

SUPREME COURT OF NORTH DAKOTA

Cusey v. Nagel

695 N.W.2d 697 (N.D. 2005) · No. No. 20040241 · Decided May 3, 2005

SUMMARY

The Supreme Court of North Dakota reversed a two-year disorderly conduct restraining order against Trayce Nagel. The court held that the evidence did not establish reasonable grounds to believe Nagel had committed disorderly conduct because the allegations were vague and lacked specific facts showing an intent to affect Keith Cusey's safety, security, or privacy. The court also discussed evidentiary procedures for hearings on disorderly conduct restraining orders, emphasizing the use of sworn testimony and admissible evidence.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; Gerald W. Vande Walle, C.J.; Carol Ronning Kapsner, J.; Bruce E. Bohlman, S.J.
JURISDICTION	North Dakota
DECIDED	May 3, 2005
DOCKET	No. 20040241
DISPOSITION	reversed
PROCEDURAL POSTURE	Trayce Nagel appealed from a two-year disorderly conduct restraining order issued after a hearing on Keith Cusey's petition.
STANDARD OF REVIEW	A trial court's decision to grant a disorderly conduct restraining order is reviewed for clear abuse of discretion. The underlying determination of whether reasonable grounds exist is evaluated under the statutory probable-cause standard.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Trayce Nagel v. Keith Cusey

TOPICS

- family law procedure
- injunctions
- hearsay
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Nagel's alleged contact with Cusey after entry of the ex parte temporary restraining order automatically barred Cusey from obtaining a final disorderly conduct restraining order.
2. Whether the evidence established reasonable grounds to believe Nagel had engaged in disorderly conduct under N.D.C.C. § 12.1-31.2-01.
3. Whether the trial court's use of Cusey's affidavit as the principal evidence, while limiting his testimony, complied with the requirements of a full evidentiary hearing.

HOLDINGS

1. A petitioner's contact with a respondent subject to a temporary disorderly conduct restraining order does not automatically bar the petitioner from obtaining relief.
2. The evidence was legally insufficient to establish reasonable grounds to believe Nagel had engaged in disorderly conduct intended to affect Cusey's safety, security, or privacy; therefore, the trial court abused its discretion in issuing the order.
3. Although a hearing may in some circumstances be conducted through affidavits and cross-examination, the better practice is to require the petitioner to establish the petition's allegations through admissible testimony and to allow the respondent a meaningful opportunity to contest them with admissible evidence.

KEY QUOTATIONS

"A person who petitions for a disorderly conduct restraining order must allege specific facts or threats." (695 N.W.2d at 700)

"Vague generalities do not suffice," (695 N.W.2d at 701)

"Cusey's vague allegations in this case are insufficient as a matter of law to support the order." (695 N.W.2d at 702)

"The petition and affidavit itself is hearsay, since it is an out-of-court statement made to prove the truth of the allegations, and is not admissible in evidence under N.D.R.Ev. 801(c)." (695 N.W.2d at 703)

FACTUAL BACKGROUND

Cusey and Nagel dated from August 2003 until March 2004, when Cusey began dating another woman. Cusey alleged that Nagel went to his workplace, made telephone calls and left messages, drove past his girlfriend's house, appeared at a bar where they were present, and contacted third parties. Nagel disputed several allegations and asserted that Cusey sought the restraining order in retaliation for her small-claims action against him. The trial court relied primarily on Cusey's affidavit allegations that Nagel had yelled and screamed at him at work and continued calling his workplace, but the Supreme Court found those allegations too vague to establish disorderly conduct.

PROCEDURAL HISTORY

Cusey petitioned for a disorderly conduct restraining order and obtained an ex parte temporary order. After a brief evidentiary hearing, the trial court found reasonable grounds to believe Nagel had engaged in disorderly conduct and entered a restraining order effective through June 30, 2006. Nagel appealed, and the North Dakota Supreme Court reversed.

DISPOSITION

reversed

CASES CITED

- Skadberg v. Skadberg, 2002 ND 97, 644 N.W.2d 873
- Tibor v. Lund, 1999 ND 176, 599 N.W.2d 301
- Svedberg v. Stamness, 525 N.W.2d 678 (N.D. 1994)
- Wishnatsky v. Huey, 1997 ND 35, 560 N.W.2d 878
- Williams v. Spilovoy, 536 N.W.2d 383 (N.D. 1995)
- Baker v. Mayer, 2004 ND 105, 680 N.W.2d 261
- Gullickson v. Kline, 2004 ND 76, 678 N.W.2d 138
- Cave v. Wetzel, 545 N.W.2d 149 (N.D. 1996)

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