



CASE ALERT

Stipulated (Agreed-To) DVROs Trigger Family Code § 3044 Rebuttable Presumption

C.C. v. D.V. (2024) ___ Cal.App.5th ___ [2024 WL 4210676]

How Could This Case Help Your Clients?

- This is the first case to say that a **stipulated domestic violence restraining order after hearing (DV-130, JV-255, or JV-265)** triggers the [Family Code section 3044](#) rebuttable presumption. This means if the parties agree to a DVRO, and one of them asks the court to make a custody or visitation order, the court must apply [section 3044](#).
 - Please see FVAP's website (<https://fvaplaw.org/resource-library/>) for more information and free resources on [section 3044](#).
- This case also is an example of a trial court's need to apply section 3044 for both legal and physical custody. So even if the court grants the survivor sole physical custody, the court still has to apply section 3044 before it can grant the abuser joint legal custody. (See [Fam. Code, § 3000 et seq.](#) [defining legal and physical custody].)

Case Summary

In this case, survivor C.C. asked the court for a DVRO against D.V. after years of his emotional and verbal abuse, including sending unwanted sexual pictures and degrading names, as well as sexual abuse including groping at custody exchanges. At a DVRO hearing in April 2023, the parties agreed to enter a DVRO protecting C.C. against D.V. for one year. The stipulated DVRO did not address custody. C.C. then asked the court to modify custody, and at a custody hearing in July 2023, the court maintained joint custody without addressing [Family Code section 3044](#). C.C. appealed from both the April 2023 and July 2023 custody orders. D.V. argued that section 3044 did not apply when the DVRO was part of a stipulated agreement.

The Court of Appeal affirmed the April 2023 order, saying the trial court did not need to decide custody that day because the parties had already agreed to have it decided separately. But the Court reversed the July 2023 order, saying a stipulated DVRO does trigger Family Code [section 3044](#), and the trial court erred by failing to apply it. In reversing, the Court importantly explained that Family Code [section 3044](#) applies to both legal and physical custody ([Fam. Code, § 3000 et seq.](#) [defining legal and physical custody]), and the statutory presumption can be rebutted as to one form of custody and not the other.

PRACTICE TIPS

1. If your client and the opposing party agree to a DVRO, and the court then makes a custody order, the court must apply the [Family Code section 3044](#) presumption against the restrained party. If the court says it does not have to apply [section 3044](#) because the DVRO was agreed to, show them this case.
2. If your client and the opposing party agree to a DVRO, and your client wants the court to apply [section 3044](#), be sure to ask the court to do so. This is so even if the parties' agreement does not talk about custody.

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