



CASE ALERT: WASHINGTON

New Case on What is “Substantial Evidence” of a History of Domestic Violence in Parenting Plans and for Continuing Restraining Orders

In re Marriage of Mishko, 23 Wn. App. 571, 519 P.3d 240 (2022)

How Could This Case Help? This case may help someone seeking restrictions in parenting plans, such as sole decision making, based on the other parent’s history of domestic violence. This case may also help someone seeking a continuing restraining order in their family law case.

Summary of the Case Mother petitioned to modify a parenting plan to impose restrictions limiting joint decision making based on Father’s history of domestic violence, and she also requested a continuing restraining order. She said that during their relationship, she feared for her and her child’s safety because Father was physically and emotionally abusive during their marriage, while she was pregnant, and verbally abusive towards their child. During the family law trial, Father’s prior partner who had a domestic violence protection order against him stated that at almost every visit the child had with Father, the child either witnessed Father emotionally or verbally abuse her or was abused himself. After the trial, the trial court entered a revised parenting plan that did not impose the restrictions Mother asked for and denied the restraining order stating there was not enough evidence of domestic violence. Mother appealed.

The Court of Appeals said there was “substantial evidence” that Father had a history of domestic violence. The appeals court was referring to testimony from both the Father’s prior partner and Mother about verbal and emotional abuse, physical threats, and physical violence, and previous restraining orders and court findings of abuse. The opinion explains the trial court makes a mistake if it does not make a finding of a history of acts of domestic violence when there is substantial evidence of domestic violence. Also, the trial court made a mistake by not considering Mother’s request for the continuing restraining order even though there was a lot of evidence of Father’s domestic violence.

PRACTICE TIPS

1. If you are wondering what **specific examples of abuse and threats are enough evidence to show a history of acts of domestic violence**, show the court this case.
2. If the other parent or the trial court says that the domestic violence is **old history**, show them a copy of this case. If it looks like that person has taken steps to get help but there are still **recent instances of conflict (or coercive control)**, show them a copy of this case.
3. If you are **asking for a continuing restraining order** in your family law case and there was a history of domestic violence by the other party, show the court this case.

For questions or clarifications, email or call Family Violence Appellate Project at infoWA@fvapl原因.org or (360) 680-1030. Thank you!