



## CASE ALERT

### Important published opinion about move-out orders!

As part of a domestic violence restraining order, petitioners can request that an abuser be ordered to move-out of a shared dwelling. Before ordering someone to move-out, the court must find: 1) the petitioner has a legal right to stay in the dwelling; 2) the person being ordered to move has assaulted or threatened to assault the petitioner or the petitioner's child, and 3) that "physical or emotional harm would otherwise result" to the petitioner or someone they take care of. Family Code §§6321, 6340(c). Courts can also issue an order allowing the petitioner temporary "use, possession and control" of real property, like a home or condominium. Family Code §6324.

*Nicole G. v. Braithwaite*, 49 Cal.App.5th 990 (2020), is the first citable opinion that discusses what constitutes a threat of future physical or emotional harm, the third requirement for a move-out order. The appellate court found that **further harm would have come to Nicole G. if she resumed living in the shared property without the move-out order based on the past acts of domestic violence and stalking** by Braithwaite.

*Nicole G.* is also the first case to analyze orders for temporary use, possession and control of real property. The appellate court found that Nicole G.'s **decision to move out of the shared property to escape additional abuse before ending her relationship with Braithwaite and before filing a request for DVRO did not prevent the court from awarding her temporary use, possession and control of the property**. The court of appeal explained that even though Nicole G. and Mr. Braithwaite had a separate lawsuit in court about who owned their shared dwelling, the family court issuing the domestic violence restraining order still had authority to grant Nicole the temporary right to use and control the property.

We believe that this case will help other survivors like Nicole G. who are seeking move-out orders and property control orders, particularly in cases where survivors have moved to another residence, a DV shelter, or other place while the abuser remains living in parties' shared dwelling.

### **PRACTICE TIPS**

1. Use this case to argue that someone who has committed stalking or other acts of abuse poses a threat of future harm and so should be ordered to move-out of a shared home, even if the victim left the home to avoid abuse.
2. Use this case if you are seeking a move-out order as part of an elder abuse restraining order since the factors for obtaining a move-out order under the Elder Abuse Prevention Act are the same as those under the Domestic Violence Prevention Act (DVPA). Welfare & Institutions Code §§15657.03(b)(4)(b)&(d).
3. Braithwaite used an app on his phone that downloaded the information on Nicole G.'s phone in real time, let him use the microphone on Nicole G.'s phone to hear her conversations, and tracked her location. The court found these actions were stalking and abuse under the DVPA. Use this case to argue similar acts of technology abuse are also abuse under the DVPA.
4. The court found Braithwaite had engaged in "acts of physical violence [ ] as well as stalking behavior" which were part of a pattern of increasingly "**establishing and maintaining control**" over Nicole. Use this case to argue that similar acts of **coercive control** are abuse under the DVPA.

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