



Key 2017 California & Federal Appellate Decisions Involving Domestic Violence

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California Partnership to End Domestic Violence

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What is FVAP?



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

What is FVAP?

- A state-bar-recognized Support Center for legal aid providers working on civil domestic violence cases and appeals
- A resource for CA domestic violence agencies
- Screened hundreds of requests for assistance since we started in 2012
- Based in Oakland, serve all of California
- 71% success rate in prosecuting appeals (average: 20%)
- 100% success rate in defending appeals
- Participated in 28 published decisions to date

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. civil law and juvenile court decisions to identify those that merit publication, then requests publication.
- We also request publication of cases we win if the unpublished decision would add to the body of case law.
- Our requests are usually granted, though not always.

2017 Published Decisions

- In 2017, FVAP represented a party in 4 published CA family law cases
- We'll also cover 10 other published CA decisions and 2 federal decisions – FVAP not involved, range of issues: family law, torts, juvenile, criminal
- In 2 additional cases, FVAP co-authored amicus briefs in the CA Supreme Court. Many DV agencies signed on. Both cases awaiting oral argument.

Overview of Training

- Financial Support and Domestic Violence (DV)
- Custody and DV
- Restraining Orders: Issuing, Modifying, Violating, Renewing
- Juvenile Courts and DV
- Tort Suits and DV
- Various Criminal Cases Involving DV
- Awaiting Oral Argument in CA Supreme Court

Financial Support and DV



Financial Support and DV

- *Kumar v. Kumar*, 13 CalApp 5th 1072 (2017)
 - I-864 Affidavit of Support signed by spouse sponsoring immigration enforceable in family court action
 - Family courts are part of Superior Court, are courts of general jurisdiction, can hear breach of I-864 claim.
 - No duty to mitigate, as there is with spousal support request in short term marriage.

Financial Support and DV

- *Kumar v Kumar*, continued:
- First ruling of this kind in CA
- Wife brought to US after arranged marriage in Fiji
- Husband signed contract with ICE to support wife for 10 years at 125% of federal poverty level (I-864 Affidavit of Support)
- Husband abused wife and was arrested
- He filed petition for annulment or dissolution

Financial Support and DV

- *Kumar v Kumar*, continued
- Wife awarded temporary support, husband sought to terminate it
- Wife raised breach of contract claim re Affidavit
- Family court refused to enforce Affidavit because wife in school and working part time, not seeking full time work
- Appellate court reversed: Affidavit did not require wife to mitigate damages by seeking full time work

Financial Support and DV

- *Kumar v Kumar*, continued:
- Court also held immigrant being sponsored via Affidavit not obligated to file separate claim for support in civil court or in federal court
- Supported spouse may raise this in family court as part of divorce action
- CA Supreme Court refused to grant husband's petition for review, so Court of Appeal decision stands
- This will benefit many immigrant survivors of abuse throughout the state

Financial Support and DV, continued

- See also *Erlor v Erlor* (No. Dist. CA, 11/15/17), 2017 WL 5478560
- District court denied wife's I-864 claim against husband since it held she earned >125% of federal poverty guidelines
- 9th circuit reversed & remanded: district court should consider wife's income without adult son's income
- Held: wife's food stamps & pension from Turkish government = income, reducing husband's obligation to wife

Custody and DV



Custody and DV

- Jason P. v Danielle S., 9 CalApp 5th 1000 (2017)
- Sperm donor who knew mother sought joint custody
- Court first found he was not presumed parent
- Then father sent harassing texts, emails to mother and her father, friend, and child's nanny
- Mother got DVRO (but no stay away order) because father disturbed her peace
- Court renewed DVRO

Custody and DV, continued

- *Jason P v Danielle S*, continued:
- Later, court found father was presumed parent
- Court ordered father to get 6 months of individual anger management counseling, along with joint counseling with mother
- Court stated these would rebut 3044 presumption, started “step up plan” so father could have joint physical and legal custody

Custody and DV, continued

- *Jason P v Danielle S*, continued:
- Court also found father more likely to facilitate child's relationship with other parent, thus joint custody in child's best interest
- Mother appealed presumed parent finding and custody order
- Mother argued custody order didn't comply with Family Code § 3044, presumption against custody to abusers, since DVRO had been issued

Custody and DV, continued

- *Jason P v Danielle S*, continued:
- Court of appeal upheld presumed parent finding
- However, award of joint custody premature: no evidence that father completed requirements necessary to rebut § 3044 presumption
- Remanded for hearing on this
- It may be court will find he had rebutted the presumption by the time of a hearing on remand

Custody and DV, continued

- *Jason S v Danielle P*, continued:
- Problematic decision in 3 ways:
- Upholding order for joint counseling with co parent when DVRO is in effect
- Ordering 6 months individual anger management counseling rather than 52 week batterers intervention program because abuse not physical
- Ignoring Family Code § 3011 (must consider DV allegations as part of best interest of child) and § 3020 (detrimental to child to be in home with DV)

Custody and DV, continued



Custody and DV, continued

- People v. Nan Hui Jo, 15 CalApp 5th 1128 (2017)
- Nan Hui Jo came from So. Korea, left abusive US citizen husband, he was arrested, she got DVRO
- She had child with another US citizen, a veteran with PTSD & alcohol problems
- He was very violent to her; she called police twice but no arrest
- Wife of father's father told mother she could be charged with kidnapping if she took child away

Custody and DV, continued

- *People v. Nan-Hui Jo*, continued:
- Mother took child to So. Korea to keep her safe and because mother's visa had expired; no custody order at that time
- No one advised mother of VAWA self petition or U visa options, even though USCIS had record of DVRO when she met with them re her status
- Father filed visitation petition, mother said never served or otherwise notified

Custody and DV, continued

- *People v Nan Hui Jo*, continued:
- Father emailed mother, seeking visitation and threatening her; she did not respond after threats
- Father contacted US authorities: State Dept., DA
- Yolo DA emailed mother, offered that she could testify in family law case by phone but mother did not do so
- Father obtained default custody order in Sacramento
- After 4 years in Korea, mother took child to Hawaii to go to school
- Mother arrested on arrival in Hawaii for child abduction

Custody and DV, continued

- *People v. Nan Hui Jo*, continued:
- Sacramento family court ordered full custody to father, no visitation for mother
- Daughter (6 yrs old) spoke only Korean, father spoke only English
- Daughter thought she had no father until taken from mother
- Yolo county DA charged mother with Penal Code § 278.5(a), *maliciously* depriving lawful custodian of custody or visitation
- First trial: hung jury

Custody and DV

- *People v Nan Hui Jo*, continued:
- 2nd trial: former abduction DA testified for prosecution re “good cause” defense under Penal Code § 278.7:
- Stated that taking parent must notify DA *within* 10 days, and file family law case *within* 30 days
- [Note: Incorrect. Statute says “*at least* 10 days,” and “*at least* 30 days” – these are not deadlines but are often misinterpreted as deadlines]

Custody and DV, continued

- *People v Nan Hui Jo*, continued:
- Mother failed to report to DA or file custody action, said she didn't know she was supposed to, didn't know illegal to take daughter to Korea
- Mother testified re DV by father
- Defense expert Susun Kim testified re Korean DV victims
- Defense argued DA had not proved mother acted *maliciously*, so not guilty; § 278.7 not the only possible defense to abduction

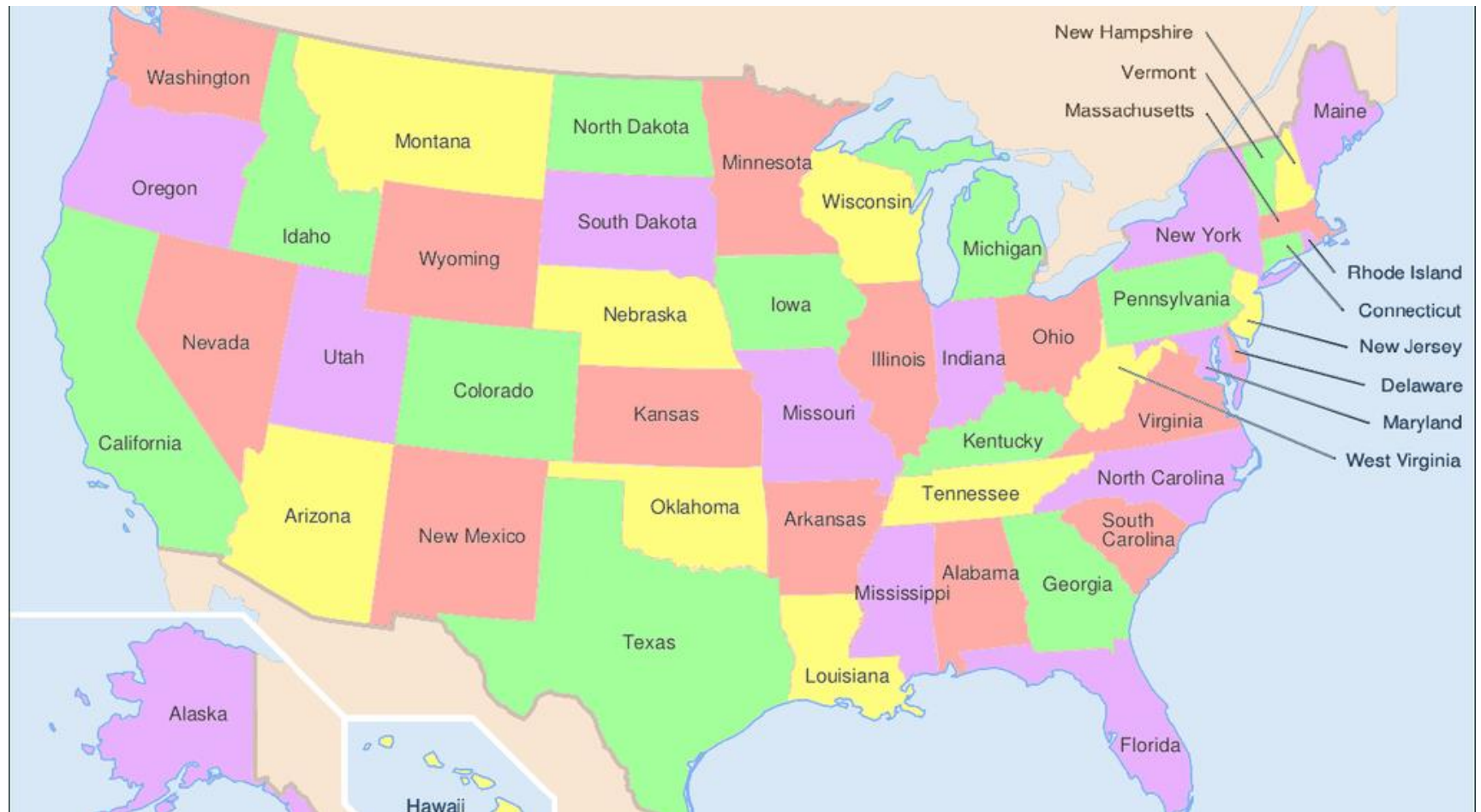
Custody and DV, continued

- *People v. Nan Hui Jo*, continued:
- Trial court instructed jury that malice = deliberate & intentional act, not ill will or intent to injure someone
- Attorney on jury: law re malice was unjust, she could not participate any more; replaced with alternate juror
- Mother convicted of felony abduction
- Large community outcry, much media attention
- Court reduced felony to misdemeanor, sentenced mother to 175 days jail (part of time already served), 3 years summary probation
- Conviction affirmed by appellate court

Custody and DV, continued

- *People v. Nan Hui Jo*, continued:
- Mother arrested by ICE as soon as released by criminal court, held 3 months
- Released July 2015
- As of late 2017, living and working in No. CA, sees daughter on regular basis
- Case illustrates overlap between family law, criminal law, and immigration law
- Also shows multiple points at which legal system failed mother and child, and need for community organizing

Restraining Orders - Issuance



Issuance of DVRO

- Hogue v Hogue, 16 CalApp 5th 833 (2017)
- Husband abused wife while living in CA, continued when they moved to GA
- Wife moved back to CA to escape Husband
- Husband continued to harass her and disturb her peace, including a mock suicide video he posted on Facebook
- Wife sought DVRO in CA, trial court denied it: no personal jurisdiction over husband

Issuance of DVRO, continued

- *Hogue v Hogue*, continued:
- FVAP represented wife on appeal
- Appellate court reversed
- First such case of its kind in CA
- Holding: When someone outside CA commits abuse against someone in CA, including social media or electronic communications, CA has jurisdiction to issue DVRO

Issuance of DVRO, continued

- *Hogue v Hogue*, continued:
- Court held: DVPA is a “special regulation” giving CA courts special jurisdiction over abusers
- Therefore alleging an act of abuse which “disturbed plaintiff’s peace of mind” under the DVPA is sufficient to vest personal jurisdiction in the CA courts over an out of state respondent.
- FVAP successfully sought publication
- This will be helpful for many survivors in CA

Issuance of DVRO, continued

- *In re Marriage of G.*, 11 CalApp 5th 773 (2017)
- Wife filed for dissolution, full custody, DVRO, submitted photos of injuries to herself caused by husband
- Husband claimed wife was aggressor, both physically and damaging his electronic devices on many occasions
- Trial court denied DVRO: Husband defending himself when injured wife

Issuance of DVRO, continued

- *In re Marriage of G.*, continued:
- Although FC §§ 6300 and 6203 don't specifically mention self-defense, § 6305 [re mutual DVRO's] shows a "clear purpose . . . to avoid restraining a party who is not culpable, and section 6305 reflects the Legislature's understanding that reasonable self-defense is a defense to a claim of abuse."
- Court of Appeal upheld trial court: (1) husband acting in response to attempts to take his property by physical force, and (2) he did not employ excessive force.

Issuance of DVRO, continued

- *In re Marriage of G.*, continued:
- Holding is in keeping with legislative history, evolving understanding that DVRO requests need to take into account entire circumstances of relationship.
- FVAP currently looking for cases to clarify whether courts must analyze primary or dominant aggressor when both parties allege abuse at different times. We think it obviously should.

Modifying Criminal Protective Order

- People v. Sandoval, 17 CalApp 5th 1185 (2017)
- Defendant had 12 felony & 7 misdemeanor convictions, including one for abusing wife in past
- Then defendant punched and strangled wife until unconscious, threatened to kill her if she left him
- Pled no contest to one count felony Penal Code § 273.5 in exchange for suspended prison term, probation, dismissal of other counts, and 3 year Criminal Protective Order (CPO)

Modifying CPO, continued

- *People v. Sandoval*, continued:
- Wife refused to testify and objected to CPO
- Defendant appealed, arguing court should terminate CPO or allow some contact with wife based on his rights to marital privacy and family association
- DA agreed, sought more narrowly tailored order

Modifying CPO, continued

- *People v. Sandoval*, continued:
- Appellate court held: 1) trial court correctly issued CPO, given Defendant repeatedly violated probation - didn't go to 2 batterer's programs, repeatedly abused methamphetamine and then violent to wife
- 2) CPO not overbroad. Ok to modify it, but *up to wife* to initiate contact, then ok for Defendant to respond. And Defendant may not go to wife's home.
- Goals of CPO: protect wife, motivate Defendant to complete batterer's program, get off drugs

Modifying CPO, continued

- *People v Sandoval*, continued:
- Modified opinion added: Appellate court mindful of potential risks to wife; recognizes court has no jurisdiction over her
- Opinion seeks to balance marital rights of defendant and wife against legislature's desire to protect wife from further DV
- But in the end it's *her* decision whether to continued having contact with defendant (emphasis in original)
- If additional facts develop, defendant &/or wife can seek additional relief in trial court

Violation of Civil Harassment Order

- People v. Faber (2017) 15 CalApp 5th Supp. 41
- Kim & Faber dated 7 weeks
- Kim later testified that during this time, Faber took personality test that said he was sociopath
- She broke up with him, asked him to stop contacting her, but he kept texting her repeatedly
- She told him she felt threatened; he kept texting
- She obtained TRO under Civil Harassment Act (unclear why she did not get DVRO)

Violation of Civil Harassment Order, continued

- *People v. Faber*, continued:
- He continued to text, & referred to his ex-wife's DVRO against him & her filing "false charges" against him for violating court orders
- Kim blocked his number; Faber texted from 10 different numbers she did not recognize, accused her of abusing him by breaking up
- She got 1-year Civil Harassment Order (CHO)

Violation of Civil Harassment Order, continued

- *People v Faber*, continued:
- While CHO in effect, he continued to send her texts, letters, leave gifts at her residence & notes on her car, contact her via social media, sometimes insulting and vulgar, said he's coming to her home at 2 am
- Since he texted her work phone, she had to tell employer, have this disconnected
- Faber tricked her into communicating with him on Instagram by using another name

Violation of Civil Harassment Order, continued

- *People v Faber*, continued:
- Kim called 911 > 10 times to report violations
- She testified Faber violated CHO 68 times; she had nightmares, went to therapy, felt afraid; asked for sentence of maximum time in prison
- She also testified that Faber violated DVRO protecting his ex-wife from him
- Jury convicted Faber of violating CHO 13 times (misdemeanor)
- Prosecution asked that he get 2 years jail + 3 years probation, plus DV course, community service

Violation of Civil Harassment Order, continued

- *People v Faber*, continued:
- Court sentenced Faber to 180 days for each violation, served consecutively (almost 6.5 years total), plus 10 year CHO, fines & fees
- Court found contacts with Kim = threat of great bodily harm
- Affirmed on appeal: his communications were “creepy”, “infused with violence,” so reasonable that Kim felt threatened

Violation of Civil Harassment Order, continued

- *People v Faber*, continued:
- Appellate court: Trial court reasonable in rejecting therapy and probation since he would not follow court orders
- Length of imprisonment ok, half what court could have imposed; also Faber's callousness and repeated offenses despite court orders merit long sentence despite his lack of prior criminal record
- While felony stalking conviction would have resulted in only 4 years, sentences are comparable even though not equivalent; not cruel & unusual punishment

Renewal of Restraining Orders



Renewal of Restraining Orders

- Garcia v Escobar, 17 CalApp 5th 267, and Priscila N. v. Leonardo G., 17 CalApp 5th 1208
- In both cases, mothers received restraining orders in Juvenile court, protecting selves and children from fathers
- Garcia first requested DVRO in family court, then case transferred to juvenile court: Priscila N. started divorce in family court, but her DVRO started in juvenile court
- Both fathers repeatedly violated DVRO's from juvenile court
- Juvenile court closed each case with "exit orders," which family court then had jurisdiction over

Renewal of Restraining Orders, continued

- *Garcia* and *Priscila N*, continued:
- Both mothers attempted to renew restraining orders
- Both family courts refused to treat matter as renewal (which would have resulted in 5 years or permanent DVRO under FC § 6345)
- *Garcia*: court issued new DVRO for only 1 year
- *Priscilla N*: court 1st issued permanent DVRO, then changed its mind: new DVRO only 3 years
- First such cases to reach CA appellate courts

Renewal of Restraining Orders, continued

- *Garcia and Priscila N*, continued:
- Appellate courts held that family courts must treat domestic violence restraining orders coming from juvenile courts as DVRO's and renew them accordingly
- Family court “is not a separate court with special jurisdiction, but is instead the superior court performing one of its general duties.”
- Both courts apply the same definition of abuse in issuing restraining orders and same process
- Family Code § 6345, renewals of DVRO's, applies here

Renewal of Restraining Orders, continued

- *Garcia and Priscila N*, continued:
- Policy reasons:
- *Garcia*: Lengthy 5 year renewal period in § 6345 implemented to save DV victims “harrowing ordeal” of returning to court every 3 years or sooner to renew orders and allow them to go about their lives with more peace of mind.

Renewal of Restraining Orders, continued

- *Garcia and Priscila N*, continued:
- Policy reasons, continued:
- *Priscila N.*: 1. Legislative history indicates legislature intended juvenile & family courts to work together to protect DV victims. Thus, court construes both statutes broadly, avoiding formalistic reading that would require DV victims receiving DVRO from juvenile court to repeat process in family court.
- 2. DV victims would have to prove new abuse to get DVRO in family court, contrary to intent of DVPA

Juvenile Courts and DV



Juvenile Courts and DV

- *In re C.M.*, 15 CalApp 5th 376 (2017)
- Dependency petition filed due to DV by stepfather to mother and physical abuse of child by stepfather
- Juvenile court issued long term RO protecting child from stepfather
- RO included provision that child would be removed from mother's care if evidence child exposed to stepfather or if mother violated RO
- Mother appealed

Juvenile Courts and DV, continued

- *In re CM*, continued:
- Appellate court reversed conditional removal order:
- Order violated mother's due process rights to notice and opportunity to be heard before child removed
- At hearing, agency must show clear and convincing evidence of substantial danger to physical health, safety, or emotional well being of child if left in mother's custody, and no reasonable means by which child can be protected without removal from mother

Tort Suits and DV



Tort Suits and DV

- Jackson v Mayweather, 10 CalApp 5th 1240 (2017)
- Shantel Jackson (girlfriend), model & actress, engaged to Floyd Mayweather (boyfriend), world-champion boxer, one of highest paid athletes in world.
- During relationship boyfriend convicted of abusing another woman, jailed.
- Boyfriend allegedly abusive to Jackson emotionally and physically, including strangling her, threatening to shoot her, keeping her virtual prisoner, etc.
- On again, off again; he promised to reform, also allegedly stole many of her valuable possessions

Tort Suits and DV, continued

- *Jackson v Mayweather*, continued:
- When she left him for good, he posted on social media and spoke on radio: said he broke up with her because she aborted their twins, and she had extensive cosmetic surgery on her face and body
- She sued for assault, battery, false imprisonment, intentional and negligent infliction of emotional distress (IIED & NIED), invasion of privacy, defamation, conversion, replevin, and harassment.

Tort Suits and DV, continued

- *Jackson v Mayweather, continued:*
- Invasion of privacy claim was based on his online posting of sonogram and medical report of her pregnancy, its termination, & her cosmetic surgery
- He argued she had given up right to privacy when began relationship with him; he filed anti-SLAPP (Strategic Lawsuit Against Public Participation) suit, moving to strike her claims re privacy, defamation, IIED, and NIED.

Tort Suits and DV, continued

- *Jackson v Mayweather, continued:*
- Court denied motion:
- While boyfriend had 1st Am. right to post some information on social media & radio, as this is protected activity, & issue of public interest since both parties were high profile individuals, whether it invaded girlfriend's privacy should be determined by jury
- Also, girlfriend showed probability of prevailing on invasion of privacy re his posting of sonogram & medical report re pregnancy, and his statements about reason for breakup and extent of her surgery.

Tort Suits and DV, continued

- *Jackson v Mayweather, continued:*
- Appellate court agreed that invasion of privacy claim should go to jury.
- But it reversed trial court re defamation and false light claims – girlfriend had not shown that having abortion or extensive cosmetic surgery would expose her to ridicule, so claim should be stricken.
- Posting sonogram not so outrageous that it goes beyond all possible bounds of decency, but IIED & NIED claims up to jury, since based on all abuse in relationship.

Tort Suits and DV, continued

- *Jackson v Mayweather, continued:*
- Media reported 12/1/17 boyfriend suing girlfriend for stealing cash from him
- Apparently he has not denied assaulting her
- Tort suits are not just for rich people – middle class DV survivors can sue for the other half of the house, part of the abuser's pension, etc.
- Having jury validate DV survivor can be healing
- CA has 3 year statute of limitations in DV suits
- Alipato Project, FreeFrom, ADZ Law -- lawyers working on these cases

Tort Suits and DV, continued

- *F.P. v Monier*, 3 Cal.5th 1099 (2017)
- Tort suit for child sexual abuse; deals with Statements of Decision (SOD), often a key document in DV cases
- CA Supreme court held trial court's error in failing to issue requested SOD not reversible error per se, but subject to harmless error review – i.e., may or may not be reversible error, depending on case

Tort Suits and DV, continued

- *F.P. v Monier, continued:*
- Practice tip: Request SOD prior to or at beginning of trial, to clarify basis for judge's ruling and to help appellate court determine if ruling should be reversed.
- See FVAP website for training: "Requesting SODs in Family Law & DV Cases," and documents: "Getting a Court's Reasons for Making a Family Court Order"

Criminal Cases and DV



Criminal Cases Involving DV

- *Seminole v U.S.*, (9th Cir. 2017) 865 F.3d 1150
- When common law wife tried to leave Defendant Leon Seminole, he strangled & assaulted her, causing great bodily injury.
- She did not want to testify, recanted earlier statement to police and doctors when prosecution forced her to take stand; claimed she was instigator, Defendant trying to calm her by hugging her.
- Prosecutor impeached her with earlier statements.
- Defendant convicted.

Criminal Cases Involving DV, continued

- *Seminole v U.S.*, continued:
- Defendant appealed, arguing prosecution could not compel wife to testify.
- Conviction Affirmed: Privilege not to testify against other spouse does not apply when spouse is alleged victim of defendant.
- This is a centuries-old exception to spousal privilege.

Criminal Cases Involving DV, continued

- *Seminole v U.S.*, continued:
- Policy behind this exception: “We are far from solving the crisis of DV, as this country witnesses more than a million acts of DV, and hundreds of deaths from DV, each year.” [quoting from *U.S. v Castleman*]
- “[DV] is a crime that is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial.” [quoting from *Davis v Washington*, another US Supreme Court decision]

Criminal Cases Involving DV, continued

- People v. Garcia, 16 CalApp 5th 979 (2017)
- Defendant charged with 8 crimes committed in 1 day against mother of his child, including violating DVRO
- Victim testified re 3 incidents of physical abuse that day, including strangulation and knocking her unconscious
- Victim called police 7 times for DV in past
- DA introduced evidence of prior uncharged acts of DV against victim under CA Evidence Code § 1109, & prior DV conviction, plus 3 jail calls from defendant to victim trying to get her not to testify

Criminal Cases Involving DV, continued

- *People v Garcia*, continued:
- Defendant convicted of 4 charges: burglary, DV, dissuading witness from reporting, violating DVRO (not guilty or hung jury on 4 other charges: robbery, kidnapping, threats, false imprisonment)
- Sentenced to 9 years & 4 months prison
- On appeal, Defendant argued jury instructions regarding his prior DV (finding by preponderance of evidence) lowered DA's burden to prove guilt beyond reasonable doubt re current crimes

Criminal Cases Involving DV, continued

- *People v Garcia*, continued:
- Defendant argued court should follow *People v Cruz* (Cal. App., 2016), holding jury instructions re prior charged crimes in sexual assault case (preponderance of evidence) improperly lowered burden of proof
- This appellate court disagreed with *Cruz*, as did CA Attorney General in arguing this case
- Held: all prior charged crimes were DV against same victim and were properly admitted, as were jail calls
- Also: given strength of evidence, any error in introducing priors was harmless: jury told 7 times it had to find guilt re current charges beyond a reasonable doubt

Criminal Cases, continued

- *People v Garcia*, continued:
- Standard jury instructions were revised in 2017 re use of prior charged offenses to prove propensity to commit sexual assault or DV:
- Prior *charged* offenses must be proved beyond reasonable doubt
- Prior *uncharged* offenses: may be considered if jury finds they occurred using preponderance of evidence standard
- So DA can still use both charged and uncharged prior DV offenses in a DV prosecution, as long as they are more probative than prejudicial

Criminal Cases, continued

- *People v Garcia*, continued:
- This case was ordered depublished by the Ca. Supreme Court court on 2/21/18, on its own motion.

Criminal Cases Involving DV, continued

- People v. Salas, 9 CalApp 5th 736 (2017)
- Defendant pleaded no contest to felony DV (Penal Code § 273.5) after grabbing wife's throat, bashing her head on floor, etc. – she lost consciousness and 4-5 pints blood, cracked skull, needed 7 staples in head
- Sentenced to 3 years prison & ordered to pay restitution to wife for security windows & alarm system
- Defendant appealed restitution for residential security expenses, arguing § 273.5 is not a “violent felony” per Penal Code § 667.5(c)

Criminal Cases Involving DV, continued

- *People v. Salas*, continued:
- Appellate court agreed with defendant: § 667.5(c) is exclusive list of “violent felonies,” § 237.5 not on list, so restitution order must be stricken
- Appellate court also “welcomed review” by legislature to add § 273.5 to list; “strong policy considerations” support this for victims of stalking, DV, where ongoing security concerns
- Note: Victims of Crime Fund provides funds for residential security expenses, though not a lot of \$

Criminal Cases Involving DV, continued



Criminal Cases Involving DV, continued

- Fortson v. Los Angeles City Attorney's Office (9th Cir. 2017) 852 F.3d 1190
- Fortson convicted of misdemeanor DV (Penal Code § 243) in 2009
- Judge said could keep guns at work as defendant was armed security guard
- After he satisfied all obligations in 2011, probation & protection order terminated, changed plea from no contest to not guilty, conviction vacated
- Later, bought guns & ammo, thought this was legal

Criminal Cases Involving DV, continued

- *Fortson v LA City Attorney's Office*, continued:
- Arrested, charged with unlawful possession of guns & ammo
- Charges later dropped in furtherance of justice
- However, he challenged CA's 10 year automatic gun ban for misdemeanor DV abusers
- Sued many employees of LA City Attorney, DOJ, and LAPD, asserting civil rights violation based on 2nd Am right to bear arms, false imprisonment, unlawful search, malicious prosecution

Criminal Cases Involving DV, continued

- *Fortson v LA City Attorney's Office*, continued:
- District court dismissed case
- 9th circuit affirmed dismissal, held CA's 10 year ban advances same interest as lifetime federal ban on misdemeanor DV abusers having guns, which has been held constitutional in prior cases:
- DV has high rate of recidivism, and 65% of DV homicides involve guns
- Thus, gun ban for abusers substantially related to important governmental interest

Criminal Cases Involving DV, continued

- *Fortson v LA City Attorney's Office*, continued:
- Re 2nd Am challenge, gun ban attaches automatically, so lack of notice to DV Defendants in trial court is not defense
- Officers had probable cause to arrest Fortson so no claim for false imprisonment or malicious prosecution

Awaiting Oral Argument in CA Supreme Court



Awaiting Oral Argument in CA Supreme Court

- Jameson v Desta - Incarcerated man in San Diego filed malpractice claim against prison doctor
- Appellate court denied petition since there was no transcript of trial proceeding; he could not afford to hire court reporter
- CA Supreme Court granted review on issue of right to free court reporter
- FVAP authored amicus brief 7/16 on behalf of 30 DV organizations, awaiting oral argument

Awaiting Oral Argument, continued



Awaiting Oral Argument, continued

- *Bianka M – Special Immigrant Juvenile Status*
- Honduran father beat Bianka M's mother with machete while pregnant, refused to support Bianka
- Mother brought Bianka to US, petitioned for custody and Special Immigrant Juvenile Status
- Court denied petitions since father did not stipulate to parentage or consent to personal jurisdiction when he was notified of custody action

Awaiting Oral Argument, continued

- Bianka argued that forcing her or mother to get father's signature would endanger them further
- Consequence is deporting Bianka to harmful environment in Honduras
- CA Supreme Court granted review
- FVAP co authored amicus brief 4/17 with many DV organizations, awaiting oral argument

Questions?



Thank You!

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