



Administrative Office of the Courts

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Supreme Court clarifies requirements for domestic violence order of protection

SANTA FE – New Mexico law does not require victims of domestic violence, sexual assault or stalking to show an immediate threat of harm to obtain an order of protection, the state Supreme Court ruled today.

In a unanimous opinion, the state’s highest court held that New Mexico’s Family Violence Protection Act “does not require petitioners to provide a showing of imminent danger or injury” in seeking a court order protecting them from their alleged abusers.

“The statute is clear; the only predicate finding required is that domestic abuse has occurred. If the court finds that domestic abuse has occurred, it ‘shall’ enter the order of protection,” the Court wrote in an opinion by Justice David K. Thomson. “There is no language that indicates that a petition must state why a petitioner needs the order, or even language that requires proof of a petitioner’s need for the order.”

State law provides for protective orders for domestic abuse by household members, such as a spouse or former spouse. The law’s definition of domestic abuse also covers stalking and sexual assault by someone who is not a member of the victim’s household.

The Court reached its decision by interpreting the language of the statute, [Section 40-13-5](#), concluding that victims must show “past or present domestic abuse” but not “a threat of future harm.” The statute “imposes no temporal qualifications,” the Court wrote.

The justices ordered an Albuquerque woman’s case back to the district court in Bernalillo County for a new hearing. A temporary order of protection will remain in place pending the outcome of the proceeding.

The woman, after turning 18 years old, sought a protective order against a man who allegedly had sexually abused her since she was the age of twelve. A temporary order of protection was granted, but a permanent order was denied because a hearing officer concluded the woman had failed to prove the alleged abuser posed an immediate danger. The older man had not contacted

her in more than a year except for an encounter at church when the two did not speak. The district court adopted the hearing officer's dismissal order.

The Supreme Court affirmed a state Court of Appeals decision that reversed the district court.

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To read the decision in *Nguyen v. Bui*, No. S-1-SC-39140, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521914/index.do>