



CASE ALERT

Coercive Controlling Behavior is Abuse that Justifies Issuing a Restraining Order

The Domestic Violence Prevention Act (DVPA) allows courts to issue a domestic violence restraining order (DVRO) to prevent acts of abuse, including acts that disturb the peace of the other party. Family Code § 6320(a). Courts must consider the “totality of the circumstances” in deciding whether to issue a DVRO. Family Code § 6301(c).

McCord v. Smith, 51 Cal.App.5th 358 (2020), explains that **coercive and controlling behavior can be abuse under the DVPA**. In this case, McCord repeatedly showed up at Smith’s home and work uninvited, texted and called nonstop, and made threats in order to force Smith to speak with him. The court found that McCord’s statements and actions were a means of exercising control and dominion over Smith and that those actions were sufficient to disturb her peace, as well as stalking, threatening and harassing and so were abuse. The decision also clarifies that “abuse” can include coercive controlling behaviors that do not involve physical harm or threats of physical harm.

McCord is the first citable opinion that **explains how the “totality of the circumstances” test should be applied to determine whether to issue a restraining order**. After considering McCord’s acts of repeatedly showing up to Smith’s house and workplace uninvited and sending threatening messages, the appellate court found that McCord sending a photo of Smith’s nursing license to her was part of “an overall series of actions... that threatened Smith’s peace of mind.” The opinion explains that because courts must consider whether the totality of the circumstances supports issuing a restraining order, individual acts need to be viewed in the context of the parties’ relationship in order to determine whether a restraining order request should be granted.

We believe that this case will help survivors who experience acts of coercive control to obtain restraining orders against their abusers.

PRACTICE TIPS

1. Use this case to argue that seemingly non-abusive, individual acts, when viewed with other abusive acts, are evidence of a pattern of **coercive control** that are abuse under the DVPA. For more information on what is abuse under the DVPA, see Cases You Can Use at www.fvaplaw.org.
2. McCord repeatedly showed up to Smith’s house and work uninvited, texted her, emailed her, and sent her harassing and threatening photographs. The court found these acts were stalking and abuse under the DVPA. Use this case to argue similar acts of stalking are also abuse under the DVPA.
3. The court found that McCord’s acts of stalking, harassing, and threatening Smith were part of an “overall series of actions ... [used to] exercise some form of dominion and control” over Smith. Use this case to argue that similar acts of **coercive control** are abuse under the DVPA and under the “totality of the circumstances” test should be the basis for issuing a restraining order.

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