

SUPREME COURT OF NORTH DAKOTA

James Daniel Mitzel v. Katherine Deanna Larson

2017 ND 48 (N.D. 2017) · No. 20160208 · Decided March 7, 2017

SUMMARY

The North Dakota Supreme Court reversed a one-year disorderly conduct restraining order issued against Katherine Larson. The court held that Larson waived her personal-jurisdiction and continuance objections by appearing without objection, but concluded the district court abused its discretion because the petition and record lacked sufficiently specific facts and findings showing that Larson’s conduct affected James Mitzel’s safety, security, or privacy.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers, Justice; Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom, Surrogate Judge; Carol Ronning Kapsner; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	March 7, 2017
DOCKET	20160208
DISPOSITION	reversed
PROCEDURAL POSTURE	Larson appealed from a one-year disorderly conduct restraining order issued by the Cass County District Court.
STANDARD OF REVIEW	A district court's decision to grant a disorderly conduct restraining order or conduct a hearing is reviewed for abuse of discretion. The court abuses its discretion when it acts arbitrarily, unreasonably, or unconscionably, misinterprets or misapplies the law, or fails to reach a reasoned determination through a rational mental process.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Katherine Deanna Larson v. James Daniel Mitzel

TOPICS

[remedies](#)[appellate procedure](#)[standard of review](#)[civil procedure](#)[equitable relief](#)

PRACTICE AREAS

civil procedure

appellate procedure

protective orders

remedies

QUESTIONS PRESENTED

1. Whether Larson waived her personal-jurisdiction and service objections by appearing at the hearing without objecting.
2. Whether the district court abused its discretion by issuing a disorderly conduct restraining order without specific findings and without sufficient specific facts or threats showing that Larson's conduct affected Mitzel's safety, security, or privacy.
3. Whether the district court's alleged failure to obtain agreement to continue the hearing required reversal.

HOLDINGS

1. Larson waived her personal-jurisdiction arguments by appearing at the hearing with counsel without objecting to service of the temporary restraining order or to the continuance of the hearing.
2. A disorderly conduct restraining order must be supported by sufficiently specific findings of fact that permit appellate review and provide a clear understanding of the district court's decision; conclusory and general findings are insufficient.
3. The district court abused its discretion in issuing the disorderly conduct restraining order because Mitzel failed as a matter of law to allege the specific facts or threats necessary to show that Larson's conduct was intended to affect his safety, security, or privacy.

KEY QUOTATIONS

“The district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination.” (¶ 7)

“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.” (¶ 9)

“Therefore, he has failed as a matter of law to allege the specific facts or threats necessary to support his petition for a disorderly conduct restraining order.” (¶ 12)

FACTUAL BACKGROUND

Larson and Mitzel were in a romantic relationship from June 2015 through January 2016. After the relationship ended, Larson obtained a Minnesota protection order alleging that Mitzel had physically and sexually assaulted her, while Mitzel petitioned in North Dakota for a disorderly conduct restraining order alleging that Larson harassed him and his wife through electronic communications. The parties exchanged hostile text messages, but Mitzel continued responding to Larson, and he did not specifically testify how her conduct affected his safety, security, or privacy.

PROCEDURAL HISTORY

Mitzel petitioned for a disorderly conduct restraining order alleging that Larson harassed him and his wife through email, text messages, and social media. The district court issued a temporary order, held a continued hearing, and entered a one-year restraining order prohibiting Larson from contacting Mitzel and excluding her from his home. Larson appealed, challenging personal jurisdiction, the continuance, and the sufficiency of the findings and evidence; the Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Investors Title Ins. Co. v. Herzig, 2010 ND 138, ¶ 57, 785 N.W.2d 863
- Combs v. Lund, 2015 ND 10, ¶¶ 4, 17, 858 N.W.2d 311
- Hanisch v. Kroshus, 2013 ND 37, ¶ 9, 827 N.W.2d 528
- Interest of J.A.H., 2014 ND 196, ¶ 12, 855 N.W.2d 394
- Cusey v. Nagel, 2005 ND 84, ¶¶ 7, 11-13, 695 N.W.2d 697