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November 18, 2022

Hon. Cynthia C. Lie
Hon. Mary J. Greenwood
Hon. Adrienne M. Grover

Sixth District Court of Appeal
333 W. Santa Clara Street, Suite 1060
San Jose, CA 95113

Re: *Y.L. v. L.T.*
Sixth District Court of Appeals, Appellate Case No. H048453

Request for Publication

Dear Justices:

The Association of Certified Family Law Specialists (ACFLS) writes to request publication of this court's opinion in *Y.L. v. L.T.* (CRC 8.1120).

This case meets the standard for publication under Rules of Court 8.1105(c) (2), (3), and (6).

In *Y.L.*, the Court of Appeal addressed the creative argument by an abuser that a physical act of violence by the victim in response to non-violent abuse required the court to issue a mutual restraining order. The Court of Appeal analyzed the rules for mutual restraining orders and the "primary aggressor" rule. The opinion demonstrates a party does not automatically become a "primary aggressor" merely by responding to non-physical abuse with physical violence.

Document received by the CA 6th District Court of Appeal.

The analysis of whether self-defense may apply with physical violence in response to non-physical abuse provides guidance for trial courts to take a nuanced and pragmatic approach to the overall set of facts. It rejected the notion that the first person to resort to physical violence was *a fortiori* the “primary” aggressor.

The Court of Appeal’s conclusion an unfortunate physical reaction to non-violent abuse does not automatically require a mutual restraining order addresses a unique factual scenario and assists to develop the evolving law of mutual restraining orders. This is a topic of great interest to our Legislature given the recent statutory amendments to the Domestic Violence Prevention Act (DVPA).

The opinion also clarifies and reminds litigants and trial courts about the distinction between “may” vs. “shall” in the Domestic Violence Protection Act (DVPA), and clarifies that ultimately restraining orders remain within trial court’s discretion, and a finding of abuse does not mandate a restraining order.

The Court of Appeal’s discussion and analysis of the “primary aggressor” rule provides useful guidance to trial courts to better understand how domestic violence works and how a reactive response to provocation and abuse is not necessarily an act of abuse that warrants issuance of a restraining order.

This opinion also examines the interrelationship between the words “primary aggressor” and “dominant aggressor,” an analysis that would be helpful for trial courts and litigants.

The opinion also clarifies that determining whether a party acted as a primary aggressor is a mixed question of fact and law.

The opinion also includes a helpful discussion explaining the pattern of coercive-control abuse. This is especially pertinent since coercive-control abuse is new to the definition of abuse, and there is scant case law applying this new statutory provision.

1. The Opinion Applies Existing Law to a New Set of Facts

Rule of Court 8.1105(c) (2) supports publication because the opinion applies an existing rule of law (mutual restraining orders) to a set of facts significantly different from those stated in published cases (whether a physical reaction to non-physical abuse makes the other party a “primary aggressor” to issue a mutual restraining order). The opinion’s discussion of coercive-control abuse also applies existing law, with the recent addition of coercive-control as a form of abuse, to a new set of facts.

2. The Opinion Explains an Existing Rule of Law

Rule of Court 8.1105(c) (3) supports publication because the opinion explains an existing rule of law (application of mutual restraining order requests in mixed physical and non-physical fact patterns) and addresses coercive-control abuse.

3. The Opinion Involves a Legal Issue of Continuing Public Interest

Rule of Court 8.1105(c) (6) supports publication because the opinion involves a legal issue of continuing public interest. Cases that clarify when the trial court may issue a mutual restraining order, when reactive conduct does not make a person a primary aggressor, understanding the concept of a “dominant aggressor” and “primary aggressor,” and reminding trial courts and litigants of the discretionary nature of restraining orders serve the public, lawyers, and trial courts.

There is also continuing public interest in understanding coercive-control abuse and how the concept is applied by the courts.

4. Association of Certified Family Law Specialist (ACFLS)

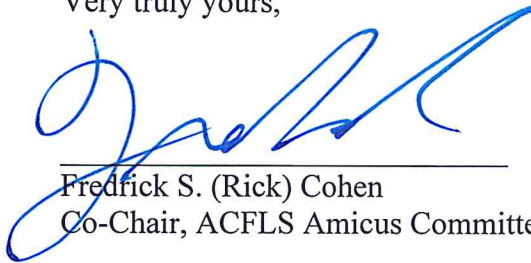
ACFLS is a nonprofit, statewide bar association with 705 members certified by the State Bar of California, Board of Legal Specialization as family law specialists. Since its founding at the inception of the State Bar’s family law certification program, ACFLS has taken an active public policy role when the appellate courts, Legislature, and Judicial Council consider matters of significance to family courts, family court populations, or the family law bar.

ACFLS has an active, all-volunteer amicus committee that reviews cases and makes recommendations to the Board of Directors regarding letters supporting publication or depublishation of opinions, letters supporting or opposing California Supreme Court review, and amicus curiae briefs.

ACFLS’ Board of Directors and Amicus Committee have no direct ties to or interests in the litigants or the attorneys in this matter with one exception. Ms. Michelene Insalaco, one attorney involved with this appeal, is a member of the ACFLS Amicus Committee. Ms. Insalaco was recused from discussion, voting, or participation in the Amicus Committee’s work on this matter.

ACFLS has appeared as amicus curiae in approximately 16 intermediate court of appeal and California Supreme Court cases. Lawyers and family court judges throughout California bring cases to the committee for consideration. The Amicus Committee includes as its members some of the most experienced family law and appellate attorneys, including the only four lawyers in the state who are dual certified in family law and appellate law (Leslie Ellen Shear, Claudia Ribet, E. Stephen Temko, and Ronald Funk) and one of the state's foremost family law continuing education lecturers (Garrett C. Dailey).

Very truly yours,



Fredrick S. (Rick) Cohen
Co-Chair, ACFLS Amicus Committee

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