



CASE ALERT

New Case explains what courts must do before granting mutual domestic violence restraining orders. *K.L. v. R.H.*, 70 Cal.App.5th 965 (2021). Mutual restraining orders means that two people request domestic violence restraining orders against each other. The court then considers both requests at the same time and orders restraining orders against both parties.

How Could This Help Your Clients? Abusers often seek restraining orders to further abuse or control survivors. When faced with mutual requests for restraining orders, trial courts can't grant both orders without doing two things. First, the court must decide that both parties are "dominant aggressors" in the relationship. "Dominant aggressor" means that the person was the more significant abuser. Second, the court must decide that neither party was defending themselves. Mutual domestic violence is very rare so granting mutual restraining orders puts the real victim at risk.

Summary of the Case K.L. and R.H. have a child together. During their relationship, K.L. severely physically, sexually, and emotionally abused R.H. After their relationship ended, K.L. still abused R.H., including strangling, sexually assaulting, refusing to return the child after visitation, and punching R.H. at a police station while a temporary restraining order was in place. Based on this abuse, the trial court granted R.H. a restraining order against K.L. But K.L. also got a restraining order against R.H., because R.H. had called K.L. a name on the Talking Parents App and had threatened him after K.L. threatened her.

R.H. challenged the restraining order against her. The Court of Appeal agreed there should not be a restraining order against R.H. The Court of Appeal stated that the trial court should not have looked at each request for a restraining order individually. Instead, the trial court was supposed to look at both parties' restraining order requests together to decide who was the dominant or significant aggressor. To decide this question, the court must look at four things. First, the law is meant to protect actual victims of domestic violence from more abuse. Second, the parties' relationship history to understand the context or circumstances surrounding the abuse. Third, if either party made threats causing fear of physical injury. Fourth, if someone was defending themselves against the other parties' abuse.

In this case, there was a long, violent history of K.L. seriously abusing R.H. On the other hand, R.H. only verbally harmed K.L. on a couple of occasions without causing fear of physical injury. The trial court also thought that R.H. should have a restraining order against her because she had past criminal convictions. But the law says courts should only look at convictions in restraining order cases for crimes of violence or involving weapons, serious or violent felonies, and restraining order violations. R.H.'s convictions for child endangerment and shoplifting didn't fit in those groups. The trial court should not have looked at her criminal history.

In the end, K.L. was the dominant or significant aggressor. The trial court was right to grant R.H. a restraining order against him. But the trial court was wrong to grant K.L. a restraining order against R.H.

PRACTICE TIPS

1. Practice Tip 1: **Mutual restraining orders should be rare.** Mutual domestic violence is very rare. If both you and the other party filed restraining order requests, tell the court to look at both requests together with these four things in mind:
 - 1) The law is meant to protect actual victims from more abuse.
 - 2) The parties' relationship history gives context.
 - 3) Threats causing fear of physical injury are important.
 - 4) Was someone defending themselves?

If you have evidence about these four things, such as text messages or medical records, attach them to your restraining order request, and to your response to the other party's request. You can also give the court a copy of *K.L. v. R.H.* to help.

2. Practice Tip 2: If a court is looking at any restraining order request, it should look at the restrained party's criminal history in a limited way. For past criminal convictions, the court can only look at those that involve violence or weapons, serious or violent felonies, or restraining order violations. The court can also look at whether the restrained party has a registered firearm or outstanding warrant, is on probation or parole, or is currently restrained by another restraining order. If the court looks at other criminal convictions or criminal history, that could be wrong under Family Code section 6306, and you can give the court a copy of *K.L. v. R.H.* to help.

For more, contact us at info@fvaplaw.org or (510) 380-6243. Thank you!