DOMESTIC VIOLENCE RENEWAL

Trial Courts reversed for denial of renewal. Failed to consider the egregiousness of the original act. No requirement to have violations of the RO.

_G.G. v. G.S._ (2024) 102 Cal. App. 5th 413.

Summary:
Appellant unsuccessfully sought renewal of a domestic violence restraining order against her former romantic partner (Fam. Code, § 6345, subd. (a)). The order was originally issued on stalking.

The Court of Appeal reversed and remanded. The court found the trial court articulated the standard and factors adopted by *Ritchie v. Konrad*. However, it took the discussion no further than the observation that the original basis for the domestic violence restraining order and respondent's alleged postorder behavior were both stalking (§ 6345, subd. (a)). The trial court did not mention the severity of the behavior that occurred, when appellant testified that respondent had manhandled her, cornered her, taken her phone, and followed her to work in a courthouse. Nor did the trial court address the various and repeated instances of threatening behavior that occurred after the relationship was over, when respondent placed a listening device in appellant's home and persistently appeared uninvited. (Opinion by Zukin, J., with Currey, P. J., and Collins, J., concurring.)

NAVARRO v CERVERA (2025) 108 Cal.App.5th 229

Summary:
The trial court denied plaintiff's request to renew her domestic violence restraining order (DVRO) against defendant. The parties dated for approximately eight years before breaking up in 2018. Plaintiff stated in her renewal application that defendant violated the existing DVRO by texting, e-mailing, and mailing communications to her, and she claimed she was afraid defendant would harm her in the future because defendant, among other things, admitted to attempting to kill her a few months after the breakup by first breaking into her apartment and then discovering her work schedule and waiting in her workplace parking lot to try to kill her. (Superior Court of Alameda County, No. HF18915010, Keith Kern Fong, Judge.)

The Court of Appeal reversed the order and remanded with instructions, concluding it was an abuse of discretion for the trial court to deny renewal of the DVRO (Fam. Code, § 6345, subd. (a)). The facts surrounding the incident on which the initial DVRO was based were egregious and, combined with defendant's intentional violations of the DVRO, established the reasonableness of plaintiff's ongoing fear of future abuse. Defendant admitted sending text and e-mail messages in violation of the DVRO and after her change in medication and new psychiatric diagnosis. The trial court erred in concluding plaintiff's fear of future harm was unreasonable based on changes in defendant's medication. There was no substantial evidence in the record to support the finding that defendant's attack on plaintiff was triggered by medication. Nor did the record support a finding that defendant's updated mental health diagnosis negated plaintiff's fear of future harm. The trial court was required to broadly construe the Domestic Violence

Prevention Act (Fam. Code, § 6200 et seq.) when assessing the reasonableness of plaintiff's fear. Instead, by giving greater weight to defendant's unsubstantiated justifications for her abuse and DVRO violations rather than considering the impact of those actions on plaintiff's sense of safety, the trial court abused its discretion. (Opinion by Petrou, J., with Tucher, P. J., and Rodríguez, J., concurring.)

DOMESTIC VIOLENCE RESTRAINING ORDERS

BAILEY v MURRAY (2024) 102 Cal.App. 5th 677.

Summary:
Petitioner sought a domestic violence restraining order (DVRO) under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.) against a former intimate partner, alleging he sexually assaulted her after the relationship had ended. The trial court granted a temporary restraining order that, among other things, barred the former partner from possessing firearms and from going to the church they attended. At a later DVRO hearing, the trial court issued a DVRO, finding the former partner had sexually assaulted petitioner and had committed subsequent acts of abuse by attending the same church as petitioner and possessing a firearm. (Superior Court of San Bernardino County, No. FAMSB2301122, Shannon N. Suber, Temporary Judge.*)

The Court of Appeal affirmed. The trial court did not compromise its neutrality by questioning petitioner because petitioner was unrepresented, her former partner was represented by counsel, and the trial court asked general, open-ended questions that elicited petitioner's testimony about the two incidents of sexual abuse. The former partner was also given several opportunities to respond to the report that he was the registered owner of a firearm in violation of the DVRO (Fam. Code, § 6203, subd. (a)(4)), and he refused to respond fully. (Opinion by Raphael, J., with McKinster, Acting P. J., and Miller, J., concurring.)

C.C. v. D.V. (2024) 105 Cal.App.5th 101

Summary
Plaintiff sought a domestic violence restraining order against defendant. In April 2023, pursuant to a stipulation, the trial court issued a one-year restraining order after hearing (ROAH). The trial court did not mention Fam. Code, § 3044, which creates a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. In July 2023, after plaintiff filed a request for an order modifying custody and visitation, the trial court ordered the parties to continue to share custody. The trial court did not address § 3044 before issuing its order. (Superior Court of Marin County, Nos. FL2200215 and FL1403102, Sheila Shah Lichtblau, Judge.)

The Court of Appeal affirmed the trial court's April 2023 restraining order, but reversed the trial court's July 2023 order awarding joint custody. The court found that subsequent proceedings had rendered moot the custody issues in this case. But this matter presented a significant issue, which was capable of repetition yet evading review. Accordingly, the court retained the appeals and resolved the legal issue. The court held that the Fam. Code, § 3044 presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child is triggered whenever a restraining order after hearing (ROAH) issues—even when it is the product of a stipulation. When the trial court issued its joint custody order in July 2023, it had already issued an ROAH and thus found defendant had perpetrated domestic violence. The trial court prejudicially erred by not

determining the presumption in § 3044 was overcome before awarding joint custody. (Opinion by Rodríguez, J., with Tucher, P. J., and Fujisaki, J., concurring.)

CARDONA v SOTO (2024) 105 Cal.App.5th 141

Summary
The trial court issued a domestic violence restraining order (DVRO) following a hearing (Fam. Code, §§ 6300, subd. (a), 6340, subd. (a)). The order, which restrained a parent of a minor child, protected the other parent and the child. (Superior Court of Contra Costa County, No. MSD-11-00993, Judith S. Craddick, Judge.*)

The Court of Appeal reversed, noting that although the DVRO had expired, the appeal was not moot because the underlying finding of domestic violence triggered the five-year presumption against awarding custody of a minor child to a parent against whom a DVRO had been issued (Fam. Code, § 3044) and that five-year period had not expired. The trial court's reliance on testimony the minor gave in an interview outside the parties' presence, which was not reported or otherwise documented, was reversible error because the trial court violated due process by preventing any response to the minor's testimony and leaving the evidentiary basis for the DVRO unreviewable, regardless of whether there was any custody or visitation issue that would require specific procedures for the minor's testimony (Fam. Code, § 3042; Cal. Rules of Court, rule 5.250(e)(3)(D)). (Opinion by Humes, P. J., with Banke, J., and Siggins, J.,† concurring.)

MALINOWSKI v. MARTIN (2024) Cal..App.5th 559

Summary
The trial court denied a request to include children as protected parties under an existing domestic violence restraining order (DVRO) under the Domestic Violence Prevention Act (Fam. Code, § 6200 et seq.). (Superior Court of San Mateo County, No. 21-FAM-01531, Rachel Holt, Judge.)

The Court of Appeal affirmed, noting that videos of a supervised visitation exchange should not have been excluded because the videos did not record confidential communications in violation of privacy rights (Pen. Code, § 632) but involved statements that were subject to monitoring and documenting, were made in a public parking lot where they could have been overheard, and likely were recorded with actual knowledge. Recording confidential communications was not authorized for evidence-gathering purposes (Pen. Code, §§ 633.5, 633.6, subd. (b)) because an objectively reasonable belief that recordings would result in evidence was not shown, given that the DVRO did not include the children. (Opinion by Fujisaki, Acting P. J.,
with Petrou and Rodríguez, JJ., concurring.)

CUSTODY / VISITATION

FEEHAN v. SUPERIOR COURT (2024) 105 Cal.Ap..5th 38

Summary
The trial court denied a request for temporary visitation during the pendency of a petition to establish a parental relationship with a minor child (Fam. Code, § 7611, subd. (d)). (Superior Court of Alameda County, No. 23-FL-05671, Maria Morga, Judge.)

The Court of Appeal issued a peremptory writ of mandate commanding the trial court to vacate its order and to hold a new hearing to reconsider the request. The court held the trial court erred in concluding it lacked authority because trial courts have discretion (Fam. Code, §§ 3022, 3100,

subd. (a)) to enter temporary visitation orders if the requesting party makes a preliminary showing that the requesting party is a presumed parent and the order is in the best interest of the child. Because Fam. Code, § 7604, was not intended to be the exclusive authority for issuance of temporary visitation orders, trial courts are not precluded from awarding temporary visitation in Uniform Parentage Act (Fam. Code, § 7600 et seq.) actions under circumstances other than where a parent and child relationship has been found to exist pursuant to Fam. Code, § 7540 or 7541. (Opinion by Petrou, J., with Tucher, P. J., and Fujisaki, J., concurring.)

NEW LEGISLATION

AB 3072 amends 3064, 3100 : Existing law requires the court to refrain from making an order granting or modifying a child custody order on an ex parte basis unless there has been a showing of immediate harm to the child, as defined, or immediate risk that the child will be removed from the State of California. This bill would require a court to consider a parent's illegal access to firearms and ammunition when determining whether there is a showing of immediate harm to the child, as specified.

This bill would also require the court to determine whether to require that visitation be supervised, suspended, limited, or denied if it has found that circumstances warrant making an order granting or modifying a custody order on an ex parte basis because there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.

CHILD SUPPORT

IRMO SARAYE (2024) 106 Cal.App.5th 348

Summary
The trial court denied an obligor's request for order (RFO) for reimbursement of overpaid child support. (Superior Court of Los Angeles County, No. YD002089, Reginald L. Neal, Judge.)

The Court of Appeal affirmed, holding the equitable remedy of laches was unavailable as a defense to the RFO because the payee, who knew that the child was no longer a minor, had unclean hands. Because the wage and earnings assignment order (Fam. Code, § 5233) did not state an end date or a terminating contingency, nor did the parties' dissolution judgment specify that the payee was to notify the obligor of the happening of a contingency, Fam. Code, § 4007, subd. (b), did not apply to require the payee to refund the excess amount and the obligor had the burden (Fam. Code, § 5240, subds. (a)(2), (b)) to file an RFO for termination of the assignment order (Fam. Code, § 5235, subd. (a)) or request ex parte relief. Denying the RFO was not an abuse of discretion because a lengthy and prejudicial delay was a relevant consideration (Fam. Code, § 3653, subd. (d)). (Opinion by Stratton, P. J., with Wiley and Viramontes, JJ., concurring.)

MERCADO v SUPERIOR COURT (2024) 106 Cal.App.5th 1143

Summary
In a parentage action, the trial court ordered a party to undergo a vocational evaluation by the other party's chosen consultant. (Superior Court of Orange County, No. 22P000196, Claudia J. Silbar and Paul Minerich, Judges.)

The Court of Appeal granted writ relief, holding there was no statutory authority to order a vocational evaluation to impute earning capacity. Because the parties were not dissolving a

marriage or legally separating and there was no pending spousal support motion, no good cause existed to order a vocational evaluation relevant to a determination of spousal support (Fam. Code, § 4331). The party requesting the evaluation made only a conclusory statement regarding child support and the children's best interests (Fam. Code, § 4058, subd. (b)(1)(B)) without addressing the developmental needs of the children or the time spent with the children, and the trial court made no findings on these issues. The trial court's authority to appoint experts (Evid. Code, § 730) did not support ordering a vocational evaluation because the consultant was not a neutral expert. (Opinion by Sanchez, Acting P. J., with Delaney and Gooding, JJ., concurring.)

PROPERTY

IRMO LIETZ (2024) 99 Cal.App5th 664

Summary
In a dissolution of marriage case, the parties disputed the value of the family home. Both appraisers testified, and the trial court found the husband's appraiser to be more credible. The court found the home to be valued at $1,020,000. (Superior Court of Orange County, No. 19D003709, Sandy N. Leal, Judge.)

The Court of Appeal affirmed. The trial court did not err by precluding the wife from eliciting testimony regarding the home's lot size from her appraiser. During redirect examination when the wife's counsel asked the appraiser if the lot size was larger than 9,000 square feet, counsel was eliciting case-specific facts (Evid. Code, §§ 801, 802). The appraiser could not be permitted to testify regarding the lot size unless counsel produced and was able to admit into evidence a public record or other evidence that independently proved that fact, and counsel did not identify or produce the public record. (Opinion by Sanchez, J., with Bedsworth, Acting P. J., and Motoike, J., concurring.)

MOHAMMADIJOO & DADASHIAN (2024) 102 Cal.App.5th 392

Summary
The trial court entered a judgment of dissolution after a bench trial on reserved issues concerning financial matters in divorce proceedings. (Superior Court of Contra Costa County, No. D1304989, Brian F. Haynes, Judge.)

The Court of Appeal reversed and remanded, holding the trial court erred by not shifting the burden of proof to the spouse who, after the parties' separation, had exclusive management and control of overseas assets, which were not accounted for at the time of trial. The fiduciary obligations of a spouse (Fam. Code, § 721) extended to assets under the managing spouse's control through a relative who acted as a third party investment manager. Policy and fairness considerations also supported altering the burden of proof (Evid. Code, § 500) to require the managing spouse to account for allegedly missing separate property that the nonmanaging spouse had entrusted to the managing spouse. Sanctioning the managing spouse for violating disclosure obligations was insufficient because it did not go far enough to uphold the duty of strict transparency and fair dealing. (Opinion by Stewart, P. J., with Richman, J., and Mayfield, J.,* concurring.)

IN RE MARRIAGE OF WIESE (2024) 106 Cal.App.5th 917

Summary
In dissolution of marriage proceedings, the trial court found the husband had breached his

spousal fiduciary duties (Fam. Code, § 1101) and made an award accordingly. (Superior Court of Orange County, No. 14D010350, Nancy Wieben Stock, Temporary Judge.†)

The Court of Appeal affirmed in part, reversed in part, and remanded. The court held only claims for breaches of spousal fiduciary duties involving community property are exempted from otherwise applicable limitation periods (Fam. Code, § 1101, subd. (d)(2)) and not claims involving a spouse's separate property. Thus, the four-year limitations period (Code Civ. Proc., § 343) applied to breach of fiduciary duty claims alleging impairment of separate-property interests as a result of inaccurate accounting in a family business, and the wife's claims were untimely with respect to acts outside that limitations period. Limitations ceased to run upon the filing of a trial brief, not the dissolution petition, because the fiduciary duty claims were raised for the first time in the trial brief. Rejecting a laches defense was not an abuse of discretion because only claims within the limitations period were pertinent to the delay's reasonableness. (Opinion by O'Leary, P. J., with Goethals and Gooding, JJ., concurring.)

ATTORNEY FEES

MASIMO CORP v VANDERPOOL (2024) 101 Cal.App.5th 902

Summary
The trial court imposed monetary sanctions (Code Civ. Proc., §§ 2023.010, 2023.030, subd. (a)) against a law firm for misconduct that included providing only ineffective general objections in responses (Code Civ. Proc., §§ 2030.210, subd. (a)(3), 2031.210, subd. (a)(3)). (Superior Court of Orange County, No. 30-2019-01081908, Theodore R. Howard, Judge.)

The Court of Appeal affirmed, holding the firm's substitution out of the case as counsel before the filing of a motion to compel did not preclude an award of sanctions because it was not necessary to be counsel of record to be liable for monetary sanctions for discovery misuse, which can be imposed on any attorney advising the misconduct, and because the firm's lack of civility further justified awarding monetary sanctions. The firm's other arguments were unavailing because the record contradicted its claims that the trial court did not independently consider the referee's findings and that the opposing party had failed to meet and confer. (Opinion by Bedsworth, Acting P. J., with Goethals and Motoike, JJ., concurring.)

IRMO MOORE (2024) 102 Cal.App.5TH 1275

Summary
Plaintiff served deposition subpoenas for production of business records on nonparty deponents in marital dissolution proceedings. After the deponents asserted objections and refused to comply with most all of the subpoenas' demands, plaintiff filed a motion to compel their compliance under Code Civ. Proc., § 2025.480. The trial court granted the motion in substantial part and ordered the deponents to each pay plaintiff $25,000 in monetary sanctions. (Superior Court of the City and County of San Francisco, No. FDI20793151, David S. Weinberg, Judge.*)

The Court of Appeal reversed the portions of the trial court's orders imposing monetary sanctions on the deponents and remanded the matter with directions. The court concluded that based on the statutory language and available case law, costs and fees incurred during the meet and confer process are not outside the scope of compensable expenses for purposes of monetary sanctions under the Civil Discovery Act (Code Civ. Proc., § 2016.010 et seq.). The trial court could reasonably have concluded that one of the deponents failed to show this was an egregious case justifying summary denial of discovery, and that this appellant's attempt to have the motion to compel denied outright was not well grounded in law or fact. The court further concluded that

after a motion to compel has been filed, further expenses incurred in meeting and conferring on the dispute, whether it be through private mediation or normal channels of communication, are not [*1276] compensable as discovery sanctions. Fees and costs plaintiff incurred in mediation as meet and confer attempts after her discovery motions were already filed were not compensable as discovery sanctions because they were not incurred as part of the necessary costs of bringing the motions. Another deponent forfeited its argument that the trial court abused its discretion by failing to include attorneys' eyes only protection in connection with its order on the motion to compel. (Opinion by Fujisaki, J., with Tucher, P. J., and Petrou, J., concurring.)

IRMO McINTYRE & SHANAN (2024) 106 Cal.App.5th 76

Summary
A spouse requested to set aside a writ of execution for attorney fees filed by his former spouse, arguing that the judgment had expired after 10 years under Code Civ. Proc., § 683.020, and that the former spouse had not renewed the judgment within that period as provided by Code Civ. Proc., § 683.130. The family court denied the request. (Superior Court of Los Angeles County, No. SD025162, Elizabeth Potter Scully, Judge.)

The Court of Appeal affirmed the order. Both case law and the definition of a money judgment under the Code of Civil Procedure establish that an order for attorney fees constitutes a money judgment (Code Civ. Proc., § 680.270). Moreover, the parties both agreed that an attorney fees order is a money judgment. Thus, the plain language of Fam. Code, § 291, which exempts money judgments entered under the Family Code from the 10-year limitation period (Code Civ. Proc., § 683.020) and the renewal requirement (Code Civ. Proc., § 683.130), includes money judgments meant to satisfy payment for attorney fees. Legislative history, as well as reason and common sense, supported the court's interpretation. It made no sense for Fam. Code, § 291, to exempt judgments that determine important rights, e.g., child, spousal, and family support, but not to exempt those judgments for attorney fees that are often necessary to enforce those rights in the first instance. (Opinion by Viramontes, J., with Grimes, Acting P. J., and Wiley, J., concurring.)

SHENEFIELD v KOVTUN (2024) 106 Cal.App.5th 925

Summary
Following a bench trial on causes of action for negligence, intentional infliction of emotional distress, intentional misrepresentation, and negligent misrepresentation, which arose from an attorney's conduct toward an unrepresented opposing party, the superior court entered judgment against the attorney and awarded damages. (Superior Court of San Diego County, No. 37-2018-00052009-CU-PO-CTL, Eddie C. Sturgeon, Judge.)

The Court of Appeal affirmed, holding the attorney waived the statute of limitations affirmative defense (Code Civ. Proc., § 340.6, subd. (a)) by failing to specifically plead it (Code Civ. Proc., § 458) in the answer. The litigation privilege (Civ. Code, § 47, subd. (b)) did not apply because the superior court expressly found in its statement of decision that the attorney threatened baseless litigation without good faith and, absent a proposed statement of decision in the record (Code Civ. Proc., § 632) or any indication a deficiency was brought to the superior court's attention (Code Civ. Proc., § 634), the judgment was supported by an implied finding that no imminent litigation was seriously proposed and actually contemplated. (Opinion by Irion, J., with McConnell, P. J., and Castillo, J., concurring.)

PROCEDURE

IRMO GOLDMAN (2025) 107 Cal.App.5th 1258 [Petition for rehearing filed]

Summary

The trial court held that laches barred claims to enforce provisions of a stipulated marital settlement agreement and denied requests for attorney's fees and costs. (Superior Court of San Diego County, No. DN149413, Sharon L. Kalemkiarian, Judge.)

The Court of Appeal reversed the order and remanded with directions. The court held the laches defense was available because the legislative history of Fam. Code, § 291, establishes that laches is available in actions to enforce all family court judgments, with an exception for support judgments not involving the state, and the action was not brought to enforce a support judgment and therefore did not fall within the exception. The appeal was properly taken, although the notice of appeal identified a nonappealable minute order directing preparation of findings and order after a hearing (FOAH), because the FOAH and the statement of decision were appealable (Code Civ. Proc., § 904.1, subd. (a)(2)) and the appellate court exercised discretion (Cal. Rules of Court, rule 8.104(d)(2) and (e)) to treat the notice of appeal as having been filed after the FOAH issued. (Opinion by Dato, Acting P. J., with Do and Buchanan, JJ., concurring.)