CASE ALERT

Remote Domestic Abuse Is a Basis for Personal Jurisdiction Over an Out-of-State Person in a Domestic Violence Prevention Act Case

Family Violence Appellate Project and co-counsel Lieff Cabraser Heimann & Bernstein, LLP, won a landmark California case that may help some of your clients. Thanks to the 23 organizations who joined our request for publication!

How Could This Case Help Your Clients?

If you are working with a client who has been abused through social media or other remote means, by an abuser who lives in another state, then this case should make it easier for your client to obtain a restraining order from a California court. Be sure to explain the acts of abuse that are a basis for jurisdiction in a ***verified*** filing, such as the DV-100 Form. (A verified filing is something signed by your client, under the statement "I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.")

Summary of the Case

On October 30, 2017, the Court of Appeal published its opinion in *Hogue v. Hogue*, 16 Cal.App.5th 833 (2017), which holds, for the first time, that California courts can exercise jurisdiction over out-of-state persons in Domestic Violence Prevention Act (DVPA) cases.

In this case, the appellant sought a restraining order in California after moving back from Georgia. She sought protection from her estranged husband who remained in Georgia. Her application for restraining order alleged four instances of severe physical abuse in Georgia in the months prior to her move back to California, and a 20-year history of physical and sexual abuse when they lived in California. She also alleged that after she left Georgia, her estranged husband (the "respondent" in the case) pretended to shoot himself in the mouth with his shotgun during a video message to her on social media.

Respondent appeared in court through his lawyer and asked the court to dismiss the case for lack of personal jurisdiction under Code of Civil Procedure §418.10. He asserted he had not had any contacts with California since moving away two years prior, and that there were no alleged acts of abuse that took place inside California, and therefore California should not have personal jurisdiction over him. However, he did not deny the social media incident. The trial court granted his request and dismissed the restraining order case. We appealed.

On appeal, we argued that California had jurisdiction over respondent because his abusive conduct comes within the "special regulation" basis for specific jurisdiction. The Court of Appeal agreed.

Analyzing the due process requirements for personal jurisdiction, the opinion explains that a respondent may be subject to specific, as opposed to general, jurisdiction of California courts if

the controversy arises out of sufficient purposeful contacts with California. "Special regulation" jurisdiction is a type of specific jurisdiction that can be exercised when a respondent, acting elsewhere, causes effects in California of a nature that are "exceptional" and subject to "special regulation" in this state under a line of cases, most notably *Quattrone v. Superior Court* (1975) 44 Cal.App.3d 296.

For the first time, this case holds that the DVPA is such a special regulation, stating "[t]he very existence of the Domestic Violence Prevention Act bespeaks California's concern with an exceptional type of conduct [domestic abuse] that it subjects to special regulation." In other words, the existence of statutory protection from exactly the type of abuse alleged here, a video mock suicide, provides a basis for jurisdiction over the alleged abuser. The Court of Appeal held that the "act of purposefully sending a video of a mock suicide to plaintiff in California (particularly in the context of alleged domestic violence taking place in Georgia) is indisputably conduct that would disturb plaintiff's peace of mind within the meaning of the [DVPA] and be the basis for granting a restraining order." As a result, this was sufficient to vest personal jurisdiction in the courts of California over respondent for the purposes of enjoining any further abusive conduct.

The Court of Appeal was very clear that it is the petitioner's (the person asking for a restraining order) burden to allege the facts on which to premise personal jurisdiction in a ***verified*** submission. An attorney's statements in a legal brief, or documents and statements that are not evidence, cannot be the basis for jurisdiction. Upon a sufficient showing, the burden then switches to the respondent to show the exercise of jurisdiction would nonetheless be unreasonable. (See, e.g., *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1168.) Since no such showing was made here, the case was remanded for a trial on the merits of the restraining order application.

Practice Tips

1. The person asking for the restraining order should file a request that is **verified**, as explained above.
2. In the **verified** filing, the person asking for the restraining order should explain that they were in California when they received the abusive messages.
3. The **verified** filing should explain that the person asking for the restraining order currently resides in California.
4. The **verified** filing should explain how the abuse affected the person requesting the restraining order.
5. The **verified** filing should explain the history of abuse to better inform the court on how the abuse affected the person requesting the restraining order.

For questions or clarifications, contact Family Violence Appellate Project: info@fvaplaw.org or (510) 858-7358. Thank you!