

In Re Marriage of Freitas

The pervasive effect that Domestic Violence Protection Act matters have on family law proceedings is under-appreciated and very often over-looked. In the current issue of Family Law e-News, an E-publication of the Los Angeles County Bar Association (October 2012), an article by Judge Hank M. Goldberg (*Settling Domestic Violence Matters in Family Court*) discusses the substantial risks of DVPA litigation and the wisdom of pursuing settlement alternatives. Judge Goldberg's article points out that a DVPA matter can often be characterized as "high stakes" litigation and that skilled representation by counsel involves not only sophisticated litigation skills but also careful consideration of settlement alternatives.

In re Marriage of Freitas exemplifies the impact of a conviction of domestic violence on an award of spousal support. *Family Code* Section 4320, subdivisions (i) and (m), require the trial court to consider evidence of any history of domestic violence which must be considered in making any reduction or elimination of a support award. Section 4325 creates a rebuttable presumption that spousal support should not be awarded to a spouse convicted of domestic violence against the other spouse within the five years preceding filing of the marital dissolution proceeding. The *Freitas* tribunal held that proof of change of circumstances to terminate a temporary spousal support award was not required because the trial court failed to consider husband's history of domestic violence when it made its original temporary orders, and would most likely not have made the order if it had known of such facts. The Appellate Court also held that the trial court committed error by relying on *In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, because in *Freitas*, unlike *Gruen*, the trial court expressly reserved jurisdiction to do so, which meant that its temporary orders did not become final and thus not immediately appealable. The Court of Appeal affirmed the termination of spousal support based on the existence of the prior domestic violence conviction.

The citation to the *Gruen* case raises an issue of current concern: can a trial court "reserve" jurisdiction to retroactively modify a temporary support order? An excellent review and analysis of this issue and the *Gruen* case can be found in "*Going Retro: Dealing with Retroactivity in Temporary Support Orders*" by Christopher Melcher, Journal of the California Association of Certified Family Law Specialists [ACFLS], Fall 2012, No. 2, pg. 12.

The importance of domestic violence allegations cannot be over-emphasized. Counsel does a disservice to clients by not being coldly realistic about possible adverse consequences and exploring the possibility of viable settlement alternatives, as suggested in Judge Goldberg's timely and important article.

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