Searching for the Truth in a Half-Told Story: Balancing Parental Rights Against Children's Interests in Purcell v. Begnaud

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In Purcell v. Begnaud, the South Dakota Supreme Court reversed the protection order granted by the trial court, holding that the trial court abused its discretion in granting a protection order for two children against their father by failing to submit sufficient findings of fact to support the order. However, the court failed to adequately evaluate the best interests of the children and any potentially less restrictive alternatives. The court also failed to allow the trial court an opportunity to clarify its findings for a full narrative showing whether the children were truly in need of protection. Remanding the case, rather than reversing, would have allowed for further inquiry into the children's needs and ensured a proper balancing between the father's rights and the children's interests.

I. INTRODUCTION

"Narrative imagining—story—is the fundamental instrument of thought. Rational capacities depend upon it. It is our chief means of looking into the future, of predicting, of planning, and of explaining." As an essential component of legal practice, "the value of storytelling is undisputed." It is found in courtroom advocacy, policy-making, and even findings of fact. Plot, setting, and characters are all important to developing the stories on which courts base their decisions. Stories are especially important to the legal field because listening to and reading...
them increases empathy for the persons involved. Empathizing and thinking about the issue from someone else's perspective and experience allows a court to make solid "judgments about what is wise or proper to do in a given situation."

Family law cases in particular are a complex area of the law presenting innumerable stories to be told, and protection order actions against parents make up an important portion of those narratives.

Protection orders provide victims of domestic abuse with an immediate solution to protect themselves from further harm. When a protection order is requested against a parent on behalf of his or her children, however, the issue of whether there is abuse becomes only one of multiple considerations. The United States Supreme Court has held that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." Thus, absent extraordinary circumstances, the state does not typically become involved in family issues.

Parental rights are threatened when a protection order is granted, especially where an order restricts all interaction with the children for the given period of time. Those rights may be restricted only where doing so implements the least restrictive alternative and is in the best interests of the children. There must also be a significant focus on ending the cycle of violence and abuse. South Dakota's domestic abuse statutes offer trial courts significant discretion in finding the best remedy for a given situation, allowing for the protection of both the children and the parents' rights.

At issue in Purcell v. Begnaud was whether the trial court struck the proper balance between those concerns. In Purcell, the line between the competing rights was blurred by a lack of sufficient findings of fact to be considered on review.

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5. Moran, supra note 2, at 10. See also Van Patten I, supra note 3, at 239 (asserting that storytelling "can show the way to a common ground that ties in to the basic values of the listener").


7. Id. at 18.


9. See In re S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d 213, 220 (discussing the presumption that parents should keep their rights and the state's reluctance to interfere with those rights); Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981) (discussing the best interests of the child standard and introducing the need to balance the various rights at stake).


11. See S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d at 220 (explaining the state's reluctance to interfere with the family).

12. See Purcell v. Begnaud, 2017 SD 23, ¶ 12, 895 N.W.2d 346, 350 (criticizing the trial court's prohibition of all contact between father and children for three years).

13. See In re S.A., 2005 SD 120, ¶¶ 22, 27, 708 N.W.2d 673, 680, 683 (explaining the need to reduce the risk of abuse without overly restricting parental rights).


16. Purcell, 2017 SD 23, ¶¶ 7-12, 895 N.W.2d at 349-50.

17. Id. ¶¶ 10-11, 895 N.W.2d at 349-50.
The South Dakota Supreme Court held in Purcell that the trial court abused its discretion in granting a protection order for two children against their father without submitting sufficient findings to support the order.\textsuperscript{18} The court reversed the protection order as it pertained to the children based on its finding that no evidence in the record supported such a restriction of the father’s rights.\textsuperscript{19} However, the trial court’s findings of fact were not clear enough for the supreme court to make that determination.\textsuperscript{20} The court also did not focus its opinion on the best interests of the children—as is necessary in any case concerning children’s rights.\textsuperscript{21} The court’s discussion of an alternative to the granted protection order was brief and incomplete.\textsuperscript{22} The trial court had significant discretion to determine the best form of relief, and while the protection order granted was not the least restrictive option available, other options may have been appropriate to protect the children.\textsuperscript{23}

The court was correct in stating that the trial court’s findings of fact were incomplete or insufficient to prove the need for a protection order.\textsuperscript{24} However, remanding the decision for clarification of the trial court’s findings and reasoning would have safeguarded the children’s interests in a way that the supreme court’s decision did not.\textsuperscript{25} The supreme court has been willing to remand similar cases in the past based on the belief that the whole story needed to be analyzed to make the correct decision.\textsuperscript{26} The court could not be sure that there was no need for a protection order without learning as much about the situation as possible, and failure to allow for the necessary clarification in this instance recklessly ignored the fact that the children may have still needed protection.\textsuperscript{27}

The supreme court should have remanded, rather than reversed, the trial court’s decision because further inquiry into whether protection was warranted

\textsuperscript{18} Id. ¶ 13, 895 N.W.2d at 351.
\textsuperscript{19} Id. ¶¶ 11, 14, 895 N.W.2d at 350-51.
\textsuperscript{20} Id. ¶ 12, 895 N.W.2d at 350.
\textsuperscript{21} Id. ¶¶ 7-12, 895 N.W.2d at 349-50; Madson v. Madison, 313 N.W.2d 42, 44 (S.D. 1981).
\textsuperscript{22} Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350.
\textsuperscript{23} See S.D.C.L. § 25-10-5 (2013 & Supp. 2017) (enumerating the various available forms of relief); In re S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d 213, 220 (explaining the state’s interest in removing itself from involvement in the family).
\textsuperscript{24} Purcell, 2017 SD 23, ¶ 7, 895 N.W.2d at 349.
\textsuperscript{25} Compare Repp v. Van Someren, 2015 SD 53, ¶ 12, 866 N.W.2d 122, 126-27 (explaining why remanding is a better option than reversing), and Shroyer v. Fanning, 2010 SD 22, ¶ 11, 780 N.W.2d 467, 472 (remanding for insufficient findings of fact), with Purcell, 2017 SD 23, ¶¶ 12-14, 895 N.W.2d at 350-51 (reversing without considering whether protection could still be needed), and Castano v. Ishol, 2012 SD 85, ¶¶ 17-18, 824 N.W.2d 116, 121 (reversing only, without explanation).
\textsuperscript{26} See, e.g., Repp, 2015 SD 53, ¶ 12, 866 N.W.2d at 126-27 (remanding for improved findings regarding a protection order); Shroyer, 2010 SD 22, ¶ 11, 780 N.W.2d at 472 (reversing and remanding for failure to enter findings of fact to support protection order); Judstra v. Donelan, 2006 SD 32, ¶ 9, 712 N.W.2d 866, 869 (same); Goeden v. Daum, 2003 SD 91, ¶ 10, 668 N.W.2d 108, 111 (same).
\textsuperscript{27} Madson v. Madison, 313 N.W.2d 42, 44 (S.D. 1981). See also Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350 (professing the court’s inability to properly determine whether the protection order was necessary); Appellee’s Brief at 12, Purcell v. Begnaud, 2017 SD 23, 895 N.W.2d 346 (No. 27940) [hereinafter Appellee’s Brief] (arguing that even if the trial court erred, remand is necessary to ensure the children’s protection).
would have increased the chance of achieving an appropriate balance of rights.\textsuperscript{28} In reaching this conclusion, this casenote first presents the facts of the \textit{Purcell} case.\textsuperscript{29} Then, this casenote discusses the background surrounding domestic abuse and protection orders.\textsuperscript{30} The background focuses on fundamental parental rights, the domestic abuse statutes of South Dakota and other states, and the necessity of finding solutions that both safeguard children from abuse and protect parents’ rights.\textsuperscript{31} Finally, the casenote analyzes the facts of \textit{Purcell} within that context to show that, in reversing the case, the supreme court failed to recognize the possibility that other remedies may better protect the children, and that in order to determine the proper balance between Begnaud’s rights and the children’s rights, the trial court should have had the opportunity to clarify its findings of fact.\textsuperscript{32}

\section*{II. FACTS AND PROCEDURE}

On June 2, 2016, Sarah Purcell petitioned for a protection order on behalf of herself and her two children against the children’s father, Gregory Begnaud.\textsuperscript{33} The children were eight and seven years old when the petition was filed.\textsuperscript{34} Purcell and Begnaud were never married, and Purcell had full legal and physical custody of both children.\textsuperscript{35} The petition alleged that Begnaud used methamphetamine twice in the month before the petition was filed, in violation of his probation at that time.\textsuperscript{36} Purcell also alleged that Begnaud had raised his fist and pulled back as if to hit her, stopping just before hitting her face.\textsuperscript{37} According to Purcell’s testimony at the protection order hearing, that particular incident occurred a couple years earlier.\textsuperscript{38} She filed charges against Begnaud for the incident.\textsuperscript{39} Purcell filed the petition for a protection order because she worried about meth’s effects on Begnaud and what he was capable of under the influence; she also feared that he would take his anger out on the children.\textsuperscript{40}

The Third Judicial Circuit Court held a hearing on the protection order on June 27, 2016.\textsuperscript{41} In addition to testifying about the raised-fist incident, Purcell stated that on May 20, 2016, she met Begnaud at his fiancée’s business, where he...
confessed to the relapse and meth use. While there, Purcell felt afraid when Begnaud's fiancée locked the door after Purcell entered the business. Begnaud testified that the door was only locked so they would not be interrupted. The children were not present during that encounter. Purcell did not file a police report for that incident. Purcell was generally concerned with Begnaud's history of violence, threatening behavior, and substance abuse—though he had never physically harmed her or the children. Begnaud testified that he had never harmed nor threatened them.

At the close of the June 27th hearing, the trial court granted the three-year protection order, which provided that Begnaud must stay at least 300 feet from Purcell and the children. The protection order also prohibited Begnaud from any phone calls, emails, third-party contact, or any other correspondence with them. There was no discussion of visitation with the children. Though the trial court made written and oral findings of fact that did not explicitly mention the children, the court extended the protection order to them. The trial court presented its written findings on a standardized form requesting little detail and simply requiring check marks next to applicable boilerplate text. Concerned with the adequacy of the written findings, Begnaud filed an appeal of the decision on July 26, 2016.

In his appeal, Begnaud argued that, without a clear finding of abuse toward the children, it was an abuse of the trial court’s discretion to grant a protection order as it pertains to them. Begnaud admitted that the trial court made appropriate findings to grant a protection order for Purcell. However, he argued a “generalized statement of concern for the minor children” did not create a satisfactory basis for finding domestic abuse toward them. Purcell responded to the appeal by arguing that the trial court weighed all the relevant information in determining that there was sufficient potential for abuse to grant the protection order for the children. Purcell also stated that, in having full custody of the children, she knew best what the children felt and what would be in their best

42. Id.
43. Id.
44. Id.
45. Id.
46. Appellee's Brief, supra note 27, at 3.
47. Id.
48. Id.
49. Purcell, 2017 SD 23, ¶¶ 4-5, 895 N.W.2d at 348.
50. Id. ¶ 4, 895 N.W.2d at 348.
51. Id.
52. Id. ¶¶ 4, 10, 895 N.W.2d at 348, 350.
53. Id. ¶ 10, 895 N.W.2d at 350.
54. Appellant's Reply Brief at 5 n.3, Purcell v. Begnaud, 2017 SD 23, 895 N.W.2d 346 (No. 27940) [hereinafter Appellant’s Brief]; Appellee's Brief, supra note 27, at 2.
55. Appellant’s Brief, supra note 53, at 5.
56. Id. at 6.
57. Id. at 8.
58. Appellee's Brief, supra note 27, at 7.
interests. Finally, Purcell argued that the trial court, in granting a protection order for the children, recognized that “even slight communication or exposure regarding the exchange of children for visitation purposes” was a risk to Purcell’s safety under the protection order.

The South Dakota Supreme Court, in reviewing the protection order, reversed, determining that the requirements for a protection order were not met in regard to the children. The court stated that the protection order applied only to Purcell based on the information in the order and in the findings of fact. The court’s analysis centered around concern for Begnaud’s rights as a parent and failed to present any discussion of the children’s best interests. The court briefly mentioned the possibility of harm to the children if Begnaud were to relapse, but it felt the concern was only a possibility. The court also suggested that some visitation could be included in the protection order requirements, stating “it was an abuse of discretion to impose the protection order without exception and without considering visitation.” However, the court moved quickly past that discussion as well, transitioning to an analysis of the granted protection order’s effect on Begnaud. The supreme court ultimately reversed due to the insufficiency of the trial court’s findings of fact in regard to the children and a perceived abuse of discretion through that insufficiency.

III. BACKGROUND

A presumption against restricting parents’ rights, a reluctance to interfere with the family, and a focus on the best interests of the child provide a backdrop to any discussion of protection orders against parents on behalf of their children. This section will first discuss those considerations. Next, this section will analyze how those interests balance to ensure that each party to a protection order proceeding is protected. The discussion will then turn to how those considerations prop up the underlying goals of domestic abuse statutes, both in

59. Id. at 10-11.
60. Id. at 11.
62. Id. ¶ 10, 895 N.W.2d at 350.
63. Id. ¶¶ 7-12, 895 N.W.2d at 349-50.
64. See id. ¶ 12, 895 N.W.2d at 350 (“The only discernable justification for this order is Purcell’s understandable (even if inconsistent) concern that Begnaud might relapse again and that if he does, he might harm the children.”).
65. Id.
66. Id.
67. Id. ¶¶ 12-14, 895 N.W.2d at 350-51.
68. See In re S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d 213, 220 (considering the presumption that parents should keep their rights and the state’s reluctance to interfere); Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981) (examining the best interests of the child standard).
69. See infra Part III.A (discussing the competing rights and interests in protection order proceedings against parents).
70. See infra Part III.A (discussing how to balance the various rights).
Finally, the background will analyze trial courts’ findings of fact as a means of ensuring on review that a granted protection order is in line with all necessary considerations.\textsuperscript{72}

A. THE CONFLICT: BALANCING THE PARENTS’ RIGHTS AND THE CHILDREN’S BEST INTERESTS

All considerations of how parental rights should be maintained or restricted center around the rebuttable presumption that parents should keep all of their natural parental rights.\textsuperscript{73} Failure to act as a model parent does not automatically lead to the restriction of one’s parental rights.\textsuperscript{74} The presumption that parents should keep their rights is only rebutted by proof:

1. That the parent has abandoned or persistently neglected the child;
2. That the parent has forfeited or surrendered his or her parental rights over the child to any person other than the parent;
3. That the parent has abdicated his or her parental rights and responsibilities; or
4. That other extraordinary circumstances exist which, if [the parent retained his or her rights], would result in serious detriment to the child.\textsuperscript{75}

There are many ways in which courts work to protect those rights.\textsuperscript{76} Courts use findings of fact to ensure that any restriction of parental rights is proper or necessary.\textsuperscript{77} They also provide proper notice of hearings to parents so they know they have the ability to present evidence and cross-examine witnesses at those hearings.\textsuperscript{78} ‘Taking those steps allows courts to ensure that the presumption against restricting parents’ rights is maintained.’\textsuperscript{79}

The presumption regarding parental rights stems from the state’s reluctance to have too much involvement within the family absent extraordinary

\textsuperscript{71} See infra Parts III.B-C (discussing statutes defining domestic abuse and solutions provided to victims of domestic violence).

\textsuperscript{72} See infra Part III.D (discussing the necessity of good findings of fact).

\textsuperscript{73} S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d at 220. See also Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("[T]he custody, care and nurture of the child reside first in the parents . . ."); Roe v. Conn, 417 F. Supp. 769, 777 (M.D. Ala. 1976) ("[T]here is a fundamental right to family integrity . . .").

\textsuperscript{74} S.M.N., 2010 SD 31, ¶ 29, 781 N.W.2d at 225.

\textsuperscript{75} S.D.C.L. § 25-5-29 (2013).

\textsuperscript{76} See, e.g., S.M.N., 2010 SD 31, ¶ 29, 781 N.W.2d at 225 (finding that there were not sufficient facts to restrict mother’s parental rights in favor of a grandmother as guardian); In re S.A., 2005 SD 120, ¶ 20, 708 N.W.2d 673, 680 (explaining that adjudicatory and dispositional hearings are a means by which parental rights are protected).

\textsuperscript{77} S.M.N., 2010 SD 31, ¶ 29, 781 N.W.2d at 225.

\textsuperscript{78} S.A., 2005 SD 120, ¶ 20, 708 N.W.2d at 680.

\textsuperscript{79} See S.M.N., 2010 SD 31, ¶ 17, 781 N.W.2d at 221 (reaffirming the need to protect parents’ fundamental rights); S.A., 2005 SD 120, ¶¶ 18-20, 708 N.W.2d at 679-80 (demonstrating protection of parental rights through court proceedings).
circumstances. The state’s reluctance to get involved is illustrated by the statute allowing a person to petition for a protection order due to domestic abuse, which states “there exists [such] an action,” implying that the action is used sparingly. Maintaining a distance from the workings of a family allows the state to ensure that parental rights are not unconstitutionally infringed on. However, the state must also work to protect the child’s best interests. Resistance to having too much involvement in familial issues prompts courts to consider the least restrictive alternatives while balancing the presumption that parents should retain their rights against the best interests of the children in making protection order determinations.

Courts are more willing to get involved in the family when a child’s welfare is at stake. The focus in those situations is on the child's best interests. Judges use this consideration in all cases involving the rights of children. Children’s best interests concern their “temporal, mental and moral welfare.”

In Fuerstenberg v. Fuerstenberg, the South Dakota Supreme Court laid out multiple factors to be considered in the best interests analysis. Those factors include the fitness of the parent, the stability the parent can provide, the degree of involvement the parent has had in the child’s life, substantial changes in circumstances, and any harmful misconduct by the parent. A court is not

80. See S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d at 220 (explaining the state’s reluctance to interfere with the family).
82. See S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d at 220 (emphasizing the constitutional protections granted to parents for the care and control of their children).
83. S.A., 2005 SD 120, ¶ 22, 708 N.W.2d at 680.
84. Id. ¶¶ 21-22, 708 N.W.2d at 680; Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981).
85. Madson, 313 N.W.2d at 44.
86. Id.
88. See, e.g., In re S.M.N., 2010 SD 31, ¶ 21, 781 N.W.2d 213, 222 (stating that the children’s best interests is only one factor toward the consideration of extraordinary circumstances that require parental rights to be limited); Stavig v. Stavig, 2009 SD 89, ¶ 13, 774 N.W.2d 454, 458 (illustrating the “temporal, mental and moral” aspects of the best interests of a child); S.A., 2005 SD 120, ¶ 22, 708 N.W.2d at 680 (indicating that the best interests of the children are the very first consideration when looking at restricting parental rights); Madson, 313 N.W.2d at 44 (requiring the trial court to determine what would serve the best interests of the child).
89. Stavig, 2009 SD 89, ¶ 13, 774 N.W.2d at 458; Fuerstenberg v. Fuerstenberg, 1999 SD 35, ¶ 22, 591 N.W.2d 798, 806; Madson, 313 N.W.2d at 43. In this context, temporal means “involving the affairs . . . of human life.” Temporal, BLACK’S LAW DICTIONARY (10th ed. 2014). Mental refers to the child’s state of “mental health or capacity.” Mental State, BLACK’S LAW DICTIONARY (10th ed. 2014). Moral implies the ability to act “in accordance with what is good, right, and honest.” Moral, BLACK’S LAW DICTIONARY (10th ed. 2014). The terms are not defined in statute or case law. LaFave, supra note 87, at 472.
90. Fuerstenberg, 1999 SD 35, ¶¶ 23-34, 591 N.W.2d at 807-10.
91. Id.
required to make a finding on each factor, but the decision must be made in a "balanced and methodical" way. Fit parents are presumed to be acting in their children's best interests in these areas based on the fundamental belief that parents should be allowed to care for their children. Even if someone is a generally fit parent, however, he or she may still be denied parental rights if the child’s best interests so require. A history of abuse to others may influence the denial of rights to an otherwise fit parent, requiring a more serious consideration of a child’s need for protection. Abuse to one of a child’s parents, committed by the other parent in the presence of a child who can recognize the impropriety of such abuse, can have a harmful effect on the child just as direct abuse would. The effects on the child are clear:  

Even if the child is not physically injured, he likely will suffer emotional trauma from witnessing violence between his parents. Abuse appears to be perpetuated through the generations; an individual who grows up in a home where violence occurs is more likely either to abuse others as an adult or to be a victim of abuse. Adult abuse, therefore, is a problem affecting not only the adult members of a household but also the children. However, “marital responsibilities must not be confused with parental responsibilities,” and abuse within the marriage does not always translate to abuse against children. Where the abuse to a parent has not had “a demonstrable effect . . . upon the child, it does not follow that the parent is [automatically] an unfit person . . . ” The harm to the child arises when the child is able to “recognize the improprieties” of the parent’s actions. That harm, or other

92. Id. ¶ 35, 591 N.W.2d at 810.  
94. Madson, 313 N.W.2d at 44. See also Naomi Cahn, Child Witnessing of Domestic Violence, A BATTERED MOTHER (Apr. 14, 2011), https://abatteredmother.wordpress.com/2011/04/14/child-witnessing-of-domestic-violence/ (“While courts give deference to the notion of parental prerogatives, the state can remove children from their parents for abuse and neglect.”).  
95. Fuerstenberg, 1999 SD 35, ¶ 20, 559 N.W.2d 868, 873. See also Madson, 313 N.W.2d at 43-44 (discussing restrictions of the parental rights of generally fit parents); Rosie Gonzalez & Janice Corbin, The Cycle of Violence: Domestic Violence and Its Effects on Children, 13 SCHOLAR 405, 413 (2010) (stating that even as a bystander to abuse, a child will be affected physically and mentally); Cahn, supra note 94 (“[T]he existence of domestic violence in a family often translates into a direct risk of physical harm for children . . . .”).  
96. Madson, 313 N.W.2d at 44; Baron I, supra note 87, at 421; Gonzalez & Corbin, supra note 95, at 413. See also Cahn, supra note 94 (analyzing research on the detriments to children who witness domestic violence). Violence between parents affects children “cognitively, emotionally, and physically . . . .” Cahn, supra note 94. Some states have even added exposure to domestic violence as a form of child abuse. Id.  
97. Missouri ex rel. Williams v. Marsh, 626 S.W.2d 223, 229 (Mo. 1982).  
98. Madson, 313 N.W.2d at 43 (citing Holforty v. Holforty, 272 N.W.2d 810, 811 (S.D. 1978)).  
99. Id.  
100. Id. at 44. See also Fuerstenberg, 1999 SD 35, ¶ 31, 591 N.W.2d at 809 (explaining that, when a child can recognize the misconduct, its “harmful effect is self-evident”); Baron I, supra note 87, at 421 (discussing when marital misconduct becomes a relevant consideration). Where the harm arises, it can come in the form of post-traumatic stress, anxiety, depression, and other mental health issues. Sherry Hamby et al., Children’s Exposure to Intimate Partner Violence and Other Family Violence, U.S. DEP’T JUSTICE 2 (Oct. 2011), https://www.ncjrs.gov/pdffiles1/ojjdp/232272.pdf.
extraordinary circumstances causing the child serious detriment, imply the child’s best interests may be served by restricting parental rights. Any such finding, however, still requires a balancing of the parental rights with the child’s interests.

A child’s needs and fears also play into the best interests inquiry. Evidence of fear of imminent harm must be weighed by the court or jury to determine whether the fear is present. In Beermann v. Beermann, the South Dakota Supreme Court stated that, to determine whether a daughter’s fear of her father was rational, it had to analyze the fear “in light of her knowledge of her father’s violent history.” The court stated that in light of that history of abuse, and in relation to the traditional cycle of domestic abuse, the fact that the father had never directly abused the daughter actually supported “her fear at his sudden rage, verbal outburst, and aggressive physical conduct.” The escalating nature of abuse is also considered in determining whether the child’s welfare would be adversely impacted by the parent maintaining his rights. The nature of domestic abuse can cause fear of such abuse simply through observing changed, more threatening behavior by a parent, and the rationality of such fear may be analyzed in determining whether the domestic abuse definition is fulfilled.

The goal in making decisions about restricting parental rights is to find the proper balance between those rights and the children’s needs. In creating that balance, courts must have as much information as possible about the situation and history of abuse. The inquiry into what solutions would provide the most protection with the least restriction should be based on that information. Where the interests of children are at stake, the state will step in to protect them—but only to the least extent necessary. Reluctance to get involved on the state’s part leads to careful balancing of the various interests in those serious situations in

101. In re S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d 213, 220; Madson, 313 N.W.2d at 44. See also Troxel v. Granville, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting) (discussing the state’s interest in protecting children along with the parents’ and child’s interests).


103. See Beermann v. Beermann, 1997 SD 11, ¶¶ 20-23, 559 N.W.2d 868, 873-74 (discussing the effect of petitioner-daughter’s fear of the change in her father’s behavior).

104. Beermann, 1997 SD 11, ¶ 20, 559 N.W.2d at 873.

105. Id. ¶¶ 21-23, 559 N.W.2d at 873-74.


107. See Beermann, 1997 SD 11, ¶ 20, 559 N.W.2d at 873 (stating the change in her father’s behavior caused minor daughter to develop a rational fear of abuse).


110. Id.

which it does get involved. When those interests are not properly balanced, both the children’s interests and the parents’ rights are at risk.

B. THE MOTIF: ADHERING TO DOMESTIC ABUSE STATUTES

Domestic abuse statutes aim to provide effective responses to the problem of domestic abuse. The statutes developed as a means of providing “an immediate . . . solution to family members . . . who are subjected to domestic abuse.” The statutes allow for a quick response to abuse or warnings of abuse, which can serve to eliminate a violent situation before it gets worse. Putting an end to the violence and protecting the victim and other family members going forward are important considerations in any protection order proceeding. Those considerations have given courts discretion to come up with the best solutions for any domestic violence situation, so long as they are in line with the statutes.

Because the presence of “[d]omestic abuse is a prerequisite for the issuance of a protection order under SDCL 25-10-5,” understanding the statutory definition of domestic abuse is important for guiding a discussion of those protection orders. Under section 25-10-1(1) of the South Dakota Codified Laws, domestic abuse is physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a [familial] relationship . . . . Any violation of [an existing protection order] or [the stalking statutes] or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship.

To obtain relief, a person must prove such abuse “by a preponderance of the evidence.” That standard of evidence has not changed since the statute’s enactment in 1981.

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114. See, e.g., Madson, 313 N.W.2d at 44 (remanding where the information given to balance rights was insufficient because “[t]he interests of the child are too important” to proceed without a finding of such information).
116. Id. See also 1 LISA G. LERMAN, FAMILY LAW AND PRACTICE § 6.02[1] (Maureen Galvin Dwyer ed., 2009) (discussing the possible relief provided by domestic abuse statutes).
117. See Beermann, 1997 SD 11, ¶ 13, 559 N.W.2d at 871 (asserting the domestic abuse statutes’ ability to act preemptively where abuse is likely to occur).
118. Klein & Orloff, supra note 14, at 1130.
119. LERMAN, supra note 116, at § 6.02[1]; Klein & Orloff, supra note 14, at 911.
123. See id. (demonstrating that a preponderance of the evidence remains the legal standard).
In fact, the definition of domestic abuse has seen few substantial changes since it was first enacted. In 2005, the legislature clarified that abuse under the chapter was restrained to that “committed between family or household members.” In 2007, the maximum duration of a protection order was increased from three years to five years. Finally, in 2014, section 25-10-1 of the South Dakota Codified Laws took on its current form, with its only changes being references to newly organized sections of Chapter 25-10: Protection from Domestic Abuse. The lack of any significant changes to the content since their enactment indicates that the values supporting the domestic abuse statutes and the evidence required to prove a need for protection have remained the same since the need for those statutes was initially recognized.

Other states define domestic abuse similarly to South Dakota. For example, North Dakota defines domestic violence as “physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of [those abuses], not committed in self-defense, on the complaining family or household members.” Nebraska defines domestic abuse as “[a]ttempting to cause or intentionally and knowingly causing bodily injury . . . [and] [p]lacing, by means of credible threat, another person in fear of bodily injury . . . .” Minnesota’s domestic abuse definition includes “physical harm, bodily injury, or assault” and “infliction of fear of” those things as well. The similarities between the definitions imply that the same underlying values control each state’s approach to dealing with domestic violence.

There are also interesting differences between other states’ definitions and South Dakota’s. Iowa’s definition, for example, focuses on the word “assault” in describing the actions occurring between individuals that qualify as domestic abuse. Illinois’s definition includes “interference with personal liberty or willful deprivation” in its list of actions that count as domestic abuse. Montana

129. See, e.g., COLO. REV. STAT. ANN. § 13-14-101(2) (West 2018) (defining domestic abuse); KAN. STAT. ANN. § 60-3102 (West 2018) (same); MICH. COMP. LAWS ANN. § 400.1301(d) (West 2018) (same); MINN. STAT. ANN. § 518B.01(a) (West 2017) (same); NEB. REV. STAT. ANN. § 42-903 (West 2018) (same); N.D. CENT. CODE ANN. § 14-07.1-01(2) (West 2017) (same); WIS. STAT. ANN. § 813.12 (West 2017) (same).
130. N.D. CENT. CODE ANN. § 14-07.1-01(2).
131. NEB. REV. STAT. ANN. § 42-903.
132. MINN. STAT. ANN. § 518B.01(a).
133. See Klein & Orloff, supra note 14, at 956-59 (discussing various states’ legislative intent to protect individuals from violence and end it in the future).
134. See, e.g., 750 ILL. COMP. STAT. ANN. 60/103(1), (3) (West 2018) (defining domestic abuse); IOWA CODE ANN. § 236.2(2) (West 2018) (same); MONT. CODE ANN. § 41-3-102(7) (West 2017) (defining child abuse).
135. IOWA CODE ANN. § 236.2(2).
136. 750 ILL. COMP. STAT. ANN. 60/103(1).
provides a definition of child abuse standing alone, which includes physical or psychological harm and the risk thereof. While those variances do not entirely make the definitional content differ from South Dakota's, it is beneficial to observe the aspects a given state finds important to focus on within domestic abuse.

C. THE TURNING POINT: CONSIDERING ALL POSSIBLE SOLUTIONS FOR DOMESTIC VIOLENCE

Domestic abuse has been a serious issue of increasing concern to states in recent history, and the statutes mentioned above are products of each state's efforts to deal with the problem. The statutes seek to provide solutions for many different harms to domestic abuse victims. Looking more closely at one South Dakota code provision, the implementation of the "fear of imminent...harm" language indicates a recognition that domestic abuse can begin, or be expected, before any physical abuse occurs. The fact that violence has not occurred toward a particular family member before does not make it unreasonable to believe that it will, especially where abuse has previously been directed toward others. Abusers will often accidentally hurt children who are in the cross-fire, but abusers are also generally more likely to abuse their children once they have begun abusing others.

Rather than occurring randomly, domestic abuse involves a cycle including periods of harmony and periods of explosive abuse. Experts have identified three stages in that cycle: "the tension building phase; the explosion or acute battering phase; and the calm, loving respite (often called the honeymoon phase)." It is easy to fail to identify abuse when the relationship is not in the explosive phase. The cyclical nature of abuse, however, refutes the argument

137. MONT. CODE ANN. § 41-3-102(7).
139. See BARON II, supra note 126, at 862 (introducing the serious problem of domestic abuse in South Dakota and the legislature's response); LERMAN, supra note 116, at § 6.02[1] (discussing the development of domestic abuse laws over time); Klein & Orloff, supra note 14, at 810 (discussing legal reform efforts regarding domestic abuse).
141. S.D.C.L. § 25-10-1(1). See also Beermann, 1997 SD 11, ¶ 22, 559 N.W.2d at 873-74 (discussing the cycle of domestic violence).
142. Beermann, 1997 SD 11, ¶ 22, 559 N.W.2d at 873. See also Klein & Orloff, supra note 14, at 962 (stressing the relevancy of spousal abuse in the best interests of the child analysis).
143. Klein & Orloff, supra note 14, at 955; Cahn, supra note 94.
144. Beermann, 1997 SD 11, ¶ 22, 559 N.W.2d at 873-74; Gonzalez & Corbin, supra note 95, at 409-10.
145. Beermann, 1997 SD 11, ¶ 22, 559 N.W.2d at 873-74 (quoting Montana v. Stringer, 897 P.2d 1063, 1069 (Mont 1995)). See also Gonzalez & Corbin, supra note 95, at 409-10 (discussing the same).
146. See Klein & Orloff, supra note 14, at 958 (identifying the need to educate judges about the cycle of violence).
that lack of prior instances of abuse makes it unreasonable for a victim to fear it happening in the future.\textsuperscript{147}

Legislatures have worked to find solutions for improving and ending the cycle of domestic violence.\textsuperscript{148} As one such solution, a protection order "puts the would-be abuser on notice that his or her actions will be scrutinized."\textsuperscript{149} Protection orders also "provide victims with an efficient, alternative remedy to criminal prosecutions," requiring victims to meet a preponderance of the evidence standard rather than the higher beyond a reasonable doubt standard necessary in prosecution of a criminal case for abuse.\textsuperscript{150} The lower standard aids in providing quick protection for those who need it.\textsuperscript{151}

When it is in victimized children's best interests to have parental rights restricted, the issuance of a protection order offers some immediacy in protecting them from abuse.\textsuperscript{152} In order to obtain that protection in South Dakota, any person in a familial relationship may file a petition "against any other person in such a relationship."\textsuperscript{153} The petition must "allege the existence of domestic abuse" and include "an affidavit . . . stating the specific facts and circumstances of the domestic abuse."\textsuperscript{154} The allegation of domestic abuse must show proof of "physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury."\textsuperscript{155} Even where that showing is present, however, a full and permanent protection order may not be the best solution.\textsuperscript{156}

Other available solutions work toward finding the least restrictive alternative for a given situation.\textsuperscript{157} The least restrictive alternative is that which most reduces the risk of abuse with the least disruption of parental rights.\textsuperscript{158} Having multiple options ensures that a court is able to develop the best solution for a given situation.\textsuperscript{159} South Dakota's domestic abuse statutes implement that approach by providing two types of protection orders: permanent or temporary.\textsuperscript{160} There is also room in each type of protection order for the court to determine its appropriate length of duration, ranging from thirty days to five years.\textsuperscript{161} The statutes provide

\begin{itemize}
  \item \textsuperscript{147} Beermann, 1997 SD 11, ¶ 22, 559 N.W.2d at 873.
  \item \textsuperscript{148} Klein & Orloff, supra note 14, at 1044-45.
  \item \textsuperscript{149} Beermann, 1997 SD 11, ¶ 14, 559 N.W.2d at 872.
  \item \textsuperscript{151} Beermann, 1997 SD 11, ¶ 13, 559 N.W.2d at 871.
  \item \textsuperscript{152} Id. ¶ 13, 27, 559 N.W.2d at 871, 874.
  \item \textsuperscript{153} S.D.C.L. § 25-10-3(1) (2013 & Supp. 2017).
  \item \textsuperscript{154} § 25-10-3(2).
  \item \textsuperscript{156} See, e.g., Beermann, 1997 SD 11, ¶¶ 26-27, 559 N.W.2d at 874 (supporting the idea of a protection order specified to preventing abuse by father during visitation times).
  \item \textsuperscript{157} In re S.A., 2005 SD 120, ¶ 27, 708 N.W.2d 673, 683.
  \item \textsuperscript{158} Id.
  \item \textsuperscript{159} See Beermann, 1997 SD 11, ¶¶ 13-15, 559 N.W.2d at 871-72 (discussing a trial court's discretion in providing a solution for domestic abuse).
  \item \textsuperscript{160} § 25-10-1.
  \item \textsuperscript{161} Id.
for other types of relief for domestic abuse as well, such as ordering counseling, temporary custody or visitation arrangements, or "other relief as the court deems necessary," allowing the court significant discretion in determining the appropriate course of action.162

In the unique case of Beermann v. Beermann, a minor petitioned for a protection order against her father to simply prevent violence during her visits with him.163 The South Dakota Supreme Court determined that, depending on the evidence of abuse, the least restrictive course of action in that situation could be to grant a protection order limited to that specific situation.164 The domestic abuse statutes, the court noted, were meant to provide effective solutions for victims of domestic abuse, and the statutes allow the court the freedom to determine what solutions are appropriate in each situation.165

D. THE RESOLUTION: TELLING THE STORY THROUGH FINDINGS OF FACT

In general, the court must review the granting of a protection order through two steps: "First, [it must] determine whether ‘the trial court’s findings of fact were clearly erroneous.’ . . . If the trial court’s findings of fact are not clearly erroneous, [the court] ‘must then determine whether the trial court abused its discretion in granting or denying the protection order.’"166 That process allows the court to consider the trial court’s superior opportunity to observe the witnesses and evidence.167 Abuse of discretion could take the form of a simple error or use of discretion for "an unjustified purpose, against reason and evidence."168 In reviewing the findings of fact under that process, the court will only set them aside if it is "left with a definite and firm conviction that a mistake has been made."169 To successfully fulfill those requirements, a good record—telling the story of the evidence—must be established for the court to review.170

The trial court’s findings of fact and conclusions of law are the means by which it narrates what protection is needed and why it is needed.171 The reviewing

163. Beermann, 1997 SD 11, ¶ 14, 559 N.W.2d at 872.
164. Id. ¶¶ 13, 15, 559 N.W.2d at 871-72. The court explained that a trial court has discretion to determine whether a protection order is necessary or what type is necessary. Id. The court also specified the purpose of a protection order: "put[ting] the would-be abuser on notice that his or her actions will be scrutinized." Id. ¶ 14, 559 N.W.2d at 872. The protection order requested would thus put the father on notice. Id.
165. Id. ¶ 27, 559 N.W.2d at 874. See also In re Marriage of McCoy, 625 N.E.2d 883, 886 (Ill. App. Ct. 1993) (stressing the breadth of harms that domestic abuse statutes seek to address).
166. Shroyer v. Fanning, 2010 SD 22, ¶ 6, 780 N.W.2d 467, 469 (quoting White v. Bain, 2008 SD 52, ¶ 8, 752 N.W.2d 203, 206) (internal citations omitted).
167. Id. (quoting White, 2008 SD 52, ¶ 8, 752 N.W.2d at 206).
171. Repp, 2015 SD 53, ¶ 11, 866 N.W.2d at 126. See also Howell, supra note 3, at 58 (asserting that findings of fact and conclusions of law ensure that the trial court exercised adequate care in making
court must have sufficient findings of fact at its disposal to make a meaningful analysis on appeal.\textsuperscript{172} A "stale" or insufficient record cannot be reviewed without some risk that the interests of the child will not be properly served or that parental rights will be unreasonably restricted.\textsuperscript{173} The trial court has a superior opportunity to observe the evidence and witnesses presented at trial, making it the proper entity to ensure that there is a balance between parental rights and children's interests.\textsuperscript{174} The balance struck by the trial court should be clear enough for review by a higher court to be successful.\textsuperscript{175}

Findings of fact must have enough detail to allow the reviewing court to understand why the decision was made.\textsuperscript{176} The findings are adequate where the reviewing court can glean from them the factual basis for a decision.\textsuperscript{177} For example, where a court's findings simply stated that domestic violence had occurred without any specific statement of supporting facts, the findings were insufficient to use on review.\textsuperscript{178} When important facts are in dispute, the findings of fact, whether made orally or in writing, should "indicate which version of the evidence [the court] believed or how the evidence met [the required] elements."\textsuperscript{179} That indication allows the reviewing court to determine whether the decision was correct or not.\textsuperscript{180}

The South Dakota Supreme Court has previously remanded protection order cases for revision of findings of fact.\textsuperscript{181} It has done so based on the belief that sorting out the truth is important, especially where remand is specifically requested.\textsuperscript{182} In \textit{Repp v. Van Someren}, for example, where a woman sought a protection order against her former boyfriend, remand was necessary where findings of fact were insufficient and the defendant specifically requested remand for that reason.\textsuperscript{183} The court reasoned that it "should facilitate, rather than avoid its determination); LaFave, supra note 87, at 472 ("Trial courts are to look at all the facts and circumstances, and out of that gestalt, divine what is in the best interests of the child.").

\textsuperscript{172} Boeckel v. Boeckel, 2010 ND 130, ¶ 20, 785 N.W.2d 213, 221; Repp, 2015 SD 53, ¶ 11, 866 N.W.2d at 126; Shore, 2003 SD 81, ¶ 9, 667 N.W.2d at 315.

\textsuperscript{173} Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981). See also LaFave, supra note 87, at 474 (stating that trial courts' decisions must have a solid basis in the evidence presented).

\textsuperscript{174} Shroyer v. Fanning, 2010 SD 22, ¶ 6, 780 N.W.2d 467, 469; S.A., 2005 SD 120, ¶¶ 21-22, 708 N.W.2d at 680. See also Legrand v. Weber, 2014 SD 71, ¶ 36, 855 N.W.2d 121, 131 (quoting State v. Guthmiller, 2014 SD 7, ¶ 27, 843 N.W.2d 364, 372) ("[I]t is the function of the trier of fact 'to resolve the factual conflicts, weigh credibility, and sort out the truth.'").

\textsuperscript{175} Repp, 2015 SD 53, ¶ 11, 866 N.W.2d at 126.

\textsuperscript{176} Boeckel, 2010 ND 130, ¶ 16, 785 N.W.2d at 220; Howell, supra note 3, at 58. See also Wiswell v. Wiswell, 2010 SD 32, ¶ 10, 781 N.W.2d 479, 482 (requiring "some reasonable measure of consistency and exactness" in findings of fact).

\textsuperscript{177} Boeckel, 2010 ND 130, ¶ 19, 785 N.W.2d at 221.

\textsuperscript{178} Id. ¶¶ 19-20, 785 N.W.2d at 221-22.

\textsuperscript{179} Castano v. Ishol, 2012 SD 85, ¶ 17, 824 N.W.2d 116, 121.

\textsuperscript{180} Repp, 2015 SD 53, ¶ 11, 866 N.W.2d at 126.

\textsuperscript{181} See, e.g., id. ¶ 12, 866 N.W.2d at 126-27 (remanding for improved findings for a protection order). See also Shroyer v. Fanning, 2010 SD 22, ¶ 11, 780 N.W.2d 467, 472 (reversing and remanding for failure to enter findings of fact to support a protection order); Judstra v. Donelan, 2006 SD 32, ¶ 9, 712 N.W.2d 866, 869 (same); Goeden v. Daum, 2003 SD 91, ¶ 10, 668 N.W.2d 108, 111 (same).

\textsuperscript{182} Repp, 2015 SD 53, ¶ 12, 866 N.W.2d at 127.

\textsuperscript{183} Id. ¶ 1, 12, 866 N.W.2d at 123, 127.
sorting out the truth," in allowing the trial court to "complete the task it was trying to accomplish."\(^{184}\) Remanding allows the court to avoid guessing at the truth in situations where important rights are at stake.\(^{185}\) The competing rights and interests are "too important" to be tampered with absent knowledge of the full story.\(^{186}\)

IV. ANALYSIS

In Purcell, further inquiry into the balance between the children’s interests and Begnaud’s rights would have allowed the South Dakota Supreme Court to protect all parties’ rights while ensuring that any necessary protection was provided.\(^{187}\) In reaching that conclusion, this section will analyze the court’s failure to sufficiently consider the children’s best interests and need for protection.\(^{188}\) Next, the analysis will delve into the court’s failure to sufficiently consider alternatives to the granted protection order.\(^{189}\) Finally, this section will discuss the court’s failure to use its power to remand.\(^{190}\)

A. IN ANALYZING THE CONFLICT, THE COURT FAILED TO SUFFICIENTLY CONSIDER THE CHILDREN’S BEST INTERESTS AND NEED FOR PROTECTION

The balance in Purcell between parental rights and children’s interests favored the father after the court’s decision.\(^{191}\) The court did not believe there was sufficient evidence to authorize a “protection order prohibiting all contact between Begnaud and his children for three years.”\(^{192}\) The court determined that failure to specifically mention the children in the findings of fact or oral ruling constituted a failure to find that the children were victims.\(^{193}\) However, the court failed to sufficiently discuss whether there was still a potential need for protection of the children or any extraordinary circumstance that would justify the limitation

\(^{184}\) Id. ¶ 12, 866 N.W.2d at 127.
\(^{185}\) Id. ¶¶ 12-13, 866 N.W.2d at 126-27.
\(^{187}\) See id. (discussing the goal of finding the proper balance between parental rights and children’s interests).
\(^{188}\) See infra Part IV.A (explaining the significance of the court’s failure to consider the children’s best interests).
\(^{189}\) See infra Part IV.B (analyzing the alternatives to the granted protection order that were available to the court).
\(^{190}\) See infra Part IV.C (arguing that the court should have remanded for clarified findings of fact).
\(^{191}\) See Purcell v. Begnaud, 2017 SD 23, ¶¶ 11-12, 895 N.W.2d. 346, 350 (focusing on the father’s potential loss of parental rights).
\(^{192}\) Id. ¶ 13, 895 N.W.2d at 351.
\(^{193}\) Id.
of Begnaud's parental rights. Failing to take the children’s best interests into account promotes reckless decision-making in domestic abuse situations. Abuse to others should be taken into account in determining whether restricting parental rights is in the children’s best interests. Begnaud admitted that the protection order was properly granted as it pertained to Purcell herself, thus admitting that the evidence of abuse to her was accurate. That abuse to Purcell, if the children recognized its impropriety, would serve as a factor supporting that a protection order was in the children’s best interests. Although the considerations may not have necessarily required a protection order in this case, and the findings of fact made by the circuit court were insufficient on this point, Begnaud’s abuse of the children’s mother should have been considered in determining whether there was any need to protect the children.

The court’s consideration of the evidence in the record was brief and focused solely on the father’s perspective. In her brief, Purcell argued against focusing too much on the father’s interests. Purcell argued that, in her role as the custodial parent, she was most equipped to determine the children’s feelings and their best interests; thus, her valid concern that the children were in danger sufficiently supported the trial court’s determination that protecting the children from their father was necessary. Though Begnaud argued that any such assertion was inconsequential to the appeal because meaningful review of the trial court’s decision was not possible, the children’s best interests is a central concern in determining whether parental rights may be restricted or terminated; therefore, the supreme court should have considered the children’s best interests. In fact, it is the first question that should have been asked.

In its opinion, the court failed to look at what may be in the children’s best interests. Despite discussing the possibility of Begnaud harming the children because of a relapse, the court ignored how the children would be affected and focused solely on the effect on Begnaud’s rights. Without some analysis of the

194. See S.D.C.L. § 25-5-29 (2013) (allowing for restriction of parental rights based on extraordinary circumstances); Purcell, 2017 SD 23, ¶ 7-12, 895 N.W.2d at 349-50 (analyzing the facts without mentioning the need to determine with certainty if the children required any protection).
198. See Baron I, supra note 87, at 421 (explaining the harm to children who witness abuse).
199. In re S.M.N., 2010 SD 31, ¶ 16, 781 N.W.2d 213, 220; Purcell, 2017 SD 23, ¶ 10, 895 N.W.2d at 349-50. See also Cahn, supra note 94 (discussing the effects on children of witnessing abuse).
200. Purcell, 2017 SD 23, ¶¶ 11-12, 895 N.W.2d at 350.
201. See Appellee’s Brief, supra note 27, at 10-11 (discussing Purcell’s ability to best determine her children’s needs due to her unique position as full legal and custodial parent).
202. Id.
203. Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981); Appellant’s Brief, supra note 53, at 7; Baron I, supra note 87, at 417, 419.
204. In re S.A., 2005 SD 120, ¶ 22, 708 N.W.2d 673, 680.
205. See Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350 (focusing on the potential for Begnaud to lose his parental rights).
206. See id. (discussing briefly the concern that Begnaud may relapse).
children’s interests, it cannot be determined how they would be best served; therefore, the court impermissibly shifted focus away from what should be the paramount question in such cases.\textsuperscript{207}

The court reversed the protection order as it pertained to the children based on its belief that the necessary findings were not made.\textsuperscript{208} However, as suggested by Purcell in her brief, the court had discretion to remand the issue for further entry of improved findings of fact by the trial court.\textsuperscript{209} Although the protection order granted was not the least restrictive alternative for protecting the children from abuse by Begnaud, a simple reversal, offering no chance for the trial court to modify or clarify the findings of fact, diminished the assurance of both the children’s protection and the preservation of Begnaud’s parental rights.\textsuperscript{210} By simply reversing, the court ignored the possibility that a protection order may still have been necessary in an altered form and presented the granting of a protection order as an all-or-nothing solution.\textsuperscript{211} An all-or-nothing approach is not appropriate in a situation where important rights of multiple individuals are at stake, and such an approach will lead to more incorrect decisions in the future.\textsuperscript{212}

B. AT THE TURNING POINT, THE COURT IGNORED THE POSSIBILITY THAT ALTERNATIVES TO THE PROTECTION ORDER GRANTED MAY BE NECESSARY OR APPROPRIATE

There may have been less restrictive alternatives for a court to provide as relief for domestic abuse in this situation.\textsuperscript{213} In order to protect Begnaud’s fundamental parental rights, the least restrictive alternative that still protects the children should have been observed.\textsuperscript{214} The domestic abuse statutes allow for numerous options in granting relief to victims of abuse, including room for discretion with the length and type of protection order, and other restraints from abuse.\textsuperscript{215} Applicable options include:

(1) Restrain[ing] any party from committing acts of domestic abuse;

(2) Exclud[ing] the abusing party from . . . the residence of the petitioner; . . .

\textsuperscript{207} S.A., 2005 SD 120, ¶ 22, 708 N.W.2d at 680; Madson, 313 N.W.2d at 44.
\textsuperscript{208} Purcell, 2017 SD 23, ¶¶ 13-14, 895 N.W.2d at 351.
\textsuperscript{209} Appellee’s Brief, supra note 27, at 12.
\textsuperscript{210} See Purcell, 2017 SD 23, ¶¶ 12-14, 895 N.W.2d at 350-51 (reversing the trial court’s order for protection); Appellee’s Brief, supra note 27, at 11-12 (arguing that a simple reversal is not appropriate under the circumstances).
\textsuperscript{211} See Purcell, 2017 SD 23, ¶ 13, 895 N.W.2d at 351 (finding that the protection order was unauthorized, overbroad, and an abuse of discretion).
\textsuperscript{212} See Klein & Orloff, supra note 14, at 970-71 (describing the conduct of courts who are sensitive to the important issues at stake in abuse cases). See also generally Purcell, 2017 SD 23, 895 N.W.2d 346 (failing to address the sensitive nature of the issues in abuse cases).
\textsuperscript{213} See In re S.A., 2005 SD 120, ¶ 21, 708 N.W.2d 673, 680 (describing the importance of determining the least restrictive alternative).
\textsuperscript{214} Id. ¶ 27, 708 N.W.2d at 683.
(5) Order[ing] that the abusing party obtain counseling; [and]
(6) Order[ing] other relief as the court deems necessary for the
protection of the person to whom relief is being granted . . .

The domestic abuse statutes also provide that "[i]f any minor child resides with
either party, the court shall order that the restrained person receive instruction on
parenting approved or provided by the Department of Social Services as part of
any relief granted." Just as the trial court had significant discretion to protect
Purcell and the children, it had the discretion to determine the best way to preserve
Begnaud's fundamental parental rights.

Invoking the least restrictive alternative would help to balance those competing concerns.

The South Dakota Supreme Court itself made a suggestion in reviewing the
trial court's decision that the protection order could have been imposed with some
type of visitation provision. The supreme court stated that the trial court could
have used its discretion to allow for some visitation within the protection order
requirements or allow for other options that would avoid "curtailing Begnaud's
fundamental rights as a parent for three years." The court, however, blew
quickly past that consideration in deciding to reverse the protection order after
little discussion of alternatives.

As indicated in Beermann, the trial court also could have invoked a modified
protection order. Just as the daughter in Beermann petitioned for a protection
order requesting that her father be prevented "from physically abusing her during
visits to his home," that option would be open under the statute authorizing relief
from abuse. The deterrent qualities of a protection order apply even though an
order is not for full protection, as the "would-be abuser" understands that his
actions will certainly have legal consequences.

The legislature intended the domestic abuse statutes to provide flexible solutions to eliminate domestic abuse

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216. § 25-10-5.
217. Id.
218. See id. (presenting the options available to the court for offering protection); S.A., 2005 SD 120,
 ¶ 21, 708 N.W.2d at 680 (discussing the court's significant amount of discretion).
221. Id. ¶ 12, 895 N.W.2d at 350-51.
222. See id. ¶¶ 12-13, 895 N.W.2d at 350-51 (stating that "even if the circuit court had found that the
children were victims of domestic abuse, it could have protected against such abuse without completely
curtailing Begnaud's fundamental rights as a parent for three years," before moving immediately to the
opinion's conclusion).
223. See Beermann v. Beermann, 1997 SD 11, ¶¶ 13-15, 559 N.W.2d 868, 871-72 (analyzing the
daughter's request for a modified protection order against her father).
224. Id. ¶ 1, 559 N.W.2d at 869. See also S.D.C.L. § 25-10-5 (2013 & Supp. 2017) (presenting the
statutory options for relief from domestic abuse).
225. Beermann, 1997 SD 11, ¶ 14, 559 N.W.2d at 872. See also Klein & Orloff, supra note 14, at
866 (asserting that the cycle of violence will not end unless there are recognized consequences for those
actions).
and aid victims.\textsuperscript{226} The supreme court failed to further the goals of that flexibility in reversing the trial court’s decision with no opportunity for revision.\textsuperscript{227}

A modified protection order—one that clearly delineates specific restrictions without completely removing parental rights—also would have alleviated the court’s concerns about “completely curtailing Begnaud’s fundamental rights as a parent for three years.”\textsuperscript{228} The court on appeal suggested that the trial court could have granted the protection order with provisions for visitation with the children.\textsuperscript{229} While Purcell expressed concerns that any visitation requirements may expose her to unnecessary risk in their planning or execution, that option was well within the trial court’s discretion under section 25-10-5 of the South Dakota Codified Laws.\textsuperscript{230} Allowing for visitation, or making other adjustments to a typical protection order, would have ensured that Begnaud’s parental rights remained protected.\textsuperscript{231}

C. IN REVIEWING THE RESOLUTION, THE COURT SHOULD HAVE REMANDED FOR CLARIFIED FINDINGS OF FACT TO PROTECT THE INTERESTS OF ALL PARTIES

The trial court made both written and oral findings of fact, but those findings were not explicit.\textsuperscript{232} The findings made no mention of the children, though the trial court appeared to believe the children were covered by the findings.\textsuperscript{233} The trial court also presented its written findings on a standardized form, causing some concern over whether that was a proper method under these circumstances.\textsuperscript{234} The trial court granted the protection order as requested by Purcell, including protection for the children, indicating that it found the children in need of protection.\textsuperscript{235} However, the supreme court thought that the trial court’s findings indicated that the protection order applied only to Purcell.\textsuperscript{236} The court on appeal explained that indicating that the petitioner was a “former spouse” of the defendant, rather than a “person[] related by consanguinity,” excluded the children.\textsuperscript{237} Based on the information alleged in Purcell’s petition, and the findings made by the trial court, the supreme court determined there was no

\textsuperscript{226} Beermann, 1997 SD 11, ¶ 27, 559 N.W.2d at 874.
\textsuperscript{227} See Purcell, 2017 SD 23, ¶¶ 13-14, 895 N.W.2d at 351 (reversing the trial court’s grant of the protection order, without remand).
\textsuperscript{228} Id. ¶ 12, 895 N.W.2d at 350-51.
\textsuperscript{229} Id. ¶ 12, 895 N.W.2d at 350.
\textsuperscript{231} See Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350-51 (arguing that some visitation for Begnaud should have been considered in the trial court’s decision). See also Troxel v. Granville, 530 U.S. 57, 66 (2000) (emphasizing the Fourteenth Amendment’s protection of parents’ fundamental rights).
\textsuperscript{232} Purcell, 2017 SD 23, ¶ 10, 895 N.W.2d at 349-50.
\textsuperscript{233} Id. ¶¶ 4, 10, 895 N.W.2d at 348-50.
\textsuperscript{234} See Appellant’s Brief, supra note 53, at 5 n.3 (arguing that, although a standardized form is appropriate in some cases, it was not appropriate in the present case); Appellee’s Brief, supra note 27, at 6 (arguing that, even though a standardized form was used, the Repp requirements were still fulfilled).
\textsuperscript{235} Purcell, 2017 SD 23, ¶ 4, 895 N.W.2d at 348.
\textsuperscript{236} Id. ¶ 10, 895 N.W.2d at 350.
\textsuperscript{237} Id.
evidence of abuse to the children or imminent fear of such abuse on their part, but gave no real explanation for the conflicting determination that no protection was needed.238 The court should have considered more than just the limited evidence provided by the trial court’s findings of fact.239 Particularly, the father’s history of abuse should have been considered in analyzing whether his parental rights should be restricted.240 Courts are often willing to allow for protection of children when they have witnessed abuse to others by a parent, even if it was not directed toward them.241 Where abuse between parents occurs around children who are old enough to recognize the impropriety of such abuse, children are thereby harmed and warrant protection.242

Being eight and seven years old when the petition was filed, it is likely that the children in this case could understand much of the abusive interactions between Purcell and Begnaud.243 Begnaud’s history of violence against Purcell likely justified the children’s fear and rationalized Purcell’s desire that the children be protection.244 Even more significantly, Begnaud’s history of abuse to Purcell makes it more likely that he will abuse the children as well.245 As indicated above, domestic abuse’s cyclical nature makes it reasonable to believe that abuse may happen in the future, even if it has not previously been directed at the children.246 Although the trial court’s findings of fact did not delve into this consideration, similar concerns were at play in Purcell.247 These considerations must have a role in reviewing the impact on Begnaud’s and the children’s rights, otherwise the goals of protecting victims and preserving parental rights will remain unmet.248

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238. *Id.* ¶¶ 7, 9, 11, 895 N.W.2d at 349-50.
239. *See*, e.g., *In re S.A.*, 2005 SD 120, ¶ 22, 708 N.W.2d 673, 680 (requiring analysis of the best interests of the child); Fuerstenberg v. Fuerstenberg, 1999 SD 35, ¶ 23, 559 N.W.2d 798, 807 (same); Madson v. Madson, 313 N.W.2d 42, 44 (S.D. 1981) (same). *See also* Beermann v. Beermann, 1997 SD 11, ¶ 20, 559 N.W.2d 868, 873 (analyzing the history of abuse in protection order considerations).
240. *Beermann*, 1997 SD 11, ¶ 20, 559 N.W.2d at 873.
241. *See*, e.g., *In re Marriage of McCoy*, 625 N.E.2d 883, 886 (Ill. App. Ct. 1993) (“Once one member of a household is abused, the court has maximum discretionary power to [apply a protection order to] other household members ... who may be at risk of retaliatory acts by the abuser.”); *Beermann*, 1997 SD 11, ¶ 21, 559 N.W.2d at 873 (“To ignore [the father’s] violent history is to detract from its effect upon [the child].”).
242. *Madson*, 313 N.W.2d at 44.
247. *See* *Purcell*, 2017 SD 23, ¶ 12, 895 N.W.2d at 350 (discussing the possibility of harm to the children if Begnaud was on methamphetamine); *Beermann*, 1997 SD 11, ¶¶ 20-23, 895 N.W.2d at 873-74 (discussing the cyclical nature of domestic abuse); Appellee’s Brief, *supra* note 27, at 10 (presenting Purcell’s belief that Begnaud was a threat to the children while on methamphetamine).
The protection order offered the children protection from abuse by their father. 249 Any effort supporting mental, temporal and moral well-being, and thus combatting abuse, is generally in the children’s best interests. 250 Parental rights, however, must be balanced against those interests. 251 The order that Begnaud stay away from the children for three years was a substantial restriction of Begnaud’s parental rights. 252 Although the trial court’s findings of fact did not explicitly show how Begnaud’s rights and the children’s interests were weighed in the final determination, it is clear from the three-year order that the children’s interests took precedence. 253 More thorough findings of fact would have clarified the reason for that determination. 254

While the findings of fact did not specifically mention the protection order’s application to the children, the form did state that the preponderance of the evidence standard for domestic abuse was met. 255 The order was apparently extended to the children by default through that statement. 256 To determine whether that was appropriate, the supreme court should have requested that the trial court provide the necessary information. 257 The trial court could have easily been given the opportunity to amend its findings of fact, thus protecting the children and preserving Begnaud’s parental rights. 258 Simply reversing did not offer any opportunity to make such adjustments to the record. 259

The state’s interest in limiting its involvement in family life was likely not best served by the protection order barring Begnaud “from all contact with his two minor children” for three years. 260 As indicated above, however, the court had discretion to authorize any form of relief found in section 25-10-5. 261 The court on appeal could not truly determine which form of relief the children needed, and modified findings of fact would have allowed for the necessary clarification. 262 Because protection order situations regarding children are complicated, it is necessary to know the whole story; since the case here lacked a complete narrative, the court was unable to determine whether there was an abuse of discretion. 263 In order to protect all of the parties, the supreme court should have made the trial

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249. See generally Purcell, 2017 SD 23, 895 N.W.2d. 346 (discussing whether protection from the father was warranted).
250. Stavig v. Stavig, 2009 SD 89, ¶ 13, 774 N.W.2d 454, 458; Madson, 313 N.W.2d at 43.
252. Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350-51.
253. Id. ¶ 10, 12, 895 N.W.2d at 349-51.
254. See Boeckel v. Boeckel, 2010 ND 130, ¶ 19, 785 N.W.2d 213, 221 (discussing the requirements for adequate findings of fact).
255. Purcell, 2017 SD 23, ¶ 10, 895 N.W.2d at 349-50.
256. See id. (illustrating the trial court’s indication on the order for protection that domestic abuse had been found by a preponderance of the evidence).
257. Id.
258. Appellee’s Brief, supra note 27, at 12.
259. See id. (presenting alternatives for the court to consider).
260. Purcell, 2017 SD 23, ¶ 1, 895 N.W.2d at 347.
262. Purcell, 2017 SD 23, ¶ 12, 895 N.W.2d at 350; Appellee’s Brief, supra note 27, at 12.
263. See Boeckel v. Boeckel, 2010 ND 130, ¶ 16, 785 N.W.2d 213, 220 (presenting general requirements for findings of fact).
court clarify its findings of fact to determine what protections were truly needed.264

The supreme court in Purcell broke from its typical course of action of remanding for completion of the trial court’s findings of fact, which it had done in similar protection order cases.265 Such a course of action satisfied the need to see the entire story to discover the truth where important rights are at stake.266 The court’s prior concern with discovering the truth applies to Purcell as well because the court was unable to determine whether protection for the children was needed.267 Remand was warranted in Repp v. Van Someren where one of the parties in a protection order appeal requested that the case be remanded for improved findings of fact.268 Similarly, Purcell specifically requested that, if the findings of fact were found to be insufficient, the case be remanded for their clarification.269 In reversing, without remanding, the court moved away from its concern with determining the whole truth.270

V. CONCLUSION

If the court wishes to “look[] into the future, . . . predict[, . . . plan[, and . . . explain[]]” properly in making its decisions, it must provide adequate opportunity for each case’s story to be told.271 Remanding Purcell for more detailed findings of fact would have allowed the South Dakota Supreme Court to determine whether the children’s story showed a need for protection from Begnaud. In deciding to simply reverse, taking away that opportunity, the court limited its ability to make the appropriate “judgments about what is wise or proper” in ensuring the children’s safety and preserving Begnaud’s parental rights.272 The trial court’s findings of fact may have been insufficient, but failing to allow for clarification of the findings left the children in a situation where they may not have received the protection they needed.

The court has remanded similar protection order situations in the past for the purpose of gleaning the full story to determine whether protection was needed. In Purcell, the court strayed from its own focus on determining the truth. The Court

264. See Repp v. Van Someren, 2015 SD 53, ¶ 12, 866 N.W.2d 122, 126-27 (supporting remand for findings of fact to determine the truth of the situation); Appellee’s Brief, supra note 27, at 12 (suggesting the same).

265. See, e.g., Repp, 2015 SD 53, ¶ 12, 866 N.W.2d at 126-27 (remanding for improved findings in support of a protection order); Shroyer v. Fanning, 2010 SD 22, ¶ 11, 780 N.W.2d 467, 472 (reversing and remanding for failure to enter findings of fact supporting a protection order); Judstra v. Donelan, 2006 SD 32, ¶ 9, 712 N.W.2d 866, 869 (same); Goeden v. Daum, 2003 SD 91, ¶ 10, 668 N.W.2d 108, 111 (same).


267. Purcell, 2017 SD 23, ¶¶ 10-12, 895 N.W.2d at 349-50; Repp, 2015 SD 53, ¶ 12, 866 N.W.2d at 126-27.

268. Repp, 2015 SD 53, ¶ 12, 866 N.W.2d at 127.

269. Appellee’s Brief, supra note 27, at 12.

270. Purcell, 2017 SD 23, ¶ 14, 895 N.W.2d at 351.

271. TURNER, supra note 1, at 4-5.

272. Moran, supra note 2, at 11 (quoting Menkel-Meadow, supra note 6, at 791-92).
also spent too little time discussing the children’s best interests and other concerns surrounding domestic abuse. Those considerations are necessary where a balance is sought between parents’ rights and children’s rights. The court focused on finding the least restrictive alternative—no protection order in any form regarding the children—without concern for whether that outcome left the children impermissibly unprotected. Purcell’s result is a heavily weighted protection of Begnaud’s parental rights with little concern for the children’s best interests and no interest in discovering the full narrative to determine whether protection was actually needed. A precedent that allows for reversing granted protection orders without knowing as much of the story as possible dangerously paves the way for recklessness in making decisions concerning domestic abuse in the future. The South Dakota Supreme Court must correct this dangerous precedent to ensure that the children of South Dakota, and their families, are protected.