

Batterer Manipulation of the Courts to Further Their Abuse, and Remedies for Judges

Court Corner

Despite assumptions by laypersons that domestic violence ends with separation, in reality the batterer may respond to separation by escalating behavior in order to reestablish control or punish a partner for leaving. For example, the use of custody proceedings is a strategy commonly identified by batterers themselves as a means to control or harass former partners.¹ Research shows that batterers are more likely to apply for custody and equally likely to have it granted in comparison to non-violent fathers.² As a result, battered women have an ongoing need both for safety planning after separation and for consideration of a range of remedies and interventions from courts and court-related services.

Growing research indicates that litigation filed for the sole purpose of harassing a victim is not uncommon in civil legal matters involving domestic violence; and that it creates challenges for judges to determine whether a matter is legitimate and if not, what appropriate sanctions may be. Such was the case in *Davey v. Dolan*, a federal district court case in New York that imposed sanctions for vexatious litigation.³

In that case, the former husband, an attorney, sued the former wife (who, along with her children, had been granted an order of protection from domestic violence) and others, seeking several million dollars in damages from alleged wrongs arising from events surrounding his divorce.⁴ He also sued his son, two of the wife's family members, the wife's legal counsel and their respective law firms, the judge who presided over the divorce, and the State of New York, all for issues related to the divorce itself.

Davey first filed claims in state court and, when he was not successful there, filed his claims again in federal court. Each of the courts involved issued admonishments to Davey, and the United States District Court in 2006 held that he had failed to state any cognizable claim against any of the defendants. The court also held that Davey had litigated or could have litigated all of his claims in his prior suits. Therefore, Davey was sanctioned for what the court stated were frivolous actions, and ordered not to file any future suits relating to the divorce. The court held that all claims were completely without merit and that Davey should have known his suits would not be successful.

Davey filed a motion for reconsideration, but the court again in 2007 found no claims upon which relief could reasonably be granted. It reaffirmed a previous finding that "[g]iven the utter lack of merit of [his] claims, his vexatious litigation history, and the fact that he has continually and continues to file repetitive suits," an injunction against pursuing additional, related litigation was proper.⁵

The court went on to note that Davey knew, or should have known, that he had very little likelihood of succeeding on the merits of his claims for reconsideration, and therefore sanctions were proper in this case. In fact, the court stated that the sanctions (attorney's fees and expenses) were "quite reasonable, given the utter lack of merit of [Davey's] claims and his evident intent to harass [his ex-wife and her sister]."⁶

Sara Buel, clinical professor of law at the University of Texas School of Law, reports that legal clinics across the country have described an increase in similar cases. Said Buel, "this is a daunting problem for many of us. I'm delighted

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Safe Havens: Supervised Visitation and Safe Exchange Grant Program Guiding Principles

to see the [Davey] court take a stand against [vexatious litigation].”

The sheer volume of lawsuits that he filed made clear Davey's intent to harass. However, intent is likely to be murkier in the bulk of cases. To discourage frivolous claims, courts can analyze situations where an abuser appears to be using the legal system to further the abuse and can impose appropriate sanctions. A few ideas for bolstering the safety of domestic violence victims and avoiding waste of judicial resources include:

- Not letting first or subsequent violations of any order go by without consequences.
- Ordering the abuser to pay all reasonable costs, expenses, and attorney's fees incurred by the defendants in responding to the violation of any order or the filing of frivolous lawsuits, including lost wages of the victim.
- Even if not required to do so in your jurisdiction, making findings in your order that will be helpful to you and the parties should additional actions follow, such as requiring prior authorization from the court before filing further litigation or requiring the abuser to attach the court's opinion and order of injunction to all subsequent filings.

Endnotes:

1. See generally, Peter G. Jaffe, Claire V. Crooks, & Samantha E. Poisson, *Common Misconceptions In Addressing Domestic Violence in Child Custody Disputes*, 54 Juv. & FAM. Ct. J. 57 (2003).3.

2. Zorza, J., 1996, How abused women can use the law to help protect their children. In Peled, E., Jaffe P., & Edleson, J. (Eds.) *Ending the cycle of violence: Community responses to children of battered women* (pp. 147-169) Thousand Oaks, Ca, Sage Publications.

3. *Davey v. Dolan*, 496 F.Supp.2d 387 (S.D.N.Y. 2007). Refer to the case for citations on all other litigation associated with this matter.3. *Davey v. Dolan*, 496 F.Supp.2d 387 (S.D.N.Y. 2007). Refer to the case for citations on all other litigation associated with this matter.

4. Among them, that Mary Davey telephoned the police to report an incident of domestic violence for the sole purpose of gaining a tactical advantage in the divorce.

5. 453 F.Supp.2d at 758.

6. 496 F.Supp.2d 387, 390

The U.S. Department of Justice, Office on Violence Against Women (OVW) recently introduced the *Guiding Principles for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program* (Supervised Visitation Program). The *Guiding Principles* are a set of principles, standards, and practices to guide best practice in the provision of supervised visitation and exchange in cases of domestic violence, sexual assault, child abuse, stalking, and dating violence, and that reflect the statutory requirements and objectives of the grant program.¹

The *Guiding Principles* were initiated when OVW, in partnership with Supervised Visitation Program technical assistance providers,² convened a National Steering Committee (Committee) comprised of a diverse spectrum of national experts representing various disciplines of practice. The Committee included members from the judiciary and legal community, child welfare and domestic violence services, supervised visitation and exchange services, batterer intervention services, culturally-specific organizations, mental health professionals, federal agencies, and the academic community. Over the course of four years, six meetings were convened to further the development of the *Guiding Principles*, incorporate new and emerging trends around best practice, and gain insight about Supervised Visitation Program grantees.

OVW, the Committee, and technical assistance providers were acutely aware of the need to incorporate the voices of Supervised Visitation Program center service providers into the document. As a result, opportunities to learn from Supervised Visitation Program grantees were built into the development process. These opportunities included an all-grantee meeting during which grantees provided insight, professional perspective, and guidance to the Committee, and a grantee panel to review and

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