

CASE ALERT

Family Code Section 3044 Applies Even If Parties Agree or Agreed to Joint Custody

In re Marriage of J.G. & K.G. (2025) ____ Cal.App.5th ____ [2025 WL 1275765]

How Could This Case Help Your Clients?

- This is the first case to say that the trial court must apply the [Family Code section 3044](#) presumption against awarding custody a parent who committed domestic violence—***even if the parties want to agree (stipulate) to joint custody.***
 - The trial court must independently determine the child’s best interest ([Fam. Code, § 3011, subd. \(a\)\(5\)\(A\)-\(B\)](#)), which must include the [section 3044](#) presumption. This is true even if the parties had previously agreed to joint custody.
 - Parties can’t stipulate around [section 3044](#).
 - Parties can’t stipulate that [section 3044](#) doesn’t apply, when past abuse has been found or alleged.
 - Parties can’t stipulate that [section 3044](#) has been overcome (“rebutted”).
 - If [section 3044](#) is triggered, the trial court must analyze the rebuttal factors before it can find the presumption rebutted.

Case Summary

In 2021 the trial court found that Father had abused Mother in 2019, and ordered the parties to share joint custody, noting the parties had agreed to this before. In 2023, a second judge denied Mother’s request to modify custody, finding without further explanation that Father had rebutted the [Family Code section 3044](#) presumption, and noting that Mother had agreed to joint custody before. The Court of Appeal reversed, concluding that neither judge had analyzed the mandatory rebuttal factors in [section 3044](#), so neither had properly found the presumption rebutted. Even if the parties want to reach an agreement on custody, the court must still independently determine the child’s best interest and whether the [section 3044](#) presumption has been rebutted. Parties cannot stipulate around [section 3044](#) or stipulate that it has been rebutted without the court also making the mandatory findings.

PRACTICE TIPS

1. If the trial court says [section 3044](#) **doesn’t apply, or has been rebutted**, because the parties previously agreed to joint custody, or want to agree to joint custody now, then show them 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 other cases related to custody or domestic abuse, plus a bunch of other free resources on our website for more. Thank you!