IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

JESSICA V. (F.K.A. JESSICA S.),
APPELLANT;

V.

DOUGLAS M.,
RESPONDENT.

Court of Appeal
Case No. C083120

El Dorado Superior Court

The Honorable: Douglas R. Hoffman,
Commissioner Presiding

Case No. SFL20120210 (consolidated with SFL2015071)

AMICI CURIAE BRIEF OF THE CALIFORNIA WOMEN'S LAW CENTER, LEGAL SERVICES FOR CHILDREN, AND LEGAL ADVOCATES FOR CHILDREN AND YOUTH IN SUPPORT OF APPELLANT JESSICA V.

PEPPER HAMILTON LLP
PAMELA S. PALMER (SBN 107590)
palmerp@pepperlaw.com
350 South Grand Avenue,
Suite 3400
Los Angeles, CA 90071
Telephone: (213) 928-9800
Facsimile: (213) 928-9850

PEPPER HAMILTON LLP
JESSICA SPRADLING RUSSELL
(SBN 298558)
russellj@pepperlaw.com
333 Twin Dolphin Drive
Redwood City, CA 94065
Telephone: (650) 802-3600

COURTNEY A. MUNNINGS (PA 318800)
Pro Hac Vice Admission Pending
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
Telephone: (215) 981-4000

ATTORNEYS FOR *AMICI CURIAE*

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208 of the California Rules of Court, *Amici Curiae* California Women's Law Center, Legal Services for Children, and Legal Advocates for Children and Youth certify that, to the best of their knowledge, they are 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 two erroneous decisions by the family court below, both of which conflict starkly with California law and policy designed to prevent domestic violence and abuse through the issuance and enforcement of restraining orders.

First, acting *sua sponte*, the family court improperly terminated a domestic violence restraining order issued by the juvenile court ("JVRO"), which the juvenile court deemed necessary to protect two minor children from abusive conduct by Respondent Douglas M. ("Douglas"). The juvenile court included the JVRO in its custody order and final judgment as a condition of terminating juvenile dependency proceedings. The family court, acting in excess of its jurisdiction and in violation of the children's due process rights, then improperly terminated the JVRO more than year before it was scheduled to expire, and did so without making the findings required by California Welfare & Institutions Code section 302(d) and Rule of Court 5.700 governing modification of final custody orders issued by a juvenile court.

Second, the family court abused its discretion by refusing to grant a new domestic violence restraining order ("DVRO") to protect Appellant Jessica V. ("Jessica") and her children from Douglas, despite multiple prior adjudications finding him to be an abuser, and new evidence

that he initiated stalking behavior—a known lethality indicator—within days after expiration of the family court's prior DVRO.

In summary, in 2012 and 2013, Jessica applied to the family court for domestic violence restraining orders to protect herself and her two minor daughters from Douglas' violent and abusive conduct. On both occasions, following full, contested hearings, the family court issued DVROs, finding that Douglas acted abusively and restraining him.

Based on the seriousness of Douglas' conduct as documented in a 2013 police report, the state initiated juvenile dependency proceedings for the protection of Jessica's and Douglas' daughters, A.M. and L.M. In July 2014, the juvenile court terminated the dependency case based on its final judgment and "exit order" (also called a "juvenile court custody order") pursuant to section 362.4 of the Welfare & Institutions Code. The exit order gave Jessica sole custody of the children and imposed a three-year restraining order under section 213.5 of the Welfare & Institutions Code protecting the children from Douglas until at least July 2017.

Meanwhile, the family court's prior 2013 DVRO remained in effect, which required Douglas to stay away from Jessica and the children. However, only a few days after the 2013 DVRO expired in February 2016, Douglas initiated unwelcome, previously restrained contact with Jessica. Undisputed evidence presented to the family court showed that Douglas

began lying in wait for Jessica and confronting her at her place of employment and other public places where he knew that she would be.

Afraid for her own safety and the safety of her daughters, her husband and their new baby (who was not part of the 2014 dependency case), Jessica returned to the family court and applied for a new DVRO. At the hearing on her application, Douglas admitted that he had confronted Jessica repeatedly at her place of employment and elsewhere, even though he knew that this contact was unwelcome.

Incredibly, the family court denied Jessica's application for a DVRO, without stating any factual basis. At the same time, in a decision that surprised even Douglas' counsel, the family court, without notice and upon its own motion, terminated the JVRO protecting A.M. and L.M., even though the JVRO was not at issue and would not have expired for another 15 months. The family court did not make the factual findings required by law for modification of a JVRO in juvenile court exit order—*i.e.*, that "[1] there has been a significant change in circumstances since the juvenile court issued the order and [2] modification of the order is in the best interests of the child." Welf. Inst. Code § 302(d); Cal. R. of Court, rule 5.700. The family court subsequently denied Jessica's motion for reconsideration, offering only the following conclusory statement:

> The Court has given weight to all reviewed documents and all testimony by all parties. The Court finds that there is no basis for a permanent restraining order. (CT 31; AS 7.)

Appellant's opening brief contains a thorough discussion of the multiple bases on which the family court's decisions were prejudicially erroneous and should be reversed. This brief on behalf of California Women's Law Center, Legal Services for Children, and Legal Advocates for Children and Youth as *Amici Curiae*, focuses on two of those bases, which present recurring issues of statewide impact involving restraining orders for the prevention of domestic violence.

First, the family court failed to give appropriate deference to the JVRO issued by the juvenile court in its final judgment and exit order. The California legislature has recognized that juvenile courts have unique competence in protection of abused children, and that custodial exit orders issued by juvenile courts—which may include JVROs—must be respected by family courts. By amendment to the Welfare & Institutions Code in 2000, family courts are required to treat such orders as final judgments, not to be modified absent specific findings of fact that the family court below failed to make. (See Welf. & Inst. Code 302(d).)

Second, in refusing Jessica's application for a new DVRO, one can only assume that the family court disregarded Douglas' history as

an adjudicated abuser and his stalking behavior, which he initiated as soon as the prior DVRO expired requiring him to keep away from Jessica. Consistent with social science research and legislative findings, Douglas' conduct illustrates that the prior restraining order had been effective in keeping him away. The family court's refusal to issue a new DVRO put Jessica and her family in danger. As discussed below, stalking is a significant lethality indicator—even in the absence of recent physical abuse—and must be given serious judicial consideration in determining whether to issue or renew a DVRO.

These public safety issues have not yet been addressed in a published decision by this Court of Appeal. Accordingly, this case presents an important opportunity not only to correct the erroneous decisions below, but to provide needed guidance to family courts regarding their duty to enforce JVROs in juvenile court exit orders and regarding the effectiveness of DVROs generally in protecting women and children against domestic violence, often prefaced by stalking behavior.

II. STATEMENT OF THE CASE

A. Background

Jessica and Douglas never married, but they were domestic partners and had two daughters, L.M. (born in 1999) and A.M. (born in 2008). During their relationship, Douglas was verbally and physically

abusive toward Jessica, L.M., and A.M. After their relationship ended, his physical abuse and verbal threats escalated to the point where Jessica was afraid for her life and the lives of her daughters. (MTA 0024-26).

B. In 2012 and 2013, the Family Court Issued Consecutive Domestic Violence Restraining Orders Protecting Jessica and the Children from Douglas.

Following several violent incidents in late 2012—including an incident where Douglas strangled Jessica, another where he threatened to get Jessica fired, and another where he threated to burn their house down, causing Jessica to flee with her children to a motel because she did not feel safe at home (MTA0024-26)—Jessica sought judicial protection by applying to the family court for a DVRO.

After a contested hearing in October 2012, the family court found that Douglas was abusive and issued a DVRO to protect Jessica, L.M., and A.M.—but denied Jessica's request for a stay-away order. (CT 110; MTA 0038.) Without a stay-away order, it quickly became evident that the DVRO was insufficient to protect Jessica and the children. Only two months later, in December 2012, Douglas forced Jessica into non-consensual sexual relations. She called the police and obtained an emergency protective order. (SMTA 0028; 0031; MTA 0052; 0070.)

Even police intervention was not enough to stop Douglas. In January 2013, Douglas locked Jessica her out of her house, and tried to push Jessica and her mother down the stairs in front of both L.M. and A.M.

(MTA 0052; SMTA 0016-17, 0072-74.) Jessica returned to the family court and renewed her application for a DVRO with a stay-away order. After another contested hearing, the family court again found that Douglas was abusive and issued a restrictive three-year DVRO, including a "stay away" order forbidding Douglas from contact with Jessica and the children, except for court-ordered visitations ("2013 DVRO").

C. In 2015, the Juvenile Court Issued An Exit Order, which Included a Domestic Violence Restraining Order Protecting the Children from Douglas.

Informed by the police intervention in 2013, the El Dorado County Health and Human Services Agency initiated dependency proceedings in juvenile court for the protection of L.M. and A.M. By statute, initiation of dependency proceedings shifts "exclusive jurisdiction" to the juvenile court over certain matters, including issuance of domestic violence restraining orders under the Domestic Violence Protection Act ("DVPA"). (See Welf. & Inst. Code §§ 213.5(a), 304.)

On July 16, 2014, the juvenile court issued a restraining order protecting L.M. and A.M. from contact with Douglas until at least July 15, 2017—the three-year statutory maximum available to the juvenile court. (CT 24-26, 121).[1] (Cal. Welf & Inst. Code § 213.5(d).) One year later, in

[1] The family court may initiate and renew DVROs for five years or permanently and, after taking over jurisdiction of juvenile court orders, may

July 2015, after a full dependency hearing, the juvenile court terminated the dependency proceedings, based on its determination that the children would be protected by the orders set forth in its custody order—also known as an "exit order"—issued under section 362.4 of the Welfare & Institutions Code. (CT 29, 91-92.) That exit order gave Jessica sole legal and physical custody of the children and included the 2014 JVRO, which the juvenile court modified only to allow Douglas supervised visits with the younger daughter, A.M.—but no contact whatsoever with the older daughter, L.M. (AS 3, CT 28-29.) Because Douglas refused to follow the safety protocols for supervised visits, he never had any visitation with A.M. after the dependency case concluded. (CT 13, 35-36.)

As discussed below, the juvenile court's exit order functions as a statutory hand-off to the family court. The exit order "shall be filed" in any pending family court proceeding—or may be used as "the sole basis" for opening a family court proceeding. (Welf. & Inst. Code § 362.4.) It falls to the family court, therefore, to enforce the exit order. The family court may modify it only upon specifically finding that there has been "a significant change in circumstances" and that modification is in the "best interests of the child." (Welf. & Inst. Code § 302(d).)

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renew JVROs for five years or permanently. Cal. Fam. Code § 6345; *Garcia v. Escobar* (2017) 17 Cal. App. 5th 267, at *4-7.

D. In 2016, the Family Court Denied Jessica's Application for a New DVRO and *Sua Sponte* Terminated the Juvenile Court's JVRO.

The family court's 2013 DVRO with stay away order and the juvenile court's 2014 JVRO protected Jessica, L.M., and A.M. for three years—Douglas stayed away. Only a week after the 2013 DVRO expired in February 2016, however, Douglas began showing up unannounced and uninvited near Jessica's place of work at a public place where Douglas knew she would be. (CT 6-8.)

Jessica promptly sought protection by applying in the family court for a new long-term DVRO to protect herself and her children, now including a newborn son. (AS 3; CT 1-6). At a contested hearing in April 2016, Jessica testified about Douglas' conduct in showing up unannounced and uninvited, and a co-worker provided corroborating witness testimony that Douglas had confronted Jessica near work. (CT 30-31.)

Indeed, Douglas himself admitted at the hearing that, as soon as the 2013 DVRO expired, he repeatedly waited for Jessica near her place of employment and sought contact with her even though he knew contact was unwanted. (CT 13.) He also understood that the JVRO was still in effect and that he had not had visitation with A.M. because of his conduct. (AS 6.)

Astoundingly, the family court denied Jessica's request for a DVRO in a two-sentence order without substantive explanation. (CT 31.) After denying Jessica's request for a DVRO, the family court, upon its own

motion and without notice or explanation, terminated the 2014 JVRO protecting L.M. and A.M. from Douglas, effective immediately. (CT 31, 92; AS 7.) Had the court not terminated the JVRO, it would have protected L.M. and A.M. for another fifteen months, until July 2015.

E. The Family Court Denied Jessica's Motion for Reconsideration without Factual Findings.

Jessica made a timely motion for reconsideration of the family court's decisions to deny a DVRO and terminate her children's JVRO, including a sworn declaration that termination of the JVRO was not in the children's best interest, and that unsupervised contact with Douglas would put L.M. and A.M. at risk of serious harm. (CT 46-47; see Cal. Code Civ. Proc. § 1008(a).) After a hearing on the motion for reconsideration, (RT 6), the family court took the motion under submission, stating that its view of the issue was "whether or not the juvenile domestic violence restraining order that has been made a family law case can be dismissed or resolved by the family Judge and what are the conditions necessary for that." (RT 22.)

The family court subsequently issued a ruling consisting of nothing more than a conclusory assertion that its denial of the DVRO and termination of the JVRO complied with California Rule of Court 5.700 (CT 92), and providing no substantive factual findings. (CT 94.)

III. ARGUMENT

A. An Exit Order Including a Juvenile Restraining Order Is a Final Judgment That Cannot Be Modified Absent Certain Special Circumstances.

As the family court correctly acknowledged, a JVRO, when included as part of a custody order upon termination of a dependency proceeding, is a final judgment of the juvenile court. (See Welf. & Inst. Code, 302(d); *In re Marriage of David and Martha M.* (2006) 140 Cal. App. 4th 96, 102.) [2] This means that the JVRO "shall remain in effect" and "shall not be modified" by the family court absent factual findings that "there has been a significant change in circumstances" since issuance of the juvenile court order and that modification is "in the best interest of the child." [3] The statutory mandate is clear:

> Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously

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[2] California Courts of Appeal have emphasized repeatedly that Section 302(d) means what it says: "changed circumstances" must be truly significant to warrant a modification of an exit order. See, e.g., *In re Marriage of Brown & Yana* (2006) 37 Cal. 4th 947, 954, 964-65.

[3] Though informally called "exit orders," juvenile court orders issued upon the termination of a dependency proceeding pursuant to Welf. & Inst. Code § 362.4 are "juvenile court custody orders." See California Courts Form JV200 "Custody Order-Juvenile-Final Judgment" *available at* http://www.courts.ca.gov/documents/jv200.pdf; see also Edwards (2012) *Moving Cases from Juvenile to Family Court*, 16:2 U.C. Davis J. of Juvenile L. & Pol. 535, 537.

> adjudged to be a dependent child of the juvenile court ***shall be a final judgment*** and shall remain in effect after that jurisdiction is terminated. ***The order shall not be modified*** in a proceeding or action described in Section 3021 of the Family Code ***unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child***.

(Welf. & Inst. Code § 302(d) [Emphasis added.]) The specific findings necessary for modification of an exit order are echoed in California Rule of Court 5.700.

The family court below correctly recognized that the JVRO was part of the juvenile court's final judgment and could only be modified upon findings of significantly changed circumstances and the best interests of the child. (See CT 92.) The court simply failed to make these findings. The record was devoid of evidentiary support for such findings in any event. The family court's dismissive treatment of the juvenile court's JVRO reflects a lack of understanding—or indifference to—the juvenile court's judgment that a restraining order was necessary for the continued safety of the children after termination of the dependency proceedings. As discussed below, the California legislature conferred upon juvenile courts unique powers and resources, giving them special competency in the

protection of minor children from abuse and neglect and required that family courts treat juvenile court exit orders with deference.[4]

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

The DVPA is a 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, declaring that "[t]he 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 effectiveness of the DVPA, including 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).)

While both the juvenile and family courts have statutory authority to issue and modify domestic violence restraining orders under the DVPA, the juvenile court is a specialist in the protection of children.

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[4] A disturbing and unusual fact of this case is that family court and juvenile court are the same judicial officer. This analysis treats the judge's two capacities as distinct, however, consistent with the legislative scheme.

2. Juvenile Courts Have Special Competency in Dependency Matters, Entitling Exit Orders to Deference by Family Courts.

The primary goal of the juvenile court is to achieve the "maximum safety and protection for children" who are made dependents of the court, having been exposed to abuse or neglect. (Welf. & Inst. Code § 300.) The juvenile court seeks to ensure "the safety, protection, and physical and emotional well-being of children" who are at risk of harm. (*Id*. § 300.2.) Juvenile court proceedings may be initiated by a social services agency acting for the state. (*Id.* § 325.) The parties are the state, 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).)

Once dependency proceedings have been 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 California Legislature made clear that the juvenile court's authority to issue such orders is expressly in the manner set forth in the DVPA "if related to domestic violence." (*Ibid*.) Thus, while the DVPA governs issuance of domestic violence restraining

orders in both family and juvenile courts, the primary focus of the juvenile court is protection of children and their custodians.[5]

The juvenile and family courts also operate from different assumptions about the ability of parents to act in the best interests of their children. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 201; see generally Edwards, *Moving Cases from Juvenile to Family Court* (Summer 2012)16:2 U.C. Davis J. Juvenile L. & Pol. 535, 537.) While family courts are directed to presume that a child's parents are "fit and capable," no such presumption exists in juvenile court dependency proceedings. (*In re Jennifer R.* (1993) 14 Cal. App. 4th 704, 712; Cal. Fam. Code § 3061.) To the contrary, dependency proceedings are based on an assumption that the parents are unable or unwilling to protect their children from abuse and neglect. (See *In re Roger S.* (1992) 4 Cal. App. 4th 25, 30-31.)

Whereas family courts may decide custody disputes, a central purpose of the juvenile courts is to provide the state with a forum in which it may act explicitly to protect at-risk children by restricting parents' access or even removing children into state custody. (*In re Chantal S.* (1996) 13 Cal. 4th 196, 201.) The juvenile court thus assumes the state's "special

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[5] 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).

responsibility to the child as *parens patriae*." (*In re Roger S.* (1992) 4 Cal. App. 4th 25, 30-31.)

In furtherance of this special responsibility, juvenile courts have resources at their disposal that the family courts do not. For example, in dependency proceedings, a social worker prepares a report for the court, which may include a detailed summary and investigation of the child's background, including hearsay information, which would not usually be admitted into evidence in a family court. (See Welf. & Inst. Code § 280; Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases* (1987) 27 S. Clara L. Rev. 201.)

Similarly, all parties in a dependency proceeding are entitled to legal representation, which may be appointed by the court. (Welf. & Inst. Code §§ 317, 317.5, 325; Cal. Rules of Court, rules 5.534, subds. (c)-(d).); Edwards, supra, 27 S. Clara L. Rev., at 217.) The child has an attorney advocate who acts as a guardian *ad litem* representing only the child's interests. (*Id*.) In contrast, parties in the family court proceedings (particularly children) have no such resources or rights to counsel.

Given the special procedures and resources available to the juvenile courts, the California legislature has recognized the special competence of the juvenile courts in the protection of at-risk children. (See Welf. & Inst. Code § 300.) By law, a juvenile court's exit order governing

custody, including restraining orders and restrictions on visitation, is entitled to deference in subsequent superior court proceedings:

> By empowering the juvenile court to issue custody and restraining orders, the Legislature has expressed its belief that the juvenile court is the appropriate place for these matters to be determined and that the juvenile court's orders must be honored in later superior court proceedings.

(See *In re Roger S.* (1992) 4 Cal. App. 4th 25, 30-31 [internal quotations omitted].)

The exit order puts in place protections that the juvenile court has determined to be necessary to the child's safety and welfare, thereby enabling the juvenile court to relinquish jurisdiction. Enforcement of an exit order, including any JVRO, is then handed off by statute to the family court. (Welf. & Inst. Code §§ 362.4, 302(d)).

The evidentiary records on which a juvenile court based its determinations are available to the family court. (See Cal. Rules of Court, rule 5.700). Review of these records is logically essential to any later factual determination by the family court that modification (including termination) of a custody order and JVRO is warranted by "a significant

change in circumstances" and "in the best interest of the child." The family court here, as discussed, made no such findings.[6]

3. The Legislative History of Section 302 Reflects Intent That Juvenile Court Exit Orders Be Honored By Family Courts.

Section 302(d) of the Welfare & Institutions Code sets forth the findings a superior court must make in a subsequent proceeding before modifying a juvenile court's final judgment embodied in the exit order. This provision was added by amendment in 2000 based on the legislature's determination that juvenile court exit orders must be treated with deference. The legislature amended 302(d) to state that a juvenile court exit order "shall be a final judgment and shall remain in effect after that jurisdiction is terminated." (Assem. Bill No. 2464 (1999-2000 Reg. Sess.) ch. 921.)

Before amendment in 2000, Section 302 was silent as to the deference, if any, that family courts must give to juvenile court exit orders. This silence led to uneven treatment of juvenile court exit orders. Some family courts held that exit orders were final judgments; others held that they were similar to *pendent lite* orders under family law that did not have the same finality or weight as permanent custody orders issued by the

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[6] Although the family court below stated that it had reviewed the juvenile court file (RT 25), it made no findings of changed circumstances or of the best interests of the children.

family courts. (See Edwards, *Moving Cases from Juvenile to Family Courts*, 543; see also *In re John W*. (1996) 41 Cal. App. 961, 970-73).

The failure of some family courts to enforce juvenile court exit orders led to dire, unintended consequences. The legislature was moved to amend section 302(d) in response to a tragic case in Los Angeles County, where a family court judge terminated an exit order that had been crafted to protect a child from sexual abuse, only for the child to later suffer terribly at the hands of her abuser. (See Cal. Bill Anal., A.B. 2464 Sen., 5/9/2000 [Testimony of California Family Law Task Force, "Limitation on Family Court's Authority to Modify Custody and Visitation Orders Issued By the Juvenile Dependency Court." at p 3].)

The legislature's deliberations on the bill that ultimately amended section 302(d), by giving exit orders the status of "final judgments," reflects recognition of the juvenile courts' special expertise:

> [Juvenile court exit orders are] made on a more complete understanding of the best interests of the child. Juvenile dependency courts have greater resources and expertise[,] the dependency process is less adversarial, it has greater access to social services to address the needs of abused children, and its attention is solely on the welfare of the child. California courts have similarly recognized critical differences between the family court and the juvenile court affecting custody and

> visitation orders that would seem to dictate that, for children who were the subject of abuse and neglect, the juvenile court's orders should be given greater deference[.] Therefore, courts have concluded, *"by empowering the juvenile court to issue custody and restraining orders, the Legislature has expressed its belief that the juvenile court is appropriate place for these matters to be determined and that the juvenile court's orders must be honored in later superior court proceedings*."

(Assem. Com. on Judiciary, 3d reading analysis of A.B. 2464 (1999-2000 Reg. Sess.) as amended May 17, 2000, p.3.)

Given the particular expertise of juvenile courts in the protection of abused and neglected children—as reflected in this legislative history—reversal of the family court's erroneous decision below to terminate the JVRO warrants the pen of this Court of Appeal to remind family courts that juvenile court exit orders are entitled to deference and must not be altered absent strict compliance with the factual findings mandated by section 302(d).

B. The Court Failed to Recognize Evidence of Stalking Behavior In Refusing To Grant Appellant Jessica's Domestic Violence Restraining Order.

Since the family court gave no factual basis for denying Jessica's application for a DVRO, one can only assume that the court did

not view Douglas' conduct in showing up uninvited to confront Jessica near work and other public places as worthy of restraint. While the court's denial of Jessica's application should be reversed for all the reasons explained in Appellant's Opening Brief, the court's failure to recognize the threat inherent Douglas' stalking behavior is of particular concern because stalking is a known lethality indicator in domestic violence cases.

As noted, the DVPA was enacted 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 DVPA directs courts to "consider the totality of the circumstances in determining whether to grant or deny" a DVRO. (*Id*. § 6301.) In this case, the family court gave no indication that it considered the extensive evidence and findings of Douglas' prior abuse, nor his admission that—as soon as the DVRO requiring him to "stay away" from Jessica expired—he began to show up repeatedly at her place of employment and other public places where he knew she would be—*i.e.*, stalking behavior.

Current research shows that stalking is an independent risk factor in femicide that needs to be taken very seriously. Research also shows that, while imperfect, restraining orders work—indeed, here, Douglas stayed away from Jessica as long as a restraining order was in effect, and only initiated his stalking behavior after it had expired.

1. Social Science Research Shows That Stalking Behavior Is a Lethality Indicator In Intimate Partner Violence

The U.S. Department of Justice Bureau of Justice Statistics defines stalking behaviors broadly—including following or spying, showing up without a legitimate reason, and lying in wait, among other types of conduct.[7] One recent meta-study collecting data on other studies concluded that "physical surveillance" was the most common stalking behavior identified in social science research, followed by phone calls and "other unwanted contact."[8]

Because stalking does not cause immediate physical injury, evidence of stalking behavior by current or former domestic partners often is not given the same weight by law enforcement authorities as evidence of physical assault.[9] However, study after study has confirmed that stalking

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[7] Baum, *Bureau of Justice Statistics Special Report: Stalking Victimization in the United States* (2009). Though the criminal laws of some states take a more restrictive view of stalking, see, e.g., Cal. Penal Code § 646.9(e), social science generally relies on a more expansive definition of stalking behaviors for purposes of threat assessment and lethality evaluations. See McFarlane *Stalking and Intimate Partner Femicide* (November 1999) 3:4 Homicide Studies 300-316.

[8] Logan, T., *Research on partner stalking: Putting the pieces together*, Lexington, KY: University of Kentucky, Department of Behavioral Science & Center on Drug and Alcohol Research (2010).

[9] Although interstate stalking is prohibited by federal law and all 50 states and the District of Columbia have criminal laws against stalking, social science research indicates that intimate partner stalking is rarely

behavior of the type in evidence before the family court in this case can be a precursor to femicide and independently is a significant indicator of potential lethality.

For example, a 2002 study of more than 800 survivors of domestic violence concluded that stalking behavior was a "strong risk factor for lethality." (McFarlane, J., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety* (2002) 20(1-2) Behav. Sci. Law. 51- 66). In this study, women who reported stalking behavior by their abuser were more than twice as likely as women who did not report such behavior to become victims of actual or attempted femicide.[10]

Similarly, according to the National Coalition Against Domestic Violence, 76% of women murdered by an intimate partner were stalked and 85% of women who survived a murder attempt were stalked.[11] Studies also show that stalking is independently associated with femicide,

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referred for criminal prosecution. For example, in a study of 1,785 domestic violence police reports in Colorado Springs, Colorado, researchers found that almost 300 contained evidence of stalking behavior, but the perpetrator had only been formally charged in one case. Tjaden, *The Role of Stalking In Domestic Violence Crime Reports Generated by the Colorado Springs Police Department* (2000) 15:4 Violence & Victims 427-441.

[10] McFarlane, J., *Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety* (2002) 20(1-2) Behav. Sci. Law. 51-52.

[11] See National Coalition Against Domestic Violence—Facts about Domestic Violence and Stalking, *available at* https://ncadv.org/assets/2497/domestic_violence_and_stalking_ncadv.pdf.

even in the absence of physical assault. In fact, nearly 20% of femicide victims report stalking behaviors without assault before they were killed.[12]

At the hearing on Jessica's application for a DVRO, she presented—through her own testimony and her co-worker's testimony—credible evidence of stalking behavior by Douglas, including repeated unwanted contact, waiting for her at her place of employment, and waiting for her at public places he knew she frequented. (CT 1-8, 13.) Indeed, Douglas admitted in testimony that he repeatedly showed up in Jessica's presence, knowing that his contact was not wanted. (CT 13.)

In denying Jessica's application for a DVRO, the court provided no explanation for disregarding evidence of Douglas' stalking behavior. The court's disregard of this evidence reflects a lack of understanding about the seriousness and potential lethality of stalking.

2. Social Science Research Shows That Restraining Orders Are Effective at Preventing Domestic Violence.

Social science research also has shown that restraining orders are effective in reducing domestic violence. For example, in a recent study of survivors of abuse in rural and urban settings, domestic violence

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[12] Mechanic, M., *The Impact of Severe Stalking Experienced by Acutely Battered Women: An Examination of Violence, Psychological Symptoms and Strategic Responding* (Winter 2000) 15:4 Violence Vict., 443–458.

restraining orders were found to be effective as measured by the elimination or reduction of violence and improved quality of life for survivors.[13]

Similarly, a large population-based study conducted in Seattle, Washington using review of police records found that having a permanent civil protective 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.[14]

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.[15] The report accompanying the package

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[13] See Logan & Walker, Carsey Institute, University of New Hampshire, 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.

[14] Holt, Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury? (2003) 24:1 Am. J. Prev. Med. at pp. 16, 19-20.

[15] 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.

concludes that protective orders are "associated with lower risk of subsequent violence toward the survivor." [16]

Finally and most relevant here, studies suggest that the majority of partner stalkers (61-65 percent) discontinue stalking behavior after a civil restraining order is obtained against them.[17] Douglas' own behavior conformed to the expectations of social science research. DVRO's are effective at stopping abuse by fulfilling a primary objective of the DVPA to "provide for separation of persons involved in domestic violence." (Fam. Code § 6220.) Douglas stayed away from Jessica until the DVRO expired. (CT 13.)

IV. CONCLUSION

Amici Curiae respectfully request that this Court reverse the family court's erroneous decisions in a written opinion clarifying that (1) exit orders from the juvenile courts, including JVROs, are final orders that can only be modified in a subsequent proceeding before a superior court only upon strict compliance with the factual findings required by

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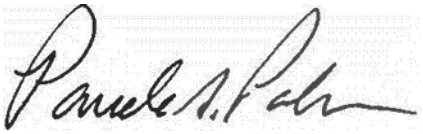
[16] *Id*. at p. 40 [citing Benitez et al., Do protection orders protect? (2010) 38:3 J. of the Am. Acad. of Psychiatry and the Law Online, at pp. 376-385].

[17] See Häkkänen, H., C. Hagelstam and P. Santtila, "Stalking Actions, Prior Offender-Victim Relationships and Issuing of Restraining Orders in a Finnish Sample of Stalkers" (2003) 8 Legal and Criminological Psychology 189-206.

section 302(d) of the Welfare & Institutions Code and (2) evidence of stalking should be regarded as a serious potential lethality indicator in judicial consideration of the issuance or renewal of a DVRO.

DATED: January 3, 2018

PEPPER HAMILTON LLP
Pamela S. Palmer
Jessica Spradling Russell
Courtney A. Munnings



Pamela S. Palmer

Attorneys for *Amici Curiae* California Women's Law Center, Legal Services for Children, and Legal Advocates for Children and Youth

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.360 of the California Rules of Court, I certify that this *Amici Curiae* brief contains 7,030 words as counted by the Microsoft Word word-processing program used to generate this brief.

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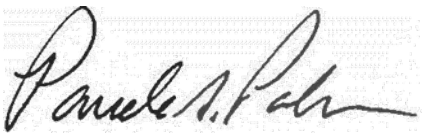

Attorneys for *Amici Curiae*, California Women's Law Center, Legal Services for Children, and Legal Advocates for Children and Youth

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Case Name: Jessica V. (F.K.A. Jessica S v. Douglas M.)
Court of Appeal Case Number: C083120
Superior Court Case Number: SFL20120210

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   On behalf of (*name or names of parties represented, if person served is an attorney):*
   Jessica V

   (a) Address:
   Simpson Thacher & Bartlett LLP
   2475 Hanover Street
   Palo Alto, CA 94304
   (b) E-Mail Address:
   acoll-very@stblaw.com

   (2) Name of Person served: Anya Emerson, Shuray Ghorishi, Jennafer D. Wagner, Erin Smith, Nancy K.D. Lemon

   On behalf of (*name or names of parties represented, if person served is an attorney):*
   Jessica V.

   (a) Address:
   Family Violence Appellate Project
   1814 Franklin Street, Suite 805
   Oakland, CA 94612
   (b) E-Mail Address:
   aemerson@fvaplaw.org

   (3) Name of Person served: Robert Calleros, Jr.

   On behalf of (*name or names of parties represented, if person served is an attorney):*
   Jessica V.

   (a) Address:
   Live Violence Free
   2941 Lake Tahoe Blvd.
   South Lake Tahoe, California 96150
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Court of Appeal Case Number:	C083120
Superior Court Case Number:	SFL20120210

(4) Name of Person served: Pro Hac Vice Program

On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:
Office of Special Admissions
The State Bar of California
180 Howard Street
San Francisco, California 94105
(b) E-Mail Address:

(5) Name of Person served: Honorable Douglas R. Hoffman, Commissioner Presiding, Superior Court of California, County of El Dorado

On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:
Clerk of the El Dorado Superior Court, South Lake Tahoe Branch
1354 Johnson Blvd.
South Lake Tahoe, CA 96150
(b) E-Mail Address:

(6) Name of Person served: Clerk of the Court

On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(b) E-Mail Address:

(7) Name of Person served:

On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:

(b) E-Mail Address:

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(a) Address:

(b) E-Mail Address:

AMENDED PROOF OF SERVICE (Court of Appeal)
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   (2) AMICI CURIAE BRIEF OF THE CALIFORNIA WOMEN'S LAW CENTER, LEGAL SERVICES FOR CHILDREN, AND LEGAL ADVOCATES FOR CHILDREN AND YOUTH IN SUPPORT OF APPELLANT JESSICA V.,

   (3) MOTION REQUESTING JUDICIAL NOTICE IN SUPPORT OF [PROPOSED] BRIEF OF AMICI CURIAE, and

   (4) APPLICATION FOR ADMISSION PRO HAC VICE OF COURTNEY A. MUNNINGS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF COURTNEY A. MUNNINGS
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   Jessica V

   (a) Address:
   Simpson Thacher & Bartlett LLP
   2475 Hanover Street
   Palo Alto, CA 94304
   (b) E-Mail Address:
   acoll-very@stblaw.com

   (2) Name of Person served: Anya Emerson, Shuray Ghorishi, Jennafer D. Wagner, Erin Smith, Nancy K.D. Lemon

   On behalf of (*name or names of parties represented, if person served is an attorney):*
   Jessica V.

   (a) Address:
   Family Violence Appellate Project
   1814 Franklin Street, Suite 805
   Oakland, CA 94612
   (b) E-Mail Address:
   aemerson@fvaplaw.org

   (3) Name of Person served: Robert Calleros, Jr.

   On behalf of (*name or names of parties represented, if person served is an attorney):*
   Jessica V.

   (a) Address:
   LIVE VIOLENCE FREE
   4740 Folsom Blvd.
   Sacramento, CA 95819

(b) E-Mail Address:
Robert@divorcewithrespect. com

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Date: January 4, 2018

Helen Perez
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Helen Perez
(SIGNATURE OF PERSON COMPLETING THIS FORM)

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On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(b) E-Mail Address:

(7) Name of Person served: Adam Spicer

On behalf of (*name or names of parties represented, if person served is an attorney):*
Douglas M.

(a) Address:
2197 Lake Tahoe Boulevard, Suite 5
P. O. Box 14471
South Lake Tahoe, CA 96150
(b) E-Mail Address:
AdamSpicerLaw@gmail.com

(8) Name of Person served:

On behalf of (*name or names of parties represented, if person served is an attorney):*

(a) Address:

(b) E-Mail Address: