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Practice Tips

A Recent Development in California Stalking Law

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Stalking is a particularly harmful type of domestic violence. It is often perpetrated by former romantic partners. More than a third of stalking victims are stalked by current or former partners.¹ Also, partners who stalk are more likely to physically injure their victims.² Likewise, the stalking of an intimate partner triples the likelihood of homicide.³ These issues have been made more insidious in recent years by the widespread availability of technology that facilitates remote surveillance. Recently, the California Court of Appeal published a decision validating these concerns. The court recognized that stalking—apart from being a reliable predictor of future physical violence—is itself a form of domestic violence accompanied by a risk of significant psychological harm.⁴ Additionally, the decision provides new guidance on how to interpret the *Ritchie* factors,⁵ which courts consider when deciding whether to renew a domestic violence restraining order (DVRO). The decision also holds that there is no distinction between physical and nonphysical abuse for the purposes of these determinations.

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The case, *G.G. v. G.S.*, involved former romantic partners who shared two minor children. The couple separated after G.G. (the mother) suffered physical and psychological abuse at the hands of G.S. (the father). G.S. angrily followed G.G. in their home. He yelled at her and bullied her. He planted a listening device in the house to surveil her. He followed G.G., who is a courthouse employee, to her work to watch her. He also manhandled her in public. While the two were separating, G.S. installed another listening device in their house. G.S. used the device to monitor G.G. and their children. Every time their daughter said the word “Daddy,” he would immediately call G.G.

After their breakup,

G.S. accessed G.G.’s phone through her Apple ID account and sent G.G. pictures he found on her phone. G.G. captured footage of G.S.’s approaching her house and listening at her bedroom and bathroom windows. G.S. also repeatedly drove by G.G.’s house for months in the middle of the night.

G.G. petitioned for a DVRO against G.S. because of this behavior. The trial court found G.S. had stalked G.G. It granted G.G.’s request and issued a DVRO for two years.

The DVRO reduced some of G.S.’s unwanted contact, but it did not completely eliminate it. Even with the DVRO in place, G.S. called G.G. over Facetime outside the approved times for contact with their children. He also tried to contact G.S. through family mem-



bers. His mail continued to come to G.G.'s house, and G.G. suspected that G.S. was still driving by her house (although she was not able to capture video evidence of it).

Before the DVRO expired, G.G. asked the court to renew it. Her accompanying declaration reported these later developments and also stated that the police had repeatedly been called to her home during their relationship because G.S. had publicly and privately manhandled her—

that there is very little she can do to [sic] stem the multiple streams of abuse knocking at her door, haunting her phone, or poisoning her email. Thus, the psychological toll of living with a stalking scenario can be a constantly traumatizing nightmare that may persist for months or years.⁸

This impact can be worsened, the Court of Appeal explained, when the

the other hand, if little has changed or there is now an increased possibility of abuse, the need for the order continues.”¹⁴ Even though this factor requires courts to consider how the restrained person has acted following the initial DVRO's issuance, “courts must do more than simply ask whether the restrained person has violated the terms of the order. An order that has never been violated may still be renewed.”¹⁵

3) Whether and how much the DVRO burdens the restrained party.¹⁶ This factor ultimately weighs the seriousness of the abuse or harm at issue against the burden of imposing a DVRO on the restrained party. However, if the restrained party was physically abusive, courts may not consider this factor. “On one hand, ‘the physical security of the protected party trumps all...burdens.’... On the other, if the danger presented is ‘a few unwanted calls or letters or e-mail messages,’ the court may weigh that danger against any burdens imposed by renewal.”¹⁷

The trial court in *G.G. v. G.S.* cited *Ritchie* but failed to properly apply these factors. It ultimately framed the analysis instead by asking “whether the apprehension by [G.G. was] reasonable as evidenced by ongoing fears and...whether this court should issue the restraining order based on the fears.”¹⁸

It concluded that G.G.'s fears were real but that they were not reasonable. “[T]he court does find that there is insufficient evidence to find that the apprehension is reasonable. It appears that the instances...cited by the petitioner may be cause for alarm but aren't necessarily reasonably grounded.”¹⁹

In reviewing the decision, the Court of Appeal held that the trial court's decision to consider the reasonableness of the fears as a separate, fourth factor was wrong.

Ritchie ultimately directs trial courts to renew a DVRO “if the protected person has a ‘reasonable apprehension’ of future abuse.”²⁰ The *Ritchie* decision “delineated three factors...to help courts answer that question.”²¹ In other words, reviewing the three factors guides the court in determining whether the petitioning party has reasonable fear of future abuse should the DVRO expire. No additional reasonableness analysis is required.

While, as the *G.G. v. G.S.* court observed, “*Ritchie* does discuss the wide variety of behaviors that might lead a court to issue a DVRO, as support for its

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information that she had not given to the court when she applied for her initial DVRO. Nevertheless, the court denied G.G.'s renewal request. It found that G.S.'s Facetime calls were not intentional and that G.S. did not have a pattern of driving by G.G.'s house after the DVRO was issued. G.G. successfully appealed.

Unique Psychological Harm

The Court of Appeal reversed and, in so doing, eroded the distinction between physical and nonphysical abuse. Doing so was essential, the court explained, because of the unique and serious harm stalking presents to victims.

First, the Court of Appeal highlighted the predictive nature of stalking. It cited scholarship establishing that “stalking is ‘strongly associated with physical violence.’”⁶ According to one study, the court noted, men who stalk former romantic partners after a break-up are four times more likely to physically attack them.⁷

Second, and perhaps more importantly, the Court of Appeal recognized stalking as a source of its own, unique type of psychological harm:

Most serious crimes such as rape, robbery, and assault, are isolated events in the lives of victims, and the experiences, however horrible, have a beginning, middle, and end.... [W]hat distinguishes stalking is the added layer of ambiguity, uncertainty, and nonfinality of the ordeal.... Even when the identity of the stalker is known or strongly suspected, the victim often finds

surveillance or stalking is done electronically. It “allows the abuser to create a sense ‘of omnipresence,’ eliminating the victim’s ability to feel safe in any environment.”⁹

By outlining the realities of stalking, the *G.G. v. G.S.* decision helps solidify the fact that “*Ritchie* makes no distinction between physical and non-physical abuse in the application of its first factor.... The original order [can] be based on reasonable fear of non-physical abuse, and it can be renewed on the same basis.”¹⁰

Ritchie Factors

For background, courts should renew a DVRO if the petitioner has a reasonable apprehension of future abuse if the initial DVRO expires. The *Ritchie* factors help courts ascertain whether a petitioner has such a reasonable apprehension. There are three considerations:

1) What the factual predicate (evidence and the court's findings) for the initial DVRO was.¹¹ “The mere existence of the order itself ‘seldom if ever’ conclusively proves that it should be extended.... However, the findings and facts which supported making the order ‘often will be enough in themselves’ to justify renewing it later.”¹²

2) Whether there were significant changes in the circumstances between the parties after the initial DVRO was issued.¹³ “If the protected and restrained parties have ‘moved on with their lives,’ in a way that lessens the opportunity for or likelihood of future abuse, the need for the order may have dissipated.... On

holding that renewal should not be automatic[.]...the goal of that discussion is to illustrate differing degrees of danger, not make a legal distinction based on the kind of danger.”²²

In *G.G. v. G.S.*, the trial court erred because its decision focused on the lack of intentional DVRO violations. The trial court concluded that the case turned on whether there were ongoing threats of harm from G.S. or whether the original DVRO was predicated on a showing of significant physical abuse. The Court of Appeal described the trial court’s analysis as erroneously establishing a framework in which renewal was appropriate only if there was an initial showing of serious physical abuse and, if there was no such showing, a situation in which there was ongoing abuse. However, courts can renew DVROs “without a showing of further abuse since the issuance of the original order.”²³

Instead, the trial court should have “appl[ied] the *Ritchie* framework to determine whether a reasonable person, having experienced the abuse [G.G. experienced], would have a reasonable apprehension that the abusive behavior would resume after the order’s expiration.”²⁴

Nonphysical vs. Physical Abuse

The decision in *G.G. v. G.S.* is also significant because it emphasizes that courts may not make a distinction between physical and nonphysical abuse when deciding whether to issue an initial DVRO or whether to renew a DVRO.

The history behind the Domestic Violence Prevention Act (DVPA) shows that the legislature has attempted to take aim at physical and nonphysical violence by creating a “comprehensive statutory response to domestic violence,” which is “the number one health risk among women.”²⁵ As part of these efforts, the legislature has explicitly addressed nonphysical violence as an issue. For example, the Senate Judiciary Committee previously observed that “[a]buse is not limited to the actual infliction of physical injury or assault.”²⁶

In 1995,²⁷ the legislature added stalking to the definition of abuse.²⁸ The Senate Judiciary Committee has described this definition as “the ‘linchpin’ of the legislature’s efforts to prevent domestic violence.”²⁹ Later, when amending the DVPA, the Assembly Judiciary Committee acknowledged that psychological abuse can cause significant health consequences, which are often long-lasting.³⁰

Academic and medical research supports these conclusions. A recent report on these issues concluded that “psychological violence can no longer be considered a minor type of violence but rather a possible key predictor of certain mental health outcomes.”³¹ Another concluded that “psychological forms of abuse may be equally as harmful, if not more so, than physical forms of abuse.”³² Yet another concluded that “nonphysical abuse might be more difficult to endure and have more lasting effects than physical violence.”³³

In *G.G. v. G.S.*, the Court of Appeal ensured trial court compliance with legislative intent by clarifying that “the law does not permit courts to make a distinction between physical and non-physical abuse when issuing DVROs. Nor is there any indication that courts should make such a distinction when deciding whether to renew them.”³⁴ The only place where a “brightline physical/non-physical distinction” comes into play is in analysis of the third *Ritchie* factor (which asks whether and how much the DVRO burdens the restrained party).³⁵ “Even then, the distinction operates as a potential limitation on the evidence offered in opposition to renewal; it does not affect the showing required to obtain renewal.”³⁶

Lack of Ongoing Abuse

Finally, the *G.G. v. G.S.* opinion reaffirms that ongoing harm is not a requirement for a DVRO renewal. In so holding, the Court of Appeal observed that such a requirement would ignore the realities of how stalking works.

The trial court had denied G.G.’s renewal in part because it found there was insufficient evidence of ongoing abuse. However, ongoing abuse is not, by statute, required for a DVRO renewal.³⁷ Moreover, requiring proof of DVRO violations would likely put stalking victims in more peril, the Court of Appeal explained.

Restraining orders are generally effective. The point of them is to work, and those against whom they are taken out usually obey. Yet, stalkers often begin to harass and abuse again once an effective DVRO expires. “Stalkers tend to be much more persistent when they have a previous relationship with the victim.... They are also ‘quick learners when it comes to observing the letter of the law while circumventing its spirit.’”³⁸

Accordingly, the Court of Appeal cautioned that “*Ritchie* asks courts to adopt a practical view of their own

orders. A court order may change behavior, but that does not mean it has solved the problem. The underlying issue may remain, even if the order has been followed.”³⁹

The court’s ruling in *G.G. v. G.S.* is an important development in the law aimed at curbing the pernicious effects of stalking and other forms of domestic violence. The decision highlights the complexities of stalking and clarifies that a practical approach to the *Ritchie* factors is necessary. Furthermore, it reinforces the reality that physical and nonphysical abuse are independently sufficient for DVRO renewals. ■

¹ Stalking Prevention Awareness & Resource Ctr., Stalking & Intimate Partner Violence: Fact Sheet, <https://www.stalkingawareness.org/wp-content/uploads/2018/11/Stalking-IPV-Fact-Sheet.pdf> (last accessed June 19, 2024).

² *Id.*

³ *Id.*

⁴ *G.G. v. G.S.*, 102 Cal. App. 5th 413, 425 (2024).

⁵ *Ritchie v. Konrad*, 115 Cal. App. 4th 1275 (2004).

⁶ *G.G.*, 102 Cal. App. 5th at 425 (citation omitted).

⁷ *Id.*

⁸ *Id.* (quoting Laurence Miller, *Stalking: Patterns, Motives, and Intervention Strategies*, 17 AGGRESSION AND VIOLENT BEHAV. 489, 501–502. (2012)).

⁹ *G.G.*, 102 Cal. App. 5th at 425 (citation omitted).

¹⁰ *Id.* (citations omitted).

¹¹ *Ritchie*, 115 Cal. App. 4th at 1290.

¹² *G.G.*, 102 Cal. App. 5th at 422 (citation omitted).

¹³ *Ritchie*, 115 Cal. App. 4th at 1291.

¹⁴ *G.G.*, 102 Cal. App. 5th at 422 (citation omitted).

¹⁵ *Id.*

¹⁶ *Ritchie*, 115 Cal. App. 4th at 1291–92.

¹⁷ *G.G.*, 102 Cal. App. 5th at 422 (citation omitted).

¹⁸ *Id.* at 423.

¹⁹ *Id.*

²⁰ *Id.* at 421 (citation omitted).

²¹ *Id.*

²² *Id.* at 426 (citation omitted).

²³ FAM. CODE §6345(a).

²⁴ *G.G.*, 102 Cal. App. 5th at 427.

²⁵ *Id.* at 421 (citation omitted).

²⁶ A.B. 2089, 2013–2014 Sess., Sen. Comm.

Judiciary Analysis (Cal. 2014).

²⁷ *G.G.*, 102 Cal. App. 5th at 424.

²⁸ See FAM. CODE §§6203, 6320 (defining abuse).

²⁹ *G.G.*, 102 Cal. App. 5th at 424 (citation omitted).

³⁰ A.B. 2089, 2013–2014 Sess., Assemb. Comm.

Judiciary Analysis (Cal. 2014).

³¹ Susan Lagdon et al., *Adult Experience of Mental Health Outcomes as a Result of Intimate Partner Violence Victimization: A Systematic Review*, 5 EUR. J. PSYCHOTRAUMATOLOGY 1, 7 (2014).

³² Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 564 (2008).

³³ Laura R. Seff et al., *Nonphysical Abuse: Findings in Domestic Violence Against Older Women Study*, 8 J. EMOTIONAL ABUSE 355, 355 (2008).

³⁴ *G.G.*, 102 Cal. App. 5th at 425.

³⁵ *Id.*

³⁶ *Id.*

³⁷ FAM. CODE §6345(a).

³⁸ *G.G.*, 102 Cal. App. 5th at 426 (citations omitted).

³⁹ *Id.*