

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Supreme Court Case No. 20170231  
Ward County District Court No. 51-2017-CV-00434

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Susan Diane Brekke-Wentz,

Plaintiff/Appellee,

v.

Thomas Arthur Wentz, Jr.,

Defendant/Appellant.

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**BRIEF OF PLAINTIFF/APPELLEE**

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**Appeal of Amended Disorderly Conduct Restraining Order Entered April 18,  
2017 by the District Court, North Central Judicial District, Ward County, State  
of North Dakota, The Honorable Kirsten M. Sjue, District Judge**

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Joshua M. Feneis (ND ID 08169)

Krista L. Andrews (ND ID 05504)

**ANDERSON, BOTTRELL, SANDEN & THOMPSON**

4132 30<sup>th</sup> Avenue SW, Suite 100

P.O. Box 10247

Fargo, ND 58106-0247

[jfeneis@andersonbottrell.com](mailto:jfeneis@andersonbottrell.com)

[kandrews@andersonbottrell.com](mailto:kandrews@andersonbottrell.com)

(701) 235-3300

Attorneys for Plaintiff/Appellee

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## **STATEMENT OF THE ISSUES**

[¶1] Did the District Court correctly find that reasonable grounds existed for a Disorderly Conduct Restraining Order against Respondent in favor of Petitioner?

[¶2] Did the District Court correctly determine that Petitioner's testimony was limited to allegations raised in her Petition and that Respondent's due process rights were not violated?

[¶3] Did the District Court abuse its discretion in allowing hearsay evidence to be presented?

## **STATEMENT OF THE CASE**

[¶4] The District Court in Ward County entered an Amended Disorderly Conduct Restraining Order (hereinafter “DCRO”) on April 13, 2017. Appellant’s Appendix (hereinafter “Appellant’s A.”) at 77-79. The Amended DCRO followed Petitioner Susan Diane Brekke-Wentz’s (hereinafter “Susan”) Petition for a DCRO on March 17, 2017, Appellant’s A. at 3-57, a March 21, 2017 Temporary DCRO, Appellant’s A. at 58-60, an April 3, 2017 DCRO entered immediately after the DCRO hearing, Appellant’s A. at 69-70, and several communications between the District Court and the parties regarding the necessary terms of the DCRO, Appellant’s A. at 71-76. The parties were also subject to a stipulated Interim Order entered in the parties’ divorce file in Cass County District Court in Court File 09-2016-DM-01066. Appellant’s A. at 36-47. Both parties were present at the April 3, 2017 hearing on Susan’s Petition for a DCRO, Susan with Counsel and Respondent Thomas Arthur Wentz, Jr. (hereinafter “Tom”) representing himself as a licensed attorney. At the hearing, Judge Kirsten M. Sjue stated that the District Court would enter a DCRO against Tom in favor of Susan as the District Court found that Susan had established reasonable grounds that Tom had committed disorderly conduct against Susan by, among other reasons, entering Susan’s home despite a Cass County District Court order granting Susan temporary exclusive use and possession of the marital home and the right to exclude Tom from the marital home, by accessing Susan’s personal computer without her permission, and by admitting that he was obsessed with Susan. Transcript (hereinafter “Tr.”) at 102-

108. Tom now appeals the Amended DCRO following his Notice of Appeal filed June 27, 2017. Appellant's A. at 80.

## STATEMENT OF THE FACTS

[¶5] Tom and Susan were married on August 4, 1990. Appellant's A. at 36. Susan initiated a divorce action in 2016 against Tom in Cass County District Court in File Number 09-2016-DM-01066. Appellant's A. at 36. In the divorce action, the parties agreed to what was styled as "Findings of Fact and Interim Order" (hereinafter "Interim Order") regarding certain temporary issues and permanent child custody matters. Appellant's A. at 36-47. The Interim Order was entered by Judge John Irby in File Number 09-2016-DM-01066 on February 6, 2017. Appellant's A. at 47. The agreed upon Interim Order specifically provides in Paragraph 3:

***Temporary Use and Possession of Marital Home:*** Susan shall have temporary exclusive use and possession of the parties' marital home located at 1334 Hiawatha Street, Minot, ND 58701, and legally described as:

Lot 6 and 7, Edgewood 10th Addition to the City of  
Minot, County of Ward, State of North Dakota.

If Thomas requires anything from the marital home, he shall contact Susan and let her know when he plans to come to the marital home. The parties agree that Thomas shall have use of the following items of personal property pending finalization of their divorce, and that he may remove them from the marital home upon advance notice to Susan: his personal belongings, books in his office, sterling silver flatware from the parties' wedding, piano, treadmill, church pew, tea cups from Thomas' mom, leaf chair, Harvard chair, law school chair, desk, desk chair, oversized chair, sofa/sleeper from upstairs, rug from same room as sofa sleeper, six-drawer dresser from the upstairs hallway, secretary desk and chair, two table lamps, circular table in the library, and 23 pieces of art work and pictures from Thomas' office, and such additional items as the parties shall so agree..

Susan shall be allowed to exclude Thomas from the marital home at her discretion.

This temporary exclusive use and possession shall last until Judgment is entered in this matter.

Appellant's A. at 37. As noted, the house located at 1334 Hiawatha Street, Minot, ND 58701 was the parties' marital home (hereinafter "marital home"). Despite this agreed upon Interim Order, during the weekend of March 9 through March 14, 2017, Tom violated this provision by entering the marital home multiple times without contacting Susan and without receiving permission to enter the marital home.

[¶6] It is undisputed that Tom entered the marital home without contacting Susan and without receiving permission from Susan. Susan and the parties' children went on a trip to Phoenix, Arizona during the period of March 9 through March 14, 2017. Tr. at 12-13. Susan received no communications from Tom prior to going on the trip; specifically, he never requested that he be able to enter the marital home during that time. Tr. at 13. Despite this, while Susan and the children were in Arizona, Tom entered the marital home. Tom admitted as such during the hearing on the DCRO, stating that he entered the marital home on March 10, 2017. Tr. at 85-86. This was also confirmed through the testimony of Shaylin Prough ("Shaylin"), Susan's dog sitter while Susan was on vacation, Tr. at 65-70, and Shannon Berens ("Shannon"), Shaylin's mother, Tr. at 75-79. Tom also admitted to Shannon by text message that he entered the marital home between March 9 and March 14, 2017. Tr. at 77-78; Appellant's A. at 49 and 55. Shannon sent a text message to Tom on Saturday, March 11, 2017 asking that Tom not return to the marital home because it scared her daughter, Shaylin. Appellant's A. at 49; Tr. at 78. Not only did Tom admit that he had entered the marital home that

weekend in his responsive text message to Shannon, but he admitted that he planned to return to the marital home despite Shannon's request. Appellant's A. at 49. Tom also admitted to Susan by email on March 14, 2017 that he entered the marital home during the period of March 9 to March 14, 2017. Appellant's A. at 52-54. Tom admitted in that same email that he knew Susan had blocked his communications to her. Appellant's A. at 54. Susan also contacted the Minot police to make contact with Tom on March 10, 2017 in order to inform him that she did not want him at the marital home. Tr. at 13-14. Tom admitted that the police spoke with him about not being at the marital home on March 10, 2017. Tr. at 85; 91-92. Despite this, Tom admitted to returning to the marital home on Monday, March 13, 2017 after his conversation with the police. Tr. at 86. Shaylin and Shannon established, though, that Tom had also entered the marital home on Saturday, March 11, 2017. Tr. at 69-70; 76-77.

[¶7] Tom admitted that he did not have a key to enter the marital home, that he knocked and rang the doorbell with no response, and that he entered the marital home through an unlocked side garage door. Tr. at 86. In fact, Susan had changed the locks and the garage codes to the marital home because she was scared of Tom and did not want him to enter the marital home. Tr. at 57-58.

[¶8] Tom claims that he left a voicemail for Susan prior to entering the home during the period of March 9 through March 14, 2017, Appellant's Brief at ¶¶ 12 and 30, but only Tom testified to that claim and no such voicemail or phone records were entered into evidence during the hearing. Susan stated specifically that Tom did not contact her prior to March 9, 2017, Tr. at 13, and in fact noted that she had

blocked Tom's communications due to prior harassment and being scared of Tom. Tr. at 13; 51; 58. Despite the claims in his Brief, Appellant's Brief at ¶ 30, Tom testified that he was fully aware that Susan had blocked communications from him:

Q. Are you aware that Susan blocked communications from you?

A. Yes.

Tr. at 87. Tom also admitted that he had various means to contact Susan to receive permission to enter the marital home, including through the parties' divorce attorneys. Tr. at 85-88. Despite this, Tom admitted that he did not have permission to enter the marital home:

Q. Ms. Wentz never gave you permission to enter the house, correct?

A. Not that I received, no.

Tr. at 87.

[¶9] At the DCRO hearing, it was established that during his unpermitted entrance into the marital home, Tom had accessed and removed Susan's personal computer. Shaylin testified that on Friday, March 10, 2017, after she noticed that Tom had entered the marital home, she had noticed Susan's computer in its proper place in the marital home's computer room. Tr. at 69. Shaylin had noticed that a bag and flash drive were next to it, however. Tr. at 66-67. The next day, Saturday, March 11, 2017, Shaylin noticed that the computer, the bag, and the flash drive were gone. Tr. at 69. Later that same day, she noticed that the computer had been returned to the marital home, but was moved to the garage. Tr. at 69-70. Similarly, Shannon testified that she noticed the computer in its proper place the night of Friday, March 10, 2017, but that it was gone after she returned to the marital home on Saturday, March 11, 2017 after receiving another scared call from

Shaylin. Tr. at 76-77. During this time frame, Susan received a message from Verizon, her cell phone carrier, indicating that someone new was accessing her phone and message account on March 10, 2017. Appellant's A. at 50-51. Tom was able to access Susan's Verizon account through her personal computer at the marital home. Tr. at 36-39.

[¶10] Susan had previous experience with Tom accessing her phone and messages without her permission. Susan testified that in August 2016, Tom had accessed her phone account and read messages she had sent to men she was dating. Tr. at 16-17; 37-39. Tom admitted that he had done this and stated that these messages to other men "super" turned him on. Tr. at 16-17; 37-39. Susan mentioned this admission by Tom and the fact that he was reading her conversations with other men in her initial Petition and accompanying Affidavit. Appellant's A. at 12, ¶¶ 37 and 38. In November 2016, Tom again communicated with Susan about the messages he read after accessing Susan's phone account and admitted via text messages to Susan that he was obsessed with her and the messages he read that she had sent to other men "turned [him] on big time". Appellant's A. at 20-21; Tr. at 16-18. Tom also stated in these November 2016 text messages to Susan that he could not stop. Appellant's A. at 21.

[¶11] Susan testified several times during the DCRO hearing that she was scared of Tom, felt unsafe, and was fearful of her physical safety because of Tom. Tr. at 41-42; 47; 51-53; 55; 58. Shaylin also mentioned that she was scared of Tom. Tr. at 69-70. Susan specifically referenced being scared by Tom's text message to her which stated that he was obsessed with her. Tr. at 47. Susan testified that

she blocked communications from Tom because he scared her, Tr. at 58, and that she changed the locks and garage codes to the marital home because she was afraid of Tom, Tr. at 57. As noted, Susan also had the right to exclude Tom from the marital home. Appellant's A. at 37.

[¶12] At the conclusion of the April 3, 2017 DCRO hearing, Judge Sjue provided her reasoning for issuing a DCRO against Tom. Judge Sjue stated specifically:

Now for me, what I see here, the most significant event for me is -- and Mr. Wentz I know you appear to have taken a different view of this. But I'm reading the interim order here that was issued by the Court in Cass County. And let me get the date right here. I think it was February 4<sup>th</sup>. It was signed by the Court on February 6<sup>th</sup>. But the portion with regard to the marital home I think is pretty clear.

It says that Susan shall have temporary exclusive use and possession of the parties' marital home. Now I think exclusive means what it says. It means exclusive use and possession. Now I know that there are some provisions in here that if Mr. Wentz wants something from the home, he should contact Ms. Brekke-Wentz and there are certain items that the parties had pre-agreed he would be able to take, things of that nature.

But then it says Susan shall be allowed to exclude Thomas from the marital home at her discretion. So the way I read that, it gave Ms. Brekke-Wentz basically sole discretion to decide when and whether Mr. Wentz would have access to the marital home after this order was signed. Now I'm recognizing here that there were items that were to be exchanged. And it does make some allowance for that.

However, I think the overriding intent is clear which was that Ms. Brekke-Wentz was to control whether and when Mr. Wentz entered the home. And so I think that testimony here has been pretty clear. I mean, Mr. Wentz admits that he was in the home. I know there's some dispute here about what he was doing in the house, but I do find the testimony of the family friend who was doing the dog-sitting in particular because she was in the home for a lot of this and saw the things that were being moved. And I do believe that Mr. Wentz was accessing that computer, moving it around. It just doesn't make sense to me that it would have been anybody else who would be doing that.

So entering the house without permission from my view in violation of this order is enough from my point of view to issue the disorderly conduct restraining order. But add on top of that I'm not finding that there was abusive language in the texts, but I do in particular references from Mr. Wentz, the reference to being obsessed with Ms. Brekke-Wentz. That is consistent with then Ms. Brekke-Wentz, her Verizon account being accessed by somebody on the same date at the same time that Mr. Wentz would have been in the marital home without permission.

I think it's too much to ask for me to find that that was just a coincidence. It makes sense to me that Mr. Wentz was using the computer to try to access Ms. Brekke-Wentz's account. And again, I think that that supports the issuance of the disorderly conduct restraining order as well. So I want to be clear I'm not doing this lightly, but I do find that there are reasonable grounds to support the issuance of the disorderly conduct restraining order.

Tr. at 105-107.

[¶13] Tom also raises two minor evidentiary and procedural issues that he alleged occurred at the DCRO hearing. First, Tom alleges that Susan addressed the course of conduct of Tom previously accessing her Verizon phone account and tracking her communications at the DCRO hearing without first having raised the issue in her Petition. Appellant's Brief at ¶¶ 19-21; Tr. at 35-36. Tom neglects to mention that Tom previously accessing Susan's Verizon account and tracking her communications was raised in Susan's Petition and Affidavit, with Susan specifically stating:

[¶37] This is not the first time Tom has tracked my communications. After we separated, but before we got separate phone plans, Tom admitted to me that he was spying on text message conversations I was having with other men I was dating. Tom specifically told me that he "got off" on such messages and that the text messages "turned [him] on big time". See Exhibit B.

[¶38] I have been on a separate Verizon account from Tom since August 2016. Because of this, he needed to break into the home so

that he could gain access to my communications which he was no longer able to view at his leisure.

Appellant's A. at 12.

[¶14] Second, Tom alleges that the District Court allowed hearsay statements in the form of text messages from Susan's phone provider, Verizon, over Tom's objection. Appellant's Brief at ¶¶ 22-26. Tom did object to the introduction of evidence of Susan's discussion with her internet provider regarding the IP address of who accessed her account. Tr. at 29. Tom's objection was specific: "Your Honor, objection. That's complete hearsay. I mean, how am I supposed to defend against a statement like that with the internet provider not here." Tr. at 29. He continued his objection in a similar vein later: "Well, yes, Your Honor. I think my objection still stands. I mean, again I wasn't present and this is second hand information. And I have no ability. I don't even have the IP address to dispute the fact that it's not my IP address." Tr. at 31. And finally, "Your Honor, my objection still stands. I mean, not only is that untrue. I have no ability to cross-examine the IP provider that gave this information to Susan. I mean, I'm defenseless here." Tr. at 33. In none of these objections did Tom reference the text message Susan received from Verizon alerting her that someone was accessing her account. Tom's objections only referenced the conversation Susan had with her internet provider regarding the IP address of who accessed her Verizon account. Tr. at 29; 31; 33. In fact, Tom specifically stipulated to the introduction of the Verizon text message he now claims he was objecting to:

MR. WENTZ: Your Honor, I think these documents speak for themselves. I don't know if it's the best use of time to have them read.

It's obviously a very emotional and charged situation. But it's obviously up to the Court.

MR. FENEIS: Your Honor, if Mr. Wentz will admit to all of these documents entered into evidence I will move on.

THE COURT: Mr. Wentz, are you willing to stipulate to Exhibits A through M as they were attached to the petition for the disorderly conduct restraining order?

MR. WENTZ: Yes. The petitioner will be able to establish them. You know my only comment, Judge, is this is just a small sampling of the communications back and forth. And they have not produced all of the emails, all of the text messages, all of the what's app or other communications.

THE COURT: Okay.

MR. WENTZ: Or voicemails.

THE COURT: All right. But with that, are you stipulating then to Exhibits A through M?

MR. WENTZ: Yes, that's fine, Your Honor. They may be admitted into evidence.

THE COURT: Okay. In that case, I will receive Exhibits A through M as they have already been e-filed and were attached to the initial petition.

MR. WENTZ: Actually, let me back up on that, Judge.

THE COURT: Yes.

MR. WENTZ: There are some text exchanges between myself and my daughter which I don't believe should be part of the record or admitted. I don't think they have any bearing. And not to get into the procedural grounds, but I don't believe they would be admissible because my daughter's not here to verify.

THE COURT: So which –

MR. FENEIS: Your Honor, I can lay the foundation for them.

THE COURT: Which exhibit is that specifically?

MR. FENEIS: Exhibit M.

THE COURT: So, I will admit then Exhibits A through L pursuant to stipulation. And Mr. Wentz is objecting to Exhibit M. So Attorney Feneis, I'll let you deal with that one.

Tr. at 21-23. The Verizon text message that Tom has a problem with now was marked as Exhibit J, meaning it fell within the stipulation Tom agreed to. Appellant's A. at 50-51. Not only did Tom stipulate to the introduction of Exhibit J, but he was the one who suggested that the Court not spend time listening to argument over its introduction. Tr. at 21. Tom was even able to go back and modify his stipulation regarding the introduction of one Exhibit, but he never raised an issue with Exhibit J, the Verizon text message. Tr. at 22-23.

[¶15] Tom's hearsay objection was limited to the conversation Susan had with her internet provider about Tom's IP address. Tr. at 29; 31; 33. The Court sustained Tom's hearsay objection to that conversation. Tr. at 35-36. But Tom never objected to the Verizon text message, as indeed, he stipulated to its introduction. Tr. at 21-23.

## **ARGUMENT**

### **A. Standard of Review**

[¶16] A District Court has discretion to grant a disorderly conduct restraining order and the Supreme Court will not reverse that decision unless the District Court clearly abused its discretion. Meier v. Said, 2007 ND 18, ¶ 20, 726 N.W.2d 852. Similarly, “a district court has broad discretion on evidentiary matters, and this Court will not reverse a lower court's decision to admit or exclude evidence absent an abuse of discretion.” In re J.S.L., 2009 ND 43, ¶ 18, 763 N.W.2d 783. “A district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, or when it misinterprets or misapplies the law.” Meier, 2007 ND 18 at ¶ 20.

### **B. The District Court Had Reasonable Grounds to Enter a DCRO Against Tom**

[¶17] N.D.C.C. § 12.1-31.2-01 governs the issuance of a DCRO. A DCRO may be granted by the District Court if it finds that “there are reasonable grounds to believe that the respondent has engaged in disorderly conduct.” N.D.C.C. § 12.1-31.2-01(5)(d). “Disorderly conduct means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.” N.D.C.C. § 12.1-31.2-01(1). For purposes of N.D.C.C. § 12.1-31.2-01, “disorderly conduct” is broader than and differs from the crime of disorderly conduct. Holbach v. Dixon, 2007 ND 60, ¶ 6, 730 N.W.2d 613.

[¶18] Additionally, “reasonable grounds” has been determined to be synonymous with “probable cause”. Meier, 2007 ND 18 at ¶ 21. Thus, “[r]easonable grounds exist when the facts and circumstances presented to the judge are sufficient to

warrant a person of reasonable caution to believe that acts constituting the offense of disorderly conduct have been committed.” Id. “To support a request for a disorderly conduct restraining order, the petitioner must present evidence of specific acts or threats which constitute disorderly conduct. . . . [T]he petitioner must show that specific unwanted acts were intended to adversely affect her safety, security, or privacy.” Id. at ¶ 22. “[T]he district court is in a better position to judge the demeanor and credibility of witnesses and weigh the evidence than we who have only the cold record to review.” Id. at ¶ 26.

[¶19] The District Court provided three (3) reasonable grounds by which it determined that Tom engaged in disorderly conduct against Susan: (1) Tom entered the marital home without receiving permission from Susan to do so in spite of his own agreement that Susan had exclusive use and possession of the marital home; (2) Tom’s admission to Susan that he was obsessed with her; and (3) Tom accessing Susan’s personal computer and accessing her Verizon account without her permission. Thus, even before addressing the evidentiary and procedural issues alleged by Tom, sufficient grounds exist to deny Tom’s appeal because the District Court had reasonable grounds to grant the DCRO.

[¶20] As stated by the District Court, the Interim Order means what it says. It provided Susan with temporary exclusive use and possession of the marital home. Possession is defined as “[t]he right under which one may exercise control over something to the exclusion of all others.” Black’s Law Dictionary (10th ed. 2014). The Interim Order even supplemented that by stating that Susan could “exclude Thomas from the marital home at her discretion.” Tom did not have free rein to

enter the marital home. Susan had the sole discretion to control access to the marital home and the ability to exclude Tom at will. It is undisputed that Tom did not receive permission to enter the marital home. Simply put, by his own agreement, Tom had no right to enter the marital home. The changed locks and garage codes, plus the fact that he had to break into the marital home through a side door, were additional proof of that. By his own admission, Tom entered the marital home without permission anyway.

[¶21] On top of this, Tom was asked not to return to the marital home after entering it the first time. Susan had the Minot police contact Tom to tell him he was excluded from the marital home on March 10, 2017. The Minot police relayed that information to Tom. Similarly, Shannon asked Tom not to go back to the marital home so as not to scare Shaylin. Tom ignored this and, by his own admission, returned to the marital home. Tom acted as if he still had the right to enter the marital home at will. But he had no such right.

[¶22] Tom had only one means by which he could enter the marital home, which was to contact Susan and receive permission to enter the marital home to collect certain agreed upon personal property. Susan never received any communications from Tom regarding a request to enter the marital home. Tom claims he left a voicemail for Susan, but provided no recording or phone records to substantiate that. Regardless, Tom admits that he did not receive permission to enter the marital home from Susan and admitted, despite his current claims, that he was aware Susan had blocked his communications. Even if Tom left this voicemail, which is disputed, Tom did not contact Susan to request to enter the

marital home because he knew she was blocking his phone calls. Tom had other means by which he could contact Susan, but he chose not to use them. Beyond this, though, Tom's argument that he had innocent reasons to enter the marital home to retrieve certain items is completely destroyed by the testimony of Shaylin and Shannon during which it was established that Tom intended to enter the marital home to access Susan's personal computer. Tom blatantly violated the Interim Order to gain access to Susan's private information and communications. In doing so, he committed an act of disorderly conduct against Susan.

[¶23] Susan stated clearly that Tom's actions left her feeling unsafe and scared of Tom. Tom knew that Susan did not want him entering the marital home without permission, as it was agreed upon in the Interim Order. Tom did so anyway. A reasonable person would determine that Tom's actions were unwanted and intrusive and were intended to adversely affect Susan's safety, security, and privacy.

[¶24] This act of disorderly conduct by Tom must also be kept in context with the harassing communications Tom sent to Susan that led to her blocking his communications in the first place. In November 2016, Tom sent text messages to Susan in which he admitted that he saw messages she sent to other men that "super" turned him on, that he was obsessed with her, and that he could not stop. The District Court specifically cited the text message in which Tom admits he is obsessed with Susan as a reasonable ground to grant the DCRO. Again, Susan testified that these text messages scared her and made her feel unsafe. Tom's text messages were unwanted, intrusive, and were intended to adversely affect

Susan's safety, security, and privacy. The text messages provided further reasonable grounds for the granting of the DCRO.

[¶25] Finally, the District Court specifically cited Tom's accessing and moving Susan's computer, along with the messages Susan received from Verizon showing that someone was accessing her account on March 10, 2017, as reasonable grounds to justify the granting of the DCRO. Tom recognizes how damaging this evidence is, as he now seeks to exclude it, which will be addressed below. Needless to say, though, Tom's actions in accessing Susan's private information and communications further demonstrate disorderly conduct.

[¶26] The testimony of Shaylin and Shannon proved that Tom's intention in entering the marital home was not to obtain personal items, as alleged by Tom, but was instead to access Susan's computer for her private information and communications. Shaylin and Shannon both testified that Tom had moved Susan's computer from its original position in the marital home's computer room. On top of this, though, is the fact that during this exact time, March 10, 2017, Susan received a text message from her phone carrier, Verizon, indicating that somebody was accessing her phone and message account. The District Court considered this too strong to be a coincidence. Tom went to the marital home, accessed Susan's computer, and used that to access Susan's personal information and communications. In the context of Tom's previous text messages to Susan, Tom's unwanted and intrusive actions again show that he intended to adversely affect Susan's safety, security and privacy and in fact did make Susan feel unsafe and

scared. Reasonable grounds clearly existed to show that Tom engaged in disorderly conduct against Susan justifying the issuance of a DCRO against Tom. [¶27] The District Court had multiple reasonable grounds to enter a DCRO against Tom. Even if the District Court erred in allowing certain evidence, which it did not, such errors would be harmless, as even if the challenged evidence were excluded, sufficient reasonable grounds would still exist to enter a DCRO against Tom. See Peters-Riemers v. Riemers, 2001 ND 62, ¶ 10, 624 N.W.2d 83 (“Nonprejudicial mistakes by the district court constitute harmless error and are not grounds for reversal.”). Tom’s appeal of the DCRO should be denied in its entirety.

**C. The District Court Did Not Violate Tom’s Due Process Rights as Susan Addressed the Issue of Tom Previously Accessing Her Phone Account in Her Petition**

[¶28] “[D]ue process requirements must be met throughout the restraining order proceedings.” Meier v. Said, 2007 ND 18, ¶ 15, 726 N.W.2d 852. The District Court must hold a full hearing before it may grant a long-term disorderly conduct restraining order, which may not exceed a period of two years. N.D.C.C. § 12.1–31.2–01(5) to (6). “At the hearing, the petitioner must prove the allegations in the petition through sworn testimony, rather than by affidavits alone, with an opportunity for cross-examination. . . . Furthermore, the petitioner may not raise new allegations through her testimony without notice to the respondent.” Meier, 2007 ND 18 at ¶ 15. To comply with due process, “a fair hearing requires reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims.” Id.

[¶29] Tom was clearly placed on notice that Susan would address his past incidents of accessing her Verizon phone account and reviewing private messages

Susan sent to others. In her Petition, Susan mentioned that Tom accessed her Verizon account previously while they shared a Verizon account. Susan also mentioned in her Petition that as a result of this, she started her own Verizon account so that Tom would no longer have access to her messages. Susan also referenced in her Petition that Tom admitted to this conduct and stated that it “super” turned him on. Text messages in which Tom admitted to this conduct were also included in the Petition and Tom stipulated to their introduction into evidence at the DCRO hearing.

[¶30] Tom clearly was given notice in Susan’s Petition that past incidents in which Tom accessed Susan’s Verizon account and reviewed her private messages would be addressed at the DCRO hearing. The testimony at the DCRO hearing regarding the August 2016 incident in which Tom accessed Susan’s Verizon account, reviewed her private messages, and later admitted to Susan that he reviewed them and was “super” turned on by them did not violate Tom’s due process rights. Such evidence was properly introduced at the hearing, including the text messages to which Tom stipulated as to their introduction.

**D. Tom Waived Any Ability to Appeal the District Court’s Review of the Verizon Text Message as He Stipulated to Its Introduction**

[¶31] “A party must object at the time the alleged error occurs, so the district court may take appropriate action if possible to remedy any prejudice that may have resulted. . . . Failure to object acts as a waiver of the claim of error.” Meier, 2007 ND 18 at ¶ 18.

[¶32] Not only did Tom not object to the Verizon text message that indicated that someone new had accessed Susan’s account on March 10, 2017, but Tom

stipulated to its entering into evidence. Tom objected to a conversation Susan had with her internet provider about an IP address, which the District Court sustained and prevented the introduction of that conversation. However, Tom did not object to the Verizon text message and did not object to the evidence that someone had accessed Susan's Verizon account on March 10, 2017. Rather, Tom stipulated that such evidence could be entered. Tom cannot now ask that such evidence be excluded. Not only did he waive such an argument by not objecting, but he agreed that such evidence could be entered and reviewed by the District Court. The District Court properly reviewed the Verizon text message which indicated that someone new had accessed Susan's account on March 10, 2017 because Tom agreed that the District Court could review it.

**E. The Supreme Court Should Decide This Matter Summarily Without Oral Argument**

[¶33] N.D.R. App. Proc. 34(a)(1) allows a party to make "a statement explaining why oral argument should, or need not, be permitted." Susan does not believe oral argument is necessary and should not be permitted. Not only are the issues involved in this appeal straightforward, as addressed above, but the issues in this matter are obviously quite sensitive, as Susan was required to seek a DCRO against her husband of over 25 years. On top of this, the parties are involved in a bitter, lengthy, and expensive divorce process and having to expend further time and expenses on oral argument would not be a good use of the parties' resources.

[¶34] The issues involved in this appeal are straightforward and clear. The Supreme Court can deny Tom's appeal summarily and without oral argument.

**CONCLUSION**

¶35] The District Court's April 13, 2017 Amended Disorderly Conduct Restraining Order should be affirmed.

Dated this 20th day of September, 2017.

/s/ Joshua M. Feneis

Joshua M. Feneis (ND ID 08169)

Krista L. Andrews (ND ID 05504)

Anderson, Bottrell, Sanden & Thompson

4132 30th Avenue SW, Suite 100

P.O. Box 10247

Fargo, ND 58106-0247

(701) 235-3300

[jfeneis@andersonbottrell.com](mailto:jfeneis@andersonbottrell.com)

[kandrews@andersonbottrell.com](mailto:kandrews@andersonbottrell.com)

Attorneys for Petitioner/Appellee

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