

SUPREME COURT OF NORTH DAKOTA

Hoggarth v. Kropp

2010 ND 197 (N.D. 2010) · No. 20090326 · Decided October 19, 2010

SUMMARY

The North Dakota Supreme Court affirmed the imposition of a disorderly conduct restraining order against Mary Elizabeth Kropp based on harassing conduct during a parking-lot confrontation and through email communications. The court held that the conduct was not constitutionally protected speech, but remanded for the restraining order to be narrowed by establishing specific distance boundaries and schedules for shared public, school, church, and sporting events.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Dale V. Sandstrom, Justice; Dale V. Sandstrom; Carol Ronning Kapsner; Mary Muehlen Maring; Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers
JURISDICTION	North Dakota
DECIDED	October 19, 2010
DOCKET	20090326
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kropp appealed a permanent disorderly conduct restraining order and challenged both the constitutional basis for the order and the breadth of its terms.
STANDARD OF REVIEW	Whether conduct is constitutionally protected is a question of law reviewed fully, with independent scrutiny of the record when free-speech arguments are raised. Factual findings, including credibility determinations, are not reweighed on appeal. The grant and scope of a disorderly conduct restraining order are reviewed for abuse of discretion, while the order is independently scrutinized to ensure it is narrowly tailored as to time and distance.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Mary Elizabeth Kropp v. Monte Dean Hoggarth, Tonia Hoggarth, A.H., B.H.

TOPICS

free speech injunctions appellate procedure standard of review civil procedure

PRACTICE AREAS

constitutional law civil procedure appellate procedure protective orders

QUESTIONS PRESENTED

1. Whether Kropp's statements and e-mail communications were constitutionally protected speech that could not support a disorderly conduct restraining order.
2. Whether the restraining order was impermissibly broad because it prohibited all contact and required Kropp to leave any public place upon recognizing a Hoggarth family member.

HOLDINGS

1. Kropp's speech was not constitutionally protected because, considered in the context of her accompanying conduct and intent, it constituted harassing, intrusive, threatening, and privacy-invading behavior proscribed by North Dakota's disorderly conduct statute.
2. The restraining order was validly imposed but excessively restrictive in scope and had to be modified to establish specific distance boundaries and schedules for limited common school, public, and religious events.

KEY QUOTATIONS

“[D]isorderly conduct . . . does not necessarily depend on the particular content of the speech involved, but on the behavior.” (§ 13)

“We affirm the imposition of the disorderly conduct restraining order under N.D.C.C. ch. 12.1-31.2, but remand to the district court to establish specific distance boundaries and schedules to strike a balance between protection for the Hoggarths and freedom for Kropp.” (§ 24)

FACTUAL BACKGROUND

Kropp confronted Tonia Hoggarth and her minor son outside Tonia's workplace, screaming vulgarities about Tonia's husband and his affair, remaining parked behind them and preventing them from leaving for a time. About a month later, Kropp sent e-mails to the family account, including photographs related to the affair, knowing the account was used by the entire family and was not password-protected. The district court found that Kropp intended the communications to disrupt and damage the Hoggarth family and entered a 24-month restraining order.

PROCEDURAL HISTORY

The district court issued a temporary disorderly conduct restraining order after the Hoggarths alleged harassment and disruptive e-mails. Following a hearing, the court entered a permanent 24-month order prohibiting Kropp

from contacting the Hoggarth family. After Kropp appealed, the Supreme Court remanded for reconsideration; the district court declined to terminate or modify the order, and Kropp appealed again.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must retain the restraining order but modify it by establishing specific distance boundaries and defined schedules permitting limited attendance at common school, public, and religious functions while preventing interaction between Kropp and the Hoggarths.

CASES CITED

- Hutchinson v. Boyle, 2008 ND 150, ¶ 9, 753 N.W.2d 881
- Gullickson v. Kline, 2004 ND 76, ¶ 20, 678 N.W.2d 138
- State v. Holbach, 2009 ND 37, ¶ 11, 763 N.W.2d 761
- City of Fargo v. Brennan, 543 N.W.2d 240, 243, 245 (N.D. 1996)
- Ludwig v. Burchill, 481 N.W.2d 464, 469 (N.D. 1992)
- State v. Bornhoeft, 2009 ND 138, ¶ 11, 770 N.W.2d 270
- Wetzel v. Schlenvogt, 2005 ND 190, ¶¶ 15, 17, 705 N.W.2d 836
- Estate of Loomer, 2010 ND 93, ¶ 20, 782 N.W.2d 648
- Baker v. Mayer, 2004 ND 105, ¶ 14, 680 N.W.2d 261
- Meier v. Said, 2007 ND 18, ¶ 27, 726 N.W.2d 852