

SUPREME COURT OF NORTH DAKOTA

Kautzman v. Doll

2018 ND 23 (2018) · No. 20170232 · Decided January 22, 2018

SUMMARY

The North Dakota Supreme Court affirmed the denial of Brenda Doll’s motion for reconsideration of a disorderly conduct restraining order. The court held that her challenges to the underlying restraining orders were untimely and that she failed to establish extraordinary circumstances or an abuse of discretion warranting relief under North Dakota Rule of Civil Procedure 60(b)(6).

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Lisa Fair McEvers; Daniel J. Crothers; Jerod E. Tufte; Jon J. Jensen; Gerald W. VandeWalle, C.J.
JURISDICTION	North Dakota
DECIDED	January 22, 2018
DOCKET	20170232
DISPOSITION	affirmed
PROCEDURAL POSTURE	Doll appealed the district court's order denying her motion for reconsideration of a disorderly conduct restraining order.
STANDARD OF REVIEW	A denial of a motion for reconsideration is reviewed for a manifest abuse of discretion. A district court abuses its discretion only when it acts arbitrarily, unreasonably, or unconscionably, or when its decision is not the product of a rational mental process leading to a reasoned determination. The conduct of a hearing is also reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential opinion
PARTIES	Brenda Lou Doll v. Bruce Allen Kautzman, J.B.K., B.M.K.

TOPICS

- motion for reconsideration
- appellate procedure
- final judgment rule
- due process
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Doll's motion for reconsideration could be used to challenge the underlying temporary and permanent disorderly conduct restraining orders that she did not timely appeal.
2. Whether the district court abused its discretion by denying Doll's motion for reconsideration under North Dakota Rules of Civil Procedure 59(j) or 60(b)(6).
3. Whether Doll was denied a full and fair hearing or due process when she did not testify, present additional evidence, or make closing argument.

HOLDINGS

1. An appeal from the denial of a motion for reconsideration does not permit the appellant to attack underlying orders from which a direct appeal could have been taken but was not. Doll therefore could not challenge the propriety of the temporary or permanent restraining orders.
2. The motion for reconsideration, if treated as a motion to alter or amend under N.D.R.Civ.P. 59(j), was untimely because it was not served and filed within 28 days after notice of entry of the restraining order.
3. The district court did not abuse its discretion in denying relief under Rule 60(b)(6) because Doll failed to establish extraordinary or exceptional circumstances justifying relief from the restraining order.
4. Doll received a full hearing on the restraining-order petition, and the district court did not abuse its discretion by denying reconsideration based on her claim that she was not permitted to testify, present evidence, or make closing argument.

KEY QUOTATIONS

“An appeal from a [district] court’s refusal to vacate an order under Rule 60(b), N.D.R.Civ.P., does not permit the appellant to attack the underlying order from which an appeal could have been, but was not, brought.” (¶ 5)

“It is not to be used as a substitute for appeal. It is not to be used to relieve a party from free, calculated, and deliberate choices he has made. It is not to be used in cases where subdivisions (1) to (5) of Rule 60(b) might be employed—it and they are mutually exclusive.” (¶ 14)

FACTUAL BACKGROUND

Kautzman filed a petition for a disorderly conduct restraining order against Doll. The district court issued a temporary order and, after a December 16, 2016 hearing, granted a disorderly conduct restraining order. At the hearing, Kautzman's attorney cross-examined Kautzman, but Doll did not testify, did not request to testify, and did not indicate that she wanted to make a closing argument. Doll later filed an untimely motion for reconsideration and argued that she had not received a full and fair hearing.

PROCEDURAL HISTORY

Bruce Kautzman petitioned for a disorderly conduct restraining order, and the district court first issued a temporary order and later granted the restraining order after a hearing. Doll filed a motion for reconsideration several months later, which the district court denied. She appealed only from the denial of reconsideration, not from the underlying temporary or permanent restraining orders.

DISPOSITION

affirmed

CASES CITED

- Anderson v. Baker, 2015 ND 269, ¶ 8, 871 N.W.2d 830
- Sturdevant v. SAE Warehouse, Inc., 310 N.W.2d 749, 752 (N.D. 1981)
- Choice Fin. Grp. v. Schellpfeffer, 2005 ND 90, ¶ 6, 696 N.W.2d 504
- White v. Altru Health System, 2008 ND 48, ¶ 7, 746 N.W.2d 173
- Greywind v. State, 2015 ND 231, ¶ 11, 869 N.W.2d 746
- Meier v. Meier, 2014 ND 127, ¶ 7, 848 N.W.2d 253
- Larson v. Larson, 2002 ND 196, ¶ 11, 653 N.W.2d 869
- Hildebrand v. Stolz, 2016 ND 225, ¶ 16, 888 N.W.2d 197
- Shull v. Walcker, 2009 ND 142, ¶ 14, 770 N.W.2d 274
- Wetzel v. Schlenvogt, 2005 ND 190, ¶ 22, 705 N.W.2d 836
- Skadberg v. Skadberg, 2002 ND 97, ¶¶ 13-14, 644 N.W.2d 873