

Case No. A-25-64

IN THE NEBRASKA COURT OF APPEALS

JORDAN FLINN

Plaintiff-Appellee,

v.

ADAM STRODE

Defendant-Appellant.

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

APPELLANT'S REPLY BRIEF

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PROPOSITIONS OF LAW

1. Harassment under statute requires proof of conduct that (1) is knowing, willful, and directed at a specific person; (2) “seriously terrifies, threatens, or intimates; and (3) “serves no legitimate purpose.” Neb. Rev. Stat. § 28-311.02(2)(a).

2. Neb. Rev. Stat. § 28-311.02 is applied objectively based on what a reasonable person would experience under like circumstances. *In re Interest of Jeffrey K.*, 273 Neb. 239, 728 N.W.2d 606 (2007).

SUMMARY OF THE ARGUMENT

The statutory benchmark of Neb. Rev. Stat. § 28-311.02 requires that conduct must be (1) knowing and willfully directed at a specific person; (2) that “seriously terrifies, threatens, or intimates; and (3) “serves no legitimate purpose.” Neb. Rev. Stat. § 28-311.02(2)(a). At trial, Flinn agreed there were three main issues: the Strode’s dogs running off leash, being followed, and the floodlight. (211:6-11). However, on appeal Flinn’s claims are not legitimately predicated on the Strodes’ dogs being off leash. This claim was not viable at its inception as it fails at least two of the necessary prongs of the statutory test. There is no evidence that the Strodes directed their dogs at Flinn, nor do the circumstances indicate a reasonable person would be seriously terrified, threatened, or intimidated.

Flinn’s lawsuit is also not about being followed by the Strodes. She identified one incident of being followed and admits in her brief that it was for the plainly legitimate purpose of gathering evidence of Flinn’s own violation of city ordinance. (Appellee Br., p. 9). This is

consistent with the arguments raised in Appellant's Brief, the evidence received at trial, and the fact that Flinn herself received a warning from Animal Control from the incident. (7:7-12).

This case is really about one issue: whether the circumstances of the Strodes' floodlight rise to the level of harassment under Nebraska law. Flinn noted that "[t]he Strodes presented plenty of evidence of their own claiming that they had a 'legitimate purpose' for installing the floodlight..." (Appellee Br., p. 10). Because Flinn did not materially discuss that assignment of error, the Strodes do not submit reply arguments and rely on the arguments set forth in Appellant's Brief.

ARGUMENT

I. Flinn's appellee brief highlights the importance of an objective standard of harassment.

Nebraska law requires that a respondent's conduct be knowingly and willfully directed at a specific person, seriously terrifying, threatening, or intimidating, and serve no legitimate purpose. Neb. Rev. Stat. § 28-311.02. Section 28-311.02 is applied objectively based on what a reasonable person would experience under like circumstances. *In re Interest of Jeffrey K.*, 273 Neb. 239, 728 N.W.2d 606 (2007). Flinn's experiences reviewed objectively do not rise to the level of statutory harassment.

1) The dogs being off leash were not a legitimate basis for harassment.

Flinn's harassment claim in relation to the Strodes' dogs is not a well-developed claim. First, the record fails to demonstrate that the Strodes purposefully directed their dogs at Flinn. *See* Neb. Rev. Stat. § 28-311.02(a). While it is safely said that Flinn has a significant problem with the Strodes allowing their dogs to be off leash, that concern does not satisfy Flinn's obligation to prove the conduct was directed at her. Because someone is uniquely bothered by something, the continuance of that conduct does not *ipso facto* make it directed at that specific person. While the ordinance is not part of the record, the

Strodes take issue with Flinn's presumption of what Lincoln's leash law prohibits, and does not prohibit, and how it applies to a common area of a homeowner's association. It must be noted that there was ongoing litigation on that issue evidenced by the city prosecutor attending the trial. (68:6-9). Even if the Strodes are incorrect in their interpretation of city ordinance, and are in violation, and Flinn is correct, that still does not make the occurrence of dogs being off leash knowing, willful, and specifically directed at her to cause *serious* terror, threat, or intimidation. A neighbor's dog off leash might be annoying or frustrating, but the facts of this case fall well short of harassment.

Flinn may have had unwanted exposure to their dogs at some point, or several points, but a reasonable person would not be seriously terrified, threatened, or intimidated by the dogs being off leash. Flinn said that "[i]t freaks [her] out that someone in his position doesn't have to follow the rules, and repeatedly it creates fear on other rules that he may not be allowed to follow." (28:8-10). Flinn is fearful of her *belief* that the Strodes do not have to follow the same rules as everyone else. While she makes a nondescript reference to the dogs coming near her and barking, does this rise to a serious level to an objective, reasonable person? It does not. While not excusing a violation of city ordinance if one is later found, these two dogs have not harmed anyone, including Flinn, to justify elevating their instances of being off leash to statutory harassment. This is not to suggest allowing dogs to run off leash could not ever constitute harassment; however, this is a situation where it is not supported by the evidence.

This also must be considered within the full context. Flinn has placed herself in situations where she is likely to have some contact with their dogs. Exhibit 27, one of Flinn's pieces of evidence that the dogs were "running after her" (see Appellee's Br., p. 6), does not show what she claims. The video shows one of the Strodes' dogs (a German Shorthair Pointer) jogging in Flinn's general direction from the Strodes' yard, then common area, while wagging its tail, and returns upon command of Amy. The dog does not get reasonably close to Flinn,

nor does the dog demonstrate any indicia of aggression. To characterize this as “running after her,” respectfully, is more creative liberty than what the video demonstrates. It is also another instance where Flinn secretes herself behind the mailbox to film the Strodes. A reasonable person would not seek out circumstances that seriously terrify, threaten, or intimidate her.

2) Flinn’s one instance of being followed was for a legitimate purpose.

Flinn identified one instance at trial of being “followed” by the Strodes. (9:16-24; 28:14-21; E23). Her position, however, is defeated by her brief. Flinn freely admits that “[t]hey [the Strodes] were doing so in order to gather evidence that Flinn was walking her dog on a leash longer than six feet so the Strodes could report her to Animal Control.” (Appellee Br., p 9). By any metric, gathering evidence of a crime being committed from a public place to report to law enforcement is a legitimate purpose. Flinn did receive a warning from Animal Control. (7:7-12; 67:11-21). At trial, the Strodes pointed out that Flinn focused her entire presentation of evidence on whether she felt seriously terrified, threatened, or intimidated, and no time on the other required prong on the lack of a legitimate purpose. (218:20-24). Her brief likewise fails to satisfactorily defend this shortcoming of her evidence. Like Flinn’s complaints about the off-leash dogs, this claim is also not viable.

CONCLUSION

As set forth in the summary of the argument, this case comes down to one genuine issue: whether the circumstances of the Strodes’ floodlight rise to the level of harassment under Nebraska law, and an objective review of the legitimate purpose. Because Flinn does not engage in a comprehensive response from the Strodes’ assignment of error, the Strodes do not submit additional argument in furtherance of that alleged error.

For the additional reasons set forth herein, the trial court’s order affirming the ex parte harassment protection order should be

reversed and the matter be remanded to the trial court for dismissal of Flinn's petition.

DATED this 23rd day of June 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 1,486 words, in addition to the 6,997 words of Appellant's Brief, which together is within the 15,000-word limit for original submissions.

DATED this 23rd day of June 2025.

BY: s/ Erik W. Fern
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Certificate of Service

I hereby certify that on Monday, June 23, 2025 I provided a true and correct copy of this *Reply Brief* to the following:

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