

DOMESTIC VIOLENCE
CASE LAW UPDATE AND
COLLATERAL CONSEQUENCES OF DOMESTIC VIOLENCE

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DVPA CASE LAW UPDATE: RECENT DEVELOPMENTS

Aiken v. Aiken, 187 Wn.2d 491, 387 P.3d 680 (2017)

Rodriguez v. Zavala, 188 Wn.2d 586, 398 P.3d 1071 (2017)

Maldonado v. Maldonado, 197 Wn. App. 779, 391 P.3d 546 (2017) – Div. II

Juarez v. Juarez, 195 Wn. App. 880, 382 P.3d 13 (2016) – Div. III

DOMESTIC VIOLENCE PREVENTION ACT: RCW 26.50

Special proceeding

- *Scheib v. Crosby*, 160 Wn. App. 345, 249 P.3d 184 (2011) – Div. III
- ER 1101(c)(4): rules of evidence need not apply
 - *Grouley v. Gourley*, 158 Wn.2d 460, 145 P.3d 1185 (2006)
 - Hearsay allowed
- CR 81(a): except where inconsistent with rules or statutes applicable to special proceedings
 - Waiver of insufficiency of process or insufficiency of service of process occurs if not pled in responsive pleading OR at the hearing (more relaxed in DVPA proceeding) – CR 12(h)

DUE PROCESS AND THE DVPA: *AIKEN*

Clarifies *Gourley v. Grouley*, 158 Wn.2d 460, 145 P.3d 1185 (2006)

Court must engage in *Matthews* balancing test to determine if facts of case required additional due process

Affirmed *Scheib* (trial court had discretion to deny deposition)

Affirmed *Blackmon v. Blackmon*, 115 Wn. App. 715, 230 P.3d 233 (2010) –
Division II

- No right to jury trial in DVPA proceeding – equitable in nature and may be determined by the court on documentary evidence alone

EXPOSURE TO DV: *RODRIGUEZ*

Affirms and expands *In re the Marriage of Stewart*, 133 Wn. App. 545, 137 P.3d 25 (2006)

- Holding: witnessing DV against a parent is psychological harm and constitutes DV under the DVPA

Exposure to domestic violence and not just witnessing domestic violence is physical and psychological harm against children and constitutes DV under the DVPA

- Based on ACES and impact of exposure to domestic violence on children

Parents may petition on behalf of their children based on the parent's fear of imminent physical harm, bodily injury, or assault of the child

INTERPLAY BETWEEN DVPA AND PARENTING PLANS: *JUAREZ AND MALDONADO*

Denying effective relief in deference to a family law proceeding violates the plain language of the DVPA

- RCW 26.50.025(2): Relief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action.
- RCW 26.50.030 (2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties ...

DVPO suspending visitation is a temporary suspension of contact, not a de facto modification

- Affirming *Stewart* and differentiating from *In re the Marriage of Barone*, 100 Wn. App. 241, 996 P.2d 654 (2000) – Div. I.

HOT TOPICS: DVPO AND PARENTING PLAN RESTRICTIONS

In re the Marriage of CMC, 87 Wn. App. 84, 940 P.2d 669 (1997) – Div. I

- DVPA definition of DV: order can be entered upon a finding of a single act of DV
- RCW 26.09.191(2)(a)(iii): a history of acts of domestic violence as defined in RCW [26.50.010\(3\)](#) OR an assault or sexual assault that causes grievous bodily harm or the *fear of such harm* or that results in a pregnancy
- History of DV under RCW 26.09.191(2)(a)(iii): was intended to exclude “isolated, de minimus incidents which could technically be defined as DV”

HOT TOPICS: RECENT ACTS OF DV

In re TWJ, 193 Wn. App. 1, 367 P.3d 307 (2016) – Div. II

- Do not have to prove respondent's present ability to carry out a threat in order to prove that the petitioner had a fear of imminent physical harm, bodily injury, or assault.

Affirms decisions finding that petitioner does not have to prove a recent act of domestic violence but rather simply a fear of imminent physical harm, bodily injury, or assault

- *Spence v. Kaminski*, 103 Wn. App. 325, 12 P.3d 1030 (2000) – Div. III
- *Hecker v. Cortinas*, 110 Wn. App. 865, 43 P.3d 50 (2002) – Div. II
- *Muma v. Muma*, 115 Wn. App. 1, 60 P.3d 592 (2002) – Div. I

HOT TOPICS: COLLATERAL CONSEQUENCES OF FINDING ON RESPONDENT

In re L.H., 198 Wn. App. 190, 391 P.3d 490 – Div. II (originally unpublished)

- The trial court abused its discretion when it declined to enter a finding that parent had a history of domestic violence because it wanted to protect him from collateral consequences.

HOT TOPICS: TERMINATION OF DVPO *FREEMAN* V. RCW 26.50.130(3)

Freeman v. Freeman, 169 Wn.2d 664, 239 P.3d 557 (2010)

- Petition to terminate the DVPO
- Required protected party to prove that her current fear was reasonable and that there was a reasonable likelihood of imminent harm

RCW 26.50.130(3) (2011)

- “The legislature finds that some of the factors in *Freeman* do not demonstrate that a restrained person is likely to resume acts of domestic violence when the order expires and places an improper burden on the protected person.” LAWS 2011, c. 137
- RCW 26.50.130(3)(a): petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by respondent
- RCW 26.50.130(3)(d): termination may not be based solely on: (i) the fact that time has passed without a violation of the order; or (2) the fact that the respondent or petitioner has relocated to an area more distant from the other party

HOT TOPICS: PROTECTION FOR TEENAGERS

Nelson ex. rel. Crump v. Blanchette, 149 Wn. App. 111, 201 P.3d 1089 (2009)

- DVPA does not protect teenagers under the age of 16
- Petitioner age 14
- Respondent age 17

RCW 26.50.020(1) (2010)

- Dropped age of petitioner to 13 to be petitioned by parent, guardian, or next of friend
- Age of respondent must still be 16

HOT TOPICS: DV PERPETRATORS AND FREE SPEECH

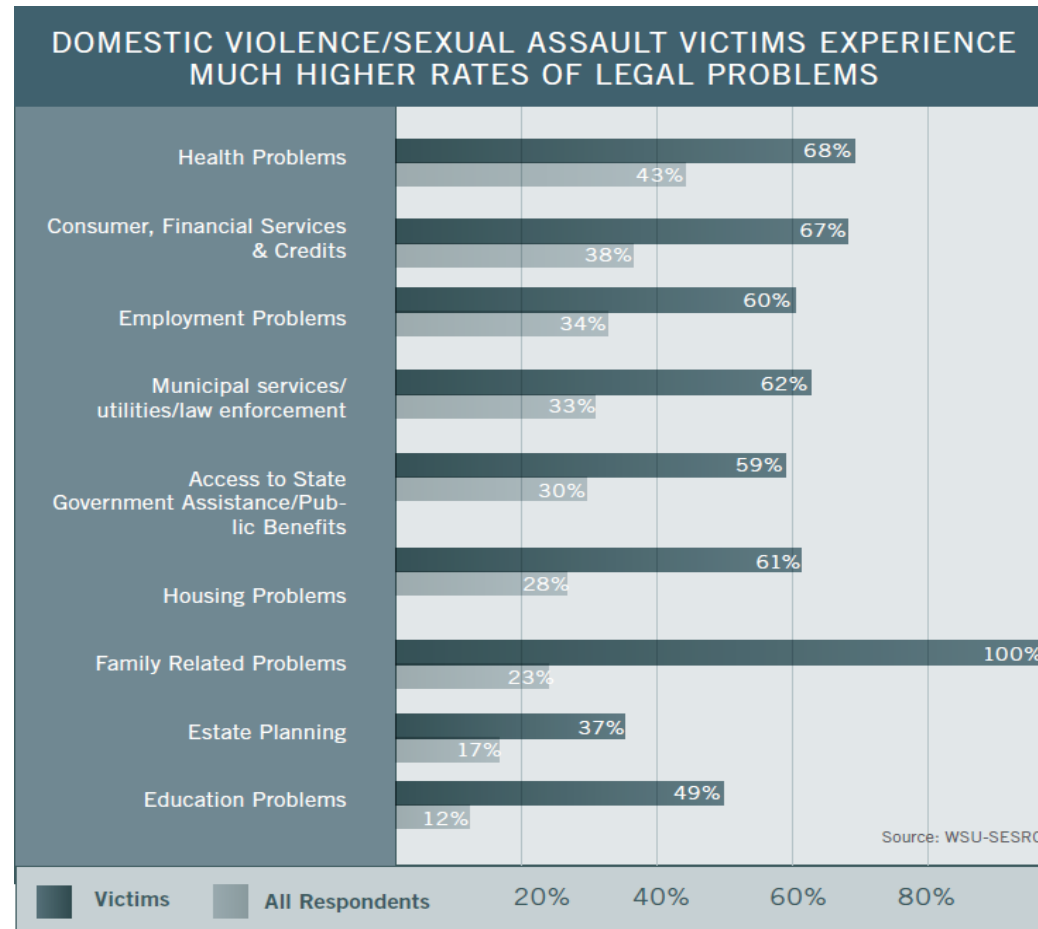
In re the Marriage of Meredith, 148 Wn. App. 887, 201 P.3d 1056 (2009) – Div. II

- Restraint on husband contacting any government agency about wife's immigration status was unconstitutional prior restraint
- No evidence that husband had abused his right to speech
- No finding of prior inappropriate contacts regarding wife's immigration status
- Order was not specifically crafted to prohibited unprotected speech only

OUTSTANDING ISSUES

Residential provisions for children in DVPOs

COLLATERAL CONSEQUENCES FOR VICTIMS



COLLATERAL CONSEQUENCES OF DOMESTIC VIOLENCE: COURT PROCESSES

“Prolonged court proceedings increase the risk of danger to a victim of domestic violence. Studies show an increased risk of homicide during extended divorce and child custody proceedings. Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 Fam. L.Q. 273, 290 (1995).”

- *Juarez v. Juarez*, 195 Wn. App. 880, 889, 382 P.3d 13 (2016) – Div. III

“Because many victims are unable to retain counsel, the system is designed for use by pro se litigants.”

- *Aiken v. Aiken*, 187 Wn.2d 491, 497, 387 P.3d 680 (2017)

COLLATERAL CONSEQUENCES: ABUSIVE LITIGATION

Domestic Violence Bench Guide for Judicial Officers (updated 2015)

- Appendix H: Abusive Litigation by Legal Voice Violence Against Women Workgroup

Abusive Litigation: misuse of court proceedings to control, harass, intimidate, coerce and/or impoverish survivors

Court proceedings provide an avenue for the abuser to reestablish power and control over the survivor