



CASE ALERT

New Case Explains How to Apply the Family Code Section 3044 Rebuttable Presumption Against Granting Custody to a Parent Who Has Engaged in Domestic Violence.

Noble v. Superior Court, 71 Cal.App.5th 567 (2021).

How Could This Case Help? This case may help if someone who has abused their partner, their child, or another family member is seeking custody of a child and the child's other parent disagrees.

Summary of the Case: In this case, the trial court decided that Wife and Husband would have joint legal and physical custody of the parties' children. The trial court made this decision even though Wife had a ten-year domestic violence restraining order (DVRO) against Husband in Utah because he threatened her with physical violence. The trial court also knew that Wife stated Husband had physically and emotionally abused her and that Husband admitted to at least some physical abuse in an email to Wife. Even though the court knew all of this, it did not bring up or apply the rebuttable presumption against granting sole or joint custody to a person who committed abuse like Husband. This rebuttable presumption is found in Family Code section 3044. That law says the court must presume (think that) giving the domestic abuser sole or joint legal or physical custody would be against the children's best interest. The abuser can overcome this presumption (called rebutting the presumption) by showing that it is in the children's best interest for the parents to have joint custody, and that six other factors are also in favor of joint custody. (For more information about the rebuttable presumption, see FVAP's [toolkit](#).) The law also says the court must tell the parties about this presumption before sending them to mediation. In this case, the court did not do either of these things before granting joint custody. Wife asked the Court of Appeal to vacate (cancel) the temporary custody orders.

The Court of Appeal agreed with Wife. There are three important points in the Court of Appeal's published decision. First, the rebuttable presumption found in Family Code section 3044 applies when someone gets a DVRO from another state if the other state's definition of abuse would be considered abuse under California law. Second, trial courts must tell parties about the rebuttable presumption before sending them to mediation. The trial court must put it in the record that they told the parties about this law, such as by adding it to the minute order or saying it in a transcript. Third, if there is evidence of domestic violence, trial courts must apply this law before making any custody decisions, even if the order is only temporary. This is true even if the court found out about the abuse through a different case at the same court. In this case, Wife gave the court additional evidence of Husband's abuse in their divorce case.

PRACTICE TIPS

1. The court should apply the Family Code 3044 presumption if there is evidence that **another state issued a DVRO against a party in the past five years**, and the court finds that state's definition of "abuse" fits within California's abuse definition. If not, show this opinion.
2. **Before child custody mediation**, if one party has accused the other of abuse, the trial court should tell you about Family Code section 3044 and give you a copy. If not, show this opinion.
3. Before the trial court can rule on child custody, if either party has accused the other of domestic violence, the court **first has to decide whether the abuse happened**. If not, show this opinion. This is true even if the evidence were raised in a different court case, such as a divorce case. If the court says that abuse happened, it then **has to apply the rebuttable presumption found in Family Code section 3044 before deciding custody**. This is true even if the order is **only temporary**.

For questions, contact Family Violence Appellate Project at info@fvapl.org or (510) 380-6243. Thank you!

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