

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 23, 2023

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

**1. BASIL AREVALO V. ELISABETH AREVALO**

**22FL0061**

Respondent filed a Request for Order (RFO) on October 7, 2022 requesting temporary spousal support as well as attorney fees. Respondent filed an Income and Expense Declaration on September 29, 2022. Petitioner was personally served with the RFO on October 19, 2022. It does not appear Petitioner was served with Respondent's Income and Expense Declaration. Therefore, the court is unable to consider this document.

Respondent is requesting the court grant temporary spousal support in the amount of \$1,800 per month, though Respondent does not provide any basis for this amount. Respondent also requests the court award her attorney's fees; however, she does not request a specified amount nor include the FL-319 or FL-158.

Petitioner filed an Income and Expense Declaration on December 12, 2022. There is no Proof of Service for this document, therefore the court cannot consider it.

Respondent filed an updated Income and Expense Declaration on December 21, 2022. It was served electronically on Petitioner on December 21, 2022.

Parties appeared for the hearing on December 22, 2022. Respondent requested the court go forward with a temporary spousal support order and was willing to waive any defect in notice for Petitioner's Income and Expense Declaration. Respondent also made an oral request for attorney fees pursuant to Family Code 2031. Petitioner was not willing to waive the short notice of Respondent's Income and Expense Declaration and further asserted Respondent's Declaration was incomplete and inaccurate as she had failed to disclose additional income she receives. The court found there were too many discrepancies in both parties' Income and Expense Declarations to proceed and continued the request for spousal support and attorney fees to January 5, 2023. The court ordered parties to file and serve updated, accurate Income and Expense Declarations forthwith.

Petitioner filed an Income and Expense Declaration and Declaration on December 29, 2022. Respondent was personally served on December 29, 2022. Petitioner in his declaration asserts Respondent's December 21, 2022 filed Income and Expense Declaration fails to accurately disclose all of her income.

Parties appeared for the January 5, 2023 hearing. Counsel for Respondent requested a continuance based on new information received. The court continued the matter to March 23, 2023 and ordered the parties to prepare and file updated Income and Expense Declarations. The court reserved jurisdiction to retroactively modify support to the date of the filing of the RFO.

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On February 10, 2023, the parties appeared for a hearing on Respondent's request for a Domestic Violence Restraining Order. After the court received testimony and evidence, the court granted the request for a restraining order. The court continued Respondent's request for attorney's fees pursuant to join with the hearing already set on March 23, 2023.

Respondent filed an updated Income and Expense Declaration on February 1, 2023. Petitioner was served by mail on February 1, 2023.

The court finds it needs additional information from the parties. When the parties were last in court, Petitioner was not working. The court is unaware if this is still the current circumstance. The court finds Petitioner's December 29, 2022 filed Income and Expense Declaration to be nearly out of date. Parties were to file updated Income and Expense Declarations, and Petitioner has failed to do so. Therefore, parties are ordered to appear for the hearing.

**TENTATIVE RULING #1: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**

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**2. BRANDIE ERIN LYONS V. WILLIAM EDWARD COLLINS**

**PFL20200772**

On August 15, 2022, Respondent filed a Request for Order (RFO) for child custody, visitation, and child support orders. Along with his RFO, Respondent filed his Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing was set for October 13<sup>th</sup>.

Prior to the October 13<sup>th</sup> hearing date, the court noted that there was no Proof of Service on file for the RFO, the Income and Expense Declaration or the CCRC referral and neither party appeared at the CCRC appointment. The court dropped the matter from calendar but both parties appeared at the hearing and requested a re-referral to CCRC. A new CCRC appointment was set for November 4<sup>th</sup> and the hearing on the RFO was continued to the present date.

On October 24<sup>th</sup>, Petitioner filed and served her Responsive Declaration to Request for Order and her Income and Expense Declaration.

Respondent would like joint legal and physical custody. He requests to have the minors every Wednesday to Thursday and every other Friday to Monday. He would also like to establish a set holiday and summer schedule. According to Respondent, the children have requested to have increased visitation with him.

Petitioner is opposing the RFO and asking the court to maintain the current custody and visitation orders. She would also like guideline child support as well as an arrears payment of \$200 per month. According to Petitioner, she currently has sole physical custody of the children, and Respondent has parenting time every other weekend from Friday until Monday. Petitioner claims the children have not been requesting additional time with Respondent but are in fact resistant to their visits with him. She notes that Respondent is in arrears from December of 2020 through February of 2021. At \$1,848, this amounts to a total arrears balance of \$5,544. Finally, Petitioner is asking to have Respondent provide updated paystubs as she is informed and believes that he has received a pay raise since his original August filing.

The parties attended CCRC on November 4<sup>th</sup> and a report was issued on November 30, 2022 wherein the CCRC counselor provided a list of recommendations.

On December 14<sup>th</sup> Petitioner filed a Supplemental Declaration of Brandie Lyons in Opposition to CCRC Report; Request for Minor's Counsel. Petitioner is agreeable to adopting the recommendations of the CCRC report with the exceptions of the proposed parenting plan and the recommendation that she participate in a parenting class. She would also like Respondent to be ordered to participate in individual therapy. Petitioner notes that there is a Domestic Violence Criminal Protective Order against Respondent for an incident that occurred

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on November 8, 2020. As of the time of her filing, the criminal matter was still pending and was likely go to trial in January of 2023, but Petitioner asked that the court address the Family Code Section 3044 factors. She also asked that Minor's Counsel be appointed.

The court issued its tentative ruling on January 5, 2023 at which time the court denied Petitioner's request for Minor's Counsel, adopted the CCRC recommendations with the exception that the current parenting plan was to remain in full force and effect pending the outcome of the criminal case. The court set a review hearing for the present hearing date to determine the applicability of Family Code section 3044. The requests to modify child support and the arrears balance were continued to the DCSS calendar pursuant to Family Code section 4251. A hearing on those matters would be set after the court's ruling on a parenting plan.

A Supplemental Declaration of William Collins in Support of His Request for Order to Modify Custody was filed and served on February 16<sup>th</sup>. According to Respondent, his criminal matter concluded on February 1, 2023 with a not guilty verdict. The Criminal Protective Order has since been lifted. Due to the acquittal, Respondent argues the Family Code section 3044 factors do not apply. He now requests the court adopt the CCRC recommendations in their entirety. He further requests the court set a date for the issue of child support to be heard. Finally, he notes that Petitioner has been making disparaging remarks about him to the minor and her healthcare provider and school. He asks the court to condemn such statements and direct Petitioner to retract them.

Petitioner filed and served a Supplemental Declaration of Brandie Lyons in Opposition to CCRC Report; Request for Evidentiary Hearing on March 6<sup>th</sup>. Respondent was served Electronically on March 6, 2023. Petitioner requests that the current custody and visitation orders remain in place or, in the alternative, an evidentiary hearing. She also reiterates her request for guideline child support and an arrears payment plan of \$200 per month.

After reviewing the aforementioned filings, the court finds Family Code section 3044 does not apply. Therefore, the court finds the recommendations contained in the CCRC report, including the Parenting Time and Holiday Schedule, are in the best interests of the minor and the court adopts them as the orders of the court. Additionally, Respondent is ordered to commence individual therapy to address his anger management skills. Respondent is to attend therapy at a frequency and duration as recommended by the therapist. Both parties are admonished to abide by the Respect Guidelines as listed in the CCRC report. Failure to do so may result in an Order to Show Cause and contempt proceedings. The issues of child support and arrears are continued to 4/24/23 to be heard by the Child Support Commissioner pursuant to Family Code section 4251.

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**TENTATIVE RULING #2: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE CCRC REPORT, INCLUDING THE PARENTING TIME AND HOLIDAY SCHEDULE, AS THE ORDERS OF THE COURT. RESPONDENT IS ORDERED TO COMMENCE INDIVIDUAL THERAPY TO ADDRESS HIS ANGER MANAGEMENT SKILLS. RESPONDENT IS TO ATTEND THERAPY AT A FREQUENCY AND DURATION AS RECOMMENDED BY THE THERAPIST. BOTH PARTIES ARE ADMONISHED TO ABIDE BY THE RESPECT GUIDELINES AS LISTED IN THE CCRC REPORT. FAILURE TO DO SO MAY RESULT IN AN ORDER TO SHOW CAUSE AND CONTEMPT PROCEEDINGS. THE ISSUES OF CHILD SUPPORT AND ARREARS ARE CONTINUED TO 4/24/23 AT 8:30 AM IN DEPARTMENT 8 TO BE HEARD BY THE CHILD SUPPORT COMMISSIONER PURSUANT TO FAMILY CODE SECTION 4251. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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. BRYCE ABBOTT V. REBEKAH R. ABBOTT**

**22FL0639**

Respondent seeks an order setting aside her default taken on January 2, 2023 and directing the clerk to file her Response (FL-120). Respondent filed her Request for Order (RFO) and a Memorandum of Points and Authorities in support of her RFO on January 17, 2023. All required documents were mail served on January 27<sup>th</sup>. On March 10<sup>th</sup> Petitioner filed and served his Responsive Declaration to Request for Order and a Declaration of Attorney Amber White in Support of Petitioner's Responsive Declaration. An Updating Declaration of Attorney was filed and served thereafter on March 13<sup>th</sup> wherein counsel states that her office was not served with a copy of the responsive documents. The proof of service does indicate service on Ms. Mayer at the email address that appears to be correct. Thus, the court considers service to have been proper and the responsive documents have been considered. An additional declaration was filed by Respondent on March 16<sup>th</sup> regarding the value of her vehicle.

According to Respondent her failure to file a Response to the Petition for Dissolution was a result of her being told by Petitioner that she did not need to file anything. Respondent resides in Tennessee and for that reason she states she cannot go to the local courthouse self-help desk or attend local workshops. Respondent's default was taken on December 21<sup>st</sup> but she did not receive notice of the default until January 3<sup>rd</sup>. She retained counsel immediately thereafter on January 5<sup>th</sup>. She disputes the division of assets as proposed by Petitioner and asks that she be allowed to file her response and let the matter be determined on the merits. She has included a copy of her proposed Response and Request for Dissolution of Marriage with her moving papers.

Petitioner asks that the court deny the motion and award him \$3,000 in attorney's fees pursuant to Family Code section 271. Petitioner states that Respondent's version of events is inaccurate. Instead, he states he told Respondent that she did have to file a response and she had 30 days to do so. At the time Petitioner told Respondent she did not need to file anything was when both parties were of the opinion that an agreement had been reached and they could resolve the matter with a default and agreement. Petitioner points out that Respondent told him in October that she was intending to obtain legal counsel. Petitioner waited three months before finally taking the default in December. In short, Petitioner argues that Respondent was aware of her requirement to file a response, she had three months to do so and she deliberately chose not to. According to Petitioner, this does not constitute mistake, surprise, inadvertence or excusable neglect and therefore the default should not be set aside.

Petitioner seeks \$3,000 in attorney's fees regardless of whether or not the motion is granted. Petitioner notes the parties' discussions in attempting to resolve the matter informally and Respondent's refusal to agree to allow him to reserve on his request for attorney's fees which, at the time, was only \$350. To date he has incurred \$2,546.50 in attorney's fees and he

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is expected to incur an additional \$400 in the preparation and filing of the response as well as an additional \$680-\$1,020 for the preparation and appearance at the hearing if necessary. Petitioner proposes sanctions to be paid out of Respondent's portion of community property.

While Respondent opposes the request for sanctions, she notes that as of March 8, 2023, her office had not been served with a copy of the responsive papers.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Cal. Civ. Pro. § 473(b). To obtain relief under Section 473(b), the moving party must do so within a reasonable time and must provide a copy of the pleading proposed to be filed. *Id.* Section 473(b) allows for a set aside in instances of the attorney's fault, which give rise to mandatory relief, in all other cases, relief is discretionary. See Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674 (1997). Thus, the court turns to the discretionary relief requirements of 473(b).

Where, as here, a mistake in law gives rise to the default judgment the court must determine whether a mistake in law is grounds to set aside a default judgment under Section 473(b). Generally, a pro per is held to the same standard as a practicing attorney. Goodson v. Bogerts, Inc., 252 Cal. App. 2d 32, 40 (1967) ("One who voluntarily represents himself is not, for that reason, entitled to any more (or less) consideration than a lawyer. Thus, any alleged ignorance of legal matters or failure to properly represent himself can hardly constitute 'mistake, inadvertence, surprise, or excusable neglect' as those terms are used in section 473"). It appears from case law that "[a]n 'honest mistake of law' can provide 'a valid ground for relief,' at least 'where a problem is complex and debatable,' but relief may be properly denied where the record shows only 'ignorance of the law coupled with negligence in ascertaining it.' [Citations omitted]." Hopkins & Carley v. Gens, 200 Cal. App. 4<sup>th</sup> 1401, 1412-1413 (2011)."

While the court is not to give deference to a party simply because that party was acting in pro per, the court is to resolve any doubts as to a showing of mistake, inadvertence, surprise, or excusable neglect in favor of the moving party. Elston v. City of Turlock, 38 Cal. 3d 227, 233 (1985) (overruled on other grounds). This is especially so when there has been no showing of substantial prejudice to the opposing party should the motion be granted. *Id.* at 235.

Here, Respondent's claim is essentially that she was unaware of the law requiring her to file a response to the Petition for Dissolution. As stated above, simply stating that the pro per was unaware of the law is insufficient to allow leeway under Section 473. Thus, her mistake in not knowing that she was required to file a response is not sufficient grounds to set aside the default. That said, the court recognizes that Respondent was not intending to act in pro per but

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simply did not retain an attorney in a timely fashion. Whether or not her delay constitutes inadvertence or excusable neglect is a question to be determined by the discretion of the court.

Whether or not the three month delay between October, when she said she was obtaining an attorney, and December, when her default was taken, constitutes excusable neglect is arguable. While it seems a reasonably prudent person would have sought legal assistance much earlier than that, it is reasonable to believe that Respondent was confused regarding Petitioner's statement that she no longer needed to file a response. Where, as here, the existence of inadvertence or excusable neglect is questionable, all such matters must be resolved in favor of the moving party. Additionally, once Respondent became aware of the default on January 3<sup>rd</sup>, she did act with diligence in retaining an attorney days later on January 5<sup>th</sup> and the motion was filed by the 17<sup>th</sup> of that month. Because deference is to be given to the moving party, and because Respondent acted with urgency upon receiving notice of the default, under the circumstances, it appears warranted to grant the Motion to Set Aside Default.

On the issue of sanctions, the court finds no law which supports the proposition that a request for Section 271 sanctions cannot be ruled upon unless it is made in a separate noticed motion. The statute requires only "...notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard." A request for sanctions made in a responsive declaration affords the opposing party both notice and the opportunity to be heard in its reply brief or at the hearing on the underlying motion. The court is reserving on the issue of sanctions until a determination is made on the division of community property.

**TENTATIVE RULING #3: RESPONDENT'S MOTION TO SET ASIDE DEFAULT IS GRANTED. RESPONDENT IS ORDERED TO FILE HER RESPONSE AND REQUEST FOR DISSOLUTION OF MARRIAGE NO LATER THAN APRIL 6, 2023. THE COURT RESERVES ON PETITIONER'S REQUEST FOR FAMILY CODE SECTION 271 SANCTIONS. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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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**4. DAVID FOSTER V. SARAH FOSTER**

**22FL0599**

Petitioner filed a Request for Order (RFO) along with an Order Shortening Time (OST) on February 24, 2023. The court granted the OST and set the RFO for a hearing on March 23, 2023. Petitioner was directed to serve Respondent with the RFO no later than March 1, 2023 and Respondent was to file a Responsive Declaration no later than March 15, 2023.

The RFO and all other required documents were served electronically and by mail on March 1<sup>st</sup>. On March 7<sup>th</sup> Respondent filed her Responsive Declaration to Request for Order, and her Income and Expense Declaration; both of which were served on March 9<sup>th</sup>. Petitioner filed and served his Reply Declaration of Petitioner in Response to Respondent's Responsive Declaration on March 16<sup>th</sup>.

Petitioner requests an order setting aside the January 26, 2023 Findings and Orders After Hearing or, in the alternative, he requests the court set a hearing to modify spousal support and orders directing Respondent to return the F-150 pickup truck and denying Respondent's request for exclusive use and occupancy of the former family residence. He also requests the court offset Respondent's attorney fees award in the amount of \$6,000 as payment toward the court's order of attorney fees.

According to Petitioner he was never served with Respondent's October 21, 2022 RFO or any of the supporting documents. Nor was he aware of the hearing conducted on January 19<sup>th</sup> which resulted in spousal support orders, an order for Respondent's exclusive use and control of the residence and Section 2030 attorney's fees. Petitioner was not aware of any of the proceedings until he received the Findings and Orders After Hearing in February. Respondent is in charge of collecting Petitioner's mail and Petitioner is of the belief that she deliberately buried the moving papers so he would not see them.

Respondent's opposition addresses the issues of spousal support, property control, and attorney's fees on the merits as opposed to providing argument as to why the January 19<sup>th</sup> order was not the result of mistake, inadvertence or excusable neglect and should not be set aside.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Cal. Civ. Pro. § 473(b). To obtain relief under Section 473(b), the moving party must do so within a reasonable time and must provide a copy of the pleading proposed to be filed. *Id.* Section 473(b) allows for a set aside in instances of the attorney's fault, which give rise to mandatory relief from default, in all other cases, relief is discretionary. See Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674 (1997). Thus, the court turns to the discretionary relief requirements of 473(b).

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Because the law favors ruling on the merits of each matter, the court is to resolve any doubts as to a showing of mistake, inadvertence, surprise, or excusable neglect in favor of the moving party. Elston v. City of Turlock, 38 Cal. 3d 227, 233 (1985) (overruled on other grounds). This is especially so when there has been no showing of substantial prejudice to the opposing party should the motion be granted. *Id.* at 235.

It is clear from the pleadings that Petitioner had no knowledge of the RFO or the court's orders until he received the Findings and Orders After Hearing (FOAH) which was served on February 14, 2023. Upon receiving the FOAH, Petitioner acted with expediency in having the present motion prepared and filed by February 24<sup>th</sup>. It appears the orders issued by the court were due to Petitioner's surprise in that he had no knowledge of the pleadings or the hearing, especially in light of the fact that Respondent picks up his mail and Respondent did not do or say anything to draw Petitioner's attention to the moving documents or even notify him that she had a motion pending. Thus, Petitioner's Request for Order is granted. Orders made on January 19, 2023 are hereby vacated. Petitioner is to file his Responsive Declaration to Request for Order no later than March 30, 2023. A hearing on the October 21, 2022 Request for Order is set for at 8:30 a.m. in Department 5. The court reserves jurisdiction to award support back to the date of filing the October 21<sup>st</sup> RFO.

**TENTATIVE RULING #4: PETITIONER'S REQUEST FOR ORDER IS GRANTED. ORDERS MADE ON JANUARY 19, 2023 ARE HEREBY VACATED. PETITIONER IS TO FILE HIS RESPONSIVE DECLARATION TO REQUEST FOR ORDER NO LATER THAN MARCH 30, 2023. A HEARING ON THE OCTOBER 21, 2022 REQUEST FOR ORDER IS SET FOR 4/20/23 AT 8:30 A.M. IN DEPARTMENT 5. THE COURT RESERVES JURISDICTION TO AWARD SUPPORT BACK TO THE DATE OF FILING THE OCTOBER 21<sup>ST</sup> RFO. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER 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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**5. DCSS V. ERIC J. HILL (OTHER PARENT: ANAROSE FERRO)**

**PFS20150143**

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on April 12, 2022. Other Parent was personally served on April 13, 2022. Respondent asserts Other Parent failed to exchange the minor on April 10, 2022 per the court's prior orders which directed exchanges to take place on Sundays.

The parties appeared for hearing on September 21, 2022 and the court found Other Parent did violate the aforementioned court orders. Other Parent was directed to complete 12 hours of community service and provide the court with documentation thereof no later than six months from the date of the hearing. The court set sentencing to occur on March 23, 2023 but stated the contempt charge would be dismissed once proof of completion of the community service was filed with the court. Respondent was ordered to prepare the Findings and Orders After Hearing.

According to the court's file it does not appear that Other Parent has filed documentation evidencing her completion of the required community service. Additionally, there is no Finding and Orders After Hearing. The parties are ordered to appear.

**TENTATIVE RULING #5: THE PARTIES ARE ORDERED TO APPEAR.**

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**6. JEREMY HEATH V. RACHEL LORRAINE HEATH**

**22FL0458**

Request for Order

Respondent filed a Request for Order (RFO) on August 26, 2022, requesting the court make child custody, parenting time, child support, and spousal support orders. Respondent also requested Family Code section 2030 attorney's fees. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on September 26, 2022 and a hearing on the RFO was set for November 17, 2022. Due to court oversight the hearing was not held until December 1, 2022 at which time the court ruled on all matters.

At the time of the December 1<sup>st</sup> hearing, it was noted that the parties were still living together but they intended to sell the family home and relocate to separate residences. The parties were re-referred to CCRC to establish a parenting plan in anticipation of their living apart. CCRC was scheduled for February 6, 2023 and a review hearing was set for the present date.

The parties attended CCRC as scheduled and were able to reach a full agreement. The agreements were codified in the CCRC report dated February 6, 2023. The report was sent to the parties on February 9<sup>th</sup>. The court has not received a response or objection to the CCRC report from either party.

The court has reviewed the agreements contained in the CCRC report and finds them to be in the best interests of the minors. The agreements contained in the February 6, 2023 CCRC report are hereby adopted as the orders of the court. Respondent is to prepare and file the Findings and Orders After Hearing.

Temporary Restraining Order

The parties appeared for hearing on the Request for Domestic Violence Restraining Order filed by Respondent. At the hearing, both parties requested a continuance which was granted and the hearing date was reset for the present date. The parties are ordered to appear.

**TENTATIVE RULING #6: THE AGREEMENTS CONTAINED IN THE FEBRUARY 6, 2023 CCRC REPORT ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING. THE PARTIES ARE ORDERED TO APPEAR ON THE REQUEST FOR DOMESTIC VIOLENCE RESTRAINING ORDER.**

**NO HEARING ON THIS MATTER 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**

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**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. JESUS NEGRON FLORES JR V. ALEXANDRIA WASHBURN**

**PFL20200647**

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on September 14, 2022. The OSC was properly served via personal service on September 26, 2022. Respondent alleges Petitioner has repeatedly failed to comply with numerous court orders for the parties to participate in co-parenting counseling. The parties were ordered to appear on January 26, 2023, at which time the court confirmed Respondent's intent to pursue contempt charges. Petitioner was advised of his rights and appointed counsel through the Public Defender's office. The matter was continued to the present hearing date to allow Petitioner time to confer with his attorney.

The parties are ordered to appear for arraignment.

**TENTATIVE RULING #7: THE PARTIES ARE ORDERED TO APPEAR FOR ARRAIGNMENT.**

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**8. MARCI ERICKSON V. ROBERT ERICKSON**

**PFL20210456**

Petitioner filed a Request for Order (RFO) seeking numerous orders regarding arrears amounts owed, prior attorney's fees owed, amounts owed on investment properties, breach of fiduciary findings, sanctions and attorney's fees and costs pursuant to both Family Code section 2030 and Family Code section 271. The RFO was filed on December 23, 2022. There is a Proof of Service indicating that an FL-300, an FL-320 and a Notice of Tentative Ruling were served on February 2<sup>nd</sup>, however there is no indication if the FL-300 is referring to the RFO that was filed two months prior on December 23<sup>rd</sup>. There are no other Proofs of Service that would appear to show service of the December 23<sup>rd</sup> RFO. Despite the ambiguity of whether the RFO was properly served, Respondent filed a Responsive Declaration to Request for Order on March 13, 2023 and did not allege improper service therefore, any potential defect in service has been waived and the court may reach the matter on the merits. See Eliceche v. Federal Land Bank Assn., 103 Cal. App. 4<sup>th</sup> 1349, 1375 (2002) ("It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of the motion. [Citations Omitted].")

A Declaration of Kristen Alexander Re: Need for Attorney Fees and Costs for Case Procedures was filed on January 4<sup>th</sup> indicating that it was filed on behalf of Respondent. However, given the substance of the declaration and the fact that Ms. Alexander is attorney of record for Petitioner it seems likely this was in fact filed on behalf of Petitioner. The declaration was properly served on January 4<sup>th</sup>.

By way of her RFO Petitioner requests the following orders: (1) Determination of arrears in ordered payments of ½ of rental income from commercial building; determination of interest at 10% and orders regarding payment thereon; (2) Determination of arrears in ordered payments of ½ investment income, determination of interest at 10% and orders regarding payment thereon; (3) Determination of spousal support arrears; determination of interest at 10%, orders regarding payment thereon; (4) Previously-ordered \$10,000 in attorney fees and costs be added interest and made payable forthwith; (5) Respondent be ordered to account for, and pay Petitioner, ½ of the rental income from commercial building and ½ of the investment income Respondent received from the date of separation through year-end of 2021; (6) Finding of breach of fiduciary duty and sanctions imposed for Respondent's failure to provide Petitioner with ½ of rental income and ½ of investment income upon demand per *Marriage of Feldman*, Fam. Code §§ 721 and 1101; (7) Finding of breach of fiduciary duty and sanctions imposed for Respondent's failure to provide Petitioner an accounting of community income and community funds upon demand per *Marriage of Feldman*, Fam. Code §§ 721 and 1101; (8) Attorney fees and costs payable to Petitioner in the amount of \$100,000 per Family Code sections 2030 and

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271 for attorney's fees and expert witness fees, to enable Petitioner to retain a forensic accountant, obtain real property appraisals, and protect her share of the community estate.

According to Respondent, he has fulfilled his obligation for spousal support by allowing Petitioner to keep approximately \$60,000 worth of community property that would have otherwise belonged to him. He also notes that Petitioner has in her possession an estimated \$970,000 worth of community property assets. Additionally, while he is agreeable to paying Petitioner the investment funds generated, he argues nothing in the stipulation of the parties says the payment needs to be done monthly. Upon finalizing the taxes, he intends to pay Petitioner her portion of the investment funds. Finally, he opposes the request for sanctions as well as the request for \$100,000 in attorney fees as it is excessive and unwarranted.

After a review of the aforementioned documents the court finds it is necessary to obtain testimony from the parties regarding the outstanding issues. The parties are ordered to appear to choose hearing dates.

**TENTATIVE RULING #8: THE PARTIES ARE ORDERED TO APPEAR TO CHOOSE HEARING DATES.**



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**9. MATTHEW TOOCH V. JENNIFER HOLLY**

**PFL20140486**

Respondent filed a Request for Order (RFO) on December 30, 2022, requesting the court set aside orders and enter different orders pursuant to Code of Civil Procedure section 473. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail on January 18, 2023. Respondent requests the court vacate the September 22, 2022 orders because of her attorney's mistake, inadvertence, surprise, or excusable neglect, citing Code of Civil Procedure section 473(b). Respondent asserts her counsel provided opposing counsel notice of her request of oral argument by way of email on September 21, 2021. Both the California Rule of Court and El Dorado County Local Rule require notice to be provided either in person or by telephone. Respondent requests adjustments be made to the child support orders made on September 22, 2022, as well as additional orders.

Counsel for Respondent filed a Declaration on December 22, 2022 in support of the RFO. Counsel states she was mistaken in her belief that electronic notice was permissible and had not reviewed the applicable Rule of Court or Local Rule.

Petitioner filed a Responsive Declaration on March 2, 2023. Respondent was served by mail on March 3, 2023. Petitioner objects to the requests as set forth in Respondent's RFO. Petitioner asserts Respondent's counsel has practiced family law in El Dorado County for a significant period of time and should be well familiar with the local rules as well as the California Rules of Court. Petitioner also asserts the child support calculations are correct as set forth in the DissoMaster attached to the tentative ruling the court adopted on September 22, 2022. Petitioner is requesting Respondent pay attorney's fees and Family Code section 271 sanctions for having to defend against this motion.

Respondent filed a Reply Declaration on March 13, 2023. Petitioner was served electronically on March 10, 2023.

Petitioner filed a Sur-Reply on March 16, 2023. Respondent was served by mail on March 16, 2023.

"The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Cal. Civ. Pro. § 473(b). To obtain relief under Section 473(b), the moving party must do so within a reasonable time and must provide a copy of the pleading proposed to be filed. *Id.* Section 473(b) allows for a set aside in instances of the attorney's fault, which give rise to mandatory relief from a default judgment only, in all other cases, relief is discretionary. See Garcia v. Hejmadi, 58 Cal. App. 4<sup>th</sup> 674 (1997). Thus, the court turns to the discretionary relief requirements of 473(b).

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Where, as here, a mistake in law gives rise to the default judgment the court must determine whether a mistaken in law is grounds to set aside a default judgment under Section 473(b). It appears from case law that “[a]n ‘honest mistake of law’ can provide ‘a valid ground for relief,’ at least ‘where a problem is complex and debatable,’ but relief may be properly denied where the record shows only ‘ignorance of the law coupled with negligence in ascertaining it.’ [Citations omitted]. In considering whether a mistake of law furnishes grounds for relief, ‘the determining factors are the reasonableness of the misconception and the justifiability of lack of determination of the correct law.” Hopkins & Carley v. Gens, 200 Cal. App. 4<sup>th</sup> 1401, 1412-1413 (2011).”

The court has read and considered the filings as outlined above. The court denies the request to set aside the September 22, 2022 orders. The court notes the tentative ruling system for the El Dorado County Family Law and Motion calendar has been in place since 2020. Local Rule 8.05.07 has been in place since 2020. These issues are not sufficiently complex or debatable to constitute grounds to set aside the court judgment. Counsel is aware of the Local Rules and their availability for review on-line. The court cannot set aside an order where the conduct of counsel falls below the standard of care. “‘Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.’ [Citation].” Zamora v. Clayborn Contracting Group, Inc., 28 Cal. 4<sup>th</sup> 249 (2002) *citing* Garcia v. Heimadi, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997). In light of the foregoing, Respondent’s Request for Order is denied.

Likewise, Petitioner’s request for Section 271 sanctions is denied. Family Code Section 271 states in pertinent part, “...the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation of the parties...” Fam. Code § 271(a). The filing of the present motion does not appear to have been intended to either further or frustrate the policy of the law. There is no indication that the parties could have otherwise reached an agreement on this issue, instead the purpose of the motion was simply an attempt to remedy counsel’s previous oversight. Petitioner’s request for sanctions is denied.

**TENTATIVE RULING #9: RESPONDENT’S REQUEST FOR ORDER IS DENIED. PETITIONER’S REQUEST FOR SANCTIONS IS DENIED.**

**NO HEARING ON THIS MATTER 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**

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**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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**10. TIMOTHY ADKINS V. AMEY ADKINS**

**PFL20170402**

Petitioner filed an Order to Show Cause and Affidavit for Contempt on December 21, 2022. Petitioner is alleging 14 counts of contempt. Respondent was personally served on January 31, 2023.

The court orders parties to appear for arraignment on the contempt allegations.

Petitioner filed a Request for Order (RFO) on January 20, 2023, requesting the court modify the orders as to spousal support, attorney's fees, and tax filings status. In the body of the FL-300, Petitioner also includes a request to modify child support. Petitioner filed a Proof of Service on January 31, 2023, indicating counsel for Respondent was personally served on January 31, 2023. The court notes this is a post-judgment request for modification and service on counsel is not permissible per Family Code section 215, which requires service on the party.

Respondent filed a Responsive Declaration on March 9, 2023. Petitioner was served electronically on March 8, 2023. Respondent objects to the orders requested by Petitioner. Respondent specifically asserts the court previously did not make findings as to spousal support, and therefore, in order to modify post-judgment spousal support presently, the court must hold an evidentiary hearing. Respondent asserts the FL-157 is deficient. Respondent objects to the court modifying child support, and requests the court impute income to Petitioner. Respondent requests the court deny Petitioner's request to modify the orders regarding which parent claims the minor for tax purposes. Respondent also requests the court deny Petitioner's requests for attorney's fees.

The court finds Petitioner failed to comply with the notice requirements of Family Code section 215, and therefore, drops the RFO from calendar.

All prior orders not in conflict with this order remain in full force and effect.

**TENTATIVE RULING #10: THE COURT ORDERS PARTIES TO APPEAR FOR ARRAIGNMENT ON THE CONTEMPT ALLEGATIONS. THE COURT FINDS PETITIONER FAILED TO COMPLY WITH THE NOTICE REQUIREMENTS OF FAMILY CODE SECTION 215, AND THEREFORE, DROPS THE RFO FROM CALENDAR.**

**NO HEARING ON THIS MATTER 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**

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

**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.**