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PERSPECTIVE

Discarding the reasonableness standard in DVROs muddies the process

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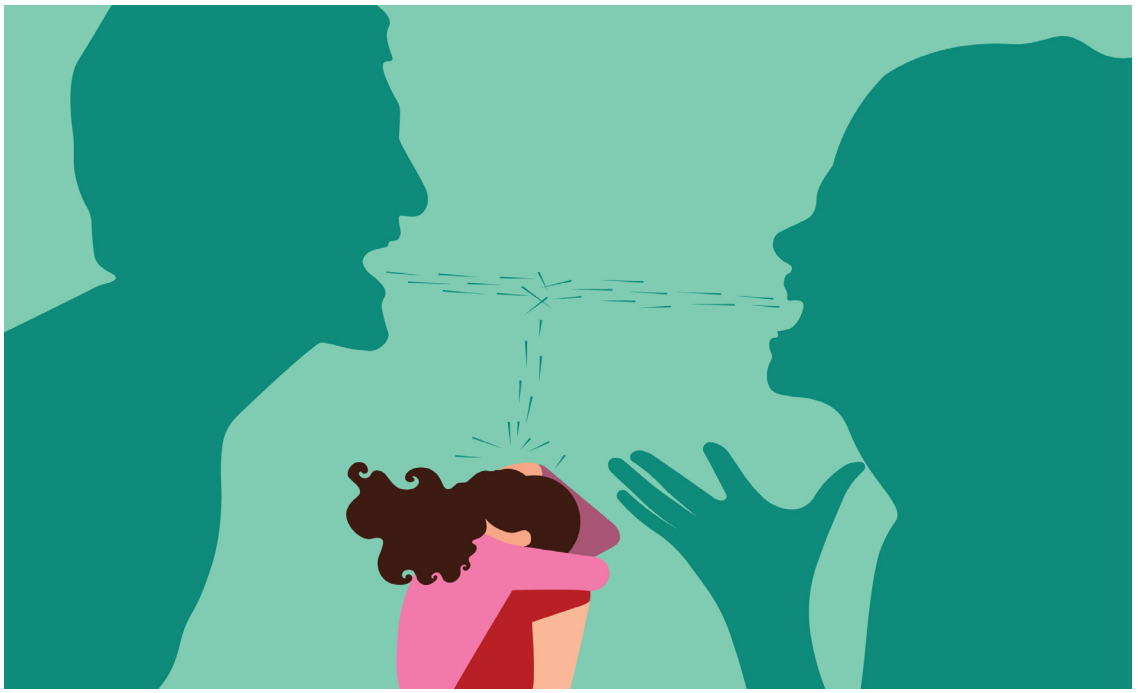

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Was the Court of Appeal reasonable not to require that trial courts use a reasonableness standard when deciding whether a domestic violence applicant's emotional calm has been disturbed? No, is the answer, and for so many reasons. In the words of Benjamin Cardozo: "Not what has been done under a statute, but what may reasonably be done under it, is the test of its validity." *Matter of Richardson*, 247 N.Y. 401, 420-421 (1928).

In *Parris J. v. Christopher U.*, 2023 DJDAR 10143, presiding Justice Brian Currey, joined by Justices Audra M. Mori and Helen Zukin of the Second Appellate District, Division Four, ruled that trial courts need not "apply an objective, reasonable person standard when deciding whether a person has 'disturb[ed] the peace of the other party' within the meaning of [Family code] section 6320. Instead, the relevant inquiry is simply whether the person against whom the DVRO is sought engaged in 'conduct that, based on the totality of the circumstances, destroy[ed] the mental or emotional calm of the other party.'" The court pointedly implies without explanation that the "totality of circumstances" is a lesser standard than the reasonableness standard. Interestingly, the appellate court did not need to reach this issue in affirming the ruling by LA County Superior Court Judge Mark A. Juhas. Based on the undisputed evidence, it was clear that there was ample basis to find that it was "reasonable" that the applicant's "calm" was disturbed to support the issuance of a restraining order. So reason number one why the appellate court should not have ruled on this issue is because it did not have to do so. But that is only the start of why the court should not have ruled as it did.

The facts are simple: Christopher, aged 48, began dating Parris, aged 27 in 2017. About a year later, Parris moved in with Christopher into his West Hollywood home, and they were married in 2019. Shortly after marriage, Parris secured an internship with the Bank of America in Charlotte, North Carolina, so Christopher rented her an apartment there to live in and paid the rent through her 10-week internship. But alas, their honeymoon was over, as Christopher began accusing Parris of infidelity, leading to heated text exchanges. Christopher accused her, "repeatedly insulted, berated and demeaned her," and threatened to kick her out of their home, even threatening to change the locks. Christopher even threatened to "burn and donate all the things he had bought for her." Parris was obviously "extremely concerned" about these threats and flew back to Los Angeles to retrieve her belongings. She was "extremely terrified" of Christopher, so she called the police to escort her into their home. After that, she returned to Charlotte to finish her internship. However, a few days later, Christopher flew to Charlotte and went to Parris's apartment "without her prior knowledge or consent." He entered with spare keys and was waiting for her when she returned that day, which obviously "scared her." The couple went out for a few hours but returned to the apartment for the evening – the facts were disputed about what happened – except that it was "undisputed … that between 1:00 a.m. and 6:00 a.m., Parris

tried to leave the apartment, but Christopher prevented her from doing so." Parris was finally able to leave the next morning "when a few of her friends with a spare key let themselves in and escorted her out." Subsequent to this event, although he briefly tried to reconcile, Christopher again "cursed" at Parris, "called her countless lewd and demeaning names …[and] also threatened her and her family many times."

On the issue of Parris's request for a domestic violence restraining order, the above evidence clearly supports issuing such an order. Under the statute, disturbing the peace of a party constitutes abuse as does stalking, and clearly Christopher was unreasonably disturbing and stalking Parris. Such orders are reviewed under the abuse of discretion standard, so substantial evidence clearly supported affirming the trial court's grant of a domestic violence restraining order – and the appellate court so ruled. And that should have been it.

But the court did not stop there. Christopher claimed that "a finding of non-physical abuse under the [DVPA] be subject to a reasonable person standard …" Jumping at the opportunity to write an unnecessary statutory interpretation, the court found that, since the word "reasonable" did not appear in the statute and the language was not ambiguous, an applicant for a DVRO need not show a "reasonable apprehension" of imminent harm, just any old apprehension, reasonable or not, will do. The court's pointed out that reference to reasonableness occurred in other parts of the statute, so that if the legislature wanted a reasonableness standard applied, it would have added that language.

While the word "reasonable" was not in the language of the statute, there is the language in the statute cited by the court that the "totality of the circumstances" be considered by a trial court in evaluating whether emotional calm has been disturbed. But doesn't that necessarily imply that the court, in looking at the totality of the circumstances, does so by using a reasonableness standard to judge whether the circumstances support the claim of disturbing emotional calm? The court does not say what the difference is between the "reasonableness" standard and the "totality of the circumstances" standard, but implies there is one. Instead, the court fails to explain what it means, and that just muddies the waters. Indeed, in the absence of the distinction, trial courts would likely use a reasonableness standard, which has always been a cornerstone of legal interpretation. As one court pointed out long ago: "One excellence of the common law is, that it *works itself pure*, by drawing from the fountain of reason …" *Shaw v. Moore*, 49. N.C. 25, 27 (1856). If someone is genuinely in fear but that fear is devoid of reason, a court looking at the "totality of the circumstances" should not be entering a DVRO. But with this opinion, we are left to wonder what the court intended by discarding reasonableness.

DVROs have very serious ramifications. They support an arrest if violated, and sometimes those violations can occur accidentally or because of living circumstances or due to efforts to resolve differences. And the existence of a DVRO casts a shadow across a person's character and can result in the loss of a job or disqualification from advancement or other professional opportunities. Unlike criminal convictions, DVROs cannot be expunged from one's record.

Significantly, DVRO requests are frequently used as pure tactics in divorce proceedings, and judges need to beware and scrutinize such requests carefully in recognition of this fact. Once a DVRO is issued, a parent no longer can have joint custody of his or her child and may not even be able to see that child. DVROs can also force someone from their home. These orders are often obtained ex parte without notice, and can be filed in anticipation of or simultaneously with a divorce action. So, an unreasonable apprehension of harm should support such things, thereby giving the applicant spouse an unfair advantage in the divorce proceeding?

It is likely that the language of Parris discarding "reasonableness" will be cited in divorce cases to support DVROs based on the claim of loss of emotional calm. But what party in a divorce has not had their emotional calm disturbed? That process is universally recognized as traumatic, and the disharmony in a marriage leading up to divorce is similarly terribly disturbing. DVROs must be ordered in cases of abuse, but courts must take care not to issue them unreasonably.

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