



## **CASE ALERT**

### **Guidance for Making Children Protected Parties in a Juvenile Court Restraining Order & Using Children's Exposure to Domestic Violence and Threats of Abduction as a Basis to Request a Restraining Order**

Family Violence Appellate Project successfully sought publication of an important California case *In re Bruno M.*, 28 Cal.App.5th 990 (2018). Thank you to the 12 non-profit and anti-domestic violence groups that joined our request!

#### **This case may help if your client wants to:**

- 1) **Request their children be protected parties** in a Welfare and Institutions Code (WIC) restraining order issued in juvenile court;
- 2) Request a Domestic Violence Prevention Act (DVPA) or WIC restraining order protecting their children *in any court* because **their children witnessed domestic abuse**, or the other **parent threatened to take away the children** from the client.

#### **Summary of the Case**

#### **Children who witness abuse of one parent by another parent can be considered to have their peace disturbed. Disturbing the peace of the children is enough to have them as protected parties on a WIC restraining order.**

In *Bruno M.*, a parent challenged the juvenile court's order in a dependency case. The court ordered a WIC restraining order that included the children as protected parties. The parent did not challenge having the other parent as a protected party. He said the children should not be protected parties because he had not directly abused them. In WIC cases, children can be protected under an order if there is evidence of abuse or a showing that failure to issue the order or include the children might jeopardize their safety. *Note, this is different than Domestic Violence Prevention Act (DVPA) orders, which only require good cause to add a protected party.*

The court of appeal said that the children **were abused** because **their peace had been disturbed**. Evidence showed **the children had experienced trauma and were negatively affected by witnessing their father abusing their mother**. Evidence of stalking, attacking or inflicting physical harm on the children was not required. Evidence of fear of future abuse was not required. Disturbing the peace was added to WIC as a basis for a restraining order in 2010. This case interprets it exactly the way it is interpreted in the DVPA.

#### **A Protection Order can be issued based on threats by the abusive party to take away the children.**

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The court of appeal agreed with the juvenile court that the father's threats to take the children put the children in danger. The court of appeal said **the threats alone would have been enough** to justify a restraining order. Here there was evidence that the father made these threats in front of the children. The court said the children were scared of their father. The court said the threats affected the mother's ability to remain separated from the father and to seek help. As a result, the court said the children were "in danger" and needed protection.

**The extent and violence of attacks by the abusive parent against the other parent can be considered when deciding to issue a protection order for the children.**

The court of appeal found that even though the children had not "yet" been physically hurt during the father's violence against the mother, it was proper to consider the extent and violence of the father's attacks on the mother to decide whether their safety was at risk. The court referred to other court decisions which discussed the link between spousal abuse and child abuse. The court held that it was reasonable for the juvenile court to infer that the father might be a threat to the children's safety even outside the presence of the mother based on his violence to the mother.

**PRACTICE TIPS**

1. Disturbing the peace of a child can be defined broadly so if you want to protect children with a WIC restraining order it is important to document the children's behaviors, actions and words as much as possible to show why they need to be protected by a restraining order. This includes trauma-related behavior such as inability or fear of sleeping, or behavior that is similar to the abusive parent. Children's peace can be disturbed even if they do not see the abuse, for instance by seeing property or other damage from abuse or injuries on the other parent.
2. The same is true if you are seeking a DVPA order, and want to show "good cause" to add children as protected parties.
3. Threatening to take the children is a common tactic of domestic abusers. It may be helpful to document these threats, the impact they have on the abused parent's behavior, and the impact it would have on the children if they were taken.
4. In this case the juvenile court did make the children dependents of the court based on father's abuse and mother's "failure to protect" the children from that abuse, however, the children were kept with the mother throughout the case and placed with her at the end. If "failure to protect" is an issue in your client's juvenile court case, be aware of this if using *Bruno M.* to support your client's case.

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