



CASE ALERT

New Case Explains that a survivor can provide evidence of domestic violence or violations of a Domestic Violence Restraining Order (DVRO) in their DVRO renewal case even if a judge in a different family court case, such as a custody case, found that no abuse or violations had occurred. *In re Marriage of Brubaker and Strum* (2021) 73 Cal. App.5th 525.

How Could This Case Help Your Clients? This case may help if someone is trying to renew their DVRO and the abuser argues that they cannot talk about acts of domestic violence or violations of the DVRO because a judge in a different family court matter already heard the evidence and decided the abuse or violations did not happen.

Summary of the Case After Wife filed for dissolution (divorce), Wife got a two-year DVRO against Husband. Wife's DVRO was based on incidents of Husband threatening to physically harm Wife, stalking Wife, and emotionally abusing Wife. Wife's DVRO was also based on Husband violating a temporary restraining order by not staying 100 yards away from Wife. About three months after Wife's DVRO was granted, Husband was found to have violated the DVRO by sending messages to Wife that scolded her and by using the parties' children as a pretext (excuse) to further harass Wife.

About a year and a half later, there was a hearing on Wife's and Husband's dissolution case. Although the judge noted that Husband continued to show anger and aggression during the hearing, it found that Husband had complied with (or had not violated) the DVRO and had not committed any acts of domestic violence since the DVRO was first issued.

Wife later filed a request to renew her DVRO. At the DVRO renewal hearing, Husband asked the court to prevent Wife from presenting any evidence of domestic violence or violations of the DVRO from the date the original DVRO was issued on February 22, 2018 to the date the dissolution case was decided on February 13, 2019. Husband argued that the judge at the dissolution hearing had already decided that Husband had not committed any acts of domestic violence and had not violated the DVRO during this time so Wife should not be able to use anything from that time period to try and show her restraining order should be renewed. This is called issue preclusion, a legal principle that says you should only get one chance to prove something in court. The trial court agreed with Husband and did not allow Wife to testify or present any evidence of abuse or violations of the DVRO during this timeframe.

Wife challenged the decision that she could not present any evidence of abuse or violations of the DVRO during the time period of February 22, 2018 to February 13, 2019. The Court of Appeal agreed that Wife should have been able to present this evidence. The Court of Appeal stated that issue preclusion did not apply in this case because the issues the court was hearing and deciding in the dissolution case were different than the DVRO renewal case. In the dissolution case, the issue the court was deciding was whether Husband rebutted the presumption under 3044 for deciding custody. In contrast, the issue the trial court was deciding in the DVRO renewal case was whether Wife had a reasonable fear of future abuse.

The Court of Appeal also noted two key points. First, evidence of acts of domestic violence after the original DVRO was put in place or violations of DVRO are not required to renew a DVRO. This type of evidence, however, may help a court decide if Wife had a reasonable fear of future abuse. For example, even if Husband's action were not abuse or violations of the DVRO, the acts could still be used to show Wife's reasonable fear of future abuse. Second, the type of abuse and when the abused happened are not the most important facts for the court to consider when deciding whether to renew a DVRO. Rather, the court must decide whether Wife had a reasonable fear of future abuse.

Husband also argued that, to renew her DVRO, Wife should have to present evidence of abuse that happened after the original DVRO was put in place. Husband stated that Wife needed to present new evidence of abuse because the judge who gave Wife the original DVRO limited the order to two years because the abuse was "situational." "Situational abuse" means that the judge thought the abuse was happening because of the parties' current situation—that they had separated and were going through a divorce—and that the abuse would end once the divorce was done. The Court of Appeal disagreed with Husband. The Court of Appeal explained that no matter how the trial court describes the abuse, to renew a restraining order a person only has to prove a reasonable fear of future abuse.

PRACTICE TIPS

1. Practice Tip 1: You can provide evidence of domestic violence or violations of DVRO in your DVRO renewal case even if a judge has already decided, *in a different family court case (such as custody)*, that abuse or a violation of the DVRO had not occurred. If the judge is not allowing you to talk about this evidence, give the court a copy of *In re Marriage of Brubaker and Strum* to help.
2. Practice Tip 2: Even if the court does not think that the other party violated the DVRO or committed new acts of domestic violence since you got your original DVRO, you can still use the other person's acts to show that you have a reasonable fear of future abuse.
3. Practice Tip 3: Even if the judge in your original restraining order case downplayed the abuse by calling it "situational," "mutual," "separational," or something else, you still only have to show that you have a reasonable fear of future abuse in order to renew your DVRO.

For questions or clarifications, email or call Family Violence Appellate Project at info@fvaplav.org or (510) 380-6243. Thank you!