

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 1, 2022

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

**1. B.J. V. D.C.**

**22FL0814**

The court previously issued a tentative ruling on November 16, 2022. The court received a request for oral argument. As set forth in the prior tentative ruling, oral arguments will be heard on December 1, 2022 at 8:30 a.m.

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**2. CARLA VOCATURA V. JOHN VOCATURA**

**22FL0074**

Petitioner filed a Request for Order (RFO) on September 9, 2022, seeking orders for child custody and visitation, child support, spousal support, property control/disposition, and bifurcation. The parties were scheduled to attend Child Custody Recommending Counseling (CCRC) on October 10<sup>th</sup> but the RFO was not served until October 18, 2022. It does not appear that Respondent was served with the CCRC referral form. Respondent did not appear at CCRC, nor has he filed a response to the RFO.

Petitioner attended CCRC as scheduled. However, because only one party participated CCRC was unable to make any recommendations.

Property Control and Disposition of Marital Residence

Petitioner would like the marital residence, located on Kinkead Street in El Dorado Hills (the "Marital Residence"), declared community property. For the time being she would like exclusive use and control of the residence and is willing to be responsible for maintaining payments on the mortgage. In addition to control of the residence, she is seeking exclusive use and control of a 2016 Mazda CX5 which she refers to as her separate property.

In addition to the property control orders, Petitioner asks for an order directing the marital home to be offered for sale no later than 30 days from the date of the court order and sold for fair market value as soon as a willing buyer can be found. She requests the following orders be made in relation to the sale: (1) Respondent ordered to take no action which would delay, hinder, or otherwise prevent the sale including actions which prevent Petitioner from cleaning the home, showing the home, or making it ready for sale; (2) Parties to cooperate with the real estate professional to make the home available for showing, accept reasonable offer(s), and for Respondent to communicate with the real estate professional in a brief and peaceful manner; (3) Parties to sign all necessary documents related to the sale of the home; (4) Net proceeds from the sale to be equally divided, less reimbursement to Petitioner for the cost of maintenance fees and reasonable repairs or improvements which are subject to proof; (5) If the parties cannot agree as to the reimbursement amount, then funds from the sale of the home to be placed in the Attorney Trust Account of Petitioner's counsel until further written agreement of the parties or further order of the court; (6) The court to reserve jurisdiction over all aspects of the sale and distribution of the net sales proceeds. This includes jurisdiction to order the clerk of court to act as elisor for Respondent's signature if necessary.

Currently the parties are residing together, with their children, in the marital home. According to Petitioner, this living situation is wrought with strife and is unhealthy for herself and the children. She states that Respondent is harassing and volatile and she feels unsafe

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being in the home with him. She would like Respondent ordered to move out of the marital residence and take his dog Gimli with him. Further, she proposes that Respondent be awarded the Sequoia, which was purchased during the marriage but is the vehicle Respondent regularly drives. In exchange, she would like to keep the Mazda CX5 which, according to Petitioner, was purchased after the couple already separated and is in Petitioner's name only.

Regarding the sale of the house, Petitioner states that Respondent is actively against doing so and he has expressed his intention to drag out the proceedings as long as possible. Title to the home is in the name of both parties as "husband and wife as Joint Tenants," though the mortgage is solely in Petitioner's name. With the mortgage in her name, Petitioner maintains that she alone pays the mortgage, the property taxes, income taxes and many of the remaining household bills.

It is a longstanding tenant of the law that the form in which title to a property is held gives a rise to a rebuttable presumption of its status. Fam. Code §§ 760 and 2581; *see also* Cal. Evidence Code §662. Inherent in the court's authority to ensure that community assets are divided equally, the court holds broad discretion to "...make any orders [it] considers necessary.." Fam. Code § 2553. This includes ordering the sale and division of proceeds of the marital residence. Marriage of Holmgren, 60 Cal. App. 3d 869 (1976); *See also* In re Marriage of Horowitz, 159 Cal. App. 3d 368 (1984).

Petitioner argues that the marital residence is community property. To support that assertion, she provides copies of the grant deed showing title held by both parties as joint tenants. The court finds this is sufficient to give rise to the presumption of community property. Respondent has made no effort to rebut this presumption or provide any opposition to Petitioner's requested orders. Further, based on the filings, it appears the current living situation is not only detrimental to the emotional and psychological wellbeing of Petitioner, but also to the wellbeing of the children. Accordingly, Petitioner is awarded sole use, possession, and control of the marital residence subject to Watts/Epstein credits. Respondent is ordered to move himself and his dog Gimli, out of the residence no later than January 1, 2023. Petitioner is ordered to continue making timely and complete mortgage and insurance payments on the home. Further, Petitioner is awarded exclusive use, possession, and control of the Mazda CX5 and Respondent is awarded the same with regard to the Sequoia. The court reserves jurisdiction on the issue of characterization and ownership of the vehicles subject to proof at trial.

The parties are ordered to place the house up for sale with a real estate agent or broker no later than January 1, 2023. The parties are ordered to take no action which would delay, hinder, or otherwise prevent the sale, including actions which would prevent cleaning, repairs, and maintenance or showing of the home in furtherance of its sale. The parties are ordered to

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cooperate with the real estate professional to make the home available for showings and to communicate with the real estate professional as needed. The parties are ordered to accept any reasonable offer for the purchase of the home if one is received. The parties are to sign all documents related to the sale of the home in a timely manner. Net proceeds of the sale are to be placed in the Attorney Trust Account of Petitioner's counsel until written agreement of the parties or until court order to release the proceeds. The court reserves jurisdiction over all aspects of the sale and distribution of the net proceeds of the sale, including, but not limited to, the court's authority to direct the clerk to act as elisor for Respondent's signature if necessary.

Bifurcation

Petitioner is seeking to bifurcate and terminate the marital status. The parties may address this issue at the trial currently set for December 20, 2022.

Child Custody/Visitation and Child Support

Petitioner is seeking sole custody and visitation of the minor children. They have expressed their desire to live with her and she states that the girls are old enough to choose whether or not to visit their father. Given Respondent's excessive drinking and volatile behavior, Petitioner states that it is important for the minors to have the flexibility to set emotional and physical boundaries as needed.

In addition to the custody and visitation orders, Petitioner would like guideline child support. Though she acknowledges there will be an offset for the Social Security Disability derivative benefits they receive as a result of his disability.

Given that Respondent was not properly served with the CCRC referral, the parties are re-referred to CCRC with an appointment on 12/9/2022 @ 9:00 am. The issues of child custody and child support are continued to be heard on 2/16/2023 at 8:30 a.m. in Department 5. The parties are ordered to file and serve updated Income and Expense declarations and any supplemental declarations no later than 10 days prior to the hearing date. The court reserves jurisdiction to award child support back to the date of filing of the RFO.

Spousal Support

Petitioner acknowledges she may have a temporary spousal support obligation to Respondent, but she is willing to pay it as long as he moves out of the marital residence. She would like a trial set to determine long term spousal support thereafter.

Respondent has not filed an Income and Expense Declaration and the declaration filed by Petitioner is dated May of 2022, which is not current. Prior to calculating spousal support, the court is in need of current declarations from both parties. Further, child support must be calculated prior to making an award of spousal support. Accordingly, the issue of spousal

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support is continued to be heard on 2/16/2023 at 8:30 a.m. in Department 5. The parties are ordered to file and serve updated Income and Expense declarations no later than 10 days prior to the hearing date. The court reserves jurisdiction to award spousal support back to the date of filing of the RFO.

**TENATIVE RULING #2: PETITIONER IS AWARDED SOLE USE, POSSESSION, AND CONTROL OF THE MARITAL RESIDENCE SUBJECT TO WATTS/EPSTEIN CREDITS. RESPONDENT IS ORDERED TO MOVE HIMSELF AND HIS DOG GIMLI, OUT OF THE RESIDENCE NO LATER THAN JANUARY 1, 2023. PETITIONER IS ORDERED TO CONTINUE MAKING TIMELY AND COMPLETE MORTGAGE AND INSURANCE PAYMENTS ON THE HOME. FURTHER, PETITIONER IS AWARDED EXCLUSIVE USE, POSSESSION AND CONTROL OF THE MAZDA CX5 AND RESPONDENT IS AWARDED THE SAME WITH REGARD TO THE SEQUOIA. THE COURT RESERVES JURISDICTION ON THE ISSUE OF CHARACTERIZATION AND OWNERSHIP OF THE VEHICLES SUBJECT TO PROOF AT TRIAL. THE PARTIES ARE ORDERED TO PLACE THE HOUSE UP FOR SALE WITH A REAL ESTATE AGENT OR BROKER NO LATER THAN JANUARY 1, 2023. THE PARTIES ARE ORDERED TO TAKE NO ACTION WHICH WOULD DELAY, HINDER, OR OTHERWISE PREVENT THE SALE, INCLUDING ACTIONS WHICH WOULD PREVENT CLEANING, REPAIRS, AND MAINTENANCE OR SHOWING OF THE HOME IN FURTHERANCE OF ITS SALE. THE PARTIES ARE ORDERED TO COOPERATE WITH THE REAL ESTATE PROFESSIONAL TO MAKE THE HOME AVAILABLE FOR SHOWINGS AND TO COMMUNICATE WITH THE REAL ESTATE PROFESSIONAL AS NEEDED. THE PARTIES ARE ORDERED TO ACCEPT ANY REASONABLE OFFER FOR THE PURCHASE OF THE HOME IF ONE IS RECEIVED. THE PARTIES ARE TO SIGN ALL DOCUMENTS RELATED TO THE SALE OF THE HOME IN A TIMELY MANNER. NET PROCEEDS OF THE SALE ARE TO BE PLACED IN THE ATTORNEY TRUST ACCOUNT OF PETITIONER'S COUNSEL UNTIL WRITTEN AGREEMENT OF THE PARTIES OR UNTIL COURT ORDER TO RELEASE THE PROCEEDS. THE COURT RESERVES JURISDICTION OVER ALL ASPECTS OF THE SALE AND DISTRIBUTION OF THE NET PROCEEDS OF THE SALE, INCLUDING, BUT NOT LIMITED TO, THE COURT'S AUTHORITY TO DIRECT THE CLERK TO ACT AS ELISOR FOR RESPONDENT'S SIGNATURE IF NECESSARY. THE PARTIES MAY ADDRESS A STATUS-ONLY JUDGMENT AT THE TRIAL CURRENTLY SET FOR DECEMBER 20, 2022. THE PARTIES ARE RE-REFERRED TO CCRC WITH AN APPOINTMENT ON 12/9/2022 @ 9:00 THE ISSUES OF CHILD CUSTODY AND CHILD SUPPORT ARE CONTINUED TO BE HEARD ON 2/16/2023 AT 8:30 A.M. IN DEPARTMENT 5. THE ISSUE OF SPOUSAL SUPPORT IS CONTINUED TO BE HEARD ON THE SAME DATE AS CHILD CUSTODY AND CHILD SUPPORT. THE PARTIES ARE ORDERED TO FILE AND SERVE UPDATED INCOME AND EXPENSE DECLARATIONS AND ANY SUPPLEMENTAL DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. THE COURT RESERVES JURISDICTION TO AWARD CHILD SUPPORT AND SPOUSAL SUPPORT BACK TO THE DATE OF FILING OF THE RFO.**

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**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO LEWIS V. SUPERIOR COURT*, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07**

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**3. CASSANDRA THORP V. ANTWON LILES**

**22FL0592**

Petitioner filed a Temporary Restraining Order (TRO) on June 29, 2022 which was set for hearing on July 22, 2022. As of the July hearing date, the court continued the matter and extended the TRO to August 26, 2022. On August 26<sup>th</sup> the parties submitted a stipulation to the court and the matter was once again continued to September 16<sup>th</sup>. At the September 16<sup>th</sup> hearing, the parties again submitted a stipulation to the court which was adopted and became the order of the court. The parties stipulated to various issues regarding the restraining order and the minor children; they also requested referral to Child Custody Recommending Counseling (CCRC) with a review hearing. In accordance with the terms of the stipulation, the parties were referred to attend CCRC on October 6<sup>th</sup> and a review hearing was set for the present date.

The parties attended CCRC as scheduled. A report was issued on October 17<sup>th</sup> and mailed to the parties the next day. CCRC made recommendations regarding legal custody, parenting time, transportation for visits, and additional provisions.

On November 23<sup>rd</sup> Respondent filed a Supplemental Declaration which was served by mail the day prior. In his supplemental declaration, Respondent requests the following orders: (1) Respondent removed from supervised time and have the children unsupervised for four hours every weekend with the remainder of the step-up plan as recommended by CCRC; (2) Alternatively, Respondent to stay on agency supervised visitation for 30 days after the hearing date and then move to unsupervised visits; (2) Alternatively, non-agency supervised visits to be supervised by Respondent's mother or fiancé; (3) The children's last name to be changed to Liles-Thorp; (4) Neither parent to speak negatively about the other or coach the children; (4) Visitation with the children to occur in Sacramento County; (5) Respondent be allowed to take his mother and fiancé to visitation with the children after the date of the hearing.

The court has reviewed the aforementioned filings and finds the recommendations contained in the CCRC report to be in the best interests of the minor children, with some adjustments. The court hereby adopts the recommendations contained in the CCRC report as the orders of the court with the following modifications:

The Parenting Time section of the CCRC report shall be amended to read - (1) Petitioner shall have primary physical custody of the children; (2) Commencing immediately, Respondent shall have professionally supervised weekly visits with the children on Saturday or Sunday for up to 3 hours per visit. Petitioner and Respondent are to split the cost of supervised visitation equally. If the parties are unable to afford the cost of supervised visitation, the parties may mutually agree to visitation supervised by Respondent's mother. Visits are to alternate weekly between Sacramento County and El Dorado County; (3) After 30 days of professionally supervised visits (or non-professionally supervised if mutually agreed upon), Respondent may

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have non-professionally supervised visitation with his mother acting as supervisor on a weekly basis on either Saturday or Sunday for up to 3 hours. Visits are to alternate weekly between Sacramento County and El Dorado County; (4) After 60 days of non-professionally supervised visits, Respondent may have unsupervised visitation on a weekly basis on either Saturday or Sunday for four hours per visit with visits alternating between Sacramento County and El Dorado County; (5) After 30 days of four hour visits, Respondent's non-supervised visitation will increase to six hours on either Saturday or Sunday with visits alternating between Sacramento County and El Dorado County. Respondent's fiancé may begin attending visits at this stage; (6) After 30 days of six-hour visits, Respondent shall have visitation from Saturday at 2:00pm until Sunday at 2:00pm (24-hours) every other weekend; (7) After 30 days of 24-hour visits, Respondent's visitation shall increase to visits on alternate weekends from Friday after school (or 3pm if no school) until Sunday at 6:00pm.

The Additional Provisions section of the CCRC report shall be amended to include Respect Guidelines stating: (1) Neither parent shall make disparaging remarks about the other parent in the presence of the children or within earshot of the children; (2) Parents are to ensure that extended family, relatives, friends, or significant others do not make disparaging remarks about the parents in the presence of the children or within earshot of the children; (3) Parents shall not discuss custody issues with the children nor coach the children in this regard.

Regarding Respondent's request that the last name of the children be changed, this request is outside the scope of the pending hearing. "[U]nrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300)..." Cal. Rule Ct. § 5.92(g)(2). The parties were referred to CCRC to establish a visitation schedule. Prior to the CCRC appointment there is no reference to a request to change the names of the children. Accordingly, Respondent's request is denied without prejudice.

**TENTATIVE RULING #3: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE CCRC REPORT AS THE ORDERS OF THE COURT WITH THE FOLLOWING MODIFICATIONS: THE PARENTING TIME SECTION OF THE CCRC REPORT SHALL BE AMENDED TO READ - (1) PETITIONER SHALL HAVE PRIMARY PHYSICAL CUSTODY OF THE CHILDREN; (2) COMMENCING IMMEDIATELY, RESPONDENT SHALL HAVE PROFESSIONALLY SUPERVISED WEEKLY VISITS WITH THE CHILDREN ON SATURDAY OR SUNDAY FOR UP TO 3 HOURS PER VISIT. PETITIONER AND RESPONDENT ARE TO SPLIT THE COST OF SUPERVISED VISITATION EQUALLY. IF THE PARTIES ARE UNABLE TO AFFORD THE COST OF SUPERVISED VISITATION, THE PARTIES MAY MUTUALLY AGREE TO VISITATION SUPERVISED BY RESPONDENT'S MOTHER. VISITS ARE TO ALTERNATE WEEKLY BETWEEN SACRAMENTO COUNTY AND EL DORADO COUNTY; (3) AFTER 30 DAYS OF PROFESSIONALLY SUPERVISED VISITS (OR NON-PROFESSIONALLY SUPERVISED IF MUTUALLY AGREED UPON), RESPONDENT MAY HAVE NON-PROFESSIONALLY SUPERVISED VISITATION WITH HIS MOTHER ACTING AS SUPERVISOR ON A WEEKLY BASIS ON EITHER**



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**SATURDAY OR SUNDAY FOR UP TO 3 HOURS. VISITS ARE TO ALTERNATE WEEKLY BETWEEN SACRAMENTO COUNTY AND EL DORADO COUNTY; (4) AFTER 60 DAYS OF NON-PROFESSIONALLY SUPERVISED VISITS, RESPONDENT MAY HAVE UNSUPERVISED VISITATION ON A WEEKLY BASIS ON EITHER SATURDAY OR SUNDAY FOR FOUR HOURS PER VISIT WITH VISITS ALTERNATING BETWEEN SACRAMENTO COUNTY AND EL DORADO COUNTY; (5) AFTER 30 DAYS OF FOUR HOUR VISITS, RESPONDENT'S NON-SUPERVISED VISITATION WILL INCREASE TO SIX HOURS ON EITHER SATURDAY OR SUNDAY WITH VISITS ALTERNATING BETWEEN SACRAMENTO COUNTY AND EL DORADO COUNTY. RESPONDENT'S FIANCÉ MAY BEGIN ATTENDING VISITS AT THIS STAGE; (6) AFTER 30 DAYS OF SIX HOUR VISITS, RESPONDENT SHALL HAVE VISITATION FROM SATURDAY AT 2:00PM UNTIL SUNDAY AT 2:00PM (24-HOURS) EVERY OTHER WEEKEND; (7) AFTER 30 DAYS OF 24-HOUR VISITS, RESPONDENT'S VISITATION SHALL INCREASE TO VISITS ON ALTERNATE WEEKENDS FROM FRIDAY AFTER SCHOOL (OR 3PM IF NO SCHOOL) UNTIL SUNDAY AT 6:00PM. THE ADDITIONAL PROVISIONS SECTION OF THE CCRC REPORT SHALL BE AMENDED TO INCLUDE RESPECT GUIDELINES STATING: (1) NEITHER PARENT SHALL MAKE DISPARAGING REMARKS ABOUT THE OTHER PARENT IN THE PRESENCE OF THE CHILDREN OR WITHIN EARSHOT OF THE CHILDREN; (2) PARENTS ARE TO ENSURE THAT EXTENDED FAMILY, RELATIVES, FRIENDS, OR SIGNIFICANT OTHERS DO NOT MAKE DISPARAGING REMARKS ABOUT THE PARENTS IN THE PRESENCE OF THE CHILDREN OR WITHIN EARSHOT OF THE CHILDREN; (3) PARENTS SHALL NOT DISCUSS CUSTODY ISSUES WITH THE CHILDREN NOR COACH THE CHILDREN IN THIS REGARD. RESPONDENT'S REQUEST TO HAVE THE NAMES OF THE CHILDREN CHANGED IS DENIED WITHOUT PREJUDICE. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**4. ERIN TOMPKINS V. ERIC TOMPKINS**

**PFL20190865**

On September 19, 2022, Petitioner filed a Request for Order (RFO) and Petitioner's Statement in Support of Request for Modification of Child Custody and Visitation Orders. There does not appear to be a Proof of Service on file, however Respondent has filed responsive documents without raising an objection regarding service. Accordingly, the court finds good cause to address the RFO on the merits.

By way of her RFO, Petitioner seeks to modify current child custody and visitation orders. She is also requesting an order restricting the maternal grandmother's time with the children and an order changing the school attended by the children commencing the next school year. On September 30, 2021, the parties stipulated to custody and visitation. The stipulation stated that the orders were intended to be "final orders." Currently Petitioner has the children from Thursday after school (3pm) until Sunday at 9:00am on alternating weekends. Petitioner would like visitation with the children from Thursday through Monday on the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> weekends of each month until June 2023 when the girls begin summer break. Thereafter, she would like to the girls to attend school in Cameron Park, where Petitioner resides.

The parties attended Child Custody Recommending Counseling (CCRC) on October 13, 2022. A report was prepared on October 23<sup>rd</sup> wherein the CCRC counselor made a variety of recommendations as stated in the report.

On November 15<sup>th</sup> Respondent filed and served a Responsive Declaration to Request for Order. Respondent asks the court to adopt the CCRC recommendations with the following modifications: (1) Contact with Shawn Burton (Petitioner's boyfriend) section to read: Petitioner shall not allow Shawn Burton, her boyfriend, to contact the children via cell phones for any reason or be in the presence of the children during Petitioner's parenting time; (2) Alcohol or Substance Abuse section to read: Petitioner may not consume alcoholic beverages, narcotics, or restricted dangerous drugs (except by prescription) within 24 hours before or during her parenting time; and may not permit any third party who lives with her or is in a romantic relationship with her to do so in the presence of the children; (3) All previous orders not in conflict with the court's current orders (holidays, vacations, communication with parents, etc.) to remain in full force and effect.

Petitioner filed Petitioner's Response to CCRC Recommendations on November 21, 2022. Petitioner feels that the CCRC counselor was favoring Respondent. She requests the court decline adopting the CCRC recommendations and instead institute a 3-4-4-3 schedule beginning with Petitioner to have the first three days and then alternating from there. Or, in the alternative, she asks the court to institute any plan in which equal custody time is ordered. She also notes that the parties have agreed to enroll the children in school closer to each of their workplaces.

As noted in Petitioner's response declaration, it is the policy of the state to ensure that children have frequent and continuing contact with both parents. Fam. Code §3020. However, "frequent and continuing contact" has not been construed as requiring a visitation schedule with equal timeshares. Instead, the court's primary concern is to ensure the health, safety, and welfare of the children. *Id.* In fact, the "frequent and continuing contact" policy gives way where the court deems such contact to be adverse to the best interests of the child. *Id.* Additionally, once there has been a final judgment

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regarding the best interest of a child in a child custody proceeding, there becomes an additional public policy consideration to promote a stable and consistent custody arrangement. Keith R. v. Sup. Ct., 174 Cal. App. 4<sup>th</sup> 1047 (2009); *See also In re Marriage of Battenburg*, 28 Cal. App. 4<sup>th</sup> 1338.

Paragraph 18 of the September 30, 2021 stipulation specifically states that the custody provisions therein are intended to be final orders of the court. Stip. for Child Custody and Visitation of the Minor Children ¶17, September 30, 2021. "If either party desires to modify the custody or visitation provisions of this agreement, the applicable test shall be a 'significant change of circumstances,' as that term is used and defined both statutorily and in case law." *Id.* In keeping with the stipulation of the parties, "...once it has been established that a particular custodial arrangement is in the best interests of the child, the court need not reexamine that question. Instead, it should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child's best interest." Montenegro v. Diaz, 26 Cal. 4<sup>th</sup> 249, 294 (2001) *citing Burchard v. Caray*, 42 Cal. 3d 531 (1986).

Here, it does not appear that there has been a change in circumstances sufficient to warrant changing the previously established court orders. The problem, according to Petitioner, is that Respondent is not adhering to the previously ordered schedule. Further, she notes that she was of the impression that the current schedule would allow her 50/50 visitation. However, she was aware of the schedule at the time she signed the stipulation and she still agreed to it. In other words, she had all of the information then that she has now. Thus, this does not constitute a change in circumstances sufficient to amend the custody orders.

Even if the court were to apply the best interests of the minor standard, the result remains the same. While Petitioner is correct in her statement that Family Code Section 3011 provides factors the court is to consider in determining the best interests of the minor, the court is also to consider the child's preference if the child "is of sufficient age and capacity to reason so as to form an intelligent preference." Fam. Cod. § 3042(a); *See also In re Aljamie D.*, 84 Cal. App. 4<sup>th</sup> 424 (2000) (children aged 9 and 11 testified as to their preference to live with their mother). Here, the children (ages 13 and 9) have resided primarily with their father for quite some time. They both noted a strong bond with him and their preference to reside with him.

The court finds that neither the changed circumstances nor the best interest standard would warrant increasing the current visitation schedule as requested by Petitioner. Likewise, the court sees no need to amend visitation as proposed by the CCRC report. All current custody and visitation orders are to remain in full force and effect. The parties are admonished to abide by the court's orders. Additionally, neither party is to operate a motor vehicle while under the influence of any alcoholic beverages, narcotics, or restricted or dangerous drugs (except with valid prescription) with the children in or around the car or allow any friend, relative or significant other to do so.

Petitioner's request to restrict the maternal grandmother's time with the children is denied. From the record, the court finds no reason to believe that the children spending time with the maternal grandmother is a detriment to their health, welfare, or safety.

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Respondent's request for a no-contact order between the children and Shawn Burton is denied. Again, there has been no showing that Mr. Burton's presence is a danger to the children. While they may not particularly enjoy time with him, this is not uncommon in blended family situations. Notwithstanding the foregoing, Mr. Burton is not to contact the children via their cell phones for any reason.

**TENTATIVE RULING #4: ALL CURRENT CUSTODY AND VISITATION ORDERS ARE TO REMAIN IN FULL FORCE AND EFFECT. THE PARTIES ARE ADMONISHED TO ABIDE BY THE COURT'S ORDERS. NEITHER PARTY IS TO OPERATE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ANY ALCOHOLIC BEVERAGES, NARCOTICS, OR RESTRICTED OR DANGEROUS DRUGS (EXCEPT WITH VALID PRESCRIPTION) WITH THE CHILDREN IN OR AROUND THE CAR OR ALLOW ANY FRIEND, RELATIVE OR SIGNIFICANT OTHER TO DO SO. PETITIONER'S REQUEST TO RESTRICT THE MATERNAL GRANDMOTHER'S TIME WITH THE CHILDREN IS DENIED. RESPONDENT'S REQUEST FOR A NO-CONTACT ORDER BETWEEN THE CHILDREN AND SHAWN BURTON IS DENIED. HOWEVER, MR. BURTON IS NOT TO CONTACT THE CHILDREN VIA THEIR CELL PHONES FOR ANY REASON. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**6. JARED DENNIS V. AMORE BISHOP**

**PFL20160085**

On September 3, 2021, Respondent filed a Request for Order (RFO) asking the court to modify the custody and visitation orders, specifically to start the reunification process. The court continued the issue to March 10, 2022 at 8:30 to review the request for reunification and visitation.

In the interim, on December 7, 2021 Respondent filed an RFO again requesting reunification and visitation. A hearing was set for the RFO on February 24, 2022.

On February 9, 2022, Petitioner filed a Responsive Declaration requesting the matter be continued past the date for trial on the confidential probate matter, which was set for April 5, 2022. Respondent filed a Declaration in support of the RFO on February 15, 2022 reiterating the same requests from her previous filings.

On February 24, 2022 the court continued the hearing to join with the RFO set for May 12, 2022. Respondent filed a Supplemental Declaration on April 26, 2022. The Supplemental Declaration raised the same arguments as previous declarations. The May 12<sup>th</sup> hearing was once again continued to trail the confidential probate matter. The hearing was set for July 14, 2022.

Respondent filed a Declaration on July 5, 2022 asserting that Petitioner has a substance abuse problem. Respondent renewed her request that the court begin the reunification process with the minor. Petitioner filed a Supplemental Declaration on July 7, 2022 again requesting the court continue the hearing as the trial on the confidential matter was still pending. The court granted Petitioner's request and continued the matter to the present hearing date.

On July 15<sup>th</sup>, Respondent filed a Declaration with several attachments. However, there is no Proof of Service on file for this document. As such, it cannot be considered.

Respondent filed and served an additional declaration on November 22<sup>nd</sup> updating the court on the status of the confidential proceedings and directing the court to review Jamie Miller's letter attached to her July 15<sup>th</sup> filing.

Petitioner has not filed a reply.

On November 8, 2022, the confidential matter was heard and ruled upon. The court finds it is now proper to rule on the merits of the RFO.

It is the policy of the state to ensure that children have frequent and continuing contact with both parents so long as the contact with each parent is in the best interest of the minor. Fam. Code § 3020. It is well documented that children benefit from contact with both parents

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where the contact is not detrimental to the health, safety, and welfare of the child. It does not appear that beginning the reunification process between the minor and Respondent would be detrimental to the minor. Respondent was previously ordered to provide the court with various documentation verifying completion of, and participation in, services offered through Sacramento County Child Protective Services. Respondent has done so to the satisfaction of the court.

In light of the foregoing, Respondent and the minor are to commence reunification therapy with Jaime Miller at a frequency and duration as recommended by Ms. Miller. The parties are to comply with all requests and treatment plans established by the therapist. Respondent is to pay the cost of therapy. A review hearing is set for 3/2/2023 @ 8:30 AM to address the status of the reunification process. The parties are ordered to file supplemental declarations updating the court on the reunification progress no later than 10 days prior to the hearing date.

**TENTATIVE RULING #6: RESPONDENT AND THE MINOR ARE TO COMMENCE REUNIFICATION THERAPY WITH JAIME MILLER AT A FREQUENCY AND DURATION AS RECOMMENDED BY MS. MILLER. THE PARTIES ARE TO COMPLY WITH ALL REQUESTS AND TREATMENT PLANS ESTABLISHED BY THE THERAPIST. RESPONDENT IS TO PAY THE COST OF THERAPY. A REVIEW HEARING IS SET FOR 3/2/2023 at 8:30 AM TO ADDRESS THE STATUS OF THE REUNIFICATION PROCESS. THE PARTIES ARE ORDERED TO FILE SUPPLEMENTAL DECLARATIONS UPDATING THE COURT ON THE REUNIFICATION PROGRESS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07**

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**7. JENNIFER WYMAN RUSH V. SETH WYMAN RUSH**

**22FL0106**

The court previously issued a tentative ruling on November 16, 2022. The parties were ordered to appear. As set forth in the prior tentative ruling, oral arguments will be heard on December 1, 2022 at 8:30 a.m.

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

**10. KIMBERLY NEWKIRK CLINE V. MICHAEL KEVIN CLINE**

**PFL20120356**

The court previously issued a tentative ruling on November 16, 2022. The court received a request for oral argument. As set forth in the prior tentative ruling, oral arguments will be heard on December 1, 2022 at 8:30 a.m.



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

**11. KIP WEBER V. KATHARINE WEBER**

**PFL20180264**

The court previously issued a tentative ruling on November 16, 2022. The parties were ordered to appear. As set forth in the prior tentative ruling, oral arguments will be heard on December 1, 2022 at 8:30 a.m.

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**12. MEGAN WILLIAMS V. KEITH WILLIAMS**

**PFL20180024**

On September 13, 2022, Petitioner filed a Request for Order (RFO) asking the court to suspend visits with Respondent pending further order of the court, and a referral to Child Custody Recommending Counseling (CCRC) which is to include an interview with the youngest child. This RFO is a follow up to the ex parte request filed by Petitioner on September 12th. On that request the court ordered the parties to attend CCRC with the minors to be interviewed. Respondent's professionally supervised visits were allowed to continue pending a hearing on the RFO; however, visits were ordered to be immediately terminated and the remainder of the visits forfeited if there was any violation of the visitation guidelines.

Currently Respondent has supervised visits with the minors twice per month, which, according to Petitioner, have not gone well. She notes one visit that resulted in Respondent losing his temper and yelling at the supervisor. She states that Respondent has recently pled guilty to a charge of child endangerment. Trial on the issue of child custody is currently scheduled for February 28, 2023. Given Respondent's recent behavior she feels that continued visits are detrimental to the children and she would like all visits suspended until a custody determination is made at trial. She asserts Minor's Counsel's agreement with the requested orders.

Respondent filed a Responsive Declaration to Request for Order on September 12<sup>th</sup>. It was served electronically on the 9<sup>th</sup> of that month. Respondent asks the court to deny Petitioner's request to suspend visitation and admonish her for failing to comply with the court ordered supervised visits. He states that Petitioner often cancels or reschedules visits and she recently withheld one of the minors from a visit claiming that he was sick. He feels that Petitioner is attempting to alienate the children from him. He also notes that, on the advice of counsel, he pled no-contest to the criminal charges filed against him.

Declaration of Keith Williams in Support of Strong Admonishment of Mother and Custody Change was filed on October 11<sup>th</sup>. It was served on the 6<sup>th</sup>. In his declaration, Respondent asks the court to consider changing custody altogether, though he does not specify what changes he would like made. He states that after the court's denial of Petitioner's ex parte request on September 13<sup>th</sup>, Petitioner has continued to refuse to allow Respondent's visits with the children to resume. Attached to Respondent's declaration, he provides supervisor notes from the August 30<sup>th</sup> and August 31<sup>st</sup> visits he had with the children.

The parties attended CCRC on November 3<sup>rd</sup>. A report was issued thereafter on November 21<sup>st</sup>. According to CCRC the youngest child stated that she does not like the visits with Respondent and she does not wish to see him at all. She said that at the August 31<sup>st</sup> visit, Respondent began screaming at the supervising staff, which was a trigger for her. The older child also stated that he does not like attending the supervised visits and he does not want to

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have any visitation with Respondent. Both children indicated that they had no desire to participate in therapy with Respondent. CCRC made recommendations regarding legal custody, parenting time, and counseling.

After reviewing the aforementioned filings, the court finds the recommendations contained in the CCRC report to be in the best interest of the children and hereby adopts them as the orders of the court. All prior orders not in conflict with this order are to remain in full force and effect.

**TENTATIVE RULING #12: THE COURT FINDS THE RECOMMENDATIONS CONTAINED IN THE CCRC REPORT TO BE IN THE BEST INTEREST OF THE CHILDREN AND HEREBY ADOPTS THEM AS THE ORDERS OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07**

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**13. SARAH PINNELL V. RICHARD PINNELL**

**PFL20170430**

Respondent filed a Request for Order (RFO) on September 20, 2022. It was served via mail the next day. In March of 2022, Respondent filed a motion to prevent Petitioner from moving the children to Vacaville. Respondent did not understand the tentative ruling process and did not provide proper notice to request a hearing. The court adopted its tentative ruling dated March 23, 2022. Respondent now requests a move away analysis and a change in custody to have the minor children reside primarily with him in Grass Valley. He states there were several incorrect statements in the CCRC report that the court had previously adopted. He also states that he is no longer considering moving away from Grass Valley. The court notes this is essentially the same request made by Respondent in his April 14<sup>th</sup> RFO which was denied on July 21<sup>st</sup> as it was deemed to be akin to a motion for reconsideration but no new facts or circumstances were presented.

On September 26, 2022, Petitioner filed an Ex Parte Application and Declaration for Orders and Notice wherein she requested full physical custody of both children due to an alleged incident of abuse. Respondent opposed the motion and stated that the accusations were false he also objected on the basis of improper service. The court denied the ex parte on the grounds of improper service.

Petitioner followed her ex parte with an RFO filed on September 30<sup>th</sup>. The RFO does not specify the orders sought and, while it directs the court to “see attachment” there is nothing attached. Further, there is no Proof of Service indicating that Respondent was served with this RFO. Petitioner’s RFO is dropped from calendar due to lack of proper service.

On October 4<sup>th</sup> Petitioner filed another Ex Parte Application and Declaration for Orders and Notice, again requesting full custody of the children. Respondent again opposed the motion by filing a Responsive Declaration to Request for Order on October 6<sup>th</sup>. The court denied the motion, set a hearing for December 1<sup>st</sup>, referred the parties to Child Custody Recommending Counseling (CCRC) and ordered that the minors be made available to speak with the CCRC counselor at the counselor’s request.

The parties attended CCRC on October 24<sup>th</sup>. A report was issued on November 4<sup>th</sup>. The court specifies several agreements reached by the parties and provides recommendations on the issues that were not agreed upon.

Petitioner filed a Responsive Declaration to Request for Order on November 18<sup>th</sup>. It was served via mail the day prior. She states that she mostly agrees with the mediator’s recommendations but she would like to pick up the children on Sundays at 9:00 am to allow her time for family activities on that day. She would also like to keep the children on Mondays if it is a holiday.

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The court has reviewed the aforementioned documents and finds the agreements and recommendations as stated in the CCRC report to be in the best interest of the children and adopts them to be the orders of the court with the following modification: Petitioner is to pick up the children on Sundays at 9:00 am unless Monday is a school holiday. In such case, Respondent shall keep the children through the Monday holiday and drop the children off at school on the Tuesday following the holiday. Respondent's request for a hearing on the move away issue is denied as res judicata.

**TENTATIVE RULING #13: PETITIONER'S SEPTEMBER 30<sup>TH</sup> RFO IS DROPPED FROM CALENDAR FOR LACK OF PROPER SERVICE. THE AGREEMENTS AND RECOMMENDATIONS AS STATED IN THE NOVEMBER 4<sup>TH</sup> CCRC REPORT ARE ADOPTED AS THE ORDERS OF THE COURT WITH THE FOLLOWING MODIFICATION: PETITIONER IS TO PICK UP THE CHILDREN ON SUNDAYS AT 9:00 AM UNLESS MONDAY IS A SCHOOL HOLIDAY. IN SUCH CASE, RESPONDENT SHALL KEEP THE CHILDREN THROUGH THE MONDAY HOLIDAY AND DROP THE CHILDREN OFF AT SCHOOL ON THE TUESDAY FOLLOWING THE HOLIDAY. RESPONDENT'S REQUEST FOR A HEARING ON THE ISSUE OF A MOVE AWAY ORDER IS DENIED. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07**

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**14. SUSAN MOSKALETS V. VICTOR MOSKALETS**

**PFL20210479**

On May 5, 2022, Respondent filed a Request for Order (RFO) requesting the court set aside the temporary spousal support order made on February 17, 2022. Respondent's request was based on the fact that he was unable to work due to medical issues and therefore, was not earning and income. The court set the matter for trial to be heard on July 6<sup>th</sup>. The July 6<sup>th</sup> trial date was continued to August 23<sup>rd</sup> and the court issued a temporary suspension of spousal support for the month of August. The August 23<sup>rd</sup> trial date was later continued to October 11<sup>th</sup> and then to January 17, 2023.

On September 13, 2022, Respondent filed an Ex Parte Application and Declaration for Orders and Notice requesting to have the suspension of spousal support extended to the time of trial on the issue. The court denied the ex parte and stated that it may be set on the regular law and motion calendar. On September 16<sup>th</sup> Respondent filed his RFO renewing his request to extend the suspension of spousal support. His RFO was served electronically on September 21<sup>st</sup>.

This matter is currently set for hearing on December 8<sup>th</sup> for an Order to Show Cause regarding non-payment of spousal support. In the interest of judicial economy, this matter is continued to join with the December 8<sup>th</sup> hearing.

**TENTATIVE RULING#14: THE MATTER IS CONTINUED TO JOIN WITH THE HEARING SET FOR DECEMBER 8<sup>TH</sup> AT 8:30AM IN DEPARTMENT 5. THE COURT RESERVES JURISDICTION ON THE ISSUE OF SPOUSAL SUPPORT BACK TO THE DATE OF FILING THE RFO.**

**NO HEARING ON THESE MATTERS WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07**

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**15. WALTER BORING V. ALLISON BORING**

**PFL20160114**

The court previously issued a tentative ruling on November 16, 2022. The parties were ordered to appear. As set forth in the prior tentative ruling, oral arguments will be heard on December 1, 2022 at 8:30 a.m.