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When to renew a restraining order

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The 2nd District Court of Appeal recently held in *Eneaji v. Ubboe*, 229 Cal. App. 4th 1457 (2014), that a litigant was not required to show a reasonable apprehension of future physical abuse to renew a domestic violence prevention restraining order.

Baldwin Eneaji and Pamela Ubboe were married in 2003 and divorced in 2010. During the divorce proceedings, Ubboe requested a domestic violence prevention restraining order against Eneaji. She described a history of verbal and physical abuse by Eneaji during the marriage and how Eneaji was "extremely physically abusive" to her after learning she was unable to have a child.

When Eneaji was angry, Ubboe said "he threw her against the wall, floor or furniture. He would slap, kick and punch her leaving bruises all over her body. He threatened to kill her 'on numerous occasions, too many to count.'" Ubboe did not call the police on any such occasions.

In June 2009, Ubboe said Eneaji threatened her life: "[A]fter a hearing in the dissolution proceedings, Eneaji asked if Ubboe could give him a ride to his car ... [H]e told Ubboe she 'could die' because she was fighting over her rights" to their marital residence. "She asked him if that meant she could be killed, and Eneaji said 'yes.'"

Fearing for her safety, Ubboe

went back the courthouse to get a restraining order. That day, the trial court issued a temporary restraining order that prohibited Eneaji from "harassing, attacking, threatening, hitting, following or stalking Ubboe." Eneaji was also ordered "to remain 100 yards away from Ubboe's person, home, job and vehicle."

The following month, the trial court issued a "domestic violence prevention restraining order against Eneaji for a term of three years." He was prohibited from "harassing, attacking, striking, threatening, assaulting, hitting, following, stalking, molesting, destroying her personal property, disturbing the peace, keeping her under surveillance or blocking her movements." He was ordered not to "directly or indirectly contact or telephone Ubboe," and to stay 100 yards from Ubboe's person, home, job and vehicle.

Three years later, Ubboe requested a permanent renewal of the restraining order because her fear of Eneaji continued. She said that during the past three years, Eneaji had attempted to communicate with her in violation of the restraining order. During one incident, Eneaji saw Ubboe at a store, tried to get her to come to him, and waited outside of the store to talk to her. In addition, Ubboe believed there were times when Eneaji was outside her home in the evening. During August 2009, she saw "the shadow of a man, 'who seemed to be' Eneaji" on more than one occasion. Ubboe remained inside the home

with the lights out, pretending not to be home, and dialed 911 on the telephone in case he tried to break into her home.

The trial court denied Ubboe's request for a permanent renewal of the restraining order because it did not meet the standard required in *Ritchie v. Konrad*, 115 Cal. App. 4th 1275 (2004), which the trial court articulated as "a reasonable apprehension of future physical abuse." The Court of Appeal reversed, holding that Ubboe was not required to show a reasonable apprehension of future physical abuse.

In *Ritchie*, the Court of Appeal held that in a contested case, a trial court should renew the domestic violence prevention restraining order if, and only if, it finds by a preponderance of the evidence, that the protected party entertains a reasonable apprehension of future abuse. In *Eneaji*, the Court of Appeal quoted *Ritchie*: "In assessing the risk of future abuse, the trial court 'ordinarily should consider the evidence and findings on which [the] initial order was based.' The existence of the order and its underlying findings and facts 'often will be enough in themselves to provide the necessary proof to satisfy that test.'"

The Court of Appeal determined that the trial court erred in its conclusion that because "nothing" had happened in three years, there could be no reasonable apprehension of future abuse. The court discussed Section 6345(a) of the Family Code, which expressly states that the restraining order "may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order." Therefore, "Section 6345 makes it unnecessary for the protected party to introduce or the court to consider actual acts of abuse the restrained party committed after the original order went into effect."

In *Ritchie*, the court also stated, "it would be anomalous to require the protected party to prove further abuse occurred in order to justify renewal of that original order. If this were the standard, the protected party would have to

demonstrate the initial order had proved ineffectual in halting the restrained party's abusive conduct just to obtain an extension of that ineffectual order. Indeed the fact a protective order has proved effective is a good reason for seeking its renewal."

The Court of Appeal in *Eneaji* also determined that the trial court erred in its conclusion that *Ritchie* required a "reasonable apprehension of future physical abuse." *Ritchie* did not hold that a reasonable fear of physical abuse was required. The court discussed Sections 6203 and 6320 of the Family Code, stating those sections "do not limit the definition of abuse to physical injury." Section 6203(d) defines abuse as behavior which may be enjoined under Section 6320. The court stated that the "behavior which may be enjoined under section 6320 (a) is 'molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls ... destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party' ... In sum, there is no requirement that the party requesting a renewal have a fear of physical abuse."

The *Eneaji* decision provides domestic violence victims a clear understanding of the law — that a fear of physical abuse is not required, when requesting a renewal of a restraining order. The decisions also clarified that it is unnecessary to prove any further abuse occurred since the initial restraining order was issued. Family law practitioners should keep this holding in mind when representing a victim of domestic violence, or advising a litigant defending a request for renewal.

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