CASE ALERT

New Case Explains that Trial Courts Must Apply the Family Code Section 3044 Presumption Even If the Presumption Was Rebutted in a *Different* Custody Case

In re Marriage of Jessica L. & Sammer Z. (2026) 123 Cal.App.5th 1

How Could This Case Help Your Clients?

This case could help your client by making sure the family court applies the Family Code section 3044 before awarding custody to a parent who's committed abuse. The Opinion explains the section 3044 presumption against awarding sole or shared custody to someone who committed abuse applies in every custody proceeding with an abusive parent until and unless it is rebutted in each proceeding. Rebuttal as to one child with one parent is not the same issue as rebuttal with another child and another parent. The presumption is unique to each child and each parent the abusive parent litigates custody against. **The abusive parent has to rebut the presumption for each custody case.**

Summary of the Case

In December 2024, the trial court granted **Jessica and Sammer** joint custody of their child. The trial court refused to apply **Family Code section 3044** despite the February 2024 finding that Sammer had abused his new partner, Raquel. The court said it did not need to apply the presumption against Sammer in December 2024, for his custody case with Jessica, because it had previously found Sammer rebutted the presumption in his custody case with Raquel. Jessica appealed. The Court of Appeal reversed, explaining the trial court should have applied the section 3044 presumption against Sammer in his case with Jessica. Although Sammer rebutted the presumption in his case with Raquel, that rebuttal involved a different partner, a different child, and different facts. The Court also explained the trial court erred in relying on the preference for frequent and continuing contact, when section 3044 does not permit that before the presumption is rebutted.

PRACTICE TIPS

If the opposing party has abused a new partner, or anyone in Family Code section 3044, subdivision (a), or section 3011, subdivision (a)(2)(A), the court has to apply the section 3044 presumption in your client's custody case. Use this case to explain that the judge:

1. Has to apply the presumption if the abusive parent has abused a new partner or other close family member.
2. Has to apply the presumption even if the abusive parent has rebutted the presumption in their custody case with another parent.
3. Can't use the preference for frequent and continuing contact before the section 3044 presumption is rebutted, or when deciding whether it has been rebutted.

Questions for FVAP? Contact us at info@fvaplaw.org or (510) 380-6243. Thank you!