



Recent California Family Law Decisions Involving Domestic Violence

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What is FVAP?



Family Violence Appellate Project provides free appellate representation to low and moderate-income family law litigants throughout California in cases involving restraining orders, child custody, and other domestic violence (DV) issues.

What is FVAP?

- A state-bar-recognized Support Center for Qualified Legal Services Providers (e.g., Bay Area Legal Aid, Harriett Buhai Center in LA, etc.)
- Screened over 400 requests for assistance since we started in 2012
- Based in Oakland, serve all of California
- 83% success rate in prosecuting appeals (average: 21%)
- 100% success rate in defending appeals

FVAP's Mission

- California has many well-crafted statutes designed to protect survivors and their children
- However, these laws are under-utilized as there are so few appellate decisions referring to them
- FVAP's mission is to assist and protect individual survivors of DV and their children
- It is also to build a body of published appellate decisions to guide attorneys and judges throughout California

Case Publication Project

- FVAP screens all Ca. family law and juvenile court decisions to identify those that merit publication, then requests publication.
- We also usually request publication of cases we win if court does not indicate it plans to publish decision.
- In 2014, FVAP got 9 key family law cases published: 8 cases we worked on and 1 through case publication project.

Case Publication Project, continued

- *In re Jonathan B* (2d Dist, 2015) 235 Cal.App.4th 115
- Battered mother took appropriate steps to protect children from being exposed again to father's abuse of her – she went to police, obtained EPO
- Juvenile court's asserting jurisdiction based on § 300 petition by LA DCFS unsupported by substantial evidence - reversed
- Not foreseeable he would abuse her after 5 years separation
- Courts shouldn't penalize mothers for reporting abuse

Case Publication Project, continued

- *Faton v. Ahmedo* (4th Dist., published May 15, 2015)
- DV survivor initially self-represented, so did not request attorney's fees in her DVRO petition
- Later hired a lawyer, obtained the DVRO, then asked for prevailing party attorney's fees
- Opposing party said attorney's fees had to be requested in initial DVRO petition
- *Held*: Attorney's fees can be granted after "notice and a hearing," even though not requested on standard Judicial Council DV forms; they don't have to be requested in initial DVRO petition. Fam. Code 6344.

2014 Published Ca. Decisions

- CA appellate courts decided 13 significant family law decisions in 2014 involving DV
- Federal courts decided 2 (*Lozano v Alvarez* - USSCt, *Ermini v Vittori*, 2nd Cir.), not covered here
- Of these 15 CA and federal cases, FVAP involved in 11 (appeal, defending appeal, amicus/friend of the court)
- Another was a case FVAP successfully requested appellate courts publish
- Plus 3 unpublished FVAP victories in 2014

Issuing DV Restraining Orders



Issuing Restraining Orders

- Questions Presented:
- 1. What is “abuse?”
- 2. To obtain a RO under the DVPA, does the petitioner just have to show past abuse?
- Or does s/he have to show a likelihood or fear of future abuse?

Issuing DV Restraining Orders: Abuse

- *Nevarez v Tonna* (2014) (6th Dist) 227 Cal.App4th 774
- Parties lived together 2 years
- Girlfriend broke up with boyfriend
- He went to her workplace almost daily, texted her, etc., tried to get her to reunite for months
- She placated him, sometimes agreeing to meet, but also said relationship was over

Issuing Restraining Orders: Abuse

- *Nevarez v Tonna*, continued
- He came to her apartment, pushed her against wall, tried to take her clothes off, attempted sexual assault
- She told him she was considering RO
- When she went to his apartment to get her things, he grabbed her wrist, bruising her, pushed her, almost pushing her down stairwell

Issuing Restraining Orders: Abuse

- *Nevarez v Tonna*, continued
- He kept texting, emailing, coming to her work
- She changed her phone number, apartment and workplace, said she would call police if he kept contacting her
- Finally she filed for DVRO

Issuing Restraining Orders: Abuse

- *Nevarez v Tonna*, continued
- At trial, boyfriend denied threats, physical force, blocking her movements
- He promised never to contact girlfriend again
- She testified that he had not violated TRO, but asked for permanent DVRO
- Trial court found girlfriend credible, issued 2 year DVRO notwithstanding boyfriend's promise not to contact her again

Issuing Restraining Orders: Abuse

- *Nevarez v Tonna*, continued
- Boyfriend argued on appeal that she had to show she *feared future abuse*, not just *past acts of abuse*, also insufficient evidence of both findings
- Appellate court upheld issuance of DVRO:
- 1. Sufficient evidence of past abuse per Family Code §§ 6203, 6320 – Court focused on *large volume of texts and emails*, and that many were sent *late at night*, this = harassment, thus abuse

Issuing Restraining Orders

- *Nevarez v Tonna*, continued
- Ca. Family Code § 6203:
 - (a) For purposes of this act, “abuse” means any of the following:
 - (1) Intentionally or recklessly to cause or attempt to cause bodily injury.
 - (2) Sexual assault.
 - (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
 - (4) To engage in any behavior that has been or could be enjoined pursuant to [Section 6320](#).
 - (b) Abuse is not limited to the actual infliction of physical injury or assault.

Issuing Restraining Orders

- *Nevarez v Tonna*, continued
- Ca. Family Code section 6320(a):
- The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, ...
impersonating ..., harassing, telephoning, including, but not limited to, making annoying telephone calls ..., destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party ...

Issuing Restraining Orders

- *Nevarez v Tonna*, continued
- Until 2014, only one case defined “disturbing the peace” under the DVPA, *IRMO Nadkarni* (Cal. App. 2009) 173 Cal.App.4th 1483
- *Nadkarni* had atypical facts: husband accessed wife’s email account, then publicly disclosed content; she was shocked & embarrassed, feared this would destroy her business relationships, feared for her safety
- Facts of *Nevarez v Tonna* more typical of how batterers disturb peace of partners, former partners

Issuing Restraining Orders

- *Nevarez v Tonna*, continued
- 2. Appellate court also held:
 - Family Code § 6300 does not require petitioner to prove *likelihood of future abuse*, just a *past act or acts of abuse*:
 - “An order may be issued under this part ... to restrain any person for the purpose specified in [Section 6220](#), if an affidavit or testimony and any additional information provided to the court pursuant to [Section 6306](#), shows, to the satisfaction of the court, reasonable proof of a *past act or acts of abuse*...”

Issuing Restraining Orders: Abuse

- *Burquet v Brumbaugh* (2014) (2nd Dist) 223 Cal.App.4th 1140
- Dating relationship, boyfriend/girlfriend
- Twice when boyfriend got angry he got physical with her
- Girlfriend broke it off, he refused to accept this
- For 10 months, he continued to text, email, beseeching her to renew their intimate relationship, included inappropriate sexual innuendos
- She asked him not to contact her but he continued

Issuing Restraining Orders: Abuse

- *Burquet v Brumbaugh*, continued:
- Then he came to her apartment, knocked, she opened door but didn't invite him in, asked him to leave
- He refused, angry, saying loudly that he loved her, she said she was afraid and was going to call the police, shut door
- Boyfriend shouted through door window: "I want to see you do that." Paced on her porch 10 min, called her on his cell phone and said he was leaving
- Left before police arrived

Issuing Restraining Order: Abuse

- *Burquet v Brumbaugh*, continued
- Girlfriend filed for restraining order
- Trial court granted 2 year DVRO
- Boyfriend appealed: no evidence of past abuse
- Appellate court upheld issuance of DVRO:
- Texting and showing up at residence, causing scene, refusing to leave constitutes “*disturbing the peace*” & thus “abuse” under DVPA, Family Code § 6203(d)

Issuing Restraining Orders: Children

- Questions Presented:
- When parties have a child/children in common, and the main physical abuse is toward the child, can this be the basis for jurisdiction under the DVPA?
- If a biological father and a stepfather of the same child have an altercation, can the fact that they are both related to the same child be the basis for jurisdiction under the DVPA?

Issuing Restraining Orders: Children

- Gou v Xiao (2014) (1st Dist.) 228 Cal.App.4th 812
- Married parties from China, father and 8 year old son came to US, mother still in China waiting for visa
- During Skype visit, mother saw father hit son with long plastic/rubber stick, slapped and kicked him
- Mother told father to stop, told son to call police
- Mother came to US, father continued to hit son, put him in chokehold, son struggled to breathe
- Mother tried to stop this, father bit mother, mother too afraid to call police

Issuing Restraining Orders: Children

- *Gou v Xiao*, continued:
- Mother and son blocked door with furniture that night to keep father out
- Later, father hit son at mother's school, third party called police, who took report, security video
- CPS got involved, son said father abused him
- CPS helped mother and son go to DV shelter

Issuing Restraining Orders: Children

- *Gou v. Xiao*, continued:
- Father apparently tried to find mother and son, and to stop mother's CalWorks \$
- Mother obtained TRO to protect self and son, based on abuse against son
- DA filed child abuse charge against father
- At DVRO hearing, court denied order: son had to apply for own RO since he was the victim, or mother had to become son's guardian ad litem

Issuing Restraining Orders: Children

- *Gou v. Xiao*, continued:
- Mother appealed; FVAP filed amicus brief, arguing mother was a victim of DV
- 8 other agencies and a professor signed onto brief
- Appellate court noted that it had considered amicus brief, reversed and remanded back to trial court
- Held: parent can seek restraining order based on abuse against child without becoming child's guardian ad litem, under DVPA

Issuing Restraining Orders: Children

- *Gou v Xiao*, continued:
- Appellate court: Father's actions placed mother "in *reasonable apprehension of imminent serious bodily injury to self or the child*,
- and *disturbed her peace* by destroying her mental or emotional calm."
- These actions constitute abuse under Family Code §§ 6203, 6211, 6320

Issuing Restraining Orders: Children

- *Hauck v. Riehl* (2014) (2nd Dist.) 224 Cal.App.4th 695
- Father sought DVPA order against stepfather after confrontation during visitation exchange of 5 year old daughter
- Father asked court to keep stepfather away from stepfather's home, where he lived with child and child's mother, even though no allegations he abused child
- Stepfather argued no jurisdiction over him under DVPA

Issuing Restraining Orders: Children

- *Hauck v Riehl*, continued:
- Trial court granted 5 year order, including keeping stepfather away from child's school or day care
- Family Code § 6211(e): DV = abuse against child of party or child in paternity action where male parent is presumed father
- Trial court said since child was to be protected in DVRO, this = “necessary nexus to confer jurisdiction”

Issuing Restraining Orders

- *Hauck v Riehl*, continued
- Appellate court reversed:
- Father was not “related by consanguinity or affinity” to stepfather under DVPA, and
- Stepfather’s acts against father did not entitle father to seek DVRO on child’s behalf, & no allegation that stepfather abused child
- Father could not be granted DVRO against stepfather
- Remedy: Civil Harassment RO

Issuing Restraining Orders: Mutual Orders

- Questions Presented:
- What is required for a court to issue a mutual restraining order under the DVPA?
- If the mother of a child calls the father repeatedly and pushes the father during an altercation after he lunges at her, is she the primary aggressor?

Issuing Restraining Orders: Mutual Orders

- J.J. v. M.F. (2014) (2nd Dist) 223 Cal.App.4th 968
- Father abused mother, strangling her several times, threatening to “F— her up,” pushing her out of car and through glass door, she was cut
- Mother obtained 3 year DVRO, sole custody, father had visitation; father had DVRO dissolved without notice
- Mother kept address secret from father, visitation exchanges at other relatives’ residences
- One day father did not bring 2 year old’s one warm jacket when dropped him off, child had cold, winter time

Issuing Restraining Orders: Mutual Orders

JJ v MF, continued:

- Mother called father several times to bring jacket
- When father brought it, blocked mother's car with his, tried to take son from her arms, mother pushed father away, told him to leave; son crying, screaming
- Father grabbed mother by neck, strangling her, his wife punched mother and hit her in face with shoe
- Third parties intervened to stop assault
- Mother called police, filed for second DVRO, asked for supervised visits, no contact between parents

Issuing Restraining Orders: Mutual Orders

- *JJ v MF*, continued:
- At hearing, father denied assaulting mother, said mother called him several times & cursed, attacked his wife, father just trying to give son kiss goodbye and keep women apart
- Court found father “choked,” dragged mother, but *sua sponte* issued 3-year *mutual order*, calling incident “mutual combat”: mother called father, “harassing” him re jacket, pushed father before he strangled her
- Mother appealed, FVAP filed amicus (friend of court) brief

Issuing Restraining Orders: Mutual Orders

- *JJ v MF*, continued:
- Appellate court reversed order directed toward mother:
- Family Code § 6305: before issuing mutual order, trial court must find both parties acted primarily as aggressors and not in self-defense
- Finding that mother was primary aggressor not supported by evidence, in fact she was acting in self-defense
- Extreme violence in past by father toward mother very relevant to primary aggressor determination

Issuing Restraining Orders: Mutual Orders

- *JJ v MF*, continued
- Mother's calls to father re jacket were not harassing but made in good faith, as child needed it right away, was ill, and had only one warm jacket
- Father never alleged that he felt threatened or abused by mother, did not request DVRO
- Abuse of discretion to order mutual order in this situation

Renewing Restraining Orders

- Questions Presented:
- What is the legal standard for renewing a DVRO?
- Does the petitioner have to show the DVRO was violated?
- Does the petitioner have to prove a reasonable apprehension of future *physical* abuse, or just a reasonable apprehension of *any* future abuse?

Renewing Restraining Orders

- *Eneaji v Ubboe* (2014) (2nd Dist) 229 Cal.App.4th 1457
- Husband violent to wife during marriage, threw her against walls and floors, slapped and punched her, strangled her, left bruises all over her body, threatened to kill her
- Wife obtained divorce and 3 year DVRO
- Husband moved back to Nigeria but came to Ca. regularly
- Husband approached wife in public at least twice, in violation of DVRO

Renewing Restraining Orders, contd

- *Eneaji v Ubboe*, continued:
- Wife requested permanent renewal of DVRO
- Husband testified that he had moved on, had new wife in Nigeria, denied violating DVRO
- Trial court found violations weighed *in favor* of denying renewal because they were not violent: “Nothing happened in 3 years.”
- It also stated that wife had not shown reasonable apprehension of future *physical* abuse

Renewing Restraining Orders

- *Eneaji v Ubboe*, continued:
- Appellate court reversed and remanded:
 - 1. Not necessary to show any violations to obtain renewal, per Family Code § 6345(a)
 - 2. Also, not necessary to show apprehension of future *physical* abuse, but of *any* abuse, per Family Code §§ 6203, 6320, 6345, *Ritchie v Konrad*, (2004)115 Cal.App.4th 1275

Child Custody

- Questions Presented:
- What is the proper standard for determining child custody when there has been a history of DV from one of the parents toward the other?
- If the court denies a DVRO, is Family Code § 3044 still triggered?
- Is the court allowed to change custody from a non-abusive parent to an abusive parent without a showing of changed circumstances after the initial custody order was issued?

Child Custody

- *Christina L. v Chauncey B.* (2014) (1st Dist) 229 Cal.App.4th 731
- Severe abuse of mother by father: grabbed steering wheel of car she was driving with children, punched, strangled, kicked, and stomped her, pulled her hair, made her hand bleed from squeezing it with keys in it
- Mother obtained 3 year DVRO, father was to have monthly 2 hour supervised visits

Child Custody

- *Christina L. v Chauncey B.*, continued:
- 3 years later: Mother awarded sole physical and legal custody, father had supervised visits, criminal protective order in effect
- The next month: Mother awarded 2 year DVRO based on continued stalking at work

Child Custody

- *Christina L. v Chauncey B.*, continued:
- 16 months later: father requested DVRO be terminated, requested sole physical and joint legal custody, said mother came to his home “in violation of order,” wanted children to be with his other daughter
- Mother testified father had very little contact with children for 5 years
- Trial court granted joint physical and legal custody, unsupervised visits for father every Friday til Monday or Tuesday

Child Custody

- *Christina L. v Chauncey B.*, continued:
- Trial court did not mention Family Code § 3044, rebuttable presumption against custody to abusers
- Nor did court require father to show circumstances changed since original order
- Appellate court reversed and remanded because trial court ignored § 3044 presumption, triggered by DVRO
- Also noted that trial court erred by not requiring father to show changed circumstances

Child Custody

- *Christina L. v Chauncey B.*, continued:
- CA Family Code § 3044(a):
- “Upon a finding by the court that a party seeking custody of a child has perpetrated DV against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated DV is detrimental to the best interest of the child, pursuant to [Section 3011](#).”

Child Custody

- *Christina L. v Chauncey B.*, continued
- § 3044 is rebuttable:
- Party who committed DV must show why it is in best interest of children to be with him or her
- And court must consider 6 other factors: successfully completing 52-week batterer's program, substance abuse program, parenting classes, complying with any protective orders and with probation/parole, no further abuse.

Child Custody

- *Christina L. v Chauncey B.*, continued:
- Reasons why § 3044 enacted:
- Extensive research: being exposed to a batterer has serious, sometimes life-long, impact on children
- See Lynn Hecht Schafran, “DV, Developing Brains and the Lifespan: New Knowledge from Neuroscience,” *53(3) The Judges’ Journal* 32 (2014)
- See also Adverse Childhood Experiences study by Vincent Felitti and Robert Anda, MD’s (2009)
- See also Cal. Attorney General video: *First Impressions: Exposure to Violence and a Child’s Developing Brain* (available on YouTube)

Child Custody

- *Christina L. v. Chauncey B.*, continued
- Exposure to batterers impacts child's brain development, health, school performance, ability to trust others, child sees violence as normal
- Toxic stress, chronic state of tension and fear
- Study found that sons of severe batterers had rates of wife abuse 10X higher than those from non-violent families

Child Custody

- *Fajota v Fajota* (2014) (4th Dist) 230 Cal.App.4th 1487
- Father hit mother in head while she was driving, verbally abused her, charged at her, pushed her until she fell, even when pregnant, destroyed her things, threw things, pinched hand when holding keys, made it bleed
- Father hit children with belt, CPS involved
- Family Court Services recommended joint legal custody even though father admitted physical violence to mother
- Father arrested for assaulting mother

Child Custody

- *Fajota v Fajota*, continued:
- Father admitted abuse at DVRO trial but minimized it
- Trial court found abuse had occurred but denied DVRO: “He’s not going to hit you in the head to get your attention any more.”
- Court gave father copy of § 3044 but didn’t apply it, awarded father joint legal custody, sole physical custody to mother
- Mother appealed joint legal custody order

Child Custody

- *Fajota v Fajota*, continued:
- During appeal #1, father again abusive to mother, stalking her, coming into her house without her knowledge or permission, taking things, etc.
- Mother obtained 1 year DVRO & divorce
- Trial court did not change joint legal custody order when issued DVRO
- Mother appealed this, appeals consolidated

Child Custody

- *Fajota v Fajota*, continued:
- Appellate court reversed and remanded
- Held: 3 different trial court judges abused their discretion when awarding joint legal custody and continuing this order, after finding that father had abused mother
- These orders ignored Family Code § 3044, which is mandatory

Interstate Custody Issues

- Question Presented:
- Did California properly assert jurisdiction over custody of young son when mother fled here from Texas to escape DV, bringing son with her, then both lived in California over 6 months?
- Did CA properly assert jurisdiction when neither parent still lived in original home state?

Interstate Custody Issues

- *Keisha W v Marvin M – (2014) (1st Dist) 229 Cal.App.4th 581*
- Parents and son lived in Texas, father abused mother
- TX issued joint custody order
- Mother fled with son to CA, stayed >6 months, requested DVRO and modification of TX custody order
- Father moved to NV, came to CA and got son, refused to return him

Interstate Custody Issues

- *Keisha W. v Marvin W.*, continued:
- CA trial court granted DVRO, including changing custody of son to mother
- Father appealed new custody order: no DV, and if there was DV, not bad enough to warrant mother fleeing with son; CA didn't have jurisdiction
- Father requested holding that fleeing abuse with child should prevent mother from seeking custody in new state (unjustifiable conduct)

Interstate Custody Issues

- *Keisha W. v Marvin M.*, continued
- Appellate court upheld order:
- Declined to hold that mother had engaged in unjustifiable conduct
- CA court not required to communicate with NV and TX courts before modifying TX custody order
- Held CA properly asserted jurisdiction and modified TX custody order where neither parent still lived in TX
- Also significant: mother fled here with child to avoid DV, lived here > 6 months

Spousal Support

- Questions Presented:
- Is a history of DV relevant to spousal support?
- Can temporary spousal support be awarded in a DVRO action before the court has determined if DV occurred?
- Is the presumption against spousal support to an abuser retroactive to a conviction occurring before the presumption statute took effect?

Spousal Support

- *In re Marriage of JQ & TB* (2014) (4th Dist) 223 Cal.App.4th 687
- Wife Chinese citizen, spoke little English, husband US citizen, spoke little Chinese, met online, both Christians, married in China
- Wife left job and family in China, came to US, lived with husband, found church
- Husband physically abused wife so severely the pastor she had seen testified that he did not at first recognize her immediately after the abuse; also sexual abuse
- Wife moved to DV shelter & requested DVRO and spousal support

Spousal Support

- *In re Marriage of JQ v TB*, continued:
- Husband arrested and charged with DV
- DVRO case stayed pending criminal case
- Wife unable to work in CA since did not speak English, knew almost no one in US, living in shelter
- Court denied *interim* spousal support until criminal court resolved DV charges, but asked parties to appeal so trial courts could have guidance, as no case on point

Spousal Support

- *In re Marriage of JQ and TB*, continued:
- Appellate court reversed spousal support order:
Interim spousal support *can* be awarded in a DVRO action before a finding of DV has been made
- Appellate court upheld denial of DVRO as did not find a legal mistake or abuse of discretion in the ruling

Spousal Support

- *In re Marriage of Kelkar (2014) (2nd Dist) 229 Cal.App.4th 833*
- Husband alleged wife physically and verbally abused him about 200 times, including brandishing knife, cutting him, punching him, injuring him, & trying to push him down stairs
- 2000: Wife pled no contest to unlawfully using deadly weapon against husband (knife)
- FC § 4320 required court to consider history of DV in awarding spousal support from victim to abuser

Spousal Support

- *IRMO Kelkar*, continued:
- 2002: Legislature enacted FC § 4325: rebuttable presumption against spousal support to spouse convicted of DV against other spouse
- 2004: Husband stipulated to permanent spousal support for wife, who was allegedly disabled (bipolar)
- Husband and his attorney unaware of § 4325 at the time
- Wife continued to threaten and harass ex-husband and his fiancée: profane and vulgar calls, texts

Spousal Support

- *IRMO Kelkar*, continued:
- 2007: fiancée obtained RO against wife
- 2009: ex-husband obtained RO against wife
- Wife violated both ROs
- 10 years after stipulation, wife requested increased support, ex-husband requested termination of support, 2 experts found wife could work if got treatment for bipolar disorder

Spousal Support

- *IRMO Kelkar*, continued:
- Trial court terminated support based on conviction
- Appellate court affirmed:
 - 1) Presumption could be triggered by conviction before enactment of § 4325
 - 2) Support was modifiable
 - 3) Husband not equitably estopped from relying on § 4325

Fee Waivers

- Question Presented:
- Is revoking a prior fee waiver when an indigent litigant borrows money to pay for a transcript reversible error, as a denial of access to the courts?

Fee Waivers

- C.S. v. W.O. (2014) (2nd Dist) 230 Cal.App.4th 23
- Mother receiving SSI, CalWorks, CalFRESH (food stamps) granted fee waiver for filing fee in custody case
- Trial court provided court reporter, determined mother did not have to contribute to cost of reporter
- Trial court granted custody to father, mother appealed
- Mother borrowed \$1000 to purchase expedited transcript of trial court proceedings for the appeal

Fee Waivers

- C.S. v W.O., continued
- Because she borrowed \$, court ordered mother to pay for part of court reporter fee retroactively
- Court revoked fee waiver
- Court denied 2 later requests by mother for fee waivers for court reporter fees at upcoming hearings

Fee Waivers

- C.S. v W.O., continued

- Appellate court reversed:

 - 1. Mother automatically qualified for fee waiver since she received public benefits
 - 2. Trial court's denial of fee waiver is denial of access to courts for an impermissible reason

Malicious Prosecution in DVRO Cases

- Questions Presented:
- When a petitioner for a DVRO dismisses the petition, and the respondent then files a claim for malicious prosecution, is it reversible error for the court to dismiss the claim?
- If dismissal is correct, does the respondent have another remedy?

Malicious Prosecution in DVRO Case

- S.A. v. Maiden (2014) (4th Dist) 229 Cal.App.4th 27
- Abused immigrant wife filed for DVRO, later withdrew request when obtained attorney, filed for separation, custody, support
- Husband awarded \$3500 attorney's fees as prevailing party when wife withdrew DVRO request
- Husband sued for malicious prosecution, abuse of prosecution, and IIED

Malicious Prosecution

- *S.A. v Maiden*, continued:
- Trial court dismissed husband's claims
- Appellate court upheld dismissal
- Reasoning: wife and her attorney's request for DVRO clearly protected by anti-SLAPP statute
- Husband not likely to prevail, as CA bars malicious prosecution cases arising out of family law matters

Malicious Prosecution

- *S.A. v. Maiden*, continued:
- “[I]f malicious prosecution actions were permitted against persons who request DVPA restraining orders, there would be a ‘chilling effect’ on the ability of victims of domestic violence and other abuse to obtain protective relief under the DVPA.”
- Remedy is attorney’s fees as sanctions to discourage frivolous motions

Malicious Prosecution

- *S.A. v. Maiden*, continued:
- Claims properly struck as husband could not establish probability that he would win malicious prosecution claim
- Husband could not establish that wife and her attorney misused power of court, so also no abuse of process
- No IIED: actions of wife and her attorney did not involve anything outside ordinary court proceedings



Questions?

Thank You!

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