

**ENDORSED FILED
SAN MATEO COUNTY**

FEB 17 2021

Clerk of the Superior Court
By DIANA CALLIER
DEPUTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

In re Petition for Domestic)	Case No. 20-FAM-01366
Violence Restraining Order:)	
Tamara E. Reyes)	PROPOSED STATEMENT OF
Petitioner,)	DECISION
vs.)	
Douglas Lopez)	
Respondent)	

The parties appeared for an evidentiary hearing on the issue of domestic violence against Tamara Reyes by Douglas Reyes. An evidentiary hearing was held on November 23, and December 9 and December 14, 2020 in Department 26 of the above-entitled court before the Honorable Judge Sean Dabel. Petitioner Tamara Reyes appeared in person. Petitioner was represented by David Nazzaro. Respondent Douglas Lopez appeared in person. Respondent was represented by Counsel Andrew Watters. On December 31, 2020 and February 4, 2021 the Petitioner filed

1 requests for the court to issue a Statement of Decision per CCP
2 632.

3 The Court has weighed and considered each party's trial
4 briefs, pleadings, oral closing arguments, the trial testimony
5 of the parties and their witnesses, and all other admissible
6 evidence presented in this matter.

7 C.R.C., rule 3.1590(g): Objections to proposed statement of
8 decision "Any party may, within 15 days after the proposed
9 statement of decision . . . have been served, serve and file
10 objections to the proposed statement of decision or judgment."
11 If neither party objects to this proposed statement of decision
12 within 15 days, the statement will become final.

13 **PROCEDURAL BACKGROUND**

14 On August 4, 2020, Tamara Reyes filed a Request for
15 Domestic Violence Restraining Order (DVRO) and a Temporary
16 Restraining Order was issued on August 6, 2020. A hearing for
17 the Temporary Restraining Order was set for September 2, 2020. On
18 August 11, 2020, in the related case, Tamara Reyes filed a
19 Petition for Dissolution. On August 26, 2020, Respondent filed a
20 Response to the Domestic Violence Petition and on September 1,
21 2020, a Supplemental Declaration in Opposition to Petitioner's
22 Domestic Violence Petition was filed by Respondent's Attorney.

23 At the hearing on September 2, 2020, Respondent requested
24 the Temporary Restraining Order be set aside and dissolved.
25 After hearing arguments, the Court declined to set aside the
26 Temporary Restraining Order and set a Evidentiary hearing for
27 November 23, 2020.
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2 On November 23, 2020, the 1st day of the DVRO Evidentiary
3 Hearing, Witness Nelly Alba Morales, Witness Cristian Lopez and
4 Tamara Reyes testified.

5 On December 9, 2020, the 2nd day of the DVRO Evidentiary
6 Hearing, Douglas Lopez testified.

7 On December 14, 2020, the 3rd day of the DVRO Evidentiary
8 Hearing, Tamara Reyes testified. Oral closing arguments were
9 presented by both parties. Attorney for Petitioner requested a
10 Statement of Decision on December 31, 2020 and supplemented that
11 request on February 4, 2021.
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13 **CONTESTED TRIAL ISSUES**

14 The parties' identified the following issues in dispute at
15 the close of trial:

- 16 1. Abuse of Tamara Reyes by Douglas Reyes as defined by
17 Family Code 6203, 6211, 6300, 6320.
18

19 **FACTUAL FINDINGS AND CONCLUSION OF LAW**

20 The Court finds that the parties married on December 21,
21 2001, and the parties separated on August 8, 2020. They were
22 married for approximately eighteen years and eight months. They
23 have three minor children.
24

25 The Petitioner alleges a pattern of abuse that dates back
26 over a decade - with allegations of both physical and mental
27 abuse at the hands of the Respondent. The Petitioner was able to
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1 produce photos that depicted small bruises on her leg, face and
2 eye. The Petitioner testified that these photos occurred over a
3 number of years and all of which were alleged as effects of
4 physical abuse inflicted by the Respondent. The Petitioner also
5 testified to being victimized by both verbal abuse and
6 controlling behavior from the Respondent. The court reviewed all
7 of the trial testimony, with admitted exhibits, in order to
8 weigh witness credibility and to determine whether there was
9 sufficient evidence - demonstrated to the court by a
10 preponderance standard - that Respondent abused the Petitioner.
11

12
13 **(A) Incident - August 1, 2020**

14 The incident that gave rise to the temporary domestic
15 violence restraining order arose during the evening hours of
16 August 1, 2020. The court heard testimony concerning this
17 incident from the Petitioner, Respondent and witness Morales. In
18 weighing the credibility and believability of the witness
19 statements the court found the Respondent's version of events to
20 be supported logically and corroborated through the admitted
21 text messages between the Petitioner and Respondent found in
22 Respondent Exhibit C. The Respondent testified that he travelled
23 to the home of witness Morales to find the Petitioner whom he
24 believed to be intoxicated. The Respondent testified he indeed
25 found the Petitioner heavily intoxicated and observed wine,
26 beer, marijuana and hard alcohol in the home. The Respondent
27 testified that he took the Petitioner from the home - assisting
28 her due to her level of intoxication - however the court

1 believes he was upset at her appearance and her initial refusal
2 to leave with him. The two parties got into the Respondent's car
3 where they argued about the events of the evening. At some point
4 during this conversation the Respondent was able to review
5 videos and photos on the Petitioner's phone that depicted the
6 Petitioner engaged in sexual relations with a common
7 acquaintance, Mr. Oscar Pereira a 19 year old male. Witness
8 Morales testified that the Petitioner was in a bedroom with Mr.
9 Pereira when the Respondent arrived at her door. Witness Morales
10 also testified that she berated Mr. Pereira for not coming out
11 to the door when the Respondent arrived at her home to
12 intercede.

13
14 In the vehicle, after the Respondent reviewed the images,
15 he attempted to drive his vehicle back to their family
16 residence. The Petitioner objected to leaving the area and
17 demanded to be let out of the vehicle and opened the car door
18 while the vehicle was moving. The Petitioner then exited the
19 vehicle and returned to the home of witness Morales.

20 Respondent's Exhibit C corroborates the Respondent's
21 testimony concerning the following hours. The Respondent and
22 Petitioner engaged in conversation where the Respondent accused
23 the Petitioner of infidelity and intoxication. The Respondent
24 also demanded that the Petitioner retrieve her belongings from
25 the family home the following morning, August 2, 2020. The
26 Petitioner text messages indicate that she initially indicated
27 that she had been victimized by Mr. Pereira but then
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1 transitioned into a running argument about her hatred and
2 disgust for the Respondent.

3 Throughout these heated exchanges the Petitioner doesn't
4 demonstrate any fear of the Respondent. She continually
5 belittles and demeans the Respondent - and accuses him of his
6 own infidelity. The Petitioner does not accuse the Respondent of
7 domestic violence. The Respondent indicates that he wants the
8 police to be present to in order to keep the Petitioner calm
9 while she collects her belongings. The Petitioner seems upset
10 the Police are involved - and doesn't want to speak with them
11 until they contact her directly at the request of the Respondent
12 to setup the civil standby.

13 Overall, the court found the testimony of the Respondent to
14 be more credible concerning this incident, and supported by the
15 text messages in Respondent Exhibit C that was admitted into
16 evidence. The court did not find sufficient evidence to conclude
17 domestic violence occurred when the Respondent arrived at
18 witness Morlaes home, or between the parties during their brief
19 car ride outside of the home.

20
21 **Witness Morales**

22 Further the court did not find the testimony of witness
23 Morales credible when she alleged the Petitioner committed acts
24 of violence against the Petitioner in her home. Witness Morales
25 had rented a bedroom to the Petitioner and collected rent from
26 her during a period of separation from the Respondent. While
27 witness Morales maintained the she was friends with both
28 parties, witness Morales indicated that she initially attempted

1 to block entry into her home when the Respondent arrived,
2 logically to shield the Petitioner's affair from being
3 discovered. Witness Morales also attempted to downplay the
4 Petitioner's level of intoxication by claiming the Petitioner
5 had only shared in two bottles of wine with six people in her
6 home. However, the Petitioner testified, outside the presence of
7 witness Morales, she had drank both wine and tequila on the
8 night of August 1, 2020. On balance the court found witness
9 Morales' testimony not to be credible and biased toward her
10 friendship with the Petitioner. Further witness Morales did not
11 contact law enforcement at anytime to relate her potential
12 concerns about domestic violence in any of the evidence
13 submitted to this court.

14 **(B) Incident - January 26, 2016**

15 The Respondent testified to an incident that occurred on
16 January 26, 2016. The court also admitted Respondent exhibit B,
17 a video recording, as well as exhibit B1 which was a transcript
18 of the video recording. The exhibit is a video recording made by
19 the Respondent, on his phone, of the Petitioner and Respondent
20 having a conversation in the family home's kitchen. The video
21 starts with the Respondent showing the camera his finger with a
22 minor injury. The video then shows an approximately pint sized
23 bottle of hard alcohol which the Respondent alleges the
24 Petitioner drank. The Petitioner appears slightly intoxicated
25 and her demeanor swings from emotional to violent. During what
26 appeared to be a relatively calm discussion the Petitioner,
27 without warning, hits the Respondent in the area of his head
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1 twice in relatively quick succession. The Respondent appears to
2 put up his hands and swats away the Petitioner's hands in a
3 defensive manner. At one point the video shows that, to the
4 Petitioner's left, on the counter, is a standard butcher block
5 of knives. The Petitioner is seen on the video aggressively
6 lunging toward the block with the knives. The parties are then
7 seen struggling as the Respondent attempts to control the
8 Petitioner as she attempted to arm herself with a knife. The
9 video ends during this struggle. This is the clearest evidence
10 presented at the hearing concerning domestic violence - and the
11 acts committed were perpetrated by the Petitioner.
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15 The Petitioner's Credibility

16 The conduct depicted in Respondent's Exhibit B was relevant
17 to the court's credibility determinations in a number of ways.
18 The Respondent testified that the Petitioner was typically the
19 physical aggressor throughout the relationship - as well as the
20 night of August 1, 2020. Further, the Respondent indicated that
21 he had put his hands on the Petitioner on prior occasions in a
22 manner that potentially could have caused bruising while
23 defending himself from attack. All of these allegations of the
24 Respondent were supported by the video in Exhibit B. Further the
25 Petitioner's credibility was further deteriorated when she was
26 called by her council as a rebuttal witness and asked if she had
27 attempted to grab a knife in the video depicted in Exhibit B.
28 The Petitioner testified that she had not attempted to grab a

1 knife - which was in contradiction to what the court observed on
2 the video. The court was left to weigh the fact that the
3 Petitioner had attempted to arm herself with a deadly weapon and
4 then testified that she had not done so. As the finder of fact
5 this court determined that the Petitioner had deliberately lied
6 about something significant in this case, and then had to
7 consider whether to believe anything the witness testified to
8 during the hearing.
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11 **(C) Response to the Requested Statement of Decision:**

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13 (1) The court did not find the Petitioner's testimony
14 concerning the alleged abuse to be credible based on the
15 factors stated above - with particular focus on
16 credibility issues raised in Respondent Exhibit's B and C
17 as stated above.
- 18 (2) The court did find the Respondent's testimony credible
19 based on his testimony and corroboration in Respondent's
20 Exhibit's B and C.
- 21 (3) The court does not have sufficient evidence that the
22 Respondent committed past acts of abuse based on the
23 evidence presented at the hearing.
- 24 (4) The court did not find that the Respondent hit the
25 Petitioner or transported her against her will on August
26 1, 2020.
- 27 (5) The court is denying the restraining order request
28 because there was insufficient evidence presented that

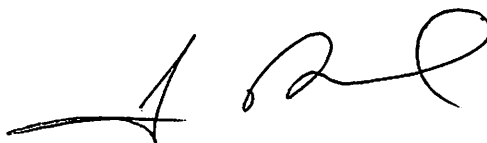
1 the Respondent had committed acts amounting to domestic
2 violence. The reasons are stated above. The court did not
3 find the testimony of the Petitioner credible, found the
4 statements of witness Morales biased and unsupported, and
5 found the statements of the Respondent supported by the
6 video and documentary evidence.

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8 (6) The court does not find that Family Code section 3044
9 applies to this case based on the prior findings.
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12 **ORDERS**

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14 1. The Request for domestic violence restraining order by
15 Petitioner Tamara Reyes against Respondent Douglas Lopez is
16 DENIED.

17 DATED: February 17, 2021

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20 _____
21 Sean P. Dabel
22 Judge
23 Superior Court of California,
24 County of San Mateo
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