



## Quarterly eNewsletter

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### Case & Legislative Summaries

The following are summaries of cases & statutes involving domestic violence that we hope will be useful to practitioners. If you know of recent cases that you would like to be included in future newsletters please send them to Robin Runge at [runger@staff.abanet.org](mailto:runger@staff.abanet.org).

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**Rodvik v. Rodvik**, 2006 WL 3530588 (Alaska December 8, 2006)

**Holding:** In a divorce case, the Supreme Court of Alaska affirmed the trial court's holding that the husband's gun collection should be awarded to the wife. The husband had a protective order against him, and the court found it would violate 18 U.S.C. § 922(g) if the husband were to be awarded the gun collection.

**Summary:** Prior to the divorce, three protection orders had been issued against the husband, Karsten Rodvik, for being verbally abusive, drinking excessively, and striking Maureen Rodvik and their children. The order for the divorce included a fourth protection order.

The trial court awarded Karsten's gun collection to Maureen in the property settlement, based on the trial court's reading of 18 U.S.C. §922(g)(8) which states that it is unlawful for anyone

subject to a court order that-- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains a person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child;.... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any

firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The trial court found that 18 U.S.C. § 922(g)(8) makes it unlawful for a person with a protection order entered against him to be awarded guns or ammunition in a divorce, and that the court was “compelled not to be putting into Karsten's control anything which would make him a criminal.” Included in the award were guns that were non-marital property.

The Supreme Court of Alaska affirmed the trial court, citing several cases which support the rationale that possession is enough to violate 18 U.S.C. § 922(g)(8). The Supreme Court of Alaska found no cases supporting appellant's claim that 18 U.S.C. § 922(g)(8) does not prohibit the simple possession of firearms or ammunition when a person has a protection order entered against him. The Supreme Court of Alaska also affirmed the trial court's award of guns which Karsten claimed to be non-marital property to Maureen. This was based on the trial court's ability to invade non-marital property in the division of property when required by equity, which usually requires specific findings for the reason of the invasion. As the trial court stated the reason for the awarding of all of the guns to Maureen was to stop Karsten from violating 18 U.S.C. § 922(g)(8), the Supreme Court of Alaska concluded the trial court's reasoning was sufficient for the limited invasion of non-marital property.

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**Pugliese v. Superior Court**, 2007 WL 155890 (Cal. App. January 23, 2007)

**Holding:** The California Court of Appeals held that under § 340.15 and Civ. Code § 1708.6, domestic violence victims may recover damages for all acts of domestic violence occurring during the marriage, provided the victim proves a continuing course of abusive conduct and files suit within three years of the last act of domestic violence. This is regardless of how many years ago the first act of violence occurred.

**Summary:** Michelle Pugliese filed suit against her former husband, Dante Pugliese, alleging assault, battery, intentional infliction of emotional distress and violation of civil rights as a result of abuse that began a few months after their marriage. The Puglieses were divorced on April 22, 2002. Michelle filed suit on April 2, 2004. She alleged that the physical abuse consisted of him shoving, pushing, kicking, hitting, slapping, shaking, choking and sexually abusing her. “She also allege[d] he pulled her hair, pinched and twisted her flesh, threatened to kill her, threatened her with bodily harm, confined her in the family car while driving erratically and drunkenly and infected her with sexually transmitted diseases.” The physical abuse ended in April of 2001, while the emotional abuse continued until April 2004. Dante argued that abuse that occurred more than three years prior to the lawsuit should be excluded because of the statute of limitations.

The trial court agreed with Dante and excluded all evidence of abuse that occurred more than three years prior to the filing of the lawsuit. Michelle appealed this *in limine* ruling.

The California Court of Appeals found that a traditional suit for assault, battery, and intentional infliction of emotional distress must be filed within two years of the incident, pursuant to Civ. Code, § 335.1. However, the appeals court also found that civil actions resulting from domestic violence may be filed within three years from the last incident of abuse, based on Civ. Code, § 1708.6. Because the court found that Michelle had a claim for domestic violence based on the facts of the case, the three year statute of limitations applied. The appeals court then found that under the domestic violence statute the legislature had intended for a continuing tort theory to apply. Based on this, Michelle was able to file suit for all abuse that occurred during the marriage, even that which occurred more than three years before the filing of the suit. The court of appeals found that although the suit could be considered as separate claims for assault, battery, and intentional infliction of emotional distress, since Michelle argued continuing domestic abuse, the claims were all under the claim for domestic violence. The court found that the cause of action accrued in April of 2004. Thus, Michelle met the three year statute of limitations under the domestic abuse statute.

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**Webb v. City of Dallas**, 2006 WL 3411104 (Tex. App. November 28, 2006)

**Holding:** The Court of Appeals in the Fifth District of Texas reversed the trial court's termination of Police Officer Webb. The appeals court did not find substantial evidence to support the officer's violation of the code of conduct required for termination, nor could the appeals court say that the officer pleaded guilty to the crime of assault of a family member. The appeals court concluded that pleading *nolo contendere* to a crime is not the equivalent to being convicted of the crime.

**Summary:** Officer Webb was arrested and charged with assault of a family member—his ex-wife—while off duty. He pled *nolo contendere* to the charge of misdemeanor assault. As a result, he was suspended for five days without pay, for violating the code of conduct. One of the codes he violated was committing a criminal act. The other was engaging "in any conduct which adversely affects the morale or efficiency of the Department or which has a tendency to adversely affect, lower or destroy public respect and confidence in the Department or officer."

The Internal Affairs Division then started an investigation into the officer based on a complaint entitled "Pled Guilty to M/A Family Violence." A second complaint was entitled "Tarrant County DA's office stated Officer Webb has been convicted (pled guilty) to a class A misdemeanor assault charge (Family Violence)." He

was then charged under the Internal Affairs investigation. The basis of this charge was that he pled guilty to the family member assault. This charge suggested the termination of Officer Webb.

Webb was terminated by the police chief. The termination letter stated that he was terminated for violating the two codes of conduct. Webb appealed the termination to the city manager. Reinstatement, back pay, and benefits were denied. The city manager found Webb was appropriately terminated. Webb then appealed to an Administrative Law Judge. The Administrative Law Judge affirmed the termination. Webb's argument throughout all of his appeals was that he was not convicted of a criminal act as he pled *nolo contendere*. The Administrative Law Judge held that two codes of conduct rules were violated and that the appropriate discipline was termination.

Webb then appealed this decision to the Texas Court of Appeals. The court found that Webb was not denied due process and was notified in the termination letter of the specific conduct that resulted in his termination. The court did, however, find that Webb had not violated the codes of conduct as he had not been previously found guilty of an act of family violence. The court found that the deferred adjudication of pleading *nolo contendere* was not the same as the conviction of pleading guilty. The court found that since the argument made by the city that there was sufficient evidence of violation of the code of conduct without conviction was not made to the Administrative Law Judge, it could not be made for the first time in this court. Thus, the court found that there was no sufficient evidence that Webb violated the code of conduct, and he could not be terminated.

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## **Safe Homes Act**

### **Illinois Public Act 094-1038**

The Safe Homes Act was signed into law on July 20, 2006 and became effective on January 1, 2007. The Safe Homes Act will protect victims of domestic and sexual violence who live in private market rental housing or subsidized housing. This law will allow tenants and members of their household who are survivors of violence to vacate their housing and terminate their lease early to protect their physical safety and emotional well being, and/or change the locks on an emergency basis to keep the perpetrator out of the home.

Before the passage of the Safe Homes Act, victims who fled unsafe housing situations could still be liable for rent and damages accrued after their departure. Landlords frequently refused to make necessary accommodations for these tenants, such as lock changes to prevent a perpetrator from entering the home or acknowledging basic safety concerns. Now with the law in effect, victims of sexual and domestic violence will have legally binding, actionable steps to secure their housing safety.

The Safe Homes Act allows a tenant or any member of their household who is a victim of domestic or sexual violence to end their lease early, even when the perpetrator is a member of the household or a leaseholder, if:

- There is a credible imminent threat of future harm on the premises.
- The tenant provides written notice of her fear of future harm to the landlord or property manager three days before or after vacating the residence.

Victims of sexual violence do not have to show credible imminent threat of harm on the premises if:

- They provide written notice to the landlord three days before or after they leave their apartment or house (and within 60 days of the assault).
- They provide evidence (medical/court/police evidence OR statement from a victim services/domestic violence/rape crisis agency).

Under the Safe Homes Act, tenants also have the right to request a lock change from their landlord when they have a written lease and when the perpetrator is not a leaseholder. The request must be in writing, signed by all tenants on the lease, and due to a credible imminent threat of domestic or sexual violence. The request must be accompanied by at least one form of evidence (e.g., medical evidence, police report, or statement from a victim services organization). After receiving this notice, the landlord has 48 hours to change the locks or give the tenant permission to change the locks.

To read entire text of the law, [click here](#). To receive materials or to schedule trainings on the Safe Homes Act, please contact Miriam Beyer at [miriambeyer@povertylaw.org](mailto:miriambeyer@povertylaw.org).

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