

*Gou v. Xiao*

Statistics and empirical evidence show that domestic violence has become widespread across socio-economic levels and has become a source of increasing societal concern. A frequent question in these cases is whether evidence of past abuse against a child or third party can sustain a DVRO request brought by a complainant who alleges personal fear of future abuse. In *Gou v. Xiao*, the trial court said no as a matter of law, because the complainant was not the victim of the domestic violence; the trial court dismissed the petition without a hearing. The Court of Appeal reversed and remanded for an evidentiary hearing, holding that the Petitioner-Appellant had alleged sufficient specific and admissible facts based on her personal knowledge describing three prior incidents of abuse perpetrated by the Respondent against the child and Appellant personally when she tried to intervene. Such factual allegations were found to legitimately support a finding that Respondent's past behavior was abusive, as he had placed Appellant in reasonable apprehension of imminent serious bodily injury to herself and the child and, further, disturbed her peace by causing the destruction of her mental or emotional calm. Thus, the Court of Appeal concluded that the trial court had abused its discretion in denying the DVRO request without a hearing. A proper determination on the merits was held to be a necessity.

Domestic violence proceedings have become elevated in importance for additional reasons. *Family Code* section 4325 provides that in a proceeding for dissolution of marriage where there is a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse entered by the court within five years prior to the filing of the dissolution proceeding,...there shall be a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse otherwise awardable shall not be made. *Family Code* section 3044 provides that upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, there is 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 interests of the child, pursuant to section 3011. This presumption may only be rebutted by a preponderance of the evidence.

The impact of a domestic violence conviction has a reach beyond the criminal aspects, as it proximately affects issues of both custody and support. Great care should be taken before stipulating to any domestic violence order. These domestic violence matters, quite apart from investigating the detailed specific facts, involve more expansive legal complexities and effects which are often overlooked. Please be extra careful when confronted with any DVRO allegations.

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