

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRANT

SOUTH CENTRAL JUDICIAL DISTRICT

Deborah Henderson,)
)
 Petitioner,)
)
 v)
)
 Gregory Bruce,)
)
 Respondent.)
)

ORDER ON PETITION FOR DISORDERLY
 CONDUCT RESTRAINING ORDER
 Case No. 19-2013-CV-39

[¶1] Before the Court is the petition of Deborah Henderson (“Henderson”) for a Disorderly Conduct Restraining Order alleging that Gregory Bruce (“Bruce”) has engaged in disorderly conduct toward her and seeking to restrain Bruce from further disorderly conduct.

[¶2] Hearing was held on the petition on December 9, 2013. Henderson was unrepresented by counsel. Bruce was represented by Thomas Kelsch. Henderson testified under oath and submitted various exhibits. She was subject to cross-examination by Mr. Kelsch. Bruce testified under oath, submitted an exhibit and was subject to cross-examination by Henderson.

[¶3] In her Affidavit and Petition for Disorderly Conduct Restraining Order, Henderson alleges that Bruce has terrorized her and her children, stalked her, followed her, taken pictures of her, and posted slanderous things about her, all of which actions have caused her to feel afraid and unsafe. Henderson also made allegations about actions Bruce allegedly took toward other persons, which actions are not before the Court.

SUMMARY OF FACTS

[¶4] Henderson lives in Leith. She is associated with Paul Craig Cobb and Kynan Dutton, white supremacists who also live in Leith. Mr. Cobb and Mr. Dutton have been charged with several counts of terrorizing arising from an

incident in which they allegedly walked about Leith carrying weapons. Henderson has not been charged with a criminal offense, but accompanied Mr. Cobb and Mr. Dutton during the events leading up to Mr. Cobb and Mr. Dutton being charged with terrorizing.

[¶5] Bruce lives in New Leipzig. He maintains a Facebook account entitled "Leith, North Dakota Legal Defense Fund." Bruce refers to himself as "Web Developer" on Facebook postings. It is unclear to the Court whether this means he administers the Leith, North Dakota Internet web site. Bruce also testified that he maintains a Twitter account.

[¶6] At the hearing, Henderson introduced four photographs with attached commentary. **Exhibit 1**. The photographs were taken and posted by Bruce, and the commentary is Bruce's. One photograph depicts the rear end of a car showing its license plate. **Exhibit 1, p. 2**. The commentary includes language suggesting that a law enforcement friend of Bruce's may assist him in determining to whom the car is registered. The picture and commentary contain no reference to Henderson. Neither party offered evidence as to the purpose of the photograph nor its posting on Facebook.

[¶7] Page four of Exhibit 1 includes several pictures of a minivan and its front right wheel hub. The commentary refers to "the Dutton woman" who is in fact Henderson. The commentary includes the following language: "Where's the tire . . . I couldn't find it inside the vehicle and the business was closed today so I couldn't ask if they had it inside the shop." Bruce testified that he took the pictures from a public sidewalk; however, it does not appear that could have been possible as to the close-up pictures of the hub. The minivan is parked on a dirt or gravel parking lot near a building. It does not appear from the pictures that Bruce could have taken the close-up pictures without being on the parking lot. Bruce's

commentary to the pictures indicates that, at the very least, he looked inside the vehicle if he did not actually enter the vehicle. This does not appear to have been possible for him to do from the public sidewalk based on the photographs. Bruce's testimony on this issue is not credible. Bruce did not testify as to the purpose of the taking and posting of these pictures nor as to what his concern was regarding the minivan and its missing tire.

[¶8] A photograph on page 5 of Exhibit 1 depicts several vehicles parked at a church. One of the vehicles is circled in red. Bruce testified that he took the picture from his bathroom window. Bruce's commentary to the picture is "Now this DUTTON woman, driving Craig Cobb's vehicle, with the 3 children has come to where I live in New Leipzig, North Dakota to attend the Grace Reformed Church Of The Lord Jesus." Bruce testified he took the picture for his own safety. The fourth photograph and commentary thereto in Exhibit 1 have no relevance to the issues before the Court.

[¶9] Henderson also introduced Exhibit 2 into evidence. Exhibit 2 contains Bruce's commentary regarding his reaction to being served with the temporary disorderly conduct restraining order. At page 2 of Exhibit 2, Bruce refers to "these lunatic fringe Neo-Nazis" which reference clearly includes Henderson, as she is the petitioner for the temporary disorderly conduct restraining order.

[¶10] Henderson testified that Bruce referred to her as a "terrorist" in one of his postings. Bruce testified that he had posted a comment in which he stated that the actions of Mr. Cobb, Mr. Dutton and Henderson could be "likened to terrorist acts." Neither party submitted a copy of the actual posting.

[¶11] Henderson submitted no exhibits nor testimony supporting her claims that Bruce had terrorized her, that he had followed her, that he said or posted an

allegation that she lived with a sex offender, nor that he had reported her to Grant County Social Services.

ANALYSIS

[¶12] N.D.C.C. §12.1-31.2-01 governs disorderly conduct restraining orders. Said section reads, in relevant part, as follows:

1. "Disorderly conduct" means 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."

[¶13] The Court must first examine each of the alleged acts or statements to determine whether the act or statement constitutes disorderly conduct, and then must determine whether the act or statement includes constitutionally protected activity.

[¶14] In determining whether an action constitutes disorderly conduct, it is insufficient to show that the person's actions are merely unwanted - rather, the petitioner must show specific unwanted acts that are intended to affect the safety, security, or privacy of another person. Tibor v. Lund, 1999 N.D. 176, 599 N.W.2d 301. What is required is evidence establishing reasonable grounds to believe that the respondent engaged in disorderly conduct. The standard is the "reasonable person" standard, not an objective nor a subjective standard. Wetzel v. Schlenvogt, 2005 N.D. 190, 705 N.W.2d 836. A single occurrence of disorderly conduct may be sufficient for the Court to grant a restraining order, and showing a "pattern" is not required. Gonzalez v. Witzke, 2012 N.D. 60, 813 N.W.2d 592.

[¶15] In this case, the allegations of disorderly conduct can be broken down into three areas supported by evidence, keeping in mind that they must also be viewed as a totality of circumstances.

[¶16] First is the allegation that Bruce has taken pictures of vehicles belonging to or used by Henderson and posted the pictures on Facebook along with his commentary. There is no dispute that Bruce in fact took the pictures and posted the pictures and the commentary on Facebook. Bruce seems to be of the opinion that his taking the pictures from public property somehow insulates him from being held responsible for his actions. If this were a trespassing case such may be true, but from where Bruce took the pictures is irrelevant to the proceeding before the Court. The real issues are whether Bruce intended by doing so to adversely affect the safety, security, or privacy of Henderson, and whether a reasonable person would see Bruce's actions as disorderly conduct. It would be easy to draw the conclusion that Bruce's intent is to harass Henderson until she leaves Leith. However, the only evidence of Bruce's intent is his own testimony. Bruce testified that he took the pictures for his own safety. Given the circumstances surrounding Henderson's association with Mr. Cobb and Mr. Dutton, Bruce's fears are not unreasonable. However, one can also reasonably question whether Bruce's insertion of himself into the matter, as opposed to staying in New Leipzig, actually increases any danger to him. Henderson presented no evidence of Bruce's intent, only evidence of her reactions to Bruce's actions. If this case were a case in which Bruce had been charged with stalking, Bruce's intent would be irrelevant, as a person can be found guilty of stalking even if that person did not intend to frighten, intimidate or harass another person. **N.D.C.C. §12.1-17-07.1**. The Court is concerned that Bruce may have entered Henderson's minivan, however, such entry would constitute the offense of Unlawful Entry Into a Vehicle, **N.D.C.C. §12.1-22-04**, and not disorderly conduct. The Court finds that Bruce's actions in taking pictures of Henderson's vehicles and

posting commentary relating to the pictures on Facebook do not constitute disorderly conduct when viewed under the standard of a reasonable person.

[¶17] The second allegation supported by the evidence is that Bruce committed disorderly conduct by referring to Henderson as a Neo-Nazi. Bruce clearly did so. Henderson denies she is a Neo-Nazi. She testified that she is a separatist. Neither party presented evidence as to what constitutes a Neo-Nazi nor what constitutes a separatist. Bruce seems to be of the opinion that truth is a defense to this allegation. If this were a case involving a claim of libel or slander, truth would be a defense. Nothing in N.D.C.C. §12.1-31.2-01 provides for a truth defense in the context of a disorderly conduct restraining order. The issue again is Bruce's intent and the reasonable person standard. Exhibit 8 is a DVD consisting of video footage taken by Henderson of Mr. Cobb and Mr. Dutton. At one point in the footage, Mr. Cobb is seen wearing a shirt depicting a large swastika. While truth is not a defense, in applying the reasonable person standard, the Court concludes that a reasonable person could conclude that Henderson is at least sympathetic to Nazi theories based on her association with Mr. Cobb. The Court finds that Bruce's reference to Henderson as a Neo-Nazi does not constitute disorderly conduct.

[¶18] The third allegation supported by the evidence is that Bruce referred to Henderson as a terrorist. The evidence of this allegation is Henderson's testimony that Bruce posted a comment referring to her as a terrorist, and Bruce's testimony that he "likened their acts to terrorist acts." At the hearing, Bruce testified that he made this reference after Mr. Cobb and Mr. Dutton had been charged with terrorizing. At the hearing, the Court alluded to the fact that being charged with terrorizing and being a terrorist is not the same thing, despite the confluence of words. The criminal offense of Terrorizing is committed by a

person threatening to commit a crime of violence or act dangerous to human life or falsely informing another that a situation dangerous to human life or commission of a crime of violence is imminent. **N.D.C.C. §12.1-17-04**. Webster's New Collegiate Dictionary defines a terrorist as one who "engages in a systematic use of terror especially as a means of coercion." The preceding may seem to be an inconsequential matter of semantics, but the Court believes the concept of a terrorist as understood by the general public is weighted with significant implications. Despite the above, the Court finds that Bruce's statement does not constitute disorderly conduct for two reasons: (1) a person untrained in the law and not caught up in semantics could reasonably equate a person associated with persons accused of terrorizing with the concept of a terrorist, and (2) Bruce did not directly refer to Henderson as a terrorist, but instead "likened" the actions of her and her associates with terrorist acts.

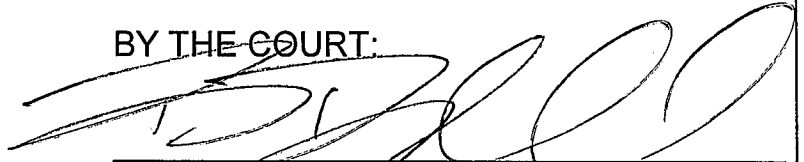
[¶19] Because the Court has found that none of Bruce's actions constitute disorderly conduct, it is not necessary for the Court to address the issue of whether Bruce's actions are constitutionally protected activity. The Court does find it interesting that Bruce cloaks himself in the right to free speech. He expressed his opinion that his status as a "credentialed journalist" gives him some unique status under the First Amendment. First Amendment protections are not limited to journalists. All citizens are protected. The Court assumes the majority of people in Leith, in Grant County, and in North Dakota do not agree with Neo-Nazi and separatist doctrines. However, the purpose of the First Amendment is not to protect majority, mainstream speech and ideas. It is to protect those with minority opinions, even if those opinions are repugnant to the majority. Obviously when the expression of those opinions assumes a form dangerous to citizens, the expression must be curtailed. Bruce wants the

benefit of the First Amendment for himself, but is not prepared to provide it to those like Henderson with whom he disagrees.

[¶20] The Temporary Disorderly Conduct Restraining Order is DISMISSED.

Dated at Bismarck, North Dakota, this 16th day of December, 2013.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Bruce B. Haskell', written over a horizontal line.

Bruce B. Haskell, District Judge
South Central Judicial District

Deborah Henderson
Thomas Kelsch