California Family Law Report

Case of the Month – September 2026

Topic: Domestic Violence

DVRO petition requires merits determination…

In reversal, the Fourth District held that trial court may not dismiss unresolved DVRO petition for docket management reasons and may not dissolve DVTRO under CCP §533 without notice.

In re Marriage of G.E. and I.D.
(July 20, 2026)

California Court of Appeal 4 Civ D085597 (Div 1) 121 Cal.App.5th 1103, 346 Cal.Rptr.3d 480, 2026 FA 2240, per McConnell (Buchanan, J., and Castillo, J., concurring). San Diego County: Bell, reversed. For W (Appellant): David Lee Kirman, Joshua Peter Hickner Cayetano, Greg Jacob, Shohrah Shuray Ghorishi, Jennafer Dorfman Wagner, and Molly B. Shuminer. For H (Respondent): Pro Per. CFLP §C.13.7.

Wife and husband married in Nigeria in 2013 and had a son in 2014. Husband immigrated to the United States in 2016 or 2017. Wife and the child joined him in San Diego in 2021.

In April 2023, wife, then self-represented, sought a DVRO against husband for herself and the child. Wife alleged that husband had been verbally and physically abusive during the marriage and that the abuse had become increasingly severe after she and the child moved to the United States. Among other things, wife alleged that husband had struck her until she lost consciousness, struck the child, threatened to kill both wife and the child, controlled wife's finances and social relationships, and repeatedly threatened to have wife deported to Nigeria.

The trial court granted wife sole legal and physical custody of the child and issued a DVTRO protecting wife and the child. The DVTRO prohibited husband from abusing them, required him to stay at least 100 yards away from them, and ordered him to move out of the family residence. The trial court later modified the temporary order to permit husband supervised visitation with the child.

After wife retained counsel, her attorney estimated that the evidentiary hearing on the DVRO request would require two court days. The hearing was continued several times. The continuances resulted from several circumstances, including wife's effort to retain counsel, recusal by the originally assigned judge, counsel's unavailability, a stipulated continuance, and wife's counsel's illness. The trial court extended the DVTRO with each continuance.

Parties estimated a two-day hearing...

Although wife's counsel had estimated a two-day evidentiary hearing, the matter was initially set for a half-day hearing on April 11, 2024. By that point, the case had been reassigned to a different judge.

At the April 11 hearing, the trial court expressed concern that a half-day would not provide enough time to complete the matter. Wife's counsel agreed, explaining that the parties would need two full days in total and estimating that wife's case in chief would take approximately a half day. Husband's counsel likewise estimated that he would need a half day for his case. The trial court acknowledged the estimates.

During her testimony, wife described husband's alleged financial control, including restrictions on her spending and movements. She further testified that husband prohibited her from leaving home without permission and restricted her ability to attend a relative's funeral until other family members intervened. She also noted that husband became verbally abusive after the child's birth and repeatedly demeaned her.

Wife further testified about an alleged assault in Nigeria. According to wife, after an argument about husband's spending, husband slapped her, left the home, returned about 20 minutes later, and punched her until she lost consciousness. When she awoke, her eyes were bruised, but husband would not allow her to seek hospital treatment.

Wife testified that, after she and the child joined husband in San Diego, husband resumed yelling, cursing, and insulting her. She stated that he threatened to kill her, take the child from her, and have her deported. Wife also described alleged physical abuse of the child, including incidents in which husband allegedly hit the child and threatened him not to disclose abuse. Wife acknowledged that she and the child had denied one alleged incident when Child Welfare Services (CWS) investigated it.

Before the April 11 hearing concluded, wife began describing an April 18, 2023 incident that occurred shortly before she sought the DVRO. Wife testified that husband woke her late at night, yelled at her, pulled her hair and ear, and struck her in the face and ear. She recorded part of the incident on her phone.

The trial court again raised the expected length of trial. Wife's counsel stated he would require about two additional hours for wife's case, excluding cross-examination. Husband's counsel estimated he would need a full day. The trial court agreed that the case was "really a two day" matter and stated that it would respect the original two-day estimate. The trial court continued the hearing to August 29, 2024, for a full day.

Wife rested after presenting substantial evidence...

At the August 29 hearing, the trial court admitted the approximately 16-minute audio recording that wife had made during the April 18 incident. On the recording, wife can be heard repeatedly asking husband to stop hitting her and saying that he was hurting her. Husband can be heard challenging wife to call the police, threatening that she had not yet experienced "real hurt," and stating that he brought wife to America and would send her back. Another man can be heard urging husband not to touch wife and referring to the child's presence.

Wife then continued her testimony, stating that husband punched her, squeezed her ear, and pulled her around during the incident captured on the recording, while the child was present. Wife also testified that, on April 20, husband made threats in the child's presence after an argument about childcare paperwork. Wife reported that incident to police and obtained a criminal protective order.

Wife completed her direct examination in less than one hour on August 29. Across both hearing dates, her direct testimony consumed approximately two and one-half hours. Husband's counsel cross-examined wife for about two and one-half hours, eliciting evidence concerning husband's financial support of wife, wife's access to a bank account, and her prior statements to CWS. Wife's counsel conducted a brief redirect examination, and wife rested.

Husband then began his direct examination. During approximately 35 minutes of testimony, husband discussed his education, employment, immigration and asylum proceedings, and financial support of wife. His counsel did not yet ask him about wife's allegations of physical or verbal abuse.

The trial court set the matter for a continued half-day hearing on August 30 and stated that it would not grant further continuances or extensions.

Trial court dissolved DVTRO and dismissed entire DVRO proceeding...

The August 30 hearing did not begin as scheduled because of a misunderstanding concerning which party would arrange for a court reporter. Once counsel secured a reporter, the reported portion of the hearing began after a 90-minute delay.

At the outset of the reported proceeding, husband's counsel orally moved under CCP §533 to dismiss the DVTRO and the entire action. Counsel argued that dissolution and dismissal would serve the ends of justice because the DVTRO had been in effect for an extended period, husband had incurred supervised visitation expenses, he had not violated the order, wife's allegations were not credible, and wife's counsel had not arranged for the reporter to be present that morning. Wife's counsel opposed the oral request, arguing that CCP §533 did not authorize dismissal of the DVRO petition, the court reporter problem was a genuine misunderstanding, and the case should be decided on the merits.

The trial court tentatively ruled that the DVTRO should be dissolved in the interests of justice. It stated that the temporary order had served its purpose as a cooling-off period, emphasized that the parties had taken substantial time to examine a single witness, and observed that there was not unlimited time available for the hearing.

The trial court then briefly questioned husband. Husband denied that wife had reason to fear future contact outside court-ordered parenting arrangements. He agreed that he would not commit future DVPA-defined acts against wife and stated that he would act peacefully during parenting exchanges or any incidental encounters. Based on that testimony, the trial court (San Diego County's Bell) found no reasonable probability of future unlawful violence or other DVPA conduct and dissolved the DVTRO without prejudice.

The trial court then clarified that it was dismissing the entire DVRO proceeding, rather than merely terminating the temporary order, because neither side had completed its case within the time allotted. At a later hearing, the trial court reiterated that dismissal had not rested on a finding that wife's evidence was insufficient to support a DVRO. Wife appealed, and the Fourth District reversed.

CCP §533 does not authorize dismissal of an unresolved DVRO petition…

The Fourth District first considered the dismissal of wife's DVRO petition. The justices explained that a DVRO is a type of injunction and that, absent a more specific provision, Family Code proceedings are generally governed by the Code of Civil Procedure. Thus, CCP §533 supplies standards for the modification or dissolution of an existing injunction or temporary restraining order.

More specifically, the justices noted that CCP §533 allows modification or dissolution, on notice, if there has been a material change in the underlying facts, a change in the governing law, or if the ends of justice would be served. The justices observed that its language, however, applies only to modification or dissolution of an injunction or temporary restraining order already in existence. It says nothing about denying or dismissing an initial, unresolved request for injunctive relief. For that reason, the panel rejected the apparent use of CCP §533 as authority to dismiss wife's DVRO petition. The justices also observed that husband did not defend the trial court's reliance on the statute for that purpose and effectively conceded the problem by acknowledging that the statute presupposes an existing injunctive order subject to modification or dissolution.

Inherent authority did not permit a nonmerits dismissal…

The Fourth District also rejected the proposition that the trial court's inherent authority to control litigation supported dismissal. The justices noted that trial courts have substantial authority to ensure orderly proceeding. That authority included imposing reasonable time limits, excluding irrelevant or cumulative evidence, and taking appropriate steps to prevent proceedings from consuming unnecessary time. The justices added, however, that the trial court did not enforce clearly defined time limits and then issue a merits ruling based on the evidence received. Nor did it merely limit additional evidence. Instead, it dismissed wife's entire DVRO request without deciding whether she had proved past abuse or whether protective relief was warranted.

The panel explained that inherent authority to dismiss claims is limited and ordinarily confined to extreme circumstances, such as failure to diligently prosecute or a fictitious or sham pleading. Neither circumstance existed here. Husband had not argued wife failed to prosecute diligently or that her DVRO petition was sham. The justices observed that less severe alternatives were available, including limiting further evidence and deciding the petition on the existing record.

The justices also noted that the delay could not fairly be attributed solely to wife. Wife's direct and redirect examinations took roughly the time her counsel had estimated. Husband's cross-examination and initial direct examination consumed more time, and the court reporter delay resulted from counsel's misunderstanding. The justices emphasized that the trial court had previously agreed the matter was a two-day hearing and stated it would not hold the parties to account if the hearing required that amount of time.

The justices also stressed the DVPA's broad protective purpose, noting it is intended to prevent domestic violence and to promote the health and safety of survivors and their children. Wife had presented extensive evidence that, if credited, could support protective relief. In that setting, the panel held that docket-management concerns could not justify a nonmerits dismissal of the DVRO petition.

DVTRO could not be terminated without notice...

The panel separately held that the trial court abused its discretion in terminating the DVTRO. CCP §533 permits modification or dissolution of an injunction or temporary restraining order only "on notice." Here, wife had no advance notice that husband would seek termination of the DVTRO. Husband made the request orally at the start of the final hearing date, and the trial court ruled shortly afterward. The justices concluded this procedure deprived wife of a meaningful opportunity to prepare evidence and legal argument opposing dissolution of the DVTRO. The trial court did not identify another source of authority supporting its ruling, and husband did not rely on another authority on appeal.

Accordingly, the Fourth District reversed both the dismissal of the DVRO petition and the termination of the DVTRO. The matter was remanded with directions to reinstate the DVTRO and conduct further proceedings on wife's DVRO petition.

COMMENT...

G.E. and I.D. offers an important practice lesson on the distinction between case management and case disposition in DVRO proceedings. Family courts may set and enforce reasonable time limits, require focused examinations, exclude cumulative evidence, and insist that counsel use hearing time efficiently. But time limits should be stated clearly, should account for the realities of contested testimony and cross-examination, and should not become a substitute for a merits ruling on a request for DVPA protection.

Practitioners should make a clear record early by providing realistic trial-time estimates, identifying the witnesses and evidence necessary to prove or defend the request, and promptly seeking additional time when it becomes apparent that the allowed time is inadequate. If the court proposes terminating a DVTRO or deciding the matter on a ground not identified in advance, counsel should object that notice and a meaningful opportunity to respond are required. The opinion also reinforces that, when a continuance is necessary, the status of the DVTRO must be addressed expressly under Fam. C. §§245 and 6327 rather than assumed.

Library Reference

11 Witkin, Summary of Cal. Law (11th ed. 2026) Marriage § 403
Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group) ¶ 17:358