IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION EIGHT

MARIA G. GARCIA,	Court of Appeal
	Case No. B279530
Plaintiff-Appellant,	
	Los Angeles Superior Court
v.	
	The Honorable: Robert E. Willett,
GILBERT ESCOBAR,	Judge Presiding
Defendant-Respondent.	Case No. LQ020533

AMICUS CURIAE BRIEF OF THE CALIFORNIA WOMEN'S LAW CENTER IN SUPPORT OF APPELLANT MARIA G. GARCIA

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208 of the California Rules of Court, *amicus curiae* California Women's Law Center certifies that, to the best of its knowledge, it is unaware of any entities or persons who have a financial or other interest in the outcome of this proceeding that would be relevant to the question of disqualification under Canon 3E of the Code of Judicial Ethics.

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I. INTRODUCTION AND SUMMARY OF APPEAL

This appeal seeks to overturn an erroneous decision below that the family court division of the California Superior Court lacks jurisdiction under Family Code section 6345(a) to renew a domestic violence restraining order that was issued by the juvenile court and included in an "exit order" upon termination of a juvenile dependency case.

In 2013, Appellant Maria G. Garcia filed for a domestic violence restraining order in the family court to protect herself and her daughter Amiah from Respondent Gilbert Escobar. But before the family court was able to rule, state authorities stepped in based on Garcia's police report and initiated an action in juvenile court for Amiah's protection. As a matter of law, the juvenile court thereupon had exclusive jurisdiction over the family court matter and issued a three-year restraining order against Escobar under section 213.5 of the Welfare & Institutions Code. In so doing, the juvenile court was required to follow the process set forth in the Domestic Violence Protect Act (DVPA), codified in the Family Code at section 6200 *et seq*., just as the family court would have done.

Less than a year later, the juvenile court issued an "exit" order terminating the dependency proceeding pursuant to section 362.4 of the Welfare & Institutions Code. The exit order gave Garcia sole physical custody of Amiah, and included the domestic violence restraining order, which still

had more than two years to go. By operation of law, the continuing enforcement of that restraining order was transferred to the family court.

Escobar regularly violated that restraining order. Before it was set to expire, Garcia filed a motion in the family court to renew the restraining order under section 6345(a) of the Family Code, which is part of the DVPA. Under section 6345(a), renewal may be granted for a minimum of "five years or permanently" without a showing of any further abuse—in contrast to the showing of a prior act of abuse required for an initial restraining order. (Fam. Code § 6300.) Garcia's request was denied because the family court did not believe that it had jurisdiction to renew a restraining order initially issued by the juvenile court. Instead, the family court treated Garcia's motion as an application for an *initial* restraining order, which it granted, but for only one year.

This decision was incorrect. As a matter of statutory construction, legislative intent and logic, the family court clearly and necessarily has jurisdiction to renew a domestic violence restraining order initially issued by the juvenile court and transferred to the family court through an exit order. (Welf. & Inst. Code §§ 302, 362.4.)

In summary:

First, the statutory hand-off from the juvenile court to the family court is designed to allow the family court to enforce, modify and extend domestic violence protective orders issued by the juvenile court. (See Wel.

& Inst. Code § 213.5 [protective orders]; *id.* § 362.4 [exit orders]; Fam. Code § 6218 [protective orders]; *id.* § 6345 [renewals].)

Second, this construction is supported by the stated intention and purpose of the California Legislature in enacting and amending the DVPA, and related provisions of the Welfare & Institutions Code and Family Code in order to increase protection for victims of domestic violence.

Third, the family court's erroneous construction, if left to stand, would impose an arbitrary, different burden on victims of domestic violence who obtain initial restraining orders in juvenile court, by requiring them to "start over" later in family court, rather than make the separate showing for renewal permitted under Family Code section 6345(a), which also affords an extended period of protection as part of the DVPA.

This Court of Appeal has not yet addressed the specific issue presented in this case in any published decision. This case presents an important opportunity to correct an erroneous reading of the law by the family court and clarify how the relevant statutes operate together to permit the family court to renew domestic violence restraining orders initially issued by the juvenile court. Such a decision would provide much needed guidance to family courts throughout the state, which routinely take over responsibility for enforcement of restraining orders issued by juvenile courts, and would further the legislative purpose to protect an especially vulnerable segment of adult and minor victims of domestic violence and abuse.

II. STATEMENT OF THE CASE

A. The Juvenile Court Issues the Initial Domestic Violence Restraining Order

Escobar has a long history of violent and abusive behavior toward Garcia and their daughter Amiah. (E.g., AA 13 [describing Escobar's 2010 forced entry into Garcia's home to take their baby daughter necessitating police involvement to secure her return].) Garcia eventually sought help from the Los Angeles County Superior Court's family division. On July 29, 2013, after Escobar had physically assaulted Garcia in front of their daughter and was arrested by the police, Garcia filed a Form DV-100 in family court requesting a domestic violence restraining order against Escobar and a Form DV-140 for custody of Amiah. (AA 13, 95, 106.) The family court immediately issued a temporary restraining order using Form DV-110 and scheduled a hearing shortly thereafter on her request for a domestic violence restraining order. (AA 87-94.)[1]

The family court did not have an opportunity, however, to rule on Garcia's request for custody or a restraining order before the Los Angeles County Department of Children and Family Services intervened based on Garcia's police report by initiating a juvenile dependency proceeding to

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[1] As discussed below, a potentially recurring source of confusion is that forms approved by the Judicial Council for use in domestic violence matters in family court and juvenile court do not cross-reference each other or recognize the transition of restraining orders between the courts.

protect Amiah. (AA 20; RT 20-21.) As a matter of law, commencement of the juvenile case stayed the family court proceeding, and gave the juvenile court exclusive jurisdiction over custody of Amiah and Garcia's pending request for a domestic violence restraining order. (See Welf. & Inst. Code §§ 213.5, 304.) On September 13, 2013, based on Garcia's compelling demonstration of Escobar's history of abuse, the juvenile court issued a three-year domestic violence restraining order using Form JV-250 to protect Garcia and Amiah from Escobar (the "Initial Restraining Order"). (AA 20, 136-141.)

In May 2014, the juvenile court issued a final judgment—also known as an "exit" order—using Form JV-200, which ended the juvenile proceedings by awarding Garcia sole physical custody of Amiah and limiting Escobar's contact with his daughter to approved supervised visits under the Initial Restraining Order. (AA 123-127.) The exit order also attached, and thereby continued, the Initial Restraining Order protecting Maria and Amiah. (*Ibid*.) Pursuant to the statutory scheme, the family court thereafter had jurisdiction with respect to any further proceedings related to the juvenile court's exit order, including the Initial Restraining Order. (See AA 136; Welf. & Inst. Code § 362.4.)

Escobar continually violated the terms of the Initial Restraining Order. (E.g., RT 31-32 [describing the ways in which Escobar improperly contacted Garcia, including fifteen incidents that caused her to call local

police].) The Los Angeles County District Attorney's Office intervened and initiated criminal proceedings against Escobar, which led to multiple protective orders issued by the criminal court to prohibit communication with Garcia. (E.g., AA 21, 128-135.) Yet, Escobar continued to harass Garcia. Even after the criminal court warned Escobar of potential jail time, he purposely chose, for example, to disregard the requirements of both the Initial Restraining Order and the criminal protective orders by staying too close to Garcia. (See AA 21, 28; RT 83-84.)

B. The Family Court Erroneously Decides that It Cannot Renew the Initial Domestic Violence Restraining Order as a Matter of Law

On September 7, 2016—before the Initial Restraining Order was set to expire after three years—Garcia filed a timely motion in the family court to renew that Order. (See AA 4.) She completed Form DV-100—like she had before her request was transferred to the juvenile court.[2] She attached the Initial Restraining Order and evidence of the numerous instances of Escobar's misconduct. (AA 4-66.) She sought *renewal* of the Initial Restraining Order under section 6345(a) of the Family Code, which is part of the DVPA and authorizes renewal of a restraining order for "five years or permanently" without showing any further abuse, based on a showing of

[2] See *supra* Note 1. Even though Garcia did not file Form DV-700 (Request to Renew Restraining Order in family court), the parties agreed her request was for renewal. (See RT 2, 56-57.)

"reasonable apprehension" of future abuse. (*Ritchie v. Konrad* (2004) 115 Cal. App. 4th 1275, 1284.)

On October 21, the family court held a hearing on Garcia's request for renewal. During the hearing, Escobar's counsel stipulated to a renewal of the Initial Restraining Order, stating:

> If this is an effort to seek a renewal of the restraining order that is going to expire . . . I believe that [Garcia] has made a prima facie case as to reasonable apprehension, fear, continuing anxiety . . . . And we would stipulate to a renewal.

(RT 55.) Despite this stipulation, the family court decided that the renewal provision under section 6345(a) of the Family Code was not—as a matter of law—available to Garcia because the Initial Restraining Order had been issued by the juvenile court. The family court believed that juvenile court's order was not issued under the DVPA—which is incorrect as discussed below. (See Section III, Part A.) The court stated:

> That [Initial Restraining Order] is not a D.V.P.A restraining order. It is a children's court restraining order. I don't think that I can renew. I don't think that I have jurisdiction over that order to renew it . . . .

(RT 57.) The family court recognized (albeit ambivalently), that Garcia was seeking a renewal of the existing restraining order:

> [W]hile there is some confusion in the record as to whether it was a renewal of restraining order or a new restraining order, the court is not confused on the subject. The court believed [sic] that this is a new request for a domestic violence restraining order. I do note that the request was filed before the expiration of the children's court restraining order. I don't think that's either here nor there in any major way, *but*

> *it is consistent with the so-called renewal language [in the Domestic Violence Prevention Act]*. Although this is not a renewal, I will repeat again, it – it does indicate a desire to obtain a restraining order before the expiration date of the children's court restraining order.

(RT 100 [emphasis added].)

Ultimately, the family court issued a new restraining order for a period of only one year, which will force Garcia to return to court soon, face Escobar again and seek another extension of the restraining order. (See AA 241.)

III. ANALYSIS

Contrary to the family court's ruling, it has full jurisdiction and authority to renew a domestic violence restraining order under the DVPA (Family Code § 6300 *et seq*.)—even where the order initially was issued by the juvenile court. First, the analysis below starts with the relevant respective roles and statutory schemes governing the family court, the juvenile court, the relationship between them and their mutual use of the DVPA in issuing domestic violence restraining orders. Second, the analysis shows how the plain language of the governing statutes—sections 213.5 and 362.4 of the Welfare and Institutions Code and section 6345(a) of the Family Code—allows the family court to renew restraining orders initially issued by the juvenile court. Third, the analysis turns to the purpose and intent of the California legislature to enhance protections to victims of domestic violence in enacting and amending the relevant statutory scheme. Finally, the analysis offers a discussion of how the

family court's erroneous interpretation would arbitrarily impose a different evidentiary burden and provide less protection to an especially vulnerable subgroup of domestic violence survivors who obtain their initial restraining orders in the juvenile court.

A. Juvenile and Family Courts have Complementary Roles and Jurisdiction in Preventing Domestic Violence

The Domestic Violence Prevention Act is the statutory lynchpin connecting the authority and jurisdiction of the juvenile and family courts to issue and modify restraining orders to prevent domestic violence. In 1993, the California legislature enacted the DVPA as Division 10 of the Family Code, section 6200 *et seq*. "The purpose of this division is to prevent acts of domestic violence, abuse and sexual abuse and to provide for separation of the persons involved in the domestic violence[.]" (Fam. Code § 6220.) The Legislature has since published findings affirming the importance and effectiveness of the DVPA, including a finding that civil protective orders "increase a victim's safety, decrease a victim's fear of future harm, and improve a victim's overall sense of well-being and self-esteem." (2014 Cal. Stats. Ch. 635, § 1, subd. (f).)

Other studies show that the majority of persons subjected to domestic violence are women. (Bugarin, *The Prevalence of Domestic Violence in California* (Nov. 2002) California Research Bureau, California State Library at p. 3 ["The Bureau of Justice estimates that '90 to 95

percent of domestic violence victims are women.'"].) As a result, 72% of the restraining orders issued by various divisions of the Superior Court "involved a restrained male and a protected female." (See Sorenson & Shen, *Restraining Orders in California: A Look at Statewide Data* (July 2005) 11 Violence Against Women 912, 920.) Women who are mothers, in turn, most often have custody and front line responsibility for protecting their children from domestic violence and abuse. This is where the juvenile and family courts dovetail. Both courts have statutory authority to issue and modify domestic violence restraining orders under the DVPA.

The Juvenile Court

The primary focus of the juvenile court is to provide "maximum safety and protection for children" who are made dependents of the court, having been exposed to abuse and neglect. (Welf. & Inst. Code § 300.) The juvenile court's job is to ensure "the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (*Id.* § 300.2.) Juvenile court proceedings may be initiated only by the state through the county Department of Children and Family Services (DCFS). (*Id.* § 325.) The parties are the state (through DCFS), the child through a *guardian ad litem* and legal counsel, and the parents through legal counsel which may be appointed by the court. (*Id.* §§ 317, 317.5, 325; Cal. Rules of Court, rules 5.534, subds. (c)-(d).) In general, juvenile court proceedings

are governed by the Welfare & Institutions Code. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

Once initiated, the juvenile court has exclusive jurisdiction to issue domestic violence restraining orders involving dependent children. (Welf. & Inst. Code § 213.5, subd. (a).) Effective in 2012, the juvenile court's authority to issue such orders is expressly "in the manner provided by Section 6300 of the Family Code if related to domestic violence." (*Ibid*.) Section 6300 is part of the DVPA and governs the issuance of domestic violence restraining orders in family court. *Accordingly, both the juvenile and family courts follow the same DVPA provisions governing the scope and procedures for obtaining domestic violence protective orders*.

The juvenile court's jurisdiction includes authority to exclude an individual from "the dwelling of the person who has care, custody, and control of the child." (Welf. & Inst. Code § 213.5, subd. (a).) Thus, where a mother has physical custody, a juvenile court restraining order may protect both woman and child. (*Ibid*.; see, e.g., AA 136.) Further, the juvenile court is authorized to issue orders "as described in Section 6218 of the Family Code," which sets forth the full array of protective orders authorized under the DVPA. (Welf. & Inst. Code § 304.)

The Judicial Council is instructed by statute to adopt forms for these restraining orders, which "shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with section 6200)

of the Family Code." (Welf. & Inst. Code § 304.) As shown by the facts in this case, however, the Judicial Council has approved "JV" forms for use in juvenile court, and "DV" forms for the same use in family court, but has failed to provide forms recognizing that a "JV" order may become a "DV" order through the exit order.[3]

At the conclusion of a juvenile proceeding, continued enforcement of any domestic violence restraining order is handed off to the family court. Under section 362.4 of the Welfare & Institutions Code, when the juvenile court terminates its jurisdiction over a minor, it may issue what is commonly called an "exit" order, which includes any domestic violence restraining order. The exit order "shall be filed" in any pending family court proceeding—or else may be used "as the sole basis" for opening a future family court proceeding. (Welf. & Inst. Code § 362.4.) The clerk of court is directed to handle the logistics and the Judicial Council is directed to adopt forms for these orders. (*Ibid*.)

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[3] The Judicial Council of California issues mandatory forms and optional forms. (See Forms & Rules, California Courts, www.courts.ca.gov/forms.htm [Using Forms].) Although the forms used for domestic violence protective orders are mandatory, relief may be granted even if the mandatory form is not used—and here, there was no perfectly suitable form available. (See *Faton v. Ahmedo* (2015) 236 Cal. App. 4th 1160, 1171 [the Family Code "states that the Judicial Council shall prescribe the [domestic violence restraining order] forms, but it does not state that a litigant's failure to use the forms necessarily requires the court to withhold the requested relief"].)

The Family Court

The family court is "established to provide parents a forum in which to resolve, inter alia, private issues relating to the custody of and visitation with children." (*In re Chantal S, supra*, 13 Cal.4th at p. 201.) The family court has authority to issue restraining orders pursuant to the DVPA, which, as noted, is codified in Division 10 of the Family Code. (Fam. Code § 6200 *et seq.*) An initial restraining order may be issued where the applicant "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse"—*i.e.*, the same standard that juvenile courts are directed to apply. (Compare Fam. Code § 6300 with Welf. & Inst. Code § 213.5, subd. (a).) The initial restraining order may be renewed for "five years or permanently" based on a showing of "reasonable apprehension" of future violence and abuse (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1284), but "without a showing of any further abuse since the issuance of the original order." (Fam. Code § 6345, subd. (a).)

Observers have noted that movement of a domestic matter from juvenile court to family court can create "interesting and complex" cases because of gaps in the continuity of information, errors in the file transfer process, mismatched forms and other communication failures. (Edwards, *Moving Cases from Juvenile to Family Court: How Mediation Can Help* (Summer 2012) 16:2 U.C. Davis J. of Juvenile L. & Pol. 535, 537.) That said, these two courts are fully authorized under the DVPA to protect

victims of domestic violence and they "should be prepared to work together" to do so. (See Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases* (1987) 27 Santa Clara L. Rev. 201, 269.)

Here, Garcia properly invoked the jurisdiction of the family court to renew her Initial Restraining Order, which was part of the juvenile court's exit order when the juvenile proceeding was terminated. There being no Judicial Council form for renewal of a juvenile court order in family court, Garcia properly improvised using the family court forms. (AA 4-66.) Escobar's counsel and the judge (for at least part of the hearing) understood that she was seeking renewal of the order that was about to expire.

The family court nonetheless deprived Garcia of her rights under the DVPA to renew that Initial Restraining Order for "five years or permanently" by erroneously finding that it had no jurisdiction to do so, treating her application as a new request for an initial order, and granting her only one year of extended protection.

B. The Plain Language of the Governing Statutes is that Restraining Orders Issued by the Juvenile Court may be Renewed by the Family Court

This Court's primary task is to determine whether the family court had jurisdiction in this case to renew the Initial Restraining Order under Family Code section 6345(a). This is an issue of statutory construction where the guiding principle is "to determine the lawmakers' intent." (*Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal. App. 4th 1385, 1396 ["[T]he aim

is 'to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.'"] [citations omitted].) In so doing, this Court looks "first [] to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction." (*Ibid*. [citations omitted].) Applying these principles, the governing statutes at issue clearly give the family court jurisdiction to renew a domestic violence restraining order issued by the juvenile court. (See also Section III, Parts C and D.)

Starting with the plain language, the key statutes, when properly read together, form a logical chain establishing the authority of the family court to renew a domestic violence restraining order inherited from the juvenile court—sections 213.5 (restraining orders) and 362.4 (exit orders) of the Welfare & Institutions Code and Family Code section 6345(a) (renewal of restraining orders).

First, section 213.5 of the Welfare & Institutions Code directs the juvenile court to issue domestic violence restraining orders "in the manner provided by Section 6300 of the Family Code" —*i.e.*, under the DVPA in the same manner required in family court. While an initial juvenile court restraining order may be issued for "no more than three years," it may be "extended by further order of the court." (Welf. & Inst. Code § 213.5, subd. (d).) Where, as here, the juvenile court's order has been transferred to the jurisdiction of the family court, "the further order of the court" can

only mean the family court. Termination of the juvenile court proceeding divests that court of jurisdiction. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 201.) Thus, a plain reading is that the family court acquires jurisdiction to extend a juvenile court restraining order.

Second, section 362.4 of the Welfare & Institutions Code governing exit orders *expressly* gives the family court jurisdiction to act on a domestic violence restraining order issued by the juvenile court. (Welf. & Inst. Code § 362.4.) When the juvenile court "terminates its jurisdiction over a minor," it may issue a protective order "as defined in section 6218 of the Family Code" (here again, the DVPA). (*Ibid*.) That exit order "shall continue *until modified or terminated by a subsequent order of the superior court*." (*Ibid*. [emphasis added].) Again, since the purpose of this section is to effectuate a hand-off from the juvenile court to the family court, any "subsequent order of the superior court" *necessarily* refers to the family court. Under the plain language, the family court may "modify" the initial juvenile order by, among other things, extending the termination date by "five years or permanently" under section 6345(a) of the Family Code.

C. Legislative Intent Supports the Family Court's Authority to Renew Restraining Orders Initially Issued by the Juvenile Court

The purpose and intent of the California legislature in enacting and amending the DVPA supports this plain language construction of the statutory scheme. The legislature enacted the DVPA to "prevent acts of

domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence[.]" (Fam. Code § 6220.) Since enactment, the legislature approved amendments that altered the showing for survivors to obtain renewals, increased the duration of initial and renewal orders, added the DVPA to the juvenile court's armory of tools to protect children and their custodians from domestic violence and abuse, and made findings affirming the DVPA's importance and track record.

In 2005, for example, the legislature increased the permitted renewal period available under section 6345(a) of the Family Code from three years to "five years or permanently," explaining its rationale as follows:

> [E]xtending the duration of these protective orders would save the victims the harrowing ordeal of returning to court every three years to renew the orders and allow them to go about their lives with more peace of mind.
>
> Advocates for domestic violence victims also argue that while in three years the physical battering of the victim may have stopped, oftentimes the litigation is drawn out for many years and the court becomes the forum through which the batterers revictimize and traumatize the party protected by the order.

(Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 99 (2005–2006 Reg. Sess.) as amended Mar. 1, 2005, p. 3.)

In 2010 (effective in 2012), the California legislature extended the DVPA to juvenile court by amending section 213.5 of the Welfare & Institutions Code to direct juvenile courts to issue restraining orders "in the manner provided by Section 6300 of the Family Code, if related to

domestic violence." (Assem. Bill No. 1596 (2009-2010 Reg. Sess.) § 25 [effective Jan. 1, 2012].) In order to "better protect victims of domestic violence," this amendment assures that juvenile courts issue domestic violence restraining orders using the same process and with the same protections as the family court. (See Assem. Com. On Jud., Rep. on Assem. Bill No. 1596 (2009-2010 Reg. Sess.) Mar. 16, 2010, Key Issue.)

In 2014, the legislature made findings emphasizing the importance of the DVPA and its effective track record: "[T]he effective issuance and enforcement of civil protective orders are of paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death." (2014 Cal. Stats. Ch. 635, § 1, subd. (i).) "Studies have shown that obtaining a civil protective order against an abuser can increase a victim's safety, decrease a victim's fear of future harm, and improve a victim's overall sense of well-being and self-esteem." (*Id.* § 1, subd. (f).) These legislative findings and policies support the plain language construction of the statutes, which assures the family court's jurisdiction and authority to invoke the DVPA's renewal provisions once a domestic violence restraining order is transferred to the family court.

There is, moreover, strong social science research supporting the legislative findings that restraining orders are effective in reducing violence to women and children. In a recent study of women in both rural and urban settings, domestic violence restraining orders were found to be effective as

measured by the elimination or reduction of violence and improved quality of life for survivors. (See Logan & Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement* (Spring 2011) at p. 3-4, Carsey Institute, University of New Hampshire.)

Similarly, a large population-based study conducted in Seattle, Washington using review of police records found that having a permanent civil protection order in place during the twelve months after a police-reported incident of intimate partner violence "was associated with a significantly decreased risk of new episodes of police-reported physical abuse"—specifically, an 80% reduction. (Holt et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* (2003) 24:1 Am. J. Prev. Med. at pp. 16, 19-20.)

In light of findings like these, the Division of Violence Prevention of the National Center for Injury Prevention and Control focused on domestic violence restraining orders in its 2017 package of programs, policies and practices for preventing intimate partner violence and increasing survivor safety. (See Niolon et al., *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices* (2017) National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.) The report accompanying the package concludes that protective orders are "associated with lower risk of

subsequent violence toward the survivor." (*Id.* at p. 40 [citing Benitez et al., *Do protection orders protect?* (2010) 38:3 J. of the Am. Acad. of Psychiatry and the Law Online, at pp. 376-385].)

Given the proven correlation between restraining orders and the safety of domestic violence survivors, this is not merely an academic argument. Women and children will be safer when family courts exercise their authority to renew restraining orders issued by juvenile courts, as the California Legislature intended. Accordingly, the relevant statutory scheme should be construed to support the family court's authority to invoke the DVPA to renew domestic violence restraining orders that safeguard survivors of domestic violence, regardless whether their safety was initially protected by the juvenile court or by the family court.

D. The Family Court's Interpretation Imposes an Arbitrary Burden on a Subset of Victims of Domestic Violence and Frustrates Legislative Intent

The family court's contrary interpretation should be rejected for the further reason that it unreasonably and arbitrarily burdens domestic violence survivors who obtain initial restraining orders in juvenile court. (See *Mt. Hawley Ins. Co.*, *supra*, 215 Cal. App. 4th at p. 1396 [court may look to the "reasonableness of a proposed construction" in determining statutory meaning].) Under the family court's interpretation, persons protected by domestic violence restraining orders issued by a juvenile court are forced to prove up an initial case for a new restraining order all over

again in the family court. This result cannot be reconciled with the language of the statutes or legislative intent discussed above.

First, Garcia and others like her who successfully obtain a domestic violence restraining orders in juvenile court have *already* met the standards under the DVPA for obtaining an initial restraining order. Under section 215.5(a) of the Welfare & Institutions Code, they demonstrated to the juvenile court the showing required by Family Code section 6300: *i.e.*, by "affidavit or testimony and any additional information provided to the court . . . reasonable proof of a past act or acts of abuse."

Second, legislative policy with respect to domestic violence restraining orders issued by the juvenile court is set forth in section 304 of the Welfare & Institutions Code that such orders "*shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code*" —which *is* the DVPA. (See Welf. & Inst. Code § 304 [emphasis added].) The family court failed to follow this mandate.

Third, powerful public health and safety concerns drove legislative amendment of section 6345 of the Family Code to make it *easier* for survivors to obtain renewals and extend the duration of domestic violence restraining orders. Those concerns are undermined by the family court's interpretation limiting its power to act on Garcia's request for renewal.

The five-year minimum renewal in section 6345 was enacted in response to evidence of high rates of murder and recidivism by domestic violence perpetrators, and their frequent use of the confrontational arena of the courtroom to "revictimize and traumatize" survivors.[4] The five year minimum renewal is designed to provide survivors "peace of mind" to "go about their lives" and minimize the "harrowing ordeal" of returning to court to confront an abuser in order to obtain extended protection.

Similarly, the distinct showing required for renewal under section 6345 reflects recognition that if an initial restraining order is serving its intended purpose, requiring proof of new abuse to justify renewal is superfluous. (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1284.) Thus, a renewal applicant must only demonstrate "reasonable apprehension" of future abuse (*id.* at p. 1279) "without a showing of any further abuse since the issuance of the original order." (Fam. Code § 6345, subd. (a).)[5] Evidence of the "existence of the initial order . . . and the underlying findings

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[4] See Sen. Rules Com., Off. Of Sen. Floor analysis, 3d reading of Assem. B. No. 99 (2005-2006 Reg. Sess.) Mar. 1, 2005 [cited in Appellants' Opening Brief at 22].

[5] Notably, the juvenile court may have access to evidence that is both useful in establishing the need for a restraining order and also not necessarily available to the family court. For example, the "testimony of a minor may be taken in chambers and outside the presence of the minor's parent or parents" if, among other factors, the child is "afraid to testify in front of his or her parents." (Welf. & Inst. Code § 350, subd. (b).)

and facts supporting that order often will be enough in themselves to provide the necessary proof." (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1291.)

The family court's erroneous ruling, denying Garcia and those in her position the protection offered by section 6345 of the DVPA, falls arbitrarily hard on survivors who are often at higher risk of harm because the violence and abuse they suffered was severe enough to call for state intervention to protect their children in juvenile court. Further, in obtaining their initial restraining orders, survivors in this subgroup likely had assistance of counsel, which often will be unavailable in family court where parties typically represent themselves. (See *Moving Cases*, *supra*, at p. 546 ["Parents usually have attorneys to assist them in juvenile court, while a high percentage of family litigants are unrepresented."]; Welf. & Inst. Code § 317, subd. (a)(1).) There is no rational basis for excluding this subgroup from the beneficial protections of obtaining renewal under section 6345.

Finally, it is important to consider that the juvenile court terminated its jurisdiction only because it found the child to be in a safe environment—*with a restraining order in place*. (See Welf. & Inst. Code § 364, subd. (c).) Mothers must have the right to seek renewal of restraining orders issued by the juvenile court in order to maintain the safe environment that the juvenile court determined to exist, and would continue to exist, when its jurisdiction ended. (See *Moving Cases*, *supra*, at pp. 538-539 ["At the time of dismissal, the juvenile court has concluded that the child currently

resides in a safe environment, but the court must acknowledge the danger of re-abuse or neglect."].)

By requiring Garcia to prove grounds for issuance of an initial domestic violence restraining order, and denying her the relief of renewal for a minimum of five years or permanently, the family court committed prejudicial error. Important public safety and health laws designed to protect Garcia have been denied to her, and will not be extended to other victims of domestic violence like her unless this Court of Appeal steers the family court in the right direction with a reversal and reasoned opinion.

IV. CONCLUSION

For these reasons, *Amicus Curiae* respectfully request that this Court reverse the family court's decision in a written opinion clarifying that the DVPA's provisions governing renewal of domestic violence restraining orders apply to orders initially issued by the juvenile court, and transferred to the family court after termination of the juvenile case.

DATED: September 8, 2017

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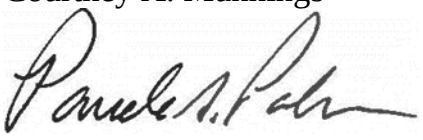

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