

N.D.A.G. Letter to Slorby (Sep. 14, 1988)

September 14, 1988

Mr. Tom P. Slorby
Ward County State's Attorney
Ward Courthouse
Minot, ND 58701

RE: N.D.C.C. 27-20-50

Dear Mr. Slorby:

Thank you for your letter dated August 18, 1988, in which you inquire as to the scope of N.D.C.C. § 27-20-50. You have asked whether a restraining order may be directed at a person who is not a party to a juvenile court proceeding pursuant to that section.

N.D.C.C. § 27-20-50 provides:

27-20-50. Protective order.--On application of a party or on the court's own motion the court may make an order restraining or otherwise controlling the conduct of a person if:

1. An order of disposition of a delinquent, unruly, or deprived child has been or is about to be made in a proceeding under this chapter;
2. The court finds that the conduct (a) is or may be detrimental or harmful to the child and (b) will tend to defeat the execution of the order of disposition; and
3. Due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

I agree with you that this provision of law grants authority to the juvenile court to issue protective orders affecting persons other than those named as original parties in the juvenile court proceeding. The provisions of the Uniform Juvenile Court Act are to be liberally construed. In Re H., 206 N.W.2d 871 (N.D. 1973). By not limiting the court's authority to only original parties to the juvenile court proceeding, the North Dakota Legislature has evidenced its intent to provide juvenile court authority over all persons who may engage in conduct which is either detrimental or harmful to a child or which will tend to defeat the execution of a disposition order.

Although the person to be restrained may not be an original party to the proceeding, that person will become a party by virtue of the notice and opportunity to be heard which must

be afforded to that person concerning the order. That person will become a party to the proceeding to the extent that such person's conduct is restrained or limited.

A somewhat similar factual situation arose in In Re Kramer, 75 N.W.2d 753 (N.D. 1956), in which a restraining order was issued in a juvenile court proceeding occurring prior to the adoption of the Uniform Juvenile Court Act. In Kramer, the defendant in a contempt proceeding contested the authority of the court to restrain his contact with a juvenile. A juvenile court issued a restraining order against that defendant which was served upon him. This defendant disregarded the order and contacted and communicated with a juvenile. Id. at 755.

In reversing a contempt finding, the court determined that the juvenile court did have subject matter jurisdiction to issue the order, but lacked jurisdiction over the person of the defendant. Id. at 757. The defendant was not a party to the juvenile proceeding, nor was he served with a summons or any process so as to bind him to the dictates of the order. Id. at 755. The court found that disobedience of an order, entered without an opportunity for a hearing, does not constitute contempt since such an order has no validity whatsoever. Id. at 757.

In light of the holding in Kramer and the language set forth in N.D.C.C. § 27-20-50, there is a question concerning the authority of a juvenile court to issue an ex parte order under that section or, if authority exists, the enforceability of that order.

I realize that a court may possess the general power to issue ex parte restraining orders pursuant to N.D.C.C. § 32-06-07 and that situations may very well exist requiring immediate action by a court because of conduct which may be harmful or detrimental to a child. N.D.C.C. § 27-20-50, however, requires a prior hearing.

I trust that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth

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