



CASE ALERT

A Violation of a Temporary Restraining Order Qualifies as Abuse Under the Domestic Violence Prevention Act
N.T. v. H.T. (2019) 34 Cal.App. 5th 595

Family Violence Appellate Project, University of California-Irvine Domestic Violence Clinic, and Jones Day represented *N.T.* in this appeal that may help some of your clients. Thanks to the 21 organizations and academics who joined our request for publication!

How Could This Case Help Your Clients? This case may help your client obtain a domestic violence restraining order (DVRO), if the restrained party has violated a temporary restraining order (TRO), because, aside from any other abuse that your client alleges, the violations in and of themselves qualify as abuse under the Domestic Violence Prevention Act.

Summary of the Case

In *N.T. v. H.T.*, the parties agreed to a 4-month extension of the TRO associated with mother's *first* DVRO request. The TRO included orders not to harass, stalk, disturb mother's peace, and no contact except for brief and peaceful contact required for visitation. Before the TRO expired, mother filed a *second* DVRO request, which was only based on allegations that father violated the TRO on multiple occasions and that he was using visitation exchanges to try to coerce her back into the relationship. Specifically, she alleged that:

- 1) Father repeatedly refused to give her their child during visitation exchanges unless she interacted with him, including asking her for hugs and kisses and making threats to fight for custody. The exchanges were video recorded, and written transcripts of those recordings were submitted into evidence.
- 2) Father followed her after a visitation exchange, questioning who she was with and stating that because she was a "housewife" no one should be with her.
- 3) Father entered her apartment complex that was a confidential address. She submitted into evidence a picture of father's vehicle.
- 4) Father gave her a spiritually abusive letter, stating she was "dirty," "filthy," and needed to be cleansed for her sins.
- 5) Father took their child before the scheduled visitation exchange time and from a location other than the agreed-upon location.
- 6) After she reminded him of the TRO, father basically responded that "his lord" said he didn't need to follow it.

She also alleged the violations made her feel afraid. The trial court denied the second DVRO request, stating that violating a TRO is not "in and of itself domestic abuse" under the DVPA and that the violations were "technical."

The appellate court disagreed, holding that a violation of a TRO independently qualifies as abuse under Family Code section 6203(a)(4): "abuse means...engaging in behavior that has been or could be [prohibited]." It explained that father had engaged in many actions prohibited under the TRO, which he did not deny, but rather minimized or attempted to justify by explaining his desire to reunite with mother and spend more time with their child.

The appellate court also held that aside from the father's actions being TRO violations, the actions described in 1-6 above, qualify as abuse under the definition of "disturbing the peace" in Family Code section 6320.

PRACTICE TIPS

1. The protected party should keep a detailed record of any TRO violations. For example, keep a written diary of the violations and/or any text messages, video-recordings and/or pictures that help prove the violation occurred.
2. If possible, before the DVRO hearing, the protected party should timely file and serve an additional declaration that explains the violations. Any evidence (text messages, pictures) should be attached to the additional declaration.
3. At the DVRO hearing, the protected party should explain to the judge how the behavior violates the TRO and submit any supporting evidence into the trial court record. To submit evidence into a trial court record, you can say: "your honor, I'd like to submit this photograph as evidence into the record." Also, coming mid-June, you can view the "Evidence and Discovery" training on the Pro Bono Training Institute's website to help you better understand this process. Go to <https://pbtraining.org/all-courses/dvro/>.
4. The protected party should explain to the judge how the violations made them feel, for example scared, anxious, etc.
5. The protected party should ask the judge to state on the record if the conduct is a violation of the TRO. Remember, the judge's statements can only be made on the record, or orally, if there is a court reporter present. All litigants who qualify for a fee waiver can request a free court reporter—see FVAP Case Alert *Jameson v. Desta* for tips and an example request form at www.fvaplaw.org.
6. If the court finds the conduct is a violation of a TRO, then it qualifies as abuse under the DVPA. But that does not mean the court *has to* issue a DVRO. The judge still has the ability to deny the DVRO, so the protected party should explain why they need a DVRO.
7. If the restrained party or judge says that the violations are merely technical, remind them that the *N.T. v. H.T.* case said that the violations alleged were *not* technical, and that it cited the *Lister v. Bowen* (2013) 215 Cal.App.4th 319 case, which held that "[a] knowing violation of a DVRO cannot be characterized as a de minimis and technical violation."

For questions or clarifications, contact Family Violence Appellate Project: info@fvaplaw.org or (510) 858-7358. Thank you!