



CASE ALERT

New Case Explains that a Survivor’s Retaliatory or Angry Motives for Renewing a DVRO Does Not Mean There is Not a Genuine Fear of Future Abuse

Michael M. v. Robin J. (2023) 92 Cal.App.5th 170

How Could This Case Help Your Clients? This case may help someone seeking a renewal of a domestic violence restraining order (DVRO).

Summary of the Case Mother sought renewal of a three-year DVRO against Father. Prior to obtaining the DVRO, Father physically and verbally abused Mother, including while Mother was holding their infant child. Months after the DVRO was granted, Father strangled and held a knife to Mother’s throat in the presence of their children. Father also sent a threatening text to Mother days before the hearing on the DVRO renewal. The trial court, however, denied Mother’s request to renew the DVRO. The trial court found that Mother’s fear of future abuse was not reasonable because there had been no recent incidents of violence. The court also determined that the threatening text “really [wasn’t] a violation.” The trial court instead concluded that Mother had filed the DVRO renewal request to retaliate against Father for filing for custody. And although the court found that Mother’s fear of future abuse was not credible, it warned Father not to commit future abuse.

The Court of Appeal disagreed with the trial court and ordered the renewal of Mother’s DVRO. The opinion confirmed that a DVRO renewal request does not require the person requesting renewal to show recent abuse or a violation of the DVRO. Renewal only requires someone to show a reasonable apprehension of future abuse. The opinion also confirmed that, when deciding whether Mother’s fear of future abuse was genuine and reasonable, the trial court should not have disregarded violations of the DVRO simply because they were not recent or not violent. Here, there had been a serious violation of the DVRO two years before the renewal request. Furthermore, the text Father sent Mother days before the hearing was a clear violation of the DVRO and the trial court did not have discretion to dismiss it as not “really” a violation. The decision additionally noted the trial court’s warning to Father to not commit future abuse showed that Mother’s fear of future abuse was reasonable.

The opinion also, for the first time, stated that a retaliatory or angry motive for filing a DVRO renewal request does not negate a reasonable apprehension of future abuse. Here, even if Mother had a retaliatory motive for requesting the DVRO renewal, she could also have a genuine fear of future abuse because “anger and fear are not mutually exclusive.” And, on this record, Mother showed “compelling evidence” of reasonable apprehension of future abuse.

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

PRACTICE TIPS

1. If a court denies a DVRO renewal request because there haven't been **recent acts of abuse**, show the court this case.
2. If a court does not consider a DVRO violation because it thinks the violation was **too long ago or not serious**, show the court this case.
3. If the court suggests that the person filing for a DVRO renewal is **motivated by anger or retaliation**, show them this case. **A retaliatory or angry motive doesn't mean that a survivor's fear of future abuse is not genuine.** Although the appeal court didn't discuss how motive should or shouldn't impact an *initial* DVRO petition, this case could also be helpful if a court questions the retaliatory or angry motives of someone filing for an initial DVRO.
4. If the court denies a DVRO renewal request but **warns the abuser not to commit any acts of abuse**, show the court this case.