

April 11, 2025

Executive Director
LEANNA REYNOLDS
President
AVI LEVY
Vice President
DAVID M. LEDERMAN
Treasurer
COURTNEY SHEPARD
Secretary
DIANNE M. FETZER
Past President
SHERRY PETERSON
Journal Editor
TRACY DUELL-CAZES
Associate Journal Editor
NAGHMEH BASHAR
Legislative Director
STEPHEN MONTAGNA
Associate Legislative Director
JUSTIN O'CONNELL
Technology Director
SCOTT LANTRY
Associate Technology Director
HENRY LEWIS
Education Director
CHRISTOPHER MELCHER
Associate Education Director
CATHERINE GOODROW
Membership and Benefits Director
MICHELE BROWN
Amicus Director
FREDRICK (RICK) COHEN
Chapter Director (1)
KELLY ROBBINS
Associate Chapter Director (1)
JILLIAN E. ATUEGBU JACKSON
Chapter Director (2)
BRIAN PAKPOUR
Associate Chapter Director (2)
JENNIFER HEMMER
Chapter Director (3)
CARRIE BLOCK
Associate Chapter Director (3)
DORIE A. ROGERS
Coordinating Director (1)
BARBARA HAMMERS
Coordinating Director (2)
LEENA HINGNIKAR

Hon. Frances Rothschild, Presiding Justice
Hon. Gregory J. Weingart, Associate Justice
Hon. Michelle C. Kim, Associate Justice

California Court of Appeal, Second District, Division One
300 South Spring Street, B-228
Los Angeles, CA 90013

RE: *Elizabeth v. Braithwaite*
Court of Appeal Case No. B336284, B336287

REQUEST FOR PUBLICATION OF DECISION

To the Honorable Presiding Justice Rothschild, the Honorable Justice Weingart, and the Honorable Justice Kim:

The recognition of a right to a full and fair hearing in a domestic violence case, and the significant consequences that may result from the denial thereof, is of great import to family law litigants throughout our state because family courts, as our Supreme Court has recognized, “face a heavy volume of marital dissolution matters, and the case load is made all the more difficult because a substantial majority of cases are litigated by parties who are not represented by counsel.” (*Elkins v. Sup. Ct.* (“*Elkins*”) (2007) 41 Cal.App.4th 1337, 1368.) This opinion reverses a trial court that denied a party the right to present rebuttal evidence.

I write on behalf of the Association of Certified Family Law Specialists (ACFLS) to request this Honorable Court publish its opinion in *Elizabeth v. Braithwaite* under California Rules of Court, rule 8.1120, subdivision (b). This case meets the legal standards for publication as set forth in California Rules of Court, rule 8.1105, subdivision (c).

In *Elizabeth v. Braithwaite*, this Honorable Court reversed the permanent domestic violence restraining order (“DVRO”) issued against Elizabeth on due process grounds, where the trial court refused to allow appellant to present rebuttal evidence to Mr. Braithwaite’s DVRO request.

The parties in *Elizabeth v. Braithwaite* had filed competing DVROs against each other based on the same July 2, 2023 incident,

each claiming the other was the aggressor. During trial on the competing DVROs, after returning from a court recess, without explanation, the trial court began announcing its ruling. Elizabeth's counsel protested Elizabeth wanted to present rebuttal evidence to Braithwaite's case-in-chief. The trial court responded, "You have rebuttal? I think I've heard enough evidence." Elizabeth's counsel stated Elizabeth planned to testify in rebuttal. The court stated it would let her rebut, and granted a short recess to get ready for the rebuttal testimony. Upon returning, however, without explanation, the court did not permit Elizabeth to testify, and immediately issued its ruling on both DVRO requests. The ruling denied Elizabeth's request for a restraining order against Braithwaite and granted Braithwaite's request for a restraining order against Elizabeth.

This Court reversed the restraining order against Elizabeth, holding the trial court violated her right to due process by refusing to permit her to present any evidence in rebuttal to the evidence Braithwaite offered supporting his DVRO request. This Court explained the "full and fair hearing" to which due process entitled Elizabeth on Braithwaite's request included the opportunity to demonstrate that Braithwaite failed to meet his burden. This Court could not justify the trial court abruptly ending the trial without giving Elizabeth the opportunity to introduce or even propose additional evidence after hearing Braithwaite's presentation on his request. This Court held the trial court's blanket refusal to allow Elizabeth to offer any testimony or other rebuttal evidence exceeded the bounds of the court's evidentiary gatekeeping role, in violation of due process.

Even though Braithwaite had died by the time the appeal was decided, this Court nonetheless considered its merits, in recognition of the serious negative legal and practical consequences a past DVRO could still have for Elizabeth in the future, including impacting her potential spousal support and inheritance rights, as well as her ability to travel.

Based on the experience of our members, ACFLS knows family law litigants are often faced with seemingly impatient judicial officers trying to move the case forward so it can get to the next case. But as the Court of Appeal held in *In re Marriage of Brantner* (1977) 67 Cal.App.3d 416, 422, nearly 50 years ago, "While the speedy disposition of cases is desirable, speed is not always compatible with justice. Actually, in its use of courtroom time the present judicial process seems to have its priorities confused. Domestic relations litigation, one of the most important and sensitive tasks a judge faces, too often is given the low-man-on-the-totem-pole treatment."

This opinion should be published under Rule of Court 8.1105, subdivision (c) (establishes a new rule of law). The opinion makes clear a flat denial of the right to put on one's case to oppose the other party's case-in-chief is a fatal violation of due process that warrants reversal.

Of course, trial courts retain the right to control the breadth and scope of a party's case under Evidence Code section 352. But there is a difference between utilizing Evidence Code section 352 as a proper tool to ensure expediency and proper justice and refusing to allow a party to oppose a claim presented by the other side.

This opinion should be published under Rule of Court 8.1105, subdivision (c)(2) (applies an existing rule of law to different facts). While due process is not a new concept, clarifying due process includes ensuring a party has the right to oppose the other side's case-in-chief is a new application of the rule.

This opinion should be published under Rule of Court 8.1005(c)(6) (involves a legal issue of continuing public interest). Ensuring the parties have the right to properly present their case and not have their case pulled out from under them is important and of continuing public interest to trial courts, attorneys, and litigants.

As our Supreme Court explained in *Elkins*, "In light of the volume of cases faced by trial courts, we understand their efforts to streamline family law procedures. But family law litigants should not be subjected to second-class status or deprived of access to justice. Litigants with other civil claims are entitled to resolve their disputes in the usual adversary trial proceeding governed by the rules of evidence established by statute. It is at least as important that courts employ fair proceedings when the stakes involve a judgment providing for custody in the best interest of a child and governing a parent's future involvement in his or her child's life, dividing all of a family's assets, or determining levels of spousal and child support. The same judicial resources and safeguards should be committed to a family law trial as are committed to other civil proceedings. (*Elkins*, *supra*, 41 Cal.4th at 1368.)

Domestic violence cases involve even higher stakes than the typical family law case, because not only can a restraining order after hearing affect a spouse's ability to obtain property rights or spousal support (Fam. Code, § 4325, subds. (a), (d)), but it can also affect a spouse's ability to have custody of his or her children (Fam. Code, § 3044), exclude the spouse from his or her home (Fam. Code, § 6321) and impact the spouse's Constitutional rights to free speech, travel, and the right to bear arms.

This case importantly recognizes some of these consequences, which included in this case, the use of the DVRO by Braithwaite's son as a basis to oppose Elizabeth's request for spousal support and letters of administration and to file a civil lawsuit against her, as well as the revocation of Elizabeth's Global Entry and TSA PreCheck privileges and Elizabeth being detained while returning to the United States after traveling internationally. (Opinion, pp. 15-16.)

This case involves a legal issue of continuing public interest because the balance between efficiency and due process in family court is an ongoing challenge that affects family law litigants, attorneys, and judges, on a daily basis. This case recognizes the importance of the right to the "full and fair hearing" that due process requires, and the severe consequences to litigants in domestic violence proceedings of denial of that right.

For these reasons, ACFLS requests publication of the decision in *Elizabeth v. Braithwaite*.

ACFLS is an independent non-profit bar association, comprised of over 500 California certified family law specialists, and dedicated to promoting the high-quality practice of family law. ACFLS members routinely appear in family courts throughout the State of California, including handling many child and spousal support matters. ACFLS also has an active amicus committee which reviews cases and makes recommendations to the Board of Directors when we believe an opinion should be published or depublished, as well as writing letters supporting or opposing Supreme Court review and filing amicus briefs. The ACFLS amicus committee includes every known California attorney holding dual certification as both a certified family law specialist and a certified appellate law specialist.

Since its founding at the inception of family law specialist certification by the State Bar, ACFLS has played an active public policy role, including regularly weighing in when the Courts of Appeal, Legislature, and Judicial Council consider matters of significance to family courts, family court populations, or the family law bar. ACFLS has appeared as amicus in many family law appellate cases, including cases where the organization's participation was invited by the Court of Appeal.

ACFLS has an active all-volunteer amicus committee currently with 24 members who review cases and make recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or de-publication of opinions, letters supporting or opposing California Supreme Court review, and amicus briefs. ACFLS's amicus committee includes all known California attorneys who hold dual certification as family law and appellate specialists, and other prominent members of the family law community including Hon. Thomas Trent Lewis (ret.) and Garrett C. Dailey. ACFLS's board of directors and amicus committee have no direct ties to or interest in the litigants or their attorneys in this matter. ACFLS is solely concerned with the development of the law for children and families in California.

**Sincerely,
Association of Certified Family Law Specialists**



Lisa R. McCall, CFLS, CALS¹
Amicus Committee

¹ *Certified Legal Specialist – Appellate Law & Family Law, State Bar of California