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Guest Commentary

## **Commentary: Criticism of Judge Who Denied Restraining Order Based on Misunderstanding of Law**

William H. Clendenen, The Connecticut Law Tribune

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The recent death of Aaden Moreno is a horrific tragedy. The circumstances that would drive a father to kill his child are unimaginable. However, the criticism leveled against Superior Court Judge Barry Pinkus by some because of what they perceive to be his failure in issuing a restraining order against Tony Moreno from seeing his child are unjustified.

Indeed, in many articles in the media, the accounts of the court proceeding before Pinkus are based on a misunderstanding or misstatement of the facts and the law, written to evoke emotion rather than reason. The application for a restraining order filed by Aaden's mother, Adrienne Oyola, sought to restrain Moreno from coming into contact with her and Aaden. Because of the nature of the process, that application was simply her recitation of the facts. It was initially granted on an *ex parte* basis, meaning the court issued a temporary restraining order lasting two weeks on her representations alone. At that time, the procedure did not allow Moreno an opportunity to rebut her claims.

The matter subsequently came before Pinkus for a hearing on the restraining order, during which both parties were allowed to present evidence, and the court was required to evaluate that evidence, including the credibility of the witnesses. The transcript of the hearing reveals several important facts. During the hearing, Pinkus assiduously attempted to determine all of the facts surrounding Oyola's application, even though her recitation of those facts was, at times, confusing and contradicted by the testimony of Moreno in several critical respects.

The judge explained to her the statutory standard for a restraining order so that she would understand what he had to find in order to continue the order she had earlier obtained. He prompted her to provide evidence of her claims. He asked her particularly about her written statement that Moreno might hurt their child, but no specific threats were offered. Moreover, it also appears from the record that both parents had been sharing custody of Aaden and, importantly, immediately after the hearing before Pinkus, the parents met with court personnel and agreed to a joint custody arrangement.

These facts are important because the statutory guidelines for issuing a restraining order require proof of a continuous threat of present physical pain, physical injury, stalking or a pattern of threatening. The judge weighed the evidence and found no such continuous threat at that time. Pinkus had to balance the interests of all the parties based solely on testimony before him. He had no ability to predict what Moreno might do a week later.

The reason the law imposes restrictions on the issuance of restraining orders is because they constitute a deprivation of a party's constitutional liberty interest. By definition, a restraining order restricts someone's conduct and, if violated, the person is subject to an immediate felony arrest. Restraining orders are provided to the police and entered into a registry, which is available for the public to inspect, including employers, landlords, border authorities and others. Therefore, our legislature has determined that a restraining order should be granted only when the evidence before the judge meets the standard of law that Pinkus explained to the mother here, prompting her with questions for testimony that would meet that standard.

Absent the testimony, the judge's duty was to deny the restraining order, however unpopular that decision seems today in light of the horrific events that followed days later. There are almost 9,000 restraining orders filed in Connecticut each year and the judges who hear them do the very best they can in balancing the concerns of the applicant with the rights of the person to be restrained. Each case is unique. Each case is steeped in emotion. Each must be determined based on the sworn facts presented by the parties. The record in *Oyola v. Moreno* reveals a judge who did everything he could to elicit the facts. He reached the result required by the law, based on the sworn testimony before him. Judge Pinkus could not have stopped and should not be blamed for the death of Aaden Moreno.

*William H. Clendenen is president of the Connecticut Bar Association.*

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