SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Shirley A Jameson-Fergel
Clerk

In The Supreme Court
Of the
State of South Dakota

Supreme Court No. 31412

In the Matter of

Jennifer Jo Malone,
Appellee,

vs.

Ian Patrick Odle,
Appellant.

Appeal from the Circuit Court
Third Judicial Circuit
Kingsbury County, South Dakota

The Honorable Carmen A. Means

Appellant's Brief – Public Redacted Version

31412

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Notice of Appeal filed March 3, 2026

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Jurisdictional Statement

This appeal arises from a final Order entered by the Third Judicial Circuit Court, Kingsbury County, the Honorable Carmen Means presiding, on February 10, 2026. Notice of Entry of Judgment was served on February 10, 2026.

Appellant filed a timely Notice of Appeal on March 3, 2026, within the time prescribed by statute.

The Order granting the protection order constitutes a final appealable order under SDCL 15-26A-3. Accordingly, this Court has jurisdiction over this appeal.

Nature of the Case

This appeal arises from a protection order entered by the circuit court under SDCL ch. 22-19A. The order was obtained by the Kingsbury County Clerk of Courts based on filings and communications regarding trust administration directed into the judicial system, and it imposes restrictions that limit Respondent's access to that same system, including physical access to the Clerk of Courts office and the manner in which filings may be submitted.

Respondent denied the allegations and presented affirmative defenses and testimony. The evidence presented at the hearing reflected filings and communications made in connection with legal and trust-related matters, including documents filed within judicial and administrative processes. At the evidentiary hearing, Petitioner's witness, a security coordinator for UJS, testified that Respondent had not made any threats of violence. (Tr. 15:1–16:16; App. A-93–A-94). The circuit court thereafter entered a five-year protection order imposing significant restrictions, including prohibiting Respondent from accessing the Kingsbury County Clerk of Courts office.

Although the circuit court referenced categories of conduct, neither the ruling nor the evidence identifies conduct satisfying the statutory elements of harassment. The court relied on generalized conclusions and considerations not tied to evidence demonstrating those elements.

The proceedings further involved the admission and public use of trust materials without applying the protections required under SDCL 21-22-28.

This appeal challenges the order on the grounds that the evidence does not establish conduct constituting harassment as a matter of law under SDCL ch. 22-19A, the ruling misapplies the governing legal standard, the proceedings admitted and used trust materials without required analysis, and the order imposes overbroad restrictions untethered to proven conduct.

Introduction and Summary of Argument

This appeal presents a failure of proof. Where the evidence, viewed in the light most favorable to Petitioner, does not establish the statutory elements, dismissal is the appropriate remedy. Remand would not cure that deficiency.

Petitioner was afforded a full evidentiary hearing and presented the evidence relied upon below. That evidence consisted of filings and communications arising from a legal dispute concerning trust administration. Petitioner's own security witness testified that there were "none" when asked whether the materials contained any threats of violence. (Tr. 16:9–14; App. A-94). As a matter of law, that conduct does not satisfy the statutory definition of harassment.

This is not a case in which remand could alter the outcome. The circuit court did not identify conduct satisfying the statutory elements, and the evidence does not establish those elements. Under these circumstances, reversal with directions to dismiss is required.

Issues Presented for Review

1. ***Whether the evidentiary record, viewed in the light most favorable to Petitioner, identifies conduct satisfying the statutory elements of harassment under SDCL ch. 22-19A.***

Circuit Court Ruling: The circuit court concluded that Respondent's conduct satisfied the statutory definition of harassment and entered a five-year protection order. The conduct identified in the record includes legal filings and communications arising from a trust-related dispute. In its oral ruling, the court also referenced Respondent's perceived beliefs and mental condition, its own observations, and concerns about anticipated future conduct. (Tr. 19:16–21:5; 28:11–29:17; App. A-97–A-99, A-106–A-107).

Authorities:
Goeden v. Daum, 2003 S.D. 91, 668 N.W.2d 108; *Shroyer v. Fanning*, 2010 S.D. 22, 780 N.W.2d 467; *Grode v. Grode*, 1996 S.D. 15, 543 N.W.2d 795.

2. ***Whether the circuit court failed to identify conduct satisfying the statutory elements in its findings.***

Circuit Court Ruling: The circuit court concluded that Respondent's conduct constituted harassment without identifying specific conduct in the evidence demonstrating the statutory elements.

Authorities:
Grode v. Grode, 1996 S.D. 15, 543 N.W.2d 795; *Goeden v. Daum*, 2003 S.D. 91, 668 N.W.2d 108; SDCL ch. 22-19A.

3. ***Whether the proceeding was affected by reliance on personal impressions, extra-record considerations, and evidentiary matters not grounded in the admitted record.***

Circuit Court Ruling: The circuit court relied on personal impressions and its own observations, admitted materials over objection that they were private or filed under seal, and did not identify whether its decision relied on matters outside the evidentiary record.

Authorities:
SDCL ch. 22-19A; U.S. Const. amend. XIV; S.D. Const. art. VI § 2.

4. ***Whether the circuit court admitted and used trust-related materials without applying the confidentiality protections required by statute.***

Circuit Court Ruling: The circuit court admitted trust-related materials over objection that they were private, confidential, or filed under seal, and relied on those materials without applying the protections required by SDCL 21-22-28.

Authorities:
U.S. Const. amend. XIV; S.D. Const. art. VI § 2; SDCL 21-22-28.

5. ***Whether the protection order imposes overbroad restrictions, including a five-year prohibition on access to the Kingsbury County Clerk of Courts office, not tied to conduct proven in the record.***

Circuit Court Ruling: The circuit court prohibited Respondent from accessing the Kingsbury County Clerk of Courts office and altered filing procedures without identifying conduct occurring at that location, establishing a nexus between the conduct identified and the restriction, or explaining why less restrictive alternatives would be insufficient.

Authorities:
Batchelder v. Batchelder, 2021 S.D. 60, 965 N.W.2d 880; *Goeden v. Daum*, 2003 S.D. 91, 668 N.W.2d 108; SDCL ch. 22-19A; S.D. Const. art. VI § 20.

Statement of the Case and Facts

This appeal arises from a protection order proceeding in the Third Judicial Circuit Court, Kingsbury County, South Dakota, the Honorable Carmen Means presiding. On February 10, 2026, the circuit court entered a five-year protection order against Respondent. (App. A-10–A-13). Respondent appeals from that order.

The following facts are drawn from the record on appeal and are presented with citation to the transcript and appendix.

1. **Nature of the Dispute**

Respondent is the settlor, primary beneficiary, and enforcer of a trust administered in Kingsbury County. (App. A-49, A-73). The dispute underlying the protection order arises from communications concerning the administration of a trust. Petitioner is the Kingsbury County Clerk of Courts.

2. **The Petition**

On January 6, 2026, Petitioner filed a Petition for Protection Order alleging that Respondent's communications constituted harassment. (App. A-5–A-9). The Petition did not allege any threats of physical violence or imminent bodily injury and expressed concern based on Respondent's behavior and perceived beliefs. (App. A-7).

3. **Hearing and Testimony**

At the evidentiary hearing, Petitioner presented testimony from a security coordinator. The witness testified that Respondent had not made any threats of violence. (Tr. 15:1–16:14; App. A-93–A-94). Respondent testified that his interactions were "very cordial," that he "never raised [his] voice," did not use vulgarities or profanities, and did not make any threats. (Tr. 22:11–23; App. A-100).

4. **References to Other Matters**

The Petition and hearing included references to Respondent's divorce proceedings and other matters that were not identified as exhibits admitted in this proceeding. (App. A-5–A-6; Tr. 11:16–19; 18:10–23; App. A-89, A-96).

5. **Court's Characterizations**

During its oral ruling, the circuit court stated that Respondent appeared to suffer from mental illness and described the conduct as "delusions." (Tr. 29:10–20; App. A-107). No expert testimony or other evidence establishing a diagnosis of mental illness was presented.

6. **Trust Materials**

Trust-related documents were admitted into evidence after Respondent objected on the basis that they were confidential or filed under seal in another proceeding. (Tr. 7:1–8:7; 11:2–8; App. A-85–A-86, A-89). The court admitted those materials and permitted discussion of them in open court.

7. **Evidentiary Issues**

Certain documents, including UCC filings (App. A-19–A-21) and materials contained at App. A-25–A-63, were described as having been obtained outside standard filing procedures. (Tr. 6:12–22, 24:17–20; App. A-84, A-102). The court acknowledged irregularities and admitted the materials. (Tr. 25:5–20; App. A-103).

8. **The Order**

On February 10, 2026, the circuit court entered a five-year protection order. (App. A-10–A-13). The order prohibits Respondent from accessing the Kingsbury County Clerk of Courts office and requires alternative filing procedures.

Standard of Review

A circuit court's decision to grant a protection order is reviewed under the standards applicable to injunctions. The Court reviews findings of fact for clear error and the ultimate decision to grant a protection order for abuse of discretion. *Goeden v. Daum*, 2003 S.D. 91, ¶ 5, 668 N.W.2d 108; *Shroyer v. Fanning*, 2010 S.D. 22, ¶ 6, 780 N.W.2d 467.

A circuit court abuses its discretion when its decision is not supported by evidence establishing the statutory elements or rests on an error of law. See *Grode v. Grode*, 1996 S.D. 15, ¶ 6, 543 N.W.2d 795.

Questions of law are reviewed de novo, including whether the court applied the correct statutory standard and whether the statutory requirements for a protection order were satisfied. Whether the court applied the correct legal standard and whether the evidence establishes conduct satisfying the statutory elements are questions of law. See *Grode*, ¶ 29. Where findings do not identify conduct satisfying the statutory elements and the evidence does not establish such conduct, the order cannot be sustained as a matter of law.

Deference applies to supported factual findings and credibility determinations. It does not extend to conclusions that are not supported by evidence establishing the statutory elements. Where the evidence does not establish conduct satisfying the statutory elements, the order cannot be sustained as a matter of law.

Because this appeal challenges whether the evidentiary record satisfies the statutory requirements for a protection order, review includes de novo consideration of that question and review of the admissibility and legal significance of the materials relied upon.

Argument

This appeal turns on whether the evidence establishes the statutory elements of harassment under the injunction-based standard of review for protection orders, not merely on how the ruling was articulated. See *Goeden*, ¶ 5; *Shroyer*, ¶ 6. Even when the evidence is viewed in the light most favorable to Petitioner, the record does not establish conduct that satisfies the statutory elements of harassment under SDCL ch. 22-19A. Petitioner was afforded a full evidentiary hearing and presented the proof relied upon below.

Because the evidence, viewed in the light most favorable to Petitioner, does not establish conduct satisfying the statutory elements, the protection order cannot be sustained. See *Goeden*, ¶¶ 5–7; *Shroyer*, ¶ 6. Where that showing is absent, reversal is required. See *Batchelder v. Batchelder,* 2021 S.D. 60, ¶ 28, 965 N.W.2d 880.

I. The Evidence Does Not Establish Harassment Under SDCL ch. 22-19A

This case does not turn on conflicting testimony, but on whether the conduct established by the evidence, taken as true, meets the statutory definition of harassment. It does not.

The circuit court's ruling reflects reliance on repeated filings and subjective fear as the basis for the harassment determination. That does not satisfy SDCL 22-19A-4.

Repetition alone, without conduct that would objectively cause fear, intimidation, or substantial emotional distress, does not establish a qualifying course of conduct. The statute requires conduct that is objectively alarming or harassing, not merely repeated activity. The evidence identifies legal filings and communications as the conduct at issue, which, on this record, do not meet that standard.

The statute applies an objective standard. Petitioner expressed concern based on "fear for the unknown," rather than identifying specific qualifying conduct. (Tr.

11:16–12:14; App. A-89–A-90). That speculative fear does not establish conduct that would seriously alarm a reasonable person.

The conduct identified served a legitimate purpose. The filings at issue were directed toward asserted legal claims and trust-related matters. Even if those filings were misguided or unsuccessful, they do not constitute conduct serving "no legitimate purpose."

The statute does not authorize a protection order based on ideology, association, or generalized concerns about how others may act. The evidence presented focused on perceived ideology and speculative risk, not on conduct satisfying the statutory elements.

The statutory definition of "course of conduct" confirms that the conduct identified here cannot support a protection order. SDCL 22-19A-5 requires a pattern of acts evidencing a continuity of purpose, not merely repeated activity, and excludes conduct that does not meet the statutory definition. The conduct identified consists of legal filings connected to trust-related matters, including filings made within courts and related legal processes. Even when accepted in full, that conduct does not satisfy the statutory elements and does not, without more, constitute harassment under SDCL ch. 22-19A.

SDCL ch. 22-19A does not provide for a protection order absent proof of conduct satisfying the statutory elements, and cannot be applied to restrict lawful activity or to act on speculation alone.

A. The Evidence Does Not Satisfy the Objective Standard

The evidence does not identify conduct that satisfies the statutory standard. While threats are not required, the evidence must still identify conduct that is objectively alarming or harassing. It does not. Petitioner's own witness testified that there were "none" when asked whether the materials contained any threats of violence. (Tr. 16:9–14; App. A-94). Respondent testified that his interactions were "very cordial" and involved "normal conversation," and that he "never made any threats… any type of threat at all." (Tr. 22:11–23; App. A-100).

The statute does not turn on subjective fear alone; it requires conduct that would cause a reasonable person to experience fear, intimidation, or substantial emotional distress.

Petitioner's concerns were based on speculation regarding future conduct and on generalized concerns derived from other matters, not on conduct identified in this record. (Tr. 11:16–12:23; 15:5–16:14; App. A-89–A-90, A-93–A-94). Petitioner's witness acknowledged that his concerns were based on patterns observed in unrelated matters, not case-specific conduct. (Tr. 15:5–16:14; App. A-93–A-94). Such generalized concern, without identified qualifying conduct, does not satisfy the statutory standard.

As presented, the conduct consists of legal filings and trust-related communications, which do not satisfy the statutory standard. See *Goeden*, ¶ 6.

B. The Court Ignored the Legal Context of the Communications

The absence of qualifying conduct is further confirmed by the legal context in which the communications occurred.

The use of judicial or administrative processes to assert legal rights, even if repetitive or unsuccessful, does not constitute harassment absent conduct that independently satisfies the statutory elements.

The communications at issue arose in connection with legal and trust-related rights. (Tr. 19:8–21:3; App. A-97–A-99). That context is directly relevant to whether the conduct served a legitimate purpose under SDCL ch. 22-19A. The documents at issue consisted of filings made in connection with asserted legal claims and the invocation of judicial or administrative processes. (Tr. 19:8–10; App. A-97).

The materials included a petition for mandamus filed in the United States District Court, along with the resulting dismissal order. (App. A-26–A-36). That filing was a formal invocation of judicial process resolved through ordinary proceedings.

Its inclusion among the asserted bases for harassment confirms that the conduct at issue consists of the pursuit of legal remedies. Even where such filings are unsuccessful, they remain part of asserting claims and do not, without additional qualifying conduct, constitute harassment.

The record also reflects that issues regarding Petitioner's alleged role in the trust were addressed in a separate proceeding. (Tr. 10:5–20; App. A-88). This confirms that the dispute concerned legal questions, not threats or harmful conduct.

Petitioner's claim of harassment was based, in substantial part, on the inclusion of her name in documents and filings associated with Respondent's asserted legal claims, rather than on the substance of those documents or any conduct within them. (Tr.

11:20–22; App. A-89). The concern was tied to the use of Petitioner's name itself, not to threats, demands, or coercive content.

The circuit court's approach lacks a limiting principle. If the inclusion of a public official's name in court-related filings is sufficient to support a protection order, then lawful participation in judicial or administrative processes could be treated as harassment without any objectively qualifying conduct. The statute does not support that result. See *Batchelder, ¶ 28.*

Accepting Petitioner's theory would convert routine use of a public official's name in court documents into harassment.

The inquiry is an objective, conduct-based analysis, not an evaluation of Respondent's legal position.

Respondent expressly denied any intent to harass and stated that the filings were made in an effort to assert and protect perceived legal rights. (Tr. 19:8–15; App. A-97). While intent alone is not dispositive, it reinforces that the conduct arose from asserted legal claims rather than any purpose to threaten or intimidate.

Petitioner's asserted fear was not based on conduct identified in this record. (Tr. 11:22–12:23; 15:5–16:14; App. A-89–A-90, A-93–A-94).

C. No Ongoing Course of Conduct or Future Risk

The record does not identify any ongoing course of conduct or present risk. Before entry of the final order, Exhibit 8 (App. A-70–A-71) included a court order stating that Petitioner was not the trustee. (Tr. 10:5–20; App. A-88). That addressed the underlying dispute reflected in the communications, and the record does not identify continued conduct directed at Petitioner thereafter.

Petitioner's testimony focused on anticipated future concerns rather than identified qualifying conduct. (Tr. 11:22–12:23; App. A-89–A-90). The record does not identify continued conduct or evidence establishing a present risk satisfying the statutory standard.

A protection order is an injunctive remedy and must be supported by evidence demonstrating a present need for relief, which is absent here. See *Goeden*, ¶ 5. In the absence of identified continuing conduct or a demonstrated present risk satisfying the statutory standard, the evidence does not establish any basis for ongoing injunctive relief as a matter of law.

Speculation regarding future conduct, without conduct satisfying the statutory elements or evidence establishing a present risk, cannot support injunctive relief.

Repetition alone does not transform otherwise lawful conduct into harassment. The statute requires a pattern of qualifying acts, not merely repeated activity.

D. The Fully Developed Record Requires Dismissal, Not Remand

Because the evidence identifies conduct but does not establish that it satisfies the statutory elements, and does not establish any present risk, the fully developed record requires dismissal.

A protection order may issue only upon proof, by a preponderance of the evidence, of conduct satisfying the statute. See SDCL 22-19A-11.

Petitioner completed her proof at a full evidentiary hearing. She submitted documents, testified, called her witness, and rested. The record is fully developed. There is no indication that additional evidence exists or was excluded, and no basis to conclude that further proceedings would develop materially different facts.

Under these circumstances, remand would not cure the deficiency in proof, as the record reflects no qualifying conduct. Petitioner had the burden to prove conduct satisfying the statute in the original proceeding, and the existing record shows that burden was not met. The issue is not the absence of explanation, but the absence of conduct satisfying the statutory elements.

Where the evidence, viewed in the light most favorable to Petitioner, does not establish conduct meeting the statutory standard, additional findings cannot supply that proof. The conduct identified consists of filings and communications connected to legal and trust-related matters. No additional qualifying conduct appears in the record. The deficiency cannot be cured through remand.

On this record, further proceedings would not change that conclusion. Under these circumstances, dismissal is the appropriate remedy.

II. The Circuit Court's Ruling Is Not Supported by Findings Identifying Conduct That Satisfies the Statutory Elements

This conclusion is further supported by the circuit court's findings, which do not identify conduct satisfying the statutory elements.

Generalized conclusions do not substitute for findings identifying specific conduct. A circuit court's failure to make findings identifying conduct supporting the statutory elements is reversible error. See *Grode*, ¶ 29; *Batchelder*, ¶¶ 21–22.

Although a court must identify conduct supporting the statutory elements, the dispositive issue is whether the evidence establishes conduct satisfying the statutory elements. See SDCL 22-19A-11. Where the findings do not identify such conduct and the evidence does not establish those elements, the order cannot be sustained. See *Goeden*, ¶¶ 6–7.

A. The Ruling Relied on Generalized Concerns Rather Than Qualifying Conduct

The significance of the ruling is not that it could be improved by further explanation, but that it fails to identify conduct satisfying the statutory elements. Even accepting the conduct referenced by the court, the record does not establish conduct meeting those elements.

The circuit court's ruling does not identify conduct satisfying the statutory elements. Instead, it relies on generalized characterizations and conclusions without specifying the acts that support the determination of harassment.

Generalized conclusions do not satisfy the requirement that findings identify conduct supporting the statutory elements. (Tr. 19:16–21:5; 28:11–31:12; App. A-97–A-99, A-106–A-109).

A court must identify conduct supporting the statutory elements, and a determination that does not do so cannot support relief under SDCL ch. 22-19A.

The ruling moves from generalized impressions to a conclusion of harassment without identifying qualifying conduct. A protection order cannot be used to address generalized concerns untethered to the statutory elements. See *Batchelder*, ¶ 28. Deference does not extend to conclusions that are not supported by evidence establishing the statutory elements, and it does not permit a court to substitute impressions, characterizations, or perceived demeanor for proof of qualifying conduct.

B. The Court's Treatment of Affirmative Defenses Further Shows That the Statutory Elements Were Not Analyzed Under the Correct Legal Framework

The circuit court's treatment of Respondent's affirmative defenses reinforces that the statutory elements were not applied to the conduct identified in the evidence. (App. A-14–A-18); see SDCL 15-6-8(c).

Although the court briefly referenced one affirmative defense during its oral ruling, it summarily rejected the defense as "ridiculous" without applying the governing statutory framework or engaging the legal issues presented. (Tr. 28:22–29:5; App. A-106–A-107).

The defenses presented here went directly to whether the alleged conduct could, as a matter of law, constitute harassment, including whether the conduct served a legitimate purpose and whether the statutory elements were satisfied. Where affirmative defenses bear directly on whether the alleged conduct satisfies the statutory elements, the court's failure to engage those issues reinforces that the statutory elements were not applied to the conduct identified in the evidence.

That omission matters not because further explanation is required, but because it confirms that the ruling rests on generalized impressions and policy concerns rather than application of the statutory standard to the conduct identified in the evidence. It therefore reinforces that the statutory elements were not proven.

Where findings do not identify conduct satisfying the statutory elements, the decision cannot be sustained. This is not a case in which the absence of findings obscures sufficient proof. The absence of findings reflects that the conduct identified does not satisfy the statutory elements.

III. The Court's Ruling Relied on Personal Impressions Rather Than Record-Based Proof of the Statutory Elements

Even apart from the sufficiency of the evidence and the adequacy of the findings, the ruling reflects reliance on considerations not grounded in evidence, including personal observations and characterizations rather than evidence of conduct satisfying the statutory elements.

A decision that is not justified by, and is clearly against, reason and the evidence in the record constitutes an abuse of discretion. *Grode*, ¶ 6; see also *Shroyer*, ¶¶ 6–7. Because the ruling rests on considerations not grounded in evidence, it constitutes an abuse of discretion.

At the outset of the hearing, the circuit court acknowledged prior familiarity with the matter, having reviewed and granted the temporary protection order. (Tr. 2:23–3:3; App. A-80–A-81; App. A-1–A-4). The record reflects that Petitioner's concerns were based, in part, on generalized characterizations of individuals with certain perceived ideologies, rather than on specific conduct by Respondent. (Tr. 11:14–12:23; App. A-89–A-90). Such generalized concerns do not identify conduct. A determination must be supported by evidence of conduct, not generalized impressions or characterizations. See *Shroyer*, ¶ 6.

Personal observations may inform credibility, but cannot substitute for proof of conduct satisfying the statutory elements.

A. The Court's Ruling Reflects Reliance on Personal Impressions Rather Than Record-Based Proof

The circuit court entered the hearing with prior familiarity based on having granted the temporary protection order. (Tr. 2:23–3:3; App. A-80–A-81). Although the court stated that the matter should be presented again in Respondent's presence, the ruling that followed reflects reliance on impressions rather than evidence of conduct presented at the hearing.

The court stated that Respondent "does seem to suffer from some sort of mental illness" and described Respondent's conduct as reflecting "delusions," based on "my observations here in the courtroom." (Tr. 29:10–17; App. A-107). Those statements reflect personal observations and characterizations rather than evidence of conduct. They do not identify any qualifying act and cannot establish any statutory element of harassment.

The court further stated that it could not determine whether the conduct reflected "sovereign citizen ideology" or "untreated mental illness," and that Respondent's actions did not make sense "to a person without a mental illness." (Tr. 31:3–12; App. A-109). No medical evidence, expert testimony, or other record evidence supported those characterizations.

While a circuit court may assess demeanor, such observations cannot substitute for evidence of conduct satisfying the statutory elements. SDCL ch. 22-19A requires an objective, conduct-based analysis—proof of a course of conduct that would cause a reasonable person to experience fear, intimidation, or substantial emotional distress and that serves no legitimate purpose.

The court's reasoning instead relied on characterizations of Respondent's beliefs and perceived mental condition in concluding that the conduct lacked a legitimate purpose. That substitution of impressions for proof does not satisfy the statutory standard.

A court may reject a litigant's legal theories or find them mistaken, unusual, or ill-founded. But disagreement with a litigant's beliefs, or a perception that those beliefs reflect ideology or mental illness, does not establish that the underlying conduct satisfies the statutory elements. Descriptions of ideology, irrationality, or legally unsound reasoning do not establish that conduct lacks a legitimate purpose or transform non-threatening filings and communications into harassment.

Because the ruling relies in part on impressions rather than evidence of qualifying conduct, it cannot be sustained. A protection order may not be imposed based on generalized concerns untethered to conduct satisfying the statutory elements, or a perceived need to manage a situation apart from the statutory elements. See *Batchelder*, ¶ 28.

The record reflects that the ruling rests on characterizations rather than evidence of conduct. It does not address testimony establishing the absence of threats in the materials at issue. (Tr. 16:9–15; App. A-94). The record also reflects references to Respondent's conduct in other proceedings, including a divorce matter, during testimony and questioning. (Tr. 11:16–22; 18:12–23; App. A-89, A-96). Those considerations reinforce that the ruling was not based on identified conduct satisfying the statutory elements.

The court's reasoning also reflects concern about anticipated future conduct rather than conduct established by the evidence. SDCL ch. 22-19A requires proof of conduct that would cause a reasonable person to experience fear, intimidation, or substantial emotional distress, not speculation about what might occur in the future.

The circuit court explained that Petitioner "should not have to live her life wondering who are you filing a document with my name on it with next." (Tr. 30:25–31:2; App. A-108–A-109). That rationale is based on uncertainty about future filings, not on conduct established in the record.

B. The Court Relied on Materials Without Establishing Their Evidentiary Basis

The circuit court relied on various documents, including purported UCC filings and related materials (App. A-19–A-21, A-25–A-63, A-64–A-65, A-70–A-78), none of which identify conduct supporting the relief granted.

The court acknowledged that it had already reviewed and granted the temporary protection order prior to the evidentiary hearing. Petitioner then presented additional documents that were not the same materials previously served, and Respondent was required to proceed after only a brief opportunity to review them. In that context, the court overruled objections to materials described as private, confidential, or filed under seal, and relied on those materials. Where the court relies on materials without resolving their evidentiary basis, the determination is not supported by evidence establishing the statutory elements.

The circuit court did not resolve the origin, status, or evidentiary basis of these materials before relying on them. Respondent raised concerns that the UCC materials would not have been available to Petitioner in her individual capacity without access to another proceeding. (Tr. 23:19–25:20; App. A-101–A-103). Rather than resolving that issue, the court redirected the inquiry, acknowledged that the circumstances were "not normal," and proceeded without determining their origin or status. (Tr. 24:21–25:7; App. A-102–A-103). It then reframed the issue as concerning the Register of Deeds rather than addressing their evidentiary basis. (Tr. 25:14–18; App. A-103).

Despite these unresolved issues, the court relied on those materials in support of the protection order, specifically referencing the UCC filings as part of the conduct at issue. (Tr. 28:15–17; App. A-106). To the extent the court relied on materials obtained from a separate proceeding, it did so without establishing their evidentiary basis within this case.

Even accepting the materials as presented, they do not establish conduct in this record that would cause a reasonable person to experience fear, intimidation, or substantial emotional distress.

Where a court relies on materials without establishing their evidentiary basis, and those materials do not identify conduct satisfying the statutory elements, the resulting determination is not supported by evidence establishing the statutory elements. U.S. Const. amend. XIV; S.D. Const. art. VI § 2.

These defects reinforce that the ruling was not based on properly supported evidence.

C. The Proceedings Reflect Consideration of Matters Not Tied to Evidence Contained in the Record

The record reflects that allegations contained in the petition were referenced during the proceedings, but were not introduced into evidence at the hearing. The petition asserted that Respondent had been jailed for contempt of court and characterized his conduct as irrational. (App. A-7). At the evidentiary hearing, Respondent raised concerns that his filings had been reported to law enforcement (DCI). (Tr. 22:23–23:16; App. A-100–A-101).

Those allegations were not developed through testimony, were not subject to cross-examination, and were not adjudicated within this proceeding. The circuit court did not clarify whether or to what extent such allegations were relied upon in reaching its decision.

The court's reliance on generalized impressions and characterizations of Respondent's beliefs, together with references to matters not tied to evidence introduced at the hearing, reflects consideration of information not subjected to adversarial testing.

Due process requires that a judgment be based on evidence presented in court and subject to adversarial testing. U.S. Const. amend. XIV; S.D. Const. art. VI § 2. Where a decision rests on matters not introduced into evidence or subjected to adversarial testing, it cannot support the exercise of judicial discretion.

Taken together, these issues confirm that the ruling was not based solely on evidence of conduct satisfying the statutory standard.

Deference does not extend to conclusions unsupported by evidence establishing the statutory elements, and it does not permit substitution of impressions, characterizations, or perceived demeanor for proof of qualifying conduct.

IV. The Proceedings Admitted and Used Trust Materials Without Addressing Confidentiality Protections Required by Statute

The circuit court relied on materials over objection that they were confidential, included private trust documents, or had been filed under seal, without addressing their confidentiality or the circumstances under which they were obtained and used. (App. A-25–A-63; A-64–A-65; A-70–A-78). This issue reinforces, rather than displaces, the dispositive point of this appeal. Even considering those materials, they do not establish qualifying conduct.

A. The Court Admitted Trust Materials Over Confidentiality Objections Without the Analysis Required by SDCL 21-22-28

The court admitted trust materials, allowed public discussion, and failed to seal or otherwise protect them. Respondent objected on the basis that the materials included private trust documents and materials described as confidential or filed under seal in another proceeding. (Tr. 7:9–13, 8:4–7, 11:2–8; App. A-85, A-86, A-89).

Respondent informed the court that Exhibit 8 had been filed under seal, and the court overruled the objection and admitted it without analysis. (Tr. 11:2–8; App. A-89). Despite those concerns, the court permitted public use of the materials without applying the confidentiality protections required by SDCL 21-22-28.

This reflects reliance on materials without applying the confidentiality protections required by SDCL 21-22-28. Even accepting those materials as admitted, they do not provide a basis for the relief granted.

B. The Failure to Address Confidentiality Concerns Had Consequences That Required Analysis

The confidentiality issue was not harmless. The materials formed a substantial portion of the documentary record referenced by the circuit court and were relied upon in reaching its determination.

Even considering the trust materials as admitted, the evidence does not establish conduct satisfying the statutory elements. Testimony confirmed that the materials contained no threats, and the interactions at issue were described as cordial and non-threatening. (Tr. 16:10–14; 22:11–23; App. A-94, A-100).

The confidentiality issue therefore reinforces that the ruling was not based on properly supported evidence.

V. The Order Imposes Overbroad Restrictions Not Tied to Proven Conduct

A protection order must be supported by evidence of conduct and must be narrowly tailored to that conduct. See *Batchelder*, ¶ 28. Here, the order imposes substantial restrictions, including barring Respondent from the Kingsbury County Clerk of Courts office and altering filing procedures, without a demonstrated nexus between any conduct established in the record and the restriction.

The order imposes restrictions that are not tied to identified conduct and are not supported by findings demonstrating necessity. In the absence of a nexus between specific conduct and the restrictions imposed, the order exceeds the scope permitted under SDCL ch. 22-19A. Even assuming the statutory elements had been satisfied, the scope of the relief imposed is not supported by the evidence.

The restrictions extend beyond preventing alleged harassment and instead regulate access to judicial processes without a basis in the evidence.

A. The Restrictions Are Untethered to Any Proven Harassment

The order bars Respondent from physically accessing the Kingsbury County Clerk of Courts office and restricts filing activity. (App. A-10–A-13). The evidence does not establish conduct occurring at that location or otherwise justifying a five-year prohibition on access.

A protection order must remain tied to its statutory purpose of addressing proven conduct. Restrictions that extend beyond that conduct are overbroad and cannot be sustained. In the absence of conduct justifying the restriction, the imposition of a five-year limitation, particularly one affecting access to court facilities, is not supported by the evidence.

B. The Order Burdens the Constitutional Right of Access to Courts

The South Dakota Constitution guarantees that courts shall be open to all persons. S.D. Const. art. VI § 20. The order imposes structural limitations on Respondent's ability to access the courts, including barring physical access to the Clerk of Courts office and requiring filings to be routed through alternative procedures, with the court creating an exception to permit service of legal documents so that Respondent could pursue legal proceedings. (Tr. 32:1–19; App. A-110)

The order reroutes filings and restricts access to the clerk's office without proof of conduct warranting those limitations. By restricting the primary point of court access in a rural county and requiring filings to be routed through another county, the order materially burdens Respondent's ability to initiate and maintain legal proceedings. This includes the ability to make timely filings and to pursue appellate review. (Tr. 30:1–32:19; App. A-108–A-110).

Nothing in the evidence establishes a basis for imposing those restrictions. The evidence does not demonstrate conduct warranting limitations on Respondent's ability to access the Clerk of Courts office or to utilize standard filing procedures. That burden exceeds any need demonstrated by the evidence and extends beyond the scope of SDCL ch. 22-19A. Relief in protection order proceedings must remain tied to conduct satisfying the statutory elements. See *Batchelder*, ¶¶ 21–22, 28. Restrictions that extend beyond such conduct cannot be sustained.

C. The Order Creates a Structural Conflict With the Statutory Framework

Because the circuit court imposed restrictions on access to the courts without proof of conduct justifying those limitations, the order is overbroad and constitutes an abuse of discretion.

This case presents a structural concern regarding the application of the statute. The protection order was obtained by a Clerk of Courts based on filings and communications directed into the judicial system and related trust and legal matters. The resulting order then restricts Respondent's ability to access that same system.

If filings and communications connected to legal and trust matters, particularly those naming a public official in her official or related capacity, can be treated as harassment sufficient to restrict access to the courts, the statutory framework would permit limitations on access to judicial processes based on lawful filings and the subjective reaction of a court officer.

SDCL ch. 22-19A does not authorize that result. The statute requires proof of qualifying conduct and does not permit the use of a protection order to regulate access to the courts in response to filings or asserted legal claims. As applied here, the restrictions imposed are not tied to conduct satisfying the statutory elements and extend beyond the scope of relief authorized by the statute.

Because the conduct identified consists of filings and communications within the judicial system and related legal and trust matters, and the resulting order restricts access to that system without proof of qualifying conduct, the order cannot be sustained.

Conclusion

This appeal presents a failure of proof. Petitioner was afforded a full evidentiary hearing and presented the evidence relied upon below. Even when that evidence is viewed in the light most favorable to Petitioner, it does not establish conduct satisfying the statutory elements of harassment under SDCL ch. 22-19A.

The record is fully developed. The deficiency is not a matter of explanation or articulation, but of proof. Additional findings or further proceedings cannot supply conduct that does not exist in the evidence presented. Under these circumstances, the protection order cannot be sustained.

Appellant respectfully requests that this Court reverse the order and remand with directions to dismiss the petition with prejudice, or grant such other relief as the Court deems appropriate.

Dated this 26th day of May, 2026.

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Certificate of Compliance

I certify that this brief complies with the type-volume limitation of SDCL 15-26A-66 because it contains 7,289 words and 48,516 characters according to the word count of the word-processing system used to prepare the brief.

Dated this 26th day of May, 2026.

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Certificate of Service

I certify that on this 26th day of May, 2026, a true and correct copy of the foregoing Appellant's Brief was served upon:

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Ian Patrick Odle

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Pro Se Appellant

IN SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31412

JENNIFER JO MALONE,

Petitioner/Appellee,

v.

IAN PATRICK ODLE,

Respondent/Appellant,

APPEAL FROM THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
KINGSBURY COUNTY, SOUTH DAKOTA

THE HONORABLE CARMEN A. MEANS
CIRCUIT COURT JUDGE

PETITIONER/APPELLEE'S BRIEF

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NOTICE OF APPEAL FILED March 3, 2026

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PRELIMINARY STATEMENT

Appellant, Ian Patrick Odle, will be referred to as "Odle". Appellee, Jennifer Jo Malone, will be referred to as "Malone".

References to the Clerk's Index will be indicated by "CR ___" with the page number. References to the Amended Transcript of the February 10, 2026 hearing will be indicated by "ATR ___". References to the exhibits introduced at the hearing will be indicated by number or letter and page number – *e.g.*, Exhibit 1, p. 1.

JURISDICTIONAL STATEMENT

Odle appeals from an Order of February 10, 2026, in which the Circuit Court granted Malone's Petition for an Order of Protection. CR 138. The Court's written Order was supported by the Court's Findings and Conclusions as stated on the record at the conclusion of the hearing as well as in the Order itself. TR 28-31. Odle filed a timely Notice of Appeal on March 3, 2026. CR 180. This Court has jurisdiction pursuant to SDCL § 15-26A-3(2).

STATEMENT OF THE ISSUES

I. Did the Circuit Court err in granting Malone's Petition for an Order of Protection?

The Circuit Court granted Malone's Petition and entered a permanent Order of Protection.

- *State v. Shibly*, 2023 S.D. 30, 993 N.W.2d 143
- *White v. Bain*, 2008 S.D. 52, 752 N.W.2d 203
- *Donat v. Johnson*, 2015 S.D. 16, 862 N.W.2d 122

II. Was the Protection Order imposed by the Circuit Court sufficiently narrow in scope?

The Circuit Court crafted the Protection Order narrowly and imposed minimal restrictions on Odle.

- *Donat v. Johnson*, 2015 S.D. 16, 862 N.W.2d 122
- *Gartner v. Temple*, 2014 S.D. 74, 855 N.W.2d 846

III. Were the evidentiary issues raised by Odle resolved properly by the Circuit Court?

The Circuit Court properly resolved all evidentiary issues presented.

- *Grode v. Grode*, 1996 S.D. 15, 543 N.W.2d 795
- *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, 764 N.W.2d 474
- *Andreson v. Black Hills Power & Light*, 1997 S.D. 12, 559 N.W.2d 886

STATEMENT OF THE CASE

On January 6, 2026, Malone filed a Petition and Affidavit for Protective Order. CR 1. In the Petition and Affidavit, Malone alleged that Odle had "pursued a knowing and willful course of conduct, which seriously alarmed, annoyed, or harassed with no legitimate purpose". The pattern of conduct was a series of acts over a period of time showing a continuing pattern of harassment. Further, Malone alleged that "Respondent willfully, maliciously, and repeatedly harassed Petitioner and/or any protected parties by means of verbal, electronic, digital media, mechanical, telegraphic, or written communication." CR 1, p. 1.

The events leading to the filing of the Petition by Malone involve Malone's performance of her duties as Clerk of Courts of Kingsbury County in the Third Judicial

Circuit. Odle became involved in a divorce proceeding brought by Odle's wife in the Kingsbury County Circuit Court. During the course of that proceeding, Odle alleged and sought to force Malone to act as his "Trustee" in regard to his alleged "family trust". CR 1, p. 1-2. In fact, Odle went so far as to commence a mandamus action in United States District Court for the District of South Dakota seeking a writ of mandamus compelling Malone to act as his Trustee and to perform the "clear, ministerial duty prescribed by law and binding agreement". *See* Petition for Writ of Mandamus, Exhibit 4; ATR 6.

On February 10, 2026, the Circuit Court took evidence and heard evidence from the parties related to Malone's Petition and Request for Protective Order. ATR, in general.

At the conclusion of the February 10, 2026, hearing, the Court verbally stated its Findings of Fact and Conclusions of Law granting Malone's Petition and ordering that a five-year Protective Order should be entered. ATR 28-31; CR 138.

A written Order was subsequently entered consistent with the Court's verbal Findings and Conclusions made on the record. CR 138; ATR 28-31. Odle then filed a timely appeal to this Court on March 3, 2026. CR 180.

STATEMENT OF FACTS

Jennifer Jo Malone (Malone) is and has, for some time, been the Clerk of Courts of Kingsbury County, Third Judicial Circuit. Ian Patrick Odle (Odle) is a resident of Kingsbury County and, in 2024, became involved in a divorce proceeding with his wife Jennifer. ATR 18, 19; Kingsbury Civil File 38DIV24-000009. As a result, Malone became responsible for performing duties relating to that divorce action as well as other actions in Kingsbury County.

Malone did not know Mr. Odle until Odle became a defendant in the divorce proceeding. ATR 11. Thereafter, and apparently as part of Odle's strategy in his divorce action, Odle unilaterally "appointed" Malone as "fiduciary trustee" or "trustee" of his family trust. *See* Exhibits 4, 5, and 6; ATR 6-9. There had been no discussion with Malone or consent by her prior to this appointment. ATR 19, 20.

As a result of these developments and others, which will be described below, Malone filed a Petition and Affidavit for Protection order. CR 1, *et seq*. The basis for Malone's filing of the Petition and Affidavit are described in those documents. CR 1-62. In addition, at a hearing before Circuit Court Judge Carmen Means, Malone testified that she felt that Odle had become "fixated on me being a part of his trust". ATR 11. Further, she testified that she had observed "very irrational behavior, he has been in contempt of court two times for his divorce trial, he spent three weeks in the Sisseton (*sic* – Roberts County) jail, and was ordered to undergo a mental evaluation as part of his divorce action". Being the Clerk who was in charge of clerical duties relating to this action, she was in a position to be well aware of Mr. Odle and was articulate in voicing her concerns.

One of the primary reasons for her concern was the fact that Odle sought to assign property to her, make her responsible for managing and protecting it, have her act as Trustee (without her consent or knowledge), as well as seeking to impose other duties on Malone unilaterally. *See*, in general, ATR.

If this irrational behavior were not sufficient, Odle filed a Petition for a writ of mandamus in United States District Court for the District of South Dakota. *See* Exhibit 4; ATR 6, 7. In that Petition, Odle sought a writ of mandamus from the U.S. District Court compelling Malone "to perform a clear, ministerial duty prescribed by law and binding agreement, and for an Order requiring specific performance of an obligation which defendant has wrongfully refused to execute." Although the District Court summarily dismissed Odle's Petition by written Opinion and Order (Exhibit 4), the Court did comment on the allegations and was clearly not impressed. In addition to being the subject of a mandamus action brought in federal court, Malone was also mailed an *ex parte* petition for trust enforcement, accounting, and equitable relief by Odle. ATR 10. That document asserts that Malone, as Trustee, had not performed her job properly and, in essence, was guilty of malfeasance as Trustee for his family trust. Further, the document alleges that she caused damage to the trust assets and irreparable harm to the trust. Additional documents reference three bonds valued at a minimum of $100 million each. ATR 10; Exhibit 8. Odle's conduct in communicating with Malone – mainly in written form – was continuous and upsetting to Malone. For example:

- He left Exhibit 4 – a petition for a writ and specific performance of her alleged duty as Trustee – at the Kingsbury County Courthouse along with other trust documents. ATR 6; Exhibit 4.
- He delivered to her written instructions for her performance as Trustee when she was at the courthouse. ATR 7; Exhibit 5. These same instructions included a direction from Odle to Malone "to resolve the matter scheduled for December 23, 2025, in a private manner."
- Odle filed a document with the Kingsbury County Register of Deeds stating that Malone was the Trustee of his trust. ATR 10; Exhibit 6. The Register of Deeds was concerned enough to deliver the document to Malone.

- Odle filed Exhibit 8 (previously discussed) as an *ex parte* petition for trust enforcement, accounting, and other relief. ATR 10; Exhibit 8.
- Various documents, including several "assignments" of Odle's legal rights to Malone as Trustee. Exhibits 1-3.

Knowing something of Odle's behavior and history during the course of his divorce proceeding and having documents identifying her as Trustee without her knowledge or consent prompted Malone to file the petition, which lead to the Court's grant of a permanent protection order. This was, in part, the result of Odle's own testimony during the February 10, 2026, hearing.

Much of his testimony made no sense whatsoever. He testified that he was appearing by special appearance because "... as a disinterested party and I have no interest in this case as I have provided full court satisfaction." ATR 18. He persisted in taking the position that, as a Clerk Magistrate, Malone had trust responsibilities for his property and that he was "... simply utilizing the processes that are in law in order to protect my property". ATR 18, 19. Odle did all this despite the fact that, on January 26, 2026, Circuit Judge Patrick Pardy had entered an Order which, among other things, stated that the Ian Odle Family Trust was void, and that Jennifer Malone is not the Trustee of the Ian Odle Family Trust. *See* ATR Exhibit 8; CR 70.

Ultimately, the Circuit Court recognized what Odle made obvious:

> I am going to concede there is very little normal about this, but none of the abnormality is due to Ms. Malone.

ATR 25.

The Court stated its Findings and Conclusions verbally on the record (ATR 28-31), and in the body of the Order (CR 138). Those Findings and Conclusions clearly support the ultimate grant of the Protection order.

STANDARD OF REVIEW

This Court reviews the grant or denial of a Protection order, first, for clear error and, then, for abuse of discretion. *Donat v. Johnson*, 2015 S.D. 16, 862 N.W.2d 122.

ARGUMENT

I. The Circuit Court correctly found that there was a factual and legal basis to grant the Protection order.

A. Findings of fact were not clearly erroneous.

Review of the grant of a protection order begins with an examination of the findings of fact under the clearly erroneous standard. Following that determination, the ultimate decision will be reviewed for abuse of discretion. *Donat v. Johnson*, 2015 S.D. 16, ¶ 13, 862 N.W.2d 122, 127. The initial question is whether the circuit court's findings, "... sufficiently address the facts of the case under the specific elements of stalking at issue such that we may determine whether 'the evidence met the statutory elements of stalking.'" *Thompson v. Bear Runner*, 2018 S.D. 57, ¶ 15, 916 N.W.2d 127, 130 (quoting *Doremus v. Morrow*, 2017 S.D. 26, ¶ 10, 897 N.W.2d 341, 345). The circuit court has deference in this matter, and their findings of fact will not be set aside unless, after the review of all evidence submitted, the court is 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, 633-634 (quoting *White v. Bain*, 2008 S.D. 52, ¶ 8 752 N.W.2d 203, 206). Unless waived, the court must ensure that the findings of fact and conclusions of law are clearly entered, either through an oral record, written memorandum, incorporating them into the Protection order itself, or filing of formal findings of fact and conclusions of law in order to allow for meaningful review upon appeal. *Goeden v. Daum*, 2003 S.D. 91, ¶ 9, 668 N.W.2d 108, 111.

The court here clearly stated the findings of fact on the record, orally and in the written Protection order itself, justifying the grant of Malone's request for a permanent protection order. ATR 28-32. The court acknowledged the proper statutory elements required to grant a permanent protection order: "[So] I need to find that Mr. Odle pursued a willful course of conduct which seriously alarmed, annoyed, or harassed Miss Malone with no legitimate purpose. And then to find that Mr. Odle willfully, maliciously, and repeatedly harassed the petitioner by means of written communication," (a showing of harassment as defined in SDCL § 22-19A-4 is required to fulfill a stalking violation under § 22-19A-1, which allows for a permanent protection order). ATR 28.

Factual conflicts were resolved in the record by the admission of evidence when Malone offered seven exhibits that provided tangible proof of Odle's accelerating harassing conduct over a course of May 2025 through January 2026 with increasing levels of severity, and provided witness testimony, along with her own, of why such conduct was alarming and served no legitimate purpose. The multiple documents admitted through Malone were documents Odle drafted himself and continuously signed and filed with Malone's name inserted as trustee without her knowledge or consent. *Id.* at Exh. 1-6; 8. The credibility of a witness and the weight to be given their testimony must be determined by the circuit court, and the circuit court is given great deference as to its observations of the witnesses and examination of the evidence. *Repp v. Van Someren*, 2015 S.D. 53, ¶ 8, 866 N.W.2d 122, 125 (quoting *Shroyer v. Fanning*, 2010

S.D. 22, ¶ 6, 780 N.W. 2d 467, 469). The court, taking into account both parties' respective credibility and testimony, found Odle severely lacking in credibility. Odle's testimony, stating that it was by virtue of Malone's position as the Clerk of Courts in Kingsbury County that she subjects herself to becoming a trustee of Odle's "trust" was found to be completely "ridiculous" by the court. ATR 29.

Unlike the clearly erroneous issue addressed in *Repp v. Van Someren* (where the Court concluded that the evidence was not sufficient to satisfy SDCL § 22-19A-1 without resolving the factual conflicts presented or weighing the credibility of the testimony provided), the court here clearly indicates in the findings of fact that Malone's version of the evidence was credible, as it is "the function of the trier of fact to 'resolve the factual conflicts, weigh credibility, and sort out the truth.'" *Repp*, 2015 S.D. 53, ¶ 11, 866 N.W.2d at 126 (quoting *LeGrand v. Weber*, 2014 S.D. 71, ¶ 36, 855 N.W.2d 121, 131). The court found that Odle's actions were so egregious that there was no question it would constitute conduct that is annoying, alarming, and harassing to Malone. ATR 29. The protection order was granted to prevent the illegal and absurd practice of filing documents and legal actions referring to a fictitious trust with Malone being described as a trustee without her knowledge or consent. ATR 30. These false, repetitive, exceedingly aggressive and alarming filings were the conduct identified as harassment, and Odle's credibility was scant after his testimony left the court with the impression that he suffered from a fixated ideology or mental illness. ATR 29. While Odle may argue that the circuit court's findings of fact relied on misimpressions of his credibility and his "... utilizing [of] the process that are in law in order to protect [his] property", (ATR 18-19), it is established law that he cannot show clear error based upon his "own testimony and version of the events and not the testimony of the [appellee] accepted by the court in entering its finding[s] ... Such a biased view of the record will not support a determination of clear error in a court's findings." *Donat*, 2015 S.D. 16, ¶ 18, 862 N.W.2d at 129 (quoting *White v. Bain*, 2008 S.D. 52, ¶ 12, 752 N.W.2d 203, 207).

Odle's conduct, the filings and alarming communications to Malone, other State employees, and members of the judiciary, satisfied the statutory requirements of harassment and stalking under SDCL § 22-19A-4 and SDCL § 22-19A-1 respectively. The exhibits, along with the court's observations about Odle's behavior and delusions, and the credible testimony from Malone about fear of anticipated harassing conduct are sufficient evidence to support the findings of fact as determined by the circuit court.

B. The trial court did not abuse its discretion.

When the findings are not clearly erroneous, a determination must be made as to whether the circuit court abused its discretion in granting or denying the protection order. *Id.*, ¶ 13, 862 N.W.2d at 127. An abuse of discretion is a fundamental error of judgment, a decision that is ultimately arbitrary and unreasonable. *Thompson*, 2018 S.D. 57, ¶ 12, 916 N.W.2d at 130 (quoting *Blair-Arch v. Arch*, 2014 S.D. 94, ¶ 10, 857 N.W.2d 874, 877).

A court may enter a protection order if it finds, by a preponderance of the evidence, that stalking has taken place. SDCL § 22-19A-11. Willful, malicious, and repeated conduct designed to harass another may constitute stalking. SDCL § 22-19A-1(1). "Harassment" is defined by SDCL § 22-19A-4 as, "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose." SDCL § 22-19A-4. A "course of conduct" is "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." SDCL § 22-19A-5. "Any relief granted by the order for protection shall be for a fixed period and may not exceed five years." SDCL § 22-19A-11(2).

i. "Harassment" as defined by South Dakota law was proven.

Odle fails to provide authority and continually misstates the law required to reach harassment under South Dakota law, the language of the statute, evidence in the record, and precedent.

Breaking down the language of SDCL § 22-19A-4, it is irrefutable that Odle knowingly and willfully partook in a course of conduct directed at a specific person. It is well established in the record through numerous exhibits that he continued to draft and file legal documents assigning Malone to be a trustee without her knowledge and consent. This behavior escalated to direct instructions to Malone, legal action against her (delivered ex parte for trust enforcement), and a writ of mandamus brought in federal court. ATR, Exh. 4-5 and 8. These actions fall squarely under SDCL § 22-19A-5, as the repetitive filing of legal documents with Malone's official name signed on to them without her knowledge or consent, in combination with the displayed escalation in behavior brought on by formal legal action against Malone, over a period of months clearly demonstrate a pattern of "course of conduct" mentioned in SDCL § 22-19A-4.

This course of conduct was found to be "seriously alarming" to Malone, by the circuit court. Malone, "... should not have to live her life wondering who are you filing a document with my name on it with next?" ATR 30-31. While Odle references that, "speculative fear does not establish conduct that would seriously alarm a reasonable person" (Brief of Respondent-Appellant at 10, *Malone v. Odle*, S.D. 3rd Cir. Ct. (2026) (TPO. 26-02)), the fear is no longer speculative when the course of conduct is identified as a pattern. Odle has already displayed behavior that created cause for alarm by filing purported legal documents with Malone's name on them. It is not speculative that, without legal recourse, Odle would continue to do so. The speculative nature only comes into play when having to live in anticipation of when the next filing may come and to what severity Odle's legal fiction may annoy, alarm, or harass Malone, as this is no longer an "if" issue but a matter of "when".

In *State v. Shibly* (protection order issued for spamming of calls and texts despite a no contact order), the court acknowledged that conduct considered to constitute "malice" as described in SDCL § 22-19A-1 (stalking statute ultimately granted in this issue), "differs from some of the malicious conduct described in other decisions." *State v. Shibly*, 2023 S.D. 30, ¶ 31, 993 N.W.2d 143, 152. The Court continued on to reference *White v. Bain*, 2008 S.D. 52, ¶ 13, 752 N.W.2d at 207 (a series of offensive letters); *Schaefer ex rel S.S. v. Liechti*, 2006 S.D. 19, ¶ 17, 711 N.W.2d 257, 263 (respondent "canvassing" children and filing false complaints); and *Erickson v. Earley*, 2016 S.D. 37, ¶ 13, 878 N.W.2d at 634 (shouting profanities and making threats). Concluding, the Court in *Shibly* determined that it was by "... statutory breadth of the definition of malice which covers conduct ranging from a wish to annoy another to a wish to injure." *Shibly*, 2023 S.D. 30, ¶ 31, 993 N.W.2d at 152). In the present proceeding, Odle was given the opportunity to discuss the lack of physical violence or swearing. Their absence does not act as the gateway to receive relief from an otherwise well-proven charge of stalking and harassment, however. The sheer volume of filing and documents indicated in the record that are falsely directed at Malone over a series of months without her knowledge, some even threatening legal action, would reasonably constitute alarming and would most certainly, at the bare minimum, constitute as "annoying".

The final element of SDCL § 22-19A-4 is that the aforementioned conduct must have "no legitimate purpose". Rather than accepting Odle's stated personal purpose, the court will objectively evaluate whether his actual conduct could reasonably relate to the claimed goal. Odle's feeble attempts to justify the conduct at issue or dismiss it as "misguided or unsuccessful" understate the utter lack of reason applicable to the conduct in the first place. Brief of Respondent-Appellant at 10. All legal filings and actions have been denied by various members of the judiciary in various proceedings across different jurisdictions for everything related to this "trust" matter that Odle claims. ATR Exhibits 4 and 8; Order Denying Motion to Seal Record and Appendix Materials, S. Ct. (2026) (#31412). Exhibit 8, in its entirety, shows clearly and without a doubt that there is no existence now or ever of a trustee, especially as far as Malone is concerned. Since she never accepted or consented to the position, she cannot be made a trustee. SDCL § 55-3-2. All actions taken by Odle thereafter attempting to forcibly or fraudulently appoint her as a trustee serve no legitimate purpose, as none of his conduct could have reasonably related to his goal.

The conduct satisfies the required elements of SDCL § 22-19A-4, which fulfills SDCL § 22-19A-1, stalking, and supports the grant of a protection order against Odle and his unlawful behavior.

II. Preventative measures were appropriate and narrowly tailored.

Once the court finds, by a preponderance of the evidence, that stalking has taken place, the court may provide relief to restrain the party from acts of stalking and "order relief as the court deems necessary for the protection of the person seeking the protection order," so long as the order for protection is for a fixed period and that period does not exceed five years. SDCL § 22-19A-11. A trial court has broad discretion in fashioning an equitable remedy. *Donat*, 2015 S.D. 16, ¶ 32, 862 N.W.2d at 133 (quoting *Gartner v. Temple*, 2014 S.D. 74, ¶ 23, 855 N.W.2d 846, 854).

There was sufficient evidence to support the finding that harassment and stalking took place by the filings made by Odle targeting Malone without her knowledge or consent. ATR 29; Exhibits 1-6 and 8. The court went to great lengths as to not impose an overbroad restriction on Odle while still granting the relief necessary to protect Malone from harassment. The court provided alternative court access after physically barring Odle from the Kingsbury County Clerk of Courts office. The order mandated that he may continue having access for legitimate use of the court system by utilizing the Brookings County Clerk of Courts office. ATR 30. The court additionally explicitly stated that the request in paragraph 6 that says Odle is "not allowed, in any way, to include [Malone's] name on a document" would be "overbroad" and, instead, found it appropriate to require a filing notice through the Brookings County Clerk of Courts if Odle chooses to file any documents involving Malone. ATR 30. This does not burden Odle's ability to initiate and maintain legal proceedings. From Arlington, South Dakota, to the Kingsbury County Clerk of Courts office, it is 21.7 miles, or a 23-minute drive as opposed from Arlington to the Brookings County Clerk of Courts, which is 19.9 miles or a 24-minute drive. The distance is nearly identical. *Directions from Arlington, SD, to Brookings County Courthouse*, Google Maps, google.com/maps (search the distance from Arlington, South Dakota, to Brookings County Courthouse) (last visited June 15, 2026); *Directions from Arlington, SD, to Kingsbury County Courthouse*, Google Maps, google.com/maps (search the distance from Arlington, South Dakota, to Kingsbury County Courthouse) (last visited June 15, 2026).

Furthermore, the court only granted protection that was specifically sought by Malone and had a clear nexus between the conduct and the restrictions. The court took into account that communications occurred at her place of work, in person, or through the phone, as admitted by Odle in his testimony. ATR 22. The court barred contact between the parties for five years both directly and through telephonic communication. Odle was barred from physically entering Malone's place of work at the Kingsbury County Clerk of Courts office and made an exception that service of documents on Malone may be made with her name on it without the notice requirement. *Order for Protection*, T.P.O. No. 38TPO26-000002, S.D. 3rd Cir. Ct. (2026). The measures taken by the court were not overbroad or overly burdensome and were well inside the scope of the evidence presented, current South Dakota law, and narrowly tailored to the protection Malone was seeking at the time.

III. All evidentiary issues raised by Odle were properly resolved by the circuit court.

The circuit court has broad discretion in admitting evidence. *Grode v. Grode*, 1996 S.D. 15, ¶ 16, 543 N.W.2d 795, 801. Those evidentiary rulings are presumed correct and will not be overturned without a clear finding of abuse of discretion. The abuse of discretion standard pertaining to evidentiary rulings is a two-step process requiring that an error be demonstrated and that the error was prejudicial to call for the ruling to be reversed. *Supreme Pork, Inc. v. Master Blaster, Inc.*, 2009 S.D. 20, ¶ 59, 764 N.W.2d 474, 491.

A. All exhibits accepted onto the record were properly admitted

Odle alleges numerous evidentiary issues relating to what was admitted onto the record during the protection order hearing. Before addressing the exhibits in their individual capacity, there are three limiting observations that provide context to the evidence record as a whole. Odle consented to having enough time to review all exhibits (most of which were prepared by Odle himself) offered by Malone before they were individually admitted. After being asked directly by the Court, "Mr. Odle, have you had enough time to review these exhibits?" Odle responded, "Yeah, I have a general idea what's in there, yes." ATR 3. Any argument from Odle about not being given enough time to review any previously unseen exhibit is waived and effectively moot.

Odle objected to four of the eight exhibits, successfully prohibiting Exhibit 7 from being admitted. Exhibits 1, 2, 3, and 6 were admitted without objection from Odle. ATR 4-6 and 8. When evidence is offered, and the party against whom the evidence is offered against either consents or fails to object, that party is considered to have waived whatever objection they may have felt was applicable. *Andreson v. Black Hills Power & Light Co.*, 1997 S.D. 12, ¶ 19, 559 N.W.2d 886, 890 (quoting *Bakker v. Irvine*, 519 N.W.2d 41, 46 (S.D. 1994)). Furthermore, an objection must be made at the earliest opportunity and must state proper grounds. Odle effectively waived his right to object to Exhibits 1, 2, 3, and 6 by consenting to their admission to the record and offering no objection as to their admissibility into the record. ATR 8.

Lastly, any argument to materials described in any exhibit, objected to or not, that is described by Odle as "private, confidential, or filed under seal" is based solely on the subjective view of Odle himself and without legal support. First, relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." SDCL § 19-19-401; FRE 401. Exhibits admitted at the hearing were relevant, as they showed tangible evidence of the harassing behavior exhibited by Odle. All of the evidence admitted had a tendency to prove the allegation made by Malone and supported the grant of the Protection Order. Exhibits 1, 2, 3, and 6, while not only went without an objection, were admissible by virtue of being public records. Exhibits 4 and 8, respectfully, are orders from various members of the judiciary that have denied to seal any "trust documents" petitioned by Odle. (Writ of Mandamus, Order from the Third Judicial Circuit). These records were never "private, confidential, or filed under seal". The petition to seal, filed on January 20, 2026, was denied on January 26, 2026, and the hearing for the protection order, where these documents were admitted occurred February 10, 2026. This Court issued an official order denying to seal any of the documents presented in this case May 15, 2026. Order denying Motion to Seal Record and Appendix Materials, S. Ct. (2026) (#31412).

Odle is correct that the admission of these exhibits was prejudicial to him because it proved the harassing conduct he was accused of. The prejudicial nature of evidence does not prevent its admission, rather it serves to prove the harassing conduct Odle was accused of. However, he cannot show abuse of discretion by the court in admitting Exhibits 1-6 and 8. All exhibits were either admitted without a timely, proper objection or squarely fit within an accepted evidentiary rule for admission, regardless of whether Odle knew those rules for admissibility or not.

B. Other acts testified to in the record were permissible evidence to be considered in granting the protection order.

"[W]hile an act or a preliminary set of acts might not rise to the level of harassment because it does not show a sufficient pattern of conduct, as additional alarming or annoying acts are committed, a more complete pattern of conduct may be established and the line between mere annoyance and legal harassment may be crossed." *Donat*, 2015 S.D. 16, ¶ 25, 862 N.W.2d 122, 131 (quoting *White*, 2008 S.D. 52, ¶ 12, 752 N.W.2d at 207).

Odle raises a complaint about his prior behavior being testified to by Malone, including that he was jailed for contempt of court, behaves irrationally, and has conduct pertaining to his harassment of Malone that was reported to law enforcement. However, Odle misstates that these behaviors were not brought into evidence and improperly heard or considered, when on the contrary, Malone brought up such observations during her testimony where Odle did not formally object. ATR 11-12. Odle bears the burden of proving that the court abused its discretion when it admitted this evidence and that this admission was unfairly prejudicial. *Id.* (quoting *State v. Boe*, 2014 S.D. 29, ¶ 20, 847 N.W.2d 315, 320). However, Malone's testimony is clearly relevant to the validity of her concerns and confirms the pattern and practice of Odle's engagement in acts of harassment, which fully support the grant of the protective order by the circuit court.

CONCLUSION

Odle's efforts to force a public servant, such as Malone, to become the trustee of his alleged trust, without consent or discussion, and repeated efforts to enforce such behavior fully justify the grant of the protective order. The order was narrowly tailored, and suitable options were provided to Odle for the conduct of his future legitimate business. Petitioner-Appellee respectfully requests that this Court affirm the circuit court's decision and grant of the protective order.

Dated this 6th day of July, 2026.

MAY, ADAM, GERDES & THOMPSON LLP

BY: [signature]

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CERTIFICATE OF SERVICE

Robert B. Anderson, of May, Adam, Gerdes & Thompson LLP, hereby certifies that on the 6th day of July, 2026, he filed an electronic copy via Odyssey File and Serve of the foregoing Appellee's Brief and appendices in the above-captioned action and served appellant on the 6th day of July, 2026, by mailing a copy of the foregoing to him at his last known address, to-with:

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CERTIFICATE OF COMPLIANCE

Robert B. Anderson, counsel for Appellee, hereby certifies that the foregoing Brief of Appellee complies with the type volume limitation provided for in the South Dakota Codified Laws and pursuant to SDCL § 15-26A-66(b)(4). This brief contains 5,064 words, exclusive of the Table of Contents, Table of Authorities, Jurisdictional Statement, Statement of Legal Issues, Appendix, Certificate of Service, and Certificates of Counsel. Counsel relied on the word and character count of Microsoft Word, word processing software, used to prepare this Brief at font size 12, Times New Roman, and left justified.

Dated this 6th day of July, 2026.

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31412

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUL 31 2026

Clerk

In The Supreme Court
of the
State of South Dakota

Supreme Court No. 31412

In the Matter of

Jennifer Jo Malone,
Appellee,

vs.

Ian Patrick Odle,
Appellant.

Appeal from the Circuit Court
Third Judicial Circuit
Kingsbury County, South Dakota

The Honorable Carmen A. Means

Appellant's Reply Brief

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Notice of Appeal filed March 3, 2026

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Preliminary Statement

Ian Patrick Odle, Respondent below and Appellant here, is referred to in this reply brief as "Respondent." Jennifer Jo Malone, Petitioner below and Appellee here, is referred to in this reply brief as "Petitioner."

Citations to Petitioner/Appellee's Brief are designated "Petitioner Br. __." Citations to Respondent's opening brief are designated "Opening Br. __." Citations to the appendix filed with that brief are designated "App. A-__." Citations to the transcript are designated "Tr. _:_."

Introduction

The dispositive question is whether the hearing record supports every statutory element under the governing standards of review. Petitioner's brief catalogs litigation activity, exhibits, and adverse rulings and treats repetition, lack of consent, and rejection of the underlying legal theories as sufficient to establish harassment or harassment-based stalking.

SDCL 22-19A-4 defines harassment conjunctively:

> "a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person, and which serves no legitimate purpose."

Because Petitioner defends the stalking finding through harassment under both SDCL 22-19A-1(1) and (3), and "harasses" is defined by SDCL 22-19A-4, that conjunctive definition controls. The conduct and context must support the no-legitimate-purpose finding. But even if the filings formed a course and caused alarm, the order cannot stand unless the evidence also supports the finding that the course served no legitimate purpose.

Repetition, alarm, nonacceptance, and legal defeat may inform purpose but do not themselves sustain that separate finding.

Argument

I. The Completed Record Permits Resolution of Statutory Sufficiency Without Remand

In *Donat v. Johnson*, 2015 S.D. 16, ¶ 13, 862 N.W.2d 122, this Court described a two-step standard: factual findings are reviewed for clear error, and issuance of the order for abuse of discretion. In *Batchelder v. Batchelder*, 2021 S.D. 60, ¶ 19, 965 N.W.2d 880, the Court separately treated whether findings correspond to the governing statutory standards as a legal question. Thus, the circuit court's credibility determinations and permissible factual inferences receive clear-error deference. Whether the findings correspond to the statutory standard is a legal question, while the finding that the course served no legitimate purpose is reviewed for clear error. This challenge does not depend on crediting Respondent's testimony over Petitioner's. Even crediting the circuit court's express credibility determinations and subsidiary findings, the completed record does not support the separate no-legitimate-purpose finding. After Petitioner rested, Respondent submitted an admitted written response denying the allegations, asserting failure of proof, and requesting dismissal. When the court identified purpose as the issue, Respondent denied intent to harass and stated that he was "utilizing the processes that are in law" to protect his property. (Tr. 19:3–10; App. A-97.) He later maintained his written defenses before the court expressly ruled on the statutory elements. (Tr. 17:4–25, 25:19–23, 28:21–29:20; App. A-14–A-18, A-95, A-103, A-106–A-107.) The sufficiency issue was therefore presented to and ruled upon by the circuit court, supporting review under SDCL 15-26A-8.

Repp v. Van Someren, 2015 S.D. 53, ¶¶ 11–12, 866 N.W.2d 122, and *Thompson v. Bear Runner*, 2018 S.D. 57, ¶¶ 15–17, 916 N.W.2d 127, remanded because inadequate findings obscured the conduct satisfying the elements. Here, the circuit court expressly found no legitimate purpose, rejected Respondent's explanation, and referred to the filings and communications before it. The question is therefore whether, under clear-error review, the completed record supports that finding.

Doremus v. Morrow, 2017 S.D. 26, ¶¶ 11–13, 897 N.W.2d 341, upheld rejection of an innocent purpose where credited conduct included an equivocal threat and repeated surveillance-like encounters inconsistent with Morrow's explanation. *Donat* likewise involved slowing, stopping, and focusing on the residence rather than merely performing asserted road work. 2015 S.D. 16, ¶ 15. In each, the evidence supporting no legitimate purpose included conduct that did not fit the asserted explanation; neither decision treats legal failure alone as sufficient. Here, the identified acts were documents facially pursuing asserted legal and administrative objects; the credited circumstances still had to establish that the course served no legitimate purpose.

Batchelder decided the appeal without remand because the record disclosed a defect beyond missing findings. 2021 S.D. 60, ¶¶ 22, 25–28. *Shore v. Cruz*, 2003 S.D. 81, ¶¶ 9, 15–17, 667 N.W.2d 312, likewise acknowledged the absence of findings but reversed after a completed hearing because the evidence did not show conduct within the scope of SDCL chapter 22-19A. *Repp* instead involved unresolved conflicts, an express remand request, and intended findings. 2015 S.D. 53, ¶ 12. Because Petitioner completed her proof, remand could clarify findings but could not supply evidence absent from the completed record. SDCL 15-26A-12 authorizes this Court to direct entry of the judgment the completed record warrants. If the no-legitimate-purpose finding is clearly erroneous after Petitioner completed her proof, the appropriate disposition is reversal with directions to dismiss the petition.

II. Even Under Clear-Error Review, the Completed Record Does Not Support the No-Legitimate-Purpose Finding

A. Labels Do Not Establish the Missing Element

Petitioner labels Respondent's behavior "very irrational," the trust "fictitious," and the filings "exceedingly aggressive and alarming," and characterizes the course of conduct as "seriously alarming." (Petitioner Br. 4, 9, 11.) Those characterizations do not establish whether the course served no legitimate purpose.

B. Petitioner's Brief Does Not Establish That the Litigation-Related Filings Served No Legitimate Purpose

The circuit court recited the element and found that the course was "meant to annoy, to alarm, and to harass" and served no legitimate purpose. (Tr. 28:5–10, 29:17–20; App. A-106–A-107.) The intent finding does not itself answer whether the course also served a legitimate legal objective. But the finding states the inference drawn; the completed record must still supply evidence supporting it. *Thompson* held that findings merely parroting statutory text did not show how the evidence satisfied stalking. 2018 S.D. 57, ¶¶ 16–17. *Doremus* confirms that adequacy and sufficiency are distinct: after holding partly conclusory findings sufficient for review, the Court separately examined the supporting evidence. 2017 S.D. 26, ¶¶ 11–13. Here, the acts are identifiable, so no findings remand is needed; the question is whether the completed record supports the conclusion. A no-legitimate-purpose finding may rest on conduct and context only if credited evidence supports that inference. Disbelief of Respondent's explanation did not shift Petitioner's burden or itself establish the opposite proposition.

Clear-error deference does not displace Petitioner's burden under SDCL 22-19A-11 to prove the separate no-legitimate-purpose element. Respondent's stated objectives, protecting property and obtaining judicial or administrative relief, were central to that inquiry. Article VI, § 20 of the South Dakota Constitution guarantees a remedy by due course of law for injury to property, person, or reputation. The filings' content, timing, relief sought, and context showed an objective relationship to protecting property and obtaining official relief; rejection of the theories did not erase that relationship. *Donat* and *Doremus* upheld contrary findings only where credited conduct contradicted the asserted purpose; neither treats nonacceptance, legal ineffectiveness, or disbelief as sufficient.

Petitioner identifies trust-related communications through the courthouse, Register of Deeds, and federal court. (Petitioner Br. 4–5.) Petitioner testified that Respondent delivered Exhibit 5 to her office and that the document described the matter as scheduled. (Tr. 7:14–25; App. A-85.) The record identifies no threat of violence or confrontation associated with its delivery. The manner of delivery did not erase the document's stated legal objective or prove that it served no legitimate purpose. The record identifies no independent conduct supporting a separate personal objective.

1. Petitioner's nonacceptance did not establish that the course served no legitimate purpose.

Petitioner emphasizes that some documents identified her as trustee or purported to assign rights to her without her knowledge or consent. (Petitioner Br. 11–13.) Lack of personal consent to the asserted trustee role is distinct from a communicated rejection of that role or objection to the trust-related filings. The record identifies no such communication before the January 6 petition. That chronology does not support characterizing the pre-petition filings as knowing continuation after a communicated rejection, and Petitioner's later objection cannot retroactively establish that the earlier filings served no legitimate purpose when made.

The mandamus petition used "refused" and "refusal" to allege nonperformance, but identified no communication in which Petitioner rejected the asserted role or directed Respondent to stop. (App. A-32–A-36.) Petitioner relies on the January 20 petition because it followed and referenced the temporary order. The petition was styled ex parte, requested sealing, alleged nonperformance by an unnamed trustee, and sought judicial relief concerning asserted fiduciary duties and the temporary order's effect on trust enforcement. But its caption did not name Petitioner or designate her as a party or respondent, and Respondent did not serve it on her. The trust court found that no interested person had received notice; that court, not Respondent, identified Petitioner as an interested person and directed the clerk to send her the petition and order. (App. A-70–A-78.) The ex parte and sealing requests describe how judicial relief was sought; they do not establish a separate communication by Respondent to Petitioner or, by themselves, that the petition served no legitimate purpose. Because the petition sought clarification of the temporary order's effect, that request necessarily referenced it. Treating that necessary reference, without more, as proof of no legitimate purpose would allow the temporary order's own reach to generate evidence offered to justify permanent relief. When the petition was filed, the trust court had not yet adjudicated Petitioner's asserted trustee status in that proceeding. The record identifies no later filing after the January 26 denial and sanctions warning and before the February 10 hearing. (Tr. 10:1–16:25; App. A-88–A-94.)

Petitioner's reliance on SDCL 55-3-2 does not establish that the earlier filings served no legitimate purpose when made. Treating nonacceptance as sufficient would leave no limiting principle: rejection of a disputed role, even by a public official, could transform filings concerning that dispute into stalking without separate proof of the statutory element. Nonacceptance and legal ineffectiveness may inform the inquiry, but neither substitutes for proof. The relevant governmental process may determine a filing's legal effect; the question here is whether the resulting course, viewed in context, satisfied the statutory definition of harassment.

2. Establishing a course of conduct does not establish statutory harassment.

Petitioner argues that repeated filings "fall squarely under SDCL § 22-19A-5" as a course of conduct. (Petitioner Br. 11.) Even if that component was proved, SDCL 22-19A-5 does not independently establish harassment, eliminate SDCL 22-19A-4's separate no-legitimate-purpose requirement, or convert the filings into stalking.

SDCL 22-19A-5 excludes activity established to be constitutionally protected from a "course of conduct." In *State v. Asmussen*, 2003 S.D. 102, ¶¶ 7–9, 668 N.W.2d 725, this Court relied on that exclusion and the statute's limiting elements in rejecting a facial overbreadth challenge, reasoning that the statute did not sweep constitutionally protected activity within its reach. In *Hobart v. Ferebee*, 2004 S.D. 138, ¶¶ 16, 19–25, 692 N.W.2d 509, this Court explained that reporting possible legal violations to an appropriate governmental agency may invoke the right to petition and that a complaint's legitimacy does not depend on its eventual success. The Court left undisturbed the finding that the complaints were intended to harass and annoy, but vacated the filing restraint as an overbroad prior restraint. *Id.* ¶¶ 19–25. Together, the cases show that use of official processes does not foreclose an improper-purpose finding, but protected governmental complaints may not be included in the statutory course or unnecessarily restrained.

The Court need not decide whether every exhibit was constitutionally protected. Use of an official channel alone does not resolve protection, but repetition, nonconsent, and legal defeat do not themselves establish statutory harassment. Petitioner still had to prove that the course satisfied every component of harassment under SDCL 22-19A-4, while any activity established as constitutionally protected remained excluded under SDCL 22-19A-5.

Schaefer ex rel. S.S. v. Liechti, 2006 S.D. 19, ¶ 16, 711 N.W.2d 257, found surveillance and dangerous pursuit unrelated to the asserted concern about traffic violations, while *Erickson v. Earley*, 2016 S.D. 37, ¶ 12, 878 N.W.2d 631, distinguished a legitimate request from an accompanying threat. Petitioner identifies no comparable threat, surveillance, dangerous pursuit, or confrontation accompanying the filings, and the record still must support the no-legitimate-purpose inference.

Petitioner invokes "filings and alarming communications to Malone, other State employees, and members of the judiciary." (Petitioner Br. 10.) A filing to another official may be directed at Petitioner, but an official's later transmission is not automatically a separate communication initiated by Respondent. The record shows that Petitioner was made aware of Exhibit 6 and obtained a copy from the Register of Deeds. (Tr. 8:8–21; App. A-86.) The trust court, not Respondent, directed the clerk to send Petitioner the petition and order comprising Exhibit 8. (App. A-70–A-71.) The underlying filings remain attributable to Respondent, but the record does not support Petitioner's statement that Exhibit 8 was mailed to her "by Odle." (Petitioner Br. 5.)

3. Escalation and volume do not establish the missing element.

Petitioner calls the sequence an "escalation." (Petitioner Br. 11.) But moving from assignments and instructions to petitions and mandamus was a change in procedure for pursuing related trust and property objectives, not itself proof that the later filings lacked legitimate purpose.

In *White v. Bain*, 2008 S.D. 52, ¶¶ 3–4, 11–12, 21, 752 N.W.2d 203, the first petition, based on collection letters and calls, was denied and Bain was warned to stop. Her later forced entry into the Whites' home and ensuing physical confrontation supplied the "final link" supporting relief. Here, the alleged escalation never moved beyond filings and legal actions pursuing related asserted trust and property objectives through governmental channels. *White* therefore does not treat repetition, nonconsent, or an adverse ruling alone as proof of no legitimate purpose.

Petitioner also invokes the "sheer volume" of filings. (Petitioner Br. 12.) SDCL chapter 22-19A imposes no numerical cap. Repetition bears on the course-of-conduct element and may inform purpose, but volume does not prove the absence of legitimate purpose. Annoyance alone was insufficient; the filings also had to serve no legitimate purpose.

In *State v. Shibly*, 2023 S.D. 30, ¶¶ 31–33, 993 N.W.2d 143, this Court upheld the malice finding under SDCL 22-19A-1(3) based on repeated unwanted calls, texts, anger, and pounding on the recipient's door. That analysis concerned malice, an intent to vex or annoy, and rested on the combined circumstances; it did not hold that volume alone proves SDCL 22-19A-4's separate no-legitimate-purpose element. Repetition may inform purpose, but neither repetition nor unsuccessful legal theories establish its absence.

C. Concern About Possible Future Conduct Does Not Establish the Missing Element

Petitioner relies on the circuit court's observation: "She should not have to live her life wondering who are you filing a document with my name on it with next?" (Tr. 30:25–31:2; App. A-108–A-109; Petitioner Br. 11.) That observation reflects concern about possible future conduct, but it does not establish that the course presented at the hearing served no legitimate purpose when undertaken.

Sheldon testified that naming Petitioner as trustee was new to him and caused concern, which he linked to patterns he had observed in other matters. His personal knowledge of communications between Petitioner and Respondent was limited to what he learned from the paperwork and his discussions with Petitioner; he did not claim expertise concerning the referenced ideology and confirmed that the documents he reviewed contained no actual threats of violence. (Tr. 13:16–16:14; App. A-91–A-94.) That contextual evidence may bear on alarm and prospective concern, but it did not identify case-specific facts, apart from the filings themselves, showing that Respondent's particular course served no legitimate purpose. Petitioner's references to contempt, incarceration, guns, and conduct she associated with "sovereign citizens" likewise supplied context for her concern, but did not identify case-specific facts showing what purpose the challenged filings served. (Tr. 11:16–12:23; App. A-89–A-90.)

The reported DCI referral does not supply the missing proof because the record identifies no DCI finding that the filings were criminal or threatening. (Tr. 22:23–23:16; App. A-100–A-101.)

D. Adverse Judicial Rulings Do Not Retroactively Establish "No Legitimate Purpose"

The federal disposition did not adjudicate the merits or purpose of the mandamus petition. The district court denied the mandamus petition and dismissed the state-law claim and action for lack of subject-matter jurisdiction; judgment was entered without prejudice. (App. A-26–A-31.) The ruling established that the selected federal forum lacked authority to grant the requested relief, but did not determine whether the petition, when filed, served no legitimate purpose under SDCL 22-19A-4.

The January 26 order stated that, "[a]s it relates to real property," the trust was void, concluded that Petitioner was not trustee, described the trust as "likely an attempt to obstruct the property division," and warned that further efforts to compel her to act as trustee would result in sanctions. (App. A-70–A-71.) Petitioner nevertheless characterizes Exhibit 8 as showing "no existence now or ever of a trustee." (Petitioner Br. 13.) The order addressed the trust's relation to the property division and Petitioner's asserted trustee status; it did not determine that the January 20 petition's stated purpose was not its actual purpose or that the course served no legitimate purpose under SDCL 22-19A-4. The trust's validity need not be resolved here. SDCL 55-3-21 confirms that trust existence and trustee status are distinct: if a trust exists without an appointed trustee, the court must appoint one. The order resolved Petitioner's asserted status and warned against further pursuit; it did not establish the earlier course's purpose, and the record identifies no later filing before the hearing.

In a later attorney-fee appeal arising from the Hobart–Ferebee dispute, *Hobart v. Ferebee*, 2009 S.D. 101, ¶ 28, 776 N.W.2d 67, this Court upheld an award supported by findings that Ferebee renewed the same issue after affirmance and had developed a pattern of frivolous and harassing state and federal filings. Here, the hearing record identifies no filing after the January 26 ruling and before the February 10 hearing. That later *Hobart* decision therefore illustrates abusive relitigation undertaken after an adverse decision; it does not establish that an adverse ruling retroactively transformed the earlier course into conduct serving no legitimate purpose.

E. The Evidentiary Arguments Do Not Cure the Failure of Proof

Proper admission of every exhibit would not establish statutory sufficiency. Petitioner's assertion that the exhibits "proved" harassment assumes the disputed conclusion. (Petitioner Br. 17.) *Donat* treated prior history as evidence of the course-of-conduct element and as relevant to motive, intent, and remedy. 2015 S.D. 16, ¶ 25. It separately rejected a challenge to attenuated acts because Johnson had not demonstrated error or prejudice. *Id.* ¶ 26. Neither holding makes admissibility dispositive of whether each statutory element, including no legitimate purpose, was proved.

Petitioner also describes Exhibits 4 and 8 as "orders," although both are composites containing petitions or trust materials. (Petitioner Br. 17.) The resulting orders' public-record status neither resolves objections to the accompanying materials nor establishes statutory sufficiency.

Respondent's statement that he had a "general idea" of the exhibits did not waive his immediate exhibit-specific objections or independent sufficiency challenge. (Tr. 3:16–19; App. A-81.)

Petitioner's waiver argument overstates the record. Respondent did not object to Exhibits 1, 2, 3, and 6, but objected to Exhibit 4 as containing private trust materials and property, Exhibit 5 as a private communication, and Exhibit 8 as containing sealed materials. He also objected to Exhibit 7 for hearsay and lack of foundation, and that exhibit was not admitted. (Tr. 4:13–6:8, 7:1–11:8; App. A-82–A-89.) Those were the privacy and sealing grounds presented for Exhibits 4, 5, and 8. The Court need not decide the full reach of SDCL 21-22-28 if statutory sufficiency resolves the appeal, and waiver of an admissibility objection does not waive the separate sufficiency challenge.

Respondent does not seek to relitigate the trust rulings in this appeal. Neither the January 26 order nor SDCL 55-3-21 determined that the earlier course, viewed in its contemporaneous procedural context, served no legitimate purpose under SDCL chapter 22-19A. See *supra* Part II.D.

Petitioner also invokes this Court's May 15 order denying sealing. (Petitioner Br. 13, 17.) Because the order postdated the February 10 hearing and protection order, it could not add to the hearing evidence. Petitioner identifies no language in that order adjudicating trust validity, earlier purpose, or the meaning of SDCL 21-22-28.

F. Even Cumulatively, the Credited Circumstances Do Not Establish the Missing Element

The circuit court relied on Petitioner's nonconsent, the filings, its rejection of Respondent's explanation, and its own statement that Respondent "does seem to suffer from some sort of mental illness wherein he is incorporating Miss Malone by virtue of her title as a Clerk of Courts into his delusions." (Tr. 28:11–29:20; App. A-106–A-107.) No expert testimony, diagnosis, or medical evidence in this record supported that characterization. The court's resort to that unsupported mental-health characterization did not resolve the statutory purpose inquiry and could not supply the evidence Petitioner was required to present. Even cumulatively, those circumstances do not support the no-legitimate-purpose finding required by SDCL 22-19A-4. That finding is clearly erroneous, and without it no harassment-based stalking theory under SDCL 22-19A-1(1) or (3) can stand. The protection order should therefore be reversed and the petition dismissed.

III. Alternatively, the Record Does Not Support the Filing-Access Restrictions, Including Their Five-Year Duration

Even if stalking were established, Petitioner's reliance on remedial discretion, alternative filing procedures, mileage, other contacts, a service exception, and the five-year ceiling shows only that some access remained, not that the filing restrictions were necessary or warranted for five years. (Petitioner Br. 14–15.) Respondent objected that the office and filing restrictions were "very overbroad" and would impede access to the clerk's office and judicial system, and the opening brief challenged their five-year operation. (Tr. 26:23–28:2; App. A-104–A-106; Opening Br. 25–27.)

A. The Record Does Not Support the Imposed Litigation Controls as Necessary for Protection

In the earlier *Hobart* appeal, the circuit court found that repeated agency complaints were intended to harass and annoy, yet this Court vacated provisions requiring court approval and a fee before complaints could be filed with governmental agencies. *Hobart*, 2004 S.D. 138, ¶¶ 20–25. It held that eventual success did not determine legitimacy, the order restricted complaints that were neither unlawful nor unfounded, alternative avenues were inadequate, and governmental complaints should be restrained only rarely. *Id.* ¶¶ 20–25. Although the mechanisms differ, *Hobart* refutes Petitioner's premise that alternative access and comparable mileage alone answer the tailoring problem. The record still must connect the challenged restrictions to the conduct and demonstrated need for protection. (Petitioner Br. 14–15.) *Batchelder*, 2021 S.D. 60, ¶¶ 25–26, likewise reversed where a protection order was used to stabilize a high-conflict relationship rather than determine whether the governing requirements for relief were met.

Ferebee v. Hobart, 2009 S.D. 102, ¶¶ 31–33, 776 N.W.2d 58, 66–67, provides a remedial comparison. After nearly ten years of multi-court litigation and findings that the filings were frivolous and malicious, this Court affirmed the trial court's decision to allow monetary sanctions an opportunity to work before imposing an "even more severe" leave-of-court injunction. *Ferebee* did not impose a categorical sanctions-first rule, but it illustrates that available lesser remedies bear on whether a severe filing restraint is warranted. Here, the trust court warned that further pursuit to force Petitioner to act as trustee would result in sanctions, and the hearing record identifies no later filing before February 10. The record therefore contains no post-warning conduct showing that the warning of sanctions was ineffective or that the more severe filing restrictions were necessary. That contrast undermines necessity under SDCL 22-19A-11.

The record must connect the proven conduct to physical exclusion and altered filing procedures. (App. A-10–A-13.) Petitioner's requested relief shows that this proceeding sought more than protection from direct contact. Her petition asked the court to prohibit Respondent from filing any document containing her name in any government office or media format, and at the hearing she renewed that request as a statewide prohibition. (App. A-8; Tr. 26:1–15; App. A-104.) The circuit court itself found that request overbroad, yet imposed a notice-and-routing regime governing future filings. (Tr. 30:15–31:2; App. A-108–A-109; App. A-10–A-12.) Because SDCL 22-19A-11(2) authorizes only "other relief as the court deems necessary" for protection, the record must support a reasonable connection between these litigation-control measures, the proven conduct, and Petitioner's protection. The Brookings alternative and mileage comparison address the degree of burden; they do not show why the court could reasonably deem these measures necessary for Petitioner's protection. (Petitioner Br. 14–15.) Because the measures regulate access to court filings, they also implicate the open-courts concern preserved below and developed in the opening brief. S.D. Const. art. VI, § 20. (Tr. 26:23–28:2; App. A-104–A-106; Opening Br. 27.)

Petitioner's narrow-tailoring defense overlooks that the routing provision requires "any filings for Kingsbury County cases" to be routed through Brookings County, not merely filings involving Petitioner. The oral ruling required prior notice through Brookings; the written order says only "without notice" and leaves timing, whether legal process is required, and the scope of "paperwork containing reference to the Petitioner" unclear. (Tr. 30:15–25; App. A-108; App. A-12.) Those ambiguities matter because a violation by a respondent who knows of the order is subject to criminal punishment. See SDCL 22-19A-16. A protection order is a form of injunction. *Ferebee*, 2009 S.D. 102, ¶ 19. SDCL 15-6-65(d)'s requirements of specificity and reasonable detail therefore reinforce the preserved challenge to the filing restrictions.

The record connects Exhibits 4 and 5 to the courthouse and Petitioner's office, including Petitioner's testimony that Respondent delivered Exhibit 5 to her office. (Tr. 6:9–25, 7:14–25; App. A-84–A-85.) That establishes a courthouse connection, but the record identifies no threat, confrontation, or other misuse of Respondent's physical presence at the office. The alleged harm arose from the documents' content and asserted effect, not threatening conduct at the location. Respondent described the interactions as cordial and nonthreatening, and Petitioner identifies no testimony of a threat or confrontation during them. (Tr. 22:11–23; App. A-100.) The evidence therefore does not explain why physical exclusion from the office except for scheduled hearings was necessary to address the document-based conduct.

Although circuit courts have broad discretion in fashioning protection-order relief, *Donat* upheld the challenged proximity restriction because many proven stalking incidents occurred when the respondent drove slowly past or stopped outside the protected person's home on the road affected by the order. *Donat*, 2015 S.D. 16, ¶ 32. Here, several document-related acts were connected to the courthouse or Petitioner's office, but the alleged harassment remained the content and asserted effect of the documents—not threatening physical conduct at the location. Unlike the repeated road-specific conduct in *Donat*, the record does not explain why exclusion from ordinary office access, rather than restrictions directed to contact and document service, was necessary. (Petitioner Br. 15.)

B. The Record Does Not Support Imposing the Filing-Access Restrictions for Five Years

SDCL 22-19A-11 permits, but does not require, a term of up to five years. *Wagner v. Tovar*, 2025 S.D. 44, ¶¶ 25–27, 25 N.W.3d 236, confirms that a particular restriction remains reviewable even when the order's overall duration is statutorily authorized. The absence here of violence, threats of violence, comparable physical conduct, or identified post-January 26 activity bears on whether the filing-access restrictions were necessary for five years, not on an additional element of written-communication harassment.

Petitioner calls the prospect of future filings "no longer speculative." (Petitioner Br. 12.) But she presented no evidence of any filing or communication after the January 26 order concluded that she was not trustee and before the February 10 hearing. (Tr. 10:1–16:25; App. A-70–A-71, A-88–A-94.) That evidentiary gap undercuts the record basis for deeming five years of prospective filing restrictions necessary.

Conclusion

The completed record lacks sufficient evidence to support the separate no-legitimate-purpose element required by SDCL 22-19A-4. Petitioner completed her proof, and the defect is evidentiary, not a deficiency that additional findings could cure. The Court should therefore reverse the protection order and direct dismissal of the petition.

At minimum, the filing-access provisions and their five-year duration should be vacated because the record does not establish that those restrictions were necessary for

Petitioner's protection. Any remand should be strictly limited to entry of relief no broader than necessary to address the proven conduct and demonstrated need under SDCL 22-19A-11.

Dated this 31 day of July 2026.

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Certificate of Compliance

I certify that this reply brief complies with the type-volume limitation of SDCL 15-26A-66(b)(2). Excluding the Table of Contents, Table of Authorities, addendum materials, Certificate of Compliance, and Certificate of Service, as permitted by SDCL 15-26A-66(b)(3), the brief contains 4,869 words. I relied on the word count of the word-processing system used to prepare the brief, as permitted by SDCL 15-26A-66(b)(4).

Dated this 31 day of July 2026.

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Certificate of Service

I certify that on this 31 day of July 2026, a true and correct copy of the foregoing Appellant's Reply Brief was served upon:

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by U.S. Mail, postage prepaid. A courtesy copy was transmitted electronically on the same date.

I further certify that on the same date, the original was deposited in the U.S. Mail, postage prepaid, addressed to the Clerk of the South Dakota Supreme Court.

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