#31417-a-SRJ
2026 S.D. 58

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

KAYDEN KURSAVE, Petitioner and Appellant,

v.

TERTIUS VAN DER MESCHT, Respondent and Appellee.

APPEAL FROM THE CIRCUIT COURT OF
THE SEVENTH JUDICIAL CIRCUIT
CUSTER COUNTY, SOUTH DAKOTA

THE HONORABLE HEIDI LINNGREN
Judge

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CONSIDERED ON BRIEFS
OCTOBER 6, 2026
OPINION FILED **11/18/26**

#31417

JENSEN, Chief Justice

[¶1.] Kayden Kursave and Tertius Van Der Mescht met in January 2024. They began dating in March 2024 and broke up once before their final breakup in February 2025. Kursave filed for a domestic abuse protection order against Van Der Mescht on January 30, 2026, after he showed up at her house unannounced and uninvited. She also alleged other prior unwelcome attempts by Van Der Mescht to communicate with her after the breakup. The circuit court denied the request for a permanent order. Kursave appeals, claiming that the circuit court erred in denying the permanent protection order. We affirm.

Factual and Procedural History

[¶2.] Van Der Mescht is from South Africa, working in America on an H-2A Visa. Kursave lives in Hermosa, South Dakota, and teaches at the Hermosa School District. After Kursave and Van Der Mescht began dating in March 2024, they got engaged in late August 2024.

[¶3.] In September or October 2024, Kursave ended the relationship by sending a text to Van Der Mescht, stating, "We are done." Van Der Mescht responded, "No," believing her explanation was insufficient. They continued communicating and soon reconciled after attending a church service together. The parties provided disputed testimony as to whether Kursave had invited Van Der Mescht to the church service, but they both agreed that after eating lunch together at Kursave's parents' home, they resumed their relationship.

[¶4.] On February 12, 2025, Kursave again ended the relationship with Van Der Mescht by text. They met later to separate their cell phone plans, but the

parties disagreed whether they discussed the potential for a future relationship. Kursave believes she had made clear she did not want to date or have further contact with him, while Van Der Mescht believes Kursave left that possibility open.

[¶5.] On February 26, 2025, less than two weeks after the breakup, Van Der Mescht visited Kursave's place of employment with flowers and a gift. Kursave did not see Van Der Mescht because she asked the secretary to tell him she was unavailable. Kursave testified that she felt embarrassed, controlled, and disrespected by the visit, but her feelings were not communicated to Van Der Mescht. After leaving, Van Der Mescht texted her a picture of his left buttock bearing a tattoo of Kursave's name. Van Der Mescht continued texting Kursave until she blocked his number. Knowing he was blocked, Van Der Mescht attempted to contact Kursave through Snapchat in April 2025, but she did not respond. He returned to South Africa shortly afterward and did not contact her again until January 30, 2026.

[¶6.] Van Der Mescht appeared uninvited and unannounced at Kursave's home on January 30, 2026. He approached the back door of the home, knocked on the sliding glass door, opened the door himself, and leaned inside. Kursave testified she did not invite him inside or permit him to open the door, while Van Der Mescht testified Kursave invited him in after he opened the door. Van Der Mescht said he wanted to check on Kursave, who responded saying she was fine and told him to leave. He then asked whether Kursave was sexually intimate with her new boyfriend. She responded that she was not because God was important to her. Kursave testified that Van Der Mescht then spoke rapidly, raised his voice, and

brought up her previous relationships. Van Der Mescht acknowledged that they argued for several minutes before Kursave asked him to leave, and he left. Kursave testified that the incident made her feel unsafe, prompting her to leave the residence that day for fear he would return. She has not lived there since.

[¶7.] Kursave filed for a protection order the same day Van Der Mescht appeared at her home. The court granted the temporary protection order and set a hearing to consider Kursave's request for a permanent protection order. At the hearing, Kursave testified and called the school secretary as a witness. Van Der Mescht also testified. Both parties were represented by counsel.

[¶8.] During the hearing, Kursave argued that Van Der Mescht's January 30 conduct satisfied the elements of stalking that must be proven to find that domestic abuse had occurred. She cited him visiting her home uninvited despite knowing he was blocked from texting her, opening the door himself, and entering the home without her permission. Kursave also testified concerning Van Der Mescht raising his voice and repeatedly asking about sex after being told to leave. She further argued that his prior uninvited school visit, texting her a picture of his tattooed buttock, and continued texts after the breakup constituted a pattern of harassment supporting a finding of domestic abuse.

[¶9.] Van Der Mescht testified that Kursave sent mixed signals about the future of their relationship, even after the second breakup. Regarding the school incident, Van Der Mescht testified that Kursave had previously expressed a wish for someone to visit her school with flowers, that he left when asked without seeing her, and that he did not know the visit upset her. He maintained that he visited

her home on January 30 to check on her well-being and asked about her sexual activity because they had both promised to remain chaste at the time of their final breakup. He characterized the January 30 encounter as a brief relationship-related argument rather than harassment and argued the significant gaps between incidents weighed against finding a repeated course of conduct or willful or malicious behavior. Van Der Mescht emphasized the absence of threats, physical violence, physical harm, or fear of harm, and alleged that Kursave sought the protection order to have him deported. He introduced a text from Kursave's relative threatening deportation if he did not stay out of their lives.

[¶10.] The circuit court found that the parties' relationship was not a significant romantic relationship because of the "time that had passed" since Van Der Mescht last saw Kursave. The court also noted that Van Der Mescht had not attempted to contact her for nearly a year and spent much of that time in South Africa. The court found portions of both parties' testimony credible, specifically finding Van Der Mescht "credible as far as what the reason for the [January 30] visit was" and that he did not come to her home with the intent to harass her. The court found no evidence of threatening or harassing behavior as defined by law because of the time between incidents and the lack of a "pattern of conduct with a series of acts over a period of time[.]" The court dismissed the petition but warned Van Der Mescht that the court would enter a protection order in the future if he made contact with Kursave.

[¶11.] Kursave appeals, arguing the circuit court erred in finding that Van Der Mescht did not engage in domestic abuse.*

Standard of Review

[¶12.] Protection orders are reviewed with a "two-step process, reviewing the facts for clear error and the ultimate decision [to grant a protection order] for an abuse of discretion." *Donat v. Johnson*, 2015 S.D. 16, ¶ 13, 862 N.W.2d 122, 127. When reviewing a trial court's granting or denial of a protection order:

> First, we determine whether the trial court's findings of fact were clearly erroneous. We will not set aside the trial court's findings of fact unless, after reviewing all of the evidence, we are left with a definite and firm conviction that a mistake has been made. Furthermore, the credibility of the witnesses, the import to be accorded their testimony, and the weight of the evidence must be determined by the trial court, and we give due regard to the trial court's opportunity to observe the witnesses and examine the evidence. If the trial court's findings of fact are not clearly erroneous, we must then determine whether the trial court abused its discretion in granting or denying the protection order.

Repp v. Van Someren, 2015 S.D. 53, ¶ 8, 866 N.W.2d 122, 125 (citation omitted).

Analysis

[¶13.] Kursave argues that the circuit court erred in determining this was "not a domestic violence situation" because there was "not a significant romantic relationship because of the time that had passed." She also argues that Van Der Mescht's uninvited text messages and visits to her workplace and home constitutes stalking, which satisfies the definition of domestic abuse under SDCL 25-10-1(1).

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* Kursave raises, as a second issue, the question whether the circuit court abused its discretion in denying a permanent protection order, but there is no need to address this issue given our determination that the circuit court did not clearly err when finding no domestic abuse occurred.

Van Der Mescht contends the evidence supports the circuit court's denial of the protection order and that the standard of review does not warrant reversal.

Significant romantic relationship

[¶14.] Kursave's petition for a protection order alleged domestic abuse based on the parties' "significant romantic relationship" within the past twelve months and Van Der Mescht's "knowing and willful course of conduct which seriously alarmed, annoyed, or harassed" her. Under SDCL 25-10-3.1(2), a person may apply for a domestic abuse protection order if the petitioner "[i]s in a significant romantic relationship or *has been in one during the past twelve months* with the abusing party." (emphasis added). The factors for determining whether a "significant romantic relationship" exists or existed are: "(1) The length of time of the relationship; (2) The frequency of interaction between the parties; (3) The characteristics and the type of the relationship." SDCL 25-10-3.2.

[¶15.] The evidence is undisputed that the parties began dating in March 2024, became engaged in August 2024, and ended their relationship permanently on February 12, 2025. They also acknowledged having an intimate relationship. Kursave petitioned for a protection order on January 30, 2026, the same date as the conduct at issue, which was less than twelve months after the relationship ended. The circuit court found a significant romantic relationship did not exist because the parties had not been in contact for an extended period while Van Der Mescht was in South Africa. However, SDCL 25-10-3.1(2) does not require an existing "significant romantic relationship" to file a petition for domestic abuse. Instead, SDCL chapter 25-10 extends to a petitioner who has been in such a relationship with the

respondent "during the past twelve months." SDCL 25-10-3.1(2). Given the undisputed evidence that Kursave and Van Der Mescht were in such a relationship within twelve months before the petition for the protection order was filed, the court clearly erred in determining Kursave and Van Der Mescht did not have a significant romantic relationship as defined by SDCL 25-10-3.1(2).

Stalking

[¶16.] We next examine Kursave's claim that the court erred in determining that Van Der Mescht's conduct did not constitute domestic abuse under the protection order statute. The definition of domestic abuse in SDCL 25-10-1(1) encompasses "any violation of § 25-10-13 *or chapter 22-19A* . . . if the underlying criminal act is committed between persons 'in a significant romantic relationship[.]'" (emphasis added). SDCL 22-19A-1 describes the acts that constitute stalking and criminalizes such conduct. When stalking occurs in the context of a significant romantic relationship, a person may petition for a domestic abuse protective order, even in the absence of assaultive conduct. A person commits stalking by: "[w]illfully, maliciously, and repeatedly follow[ing] or harass[ing] another person." SDCL 22-19A-1(1). Harassment is defined 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. Further, "course of conduct" is defined as "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.

[¶17.] The evidence shows that within two weeks of the final breakup, Van Der Mescht visited Kursave's workplace with flowers and a gift and asked to see her, but the school secretary told him Kursave was unavailable. He left voluntarily and then texted Kursave a picture of his left buttock, on which he had tattooed her name. Van Der Mescht continued to text Kursave until she blocked his number. Nearly a year passed, without any contact, before Van Der Mescht appeared uninvited at the back door of Kursave's home on January 30, 2026.

[¶18.] The details of what occurred that day were disputed. Van Der Mescht admitted to opening the back door himself, but the parties disagree about whether Kursave invited him inside. Kursave testified that she did not invite him in, that he refused to leave despite several requests, and that he yelled at her. Van Der Mescht testified that he wanted to check on her and discuss their relationship, which he still hoped to salvage. He acknowledged getting upset during the discussion and asking whether Kursave was having sex with her new boyfriend, but explained this was tied to his belief that Kursave left open the possibility of a future relationship and their mutual pledge to remain chaste at the time of the breakup.

[¶19.] Stalking requires a "repeated" following or harassing of another person and an accompanying intent that the acts were done "willfully" and "maliciously." SDCL 22-19A-1(1); *see also* SDCL 22-19A-4 ("[H]arasses means a *knowing and willful* course of conduct . . . .") (emphasis added). The court acknowledged that Van Der Mescht's conduct on January 30 "may have been alarming" to Kursave but found it did not demonstrate a pattern of conduct sufficient to support a finding of repeated following or harassing. The court highlighted the time that passed

between when the parties last interacted, and found the one, five-minute incident in her home to be insufficient to establish a "course of conduct."

[¶20.] The circuit court also found Van Der Mescht's stated reasons for the visit on January 30 were credible, and that Van Der Mescht did not intend to harm or stalk Kursave on January 30, or through any of his other actions. A "finding of stalking by harassment also [requires] a showing that [respondent] acted 'maliciously.'" *White v. Bain*, 2008 S.D. 52, ¶ 13, 752 N.W.2d 203, 207 (citing SDCL 22-19A-1(1),(3)). "'Maliciously' imports 'a wish to intentionally vex, annoy, or injure another person.'" *Id.* (citing SDCL 22-1-2(1)(a)).

[¶21.] Our task on appellate review of this case is not to determine whether the evidence was sufficient to find stalking, but whether the circuit court clearly erred in finding that stalking did not occur. The credibility of the witnesses and the weight given to their testimony is for the circuit court to determine as the fact finder. *Repp*, 2015 S.D. 53, ¶ 8, 866 N.W.2d at 125. Notwithstanding the circuit court's finding that Kursave was alarmed by Van Der Mescht's visit on January 30, the court found Van Der Mescht's stated reasons and purpose for visiting that day were credible and that he had no intent to harass Kursave. The court also found Van Der Mescht's other prior actions were too remote in time to find a pattern of conduct. There is evidence in the record to support these findings, and we are not left with a definite and firm conviction that a mistake was made. The circuit court did not clearly err in finding that Van Der Mescht did not engage in stalking.

[¶22.] We affirm.

[¶23.] SALTER, DEVANEY, MYREN, and GUSINSKY, Justices, concur.