

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 17, 2022

8:30 a.m./1:30 p.m.

12. BEVERLY CUMMINS V. CODY CUMMINS

PFL20190725

On November 30, 2021, Respondent filed a Request for Order (RFO) requesting a modification to the custody, visitation, and child support orders. A CCRC session was scheduled for January 3, 2022 with a hearing on the RFO set for February 17, 2022. An Income and Expense Declaration was filed concurrently with the RFO, both of which were served personally on Petitioner along with the Referral to CCRC on December 2, 2021.

On January 24, 2022, Petitioner filed a Responsive Declaration and Income and Expense Declaration, served electronically and by mail on Respondent on January 3, 2022.

On January 26, 2022, the Department of Child Support Services (DCSS) intervened into the case. As such, under Family Code 4251, the court continues the child support issue to be heard in front of the Child Support Commissioner on June 13th, 2022 at 8:30 a.m. in Department 5. The court reserves jurisdiction to make child support orders retroactive to the date of filing of the RFO. The court orders both parties to file and serve on one another updated Income and Expense Declarations and to serve on DCSS any other pleadings regarding the child support issues, including the RFO and Responsive Declaration, at least 10 days in advance of the this hearing date.

On January 28, 2022, Petitioner filed a Declaration. Upon review of the file, the court finds that there is no proof of service indicating service of this filing on Respondent. As such, the court has not reviewed nor considered it.

Only Respondent participated in the CCRC session, with Petitioner contacting the clerk's office the day of the CCRC session to report that she was having car problems that prevented her from being able to attend. A CCRC report was issued on February 2, 2022 with copies mailed to the parties on February 4, 2022. As only one party attended, the report makes no recommendations.

To allow the parties to attempt to reach an agreement in CCRC, the court re-refers the parties to a CCRC session on March 28th, 2022 at 9:00AM with Norman Labat and continues the custody and visitation issues to May 19th, 2022 at 1:30 p.m. in Department 5.

Respondent is ordered to prepare and file the Findings and Order After Hearing.

TENTATIVE RULING #12: UNDER FAMILY CODE 4251, THE COURT CONTINUES THE CHILD SUPPORT ISSUE TO BE HEARD IN FRONT OF THE CHILD SUPPORT COMMISSIONER ON JUNE 13TH, 2022 AT 8:30 A.M. IN DEPARTMENT 5. THE COURT RESERVES JURISDICTION TO MAKE CHILD SUPPORT ORDERS RETROACTIVE TO THE DATE OF FILING OF THE RFO. THE COURT ORDERS BOTH PARTIES TO FILE AND SERVE ON ONE ANOTHER UPDATE INCOME AND

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EXPENSE DECLARATIONS AND TO SERVE ON DCSS ANY OTHER PLEADINGS REGARDING THE CHILD SUPPORT ISSUES, INCLUDING THE RFO AND RESPONSIVE DECLARATION, AT LEAST 10 DAYS IN ADVANCE OF THE THIS HEARING DATE. THE COURT RE-REFERS THE PARTIES TO A CCRC SESSION ON MARCH 28TH, 2022 AT 9:00AM WITH NORMAN LABAT AND CONTINUES THE CUSTODY AND VISITATION ISSUES TO MAY 19TH, 2022 AT 1:30 P.M. IN DEPARTMENT 5. RESPONDENT IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.

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13. CAROL CARLISLE V. WILLIAM CARLISLE

PFL20150037

On December 10, 2021, Respondent filed a Request for Order (RFO) requesting that the court reconsider its orders from the December 2, 2021 hearing, ordering Respondent to pay over \$71,000 in sanctions and costs.

Upon review of the file, the court finds that there is no proof of service indicating service of the RFO on Petitioner. However, on February 3, 2022, Petitioner filed a Responsive Declaration, served on Respondent by mail that same day, in which she does not raise the lack of service as an issue.

Respondent argues that Petitioner failed to file a proper proof of service for her request for sanctions and costs, that the court misapplied Family Code 217 and Family Code 271 regarding the party's right to offer testimony regarding the claimed costs as well as evidence regarding Respondent's financial circumstances, and that Respondent's pending appeal made the orders of the court premature. Respondent also challenges the competency of the evidence offered by Petitioner to support her requests. Finally, Respondent states that the order contained a clerical error, by stating that the commencement date of the \$3,000 monthly payments is January 1, 2021 rather than January 1, 2022.

Petitioner counters that Respondent has failed identify any new facts, circumstances, or law not presented at the first hearing nor has Respondent provided a satisfactory explanation for not presenting this information at the first hearing. Additionally, Petitioner states that she did file a proper proof of service for her request and attached a copy of the proof of service. Petitioner further contends that the court properly applied Family Code 217 in its denial of Respondent's request for live testimony and, even if it had not, that a misapplication of law is not sufficient grounds for motion for reconsideration. Regarding Respondent's purported inability to present evidence regarding his financial circumstances, among other contentions, Petitioner argues that Respondent has failed to explain why this information was not available to him at the time of the original hearing, such as by filing an Income and Expense Declaration or providing other admissible evidence. As to the pending appeal, Petitioner argues that Respondent is not entitled to a stay the pending appeal as he has failed to file a bond staying the appeal. Finally, Petitioner requests \$8,400 in sanctions under Family Code 271.

Both parties agree that the court made a clerical error with the January 1, 2021 commencement date of the \$3,000 payments. The court orders that its orders made at the December 2, 2021 hearing be modified to reflect a commencement date of January 1, 2022. Petitioner is ordered to include this change in her Findings and Order After Hearing for the December 2, 2021 hearing, if not already prepared in which case she is ordered to prepare an amended order.

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Regarding the request for reconsideration, the court finds that Respondent has failed to identify any new facts, circumstances, or law not presented at the first hearing. The court denies the motion for reconsideration.

Regarding Petitioner's request for sanctions under Family Code 271, the court finds that the Respondent's filing of the motion for reconsideration without identifying new facts, circumstances, or law as required by Code of Civil Procedure 1008 has unnecessarily increased the cost of the litigation and frustrated the policy of the law to promote settlement. Under Family Code 271, the court orders Respondent to pay Petitioner \$2,000 in attorney's fees as a sanction. This amount shall be added to the total balance of sanctions and costs ordered to be paid by Respondent at the December 2, 2021 hearing, with the same payment terms and conditions as ordered at that hearing.

Additionally, on December 20, 2021, Petitioner filed an RFO requesting that the court vacate the trial set for March 29 and 30, 2022 without prejudice. On January 3, 2022, Respondent was served by mail with the RFO. Respondent has not filed a responsive declaration. Given the trial was set based on Petitioner's initial request for relief and given the lack of opposition from Respondent, the court vacates the March 29 and 30, 2022 trial dates without prejudice.

Petitioner is ordered to prepare and file the Findings and Order After Hearing.

TENTATIVE RULING #12: THE COURT ORDERS THAT ITS ORDERS MADE AT THE DECEMBER 2, 2021 HEARING BE MODIFIED TO REFLECT A COMMENCEMENT DATE OF JANUARY 1, 2022. PETITIONER IS ORDERED TO INCLUDE THIS CHANGE IN HER FINDINGS AND ORDER AFTER HEARING FOR THE DECEMBER 2, 2021 HEARING, IF NOT ALREADY PREPARED IN WHICH CASE SHE IS ORDERED TO PREPARE AN AMENDED ORDER. REGARDING THE REQUEST FOR RECONSIDERATION, THE COURT FINDS THAT RESPONDENT HAS FAILED TO IDENTIFY ANY NEW FACTS, CIRCUMSTANCES, OR LAW NOT PRESENTED AT THE FIRST HEARING. THE COURT DENIES THE MOTION FOR RECONSIDERATION. UNDER FAMILY CODE 271, THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$2,000 IN ATTORNEY'S FEES AS A SANCTION. THIS AMOUNT SHALL BE ADDED TO THE TOTAL BALANCE OF SANCTIONS AND COSTS ORDERED TO BE PAID BY RESPONDENT AT THE DECEMBER 2, 2021 HEARING, WITH THE SAME PAYMENT TERMS AND CONDITIONS AS ORDERED AT THAT HEARING. THE COURT VACATES THE MARCH 29 AND 30, 2022 TRIAL DATES WITHOUT PREJUDICE. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.

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14. CHRISTLYN LOOS V. ALEXANDER RAMOS

21FL0133

On November 29, 2021, Petitioner filed an ex parte application for custody and child support orders. That same day, Respondent filed a Responsive Declaration. On November 30, 2021, the court denied the ex parte relief and set a CCRC session on January 5, 2022 with a hearing on the RFO set for February 17, 2022. The court also ordered that the child be properly restrained in a car seat before driving with her in the vehicle.

On December 26, 2021, Respondent was personally served with the RFO and Referral to CCRC.

Both parties participated in the CCRC session and reached a full agreement, which includes an order for joint legal custody, a step-up plan for Respondent's parenting time, an order for Respondent to take a parenting class, an order for the minor to attend school in Petitioner's district, and an order for the parties to participate in co-parenting counseling. A CCRC report was issued on January 5, 2022 with copies mailed to the parties on January 6, 2022.

Having reviewed the filings of the parties and the CCRC report, the court finds that the agreements contained within the CCRC report are in the best interest of the minor and adopts them as the orders of the court.

Regarding the request for child support, the court finds that Petitioner failed to file an Income and Expense Declaration as required by Cal. Rules of Court, rule 5.92. As such, the court denies the request for child support without prejudice.

Petitioner is ordered to prepare and file the Findings and Order After Hearing.

TENTATIVE RULING #14: THE AGREEMENT CONTAINED WITHIN THE CCRC REPORT ARE ADOPTED AS THE ORDERS OF THE COURT. THE COURT DENIES THE REQUEST FOR CHILD SUPPORT WITHOUT PREJUDICE. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.

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15. COUNTY V. DAMIAN BUTLER (OTHER PARENT: MEGAN EPTON)

PFS20120151

On December 7, 2021, Respondent filed a Request for Order (RFO) requesting modification of the custody and child support orders. An Income and Expense Declaration was filed concurrently. A CCRC session was scheduled on January 10, 2022 with a hearing on the RFO set for February 10, 2022. Due to the unavailability of the CCRC counselor, the CCRC session and hearing were continued to January 20, 2022 and February 17, 2022, respectively.

Upon review of the file, the court finds that there is no proof of service indicating service of the RFO and Income and Expense Declaration on Other Parent. However, on January 4, 2022, Other Parent filed a Responsive Declaration referencing the custody and child support requests contained within the RFO. As such, the court finds that the Other Parent has notice of these requests.

Both parties participated in the CCRC session and reached a full agreement for joint legal custody and to maintain the current parenting plan. A CCRC report was issued on January 20, 2022 with copies mailed to the parties on February 3, 2022.

Having reviewed the filings of the parties and the CCRC report, the court finds that the agreements contained within the CCRC report are in the best interest of the children and adopts them as the orders of the court.

Regarding child support, the court finds that on August 30, 2013 the child support order was registered in the Yolo Superior Court. The court finds that the Yolo Superior Court has jurisdiction over the child support issue, and this court cannot make any child support orders. As such, the court denies the request for child support without prejudice.

Respondent is ordered to prepare and file the Findings and Order After Hearing.

TENTATIVE RULING #15: THE AGREEMENTS CONTAINED WITHIN THE CCRC REPORT ARE ADOPTED AS THE ORDERS OF THE COURT. THE COURT DENIES THE REQUEST FOR CHILD SUPPORT WITHOUT PREJUDICE. RESPONDENT IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.

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16. JAROD COOK V. TIFFANY GAMBLE

PFL20200536

On January 27, 2022, Petitioner filed an ex parte application for custody and visitation orders, an order to add Petitioner's name to the child's birth certificate, and an order regarding the child's school. On January 28, 2022, the court denied the ex parte relief and set a CCRC session on February 1, 2022 with a hearing on the RFO set for February 17, 2022.

Both parties participated in the CCRC session and reached a full agreement to maintain the current parenting plan. A CCRC report was issued on February 1, 2022 with copies mailed to the parties on February 3, 2022.

As the agreements reached in the CCRC session are to maintain all current orders, which the court finds to be in the minor's best interest, the court declines to make any specific orders and drops the matter from calendar.

TENTATIVE RULING #16: MATTER DROPPED FROM THE COURT'S CALENDAR

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17. JEFFREY LEWIS-WOMACK V. CLAUDIA LEWIS-WOMACK

PFL20090716

On December 9, 2021, the parties appeared to address Petitioner's Contempt Complaint against Respondent. At the hearing, the parties entered into an agreement which provided for the orders noted below. The court ordered Respondent to arrange reunification therapy and family counseling through Kaiser and for the parties to follow the direction of the counselor, including the frequency and duration of the sessions. Respondent was ordered to contact Kaiser within one week to schedule the appointment. The court ordered the minor to live with Respondent and for the parties to share joint legal custody. The court ordered that the Petitioner's visits would start at once per week for two hours per visit once deemed appropriate by the counselor. Lastly, Petitioner dropped his Contempt Complaint.

The court set a review hearing on February 17, 2022 to assess the progress of the therapy and ordered that any supplemental declarations be filed at least 10 days in advance of that hearing. Upon review of the file, the court finds that neither party has filed a supplemental declaration.

The court reasonably infers that the parties are working through the counseling process and that there are no major issues for the court to address at this time. As such, the court drops the matter from its calendar. Either party can file a new Request for Order to address the custody and visitation issues as appropriate.

TENTATIVE RULING #17: MATTER DROPPED FROM THE COURT'S CALENDAR

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18. JONATHON BISKNER V. KRISTEN BISKNER

21FL0132

On November 29, 2021, Petitioner filed an ex parte application requesting an order for Respondent to stop giving medication to the oldest child and for Respondent to return the children to California. On November 30, 2021, the court denied the ex parte relief and set a CCRC session on January 3, 2022 with a hearing on the RFO set for February 17, 2022.

On December 23, 2021, Respondent was personally served with the RFO and Referral to CCRC.

On January 28, 2022, Respondent filed an RFO supported by a Memorandum of Points and Authority, requesting that the court quash Petitioner's motion for lack of jurisdiction. These filings were served on Petitioner by mail that same day. A hearing is set for this RFO on March 17, 2022.

Both parties participated in the CCRC session and reached a few agreements, but not on all issues. A CCRC report was issued on February 1, 2022 with copies mailed to the parties on February 3, 2022.

As Respondent has challenged the jurisdiction of this court to make custody orders, the court continues the matter to March 17, 2022 to address the jurisdictional issues prior to making any custody orders, if appropriate.

Petitioner is ordered to prepare and file the Findings and Order After Hearing.

TENTATIVE RULING #18: THE COURT CONTINUES THE MATTER TO MARCH 17, 2022 TO ADDRESS THE JURISDICTIONAL ISSUES PRIOR TO MAKING ANY CUSTODY ORDERS, IF APPROPRIATE. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.

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19. RANDI CORRASA V. CHARLES CORRASA

21FL0145

On December 14, 2021, Respondent filed a Request for Order (RFO) requesting custody and visitation orders. A CCRC session was scheduled on January 13, 2022 with a hearing on the RFO set for February 17, 2022.

On December 14, 2021, a Proof of Service by Mail form was filed indicating service of the RFO and Referral to CCRC on Petitioner on that same date; however, the form does not indicate the address to which the document were served. As such, the court cannot find that Petitioner was properly served.

On January 13, 2022, the clerk's office returned a Stipulation Re Child Custody to Respondent, indicating that the stipulation was not completed properly and directing Respondent to seek the Family Law Facilitator's assistance if necessary.

Upon review of the file, the court finds that there is no CCRC report, which the court reasonable infers is due to the attempt of the parties to file a stipulation to resolve the custody issues.

Given the parties appear to have resolved their issues, the court drops the matter from calendar and directs the parties the seek the assistance of the Family Law Facilitator if necessary. If the issues are not resolved, either party can request oral argument to address the custody issues at the hearing.

TENTATIVE RULING #19: MATTER DROPPED FROM THE COURT'S CALENDAR

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20. STEPHANIE MASON V. STEPHEN MASON

PFL20180862

On January 5, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt. Upon review of the file, the court finds that there is no proof of service indicating service on the contempt complaint on Respondent. As such, the court drops the matter from its calendar.

TENTATIVE RULING #20: MATTER DROPPED FROM COURT'S CALENDAR

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21. WILLIAM ROSE V. MICHELLE ROSE

22FL0047

On January 20, 2022, Petitioner filed an ex parte application for custody and visitation orders, including an order to restrict travel with the minors. That same day, Respondent filed a Responsive Declaration, objecting to the requested relief. On January 21, 2022, the court granted the ex parte relief in part, ordering the minors to remain in the state of California. A CCRC session was scheduled on January 25, 2022 with a hearing on the RFO set for February 17, 2022.

Only Respondent participated in the CCRC session, so there were no recommendations made in the CCRC report, which was issued on February 1, 2022 with copies mailed to the parties on February 3, 2022.

The court finds that Respondent is requesting an order to move out of the state of California with the minors. The court orders the parties to appear to set a trial on Respondent's request to move out of state with the minors.

TENTATIVE RULING #21: THE COURT ORDERS THE PARTIES TO APPEAR TO SET A TRIAL ON RESPONDENT'S REQUEST TO MOVE OUT OF STATE

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22. DCSS V. JAMES RHOADES (OTHER PARTY: BRIANNA SNYDER)

PFS20200140

On July 16, 2021 the parties appeared before the court and the court referred the parties to CCRC with a return to court date of September 9, 2021 at 1:30 p.m.

The parties appeared for their CCRC appointment and a CCRC report was issued on August 23, 2021. Copies of the CCRC report were mailed to the parties on August 23, 2021.

On July 20, 2021 Other Party, Ms. Snyder, filed a Declaration. On September 2, 2021 Respondent filed a Declaration.

At the September 9, 2021 hearing, the court found that the recommendations contained in the August 23, 2021 CCRC report are in the best interest of the minor child with the modification that the court appoint a CASA advocate for the minor child rather than Minor's Counsel. The court adopted the recommendations contained in the 8/23/21 CCRC report with the above modification as the court order. The court set a hearing on December 2, 2021 for review of the custody and visitation orders and receipt of CASA's report.

At the December 2, 2021 hearing, the court continued the matter to January 13, 2022, as it had yet to receive CASA's report.

On January 10, 2022, CASA filed its report with the court, served on Respondent electronically and the Other Parent by mail that same day. The report provides a status update to the court and states that CASA began the process of reaching out to the parties but needs additional time to complete its full report. CASA requests a continuance to give it an additional 30 days to complete the report.

The court continued the matter to February 17, 2022 to allow CASA to complete their investigation and file a complete report.

On February 2, 2022 CASA filed a report. Respondent was served electronically on February 2, 2022 with Proof of Service filed the same day. The Other Party was served via mail, also on February 2, 2022 with Proof of Service filed the same day.

The CASA report outlines the contact the CASA was able to have with the family, including the minor. CASA recommends the current orders adopted on September 9, 2022 remain in place, as they are in the best interest of the minor.

Having read and considered the CASA report, the court finds the current custody and visitation orders remain in the best interest of the minor.

TENTATIVE RULING #22: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT

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23. SUSAN MOSKALETS v. VICTOR MOSKALETS

PFL20210479

On November 5, 2021 Petitioner filed a Request for Order (RFO) requesting temporary spousal support and attorney's fees. Petitioner alleges the parties were married 23.5 years. Petitioner filed an Income and Expense Declaration with the RFO. On November 5, 2021 Petitioner filed a Proof of Service by Mail showing service upon Respondent the same day.

On December 13, 2021 Respondent filed a Responsive Declaration to the RFO, an Income and Expense Declaration and a Proof of Service by Mail showing service upon Petitioner on December 10, 2021. Respondent alleges the parties were married for 3 years and 2 months. Respondent asks the court to deny Petitioner's requests for spousal support and attorney's fees.

The court issued a tentative ruling on January 13, 2022. Petitioner requested oral argument. After the court received arguments from the parties, the matter was continued to February 17, 2022. Petitioner was ordered to file an updated Income and Expense Declaration. The tentative ruling was stayed pending the continuance.

On February 3, 2022 Respondent filed an updated Income and Expense Declaration. Petitioner was served by mail on February 2, 2022 with Proof of Service Filed the same day. Respondent filed a copy of the parties' marriage certificate contemporaneously.

Petitioner was ordered to file an updated Income and Expense Declaration and has not yet done so. Review of the court file shows Petitioner attempted to file an Income and Expense Declaration on February 8, 2022, however it was returned by the clerk's office.

The court orders parties to appear.

TENTATIVE RULING #23: PARTIES ARE ORDERED TO APPEAR