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Strengthening Protections for Domestic Violence Victims

Meredith A. Felde

Code Section Affected

Family Code § 2603.5 (new).

AB 2018 (Chu); 2004 Stat. ch. 299.

I. INTRODUCTION

Domestic violence is a burgeoning problem in California, the United States, and the world in general.¹ California law defines domestic violence as “abuse committed against an adult or a minor who is a spouse”² In 2002, California law enforcement agencies received nearly 200,000 domestic violence-related calls for assistance.³ Of these cases, sixty-one percent involved domestic violence with a weapon.⁴ In 2002, domestic violence resulted in the murder of 153 people in California.⁵

Once a spouse finds the courage to leave an abusive relationship, financial hardship frequently follows.⁶ Upon dissolution of a marriage, Chapter 299 allows a court to deduct an award for domestic violence damages from one spouse’s share of the community property.⁷ Supporters of Chapter 299 hope this legislation will help relieve the economic burden that often follows an individual who leaves an abusive relationship.⁸

II. LEGAL BACKGROUND

In general, property acquired during the course of a marriage is deemed community property.⁹ Upon dissolution of a marriage, the community property is

1. FAMILY VIOLENCE PREVENTION FUND, *World Health Organization Supports Domestic Violence Prevention*, at <http://endabuse.org/programs/display.php3?DocID=341> (last visited Aug. 5, 2004) (on file with the *Mc George Law Review*).

2. CAL. PENAL CODE § 13700(b) (West Supp. 2004). Although domestic violence occurs in many types of relationships, Chapter 299 only applies to inter-spousal domestic violence. CAL. FAM. CODE § 2603.5 (enacted by Chapter 299).

3. CALIFORNIA DEP’T OF JUST., CRIME IN CALIFORNIA 2002, OTHER DATABASES 93 (2002).

4. *Id.*

5. CALIFORNIA ALLIANCE AGAINST DOMESTIC VIOLENCE, *Know the Facts*, at http://www.caadv.org/know_the_facts.html (last visited Aug. 5, 2004) (on file with the *Mc George Law Review*).

6. See NAT’L ADVISORY COUNS. ON VIOLENCE AGAINST WOMEN, TOOLKIT TO END VIOLENCE AGAINST WOMEN, ch. 6, at 1, *available at* <http://toolkit.ncjrs.org> (explaining that abusers often limit their partner’s access to the family’s finances, damage their partner’s credit, and leave their victim’s with medical and legal bills) (last visited March 4, 2005) (on file with the *Mc George Law Review*).

7. CAL. FAM. CODE § 2603.5 (enacted by Chapter 299).

8. See *infra* notes 36-37 and accompanying text.

9. CAL. FAM. CODE § 760 (West 1994); see *id.* § 751 (explaining that “[t]he respective rights of the husband and wife in community property during continuance of the marriage relation are present, existing, and equal interests”).

divided between the spouses.¹⁰ Under prior law, one spouse could not enforce a civil judgment against the other spouse's share of the community property unless the other spouse's separate property¹¹ had first been exhausted.¹²

The court in *In re Marriage of McNeil*¹³ held that, in a consolidated action, the court could enforce a civil judgment for one spouse against the other's share of the community property.¹⁴ The court found that in the interest of judicial economy and avoiding piecemeal litigation, a court had the power to enforce a judgment by imposing a lien against one spouse's share of the community property.¹⁵

In 2002, the California legislature created a cause of action for the tort of domestic violence.¹⁶ To recover tort damages, the plaintiff must prove that the injury resulted from abuse.¹⁷ California law defines abuse as "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."¹⁸ In an action for domestic violence damages, the court may award general damages,¹⁹ special damages,²⁰ punitive damages,²¹ and any other damages or equitable relief that it deems appropriate.²²

Although under prior law courts could not directly deduct domestic violence damages from the abusive spouse's share of the community property,²³ courts took domestic violence into account in dissolution proceedings in other ways. A documented history of domestic violence is one of many factors a court considers

10. *Id.* § 2550.

11. See BLACK'S LAW DICTIONARY 1099 (7th ed. 1999) (explaining that in a community property state, separate property is "[p]roperty that a spouse owned before marriage or acquired during marriage by inheritance or by gift from a third party, or property acquired during marriage but after the spouses have entered into a separation agreement and have begun living apart").

12. CAL. FAM. CODE § 782(a) (West 1994).

13. 160 Cal. App. 3d 548, 206 Cal. Rptr. 641 (1984) *disapproved on other grounds*, *In re Marriage of Fabian* 41 Cal. 3d 440, 715 P.2d 253 (1986).

14. *In re Marriage of McNeill*, 160 Cal. App. 3d at 567, 206 Cal. Rptr. at 653.

15. *Id.* at 567, 206 Cal. Rptr. at 653.

16. CAL. CIV. CODE § 1708.6 (West Supp. 2004); see CAL. PENAL CODE § 13700(b) (West Supp. 2004) (defining domestic violence as "abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship").

17. CAL. CIV. CODE § 1708.6 (West Supp. 2004).

18. CAL. PENAL CODE § 13700(a) (West 2000 & Supp. 2004).

19. See BLACK'S LAW DICTIONARY 394 (7th ed. 1999) (defining general damages as "damages that the law presumes follow from the type of wrong complained of").

20. See *id.* at 396 (defining special damages as "damages that are alleged to have been sustained in the circumstances of a particular wrong").

21. See *id.* (defining punitive damages as "damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit"). Punitive damages are meant to punish the defendant and deter blameworthy conduct. *Id.*

22. CAL. CIV. CODE § 1708.6 (b)-(c) (West Supp. 2004).

23. CAL. FAM. CODE § 782(a) (West 1994).

when ordering spousal support.²⁴ In addition, a criminal conviction for domestic violence creates a rebuttable presumption that the abusive spouse is not entitled to an award of spousal support.²⁵

III. CHAPTER 299

In a divorce proceeding, Chapter 299 allows a court to enforce a civil damages judgment for domestic violence against the abusive spouse's share of the community property.²⁶ Chapter 299 only applies to judgments for civil damages arising out of domestic violence.²⁷ Furthermore, Chapter 299 requires that the dissolution proceeding commence before the entry of the final judgment in the civil action for domestic violence damages.²⁸

IV. ANALYSIS OF CHAPTER 299

Where one spouse has obtained a judgment against another spouse for domestic violence damages, Chapter 299 allows the court to deduct the amount of the judgment from the abusive spouse's share of the community property.²⁹ Chapter 299 seeks to "protect victims of domestic violence during marriage dissolution"³⁰ and "encourage well-founded civil actions for domestic violence and make available . . . funds to satisfy any judgment obtained."³¹

Instead of requiring depletion of the abusive spouse's separate property before enforcing the judgment against his or her share of the community property,³² Chapter 299 permits the abused spouse to enforce the judgment against the abusive spouse's share of the community property.³³ Chapter 299 does not affect a court's consideration of domestic violence when ordering spousal support:³⁴ Chapter 299 only affects the abused spouse's ability to have his or her civil judgment for domestic violence damages enforced.³⁵

No opposition registered against Chapter 299.³⁶ Supporters of Chapter 299 believe the legislation empowers victims of domestic violence and assists them in

24. CAL. FAM. CODE § 4320(i) (West 1994 & Supp. 2004).

25. CAL. FAM. CODE § 4325(a) (West Supp. 2004).

26. CAL. FAM. CODE § 2603.5 (enacted by Chapter 299).

27. *Id.*

28. *Id.*

29. *Id.*

30. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2018, at 1 (July 1, 2004).

31. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2018, at 1 (June 22, 2004).

32. CAL. FAM. CODE § 782(a) (West 1994).

33. CAL. FAM. CODE § 2603.5 (enacted by Chapter 299).

34. CAL. FAM. CODE § 4320(i) (West 1994 & Supp. 2004).

35. *Id.*

36. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2018, at 3 (June 22, 2004).

“protect[ing] their assets after they leave their abuser[s].”³⁷ Many victims of domestic violence do not leave their abusive spouse for fear of financial struggle and those who do escape are often plagued by lack of financial means.³⁸ Therefore, supporters of Chapter 299 believe this legislation will assist victims by streamlining the process of collecting civil damages for a domestic violence judgment and may potentially deter domestic violence.³⁹

V. CONCLUSION

Prior to the enactment of Chapter 299, California law only allowed a victim of domestic violence to enforce a judgment for domestic violence damages against an abusive spouse’s share of the community property *after* the abusive spouse’s separate property was exhausted.⁴⁰ Chapter 299 codifies existing case law⁴¹ and allows the court to enforce a judgment for domestic violence damages against the abusive spouse’s share of community property without regard to the availability of separate property.⁴² Supporters believe Chapter 299 will assist battered spouses in securing their financial futures and thereby encourage victims to leave abusive relationships.⁴³

37. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2018, at 3 (June 28, 2004).

38. Letter from Elmy Bermejo, Chairperson, and Mary M. Wiberg, Executive Director, State of California Commission on the Status of Women, to Assembly Member Martha Escutia, Senate Judiciary Committee (June 21, 2004) (on file with the *McGeorge Law Review*).

39. Letter from Gregory W. Herring, Family Law Executive Committee Member, Family Law Section of the State Bar of California, to Larry Doyle, Chief Legislative Counsel, State Bar of California, at 2 (Apr. 21, 2004) (on file with the *McGeorge Law Review*).

40. CAL. FAM. CODE, § 782(a) (West 1994).

41. See *supra* notes 13-15 and accompanying text.

42. See *supra* notes 25-26 and accompanying text.

43. See *supra* notes 35-37 and accompanying text.