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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

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

SUSAN DIANE BREKKE-WENTZ,

Petitioner and Appellee

v.

THOMAS ARTHUR WENTZ, JR.,

Respondent and Appellant,

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

BRIEF OF RESPONDENT/APPELLANT THOMAS ARTHUR WENTZ, JR.

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B. The Court abused its discretion in allowing hearsay and speculative evidence to be presented, and in relying on such evidence in making its findings.

C. The Petitioner did not provide reasonable grounds for a disorderly conduct restraining order.

STATEMENT OF THE CASE

[¶2.] On March 17, 2017, the Petitioner and Appellee, Susan Diane Brekke-Wentz (hereinafter "Susan") filed a petition for a disorderly conduct restraining order against the Respondent and Appellant, Thomas Arthur Wentz, Jr. (hereinafter "Tom"). App. 3-4. A Temporary Disorderly Conduct Restraining Order was entered on March 22, 2017. App. 58-60. The temporary order set a hearing date of April 3, 2017, to determine whether the restraining order should be continued. Id. Both parties appeared for the April 3 hearing, Susan with counsel and Tom *pro se*. After testimony was heard, the Court issued a decision from the bench imposing a Disorderly Conduct Restraining Order in favor of Susan for a two-year period. App. 62-68. A written order was issued shortly thereafter. App. 69. After additional written correspondence between the Parties and the Court, an Amended Disorderly Conduct Restraining Order was entered on April 18, 2017, over Tom's objection. App. 71-79. Tom filed his Notice of Appeal of the disorderly conduct restraining order on June 27, 2017. App. 80.

STATEMENT OF THE FACTS

[¶3.] The Parties were married on August 4, 1990. App. 36. A divorce proceeding was commenced on September 12, 2016. Id. Susan served Tom with a petition for a disorderly conduct

restraining order on March 24, 2017, and a hearing was set for April 3, 2017 to determine whether a long term restraining order should be entered. App. 3-4. Susan's petition, totaling 55 pages with supporting documents, alleged that: (1) Tom had entered into the marital home, which Susan has interim use of, without her permission; (2) Tom had sent harassing and intrusive communications, including communications sent while he was under the influence of alcohol; (3) stalking of Susan's communications; and (4) objectionable communications regarding the man Susan is currently dating. App. 3-57.

[¶4.] At the outset of the restraining order hearing, Susan introduced the Parties' interim order from their divorce case into evidence. App. 83. Susan offered her interpretation of the order's provision regarding temporary use and possession of the marital home. Id. She argued that she has exclusive interim possession of the marital home, and that Tom is required to ask permission to come to the home. Id. She is allowed to exclude Tom at her discretion. Id. She argued that Tom violated these provisions when he went to the home during the weekend of March 9th, 2017, when Susan was away in Phoenix on vacation with the parties' children. App. 84. Tom did not obtain permission from Susan before going to the house. Id. In fact, Susan had blocked incoming phone calls from Tom. App. 122. Susan testified that she called the Minot Police Department after learning of the entry and requested that Tom be arrested, but that they declined. App. 85.

[¶5.] Considerable testimony was devoted to Susan's reasons for going through a divorce with Tom, focused primarily on her contention that Tom suffers from an alcohol substance abuse disorder. App. 85. She testified to her recollection of seeing him passed out, acting anxiously or weepy, and having slurred speech. App. 86. In one instance, she found Tom hidden in a basement closet. Id. Several text messages from Tom were also introduced into evidence, which Susan contended were sent by Tom while he was intoxicated. App. 87. These texts included a

conversation between Susan and Tom where Tom stated that he was obsessed with Susan. Id. Another text from Tom to Susan asked about her boyfriend, a man named Doug. App. 90. Susan testified that this text was alarming to her because she had never spoken to Tom about Doug. Id. However, she later stated that the Wentz children were aware of her relationship with Doug, and they had discussed it with Tom. App. 98.

[¶6.] A separate email from Tom to Susan dated March 5, 2017 was also introduced, where Tom discussed financial issues, spousal support, and referenced Doug, insinuating that he was poor. App. 92. Text messages between Tom and his children were also introduced into evidence, which the Court noted were barely legible. App. 96. Susan testified that Tom had sent some text messages to the Party's children discussing the Party's finances and Susan's spending money on Doug. App. 98.

[¶7.] After testifying to the text messages between herself and Tom, Susan stated her belief that someone had hacked into her Verizon account. App. 99-100. She testified that her internet provider had traced an IP address to Tom. App. 100. Tom objected on the basis of hearsay and inability to cross-examine the hearsay declarants. Id. Before the Court ruled on the objection, Susan's attorney requested additional opportunity to question Susan regarding her contention and to establish foundation for her claims regarding the alleged hacking. Id. The Court granted the request and additional testimony was elicited regarding the communications from Verizon and Susan's internet provider to Susan. App. 100-104. Tom renewed his hearsay objection after the additional testimony was received. App. 104. After discussion, the Court made a ruling sustaining the objection regarding information Susan had obtained from other parties, but overruling the objection with respect to her personal observations. App. 107. The Court did not delineate which of Susan's objected to testimony fell into each category. After the ruling, Susan continued to

testify regarding communications sent to her from Verizon. Id. She also alleged an earlier incident, in August of 2016, where she believed Tom had hacked into her phone account. App. 106. Tom objected to this allegation because it was not raised in Susan's restraining order petition. Id. The Court overruled the objection, stating its belief that course of conduct is often relevant in restraining order petitions. Id. Tom's actual objection, that the allegation was outside the scope of the petition, was not specifically addressed.

[¶8.] Susan next presented an email from Tom dated March 14, 2017, which discussed family financial matters. App. 110. Susan contended that email contained admissions from Tom that he had been to the marital home in March, 2017, without her permission. Id. During cross examination, Susan stated that the emails and text messages she had offered were only approximately half of the total communications she had from Tom. App. 112. She stated that the communications she submitted were intended to show how Tom was forceful, intimidating, and scary, and that the omitted communications were not forceful, intimidating, or scary. Id. Susan also stated that she had not affirmatively excluded Tom from the marital home between March 9-14, 2017. App. 116. She testified that on past occasions when Tom would visit the home, Tom would communicate his intended visits to Susan either by email to her or through their oldest daughter. App. 114. Susan was unsure if Tom had made any communication to their oldest daughter regarding the March 9-14, 2017 visit that Susan had complained of in her petition. App. 116-117. Susan, herself, had blocked incoming communications from Tom. App. 122.

[¶9.] Susan was asked what specific conduct by Tom made her fearful of him. App. 123. She responded that she was fearful that she would have to deal with the kids after they had dealt with Tom, and that Tom would embarrass her at the kids' activities by being intoxicated. App. 124;

130-31. She stated that there had not been any physical altercations between her and Tom during their marriage, but that they had fought verbally. App. 124-25.

[¶10.] After Susan completed her testimony, Susan's dog sitter, Shaylin Prough, was called as a petitioner witness. App. 135-36. Prough testified that she was staying at the marital home beginning on March 9, 2016, at Susan's request, while Susan was out of town. App. 136. She recalled that a vehicle was parked in the driveway when she initially arrived and that the dogs were acting unusual. App. 137. She observed a computer bag in the office laying on the couch. Id. When she woke up the next morning, the computer bag was gone, a bedroom door had been opened, and the car in the driveway was gone. App. 138. Prough called Susan, who identified the car that had been parked in the driveway as belonging to Tom. Id. The next day, Prough heard someone enter the home and then leave a short time later. App. 140. After the person left, she noticed that the computer she had seen the night of March 15 had been moved. Id. She located the computer the following day on a counter in the garage. App. 141. Prough learned later that Tom had called her mother and told her that he would be stopping by the house that weekend to get the mail and pick up some financial records. App. 141-42.

[¶11.] Susan next called Prough's mother, Shannon Berens to testify. App. 145. Berens testified that she was also Susan and Tom's hairdresser. Id. Berens had gone to the Wentz home while Prough was dog sitting and also believed that the computer had been moved from the office to the garage. App. 148. Berens testified that Tom later texted her to apologize for startling her and Prough. App. 149. Susan elicited testimony from Berens that Tom had once been intoxicated while she was cutting his hair. App. 149-50.

[¶12.] Tom testified that he had, in fact, gone to the marital home during the weekend of March 10, 2017, to retrieve some boxes from his office. App. 154. He pointed out that the interim order

made specific allowance for him to retrieve certain items from the home. See App. 37. He had called Susan and left a voicemail prior to going over, and communicated beforehand to their daughter who was with Susan in Phoenix. App. 156. This was Tom's customary manner of communication to Susan when he needed things from the home. App. 158. He was unsure whether Susan had actually received his voicemail, or whether she was blocking his phone number at the time. Id. Tom was ultimately in the home for approximately 90 minutes and left with two boxes of financial documents. Id. He was not aware that Ms. Prough was staying over. Id. He denied moving the computer or accessing any phone or social media accounts belonging to Susan. App. 155. He also picked up the mail from the mailbox on March 13, 2017. App. 157. Tom had stayed at the Sierra Inn in Minot over that weekend. App. 160. Susan's attorney devoted considerable time to cross-examining Tom regarding his past use of alcohol. App. 161-167.

[¶13.] At the conclusion of Tom's testimony, the Court made a ruling from the bench imposing a disorderly conduct restraining order for a two-year period. App. 62-68. The Court noted that the communications from Tom to Susan did not contain any physical threats or name calling. Id. Instead, the Court focused primarily on the divorce interim order. The Court interpreted the intent of the order to be that Susan had control over Tom's access the marital home, and that, in its view, violating the order was sufficient grounds to issue a restraining order. App. 106-107. In addition. the Court noted its belief that Tom was accessing the computer inside the home, and that he was doing so for the purpose of accessing Susan's accounts. App. 107.

[¶14.] A written order was issued by the Court on April 3, 2017. App. 69. Susan's attorneys contacted the Court by letter filed April 6, 2017, requesting that additional restrictions be included in the order. App. 71-72. Tom responded, requesting that the distance restriction between himself and Susan include an exception for him to attend the children's activities, and to drop off and pick

up the children from the marital home for prescheduled activities. App. 74. The Court ultimately adopted the restraining order proposed by Susan. App. 77-79.

ARGUMENT

[¶15.] A trial court may grant a disorderly conduct restraining order if the court finds "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). See also Skadberg v. Skadberg, 2002 ND 97, ¶ 5, 644 N.W.2d 873. Disorderly conduct is defined in N.D.C.C. § 12.1–31.2–01(1) as "intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activity." The term "reasonable grounds" is synonymous with "probable cause." Tibor v. Lund, 1999 ND 176, ¶ 7, 599 N.W.2d 301. Reasonable grounds exist "when 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." Svedberg v. Stamness, 525 N.W.2d 678, 682 (N.D.1994).

[¶16.] A person who petitions for a disorderly conduct restraining order must allege specific facts or threats. Wishnatsky v. Huey, 1997 ND 35, ¶ 14, 560 N.W.2d 878. "It is insufficient to show the person's actions are unwanted; rather, the petitioner must show specific unwanted acts that are intended to affect the safety, security, or privacy of another person." Cusey v. Nagel, 2005 ND 84, ¶ 7, 695 N.W.2d 697. Subjective fear is insufficient to support a disorderly conduct restraining order. Williams v. Spilovoy, 536 N.W.2d 383, 384–85 (N.D.1995). "Because of the stigma and grave consequences to the respondent associated with a disorderly conduct restraining order, we have repeatedly stressed that a person who petitions for an order must allege specific facts or threats." Cusey 2005 ND 84, ¶ 11. The statute "does not authorize one person to seek a restraining

order based upon disorderly conduct directed at some other person." Id. ¶ 12 (quoting Gullickson v. Kline, 2004 ND 76, ¶ 13, 678 N.W.2d 138). "It is not enough under the statute that the petitioner for a restraining order wants the other person out of the petitioner's life." Williams, 536 N.W.2d at 385.

[¶17.] Due process is required throughout the restraining order proceedings. Holbach v. Dixon, 2007 ND 60, ¶ 7, 730 N.W.2d 613. This requires "reasonable notice or opportunity to know of the claims of opposing parties, along with the opportunity to rebut those claims." Id. Accordingly, testimony during a restraining order hearing must be limited to the dates and events alleged in the petition. Id.; see also Gullickson, 2004 ND 76, ¶22 (holding the respondent's due process rights were violated by allowing the petitioner to raise new issues at the disorderly conduct restraining order hearing).

[¶18.] "A trial court has discretion to grant a disorderly conduct restraining order, and we will not reverse that decision unless the court clearly abused its discretion." Cusey, 2005 ND 84, ¶ 7. "A district court abuses its discretion if it acts in a unreasonable, arbitrary, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned decision, or if it misinterprets or misapplies the law." Citizens State Bank-Midwest v. Symington, 2010 ND 56, ¶ 8, 780 N.W.2d 676.

A. The District Court failed to appropriately limit the Petitioner's testimony to the allegations raised in her Petition, violating the Respondent's right to due process.

[¶19.] Susan's disorderly conduct restraining order petition, along with her supporting affidavit and exhibits, constitutes fifty-five (55) total pages. Under the Gullickson and Holbach holdings, Susan's hearing testimony should have been limited to the dates and events alleged in her petition. Gullickson, 2004 ND 76, ¶22; Holbach, 2007 NBD 60, ¶7. However, she raised at least one completely new allegation when she asserted that Tom had hacked into her Verizon account in

August of 2016. App. 106. Tom appropriately objected to this new allegation, pointing out that it was not raised anywhere in her 55-page petition. Id. The Court overruled Tom's objection, stating: "I'm going to overrule your objection as far as the August conduct because I think a course of conduct is often relevant in cases of this nature on petitions for restraining orders." Id.

[¶20.] The Court's ruling failed to address the actual objection. The objection was not to relevance, but was rather an objection on due process grounds. Tom had no reasonable notice or opportunity to know that Susan would be making new allegations of events allegedly occurring some eight months earlier. The specific events actually alleged in her 55-page petition were all alleged to have occurred much more recent in time to the petition. Under the Gullickson and Holbach holdings, the Court should have limited the scope of testimony to the dates and events actually alleged in Susan's restraining order petition. The Court abused its discretion by allowing Susan to make these new allegations, resulting in a denial of due process to Tom.

[¶21.] The inappropriate testimony regarding the August, 2016 allegations materially impacted the Court's decision to impose a restraining order, and was not harmless error. At the time of the objection, the Court stated, explicitly, that Susan's allegation of the August, 2016 event would be useful in determining whether there was a course of conduct supporting the allegation actually stated in the petition. App. 106. At the conclusion of the hearing, the Court stated that it was convinced Tom had tried to access Susan's Verizon account. App. 67. Accepting as true the Court's own statement that the August, 2016 allegation was probative, it is quite clear that the Court relied on this allegation in making its findings. Under the Gullickson and Holbach holdings, the August, 2016 testimony should not have been allowed at all. As a result of this flaw in the hearing process, Tom was denied fundamental due process.

B. The Court abused its discretion in allowing hearsay and speculative evidence to be presented, and in relying on such evidence in making its findings.

[¶22.] As referenced above, part of the Court's stated reasoning for imposing a restraining order was its determination that Tom had attempted to access Susan's Verizon account. App. 107. Susan testified during the hearing that Verizon had sent her text messages that someone had hacked into her account. App. 99-100. In support of this testimony, Susan sought to introduce text messages from Verizon into evidence which stated that her account had recently been accessed from a new browser or device. App. 50. She went on to testify that she had obtained an IP address from Verizon, that her internet provider had researched the IP address, and that she had been told it was linked to Tom. App. 100. Tom objected to these hearsay statements and noted his inability to cross-examine the declarants. Id. Before the Court ruled on the objection, Susan's attorney requested the opportunity to lay more foundation for the hearsay testimony. Id. During additional questioning, Susan testified that she was in Arizona when she received the text messages and that she had talked to employees at the Verizon store and the SRT help desk about the messages. App. 100-102.

[¶23.] At the conclusion of this additional testimony, the Court made the following ruling:

> Now as far as Mr. Wentz's objection to information about the IP address, I'm going to sustain anything that was testimony about what was told to Ms. Wentz by another party, presuming that party is not present to testify today. I haven't heard otherwise. But I will overrule the objection and allow all of her testimony about her own personal observations and the things that she has personal knowledge of related to the alerts that she received and things of that nature with regard to a party accessing her accounts. So, that's my ruling on those.

App. 107. There was no specific clarification by the Court on which outside communications fell into each category of the ruling. Susan followed the objection with additional testimony about the text messages from Verizon and her allegations that Tom had hacked her account in August, 2016. App. 107-110.

[¶24.] Based on the Court's ruling on the hearsay objection, the statements regarding the Verizon text messages should have been excluded. The alerts were sent to Susan by another party (Verizon), who was not present to testify at the hearing, and Susan had no personal knowledge of anyone accessing her accounts apart from her speculation related to the hearsay texts from Verizon.

[¶25.] There can be little doubt that the Court relied on these hearsay statements in making its ultimate decision. Assuming the Court's evidentiary rulings on the objections were appropriately observed, there was no basis for the finding that Tom had tried to access Susan's Verizon account. The only evidence supporting the claim was: (1) Susan's assertion that Tom tried to access Susan's Account in August, 2016, which was not raised in her petition; (2) hearsay statements from Verizon; and (3) hearsay statements from Susan's internet provider. It is evident that the Court relied on these three objectionable categories of evidence to make its ultimate findings because there was simply no other source of evidence that would support the finding.

[¶26.] A trial court has broad discretion on evidentiary matters, and its admission or exclusion of evidence should not be overturned unless that discretion has been abused. Davis v. Killu, 2006 ND 32, ¶ 6, 710 N.W.2d 118, 120. Here, the Court made the appropriate ruling by sustaining Tom's objection to the hearsay testimony from Verizon and Susan's internet provider. However, the Court erred by then relying on the excluded evidence in makings its ultimate findings. Attorneys often argue the difficulty of trying to "unring the bell" after prejudicial evidence has wrongly been presented to the fact finder but is ultimately excluded. See Phoenix Assur. Co. of Canada v. Runck, 317 N.W.2d 402, 408 (N.D. 1982); State v. Jasmann, 2015 ND 101, ¶ 6, 862 N.W.2d 809, 813, reh'g denied (May 27, 2015). It the current case, it appears that the bell was not effectively "unrung", and that the Court erred by relying on evidence that it had earlier ruled to exclude.

C. The Petitioner did not present reasonable grounds for a disorderly conduct restraining order.

[¶27.] Apart from the Verizon issue, the Court stated that it was relying on Susan's allegation that Tom had violated the interim order in their divorce by entering the marital home while she was away on vacation:

> 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 4th. It was signed by the Court on February 6th. But the petition 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 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 the 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 is 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.

App. 65-66.

[¶28.] Disorderly conduct is defined in N.D.C.C. § 12.1–31.2–01(1) as "intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of

another person." "It is insufficient to show the person's actions are unwanted; rather, the petitioner must show specific unwanted acts that are intended to affect the safety, security, or privacy of another person." Cusey, 2005 ND 84, ¶ 7. Subjective fear is insufficient to support a disorderly conduct restraining order. Williams, 536 N.W.2d at 384–85.

[¶29.] With respect to the interim order from the parties' divorce proceedings, Susan was indeed given temporary possession of the marital home. However, there were also specific provisions for Tom to retrieve certain items of property:

> 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: …"

App. 37.

[¶30.] It is uncontested that Tom called Susan before he went to the marital home and left a voicemail. However, unbeknownst to Tom, she had blocked his incoming communications. App. 122, 156. Susan's blocking of Tom's communications deliberately frustrated the scheme put in place through the interim order allowing Tom to retrieve his property. Susan should not, now, be allowed to gain a benefit from that. See N.D.C.C. § 31-11-05(8) ("[a] person cannot take advantage of that person's own wrong"). Further, in addition to calling Susan and leaving a voicemail, it is also uncontested that Tom called the parties' oldest daughter, who was with Susan in Phoenix, and communicated to her that he would be stopping by the marital home while they were out of town. App. 156. This method of communication was consistent with Tom's prior communications to Susan about when he would be at the home. App. 114, 159. Susan did not communicate any objection. App. 116.

[¶31.] The petitioner in a disorderly conduct restraining order must show specific unwanted acts that "are intended to affect the safety, security, or privacy of another person." Cusey, 2005 ND 84, ¶ 7. The Court's analysis of whether Tom's trip to the marital home constituted disorderly conduct essentially overlooks these factors, and instead focuses on whether or not the interim divorce order was violated:

> 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.

App. 66.

[¶32.] The Court's application of the governing statute is flawed in two respects. First, N.D.C.C. § 12.1-31.2-01 defines disorderly conduct as "intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person." There is no *per se* disorderly conduct committed simply because an individual violates a divorce interim order. The trial court misinterpreted the law, and therefore abused its discretion, by interpreting the statute otherwise. Allowing the trial court's erroneous interpretation simply devolves the restraining order process into an additional venue for divorcing parties to litigate their cases and seek advantage over each other in the divorce proceeding.

[¶33.] Second, the restraining order record did not demonstrate that Tom actually violated the divorce interim order. Based on the plain language, Tom was only required to "contact Susan and let her know when he plans to come to the marital home" before he would pick up property. The undisputed facts are that he called Susan, left a voicemail, and communicated his visit to the parties' oldest daughter, who was with Susan in Phoenix. This communication was consistent with the procedures set out in the interim order for Tom to retrieve his property, and no violation of the interim order occurred.

[¶34.] The appropriate application of N.D.C.C. § 12.1-31.2-01 requires an inquiry into whether Tom committed intrusive or unwanted acts, words, or gestures that were intended to adversely affect the safety, security, or privacy of Susan. The record plainly demonstrates that Tom's visit to the marital home was for the simple purpose of retrieving his property, as specifically allowed in the divorce interim order, and that he did so consistent with the procedures set out in the order. He intentionally chose a time when he knew that Susan would be out of town, so as to minimize any conflict with her, and announced his intentions beforehand. There are no reasonable grounds to find that these actions were actually a subterfuge designed to adversely affecting Susan's safety, security, or privacy.

CONCLUSION

[¶35.] For the reasons stated above, Thomas Wentz, Jr. respectfully requests this Court reverse the District Court's decision, and remand the case with instructions that the restraining order petition be denied, or alternatively, that new findings be made consistent with N.D.C.C. § 12.1-31.2-01.

DATED this 7th day of August, 2017.

MCGEE, HANKLA & BACKES, P.C.

BY: /s/ *Erich M. Grant*

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CERTIFICATE OF SERVICE

[¶36.] I hereby certify that, on August 7, 2017, I served the foregoing document on the following by electronic mail transmission:

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Krista Lyn Andrews
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DATED this 7th day of August, 2017.

MCGEE, HANKLA & BACKES, P.C.

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