

**CASE ALERT (9/28/18): *Melissa G. v. Raymond. M.*, 27 Cal.App.5th 360 (2018)**

**Mutual Domestic Violence Restraining Orders Do Not Need to Be Based on the Same Incident of Abuse**

**Summary of the Case:** In *Melissa G. v. Raymond M.*, Father alleged that, among other physical abuse, Mother bit his arm and punched him in the face during a child visitation exchange, and he submitted a police report and pictures of his injuries to support his allegations. Mother alleged Father was lying and harassing her by calling her through a blocked number. Another incident involved Mother's friend who pushed her phone close to Father's face and called him racial epithets during a custody exchange, and Father admitted he knocked the phone out of the friend's hand when she would not stop. The trial court granted each party's request for a restraining order against the other party, but did not make the detailed findings of fact as required under Family Code section 6305(a)(2). This statute contains safeguards to protect survivors of domestic violence from being restrained by an unwarranted mutual restraining order: Before the trial court may grant mutual restraining orders, both parties must personally appear and present written evidence of domestic violence, and "*the court must make detailed findings of fact indicating that both parties acted as a primary aggressor and that neither party acted primarily in self-defense.*" (Fam. Code. § 6305, subs. (a)(1)-(2), emphasis added.) The trial court stated that it did not need to make these factual findings because the parties' individual requests were not based on a single incident of abuse. Father appealed.

The appellate court held that factual findings under Family Code section 6305 are required regardless of whether the requests for restraining orders stem from a single incident or separate incidents. The appellate court further instructed that trial courts must make detailed findings of fact in context of the history of domestic violence between the parties to ensure that a survivor's act of defense is not viewed in isolation as an act of aggression justifying restraint.

**PRACTICE TIPS**

1. When both parties have filed written requests for Domestic Violence Restraining Orders against each other, the survivor should provide in detail the facts related to the incident or incidents at issue, including those facts that are relevant to the court's evaluation of "primary aggressor" under Penal Code section 836(c)(3). This may include facts related to the history of domestic violence between the parties, any physical threats the opposing party has made toward the survivor, any act(s) the survivor has made in self-defense, and the reasons for *why* the survivor needs an order of protection.
2. Document any abuse during shared parenting time or exchanges of the child, and explain how this contact has allowed the opposing party to continue perpetrating abuse. For example, if this contact causes your client to change their plans or experience additional trauma, it may be continued abuse the court can protect against.
3. Request specific parenting orders that prevent the opposing party from engaging in ongoing abuse during shared parenting time or exchanges of the child.
4. If the opposing party files a request for a Domestic Violence Restraining Order against the survivor, the survivor should explain to the judge that the court must make detailed findings fact before issuing a mutual restraining order, even if the mutual order is based on separate incidents of abuse.
5. During the hearing, if the trial court refuses to make detailed findings of fact before issuing a mutual restraining order because the requests are based on different incidents of alleged abuse, bring this case with you to alert the court of new case law.

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