NORTH DAKOTA SUPREME COURT REVIEW

The North Dakota Supreme Court Review summarizes important decisions rendered by the North Dakota Supreme Court. The purpose of the Review is to indicate cases of first impression, cases of significantly altered earlier interpretations of North Dakota law, and other cases of interest. As a special project, Associate Editors assist in researching and writing the Review.[*] The following topics are included in the Review:

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NORTH DAKOTA OPEN MEETINGS LAW – ATTORNEY CONSULTATION EXEMPTION AND *IN CAMERA* REVIEW

Haskell v. Grand Forks Pub. Sch. Dist.

In *Haskell v. Grand Forks Pub. Sch. Dist.*, the North Dakota Supreme Court addressed the scope of the attorney consultation exemption under North Dakota's open meetings laws.[1] The Court considered whether the Grand Forks Public School Board ("School Board") waived its ability to enter an executive session when its attorney publicly discussed the Grand Forks Public School District's ("School District") position on a teacher's grievance.[2] The Court also considered whether the School Board followed the required process for entering an executive session, whether public disclosure of the amount in controversy eliminated the adverse fiscal effect needed to justify the closed session, whether Haskell's due process rights were violated when she was denied access to the executive session transcript, and whether the district court erred by failing to review the executive session recording *in camera*.[3] The Court affirmed in part, concluding that the School Board "did not waive its right to enter an executive session, the requirements were met to enter an executive session, and [plaintiff's] due process rights were not violated by not providing her an opportunity to review the executive session transcript."[4] The Court also reversed in part "concluding the [district] court abused its discretion by failing to review the executive session recording before granting summary judgment to the School District."[5] Ultimately, the Court remanded the case to the district court for *in camera* review of the executive session recording.[6]

Plaintiff, Amber Haskell ("Haskell"), was "a field consultant for North Dakota United, a public teachers' union."[7] The dispute arose from "a July 24, 2024, level 4 grievance appeal hearing between then Grand Forks Red River teacher David Christianson and the School Board."[8] During the public portion of the meeting, "Rachel Bruner, the attorney representing the School District and School Board," explained the factual background of the grievance and the School District's reason for transferring Christianson and

1. *See* 2026 ND 40, ¶¶ 1, 14, 31 N.W.3d 626, 630.
2. *See id.* ¶ 1.
3. *See id.* ¶¶ 15–24, 45.
4. *Id.* ¶¶ 1, 47.
5. *Id.*
6. *Id.* ¶ 47.
7. *Id.* ¶ 2.
8. *Id.*

removing his extracurricular duties.[9] Bruner also stated the School District's position that Christianson's band-related contracts "were extracurricular contracts, and not extended contracts."[10]

After Bruner presented the School District and School Board's position, Christianson's attorney, Michael Geiermann ("Geiermann"), addressed the School Board.[11] Geiermann argued that Christianson's contracts should be treated as extended contracts, "identified the amount in controversy," and asserted that the cost of litigation could exceed the amount Christianson claimed he was owed.[12] After Geiermann concluded, "the School Board voted to enter an executive session to allow Bruner to privately advise the Board on Christianson's grievance."[13] The School Board later "returned on the record, and voted to deny the relief Christianson requested on appeal."[14]

Later, "Haskell sued the School District, claiming the closed executive session" violated North Dakota's open meetings statute.[15] She "asked the district court to require the School Board to disclose the recording of the closed session" under North Dakota Century Code ("N.D.C.C.") § 44-04-21.2(1).[16] The parties filed cross-motions for summary judgment and stipulated that there were no issues of material fact.[17] Based on those motions, "[t]he district court granted summary judgment to the School District and awarded the district its litigation costs."[18] Haskell then appealed.[19]

On appeal, the North Dakota Supreme Court began with the governing summary judgment standard.[20] The Court explained that, when reviewing summary judgment, it "view[s] the evidence in the light most favorable to the party opposing the motion" and gives that party "the benefit of all favorable inferences which can reasonably be drawn from the record."[21] Moreover, the Court explained it reviews summary judgment *de novo*

9. *Id.* ¶ 3.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* ¶ 4 (citing N.D. CENT. CODE § 44-04-21.2(1)).
16. *Id.* (noting that Haskell's request was a remedy available under N.D. CENT. CODE § 44-04-21.2(1)).
17. *Id.*
18. *Id.*
19. *Id.*
20. *See id.* ¶ 5.
21. *Id.* (first quoting Axvig v. Czajkowski, 2025 ND 135, ¶ 5, 24 N.W.3d 79, 82; and then quoting Berger v. Sellers, 2023 ND 171, ¶ 7, 996 N.W.2d 329, 337).

because it is a question of law.[22] The Court also reviews alleged constitutional due process violations *de novo*.[23]

The Court then turned to North Dakota's open meetings framework.[24] Under N.D.C.C. § 44-04-19, "[a]ll meetings of a public entity must be open to the public, except as otherwise provided by law."[25] However, "[o]ne exemption to the open meetings law is for certain attorney consultations with public bodies," or the attorney consultation exemption.[26] N.D.C.C. § 44-04-19.1(5) defines "attorney consultation" as a discussion between a "governing body and its attorney" when the body seeks or receives advice "regarding and in anticipation of reasonably predictable or pending civil or criminal litigation or adversarial administrative proceedings" or seeks advice "on the legal risks, strengths, and weaknesses of an action of a public entity which, if held in public, would have an adverse fiscal effect on the entity."[27] The statute also limits the exemption by providing that "[a]ll other discussions beyond the attorney's advice and guidance must be made in the open, unless otherwise provided by law."[28] Finally, the statute states that "[m]ere presence or participation of an attorney at a meeting is not sufficient to constitute attorney consultation."[29]

Haskell first argued that the School Board waived the attorney consultation exemption when "Bruner provided legal advice to the School Board at the public portion of the hearing."[30] Haskell relied on a "2002 North Dakota Attorney General Opinion stating: a public entity essentially waives its right to invoke" the attorney consultation exemption if it allows "its adversary to review the [protected] work product or attend the consultation."[31] The Court agreed that a public body may waive the attorney consultation exemption, but it rejected Haskell's proposed application of that principle as too broad.[32] The Court distinguished the Attorney General Opinion because, there, the adversarial party was present during the executive session.[33] In *Haskell*, "neither Christianson nor Geiermann, (nor

22. *Id.*
23. *Id.* (citing Zittleman v. Bibler, 2025 ND 87, ¶ 7, 20 N.W.3d 148, 151).
24. *See id.* ¶ 6.
25. *Id.* (first quoting Schmitz v. N.D. State Bd. of Chiropractic Exam'rs, 2021 ND 73, ¶ 9, 958 N.W.2d 496, 498 (*Schmitz I*); and then citing N.D. CENT. CODE § 44-04-19).
26. *See id.* (citing N.D. CENT. CODE § 44-04-19.1(2)).
27. *Id.* (quoting N.D. CENT. CODE § 44-04-19.1(5)).
28. *Id.* (quoting N.D. CENT. CODE § 44-04-19.1(5)).
29. *Id.* (quoting N.D. CENT. CODE § 44-04-19.1(5)).
30. *Id.* ¶ 7.
31. *Id.* ¶ 9 (quoting N.D. Att'y Gen. Op. 2002-O-01) (citation modified).
32. *Id.*
33. *See id.* ¶ 11.

any member of the public)" attended the executive session; only the School Board and Bruner were present.[34]

Consequently, the Court rejected Haskell's argument that Bruner's public statements waived the Board's right to later enter an executive session.[35] According to the Court, treating an attorney's public explanation of a public body's legal position as a waiver would make the exemption ineffective whenever a public body's attorney openly stated the governmental body's position.[36] The Court reasoned that this approach would frustrate the open meetings statute because attorneys might refuse to speak publicly out of concern that doing so would waive the ability to later provide confidential advice.[37] The Court therefore held that "Bruner's public statements—whether made to the Board or on its behalf—do not constitute a waiver of other consultation within the scope of the exemption."[38]

The Court next considered whether the School Board properly entered executive session.[39] To enter the executive session, "the School District relied on the adverse-fiscal-effect provision of the attorney consultation exemption."[40] At the meeting, the Board moved to enter executive session to receive Bruner's "advice and guidance on the legal risks, strengths, and weaknesses of its decision for the level four grievance appeal."[41] The motion was seconded and approved.[42] The Court held that both the form and substance of this process satisfied the statutory requirements for entering executive session under the attorney consultation exemption.[43]

Haskell also argued that the adverse fiscal effect requirement was not satisfied because the amount of money Christianson sought had already been publicly disclosed.[44] The Court rejected that argument as "overly simplistic."[45] Although the dollar amount at issue was public, the Court explained that "the concept of an adverse fiscal effect is not so narrow."[46] The School Board could still privately discuss matters with financial consequences, including "the cost of litigating the dispute, the likelihood of

34. *Id.*
35. *See id.* ¶ 12.
36. *See id.* ¶ 13.
37. *Id.* ¶ 14.
38. *Id.*
39. *See id.* ¶ 15.
40. *Id.* ¶ 9.
41. *Id.* ¶¶ 9, 16 (citing N.D. CENT. CODE § 44-04-19.1(2), (5)).
42. *Id.*
43. *Id.* ¶ 16 (citing N.D. CENT. CODE §§ 44-04-19.1, 44-04-19.2).
44. *Id.* ¶ 17.
45. *Id.*
46. *Id.* ¶ 19.

succeeding in litigation, or the potential impact on resolutions of other contract disputes."[47] Accordingly, the public disclosure of the amount Christianson sought did not prevent the School Board from relying on the attorney consultation exemption.[48]

The Court then addressed Haskell's due process argument.[49] Haskell argued that she had a constitutional right to review the executive session transcript so she could meaningfully challenge the Board's use of the attorney consultation exemption.[50] The Court disagreed.[51] It stated that "[p]rocedural due process requires fundamental fairness, which at a minimum, necessitates notice and a meaningful opportunity for a hearing appropriate to the nature of the case."[52] However, the Court found no authority giving a party the right to access allegedly privileged or exempt records in order to argue that "the party should have access to" those records.[53] The Court stated that "[t]he argument refutes itself; [because] granting access to contest the exemption would vitiate the exemption."[54] Therefore, the district court did not violate Haskell's due process rights by refusing to provide Haskell the executive session transcript.[55]

Although Haskell was not entitled to personally review the recording, the Court held that the district court abused its discretion by refusing to review the recording *in camera* itself.[56] The Court noted it "review[s] a district court's decision on a request for in camera review under an abuse of discretion standard," and grounded its analysis in North Dakota's constitutional commitment to open government operations.[57] Article XI, section 5 of the North Dakota Constitution provides that, "[u]nless otherwise provided by law, all meetings of public or governmental bodies . . . shall be open to the public."[58] Additionally, Article XI, section 6 similarly provides that, "[u]nless otherwise provided by law, all records of public or governmental bodies . . . shall be public records, open and accessible for inspection."[59] The Court explained that "these provisions reflect a deliberate

47. *Id.* ¶ 20.
48. *See id.* ¶ 21.
49. *See id.* ¶ 22.
50. *Id.*
51. *See id.* ¶ 23.
52. *Id.* (quoting Overton v. Overton, 2025 ND 187, ¶ 5, 27 N.W.3d 469, 471).
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.* ¶ 45.
57. *See id.* ¶¶ 25, 27.
58. *Id.* ¶ 25 (quoting N.D. CONST. art. XI, § 5).
59. *Id.* (quoting N.D. CONST. art. XI, § 6) (alteration in original).

choice by the people of North Dakota: the government conducts the people's business, and the people are entitled to see how that business is conducted."[60]

The Court reasoned that this "constitutional presumption of openness should inform how district courts exercise their discretion when a citizen challenges a claimed exemption."[61] The Court stated that, "[w]hen the question is whether the government has complied with an exception to the constitutional presumption of openness, courts should not automatically accept the government's assurance that it has."[62] In this case, the district court relied on "(1) the meeting notice and motion for executive session; (2) a declaration from School Board Chairman Berger; and (3) an email from Attorney Bruner to opposing counsel" to find "that in camera review was unnecessary."[63] The Court held those materials were not enough to eliminate the need for *in camera* review.[64] The notice and motion showed only that the School Board followed the process for entering executive session; they did not show that every part of the closed discussion remained within the exemption.[65] Similarly, Chairman Berger's declaration came from "the same governing body claiming the exemption," and Bruner's email was "advocacy on behalf of her client," instead of neutral verification.[66]

The Court also rejected the district court's reliance on the fact that summary judgment was based on stipulated facts.[67] The parties' stipulation concerned the open portion of the meeting, not the closed executive session.[68] Haskell could not stipulate to what occurred during the executive session because she had never heard the recording and was, of course, not present.[69] The Court explained that "[s]ummary judgment standards presuppose that both parties have access to the relevant evidence."[70] Here, the School District controlled the only evidence capable of showing whether the executive session exceeded the scope of the attorney consultation exemption.[71] Requiring Haskell to prove "impropriety before [the court] would review the recording" placed her in a circular position: she needed the recording to show

60. *Id.*
61. *Id.* ¶ 27.
62. *Id.*
63. *Id.* ¶ 34.
64. *See id.* ¶¶ 34–36.
65. *Id.* ¶ 35.
66. *Id.* ¶ 36.
67. *See id.* ¶ 38.
68. *Id.*
69. *Id.*
70. *Id.* ¶ 39.
71. *See id.*

whether a violation occurred, but the district court required her to show a violation before it would review the recording.[72]

The Court clarified that *in camera* review is not unlimited.[73] District courts may consider the volume of materials, review a subset of records first, appoint a special master for voluminous records, or limit abusive or repetitive requests.[74] But in *Haskell*, the burden was minimal because the recording was "a single audio file 27 minutes long."[75] The Court held that refusing "to listen to a 27-minute recording before granting summary judgment on a constitutional open-government claim was an abuse of discretion."[76] On remand, the district court must determine whether, "at certain points," the School Board was "discussing the proceeding without consulting with its attorney or seeking her guidance," and must order disclosure of any nonexempt portions.[77]

Justice Crothers concurred in part and dissented in part.[78] He agreed with the majority except as to the *in camera* review issue.[79] Justice Crothers first argued that Haskell had not adequately briefed the claim that the district court abused its discretion by failing to conduct *in camera* review.[80] In his view, Haskell's appellate argument was primarily that she had a due process right "to participate in some type of meaningful review of the recording," not that the district court independently erred by failing to review it.[81]

Justice Crothers also disagreed with the majority's substantive approach to *in camera* review.[82] He acknowledged that a party challenging a closed meeting faces a difficult burden because the party does not know what occurred behind closed doors.[83] However, he would not allow a party to require judicial review of a closed-session recording without first making "a minimal showing the law has been violated."[84] Justice Crothers reasoned that Haskell could have used ordinary discovery tools, such as "interrogatories or depositions to investigate whether the executive session was limited to lawful

72. *See id.* ¶ 41.
73. *See id.* ¶ 42.
74. *See id.* ¶¶ 42–43.
75. *Id.* ¶ 42.
76. *Id.*
77. *Id.* ¶ 45 (quoting Schmitz II v. N.D. State Bd. of Chiropractic Exam'rs, 2022 ND 52, ¶ 15, 971 N.W.2d 892, 897).
78. *See id.* ¶ 49 (Crothers, J., concurring).
79. *Id.*
80. *Id.* ¶ 50.
81. *Id.*
82. *See id.* ¶ 51.
83. *Id.*
84. *Id.* (citing Prod. Credit Ass'n of Mandan v. Olson, 280 N.W.2d 920, 924 (N.D. 1979)).

topics."[85] In his view, the majority's approach allows Haskell and future claimants to demand *in camera* review without first producing evidence suggesting that the closed meeting was improperly conducted.[86]

Justice Crothers further relied on the presumption that government officials regularly perform their official duties.[87] He warned that placing the burden on the public body to justify the closed session without some initial showing by the challenger risks creating a "presumption of *irregularity*."[88] He also noted that North Dakota law provides an administrative process for Attorney General review of alleged open meetings violations.[89] Because Haskell did not make a minimal showing that the executive session was irregularly conducted, Justice Crothers would have affirmed the district court in full.[90]

Ultimately, the North Dakota Supreme Court affirmed the district court's conclusions that the School Board did not waive the attorney consultation exemption, properly entered executive session, and did not violate Haskell's due process rights.[91] However, the Court reversed the judgment of dismissal and the award of costs and disbursements because the district court failed to conduct an *in camera* review of the executive session recording before granting summary judgment.[92] The case was remanded for the district court to review the recording and determine whether any portions exceeded the scope of lawful attorney consultation.[93]

85. *Id.* ¶ 53.
86. *See id.* ¶ 54.
87. *See id.* ¶ 55.
88. *Id.* ¶ 56 (quoting State *ex rel.* Hicks v. Clermont Cnty. Bd. of Comm'rs, 219 N.E.3d 894, 901 (Ohio 2022)) (emphasis in original).
89. *See id.* ¶¶ 57–59.
90. *See id.* ¶ 60.
91. *Id.* ¶ 47 (majority opinion).
92. *Id.*
93. *Id.* ¶ 45.

CRIMINAL LAW– SEARCH AND SEIZURE: REASONABLE EXPECTATION OF PRIVACY IN AN ATTACHED GARAGE

State v. Goldberg

In *State v. Goldberg*, the North Dakota Supreme Court considered whether defendant, Christopher Goldberg ("Goldberg"), had a "reasonable expectation of privacy" in an attached garage that contained an open exterior walk-through door and served as the only functional entrance to a home then under construction.[94] The Court also addressed whether sufficient evidence supported a finding of "willfulness" as an element of child neglect.[95] Ultimately, the Court affirmed the district court's findings, holding that Goldberg did not have a "reasonable expectation of privacy" in the garage—thus the search was proper.[96] Additionally, the Court affirmed the "jury's finding that Goldberg committed child neglect."[97]

The factual basis began when "[s]ocial workers and a detective went to the home of Goldberg's then-girlfriend, Shantel Lais, to investigate whether Goldberg [had] assaulted Lais's daughter."[98] Once inside the residence, the detective alleged that Lais consented to a search and that the home was a "'complete and utter mess' with various firearms and open alcohol containers within reach of Lais and Goldberg's two-year-old child."[99] The State further claimed that "the detective found drugs and drug paraphernalia."[100]

As a result, "[t]he State charged Goldberg with unlawful possession of drug paraphernalia, unlawful possession of a firearm, and child neglect."[101] Afterwards, "Goldberg moved to suppress evidence obtained from the home. . . . argu[ing] the detective illegally entered the garage."[102] At the district court's suppression hearing, "[t]he detective was the only witness."[103] The detective testified that the home had no front door because construction for an extension was being "built on the front of the house," and that the social worker approached an open walk-through garage door, entered the garage, and knocked on an interior screen door leading into the kitchen.[104]

94. *See* 2026 ND 11, ¶¶ 1–5, 30 N.W.3d 875, 878–79.
95. *See id.* ¶ 20.
96. *Id.* ¶ 21.
97. *Id.*
98. *Id.* ¶ 2.
99. *Id.*
100. *Id.*
101. *Id.* ¶ 3.
102. *Id.*
103. *Id.*
104. *Id.*

After the social worker knocked, a pit bull charged the interior door, and the detective rushed in and blocked the door with his foot.[105] The detective continued to wait with the social worker for Lais to appear, and Lais eventually let them in.[106]

After the hearing, the district court denied the motion to suppress, finding "the garage entrance was open to the public and functioned as the main access point due to ongoing construction at the home," and determining Goldberg had no "reasonable expectation of privacy in the garage, and consequently his constitutional rights were not violated."[107] At trial, Goldberg moved for a judgment of acquittal under North Dakota Rule of Criminal Procedure 29, arguing the State failed "to establish [that] he lived at the residence," but "[t]he district court denied the motion," which led to Goldberg's testimony that he had been "at the home on the night before the search but claimed he did not notice its condition because he was sleeping."[108] At the end of the trial, "[t]he jury found [Goldberg] guilty of child neglect and not guilty of the [remaining] charges," which Goldberg appealed.[109]

The North Dakota Supreme Court began its analysis by reciting the constitutional framework governing searches and seizures.[110] The Court explained that "[a] search does not occur unless the government violates an individual's reasonable expectation of privacy," which requires both that the "person has exhibited an actual (subjective) expectation of privacy and, . . . that the expectation be one that society is prepared to recognize as reasonable."[111] "Evidence seized as the result of an unlawful search must generally be suppressed under the exclusionary rule,"[112] which functions as a "judicial sanction meant to deter police misconduct"[113] rather than as "a personal constitutional right of the aggrieved party."[114]

The Court then set out the burden-shifting framework applicable to suppression motions.[115] A defendant "bears the initial burden of establishing

105. *Id.*
106. *Id.*
107. *Id.* ¶ 4.
108. *Id.* ¶ 5.
109. *Id.*
110. *See id.* ¶ 6 ("The Fourth Amendment to the United States Constitution, applicable to the states under the Fourteenth Amendment, and Article I, section 8, of the North Dakota Constitution, protect individuals from unreasonable search and seizures." (quoting State v. Gothberg, 2024 ND 217, ¶ 11, 14 N.W.3d 578, 582 (citation omitted))).
111. *Id.* (quoting State v. Nguyen, 2013 ND 252, ¶ 8, 841 N.W.2d 676, 680 (citation omitted)).
112. *Id.* ¶ 7 (citing State v. Pogue, 2015 ND 211, ¶ 9, 868 N.W.2d 522, 527).
113. *Id.* (citing State v. Holly, 2013 ND 94, ¶ 48, 833 N.W.2d 15, 30).
114. *Id.* (citing State v. Bachmeier, 2007 ND 42, ¶ 9, 729 N.W.2d 141, 145).
115. *See id.* ¶ 8.

a prima facie case that the evidence was illegally seized,"[116] by "mak[ing] specific allegations of illegality" and "produc[ing] evidence to persuade the court" that suppression is warranted.[117] If the defendant makes that showing, then "the burden shifts to the State to 'justify its actions.'"[118] On review, the Court explained that it defers to the district court's findings of fact and "resolve[s] conflicts in testimony in favor of affirmance," while treating questions of law—including "[w]hether law enforcement violated constitutional prohibitions"—as fully reviewable.[119]

Before reaching the merits, the Court addressed the State's argument that Goldberg "lack[ed] standing to challenge the search" because he "claimed at trial [that] he did not live in the home" and was "merely a visitor."[120] The Court observed that "[i]ndividuals ordinarily cannot seek suppression of evidence based on the violation of a third-party's rights"[121] and are protected only "where [they] personally have a reasonable expectation of privacy."[122]

Although "[g]uests generally have a reasonable expectation of privacy in their host's home,"[123] that "expectation of privacy does not last indefinitely."[124] The Court noted, however, that "[t]he district court did not assess whether Goldberg was a visitor without a reasonable expectation of privacy[,] [t]he factual record on the issue was not developed," and the State had conceded that Goldberg's residence at the "address was not disputed at the suppression motion hearing."[125] Ultimately, the Court declined to resolve the standing question because "[i]ssues not presented in the district court will not be addressed on appeal."[126]

Turning to the merits, the Court reaffirmed that "[t]he home is an area that is constitutionally protected"[127] and that "the Fourth Amendment has drawn a firm line at the entrance to the house," beyond which the "threshold may not reasonably be crossed without a warrant" absent exigent circumstances.[128] Yet "[t]he location of a home's 'threshold' is not always clear," and "police with legitimate business may enter certain areas

116. *Id.* (citing City of Jamestown v. Casarez, 2021 ND 71, ¶ 16, 958 N.W.2d 467, 473).
117. *Id.* (citing *Pogue*, 2015 ND 211, ¶ 10).
118. *Id.* (quoting City of Fargo v. Sivertson, 1997 ND 204, ¶ 6, 571 N.W.2d 137, 139).
119. *Id.* ¶ 9 (citing *Pogue*, 2015 ND 211, ¶ 10).
120. *Id.* ¶ 10.
121. *Id.* ¶ 11 (quoting State v. West, 2020 ND 74, ¶ 9, 941 N.W.2d 533, 536).
122. *Id.* (citing State v. Oien, 2006 ND 138, ¶ 8, 717 N.W.2d 593, 597).
123. *Id.* (citing *Oien*, 2006 ND 138, ¶ 9).
124. *Id.* (citing State v. Williams, 2016 ND 132, ¶ 12, 881 N.W.2d 618, 622–23).
125. *Id.* ¶ 12.
126. *Id.* (citing Mead v. Hatzenbeller, 2023 ND 248, ¶ 21, 999 N.W.2d 618, 625).
127. *Id.* ¶ 14 (first quoting State v. Kitchen, 1997 ND 241, ¶ 13, 572 N.W.2d 106, 109 (citation omitted); and then citing Payton v. New York, 455 U.S. 573, 590 (1980) (citation modified)).
128. *Id.* (citing *Payton*, 455 U.S. at 590).

surrounding a home, . . . such as curtilage, [that] are 'impliedly open to use by the public.'"[129] "Whether a structure attached to a home is open to the public . . . is a fact-specific inquiry" that requires courts to consider the "particular characteristics of the home in question."[130]

The Court reconciled its prior decisions on this point.[131] In *State v. Blumler*, the Court upheld suppression where a deputy chose to enter a closed garage despite the presence of a front door, reasoning that "individuals 'ordinarily' have a reasonable expectation of privacy in a garage."[132] By contrast, in *State v. Kitchen*, the Court declined to suppress evidence where officers had only one access point to the residence and entered an enclosed entryway that was the most direct access to the home's threshold.[133] Additionally, in *State v. Kochel*, the Court suppressed evidence where a no-trespassing sign on the curtilage removed any "uncertainty that the attached addition [was] an integral part of the home where privacy [was] reasonably expected."[134]

Applying these principles, the majority concluded that Goldberg's case was unlike *Kochel*, because there was no "express signage warning unexpected guests they were unwelcome in the garage,"[135] and unlike *Blumler*, because law enforcement had not bypassed an available front door to enter a closed garage.[136] Instead, the Court found the case more analogous to *Kitchen*, reasoning that "the most direct access to the home's threshold was through an enclosed space open to the public."[137] The State's photographs, submitted to the district court, "corroborated the detective's testimony that there was no other front door access because the home was under construction," and the district court found that the garage entrance functioned as the main access point and "had been used repeatedly by social workers."[138]

Because those findings were supported by the evidence, the Court held that the detective "did not illegally cross the threshold of the home into an area where a reasonable expectation of privacy existed," and that Goldberg therefore failed to establish a constitutional violation.[139]

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129. *Id.* (citing State v. Winkler, 552 N.W.2d 347, 352 (N.D. 1996) (citation omitted)).
130. *Id.* (citing *Kitchen*, 1997 ND 241, ¶ 14).
131. *See id.* ¶¶ 15–18.
132. *Id.* ¶ 15 (citing State v. Blumler, 458 N.W.2d 300–02 (N.D. 1990)).
133. *Id.* ¶ 16 (citing *Kitchen*, 1997 ND 241, ¶¶ 2–5).
134. *Id.* ¶ 17 (citing State v. Kochel, 2008 ND 28, ¶¶ 2–3, 9, 744 N.W.2d 771, 773–74).
135. *Id.* ¶ 18 (citing *Kochel*, 2008 ND 28).
136. *Id.* (citing *Blumler*, 458 N.W.2d 300).
137. *Id.* (citing *Kitchen*, 1997 ND 241).
138. *Id.*
139. *Id.*

The Court next addressed Goldberg's challenge to the sufficiency of the evidence supporting his child-neglect conviction, explaining that it "reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction," and that "[t]he defendant bears the burden of showing the evidence reveals no reasonable inference of guilt when [the evidence is] viewed in the light most favorable to the verdict."[140] Goldberg argued that the State could not prove "he willfully committed child neglect because there is nothing to prove he knew about the conditions in the home."[141] The Court rejected the argument, reasoning that Goldberg's own testimony—that he was present at the home and stayed roughly "three-and-a-half hours"—provided evidentiary support for a finding of willfulness "[w]hen viewed in a light favorable to the verdict."[142] Accordingly, the Court affirmed the amended criminal judgment.[143]

Justice Crothers dissented.[144] While agreeing that the Court should not decide the unpreserved standing question, he disagreed with the majority's conclusion that "the deputy did not illegally cross the threshold of the home."[145] In his view, North Dakota precedent firmly establishes "that a garage is an intimate part of a person's residence" in which the occupant "has a reasonable expectation of privacy against warrantless intrusions by the State."[146] He argued the majority improperly stepped over the holdings of *Blumler* and *Winkler* to rely on *Kochel*, and that treating absence of a no-trespassing sign as evidence that the public was welcome dangerously shifts the "burden on an occupant to take affirmative steps to preserve privacy in their homes and garages."[147]

In the dissent, Justice Crothers, further contended that "[w]hether the garage was open or closed [was] irrelevant," because "entry into an open garage also constitutes an illegal search," and that the "proper question [was] not whether the garage was the threshold of the home," but "whether the State has specific facts to overcome the presumed reasonable expectation of privacy in the garage."[148] Justice Crothers also identified what he viewed as three flaws in the district court's findings: (1) the prior entries by the state

140. *Id.* ¶ 19 (quoting State v. Guthmiller, 2025 ND 162, ¶ 7, 26 N.W.3d 548, 550 (citation omitted)).

141. *Id.* ¶ 20.

142. *Id.*

143. *Id.* ¶ 21.

144. *Id.* ¶ 23 (Crothers, J., dissenting).

145. *Id.* ¶¶ 24–25.

146. *Id.* ¶ 25 (citing State v. Blumler, 458 N.W.2d 300, 302 (N.D. 1990)).

147. *Id.* ¶¶ 28–30.

148. *Id.* ¶¶ 31–32 (citation omitted).

actors say nothing about what the occupant permitted the public to do; (2) that the home had other external doors law enforcement did not attempt to use; and (3) that no evidence showed how the public, as opposed to state actors, ever accessed the home through the garage.[149] Overall, Justice Crothers would have reversed and remanded "for findings on whether the occupants consented to the search inside the home after the detective's [alleged] illegal entry into the garage."[150]

149. *See id.* ¶¶ 35–37.
150. *Id.* ¶ 39 (citing State v. Torkelsen, 2008 ND 141, ¶ 24, 752 N.W.2d 640, 650).

CRIMINAL LAW – CHILD OFFENDER REGISTRY, TO DEVIATE OR NOT TO DEVIATE FROM THE REQUIREMENTS

State v. Berkley

In *State v. Berkley*, the North Dakota Supreme Court analyzed whether the district court has discretion to deviate from the offender against children registration requirements when a parent is convicted of child abuse.[151] Justice Tufte, along with Justice McEvers and Chief Justice Jensen, were in the majority.[152] Justice Bahr agreed with the majority but wrote a strong concurring opinion, which Justice Crothers agreed with.[153]

The factual basis began on June 5, 2024, when Orion Tyler Berkley ("Berkley") was convicted of child abuse of a child under six years old, and was "ordered to register as an offender against children."[154] The victim in the case is the defendant's two-year-old son, who Berkley allegedly "inflicted or allowed to be inflicted bodily injury."[155] During his sentencing, Berkley argued, "registration as an offender against children was not mandatory and the district court should not order [him] to register."[156] The district court explained that N.D.C.C. § 14-09-22(5) "requires parents who commit offenses against children to register."[157] The district court further explained its opinion regarding the defendant's sentence, stating, "I don't think Mr. Berkley needs to register for this. I don't think he's a threat to other children on this point. . . . But I don't think I have the authority to not order [him] to [register]."[158] Berkley appealed to the North Dakota Supreme Court and "argue[d] the district court erred by determining N.D.C.C. § 12.1-32-15 requires him to register as an offender against children," for his conviction under N.D.C.C. § 14-09-22 or, alternatively, he "argue[d] the [district] court abused its discretion by ordering [him] to register as an offender against children."[159]

In order for the Court to determine whether registration is required for Berkley, the statute that governs registration as an offender against children must first be understood and defined.[160] Under N.D.C.C. § 12.1-32-15(2), a

151. *See* 2025 ND 134, ¶ 1, 24 N.W.3d 69, 70.
152. *See id.* ¶ 27.
153. *See id.* ¶¶ 28, 40 (Bahr, J. concurring).
154. *Id.* ¶ 2 (citing N.D. CENT. CODE § 14-09-22(1)) (majority opinion).
155. *Id.*
156. *Id.* ¶ 3.
157. *Id.*
158. *Id.*
159. *Id.* ¶¶ 3–4.
160. *See id.* ¶¶ 5–7.

defendant is required to register if that individual has pled guilty or been found guilty of a crime against a child.[161] Section (2)(d) of the statute further states,

> Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.[162]

In this case, the defendant does not dispute that he committed a crime against a child or that he is the parent of the child.[163] The defendant instead argued that the court is allowed to deviate from the requirement to register as an offender against children in this case.[164] However, the State insisted that the "district court may not deviate from the registration requirement."[165] When analyzing North Dakota's requirements to register, N.D.C.C. § 12.1-32-15, subsection 2 provides language on whether the district court has discretion in sentencing.[166]

In the first sentence of subsection (2)(d), the statute provides the general rule for registration, stating the court "shall require" registration after a conviction.[167] Then, the second sentence of subsection (2)(d) allows deviation from registration requirements, stating "the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or of a crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense."[168] The second sentence of subsection (2)(d) starts with the exception which states that the district court may deviate from requiring registry in certain circumstances as stated above.[169]

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161. *See id.* ¶¶ 6–7 (referencing the district court's discussion of N.D. CENT. CODE § 12.1-32-15(1)(a) ("'A crime against a child' means . . . if the victim is under the age of twelve, . . . in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.")).

162. *Id.* ¶ 6 (citing N.D. CENT. CODE § 12.1-32-15(2)(d)).

163. *Id.* ¶ 8.

164. *Id.*

165. *Id.*

166. *See id.* ¶ 9.

167. *Id.*

168. *Id.* (citing N.D. CENT. CODE § 12.1-32-15(2)(d)).

169. *See id.* (citing N.D. CENT. CODE § 12.1-32-15(2)(d) ("Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register . . . .")).

The State argues deviation is only appropriate if the offense "is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim."[170] "The placement of the exception at the beginning of the second sentence, immediately following the general rule stated in the first sentence, naturally implies the exception applies to the general rule—or that the exception stated at the beginning of the second sentence applies to the first sentence." [171] Essentially, the State argued that because the defendant does not meet any requirements in the exception, as he is the parent of the child and other sections do not apply to him, he cannot ask for deviation from registering as a child offender.[172] Further, "[t]he State argues the statute should be read that the court may deviate only if the 'exception language' qualifies the offense," meaning, in Berkley's case, it is required after conviction.[173]

In the alternative, Berkley argued the court should read the statute to intend that "the court may deviate from the registration requirement *unless* 'the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim."[174] The Court agrees that both the State and Berkley have "rational and plausible application[s] of grammatical rules and [the Court's] interpretative canons."[175] However, the majority determined the statute is ambiguous.[176] Thus, it turned to "legislative history to aid in determining the meaning the legislature intended by the language of the statute."[177]

Section 12.1-32-15(2)(a) of the N.D.C.C., which governs felony-level "sexual offenses, does not allow deviation from the registration requirement."[178] It is allowed, however, under sections (b)-(d) if the court makes certain findings.[179] After a closer look at the statutory text and legislative history, the Court found that "proposed amendments which added the exception phrase" cited the Wetterling Act as the purpose, which created a mandatory registration requirement for cases involving "prostitution of a minor, kidnaping, or abducting a child."[180] Thus, reading N.D.C.C. § 12.1-32-15(2)(d) "in the context of its surrounding subsections, and the legislative

170. *Id.* ¶ 10.
171. *Id.*
172. *See id.*
173. *Id.*
174. *Id.* ¶ 11 (emphasis in original).
175. *Id.* ¶¶ 10–11.
176. *Id.* ¶ 12.
177. *Id.*
178. *See id.* ¶ 13.
179. *Id.*
180. *Id.* (citing 1999 N.D. Sess. Laws ch. 131).

history" shows that "the meaning intended by the legislature was to allow deviation for crimes against children under specified circumstances, except if (or unless) the offense is described 'in section 12.1-29-02 [prostitution], or section 12.1-18-01 [kidnapping] or 12.1-18-02 [felonious restraint] and the person is not the parent of the victim."[181]

Resulting in the Court to ask "whether [the phrase] 'and the person is not the parent of the victim' applies to any offense defined as a 'crime against a child,' any of the three offenses listed in N.D.C.C. § 12.1-32-15(2)(d), only section 12.1-18-02, or only sections 12.1-18-01 and 12-1-18-02."[182] Below, the district court found that the phrase "and the person is not the parent of the victim" applied to any offense defined as a "crime against a child."[183] However, the North Dakota Supreme Court explained that the comma after "section 12.1-29-02" followed by an "or" breaks the statutory sentence "into two separate and independent phrases."[184] Resulting in "[t]he phrase 'and the person is not the parent of the victim'" to apply "to section 12.1-18-01 and 12.1-18-02, but not section 12.1-29-01."[185]

The Court affirmed this interpretation using the Wetterling Act guidelines.[186] Noting that "[i]n 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 1407(a)-(f) (the 'Wetterling Act')."[187] Shortly thereafter, North Dakota adopted its own version, embracing the Wetterling requirements.[188] In 1999, a set of federal guidelines was published in order to provide more flexibility to the states regarding registry programs.[189]

Following this, North Dakota proposed Senate Bill 2299, which narrowed current registration and notification requirements.[190] Testimony on this bill outlined that there would be "no way to deviate from registering kidnapping or feloniously restraining a child."[191] Additionally, "the Bill

181. *Id.* ¶ 14.
182. *Id.* ¶ 15.
183. *Id.* ¶ 16.
184. *Id.* ¶ 17.
185. *Id.* ¶ 19.
186. *Id.*
187. *Id.* ¶ 20 (citing State v. Burr, 1999 ND 143, ¶ 62, 598 N.W.2d 147, 164 (Kapsner, J., dissenting)).
188. *Id.* (first citing N.D. CENT. CODE § 12.1-32-15 (1995); and then citing 1995 N.D. Sess. Laws ch. 139 (H.B. 1152)).
189. *Id.* (first citing 1999 Guidelines, 64 Fed. Reg. 572 (Jan. 5, 1999); and then citing Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 DRAKE L. REV. 741, 796 (2016)).
190. *See id.* (first citing *Burr*, 1999 ND 143, ¶ 96 & n.23 (Kapsner, J., dissenting); and then citing *Hearing on S.B. 2299 Before the Senate Judiciary Committee*, 56th N.D. Legis. Sess. (Jan. 25, 1999)).
191. *Id.* ¶ 22.

requires anyone that kidnaps a child, other than a parent, to register for life."[192] The drafter of the bill noted that it is a good option for deviation in certain circumstances so that the "registration program doesn't become a wedge tool in visitation and custody fights."[193]

Based on legislative history, the Court determined that deviation may only be allowed "if the offense is not prostitution, kidnapping (except by a parent), or felonious restraint (except by a parent)."[194] The Court concluded that the district court "has discretion under N.D.C.C. § 12.1-32-15(2)(d) to deviate from the registration requirement if the court finds Berkley has not previously been convicted as a sexual offender or for a crime against a child and he did not exhibit mental abnormality or predatory conduct in the commission of the offense."[195] Berkley's status as the parent of the victim is irrelevant in this case.[196] The Court ultimately reversed Berkley's criminal judgment and remanded to reconsider registration requirements for Berkley with the interpretation of the statute discussed in the opinion.[197]

Justice Bahr asserted in the concurring opinion that both the first and second sentence of the applicable statute are unambiguous.[198] The argument is a grammatical one: that the clause introduced by "except" is a dependent clause which is fully dependent on the first sentence of the statute.[199] The concurrence explains that the State's position in this argument is a grammatical error and that if the legislature intended for registration to be modified in accordance with their argument, it would have done so.[200] The concurring opinion states that the dependent clause only modifies the registration exception, not the requirement to register, and the State's argument rewrites the statute entirely, creating the opposite of what the legislature intended.[201] Based on this, the concurrence "would conclude N.D.C.C. § 12.1-32-15(2)(d) is unambiguous, reverse the criminal judgment, and remand for the district court to consider whether to deviate from requiring Berkley to register."[202]

192. *Id.*

193. *Id.* (quoting *Hearing on S.B. 2299 Before the Senate Judiciary Committee*, 56th N.D. Legis. Sess. (Jan. 25, 1999)).

194. *Id.* ¶ 23.

195. *Id.* ¶ 25.

196. *See id.* ¶ 24.

197. *Id.* ¶ 26.

198. *See id.* ¶¶ 30–31 (Bahr, J. concurring).

199. *Id.* ¶ 31.

200. *Id.* ¶¶ 33–34.

201. *See id.* ¶ 34.

202. *Id.* ¶ 39.

CIVIL PROCEDURE – APPEALABILITY OF AN AUTOMATIC STAY

Bobcat of Mandan, Inc. v. Doosan Bobcat N. Am., Inc.

In *Bobcat of Mandan, Inc. v. Doosan Bobcat N. Am., Inc.*, the North Dakota Supreme Court dismissed an appeal which challenged "a district court order denying Bobcat's motion to dissolve or modify an automatic stay."[203] The Court held that an "automatic stay" operates like an injunction, rather than a customary "stay," under N.D.C.C. § 51-07-01.1(3).[204] The Court looked to United States Supreme Court precedent explaining the distinction between a "stay" and an "injunction."[205] More specifically, the Court targeted the practicality of the word "stay" and how the interpretation fell within appellate jurisdiction under N.D.C.C. § 28-27-02(3).[206] This decision was tendered through the Court's two-step framework used to determine whether a case is appealable.[207] As part of this analysis, the Court addressed whether North Dakota Rule of Civil Procedure 54(b)[208] certification applied.[209] The Court also rendered a decision as to whether the district court's order violated constitutional rights, holding that it did not.[210] The Court ultimately held that it "den[ied] Bobcat's request to exercise [its] supervisory jurisdiction" and dismissed the appeal.[211]

This case involves Doosan Bobcat North America ("Bobcat") terminating the dealer sales agreement (DSA) under which Bobcat of Mandan, Inc. ("BM") operated.[212] BM, a well-established Bobcat dealer, consistently operated under various DSAs, dating back to the 70's.[213] Under Section 15.3.E of the DSAs, "Bobcat is permitted to terminate the DSA if the dealer 'makes any material written or oral statement or representation which

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203. *See* 2026 ND 63, ¶ 1, 32 N.W.3d 316, 318 (citing N.D. CENT. CODE § 51-07-01.1(3)).

204. *Id.* ¶ 17.

205. *Id.* ¶ 16 (citing Nken v. Holder, 556 U.S. 418, 428–29 (2009)).

206. *Id.* ¶¶ 6, 14 (citing N.D. CENT. CODE § 28-27-02(3)).

207. *Id.* ¶ 10 (citing Matter of Est. of Kautzman, 2025 ND 57, ¶ 11, 19 N.W.3d 272, 275).

208. *See id.* (citing N.D. R. CIV. P. 54(b) (providing guidance for judgment on multiple claims and parties, stating "[i]f an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities")).

209. *See id.* ¶¶ 7–8.

210. *Id.* ¶ 25.

211. *Id.* ¶ 26.

212. *Id.* ¶¶ 2–3.

213. *See id.* ¶ 2.

is false or otherwise misleading.'"[214] Though this section provides the termination to be effective immediately, Bobcat provided BM with a ninety-day notice to find a new buyer.[215]

BM subsequently filed a complaint and asserted that the "action and challenge to Bobcat's notice of termination operates as an automatic stay of the termination during the pendency of this action."[216] BM argued Bobcat's termination of the DSA violated two statutes under the N.D.C.C., § 51-20.1-03 ("the heavy construction equipment franchise termination statute") and § 51-07-01.1(3) ("the farm equipment dealer statute").[217] However, only the farm equipment dealer statute under N.D.C.C. § 51-.07-01.1(3), implicated an automatic stay provision:

> In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor shall establish that the termination, cancellation, or failure to renew was made in good faith for good cause. If a notice of termination is issued and the dealer challenges the notice by filing an action, there is an automatic stay during the pendency of the action.[218]

Consequently, Bobcat argued that "the automatic stay provision of N.D.C.C. § 51-07-01.1(3) does not apply to the heavy construction equipment that constitutes most products covered by the DSAs."[219] Bobcat agreed that some of its products, such as "tractors, mowers, and turf renovation products," correctly fell within the automatic stay of the statute.[220] But, the "heavy construction equipment" that included "skid-steer loaders, compact track loaders, compact excavators, and heavy excavators" did not fall under N.D.C.C. § 51-07-01.1(3)'s automatic stay provision.[221] Bobcat's evidence illustrated that only 9.3% of BM's sales included agricultural purposes, and provided the "2017 legislative history of Senate Bill 2289, which amended the farm equipment statute to clarify that equipment must be 'designed and used primarily for' agriculture, and during which legislators and industry representatives confirmed that Bobcat equipment was not intended to be covered by the farm equipment dealer statute."[222]

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214. *Id.* ¶ 3.
215. *Id.*
216. *Id.* ¶ 4.
217. *Id.*
218. *Id.* ¶¶ 4, 13 (quoting N.D. CENT. CODE § 51-07-01.1(3)).
219. *Id.* ¶ 5.
220. *See id.*
221. *Id.*
222. *Id.* (citing 2017 N.D. Sess. Laws ch. 354).

But the district court nonetheless refused to resolve these preliminary matters and left the applicability of the statute to "later stages of litigation and resolution by the fact finder."[223] Resultingly, Bobcat filed for certification under Rule 54(b).[224] However, before the court addressed this request, Bobcat filed a notice of appeal.[225] The court "notified the parties it would not address Bobcat's certification request because the court lacks jurisdiction due to Bobcat's appeal."[226]

While BM contested the appeal, Bobcat argued the appeal was permitted under N.D.C.C. § 28-27-02(3)[227] because the automatic stay "serves as a temporary restraining order or preliminary injunction," and thus falls within jurisdictional appellate review.[228] The "Court uses a two-step analysis to determine whether an order is appealable. First, the order appealed from must meet one of the statutory criteria of appealability. . . . If it does, then Rule 54(b), if applicable, must be complied with."[229] Therefore, the first question before the Court was "whether the district court's order denying Bobcat's motion to dissolve the 'automatic stay' under N.D.C.C. § 51-07-01.1(3) is an order refusing to 'dissolve an injunction.'"[230]

The North Dakota Supreme Court's first step was determining the legislative intent of the automatic stay, and whether the stay was to be interpreted like an "injunction."[231] While "a 'stay,' including an 'automatic stay' ordinarily means a 'postponement or halting of a proceeding,' or 'an order to suspend all of part of a judicial proceeding or a judgment resulting from that proceeding,'" the word "injunction" has two different applications, which the Court articulated.[232] First, a court often imposes an injunction "commanding or preventing an action."[233] Here, the Court relied on Black's Law and Heritage Law Dictionary to "define 'injunction' as a court order requiring a party to refrain from doing a particular act or to do a particular act."[234] Alternatively, "injunction" may also mean to "enjoin" which means to "prohibit" or "forbid," but an injunction is not always imposed by court

223. *Id.* ¶ 6 (internal quotation omitted).
224. *Id.* ¶ 7.
225. *Id.*
226. *Id.*
227. *Id.* ¶¶ 8, 11 (citing N.D. CENT. CODE § 28-27-02(3) (stating that an order may be appealed if it "grants, refuses, modifies, or dissolves an injunction or refuses to modify or dissolve an injunction . . . .")).
228. *Id.* ¶ 8.
229. *Id.* ¶ 10.
230. *Id.* ¶ 11 (citation omitted).
231. *Id.* ¶¶ 12–14.
232. *Id.* ¶¶ 14–15 (citations omitted).
233. *Id.* ¶ 14 (citations omitted).
234. *Id.* (citation modified).

intervention.[235] In *Nken v. Holder*, the United States Supreme Court heeded the same challenge, this Court drew similarities to the present case, by "address[ing] the distinction between a stay and an injunction."[236] The Court's analysis of *Nken* is essential for this review: "Both can have the practical effect of preventing some action before the legality of that action has been conclusively determined. But a stay achieves this result by temporarily suspending the source of authority to act—the order or judgment in question—not by directing an actor's conduct."[237]

Because these words serve different purposes—governing conduct versus governing a judicial proceeding—the North Dakota Supreme Court determined the "automatic stay" under N.D.C.C. § 51-07-01.1(3) was more like an injunction.[238] The statute specifically highlights the conduct of the actor by suspending the "*manufacturer, wholesaler, or the distributor's termination of a contract*."[239] The Court found the "automatic stay" highlighted the conduct of the manufacturer, Bobcat, because any court intervention would prevent Bobcat from terminating the current contracts of the dealer.[240] Therefore, "the district court's order denying the motion to dissolve [was] appealable."[241]

Next, the Court addressed the applicability of North Dakota Rule of Civil Procedure 54(b).[242] This is the second part of the two-part framework used "to determine whether an order is appealable."[243] This rule "creates additional requirements" and "certification is typically required to appeal non-final or interlocutory orders."[244] Under this framework, the Court had to determine whether Bobcat's certification request to the district court, submitted under Rule 54(b), could be appealed, absent a decision on the certification.[245]

The Court concluded that the district court's "order denying the motion to dissolve is interlocutory and not reviewable" without completed certification under Rule 54(b).[246] Bobcat filed its appeal before the court

235. *Id.* (citations omitted).
236. *Id.* ¶ 16 (citing Nken v. Holder, 556 U.S. 418, 430 (2009)).
237. *Id.*
238. *Id.* ¶ 17.
239. *Id.* (emphasis added).
240. *Id.* ¶¶ 17–18.
241. *Id.* ¶ 20.
242. *Id.*
243. *Id.* ¶ 10 (citing Matter of Est. of Kautzman, 2025 ND 57, ¶ 11, 19 N.W.3d 272, 275).
244. *Id.* ¶ 20.
245. *Id.* ¶¶ 20–21.
246. *Id.* ¶ 21.

responded to the request for certification; thus, the order could not be appealed because it lacked proper Rule 54(b) certification.[247]

Lastly, the Court addressed its supervisory jurisdiction.[248] Here, the Court explained its authority and discretion:

> Under N.D. Const. art. VI, § 2, and N.D.C.C. § 27-02-04, this Court may examine a district court decision by invoking our supervisory authority. We exercise our authority to issue supervisory writs rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases when no adequate alternative remedy exists. Our authority to issue a supervisory writ is purely discretionary, and we determine whether to exercise supervisory jurisdiction on a case-by-case basis, considering the unique circumstances of each case. Exercise of supervisory jurisdiction may be warranted when issues of vital concern regarding matters of important public interest are presented.[249]

Bobcat argued its fundamental rights were being harmed because the district court denied its motion to dissolve, relying on *Fargo Women's Health Organization, Inc. v. Lambs of Christ*, by arguing the court in that case "exercise[d] its supervisory jurisdiction" involving "fundamental interests of the litigants."[250] The Court found that Bobcat's fundamental rights had not been infringed upon because this case—a contract dispute between two private parties—was not a case pertaining to "important public interest."[251] Ultimately, the Court held that this type of case does not warrant supervisory jurisdiction and therefore declined Bobcat's request to exercise its supervisory jurisdiction.[252] Bobcat's appeal was ultimately dismissed.[253]

247. *Id.*
248. *See id.* ¶ 22.
249. *Id.*
250. *Id.* ¶¶ 22, 24 (citing Fargo Women's Health Organization, Inc. v. Lambs of Christ, 488 N.W.2d 401, 405–06 (N.D. 1992)).
251. *Id.* ¶ 25 (citing Wrigley v. Romanick, 2023 ND 50, ¶ 11, 988 N.W.2d 231, 237).
252. *See id.* ¶ 26.
253. *Id.*