

Case No. A-25-64

IN THE NEBRASKA COURT OF APPEALS

JORDYN FLINN

Plaintiff-Appellee,

v.

ADAM STRODE

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
FOR LANCASTER COUNTY
The Honorable Susan Strong, District Court Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	2
BASIS OF JURISDICTION.....	4
STATEMENT OF THE CASE.....	4
ASSIGNMENTS OF ERROR.....	5
PROPOSITIONS OF LAW	6
STATEMENT OF FACTS.....	7
SUMMARY OF THE ARGUMENT	12
ARGUMENT	13
I. The trial court erred by affirming its ex parte order and entering a harassment protection order based on insufficient evidence of harassment when the conduct is viewed objectively.	13
II. The trial court erred by disregarding the requirement of Neb. Rev. Stat. § 28-311.02 that the alleged conduct constituting the harassment objectively “serves no legitimate purpose.”	18
CONCLUSION	25
CERTIFICATE OF COMPLIANCE.....	25

TABLE OF AUTHORITIES

Nebraska Cases

<i>Casaday v. Winterstein</i> No. A-17-1246, 2018 WL 4042863 (Neb. Ct. App. Aug. 16, 2018) (unpublished opinion cited pursuant to Neb. R. App. P. § 2-102(E))	15, 16
<i>Diedra T. v. Justina R.</i> , 313 Neb. 417, 984 N.W.2d 312 (2023) ...	6, 7, 14
<i>In re Est. of Marsh</i> , 307 Neb. 893, 901, 951 N.W.2d 486, 494 (2020)	5
<i>In re Interest of Jeffrey K.</i> , 273 Neb. 239, 728 N.W.2d 606 (2007) ..	6, 13, 15
<i>ML Manager, LLC v. Jensen</i> , 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014).....	6, 19
<i>Yerania O. v. Juan P.</i> , 310 Neb. 749, 755, 969 N.W.2d 121 (2022)	5, 6, 7, 14

Cases from Other Jurisdictions

<i>Glover v. Michaud</i> , 222 S.W.3d 347 (Mo. Ct. App. 2007)	6, 19
<i>J.W.M. v. D.L.O.</i> , 643 S.W.3d 903 (Mo. Ct. App. 2022)	22
<i>N.L.P. v. C.G.W.</i> , 415 S.W.3d 800, 802 (Mo. Ct. App. 2013).....	21
<i>Nastal v. Henderson & Associates Investigations, Inc.</i> , 471 Mich. 712, 723 (2005).....	20, 21
<i>People v. Coones</i> , 550 N.W.2d 600, 602 (Mich. App. 1996)	21
<i>Schaefer ex rel. S.S. v. Liechti</i> , 711 N.W. 2d 257 (S.D. 2006)	22
<i>Smith v. Martens</i> , 279 Kan. 242, 252 (2005).....	20
<i>State v. Rucker</i> , 267 Kan. 816, 837 (1999)	19, 20
<i>Wallace v. Van Pelt</i> , 969 S.W.2d 380 (Mo. Ct. App. 1998).....	21

Statutes & Court Rules

Neb. Rev. Stat. § 25-1902.....	4
Neb. Rev. Stat. § 25-1912.....	4
Neb. Rev. Stat. § 28-311.02.....	passim
Neb. Rev. Stat. § 28-311.02(1)	6, 15, 18
Neb. Rev. Stat. § 28-311.02(2)(a).....	6, 13, 18, 19
Neb. Rev. Stat. § 28-311.09(9)(c)(iii)	4

Legislative Materials

93 Leg. Rec. 1437-1438 (Neb. Mar. 5, 1993) 15, 23

Other Authorities

BLACK'S LAW DICTIONARY (12th ed. 2024), s.v. "legitimate" 19

BASIS OF JURISDICTION

This Court has jurisdiction under Neb. Rev. Stat. §§ 25-1912 and 25-1902.

- (i) Date of Entry of Final Order: January 16, 2025, Harassment Protection Order (After Hearing, Ex Parte Order Issued). (T15-18).

A temporary ex parte harassment protection order is a final protection order when the parties are served with an ex parte order, the parties are served with a request for hearing, and the protection order is not dismissed at the hearing. Neb. Rev. Stat. § 28-311.09(9)(c)(iii).

- (ii) Date of Filing of Any Motion That Tolled the Time Within Which to Appeal: Not applicable.
- (iii) The Date of Filing of the Notice of Appeal, and the Date of Depositing of the Docket Fee: January 29, 2025.

The Notice of Appeal was filed, and the statutory docket fee and cash bond were paid, on January 29, 2025. (Notice of Appeal, Jan. 29, 2025; Certificate of Appeal to the Nebraska Court of Appeals, Jan. 30, 2025).

- (iv) Basis for Interlocutory Appeal: Not applicable.

STATEMENT OF THE CASE

1. *The Kind of Action or Nature of the Case.*

On December 17, 2024, Jordyn Flinn (“Flinn”), Appellee, filed a petition for a harassment protection order against his neighbor, Adam Strode (“Adam”), Appellant, seeking a protection order under Neb. Rev. Stat. § 28-311.02. (T1-9). On the same day, the trial court entered an ex parte harassment protection order. (T10-11). Adam requested a show-cause hearing. (T12). On January 16, 2025, after hearing, the trial court affirmed its ex parte order and entered a protection order for a period of one year. (T15-18).

2. *The Issues Actually Tried in the Case Below.*

The issues tried before the trial court were whether Flinn proved by sufficient evidence her entitlement to a harassment protection order under Neb. Rev. Stat. § 28-311.02; whether Flinn had objectively shown harassment through both a “willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person...” and “which serves no legitimate purpose.”

3. *How the Issues were Decided and What Judgment or Decree was Entered by the Trial Court.*

The trial court conducted evidentiary hearings on January 14, 2025, and January 16, 2025, receiving witness testimony and evidence. On January 16, 2025, the trial court ruled from the bench finding Adam engaged in harassment, affirmed its ex parte protection order, and granted Flinn’s request for a harassment protection order for one year. (T15-18).

4. *The Scope of the Appellate Court’s Review.*

Orders for protection under Neb. Rev. Stat. § 28-311.02 are analogous to an injunction. Accordingly, the grant or denial of a protection order is reviewed de novo on the record. In such a de novo review, an appellate court reaches conclusions independent of the factual findings of the trial court. *Yerania O. v. Juan P.*, 310 Neb. 749, 756, 969 N.W.2d 121, 127 (2022). Statutory interpretation is an issue of law, and the appellate court determines the question independently from the trial court. *In re Est. of Marsh*, 307 Neb. 893, 901, 951 N.W.2d 486, 494 (2020).

ASSIGNMENTS OF ERROR

- I. The trial court erred by affirming its ex parte order and entering a harassment protection order based on insufficient evidence of harassment when the conduct is viewed objectively.

- II. The trial court erred by disregarding the requirements of Neb. Rev. Stat. § 28-311.02 that the alleged conduct constituting the harassment objectively “serves no legitimate purpose.”

PROPOSITIONS OF LAW

1. The language of Nebraska’s harassment statute, Neb. Rev. Stat. § 28-311.02, is to be construed objectively. *In re Interest of Jeffrey K.*, 273 Neb. 239, 245, 728 N.W.2d 606, 612 (2007).
2. Nebraska’s harassment statute balances the interest of protecting individuals from harassment with means that “will not prohibit constitutionally protected activities.” Neb. Rev. Stat. § 28-311.02(1).
3. “[The Court] will give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.” *ML Manager, LLC v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014).
4. The proper inquiry in a harassment case is whether a reasonable person would be seriously terrified, threatened, or intimidated by the conduct at issue. *Diedra T. v. Justina R.*, 313 Neb. 417, 424, 984 N.W.2d 312, 319 (2023).
5. To “harass” means to “... engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose.” Neb. Rev. Stat. § 28-311.02(2)(a).
6. For conduct to have “no legitimate purpose,” it must not be sanctioned by law or custom, be unlawful, or not allowed. *Glover v. Michaud*, 222 S.W.3d 347, 351 (Mo. Ct. App. 2007); *Legitimate*, BLACK’S LAW DICTIONARY (12th ed. 2024).
7. A protection order under Nebraska’s harassment statute requires proof that the petitioner was seriously terrified, threatened, or intimidated, for no legitimate purpose, because of a knowing and

willful course of conduct by the respondent. *Yerania O. v. Juan P.*, 310 Neb. 749, 765, 969 N.W.2d 121, 132 (2022).

8. The petitioner at a show cause hearing following an ex parte order has the burden to prove by a preponderance of the evidence the truth of the facts supporting a protection order. *Diedra T. v. Justina R.*, 313 Neb. 417, 423, 984 N.W.2d 312, 319 (2023).

9. Protection orders are analogous to injunctions. *Yerania O. v. Juan P.*, 310 Neb. 749, 756, 969 N.W.2d 121, 127 (2022).

STATEMENT OF FACTS

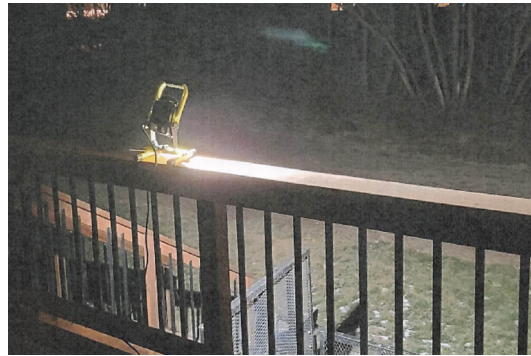
While Flinn has made three distinct claims, the material facts of this case may be reduced to one basic question for this Court to answer: To what extent can placing a light on your backyard deck be harassment warranting a protection order?

Adam and his wife, Amy Strode (“Amy”), are both law enforcement officers and live in Lincoln, Nebraska. (48:21-25; 149:20-22). They live next to Flinn, who lives with her mother. (113:3-4; 149:17-19). On December 10, 2024, Adam went to Menards and purchased a construction style flood light and installed it on the deck in the Strode’s own backyard. (E10; E17). Flinn complained to the Lincoln Police Department on December 12, 2024. (57:10-13; 151:17-20).

On December 15, 2024, after Flinn complained to the Lincoln Police Department, Adam returned the first light and installed a less powerful construction style floodlight. (E12; E13; E18; 75:6-16). Admittedly, Adam realized that the first light was probably too bright and wanted to alleviate the complaints by Flinn about the brightness. (75:11-16).



(Figure 1, E12)



(Figure 2, E13)

Figure 1 and Figure 2 represent the light as it existed from December 15, 2024, to the trial court's ruling on January 16, 2025.

Unfortunately, the second light was still a problem for Flinn. Flinn said the light was causing her stress, anxiety, and affected her sleep. (18:6-9). Flinn said it required her to place cardboard over her window to prevent the light from coming into her room. (E24, p. 10). When Flinn complained, three Lincoln police officers responded to the call. (43:13-16). Flinn did not permit the officers to enter her home to look at the window and see the effect of the light. (44:16-22). Flinn did not know why Adam put up the light. (45:11-13).

Flinn filed a civil harassment complaint on December 17, 2024, against Adam. (T1-9; E22). Flinn based her harassment petition on: (1) the Strodes allowing their dogs to run at large; (2) the Strodes installing a bright light on their deck; and (3) one incident of being followed by Adam. (T4-6). The trial court granted an ex parte protection order on the same day Flinn filed her petition. (T10-11). When Flinn filed her harassment complaint, she attached a picture of the light as it existed on December 10, 2024, and not the light that existed at the time of the petition. (E22, p. 6).

Adam requested a show cause hearing on December 23, 2024. (T12-13). At the hearing, Flinn confirmed the basis of her harassment petition as alleged in the petition. (30:5—32:6). The trial court

conducted evidentiary hearings on January 14, 2025, and January 16, 2025.

In addition to the light, Flinn takes issue with the Strodes allowing their two dogs to run off leash and she has reported them to Animal Control. (5:23—7:6). In the two months before the hearing, Flinn estimated that she saw the Strobe dogs on the sidewalk about a dozen times. (7:2-3). Flinn did not explain in detail why the dogs being off leash terrifies, threatens, or intimidates her, or how the conduct was directed at her specifically. (23:2—28:13). Flinn was concerned that “[law enforcement will] believe [Amy and Adam] over me because of their positions.” (22:1-21). Flinn also said, “[i]t freaks me out that someone in [Adam’s] position doesn’t have to follow the rules, and repeatedly it creates fear on the other rules that he may not be allowed to follow.” (28:8-10). Flinn generally referenced that the dogs ran after her and her dog, but that was not included within her harassment petition, and she provided no other evidence supporting the alleged incident. (28:11-13; *see* E22, pp. 4-5).

Flinn also claimed that she was being followed. (E22, p. 5). In one specific instance, Flinn reported seeing Adam drive past in his personal pickup truck; two days later Flinn received a verbal warning for violating Lincoln’s leash ordinance. (E22, p. 5). Amy and Adam did drive past Flinn, and they did report her to Animal Control for violating Lincoln’s leash ordinance, but they were traveling from Menards to a friend’s house in an adjoining neighborhood. (68:17-25; 156:19—157:8). The record does not include any other incident to support Flinn’s allegation of being followed.

The Strobe’s relationship with Flinn before this action is not amicable. That history is important context to understand why some of the actions were taken by Amy and Adam. Before this case, Flinn unsuccessfully petitioned the trial court for a harassment protection order against Adam in Lancaster County Case No. CI 24-1609, which the trial court dismissed. (91-18-22; 164:23—165:1). In that earlier

hearing, Flinn admitted to throwing bags of dog feces into the Strode's yard. (50:7-13).

After the trial court denied her harassment petition, Flinn began recording the Strodes. (E7). In July 2024, Flinn filed a civil lawsuit against the Strodes seeking \$100,000 in damages. (32:7-13; 33:22-25). In response to a discovery request in the civil lawsuit, Flinn produced voluminous images and videos, many of which were recordings of Amy and Adam. (37:9-18; E7). As early as May 2024 and as late as October 2024, Flinn recorded Amy or Adam many times. (85:3—88:2; E7). In one of the recordings produced, Flinn recorded a conversation between Amy and Adam. (E20). While it is difficult to understand what is said in the video, Flinn sat on her deck behind the tree line and recorded a conversation in which she was not a participant; Flinn admitted this. (39:9—40:24).

Flinn also stood in the trees between her house and the Strode's property, watching and filming the home. Adam reported seeing Flinn in the tree line. (76:23-25). Amy reported seeing Flinn recording her in the tree line. (169:18-20). Larry Wilder, another neighbor, testified at the hearing concerning his observations of Flinn in the tree line late at night, with what looked like a camera in her hand. (123:1—127:25).

Flinn's recordings are not limited to Amy and Adam. James Brhel, a neighbor who lives two houses north of the Strode residence, testified at the hearing. (137:7-11). While hosting a birthday party, his daughter came up to him concerned about someone outside standing by the mailbox. (138:1-8). After looking, he took a picture of Flinn hiding behind a mailbox photographing the Strodes. (138:9-16; E11). On more than one occasion, Brhel observed Flinn recording him as he drove to and from his home for lunch. (144:18-23; Figure 3).

On another occasion, Flinn followed and recorded a man and a toddler in a stroller causing the man and the toddler to look back at her. (E14; E21; 85:14—87:16; Figure 4).

Jordyn Flinn



(Figure 3, E11).

Unknown person



(Figure 4, E14).

Amy described one instance that was captured by their outside camera where she saw Flinn hiding at the edge of the tree line watching her and Adam. (170:17—172:13; E35). In response to how many times she's observed Flinn watching her and her husband from the tree line, she believed there were "too many to count." (172:11-13).

Beginning the day after the trial court denied her first petition, and continuing for the next four days, Flinn impeded Amy from backing out of her garage by standing on the sidewalk. (91:23—92:11). While Flinn denies that it was intentional, she said that she reviewed her security cameras and knew when Amy left for work (between 7:25 and 7:50) and knew there was a 25-minute window of time. (203:14-19).

While more elaboration was not permitted by the trial court, the conflict with Flinn influenced Amy and Adam to list their home for sale and move from the neighborhood. (166:20—167:20).

At hearing, Amy and Adam refuted the allegations of Flinn. They offered multiple factually based reasons for why they placed a light on their deck: concerning reports from officers related to a prior

officer-involved shooting, thefts in the neighborhood, a report of an armed person in their neighborhood, and Flinn's actions towards them. (65:1—66:13; 81:17—83:24). The trial court rejected these explanations and found the light was erected solely to harass Flinn. (221:8-22). The trial court found that Flinn was more credible than the Strodes even though Flinn was shown to be untruthful, under oath, by making misrepresentations in her answers to the interrogatories in her civil lawsuit against Amy and Adam. (E3; 34:1—35:22).

The trial court affirmed its ex parte harassment protection order, granted Flinn's petition, and entered a harassment protection order for one year. (T16-18). While no evidence from the previous hearing or a transcript of the testimony was offered or received in evidence by the trial court in this action, the trial court referenced the earlier dismissed action in explaining its decision to sustain Flinn's petition and enter a harassment protection order—i.e., the trial court effectively took judicial notice of evidence and testimony in a previous case where the trial court dismissed Flinn's petition seeking a protection order against Adam. (221:5-11) ("We had a protection order hearing before between these parties, or at least between Mr. Strode and Ms. Flinn, and at that time I talked about not wanting to issue a protection order because of Mr. Strode's position. He has had fair warning...").

Adam appeals.

SUMMARY OF THE ARGUMENT

The trial court's order granting the harassment protection order was not supported by sufficient evidence. It is well-established that conduct under Neb. Rev. Stat. § 28-311.02 is viewed objectively. The primary inquiry in a harassment case is whether a *reasonable person* would be *seriously* terrified, threatened, or intimidated by the conduct in question. However, the trial court applied a subjective standard by relying on Flinn's personal experience and complaints against Adam, and no reasonable person would have found the identified "harassing" conduct was seriously terrifying, threatening, or intimidating.

The trial court interpreted or applied Neb. Rev. Stat. § 28-311.02 incorrectly in two ways: it failed to *objectively* determine whether the conduct at issue was directed at Flinn which seriously terrified, threatened, or intimidated her, if she were a reasonable person; and the trial court disregarded whether the conduct objectively “serve[d] no legitimate purpose.” *See* Neb. Rev. Stat. 28-311.02(2)(a). Because a review of the evidence under an objective standard demonstrates that Flinn’s request for a protection order is unsupported by sufficient evidence, her complaint should have been dismissed, and the trial court’s order must be reversed.

The Nebraska Supreme Court has not directly addressed the requirement of Neb. Rev. Stat. 28-311.02(2)(a) that the alleged harassing conduct “serves no legitimate purpose.” The Nebraska Supreme Court held that Nebraska’s harassment statutes are interpreted objectively. *In re Interest of Jeffrey K.*, 273 Neb. 239, 728 N.W.2d 606 (2007). The proposition is that the legitimate purpose standard is also determined objectively; however, Adam is not aware of any published appellate decision determining the issue directly. Applied objectively, the evidence showed Adam’s conduct was lawful and served a legitimate purpose and Flinn’s harassment complaint was not supported by sufficient evidence.

Had the trial court properly applied an objective standard to both the conduct alleged and the legitimacy of its purpose, it would have dismissed Flinn’s complaint. The trial court’s order must be reversed.

ARGUMENT

I. The trial court erred by affirming its ex parte order and entering a harassment protection order based on insufficient evidence of harassment when the conduct is viewed objectively.

The trial court erred by finding sufficient evidence to affirm its ex parte harassment order and extending it one year. The evidence received by the trial court fails to meet the statutory requirements that

the conduct be *both* seriously terrifying, threatening, or intimidating, *and* serve no legitimate purpose. Neb. Rev. Stat. § 28-311.02. Because the evidence was insufficient, the trial court's order affirming its ex parte harassment order was not based on sufficient evidence and must be reversed.

A. Legal Standards

The petitioner at a show cause hearing following an ex parte order has the burden to prove by a preponderance of the evidence the truth of the facts supporting a protection order. *Diedra T. v. Justina R.*, 313 Neb. 417, 984 N.W.2d 312 (2023). "A harassment protection order requires proof that the petitioner was seriously terrified, threatened, or intimidated, for no legitimate purpose, as a result of a knowing and willful course of conduct by the respondent." *Yerania O. v. Juan P.*, 310 Neb. 749, 765, 969 N.W.2d 121, 132 (2022). To sustain the petition and affirm the ex parte harassment order based on the record before the trial court was error.

"A protection order is analogous to an injunction, and a party seeking an injunction must establish by a preponderance of the evidence every controverted fact necessary to entitle that party to relief." *Diedra T.*, 313 Neb. at 423, 984 N.W.2d at 319. In a proceeding where an ex parte order was entered, after the petitioning party meets the initial burden the burden shifts to the respondent to show cause why the order should not remain in effect. *Id.*

The legislative history of Neb. Rev. Stat. § 28-311.02 makes clear that the alleged conduct must be more than an annoyance. In 1993, the Legislature amended the statute and removed "alarms, annoys, or harasses" from the definition of harassment. 1993 Nebraska Laws L.B. 299. Statements from floor debates explain why the change was made:

Senator Robak: "First, the definition of harass is changed to make it more precise and specific. The bill strikes from the definition the words 'alarms, annoys or harasses' and inserts 'terrifies, threatens or intimidates'. This change makes the

definition much more precise as to what constitutes harassment. The reason we did this is because the words ‘terrify, threaten and intimidate’ all have accepted meanings in law. One of the problems with the current law is that the language used to define harassment was emphasized and subject to different interpretations and by making that change we strengthen the definition and thus make clear the intent...*This bill is only directed at criminal activity as defined by the bill, activity that serves no legitimate or legal purpose and it’s clearly meant to cause fear and terror in the victim.*”

93 Leg. Rec. 1437-1438 (Neb. Mar. 5, 1993) (Emphasis added).

The Court has described the proper lens to review conduct claimed to violate the statute as follows:

It is apparent from the announced intent of the statute, to “protect victims from being willfully harassed, intentionally terrified, threatened, or intimidated,” § 28-311.02(1), that the Legislature was not concerned with the subjective response of a victim but was instead concerned with intentional conduct by which a reasonable person would be harmed. Giving the entire statute a sensible construction, we conclude that the Legislature intended to “protect victims” and that to achieve this purpose, the language “seriously terrifies, threatens, or intimidates” ought to be applied objectively and that evidence should therefore be assessed on the basis of what a reasonable person under the circumstances would experience.

Jeffrey K., 273 Neb. at 245, 728 N.W.2d at 611.

B. Analysis

The present case is a lot like *Casaday v. Winterstein* No. A-17-1246, 2018 WL 4042863 (Neb. Ct. App. Aug. 16, 2018) (unpublished opinion cited pursuant to Neb. R. App. P. § 2-102(E)). In 2017, Casaday filed a petition and affidavit to obtain a harassment protection order against Winterstein. *Id.* at *1 Casaday’s alleged that Winterstein’s

wife berated and yelled at him, that Winterstein drove by and honked his horn when Casaday was outside; that Winterstein yelled “Here piggy piggy! Oink Oink” at her while she was parked in her driveway; that Winterstein had threatened legal and financial action; and that Winterstein was calling the police to try to intimidate Casaday. *Id.* Casaday later testified that after obtaining a survey of her property, she noticed that Winterstein stapled chicken wire and other items to her fence. When Casaday removed them and placed them on Winterstein’s side of the property, Winterstein called the police. *Id.* at *2.

When discussing the sufficiency of the evidence, the Nebraska Court of Appeals noted that “the sum total of Winterstein’s conduct can be summed up as making 2 rude and insensitive comments yelled at Casaday, honking a car horn at Casaday over the course of a two-week period, telling an officer he had evidence about Casaday and her boyfriend that the police should be aware of, and making unspecified legal and financial threats (except for one specific threat about suing over a fence) that Casay says she found to be threatening.” *Id.* at *4. The Court agreed that Winterstein’s conduct was rude, impolite, and unjustified, but it pointed out that this is not the standard. Rather, the inquiry is whether a reasonable person would be seriously terrified, threatened, or intimidated. *Id.* The Court stated that a reasonable person may be annoyed, frustrated, or irritated, but not terrified, threatened, or intimidated. The Court ultimately held that Winterstein’s conduct did not constitute the type of conduct necessary to support the issuance of a harassment protection order. *Id.*

Like *Casaday*, Adam’s conduct could—at *most*—be characterized as rude, annoying, and perhaps unjustified, but this does not meet the statutory definition of “harassment.” Summed up, Adam’s conduct consists of allowing their dogs to run off-leash, being complicit with installing lights on the back of her home, driving by Flinn and taking a photo on one occasion, and allegedly calling her names on one occasion. While this behavior may annoy or frustrate a reasonable person, it

would not seriously terrify, threaten, or intimidate a reasonable person.

The trial court's closing statements demonstrate its reliance on the installation of the light as the legal foundation for the protection order. (221:15—222:5). A homeowner lighting his or her property, even with a light a neighbor reasonably believes is too bright, is not objectively terrifying, threatening, or intimidating within the meaning of Neb. Rev. Stat. § 28-311.02. Simply put, the Legislature did not intend for Neb. Rev. Stat. § 28-311.02 to remedy disputes between neighbors when one neighbor finds the other annoying or offensive.

Likewise, Adam's permissive behavior in relation to his dogs is not seriously terrifying, threatening, or intimidating. While the occurrences may have subjectively bothered Flinn, resulting in multiple calls to Animal Control, this fails to approach the standards for harassment. The record does not support that the dogs were aggressive, that they were allowed to run to deliberately interfere with Flinn or otherwise posed a threat of harm to Flinn. Viewed objectively, it might have been a violation of city ordinance, but such conduct would not make a reasonable person terrified, threatened, or intimidated. It was not the conduct of the dogs that was at the crux of Flinn's biggest perturbation: it was the fact that she felt Amy and Adam received special treatment by virtue of their employment as police officers and would not be accountable under ordinance. (13:16-18; 22:7-11; 28:8-10). Any justification for that feeling, however, was not established at the hearing as there is no evidence that Adam was given any favorable treatment by Lincoln police officers. Further, that would not give rise to harassment even if Adam was given more favorable treatment. The conduct at issue and viewed objectively is whether the dogs being off leash meets the statutory requirements. It clearly does not.

Taking a photo of Flinn while she was violating Lincoln's leash law is also not harassment. First, it is not seriously terrifying, threatening, or intimidating to a reasonable person. Second, it served a

legitimate purpose of evidencing and reporting a violation of ordinance. Flinn acknowledged that she received a warning from Animal Control from the incident. (E22, p. 5). It is also a form of the exact same conduct—albeit far more isolated in occurrence—that Flinn is doing throughout the neighborhood with the Strodes and other neighbors.

When the trial court elevated conduct—from which a reasonable person would not be seriously terrified, threatened, or intimidated—to come within the purview of Neb. Rev. Stat. § 28-311.02 and entered a harassment protection order, the trial court erred because its decision was based on insufficient evidence.

II. The trial court erred by disregarding the requirement of Neb. Rev. Stat. § 28-311.02 that the alleged conduct constituting the harassment objectively “serves no legitimate purpose.”

The trial court erred when it disregarded the requirement that the conduct must serve no legitimate purpose. *See* Neb. Rev. Stat. 28-311.02(2)(a). Adam addressed this issue before the trial court to preserve error. (218:23—219:6). In neither the trial court’s oral statements at the conclusion of the hearings, nor its written order, does the trial court discuss any consideration of a legitimate purpose prong of the statutory standard. While the law is generally settled that the harassment statute is construed objectively, Appellant has not found a published Nebraska appellate case that addresses how the legitimate-purpose prong is construed. This is an important consideration that should be resolved. The evidence shows that Adam’s conduct served a legitimate purpose and thus did not meet the definition of harassment under the statute.

A. Legal Standards

The intention of the statute balances the interest in protecting individuals from harassment that does “not prohibit constitutionally protected activities.” *See* Neb. Rev. Stat. § 28-311.02(1). Under the statute, to “harass” means “—to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies,

threatens, or intimidates the person *and which serves no legitimate purpose.*” Neb. Rev. Stat. § 28-311.02(2)(a) (Emphasis added). The meaning is plain: Even if the purported conduct seriously terrifies, threatens, or intimidates a reasonable person, it is still not harassment under the statute if it serves some legitimate purpose. To hold otherwise would incorrectly render the last phrase of the subsection (2) superfluous. *See ML Manager, LLC v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566, 572 (2014) (“We will give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.”)

The question then centers on what conduct serves a legitimate purpose. The best interpretation, viewed objectively, permits all lawful conduct regardless of a trial court’s examination of the person’s subjective motivation for the conduct. Black’s Law Dictionary defines “legitimate” as “[c]omplying with the law, an applicable rule or regulation, or a recognized principle; lawful.” *Legitimate*, BLACK’S LAW DICTIONARY (12th ed. 2024). No Nebraska appellate court has specifically addressed how the trial court must determine what conduct “serves no legitimate purpose” under Neb. Rev. Stat. § 28-311.02. However, decisions from other states provide some helpful guidance.

The Missouri Court of Appeals said, “[f]or conduct to have ‘no legitimate purpose,’ it must be found to be not sanctioned by law or custom, to be unlawful, or not allowed.” *Glover v. Michaud*, 222 S.W.3d 347, 351 (Mo. Ct. App. 2007).

The Kansas Supreme Court, in response to a constitutional challenge to the state’s stalking/harassment statute, said:

In *Rucker*, this court found that the term “legitimate purpose”, when read in conjunction with the rest of the 1995 criminal stalking statute, did not require a person of common intelligence to guess as to its meaning. It noted that the terms were defined in relation to an ***objective standard***, the statute contained a credible threat element, and it excluded constitutionally

protected conduct. The court explained that “when we focus on the view of reasonable persons as to when lawful authority exists to follow others, the presence or absence of a legitimate purpose for an act or action can be readily determined.”

Smith v. Martens, 106 P.3d 28, 37 (Kan. 2005) (discussing *State v. Rucker*, 987 P.2d 1080 (Kan. 1999)) (emphasis added). The Kansas Court explained: “If the court focuses on the view of a reasonable person as to whether lawful authority exists for a defendant to engage in a specific course of conduct, the presence or absence of a legitimate purpose for the conduct can be readily determined.” *Id.* at 252-253.

The Michigan Supreme Court reasoned that because the words “conduct that serves a legitimate purpose” were terms of common usage undefined by the statute, the trial court could apply a plain and ordinary meaning by consulting the dictionary. *Nastal v. Henderson & Associates Investigations, Inc.*, 691 N.W.2d 1, 7 (Mich. 2005). The Court said:

The *Random House Webster’s College Dictionary* (2001) defines “serve” as “to answer the purpose”, “to be service of; work for,” “to answer the requirements of,” or “to contribute to; promote.” It further defines “legitimate,” in part, as “according to the law; lawful,” “in accordance with established rules, principles, or standards,” “in accordance with the laws or reasoning; valid,” “justified, genuine.” *Id.* Thus, given the plain and ordinary import of the terms used by the Legislature, we conclude that the phrase “conduct that serves a legitimate purpose” means conduct that contributes to a valid purpose that would otherwise be within the law irrespective of the criminal stalking statute.

Id.

In *Nastal*, the subject of a private investigation firm brought an action against the firm for civil stalking. The Court noted that the private investigators were licensed and authorized to obtain information with reference to crimes or wrongs, to identity, to the habits and conduct of the subject, to the location of stolen property, etc.

Id. at 7. Thus, the court held that surveillance, when it is conducted to obtain evidence concerning a party's claim in a lawsuit, is valid. *Id.* at 8. Only once the surveillance ceased to serve the purpose of securing information permitted by law would the conduct be outside the safe harbor. *Id.*

The Missouri Court of Appeals was confronted with its own neighbor dispute. See *Wallace v. Van Pelt*, 969 S.W.2d 380 (Mo. Ct. App. 1998). In *Wallace*, the plaintiffs alleged the defendant intentionally harassed and stalked Mrs. Wallace. *Id.* at 381-382. That behavior consisted of requesting that guests stop parking in defendant's driveway, telling Mrs. Wallace that he would do "something drastic" if she was not nicer, yelling at children in Wallace's yard to stop throwing bricks, and telling Mrs. Wallace, "Lady, I didn't do to you what you think I did but I will get you worse." *Id.* The Missouri court said: "As used in the context of § 455.010(10), the term "legitimate" means "sanctioned by law or custom; lawful; allowed." *Webster's New Twentieth Century Dictionary* 1035 (2d ed. 1979). The court dismissed the judgment finding insufficient evidence of harassment. *Id.* at 387.

In another disgruntled neighbor case in Missouri, the plaintiff alleged that the respondent was stalking her by making false reports to animal control, making constant "harassing phone calls", and using the building department and solid waste department to harass her. *N.L.P. v. C.G.W.*, 415 S.W.3d 800, 802 (Mo. Ct. App. 2013). The Court, recognizing that a legitimate purpose is one that is "lawful or is allowed" determined that while the respondent's conduct may have been irritating, it had the legitimate purpose of ensuring compliance with the governing law on neighboring property. *Id.* at 803.

Other courts have addressed actions deemed illegitimate. Before the Michigan Court of Appeals, a husband claimed that he did not harass his wife because his conduct was for the legitimate purpose of trying to preserve his marriage. *People v. Coones*, 550 N.W.2d 600, 602 (Mich. App. 1996). The defendant repeatedly attempted to contact his

ex-wife, and entered her residence without permission, contrary to a restraining order. The Court noted that the defendant's conduct was clearly in violation of his restraining order; thus, his conduct was illegitimate since it was unlawful. *Id.*

In South Dakota, the plaintiff's teenage children were driving four-wheelers throughout town. *Schaefer ex rel. S.S. v. Liechti*, 711 N.W.2d 257, 259 (S.D. 2006). A neighbor confronted the children multiple times; one time he chased the children in his vehicle. *Id.* at 259-260. The neighbor also watched the children through binoculars while they swam or were in their treehouse. *Id.* at 262. A permanent order of protection against stalking was awarded, and on appeal, the neighbor argued that his conduct served a legitimate purpose because he was concerned about the children driving in violation of the law. *Id.* at 263. The Court reasoned that even if the children had violated the law, the neighbor's surveillance of the kids through binoculars while swimming and in a treehouse was not related to his purported concerns about motor vehicle laws. *Id.* He also should not have assumed the role of law enforcement by chasing the children in his truck. *Id.*

In another Missouri case, a man had a sexual relationship with a woman he met on a dating site. *J.W.M. v. D.L.O.*, 643 S.W.3d 903, 906 (Mo. Ct. App. 2022). The woman later gave birth to a child she claimed was that man's son. *Id.* When she asked him for monetary support, he gave her money to have a paternity test done but nothing else. *Id.* Afterwards, the woman sent threatening texts to the man, accused him of rape, verbally accosted him, threatened his family and his life, placed flyers in mailboxes in his neighborhood depicting him as a sexual predator, and spray painted and slashed the tires of his family's vehicles. *Id.* The trial court entered a protection order against the woman in favor of the man and his family. *Id.* at 906-907. The woman appealed and the Court said "[a]n activity serves no legitimate purpose when it is unlawful, not allowed, or not sanctioned by law or custom." *Id.* at 908. The Court concluded that the woman's conduct served no legitimate purpose, as it was threatening, violent, and

crossed the threshold between normal social interactions and constituted stalking, at which point the conduct no longer has a legitimate purpose. *Id.*

The principle of the objectivity standard is that for conduct to “serve[] no legitimate purpose” it must be unlawful conduct. Lawful conduct, no matter how irritating or offensive was not intended to be prohibited by the Legislature when it crafted Neb. Rev. Stat. § 28-311.02. As Senator Robak’s explained in 1993: “This bill is only directed at criminal activity as defined by the bill, activity that serves *no legitimate or legal purpose* and it’s clearly meant to cause fear and terror in the victim.” 93 Leg. Rec. 1438 (Neb. Mar.5, 1993) (Emphasis added).

B. Analysis

The present case is dissimilar from the cases that have found illegitimate purposes. At the protection order hearing, Adam testified to the many reasons he placed lights on the back of the house. Considering a totality of circumstances, Adam noted that he had items go missing off his deck and that Ms. Flinn had been leaving bags of dog feces in the Strode’s yard. (50:7-13). Adam had also previously been in an officer-involved shooting on duty and he had reason to believe that the brother of an individual killed in the shooting was a potential threat to him and his family. (50:14-25). There was also a recent report of an armed individual walking around the Strode’s neighborhood. (82:18-25). The totality of these circumstances influenced Adam to purchase and install the light. Importantly, Flinn can point to no law prohibiting a property owner from installing a light on their deck. Even so, Adam installed a less bright light in direct response to Flinn’s complaint in an attempt to accommodate his neighbor despite the above-identified concerns.

The Strode’s purposes were for safety and deterrence, both of which are legitimate and legal purposes. Where the trial court erred was not considering these purposes objectively. The trial court believed the light was erected to harass Flinn, but resting on that conclusion

leaves the statutory test unfulfilled. While the trial court may disagree with the means employed by Adam that does not make the goals served by the conduct illegitimate. Nor does the statute require the person to choose the most effective means to serve a legitimate purpose.

Even if reasonable minds reach a different conclusion as to the best course of action, the sum of the circumstances confronting Amy and Adam provide an understandable basis to explain their conduct. Amy had recently given birth to a child. (194:14-16). Amy and Adam are in an ongoing dispute with their neighbor who has thrown feces in their yard, has recorded them in the middle of the night and sometimes hidden from view, and closely monitors their movements.

Officers approached both Amy and Adam at separate times regarding an interaction they experienced at a restaurant with the brother of an officer-involved shooting involving Adam. (51:12—52:7; 180:3—181:10). The trial court was dubious, but the interaction was considered serious enough for the officers to warn both of them. While it may be tempting to judge how a reasonable police officer should respond following a use of force, the evaluator should remain cognizant that the police officer is a human being placed in a critically stressful situation where he or she was asked to take the life of another person. To experience earlier his photograph posted around town calling him a “murderer” (*see* E2) and then later receive information that the suspect’s brother was asking questions; to compound matters, immediately before buying and installing the light, Amy received a report of an armed person in the neighborhood. A reasonable person would be afraid, especially one with a new baby, and a dark backyard adjacent to trees seems like a logical place to protect against. Amy and Adam may not have chosen the best way to address these concerns, but that does not make their motivations illegitimate.

Considering all of this is occurring, it quickly becomes understandable why Adam acted to remedy the area they perceived to be vulnerable.

CONCLUSION

For the foregoing reasons, Adam requests the trial court's order affirming the ex parte harassment protection order be reversed and the matter be remanded to the trial court for dismissal of Flinn's petition.

DATED this 2nd day of May 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Neb. Ct. R. § 6-1505 and Neb. Ct. R. App. P. § 2-103(A) and (C) and further certify that the word count function was applied to include all text, including the caption, cover, headings, quotations, and signature blocks. This document was prepared using Microsoft Word for Microsoft Office 365. It complies with applicable typeface requirements and exclusive of this certificate, contains 6,997 words, which is within the 15,000-word limit for original submissions.

DATED this 2nd day of May 2025.

BY: s/ Erik W. Fern
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Certificate of Service

I hereby certify that on Friday, May 02, 2025 I provided a true and correct copy of this *Brief of Appellant Strode* to the following:

Jordyn Flinn represented by Trevin Howard Preble (25296) service method: Electronic Service to **courts@preblelawfirm.com**

Signature: /s/ Erik W. Fern (23733)