



CASE ALERT

New Case Says Family Courts Must Give “Statements of Decision” in Custody Cases, and Giving a Lot of Visitation to a Parent Can Be Joint Custody.

City and County of San Francisco v. H.H. (2022) 76 Cal.App.5th 531 (published 3/18/22, A161503)

How Could This Case Help Your Clients?

This case can help if your clients are in a custody case and want a “statement of decision” from the court, which is a way for the court to say why it made the order. This case can also help if the other parent has been abusive.

Summary of the Case

Mother got a domestic violence restraining order against Father after he physically abused her and kept their young son from her, and police got involved. The family court gave Mother sole legal and physical custody but left in place a visitation schedule where Father had three days a week and Mother four. Because of the amount of time to Father, the court’s order was actually joint physical custody. In California, when a parent has abused the other parent or another family member in the past 5 years, that parent can’t have joint custody unless they can prove they have overcome the [Family Code section 3044](#) presumption. If the family court agreed, it had to explain how Father defeated the presumption by going through all 8 factors in the law. This didn’t happen so the appellate court said the family court got it wrong, canceled the visitation order, and sent the case back for the family court to make a new visitation order.

Mother had also asked for a “statement of decision” from the judge, under [Family Code section 3022.3](#). The judge said no, and the appellate court said this was wrong because parents can get a “statement of decision” in a custody case if they ask for it. A “statement of decision” is different from a statement of reasons under Family Code section 3044. FVAP’s [website](#) has more free resources on both “statements of decision” and Family Code section 3044.

PRACTICE TIPS

1. If any court has said the other parent abused your client or another family member in the past 5 years, the family court should not give that other parent sole or joint legal or physical custody, unless the court talks about all the Family Code section 3044 factors in writing or at the hearing. **Giving a lot of visitation time to the other parent can be joint physical custody even if the court does not call it that.** If the court gives a lot of visitation to the other parent and says they don’t have custody, have your client show them this case.
2. **Even without domestic violence in the case**, the family court should give a “statement of decision” if either party asks. If the judge says no, have your client show them this case.

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