

## **ANATOMY OF A VICTORY OVER FALSE DOMESTIC VIOLENCE ALLEGATIONS**

For decades, the Massachusetts domestic violence statute (Massachusetts General Law Chapter 209A) has been an ordeal for those who have been on the receiving end of the notorious restraining orders that the statute creates.

The practical impact of the order has been to estrange thousands of Massachusetts men from their families, removing them from their homes without notice and even going so far as to criminalize the sending of holiday cards to their own children or attending the children's soccer games if their mother is also attending. Because a restraining order appears on the man's record, the purported violent behavior he is accused of often forces the loss of his job, causing financial difficulties and often resulting in homelessness.

What is even sadder is that the statute is widely abused, usually by women, as leverage in divorce proceedings or for other ulterior motives unrelated to a serious fear of domestic violence. Numerous lawyers and even a few judges have acknowledged this. This is especially serious because restraining orders are often awarded without evidentiary hearings, meaning these very damaging limitations placed on the plaintiff can happen without any proof as a result of baseless or exaggerated accusations.

The Massachusetts Abuse Prevention Act (209A) defines abuse as the occurrence of actual or attempted physical abuse, placing another in fear of serious physical harm, or causing another to engage in involuntary sexual relations by force, threat of force, or duress.

Protective orders are issued under the statute in an attempt to protect household members or dating partners from physical or sexual harm.

Often issued without any notice to the defendant, 209A-restraining orders then force the wrongfully accused recipient to vacate immediately, often leaving behind possessions and having nowhere to go. Many will go months, if not years, without seeing their children. The hearings are often held informally with hearsay and wild accusations and the recipient is never given a chance to cross-examine.

Attorney David Grossack, a Hull resident whose office is in Newton, has been representing both men and women in restraining orders for his entire career. Grossack recalls one successful victory in the late 1980's when a man was tossed out of his home without any notice, only for further examination of the allegations to reveal that his wife was just upset that he was complaining about the Cable TV bill, and that was her only grievance. Grossack got this one vacated, and uses it as perhaps an extreme example of restraining order abuse.

Recently he enjoyed a significant victory in Newton District Court. His client was a law professor and entrepreneur, divorced but still involved with his former wife in vigorously litigated post-divorce proceedings in Probate and Family Court.

Among the allegations against the defendant was the accusation that he was going to chop the woman into pieces and throw the pieces in the water. Such threats, while perhaps good copy for *Law & Order*, lack credibility in real life, says Grossack.

Another allegation was that the defendant had physically assaulted his son in order to intimidate him into going to military academy, an allegation later denied by the now-adult son.

For three years, the defendant endured the restraining order. It resulted in the loss of his teaching job and made him unable to find another, and he suffered serious financial hardship as a result.

Even when he had judicial permission to drive to the curbside in front of his former home to pick up the children for visitation, his ex-wife attempted to turn it into a restraining order violation. Such cases are exemplary of how wives and girlfriends abuse their status as “victims” in the restraining order game.

The defendant moved to Florida to try to rebuild his life. He continued to contest his divorce judgment, alimony, support, and property division, and maintained a good relationship with his children, who maintain a relationship with both parents.

In June of 2010, he hired David Grossack to prevent the restraining order from being extended permanently. Grossack was successful in methodically and systematically extinguishing every ounce of credibility of the plaintiff and her claim that she had any reason to fear the defendant, due to his substantial research and evidence to contradict her claims.

The plaintiff’s lawyer came to the domestic violence hearing with thick affidavits and exhibits describing in detail the continuing post-divorce litigation between the parties. Copies of judgments and motions were brought and an affidavit from the plaintiff which actually bore the caption “The Defendant’s Relentless Probate Court Litigation” was presented, which was intended to support her incorrect testimony that this counted as the type of abuse that merits a restraining order. Phrases like “on the order of”, “the defendant *made* me come to court five times,” and “the defendant brought five witnesses to the court” and “won’t stop filing *baseless* motions” were used to make perfectly legal and understandable post-divorce filings seem as though they were somehow wrong or threatening.

This was the opening Grossack needed to introduce Constitutional arguments. His talking points included that the plaintiff’s real grievance was that she was suffering abuse because the defendant won’t accept the outcome of the divorce and won’t stop litigating.

Indeed, on the stand Grossack inquired of the witness if she thought the “relentless Probate Court litigation” was part of the abuse. Of course, she answered in the affirmative. Actually, going to Court is constitutional protected activity and is in no way the type of violent behavior that merits a restraining order.

Although the plaintiff alleged that the defendant assaulted their son, Grossack was able to produce the son as a witness whose credible testimony contradicted his mother’s.

Worse for the plaintiff, Grossack was able to have the court consider a public document in which the parties’ other child had taken out a restraining order against the plaintiff after a number of assaults, including whacking him across the face with a coat hanger. Needless to say, this did not help the plaintiff’s credibility.

It was also brought out that the plaintiff failed to disclose all of the prior proceedings involving domestic violence on the court’s paperwork, including a different case in which she was the defendant. This further injured her credibility. Such details are what make an evidentiary hearing vital in these cases to expose such misrepresentations or contradictions.

A purported incident the plaintiff alleged of disruptive behavior by the defendant at one son’s graduation was exposed as being virtually imaginary after Grossack brought in witnesses and relentlessly examined contradictions in her assertions. Grossack also brought to the Court’s attention the plaintiff’s history of making claims of child abuse against the defendant that were not substantiated. According to Grossack, this is a common tactic used to acquire unjustified restraining orders, and its use further exposed the plaintiff’s issues with credibility.

It was fairly evident that no harassment of the plaintiff had occurred or was likely to occur. The plaintiff’s lawyer attempted to argue that the fact that the parties would still meet each other in future Divorce Court proceedings was enough reason to extend the order --- permanently, effectively saying that divorce litigation was equal to violent behavior and merited preventing the defendant from being able to acquire a job permanently.

Grossack countered that the plaintiff’s lawyer’s real message, one also advanced by numerous victims’ advocacy groups, was that any man who resists a woman’s position in divorce litigation is an abuser or potential abuser, despite various meritorious defenses or claims he may have to argue in court.

In fact, opposing counsel’s cross-examination of the defendant focused entirely on the fact that the defendant was upset with prior court decisions and was still litigating.

During his testimony, The defendant said he would “fight to the death” to have the restraining order removed, and the plaintiff’s lawyer tried to make much of that choice of words as though it should be construed as a threat of violence.

Grossack explained that his client was engaging in a “mere rhetorical flourish”, expertly showing how ridiculous it would be to criminalize such commonly used hyperbolic sayings.

In the end, Grossack made constitutional arguments that obviously carried weight. The plaintiff, he argued, was trying to chill his client’s ability to contest his divorce judgment by conjuring up frivolous allegations of domestic abuse, all in violation of his First Amendment rights to have access to the Court, and impairing his ability to find work or get a fair divorce settlement.

Grossack’s performance resulted in the judge vacating the restraining order, which is very rare.

Grossack, who earned national recognition and awards for attempting to raise awareness of gender bias in the Massachusetts court system, and for challenging the 209A-restraining orders in federal court on due process and equal protection grounds, says the victory was unusual. This is because once in place, restraining orders are quite difficult to remove despite widespread evidence of abuse of the 209A statute, and, in many cases, evidence to the contrary of the plaintiff’s allegations.

The difference here, he says, was having good evidence to contradict the plaintiff, and also being able to point out the plaintiff’s ill-advised strategy of characterizing divorce litigation as a form of abuse.

Preparation, said Grossack, was exhausting. But in the end, he says nothing feels as good as being a hero to a client.

David Grossack maintains an office in Newton, Mass. His phone number is 617-965-9300. Learn more at [Grossack.com](http://Grossack.com).