

CASE ALERT

New Case Explains Unwanted Contacts, Harassment, and Disturbing the Peace Are Abuse, Even Without Threats or Violence, and Even If Part of a Lawsuit

Bassi v. Bassi (2024) 101 Cal.App.5th 1080

How Could This Case Help Your Clients?

- This is one of the first cases to explain **survivors don't have to ask the abuser to stop the abuse before they can get a domestic violence restraining order (DVRO)**. If the abuser sends harassing, disturbing, or unwanted messages, the survivor doesn't need to first ask them to stop before they can get a DVRO. ([Fam. Code, § 6320, subd. \(a\).](#))
- This is one of just a few cases to help explain some behavior that seems like a "mere annoyance" is actually abuse. This case explains behavior needs to be looked at as part of **the history of the parties' relationship**. ([Fam. Code, § 6301, subd. \(c\).](#)) In this case, the court explained the abuser's emails may seem to be "mere annoyances" when read for the first time. But when reading those emails as part of the parties' relationship over time, it's clear those emails are actually abuse.
- This case shows that unwanted contacts, harassment, OR disturbing the peace can be enough to get a DVRO, even if **ONLY ONE of these three types of abuse has happened**. ([Fam. Code, § 6320, subd. \(a\).](#)) Cases often say behavior is unwanted contact, harassment, *and* disturbing the peace. This makes it seem like behavior has to be all three types of abuse to count for a DVRO. But to get a DVRO, a survivor only has to prove **one type of abuse** happened. ([Fam. Code, § 6300, subd. \(a\).](#))
- This case gives examples of how an abuser's unwanted contacts, harassment, or disturbing the peace, can still be abuse even **without threats or violence**. ([Fam. Code, § 6320, subd. \(a\).](#))
- This case helps explain why a previous case, *Curcio v. Pels* (2020) 47 Cal.App.5th 1, is limited in how it can be used to show abuse didn't happen. This is important to note because we have seen many courts use *Curcio v. Pels* to say abuse didn't happen and deny a DVRO, even when *Curcio v. Pels* really shouldn't be used in that way. Basically, in *Curcio v. Pels*, the appeal court said the DVRO shouldn't have been granted because one private Facebook post wasn't enough to be abuse on the specific facts of that case. Importantly, *Bassi v. Bassi* gives a helpful example of how ***Curcio v. Pels* should NOT be used for denying a DVRO or finding abuse didn't happen, without very careful consideration first**. ([Fam. Code, § 6320, subd. \(a\).](#))



***The above points about this case **apply to all DVRO requests**, whether or not the two specific laws mentioned below (**anti-SLAPP and litigation privilege**) are raised in the DVRO case.



***The below point about this case applies **only if one or both of the two specific laws** mentioned below is/are raised in the DVRO case.

- This case can help address some of the issues caused when a DVRO respondent tries to **throw out a DVRO request early**. For instance, the respondent can try to use the "anti-SLAPP" law ([Code Civ. Proc., § 415.16](#)) or the litigation privilege ([Civ. Code, § 47, subd. \(b\)](#)) to ask a judge to dismiss a lawsuit before the trial. Both laws are related, but different, and one law can apply when the other

doesn't. In short, the anti-SLAPP law is meant to throw out "strategic lawsuits against public participation" (SLAPP)—lawsuits without enough of a basis that're filed to stop free speech or use of the courts. And the litigation privilege is meant to stop lawsuits that would stop someone's good faith use of the courts.

- This case shows an example where divorcing spouses sent each other many messages, only some of which actually related to their lawsuits. While some of those messages may be protected by the anti-SLAPP law or litigation privilege, the survivor also said some of the messages were acts of abuse and were not covered by these two laws, meaning his DVRO request should go forward. The appellate court agreed.
- This case also explains that, in a case like this, the litigation privilege shouldn't be used at all to say lawsuit-related behavior isn't abuse for the DVRO. This means the court can consider all of the emails, even if they would be protected by the litigation privilege.

Case Summary

Toward the end of their divorce, Robert asked for a DVRO against his spouse Susan. Robert's request said some emails Susan sent were unwanted, harassing, and disturbing, including hurting his business and social life. Susan tried to throw out Robert's DVRO request early, using the anti-SLAPP law. ([Code Civ. Proc., § 425.16.](#)) Susan said Robert's DVRO request was based on her emails about her plans to file a lawsuit against him and others, so they can't be used as evidence of abuse for a DVRO. The trial court disagreed and allowed Robert's DVRO request to go forward.

Susan appealed, and the Court of Appeal agreed with the trial court. The appeal court said: (1) the anti-SLAPP law and the litigation privilege ([Civ. Code, § 47, subd. \(b\)](#)) can't stop the DVRO request here; and (2) Robert's DVRO request had enough evidence of abuse for a DVRO, including unwanted contacts, harassment, and disturbing Robert's peace. (Fam. Code, §§ [6203](#), [6320](#).)

PRACTICE TIPS

1. If a survivor wants a DVRO because of **harassment, disturbing the peace, or unwanted messages**, show the court this case.
 - a. If the respondent or court says abuse didn't happen because the **survivor didn't first ask them to stop**, show them this case.
 - b. If they say abuse didn't happen because there must be **harassment, disturbing the peace, AND unwanted contacts**, not just *one* of those, show them this case.
 - c. If they say behavior is not abuse without **looking to the parties' relationship history**, show them this case.
 - d. If they say abuse didn't happen or a DVRO is not needed because there were **no threats or violence**, show them this case.
 - e. If they say that abuse didn't happen because of the ***Curcio v. Pels* case discussed above**, show them this case.
2. If the respondent tries to **throw out the DVRO case early** with an **anti-SLAPP motion** or by using the **litigation privilege**, show the court this case.

For questions or clarifications, email or call Family Violence Appellate Project at info@fvaplaw.org or (510) 380-6243. See [FVAP's case compendium](#) for *Curcio v. Pels* mentioned above and other DVRO cases, plus a bunch of other free resources on our website for more. Thank you!