



CASE ALERT

Vinson v. Kinsey (2023) 93 Cal. App. 5th 1166

New Case Explains that:

- **Survivors' Do Not Need to Act in a Certain Way in Order to Prove Domestic Violence Happened**
- **A Survivor's Ongoing Contact With the Person Who is Abusive, Especially a Co-Parent, Does Not Mean Abuse Did Not Happen or that They Do Not Need a Restraining Order**

How Could This Case Help Your Clients? This case may help someone seeking a domestic violence restraining order (DVRO), especially if the client has children in common with the abusive person or if the abuse has been going on for a long time.

Summary of the Case: Vinson asked for a Domestic Violence Restraining Order (DVRO) against Kinsey in April 2020, after more than a decade of physical and verbal abuse by Kinsey. While they were not dating anymore, Vinson and Kinsey had ongoing contact because they had children together. In her request, the most recent incident of abuse was in March 2020 when Vinson took Kinsey to the grocery store to buy food for the kids. Kinsey became "irate," "began threatening to beat [her] face in," and said he would kill her. Vinson submitted as evidence pages of text messages showing Kinsey's many threats to harm or kill her. She also submitted sworn statements from family and friends describing incidents of Kinsey physically injuring and verbally attacking Vinson. They described Kinsey punching holes in the wall of Vinson's home. The trial court denied Vinson's request for the DVRO. The trial court found that Vinson did not "act like" Kinsey's threats of violence were real threats because she continued to have contact with him, even driving him to the grocery store in March despite his past behavior. The trial court also said Vinson waited too long to file her request. She filed about 5 weeks after the most recent incident. The trial court said this suggested that Vinson was "not particularly concerned" about Kinsey's threats. The trial court cited unspecified "issues of credibility" as another reason for denying Vinson's DVRO request.

The Court of Appeal disagreed and sent the case back to the trial court with instructions to have a new hearing. The Court said a person requesting a DVRO does not have to be afraid of actual physical injury. DVROs only require the person asking for protection to show that the other person more likely than not committed an act of abuse. Kinsey's threats were abuse. The trial court was wrong to require Vinson to show she was afraid. The trial court was wrong to say that Vinson could only show she was afraid by acting in certain ways, including having no contact with Kinsey. The trial court was also wrong to find that Vinson's ongoing contact with Kinsey meant she was not believable when she said she feared Kinsey, because all women exposed to violence do not react to abuse in the same way. Here, there was clear evidence that Kinsey threatened to harm Vinson. The fact that she was communicating with Kinsey did not make Kinsey's threats less serious, mean that they were not abuse or that Vinson was not afraid Kinsey would hurt her. Finally, the Court said that the trial court's focus on the timing of Vinson's filing of the DVRO request following the most recent incident of abuse was too narrow and ignored "the parties' overall history over the course of a decade-long relationship and the recognized difficulty of leaving an abusive relationship."

The opinion also talks about the trial court's failure to look at other pieces of evidence, including the texts and other documents which showed Kinsey's history of "physical abuse, verbal abuse and destruction of property." The Court said it was "difficult to see" how the trial court considered the totality of the circumstances which is required by law.

The opinion also explains that a declaration included with a request for a DVRO is admitted as evidence unless there is an objection by the other side. And a trial court should be more helpful when there is a unrepresented person requesting a restraining order to make sure evidence is not excluded because the person does not know all the court rules and procedures.

PRACTICE TIPS

1. If a court denies a DVRO request because the survivor **had contact with the person abusing them** after receiving threats of harm from that person, show the court this case.
2. If the court uses the **amount of time between a person filing for a DVRO and the last incident, to say that the person was not genuinely afraid of abuse**, show the court this case.
3. If a court **focuses only on one event or incident and does not look at all the incidents of abuse over time or the context** when considering whether to grant a DVRO, show the court this case.
4. If the court **says a survivor should have behaved in a certain way if they were "really" abused**, show them this case.
5. If the court **ignores incidents of abuse described in a declaration, or other documents that describe abuse, or says a declaration or document cannot be considered without giving a reason**, show them this case.

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