

Office of the Attorney General
State of North Dakota

Opinion No. 86-22

Date Issued: June 27, 1986

Requested by: Nicholas B. Hall
Walsh County State's Attorney

--QUESTION PRESENTED--

Whether a municipal judge has jurisdictional authority in the absence of a district judge to issue an ex parte temporary protection order pursuant to N.D.C.C. § 14-07.1-08 upon application of a person who resides outside the territorial limits of a city.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a municipal judge has no jurisdictional authority in the absence of a district judge to issue an ex parte temporary protection order pursuant to N.D.C.C. § 14-07.1-08 upon application of a person who resides outside the territorial limits of a city.

--ANALYSIS--

In your request for this Attorney General's opinion, you have stated that an application was made to a municipal judge for an emergency protection order by an individual who lives outside of the city of Grafton and within Walsh County. The district judge and county judge were both unavailable to issue an emergency petition pursuant to N.D.C.C. § 14-07.1-08. You have also stated that the Grafton municipal judge did not believe that he had jurisdictional authority pursuant to N.D.C.C. § 29-01-14(3) to issue a protection order for people who live outside the city limits.

N.D.C.C. § 14-07.1-08 authorizes a magistrate, as defined by N.D.C.C. § 29-01-14(3), to issue an ex parte temporary protection order, in the absence of a district judge and after a showing of good cause, to protect the applicant or others from abuse. N.D.C.C. § 14-07.1-08 provides:

14-07.1-08. EMERGENCY RELIEF. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-

14, who may grant relief in accordance with section § 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section shall expire seventy-two hours after its issuance, unless continued by the district court, or the issuing court in the event of continuing unavailability of the district court. At that time, the applicant may seek a temporary order from the district court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the district court. Such certification to the district court shall have the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

N.D.C.C. § 29-01-15(4) authorizes a municipal judge to grant temporary protection orders. That section provides:

29-01-15. JURISDICTION OF MUNICIPAL JUDGES, SMALL CLAIMS COURT REFEREES, AND COUNTY COURTS. Any municipal judge or judge of the county court mentioned in subsection 3 of section 29-01-14 may:

1. Act as committing magistrate; provided, that this subsection shall not apply to municipal judges who are not attorneys currently licensed under chapter 27-11.

2. Hear, try, and determine misdemeanors and infractions when jurisdiction has been conferred by the Constitution of North Dakota and this and other laws.

3. Adjudge and impose the punishment prescribed by law, upon conviction, in all cases within his jurisdiction to hear, try, and determine.

4. Grant temporary protection orders under the particular circumstances and for the limited duration set forth in section 14-07.1-08.

A small claims court referee authorized pursuant to subsection 3 of section 29-01-14 may act as a committing magistrate. Any person appointed by the county judge pursuant to section 27-07.1-07 shall have the authority to act to the extent allowed by rules promulgated by the supreme court.

N.D.C.C. § 29-01-14 sets forth judicial officers who are magistrates. That section provides:

29-01-14. WHO ARE MAGISTRATES. The following officers are magistrates:

1. The judges of the supreme court, with authority to act as such throughout the state.

2. The judges of the district courts, with authority to act as such throughout the judicial districts for which they respectively are elected.

3. As limited by law directing the place of exercising their jurisdiction and authority, county judges, or any qualified person appointed by the county judge pursuant to section 27-07.1-07, municipal judges, and small claims court referees who are licensed to practice law and authorized by the county commissioners in case of an emergency, each with authority to act as magistrate throughout the county or the city for which he is elected or appointed.

The question you have presented concerns the initial power of a municipal judge to issue an ex parte temporary protection order pursuant to N.D.C.C. § 14-07.1-08.

Municipal courts are courts of limited jurisdiction and are courts created by law. N.D.C.C. §§ 40-05.1-06(5), 40-14-01, and 40-15-01 authorize a city to have a municipal judge. N.D.C.C. Ch. 40-18 sets forth the general duties and requirements of a municipal judge.

N.D.C.C. § 40-18-01 grants the municipal judge exclusive jurisdiction to hear, try, and determine all offenses against the ordinances of a city. Although N.D.C.C. § 29-01-15(4) does extend the subject matter jurisdiction of a municipal judge to include ex parte temporary protection orders issued pursuant to N.D.C.C. § 14-07.1-08, such statutory provision does not extend the territorial jurisdiction of the municipal court.

The importance of territorial jurisdiction was recognized, in the case of county courts, in *State v. Hunt*, 293 N.W.2d 419 (N.D. 1980). In that case, the supreme court stated that the jurisdiction of a county court with increased jurisdiction is generally limited to matters within the geographical area of the county unless specifically otherwise provided by law. Unless territorial jurisdiction is extended, the county court has authority to act only within its geographical limits.

Although this case construed N.D.C.C. Chs. 27-07 and 27-08 which were repealed and replaced with N.D.C.C. Ch. 27-07.1, the reasoning of that case pertaining to geographical jurisdiction remains valid.

In Patten v. Beauchamp, 599 F. Supp. 288 (D.N.D. 1984), the Beulah municipal judge was sued after having issued a temporary protection order in the absence of a district judge. The applicant was temporarily residing with her mother in the city of Beulah, and while there, the applicant's husband made numerous phone calls to the mother's home and banged on the doors of that home. At the time, the husband was a resident of Bismarck where he had resided with the applicant. The Beulah municipal judge restrained the husband from being present at the mother's home and prevented him from threatening, molesting, or injuring the applicant or the couple's children.

Although the federal district judge did not reach the question as to whether or not a municipal judge can issue an order upon application of a person who resides outside of the city, the court did discuss the judicial immunity afforded to the Beulah municipal judge in this circumstance. Finding that the Beulah municipal judge was judicially immune from this lawsuit, the court did state that judges of a court of limited jurisdiction, such as a municipal court, are protected by judicial immunity only when they act within their jurisdiction. No such immunity will be afforded for acts outside of their jurisdiction.

Both the North Dakota Limited Jurisdiction Judges Manual, published in February of 1982, and the North Dakota Municipal Court Benchbook, published in August of 1984, each of which has been provided to the courts of this state, recognize the territorial jurisdiction of a municipal court. The North Dakota Limited Jurisdiction Judges Manual specifically states, at p. I-8:

When acting as a magistrate, he may, acting within his territorial jurisdiction, issue warrants for the arrest of a person charged with a crime or public offense, fix bail for persons arrested who have been charged with a crime, hold preliminary hearings, and issue search warrants.

N.D.C.C. § 40-06-01(2) may permit the extension of the municipal court's authority up to one-half mile outside of the municipal limits. That section provides:

40-06-01. JURISDICTION OF GOVERNING BODY. Except as otherwise provided by law, a governing body of a municipality shall have jurisdiction:

2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health and quarantine ordinances and regulations and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

Pursuant to N.D.C.C. § 14-07.1-08, a municipal judge has authority to issue an ex parte temporary protection order only:

1. In the absence of a district judge;
2. Upon a showing of good cause for such emergency order; and
3. If the municipal judge is a local magistrate within the provision of N.D.C.C. § 20-01-14(3).

A review of N.D.C.C. § 29-01-14(3) provides a clear intent that the municipal court's power to issue an emergency order is limited and subject to the municipal court's territorial jurisdiction. A municipal judge is a magistrate 'as limited by law directing the place of exercising their jurisdiction and authority . . .' (N.D.C.C. § 29-01-14(3)). Other than the possible extension of territorial jurisdictional authority up to one-half mile beyond the city limits as found in N.D.C.C. § 40-06-01(2), no statutory authority exists which authorizes a municipal judge to exercise his or her authority beyond the geographical limits of a city.

In addition to the above statutory language, N.D.C.C. § 29-01-14(3) grants the municipal judge 'with authority to act as magistrate throughout the county or the city for which he is elected or appointed' (emphasis supplied). The legislative intent is clear that the municipal judge will have authority to act as a magistrate only within his city. N.D.C.C. § 29-01-14 places corresponding territorial jurisdictional limits upon district judges to act as a magistrate 'throughout the judicial districts for which they respectively are elected' (N.D.C.C. § 29-01-14(2)) and county judges, magistrates appointed by the county judge, and small claims court referees may act as a magistrate throughout

the county for which he or she is elected or appointed (N.D.C.C. § 29-01-14(3)).

Based upon these statutory provisions, the North Dakota Legislature has not extended the territorial jurisdiction of a municipal judge to act as a magistrate beyond the geographical limits of a city, subject to the possible one-half mile extension permitted by N.D.C.C. § 40-06-01(2). A municipal judge has the power to issue a temporary protection order as a local magistrate pursuant to N.D.C.C. § 14-07.1-08 only as to persons, residences, or adult abuse shelter care facilities found within the court's territorial jurisdiction. If such persons, residences, or adult abuse shelter care facilities are found without the court's territorial jurisdiction, the municipal judge will have no statutory authority to act as a local magistrate.

To avoid an occurrence such as described in your letter to me wherein both the district judge and county judge were unavailable for issuance of the emergency temporary protection order, you may wish to request that the county judge appoint a magistrate pursuant to the provisions of N.D.C.C. § 27-07.1-07 to perform such duties as may be delegated by the county judge as authorized by North Dakota Supreme Court Administrative Rule 20, as amended effective June 24, 1985.

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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