



## **CASE ALERT**

*In re Marriage of F.M. and M.M. (2021) 65 Cal.App.5th 106*

- **Courts Must Hear About Abuse That Happened After You Asked for a Domestic Violence Restraining Order (DVRO).**
- **Restraining Orders Can be Given Because of Your Testimony Alone and You Do Not Have to Give an Above Normal Level of Detail or Additional Support.**
- **Physical Separation Is Not an Excuse to Not Give You a DVRO.**

### **Summary of the Case**

Mother asked for a DVRO after Father physically and verbally abused her. In her request, Mother gave examples of how Father regularly abused her and listed four specific dates of abuse. She said that Father threatened to kill her if she called the police, took away her phone, called her vulgar names in front of the children, and threw her things outside on the lawn. The trial court gave her a temporary restraining order (TRO) but it did not require Father to move out of their home and did not include the children as protected parties.

Afterwards, the parties had two more hearings. At the next hearing, the court said Mother and Father did not need a DVRO if they stayed away from each other. It thought the parties living together caused the violence. Before the second hearing, Father told Mother to collect her things from the home. At the second hearing, Mother told the court that Father pushed and threatened her while she was there. The court said Mother did not show good judgment and would not have gone to the house if she were really afraid.

At the final hearing, Mother stated that Father recently threatened to kill her after she took money from their joint account. However, the trial court did not want to hear about Father's threats and his actions because they happened after Mother asked for a DVRO. The trial court ignored Mother when she asked to move back home with her children and for Father to move out. Finally, the trial court did not give Mother a DVRO because she did not give other evidence or enough details of the abuse.

The appellate court disagreed with the trial court for the following reasons:

#### **1. The trial court must hear about abuse that happens after you asked for a DVRO.**

This case says that the trial courts must listen to evidence of abuse that happens after you ask for a DVRO. The court cannot ignore such behavior simply because it happened after your request. The courts must look at all acts of abuse when deciding a DVRO request. You might hear the court refer to this as the "totality of the circumstances." This is important if the parties co-parent or if there is a lot of time between hearings. The case also says that violations of existing TROs are abuse. The courts must also hear about these violations.

**2. The DVPA does not ask for a higher level of detail or additional supporting evidence to prove abuse.**

This case states that you do not have to give more details to prove domestic violence than other types of cases ask for. Instead, you only need to give the court “reasonable proof” of abuse. This case recognizes that in many cases the survivor’s own testimony is the only proof available. For this reason, trial courts can use only the survivor’s statements to give a DVRO. You do not have to give other evidence of abuse to get a DVRO. You might hear the court say “corroboration” or “corroborating evidence” instead of “other evidence.” Here, Mother gave a general description of the abuse and included a few specific dates. This case explains that this was detailed enough.

**3. Physical separation alone is not a substitute for a DVRO’s legal protections.**

This case says that a court cannot deny a request for a DVRO solely because the survivor left the home shared with the abuser to escape abuse. If the parties stopped living together or are physically separated, this is not the same as having a DVRO’s protection. A DVRO can still be issued even if the parties stay away from each other. This is because violence might still happen in the future. If the parties are co-parents, they might still have to contact each other.

**PRACTICE TIPS**

1. Use this case to remind the court to look at all acts of abuse, including those that occurred after you asked for a DVRO.
2. Use this case to press back if the court ignores dates and time frames you provided in your testimony or papers. If you said abuse regularly occurred throughout your relationship, give details about the abuse itself even if you cannot give specific dates.
3. This case can be helpful if your statements are the only proof you have of abuse. Use this case if the court tries to call your case a “he said/she said” situation or if the court asks for more evidence. The court can give you a DVRO if it only has your testimony.
4. Use this case if anyone says the abuse will stop if you and the other party stop living together, especially if you have children together or abuse occurs after a TRO is issued.
5. If possible, remind the court of all of your requests at the beginning of each hearing such as requests about moveout orders or cell phone plans.

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