

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
June 9, 2022
8:30 a.m./1:30 p.m.

2. BRENT LYMAN V. KATHRYN LYMAN

PFL20210248

On January 13, 2022, parties appeared at the continued hearing on the August 24, 2021 filed Request for Order. Parties reached an agreement on the spousal support request. Parties agreed Petitioner would pay the mortgage in lieu of spousal support and Petitioner would waive all Watt/Epstein credits from January 13, 2022 forward. The issues of spousal support arrears and attorney fees were reserved until the next hearing set for June 9, 2022.

Neither party has filed a Supplemental Declaration or an updated Income and Expense Declaration.

Parties are ordered to appear.

TENTATIVE RULING #2: PARTIES ARE ORDERED TO APPEAR.

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3. CAROL VAN WOERKOM V. RICHARD VAN WOERKOM

PFL20190042

On April 14, 2022, Respondent filed a Request for Order (RFO) requesting the court modify child custody, parenting time, order parties to provide proof of 529(b) college savings accounts quarterly, reduce the amount of life insurance Respondent is required to carry, and transfer venue to Utah. Petitioner was served by mail on April 14, 2022, with address verification.

On April 14, 2022, parties submitted a stipulation and order to participate in private child custody recommending counseling with Carol Greenfield. The court signed the order on April 22, 2022.

Respondent requests the court order an equal timeshare parenting plan. Respondent asserts he only works seven to eight days, with two to three travel days, per month. Respondent states his schedule is set at least two to three months in advance. Therefore, he is available and willing to have the minors for a equal timeshare. Respondent states each party is responsible for the administration of two of the minors' 529(b) college savings accounts. Respondent requests the court order the parties mutually exchange proof of the minor's college savings accounts quarterly, to ensure the money remains in place for the benefit of the minors. Respondent seeks to modify Section 8 of the Marital Settlement Agreement (MSA) to decrease the amount of the life insurance policy. Since the MSA was entered, the parties have mutually agreed to a reduction in spousal support. The purpose of the life insurance policy is to secure spousal support payments. Respondent requests the policy be reduced to \$400,000 rather than the current \$1,200,000 as \$400,000 will be sufficient to cover the potential spousal support payments due until Respondent retires in approximately eight years or spousal support terminates. Respondent requests a further reduction in five years to \$200,000. Last, Respondent requests the court transfer venue to Utah, as both parties and the minors currently reside in Utah full time.

Petitioner has not filed a Responsive Declaration.

TENTATIVE RULING #3: PARTIES ARE ORDERED TO APPEAR.

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4. DEBRA PERCHEVITCH V. ALEX PERCHEVITCH

PFL20020636

On March 30, 2022, Petitioner filed a Request for Order (RFO) requesting the court order Respondent provide his retirement statements to Petitioner. Petitioner is also requesting attorney fees. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on April 5, 2022.

Petitioner asserts her counsel has requested Respondent provide updated retirement account statements on multiple occasions to no avail. The parties have stipulated to a private judge hearing the matter. Petitioner asserts these documents are necessary to prepare a settlement proposal.

Respondent filed a Responsive Declaration on May 26, 2022, requesting the court deny the Petitioner's request to compel documents and attorney fees. Respondent requests the court order Petitioner provide her recent retirement statements and the court award Family Code section 271 sanctions to Respondent. Respondent filed an updated Income and Expense Declaration on May 26, 2022. Petitioner was served by mail on May 26, 2022. Respondent asserts there is no need for the court to order production of the 401(k) statements as they have been provided to Petitioner's counsel. Respondent states he has provided all documents that have been requested. Respondent requests the court deny Petitioner's request for attorney fees as she has failed to show an actual need. Respondent requests Petitioner be ordered to pay Family Code Section 271 sanctions for bringing this motion and for failing to reach a settlement in this case.

The court orders each party to provide updated retirement account statements to the other on or before June 30, 2022. The statements shall be current through May 31, 2022.

The court finds that the parties' Income and Expense Declaration demonstrate that there is a disparity in monthly income, with Respondent earning substantially more than Petitioner each month prior to support. Following the support order, the disparity in income remains. Both parties list funds available to them in #11a of their Income and Expense Declaration, the court finds that Respondent does continue to have greater access to funds and ability to pay attorney's fees for both parties. The court orders Respondent to pay Petitioner \$1,200 as and for attorney fees within 30 days of this order, finding that this is sufficient to address Petitioner's request for Family Code section 2030 fees.

The court denies Respondent's request for Family code section 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.

TENTATIVE RULING #4: THE COURT ORDERS EACH PARTY TO PROVIDE UPDATED RETIREMENT ACCOUNT STATEMENTS TO THE OTHER ON OR BEFORE JUNE 15, 2022. THE STATEMENTS

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SHALL BE CURRENT THROUGH MAY 31, 2022. THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$1,200 AS AND FOR ATTORNEY FEES WITHIN 30 DAYS OF THIS ORDER, FINDING THAT THIS IS SUFFICIENT TO ADDRESS PETITIONER'S REQUEST FOR FAMILY CODE SECTION 2030 FEES. THE COURT DENIES RESPONDENT'S REQUEST FOR FAMILY CODE SECTION 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.

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5. DEBRA STANLEY V. ROBERT STANLEY

PFL20210202

On March 11, 2022, Respondent filed a Request for Order (RFO) requesting a change in parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on May 2, 2022 and a review hearing on June 9, 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, both parties appeared at the CCRC appointment as well as the minors. The parties were unable to reach any agreements. A report with recommendations was filed on May 19, 2022. A copy was mailed to parties on May 18, 2022.

Petitioner filed a Responsive Declaration on May 23, 2022. Respondent was served by mail on May 21, 2022. Petitioner requests the current orders remain in place. Petitioner also requests Respondent continue to participate in random drug and alcohol testing twice a month with Petitioner paying for all negative tests. Petitioner requests Rachael Ruiz provides family counseling.

The court finds Petitioner had actual notice of the RFO as she appeared at the CCRC appointment and has filed a Responsive Declaration.

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

The recommendations contained in the CCRC report are in the best interests of the minors and are adopted as the court's orders, with the following modifications. The minor I.S. shall determine whether she wants to see or speak with Respondent. Pending progress in family therapy, Respondent shall have parenting time in the Folsom or surrounding area from 10 am to 2 pm every Sunday. If Respondent is unable to commit to a weekly schedule, then his parenting time shall be on alternating Sundays. Paternal Grandmother shall supervise Respondent's parenting time. Paternal Grandmother shall abide by the Non-Professional Supervisor Guidelines. Prior to an increase in Respondent's parenting time, J.S. shall meet with a therapist who will introduce him to the changes in the schedule and will determine if the minor would benefit from further counseling to process the change. Respondent no longer needs to drug test, but if he is willing to do so, Petitioner shall pay for any negative tests and they shall not be more than twice a month. Respondent shall continue to participate in AA/NA meetings on a weekly basis and shall provide the court with proof of attendance. Respondent shall participate in individual therapy with a therapist who has experience working with substance abuse issues. Respondent shall attend at a frequency and duration as directed by the therapist. Respondent and L.S. shall participate in family therapy. Petitioner shall ensure the minor attends all scheduled appointments. Respondent and L.S. shall participate in family therapy at a frequency and duration as directed by the therapist. Petitioner shall provide

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Respondent with the name and contact information of three therapists on or before June 24, 2022. Respondent shall select one of the therapists on or before June 30, 2022. L.S. shall continue to participate in individual therapy. Petitioner and Respondent shall sign a release to allow the individual therapist to speak with the family therapist. The parties shall abide by the treatment recommendations and counseling appointments shall terminate only when the therapist deems it appropriate. The court adopts the remaining terms and conditions.

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

TENTATIVE RULING #5: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE CCRC REPORT AS MODIFIED ABOVE. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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7. JENNIFER COWELS V. BENJAMIN COWELS

PFL20180808

On April 22, 2022, the court confirmed June 9, 2022 for return of the previously ordered Family Code section 3111 report.

On April 28, 2022, Petitioner filed a Request for Order (RFO) requesting the court order bifurcation, retain a firm to prepare a QDRO, and attorney fees and costs. Respondent was served electronically on April 28, 2022. Petitioner is requesting the court grant a status only dissolution. Petitioner requests a division of the retirement accounts with an equal split of the fee to retain Moon, Schwartz, and Madden. Petitioner is requesting the remaining matter, property division, be set for trial. Petitioner has not filed a declaration regarding the request for attorney fees.

On May 19, 2022, Petitioner filed a Supplemental Brief re: Child support and Imputation of Income. Respondent was served electronically on May 18, 2022. Petitioner requesting the court impute additional income to Respondent, order \$5,000 in sanctions for violation of the ATROS by Respondent changing the beneficiary of his life insurance policy, and order Respondent to maintain a life insurance policy to guarantee child support until the youngest minor reaches 18.

Respondent filed a Response to Petitioner's Supplemental Brief on May 31, 2022. A Proof of Service filed June 6, 2022, shows Minors' Counsel was served by mail on May 30, 2022. There is no Proof of Service showing Petitioner was served. Therefore, the court has not considered this filing.

The court finds the issue of child support, sanctions, and order for life insurance are not currently properly before the court as they are outside the scope of the RFO. Therefore, those requests are denied.

Minors' Counsel filed a Statement of Issues and Contentions on June 1, 2022. Petitioner and Respondent were served electronically and by mail on June 1, 2022. Minors' Counsel requests the court order Petitioner to bring the minors to California to facilitate a face-to-face appointment with the 3111 evaluator. Minors' Counsel also requests the minors have professionally supervised visits with Respondent while in California.

The court grants Petitioner's request for bifurcation, parties are ordered to appear. The court orders parties to appear on the issue of the division of the retirement accounts. The court also orders parties to appear to select dates for a Mandatory Settlement Conference and trial on the property issues.

The court grants Minors' Counsel's request. Petitioner is ordered to bring the minors to California to participate in the 3111 evaluation as previously ordered. While in California the minors shall have professionally supervised visitation with Respondent. The court continues

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the review hearing for receipt of the Family Code section 3111 report to September 8th, 2022 at 8:30 AM.

The court denies the requests for imputation of income to Respondent, sanctions pursuant to Family Code section 271, order as to life insurance, as those are not properly before the court. The court denies Petitioner's request for attorney fees as she has failed to file any information regarding her need for attorney fees pursuant to Family Code section 2030. The court denies Respondent's request for Family Code section 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.

TENTATIVE RULING #7: THE COURT GRANTS PETITIONER'S REQUEST FOR BIFURCATION, PARTIES ARE ORDERED TO APPEAR. THE COURT ORDERS PARTIES TO APPEAR ON THE ISSUE OF THE DIVISION OF THE RETIREMENT ACCOUNTS. THE COURT ALSO ORDERS PARTIES TO APPEAR TO SELECT DATES FOR A MANDATORY SETTLEMENT CONFERENCE AND TRIAL ON THE PROPERTY ISSUES. THE COURT GRANTS MINORS' COUNSEL'S REQUEST. PETITIONER IS ORDERED TO BRING THE MINORS TO CALIFORNIA TO PARTICIPATE IN THE 3111 EVALUATION AS PREVIOUSLY ORDERED. WHILE IN CALIFORNIA THE MINORS SHALL HAVE PROFESSIONALLY SUPERVISED VISITATION WITH RESPONDENT. THE COURT CONTINUES THE REVIEW HEARING FOR RECEIPT OF THE FAMILY CODE SECTION 3111 REPORT TO SEPTEMBER 8TH, 2022 AT 8:30 AM. THE COURT DENIES THE REQUESTS FOR IMPUTATION OF INCOME TO RESPONDENT, SANCTIONS PURSUANT TO FAMILY CODE SECTION 271, ORDER AS TO LIFE INSURANCE, AS THOSE ARE NOT PROPERLY BEFORE THE COURT. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY FEES AS SHE HAS FAILED TO FILE ANY INFORMATION REGARDING HER NEED FOR ATTORNEY FEES PURSUANT TO FAMILY CODE SECTION 2030. THE COURT DENIES RESPONDENT'S REQUEST FOR FAMILY CODE SECTION 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.

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8. KIMBERLY DAVIS V. KEVIN DAVIS

PFL20150586

On March 30, 2022, Respondent filed an Order to Show Cause and Affidavit for Contempt. Upon review of the court file, there is no Proof of Service showing Petitioner was served with the Order to Show Cause. Therefore, the matter is dropped from the court's calendar.

TENTATIVE RULING #8: THE MATTER IS DROPPED FROM THE COURT'S CALENDAR DUE TO LACK OF SERVICE.

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9. KIP WEBBER V. KATHARINE WEBBER

PFL20180264

On March 10, 2022, Parties appeared for a hearing on child support. The court ordered Petitioner to pay Respondent child support and included a bonus table. The order was effective August 1, 2021. The court ordered parties to meet and confer regarding the bonus table and set a review hearing for June 9, 2022.

On May 26, 2022, Respondent filed a Declaration requesting corrections to the March 10, 2022 minute order. Respondent asserts the wrong timeshare was used in the DissoMaster calculation. Respondent asserts the timeshare should be 35% rather than 27.75%. Respondent requests the court provide new overtime/bonus tables utilizing the 35% time share Respondent assert is the actual time share. Respondent also request the effective date be corrected to reflect August 1, 2021, rather than August 1, 2022. Respondent also requests the overpayment be adjusted to reflect a 35% timeshare.

Petitioner has not filed a Supplemental Declaration.

The court finds the timeshare calculation was based on the actual time share of minors when averaged together. The eldest minor was spending less time with Respondent during the summer due to her age. Therefore, the court finds the March 10, 2022 DissoMaster is correct. Further, there is no pending motion for modification of the child support order, the matter was on calendar for review of the overtime/bonus payment.

The March 10, 2022 minute order was corrected to show the effective date of the child support order is August 1, 2021 in an amended minute order filed on May 24, 2022. The court further clarifies the child support order is set at \$1169 per month payable from Petitioner to Respondent, effective August 1, 2021. That order resulted in an overpayment of \$3728. The court ordered Child support payments of \$621 effective April 1, 2022 for the next six months (a reduction of \$548 per month) to compensate for the overpayment.

Respondent has filed a Request for Order (RFO) requesting payment of child support owed and calculation of overtime and bonus pay, along with other requested orders. That RFO is set for a hearing on July 21, 2022. The court finds it needs additional information about Petitioner's overtime and bonus income received. The court continues the review hearing on the overtime/bonus table to join with the RFO set for July 21, 2022. Petitioner is ordered to file an update Income and Expense Declaration, including any bonus or overtime he has earned from August 1, 2021 to June 1, 2022, no later than 10 days prior to the next hearing.

TENTATIVE RULING #9: THE MARCH 10, 2022 MINUTE ORDER WAS CORRECTED TO SHOW THE EFFECTIVE DATE OF THE CHILD SUPPORT ORDER IS AUGUST 1, 2021 IN AN AMENDED MINUTE ORDER FILED ON MAY 24, 2022. THE COURT CLARIFIES THE MARCH 10, 2022 MINUTE ORDER REGARDING CHILD SUPPORT. EFFECTIVE APRIL 1, 2022, CHILD SUPPORT IS REDUCED TO \$621

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PER MONTH FOR SIX MONTHS TO OFFSET THE PRIOR OVERPAYMENT. ALL OTHER REQUESTS RAISED BY RESPONDENT ARE DENIED. THE COURT CONTINUES THE REVIEW OF THE OVERTIME/BONUS TABLE TO JULY 21, 2022. PETITIONER IS ORDERED TO FILE AN UPDATED INCOME AND EXPENSE DECLARATION, INCLUDING ANY BONUS OR OVERTIME HE HAS EARNED FROM AUGUST 1, 2021 TO JUNE 1, 2022, NO LATER THAN 10 DAYS PRIOR TO THE NEXT HEARING.

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10. KRISTIN FRANCE V. JAMES FRANCE

PFL20170514

On January 13, 2022, the court adopted its tentative ruling, ordering Petitioner to submit to a vocational evaluation conducted by the prior evaluator or other evaluator as agreed upon by the parties. Respondent shall advance the cost of the evaluation, subject to reallocation. The court continued the matter to April 14, 2022 to receive the vocational evaluation and to consider a modification of child support with an imputation of income to Petitioner. The court reserved jurisdiction to modify child support back to April 8, 2021, the date of filing of the RFO.

On April 12, 2022, parties submitted a stipulation and order to continue the hearing to June 9, 2022.

There have been no additional filings in this matter.

Parties are ordered to appear.

TENTATIVE RULING #10: PARTIES ARE ORDERED TO APPEAR.

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11. P.Y. V. K. P.

22FL0166

On February 7, 2022, Petitioner filed a Petition to Establish a Paternal relationship. Respondent was personally served on February 13, 2022. Petitioner asserts he is presumed father of the minor, R.P. Petitioner signed a voluntary declaration of paternity at the time of the minor's birth.

On March 8, 2022, Respondent filed a Response to the Petition. Petitioner was served by mail and electronically on March 7, 2022. Respondent concurs Petitioner is the presumed father of the minor; in that he signed a voluntary declaration of paternity.

The court finds Petitioner to be the presumed father of the minor. The court orders a judgment of paternity be entered.

On March 18, 2022, Petitioner filed a Request for Order (RFO) requesting child custody and parenting time orders. Parties were not referred to Child Custody Recommending Counseling (CCRC). Respondent was served by mail on May 3, 2022. Petitioner is requesting joint legal and physical custody of the minor. Petitioner asserts Respondent has withheld the minor from him. Petitioner further asserts there are no safety concerns regarding him having custody of the minor. Petitioner states he provided care for the minor for approximately six months, while Respondent was working.

On May 26, 2022, Respondent filed a Responsive Declaration. Petitioner was served by mail on May 24, 2022. Respondent requests the court deny the request for joint physical and legal custody and order Respondent have sole physical and legal custody. Respondent asserts in her declaration the parties separated prior to the minor being born and Petitioner was not a present father for the first six months of the minor's life. Respondent asserts she remained home with the minor for the first five months of her life. Respondent states Petitioner has never been alone with the minor. The minor has attended daycare since Respondent returned to work on or about December 2, 2022. Respondent filed a request for a Domestic Violence Restraining Order (DVRO) on February 1, 2022. (The court takes judicial notice of case 22FL0092) A Temporary Restraining Order, including the minor as a protected party, was granted on February 2, 2022. The hearing on the DVRO was continued to July 12, 2022. Parties were referred to CCRC at the April 22, 2022 DVRO hearing for an appointment on May 26, 2022 and a review hearing on July 12, 2022.

The court continues the request for custody and parenting time to join with the DVRO hearing set for July 12, 2022 at 8:30 in Department 5.

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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TENTATIVE RULING #11: THE COURT FINDS PETITIONER TO BE THE PRESUMED FATHER OF THE MINOR. THE COURT ENTERS A JUDGMENT OF PATERNITY. THE COURT CONTINUES THE REQUEST FOR CUSTODY AND PARENTING TIME TO JOIN WITH THE DVRO HEARING SET FOR JULY 12, 2022 AT 8:30 IN DEPARTMENT 5. 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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12. REBECCA FISHER V. BENJAMIN FISHER

PFL20100856

On March 29, 2022, Respondent filed a Request for Order (RFO) requesting the court set aside the Domestic Violence Restraining Order granted on March 25, 2022. Upon review of the court file, there is no Proof of Service showing Petitioner was served with the RFO. Therefore, the matter is dropped from the court's calendar.

TENTATIVE RULING #12: THE MATTER IS DROPPED FROM THE COURT'S CALENDAR.