CALIFORNIA Family Law Monthly

Isidora M. v. Silvino M.

Isidora M. does not create new law, but can and should be seen as a teachable moment. The ruling is straightforward: Mutual Domestic Violence Restraining Orders cannot be issued *unless* both parties give notice of an affirmative request for relief; allegations of domestic violence in a responsive declaration are not enough. The opinion contains a detailed interpretation and review of the Legislative history of *Family Code* section 6305.

The teachable moment comes from what is not in the opinion. *Family Code* section 3044 states that a finding of domestic violence triggers a rebuttable presumption that an award of sole or joint legal or physical custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child. A trial court does not have discretion whether or not to apply the presumption in section 3044; it must do so, because a finding of domestic abuse sufficient to support a DVPA restraining order necessarily triggers the 3044 presumption [see, *S.M. v. E.P.*, 184 Cal. App. 4th 1249 (2010)]. This crucial provision, often overlooked, is why family law practitioners must pay careful attention to any allegation of domestic violence. Stipulations to a DVPO can lead to disastrous consequences in later custody proceedings.

We have learned that domestic violence issues have rightly gained heightened attention and enhanced importance. This case reminds us that technical rules apply, and unseen consequences lurk beneath the surface.

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