

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 5, 2022

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

13. ALASKA DEPARTMENT OF REVENUE V. CHRISTOPHER BAIRD

(OTHER PARENT: REBEKAH BENCOMO)

PFS20150354

On March 4, 2022, Other Parent filed a Request for Order (RFO) requesting the court order Respondent to pay one-half the cost of unreimbursed medical expenses for the minor. The Department of Child Support Services (DCSS) was served by mail on March 4, 2022. Respondent was served by mail on March 8, 2022.

Other Parent asserts pursuant to the of July 28, 2011 requires Respondent to pay one half the uncovered health care costs. Other parent has sent the Respondent medical invoices within 30 days as required. Respondent has failed to reimburse Other Parent any of the uncovered medical expenses.

DCSS filed a Responsive Declaration on March 9, 2022. Parties were served by mail the same day. DCSS requests the matter be continued to the Child Support calendar before the child support commissioner pursuant to Family Code section 4251.

Respondent has not filed a responsive declaration.

The court continues the matter to the child support calendar to be heard by the child support commissioner on May 23rd, 2022 at 8:30AM.

TENTATIVE RULING #13: THE MATTER IS CONTINUED TO May 23rd, 2022 at 8:30AM, TO BE HEARD BY THE CHILD SUPPORT COMMISSIONER PURSUANT TO FAMILY CODE SECTION 4251.

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14. BELINDA WRIGHT V. KYLEY WRIGHT

PFL20210583

On April 7, 2022, Respondent filed a ex parte request for order, requesting sole legal and physical custody of the minors and no parenting time for Petitioner pending clean drug test results. On April 8, 2022 the ex parte request was denied. The court ordered no one to transport the minors in a vehicle with any measurable amount of alcohol or other drug in their system. The Request for Order (RFO) was set on the regular law and motion calendar. Parties were referred to Child Custody Recommending Counseling (CCRC) for an emergency set appointment on April 12, 2022 and a review hearing on May 5, 2022.

Upon review of the court file, there is no proof of service showing Petitioner was served with the RFO or referral to CCRC.

Nevertheless, Petitioner appeared for the CCRC appointment. However, Respondent failed to appear and despite repeated attempts was not able to be reached by telephone by the CCRC counselor.

As such, the matter is dropped from calendar. All prior orders remain in full force and effect.

TENTATIVE RULING #14: THE MATTER IS DROPPED FROM CALENDAR. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.

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15. DORI FLOYD V. TIMOTHY FLOYD

PFL20120034

On March 7, 2022, Petitioner filed a Request for Order (RFO) requesting the court modify the judgement entered on June 22, 2016. Respondent was personally served with the RFO on March 9, 2022.

Petitioner asserts Respondent has failed to pay his portion of fees to Moon Schwartz and Madden (MSM) to complete the QDRO, has failed to disclose all his retirement accounts, has failed to provide the necessary statements, and has failed to sign forms necessary for MSM to proceed. As it has been more than five years since the process was initiated, MSM requires an additional fee to complete the process. Petitioner requests the court cancel the QDRO and order that all community property interest retirement accounts remain in the name of each respective party as their sole and separate property. Petitioner also requests the court order Respondent to reimburse Petitioner the fees paid for to MSM and for filing an Order to Show Cause.

Respondent has not filed a Responsive Declaration.

The court finds it has ongoing jurisdiction to modify a post judgement division of unadjudicated assets on either party's motion at any time regardless of whether the prior judgment reserved jurisdiction over property issues. (Family Code section 2556; *Marriage of Thorne & Raccina* (2012) 203 CA 4th 492, 501.) Normally, an *equal division* of the unadjudicated items is required; however, the court has discretion to effect an unequal division if it finds, upon good cause shown, the interests of justice so require. (Family Code section 2556.) Here, the court finds Respondent has frustrated the purposes of the judgment by failing to cooperate with the QDRO process for nearly six years, in his refusal to pay his portion of the fees, failure to provide MSM required documents, and failure to sign the necessary forms. Respondent's refusal to cooperate has led to unnecessary delay, to the potential detriment to both parties. Therefore, the court finds Petitioner has made a good cause showing to deviate from the equitable division of the unadjudicated assets and the interests of justice would be promoted by granting Petitioner the relief she seeks.

The court modifies the June 22, 2016 judgment to rescind the order for the QDRO. All community property interest retirement accounts shall remain in the name of each respective party as their sole and separate property.

The court denies Petitioner's request for reimbursement of fees and costs, as Petitioner has not adequately pled on what basis the court can grant this relief. The denial is made without prejudice. The court orders Respondent shall be solely responsible for any balance owed to MSM.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #15: THE COURT MODIFIES THE JUNE 22, 2016 JUDGMENT TO RESCIND THE ORDER FOR THE QDRO. ALL COMMUNITY PROPERTY INTEREST RETIREMENT ACCOUNTS SHALL REMAIN IN THE NAME OF EACH RESPECTIVE PARTY AS THEIR SOLE AND SEPARATE PROPERTY. THE COURT DENIES PETITIONER'S REQUEST FOR REIMBURSEMENT OF FEES AND COSTS, AS PETITIONER

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HAS NOT ADEQUATELY PLED ON WHAT BASIS THE COURT CAN GRANT THIS RELIEF. THE DENIAL IS MADE WITHOUT PREJUDICE. THE COURT ORDERS RESPONDENT SHALL BE SOLELY RESPONSIBLE FOR ANY BALANCE OWED TO MSM. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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18. MELISSA RASCON V. JEROME FIMBRES

PFL20190242

On February 17, 2022, Petitioner filed an ex parte request for sole physical and legal custody, parenting classes for Respondent, as well as drug and alcohol testing and treatment. On February 18, 2022, the court denied the ex parte request. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on March 24, 2022 and the Request for Order (RFO) was set for a hearing on the regular law and motion calendar.

Upon review of the court file, there is no proof of service showing Respondent was served with the RFO or the referral to CCRC.

Nevertheless, both parties appeared for the CCRC appointment and were able to reach two agreements. The CCRC counselor made recommendations as to parenting time. A copy of the report was mailed to the parties on April 26, 2022.

The court has read and considered the CCRC report and finds the agreement and recommendations to be in the minor's best interest. The parties shall continue to share joint legal and physical custody. The parties shall utilize a 2-2-3 parenting schedule. Parties shall enroll in a co-parenting class; parties can choose a class located on the court's website.

The court denies Petitioner's remaining requests, as the RFO was not properly served on Respondent.

All prior court orders that are not in conflict remain in full force and effect. Petitioner shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #18: THE AGREEMENT AND RECOMMENDATION CONTAINED IN THE CCRC REPORT ARE ADOPTED AS THE COURT'S ORDER. THE REMAINING REQUESTS IN PETITIONER'S RFO ARE DENIED. ALL PRIOR COURT ORDERS THAT ARE NOT IN CONFLICT REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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20. SHAWNTE FLEMING V. ANDRE FLEMING

22FL0216

On March 8, 2022, Petitioner filed a Request for Order (RFO) requesting the court make orders as to child custody, parenting time, child support and spousal support. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on March 24, 2022 and a review hearing set for March 5, 2022.

Upon review of the court file, there is no proof of service of the RFO or referral to CCRC. The court notes there is a Proof of Service of Summons filed on March 17, 2022 showing Respondent was personally served a copy of the FL-100, FL-110, and FL-120. The Proof of Service also show service of a Petitioner for Custody and Support of Minor Children, a FL-260, FL-210 and FL-270. However, it does not show Respondent was served with the RFO FL-300 or the referral to CCRC.

Respondent did appear at the CCRC appointment on March 24, 2022, however, Petitioner did not. As such a single parent report was issued without a recommendation. Copies of the CCRC report were mailed to the parties on April 20, 2022.

Petitioner filed a Declaration on March 29, 2022 requesting the CCRC appointment be reset, as she had mis-scheduled the date. Respondent was served with the declaration by mail on April 11, 2022.

Respondent was not properly served with the RFO. Therefore, the matter is dropped from calendar.

TENTATIVE RULING #20: THE MATTER IS DROPPED FROM CALENDAR.

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21. ZANE DAVIS V. NICHOLE DAVIS

PFL20190077

On March 8, 2022, Petitioner filed a Request for Order (RFO) requesting the court modify the order regarding therapy for the minor, enforce the order for the parties to participate in co-parenting counseling, enforcement of current orders regarding legal custody and parenting time, and order Family code section 271 sanctions. Respondent was served with the RFO by mail on March 4, 2022.

Petitioner asserts Respondent has failed to cooperate in having the minor enrolled in individual therapy. Further, Petitioner asserts Respondent is refusing to attend the previously ordered co-parenting therapy. Petitioner requests the court authorize him to select a therapist for the minor and allow the minor to engage in therapy. Petitioner requests the court select a co-parenting therapist for the parties and that the parties begin co-parenting counseling as soon as possible. Petitioner asserts Respondent has failed to abide by the legal custody orders. Finally, Petitioner requests attorney fees as sanctions for having to file this RFO.

Respondent filed a Responsive Declaration on May 2, 2022. Respondent filed a Proof of Service on May 2, 2022, showing that Petitioner was served by mail. However, the Proof of Service does not indicate what date the Responsive Declaration was mailed to Petitioner. Additionally, the Responsive Declaration is required by Code of Civil Procedure to be filed at least nine court days prior to the hearing. Therefore, the court has not considered Respondent's Responsive Declaration.

The court has read and considered the above filings as indicted and makes the following findings and orders:

Respondent shall provide Petitioner with the names of three licensed therapists who specialize in children's therapy who are taking on new clients no later than May 19, 2022. Petitioner will then have until May 26, 2022 to select one of the three therapists and notify Respondent of his selection. The minor shall begin therapy with the selected therapist no later than June 16, 2022. Parties are to shall the costs of therapy equally if therapy is not covered by insurance. The minor is to attend therapy at a frequency and duration as directed by the therapist. The parties are also to abide by the recommendations of the therapist.

Petitioner shall provide Respondent with the names of three licensed therapists who specialize in co-parenting counseling and are taking new clients no later than May 19, 2022. Respondent will then have until May 26, 2022 to select one of the three therapists and notify Petitioner of her selection. Parties are to begin co-parenting counseling no later than June 16, 2022. Parties shall participate in co-parenting counseling at a frequency and duration as directed by the co-parenting counselor.

Parties are reminded of the legal custody agreement, phone contact agreement, and parenting time agreement reached by the parties at CCRC and outlined in the September 2021 CCRC report that were adopted as the court's order on October 21, 2022. Failure to abide by the court's orders may result in the court modifying custody orders.

The court denies Petitioner's request for Family Code 271 sanctions.

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All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #21: RESPONDENT SHALL PROVIDE PETITIONER WITH THE NAMES OF THREE LICENSED THERAPISTS WHO SPECIALIZE IN CHILDREN'S THERAPY WHO ARE TAKING ON NEW CLIENTS NO LATER THAN MAY 19, 2022. PETITIONER WILL THEN HAVE UNTIL MAY 26, 2022 TO SELECT ONE OF THE THREE THERAPISTS AND NOTIFY RESPONDENT OF HIS SELECTION. THE MINOR SHALL BEGIN THERAPY WITH THE SELECTED THERAPIST NO LATER THAN JUNE 16, 2022. PARTIES ARE TO SHALL THE COSTS OF THERAPY EQUALLY IF THERAPY IS NOT COVERED BY INSURANCE. THE MINOR IS TO ATTEND THERAPY AT A FREQUENCY AND DURATION AS DIRECTED BY THE THERAPIST. THE PARTIES ARE ALSO TO ABIDE BY THE RECOMMENDATIONS OF THE THERAPIST. PETITIONER SHALL PROVIDE RESPONDENT WITH THE NAMES OF THREE LICENSED THERAPISTS WHO SPECIALIZE IN CO-PARENTING COUNSELING AND ARE TAKING NEW CLIENTS NO LATER THAN MAY 19, 2022. RESPONDENT WILL THEN HAVE UNTIL MAY 26, 2022 TO SELECT ONE OF THE THREE THERAPISTS AND NOTIFY PETITIONER OF HER SELECTION. PARTIES ARE TO BEGIN CO-PARENTING COUNSELING NO LATER THAN JUNE 16, 2022. PARTIES SHALL PARTICIPATE IN CO-PARENTING COUNSELING AT A FREQUENCY AND DURATION AS DIRECTED BY THE CO-PARENTING COUNSELOR. PARTIES ARE TO ABIDE BY THE AGREEMENTS OUTLINED IN THE SEPTEMBER 2021 CCRC REPORT AND ADOPTED AS THE COURT ORDER ON OCTOBER 21, 2021. THE COURT DENIES PETITIONER'S REQUEST FOR FAMILY CODE 271 SANCTIONS. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.