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| STATE OF SOUTH DAKOTA )<br>:SS<br>COUNTY OF MINNEHAHA ) | IN CIRCUIT COURT<br><br>SECOND JUDICIAL CIRCUIT |
| **MELISSA MENTELE,**<br>Petitioner/Appellant,<br><br>vs.<br><br>**JASON KARIMI,**<br>Respondent/Appellee. | TPO 26-343<br><br>**MEMORANDUM OPINION AND ORDER** |

Appellant Melissa Mentele (Appellant) appeals the denial of her Petition for Stalking Protection Order against Appellee Jason Karimi (Appellee). Appellant filed her Notice of Appeal on May 22, 2026. A briefing schedule was issued on May 26, 2026. Appellee filed a Motion to Dismiss on June 26, 2026 without scheduling a hearing. Appellant filed her appellate brief on July 28, 2026. There has been no appellate briefing filed by Appellee. Having reviewed the record and considered the briefing, this Court issues its Memorandum Opinion as follows.

**A. Appellee's Motion to Dismiss**

Appellee moves to dismiss this appeal claiming defective service of the Notice of Appeal. He claims that Appellant mailed the Notice of Appeal to him via certified mail, return receipt requested. He claims that he "does not personally handle mail retrieval under normal circumstances" and that his fiancé retrieves the mail. Appellee reports that the mail was ultimately returned because it was not claimed by Appellee or his fiancé. Appellee argues that he never agreed to accept service by mail and that he was not properly served.

This is an appeal from Magistrate Court to Circuit Court. SDCL 15-38-24 addresses service of the Notice of Appeal:

> The appellant, or his counsel, shall service the notice of appeal on counsel of record of each party other than appellant, or, if the party is not represented by counsel, on the party at his last known address.

Appellant complied with SDCL 15-38-24 by mailing the Notice of Appeal to Appellee at his last known address, which is the same address that Appellee used for his Motion to Dismiss. Appellant filed a Certificate of Service indicating that she mailed the Notice of Appeal to Appellee at that address. Appellee acknowledges that the Notice was mailed to him in his Motion to Dismiss, regardless of whether Appellee decided to retrieve the mail.

Service of the Notice Appeal complied with SDCL 15-38-24, and Appellee's Motion to Dismiss is DENIED.

**B. Merits of Appellant's Appeal**

Appellant filed her appellate brief on July 28, 2026. Per this Court's Scheduling Order, Appellee's brief was due 30 days after service of Appellant's brief. Appellee failed to comply with the Court's schedule and has not filed a brief in this matter or requested additional time. This Court will proceed with the appeal based on the briefing and record before it.

The South Dakota Supreme Court noted that the grant or denial of a protection order is reviewed

> under a two-step process: first, by reviewing the circuit court's findings of fact for clear error; and second, by reviewing the circuit court's "ultimate decision for an abuse of discretion." *Donat v. Johnson*, 2015 S.D. 16, ¶ 13, 862 N.W.2d 122, 127. "The circuit court's findings of fact will not be set aside unless 'we are left with a "definite and firm conviction that a mistake has been made." ' " *Erickson v. Earley*, 2016 S.D. 37, ¶ 8, 878 N.W.2d 631, 633-34 (quoting *Shroyer v. Fanning*, 2010 S.D. 22, ¶ 6, 780 N.W.2d 467, 469). "An abuse of discretion is a fundamental error of judgment, a choice outside the range of permissible choices, a decision, which, on full consideration, is arbitrary and unreasonable." *Id.* (quoting *Blair-Arch v. Arch*, 2014 S.D. 94, ¶ 10, 857 N.W.2d 874, 877).

Thompson v. Bear Runner, 2018 S.D. 57, ¶ 12, 916 N.W.2d 127, 130.

This case is the fourth protection order brought by Appellant against Appellee. *See* 49TPO26-45; 30TPO25-03; 30TPO25-02.[1] All were dismissed after hearing based on a finding that Appellant failed to provide sufficient evidence to support, by a preponderance of the evidence, a finding of stalking or physical injury as required by law. All essentially involve the same allegations of conduct by Appellee. The only additional allegation in this TPO petition was a single, 18 second phone call made to Appellant's place of employment during which Appellant alleged Appellee "screamed" at an employee and threatened to sue. Appellant did not receive the phone call and did not talk to Appellee. The Magistrate Court found that this did not represent a course of conduct sufficient to support a finding of stalking.

Appellee is a blogger who operates a website and Facebook page regarding cannabis. Both parties are involved or have an interest in the cannabis industry. Appellant's allegations primarily involve statements or information that Appellee has included in his blogs and on social media and her position that they are not protected by the First Amendment or free speech.

Having reviewed the record, the trial court made sufficient findings indicating why it was denying the Protection Order to include the repeated requests for a Protection Order with the same or similar facts as the basis, concerns over the credibility of the Appellant, and noting the only new information was the brief phone call noted above. The trial court further noted that the brief phone call did not meet the necessary elements for a Stalking Protection Order as it did not constitute repeated behavior. Therefore, this Court affirms the Magistrate Court's Order dismissing Appellant's Protection Order in this matter. Appellant has not shown that the Magistrate's findings of fact are clearly erroneous or that there was an abuse in discretion. Appellant has not shown conduct that supports a finding of Stalking under the applicable law.

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[1] *See* 49TPO26-59 brought by Appellee against Appellant. It was also dismissed for failure to provide sufficient evidence to support the granting of the Protection Order.

## ORDER

Based upon the foregoing, it is hereby ORDERED that:

1) Appellee's Motion to Dismiss is DENIED; and

2) The Magistrate Court's Order Dismissing Protection Order is AFFIRMED.

Dated this 30 day of October, 2026.

BY THE COURT:

Mandi A. Mowery
Circuit Court Judge

ATTEST: Karla Kalb, Clerk of Courts

By: _____
DEPUTY