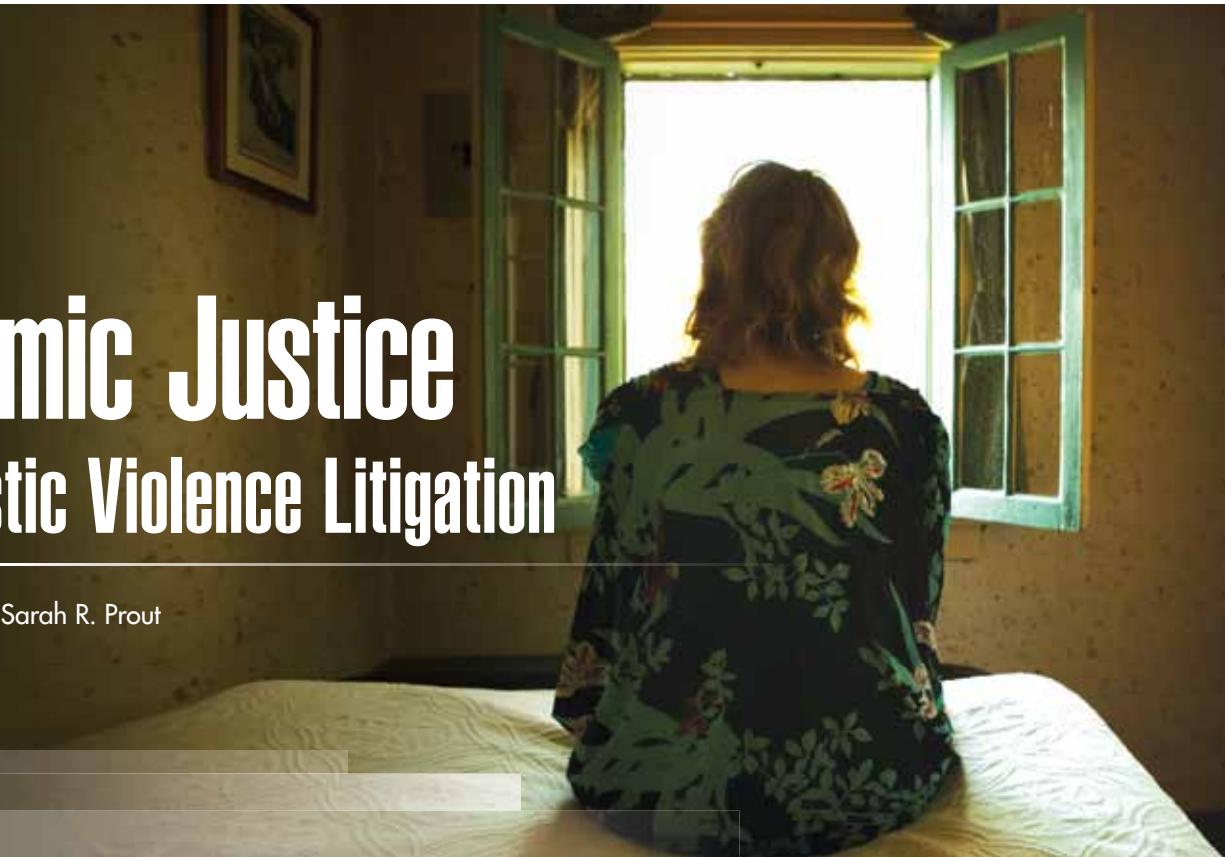


Economic Justice in Domestic Violence Litigation

By Ashley Lowe and Sarah R. Prout



Sally began dating John, a dentist, during her first year of teaching at a local high school. The couple married and about a year into their marriage, Sally became pregnant. After the couple's first child was born with special needs, John slapped, pushed, and shoved Sally when she did something he didn't like. He also monitored her use of the car, checkbook, and household finances. John also began to sabotage Sally's job by calling her multiple times at work, assaulting her during key MEAP test days, taking her car keys, and divulging the parties' marital problems to coworkers. Sally was fired as a result of absenteeism and shortly thereafter discovered she was pregnant again. Five years later, after enduring constant abuse, Sally fled to a domestic violence shelter. She now has three children under age seven and her teaching certificate has expired. Conversely, John's practice is thriving, he is living in the marital home, and both cars and all of the parties' savings are in his name. Sally has no access to the checkbook, the credit cards, or any of the marital assets.

FAST FACTS:

- Use formal discovery
- Obtain credit reports for both parties
- Avoid mediation
- Allocate debt and assets to compensate for abuse
- Provide spousal support to develop economic independence
- Consider the impact of divorce on public benefits

The Dynamics of Domestic Violence

Domestic violence is a pattern of power and control in which one partner uses violence and other tactics to isolate and control the other partner to his or her advantage. Every year, women experience about 4.8 million intimate-partner-related physical and sexual assaults.¹ One-third of all women murdered in the United States were killed by an intimate partner.² Domestic violence is a common and pervasive problem in American society; it is essential that family law practitioners understand how the dynamics of domestic violence affect their advocacy on behalf of an individual client.

While abusive spouses commonly use violence as a continuing threat in the household, an abusive partner also uses more subtle methods of exerting control. In addition to the ever-present threat of violence, an abusive spouse often uses economic abuse to control the other partner. It is common for batterers to insist that a survivor quit working to continue the batterer's campaign of

physical and financial isolation. It is also common for a batterer to sabotage efforts at maintaining employment before or after separation as outside interests and sources of income threaten a batterer's control over his partner. This fulfills the batterer's short-term and long-term goals, forcing his spouse to focus solely on his needs. Additionally, this behavior further helps establish long-term dependence on the relationship by sabotaging the survivor's ability to earn a paycheck. In Sally's case, both her termination from work and her inability to maintain her certification ensured that her economic dependence discouraged her from either reporting the abuse or leaving the relationship. In many cases, a survivor is forced to stay in a violent relationship for the sake of her children, literally to make sure they have food and shelter.

For a victim of domestic violence and her children to escape from an abuser's control, it is essential that her attorney obtain sufficient financial support to enable the survivor to transition into the workplace. Without such assistance, domestic violence survivors face negative outcomes, including homelessness or extreme poverty.

Domestic violence is the leading cause of homelessness in America.³ Most domestic violence shelters allow a 30-day maximum stay, yet it takes many dislocated families up to six months to secure permanent housing.⁴ A lack of alternative housing thus often leads women to stay in or return to violent relationships.⁵

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For those who wish to remain safe, often the only option is to seek public assistance. It is no coincidence that nearly all states report 50–60 percent of public welfare recipients have experienced domestic violence.⁶

As a practical matter, attorneys must recognize that many domestic violence survivors lack financial literacy, stemming from their lack of experience in handling money. This is often exhibited, as in Sally's case, by a profound ignorance of the marital estate. In such cases, it is important that counsel recognize these barriers for their clients, conduct thorough discovery, and neutralize this power differential, either in negotiations or by securing appropriate judicial relief. Additionally, batterers often try to take advantage of a survivor's desperate circumstance by attempting to coerce the abused spouse into accepting unfavorable negotiated settlements, offering the survivor only a portion of what she is entitled to because they are aware that the survivor is in unsafe or unstable housing or critical economic conditions.

The intervention of trained, competent counsel can make the difference between long-term stability and homelessness. Domestic violence shelters provide excellent short-term crisis intervention to allow a survivor to begin getting her life in order and offer a respite from violence and fatigue, but only civil legal assistance has been shown to decrease the incidence of domestic violence. This is primarily because the tools of economic stability lie within

the family court system.⁷ Unfortunately, at best, most legal services programs have funding sufficient to permit them to accept only approximately 20 percent of those eligible for services. Moreover, many middle-income, non-indigent domestic violence survivors do not even qualify for free legal service.⁸ Advocacy by trained lawyers from the private bar is essential to assisting domestic violence survivors to maintain long-term safety for themselves and their children by securing an appropriate division of the marital estate, protective orders, public benefits, disentanglement of the financial relationship, and an equitable division of real property.

Practical Considerations for Attorneys to Improve Survivor Outcomes

How attorneys litigate divorce can have a significant impact on the economic outcomes for survivors of domestic violence. Attorneys representing victims must always bear in mind how domestic violence and economic abuse affect the entire dynamic of marital relationships and place themselves in a position to equalize the bargaining power between the spouses.

As a preliminary matter, an attorney representing a domestic violence victim must address the most obvious economic indicator, i.e., what constitutes a fair distribution of the marital estate. It is relatively easy to discover assets through interrogatories and other discovery. If the survivor knows that an asset exists, the attorney has only to discover the value of that asset. If the asset has been hidden, however, the survivor won't know what to ask or whether the batterer has made less than full disclosure. Attorneys cannot rely on the integrity of counsel for the batterer, both because the batterer may conceal assets even from his attorney and because the primary duty of the batterer's counsel is to his client.

To be sure that the process is fair to the survivor, counsel should rely on formal discovery rather than mere assurances from counsel and the batterer. Formal discovery ensures that if assets are later unearthed, the property division can be reopened on the basis of failure to disclose fully and truthfully. For the same reason, attorneys should avoid mediation, particularly before discovery is complete. Where the batterer has controlled the victim and access to information throughout the marriage, the parties are not on equal footing at the bargaining table. The pressure of mediation combined with limited information often results in inequitable division and unfair outcomes for the survivor.

Attorneys must also consider the allocation of debt in light of the history of abuse. If the batterer used the survivor's identity to access credit for personal or business use, he should be ordered to assume and pay a higher proportion of the debt. Recent Federal Reserve Board rules requiring credit card companies to rely solely on individual rather than household income in issuing credit cards will likely result in more domestic violence victims with limited or no credit history at the time of divorce. To ensure that all debt is accounted for and allocated during the divorce, attorneys should always obtain credit reports for the parties.

Once the value of the marital estate is known, an equitable division may include a larger share for the survivor to compensate

for years of financial dependence.⁹ If the batterer demanded that the survivor leave her career early in life and stay home, she may have lost years of experience and skill development. If he required that she quit school before completing her education, she is even more financially disadvantaged. Allocating a greater share of the marital estate to the survivor can help put her on a more even playing field.

Courts determine an award of spousal support by relying on the factors outlined in *Sparks v Sparks*.¹⁰ In addition to arguing fault under the *Sparks* factors, attorneys may show that the batterer prevented the survivor from being able to contribute financially to the marital estate and, therefore, she should not be penalized for that in the distribution of property. The survivor is likely to have less earning ability because of limited work history and education resulting from the abusive spouse's strategy of isolation. General principles of equity can require that the survivor receive more than half of the marital estate to compensate her for the lack of financial resources caused by the batterer.

Moreover, if the survivor gets custody of the children, it may be equitable to have the survivor remain in the marital home, with the batterer paying the mortgage at least until the children are grown. This allows the survivor some time to get on her feet financially while also providing stability for her and the children.

An award of spousal support is another method for improving the economic outcomes for the survivor. Domestic violence is clearly relevant to several of the factors the court must consider in whether to award spousal support.¹¹ Specifically, the attorney should argue that it is the batterer's past conduct and fault that caused the divorce. In addition, the batterer may have negatively affected the survivor's health and ability to work and increased her financial, psychological, and emotional needs. Longer term spousal support may be appropriate to allow the survivor time to rebuild her financial life, including time to rehabilitate her credit.

Conclusion

In light of a survivor's economic dependence, it is essential for the attorney to approach the survivor's needs holistically with an eye to ensuring that whatever legal result is achieved enhances her long-term stability and prospects for independence. An individual survivor's needs for safety, housing, or particular public benefits may require that an attorney craft a final judgment that meets the family's unique needs, with the understanding that the long-term goal is to enable the domestic violence survivor to become and remain safe. ■



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FOOTNOTES

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2. National Organization for Women, *Violence Against Women in the United States: Statistics*, available at <<http://www.now.org/issues/violence/stats.html>>.
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8. Houseman, *The future of civil legal aid in the United States*, Center for Law and Social Policy (2005), available at <http://www.clasp.org/admin/site/publications_archive/files/0188.pdf>.
9. *Perrin v Perrin*, 169 Mich App 18, 22; 425 NW2d 494 (1988).
10. The following are factors that the court considers when determining whether alimony should be awarded: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the ability of the parties to work, (4) the source and amount of property awarded to the parties, (5) the age of the parties, (6) the ability of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the health of the parties, (10) the prior standard of living of the parties and whether either is responsible for the support of others, and (11) general principles of equity. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992).
11. A trial court has discretion to grant spousal support based on what is "just and reasonable under the circumstances of the case." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000).

