

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 30, 2023

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

**1. ALLISON MURBACH V. DENNY MURBACH**

**22FL0815**

Petitioner request orders compelling Respondent to provide a full and complete Preliminary Declaration of Disclosure, Schedule of Assets & Debts, and an Income and Expense Declaration, as well as sanctions in the amount of \$3,000. The Request for Order (RFO) was filed and served on January 19, 2023. Respondent has not filed a Responsive Declaration to Request for Order.

On November 4, 2022 Petitioner served her Preliminary Declaration of Disclosure, Schedule of Assets and Debts, and Income and Expense Declaration. On November 17<sup>th</sup> correspondence was sent requesting the same from Respondent. No response was received. Petitioner once again sent correspondence requesting the subject documents on December 15, 2022. As of the writing of the RFO, no response had been received. Petitioner now requests disclosure of the documents within 10 days of the hearing date as well as \$3,000 in attorney's fees/sanctions pursuant to Family Code §2701(c) and Family Code §271 to compensate Petitioner for the costs and fees she has incurred associated with the preparation and filing of the present motion.

Family Code section 2104 imposes on each party the obligation of making a preliminary disclosure of assets within the timeframe specified. For the party responding to a Petition for Dissolution, the disclosure is due either concurrently with the response or within 60 days of filing the same. Where a party fails to comply with Section 2104, the complying party may, among other things, file a motion to compel and seek sanctions against the noncomplying party. Fam. Code § 2107(b)(1). "...[T]he court *shall*...impose monetary sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and *shall* include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Fam. Code § 2107(c) (emphasis added).

As stated above, Respondent has failed to make his preliminary disclosures as required. This is even in the face of not one, but two, attempts by Petitioner to meet and confer on the issue. Further, Respondent has filed an RFO of his own which was previously heard in this Department. Despite filing an RFO to recoup the money taken by Petitioner, Respondent still refuses to serve his disclosures. Accordingly, Respondent is hereby ordered to serve a fully completed and properly executed Preliminary Declaration of Disclosure, Schedule of Assets & Debts, and an Income and Expense Declaration no later than April 10, 2023.

Respondent has failed to establish good cause for his refusal to comply with his disclosure obligations. In fact, Respondent has failed to provide any reason for said refusal. As such, Respondent is ordered to pay Petitioner \$2,560 as and for attorney's fees pursuant to Family

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Code § 2107(c). This amount is subject to increase at the court's discretion, in the event a hearing is requested and Petitioner incurs additional attorney's fees. Respondent may pay Petitioner in one lump sum or in monthly payments of \$512 due and payable on the 1<sup>st</sup> of each month beginning with April 1, 2023 and continuing until the amount is paid in full (approximately 5 months). If any amount is missed or late, the entire amount will become immediately due and payable with legal interest thereon.

**TENTATIVE RULING #1: RESPONDENT IS HEREBY ORDERED TO SERVE A FULLY COMPLETED AND PROPERLY EXECUTED PRELIMINARY DECLARATION OF DISCLOSURE, SCHEDULE OF ASSETS & DEBTS, AND AN INCOME AND EXPENSE DECLARATION NO LATER THAN APRIL 10, 2023. RESPONDENT IS ORDERED TO PAY PETITIONER \$2,560 AS AND FOR ATTORNEY'S FEES PURSUANT TO FAMILY CODE § 2107(C). THIS AMOUNT IS SUBJECT TO INCREASE AT THE COURT'S DISCRETION, SHOULD A HEARING BE REQUESTED AND PETITIONER INCURS ADDITIONAL ATTORNEY'S FEES. RESPONDENT MAY PAY PETITIONER IN ONE LUMP SUM OR IN MONTHLY PAYMENTS OF \$512 DUE AND PAYABLE ON THE 1<sup>ST</sup> OF EACH MONTH BEGINNING WITH APRIL 1, 2023 AND CONTINUING UNTIL THE AMOUNT IS PAID IN FULL (APPROXIMATELY 5 MONTHS). IF ANY AMOUNT IS MISSED OR LATE, THE ENTIRE AMOUNT WILL BECOME IMMEDIATELY DUE AND PAYABLE WITH LEGAL INTEREST THEREON.**

**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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**2. CATHERYN WADMAN V. MAX WADMAN**

**21FL0116**

Petitioner filed a request for emergency ex parte orders modifying child custody and parenting time on November 1, 2022. The court denied the ex parte request on November 2, 2022. Petitioner filed a Request for Order (RFO) on November 2, 2022, requesting modification of child custody and parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on November 28, 2022 and a review hearing on January 26, 2023.

Upon review of the court file, there is no Proof of Service showing Respondent was properly served with the RFO and referral to CCRC. Nevertheless, both parties appeared for the CCRC appointment on December 7, 2022. The parties were unable to reach any agreements. A report with recommendations was filed on January 12, 2023. A copy of the report was mailed to the parties on January 13, 2023.

The court issued its tentative ruling on January 15<sup>th</sup>. Both parties presented to the court for hearing on January 26, 2023, at which time the court continued the hearing to the present date and ordered both parties to file supplemental declarations no later than 10 days prior to the hearing date. Petitioner was ordered to file a Proof of Service evidencing proper service of the RFO. The court warned if the filings were not completed the court would adopt its tentative ruling of January 25<sup>th</sup>.

As directed, Petitioner filed the Proof of Service on February 9, 2023. Respondent filed and served his Declaration and supporting documents on March 20, 2023. Likewise, Petitioner filed and served her Supplemental Filing Regarding Petitioner's Proposed Custody/Visitation Provisions on March 20<sup>th</sup> as well.

In her initial RFO Petitioner requests temporary sole legal and sole physical custody of the minor with no visitation until Respondent's state of mind and health can be ascertained. In the alternative, Petitioner requests supervised visits on the 1<sup>st</sup> and 3<sup>rd</sup> weekends of the month with Respondent at Respondent's expense, until Petitioner receives medical records clarifying Respondent's state of health. Petitioner would like the following additional orders: (1) Medical documentation explaining the reasons for his hospitalization starting 9/6/22; (2) An order directing Respondent to abstain from consuming alcohol or, in the alternative, for Respondent to abstain from consuming alcohol for at least 24 hours prior to and during any visitation; (3) An order directing Respondent to abstain from any drugs; (4) Random drug and alcohol testing for Respondent; (5) Respondent to undergo a substance abuse evaluation; (6) An explanation regarding the current state of Respondent's ability to obtain a driver's license/drive a car; (7) If Respondent is unable to drive, Petitioner would like the identification of the persons who will regularly drive him on the weekends when the minor is with him; (8) The drop-off location for

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all future visits to take place halfway between Reno and Respondent's residence which is apparently unknown.

Petitioner filed a Supplemental Filing Regarding Petitioner's Proposed Custody/Visitation Provisions wherein she changes her requests. In her most recent filing Petitioner requests every other weekend during the school year, instead of three weekends a month, and alternating weeks during the summer. She reiterates her request for a more equidistant exchange location. Finally, she states she would like both parties to keep each other apprised of their medical issues in order to facilitate and bolster the co-parenting relationship.

Respondent would like to keep the current custody and visitation schedule as he feels it is not in the minor's best interest to have decreased time with her father just so she can spend more time with her friends on the weekends. Additionally, he notes that Petitioner is the one who moved away with the minor. For that reason, he feels it is unfair that he should have to drive further just to meet halfway. The onerous should be on the parent who moved. He states this issue has already been determined by the court twice. Respondent notes several ways in which he feels Petitioner is not complying with the joint legal custody orders, especially with regard to the minor's schooling.

CCRC notes that the current custody arrangement has been in place since 2018. The recommendation is to keep all court orders in full force and effect as they currently stand.

It is the policy of the state to ensure that children have frequent and continuing contact with both parents. (Fam. Code §3020.) In furtherance of that policy the court is to consider the health, safety and welfare of the child. (*Id.* at (c).) Here, the court sees no reason to change the current custody orders. The child appears to be sufficiently safe and cared for with both parents, as evidenced by the fact that the current custody orders have been in place since 2018 largely without issue. Additionally, there appears to be no reason to order the parents to disclose confidential medical information to one another. If circumstances are such that a situation affects the minor, as in drug use, alcohol abuse, or a medical condition that would prevent one parent from caring for the minor, then this information should be disclosed. But only to the extent the minor's health, safety and welfare is affected. The court declines to order the parents to reveal anything further to one another.

Regarding the exchange location, the court declines to make the orders requested by Petitioner. It appears the location is somewhat central as-is, 30 minutes from Respondent and 45 from Petitioner. Further, if Petitioner is the one who moved away as Respondent asserts, then Petitioner should bear the majority of the burden traveling to ensure the minor is still afforded time with Respondent.

All prior orders remain in full force and effect.

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**TENTATIVE RULING #2: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**3. CHRISTINA ROTH CALDERON V. EDGAR CALDERON**

**PFL20200755**

Petitioner seeks orders regarding the disclosure of employment information and arrears payments. The Request for Order (RFO) was filed January 5<sup>th</sup> and served thereafter on January 16<sup>th</sup>. Respondent has not opposed the RFO.

By way of her RFO, Petitioner requests the following orders: (1) An order directing Respondent to disclose his current employment information to Petitioner and the Department of Child Support Services (DCSS); and (2) An order for monthly payments toward the outstanding arrears amount. According to Petitioner, Respondent was unemployed in approximately May of 2022, but he has since obtained new employment. Regardless, he has not paid full child or spousal support since May of 2022. Counsel for Petitioner has been requesting the identification of the new employer since July of 2022, to no avail. The current orders are for Respondent to pay \$550 a month in spousal support and \$968 a month in child support.

Respondent has not filed anything in response to the pending RFO. As such, the court does not have information regarding his monthly income to use as a basis for determining a monthly payment amount on the arrears balance. That said, Respondent cannot simply subvert his legal obligations by withholding information. Thus, Respondent is to make monthly arrears payments in the amount of \$250 per month until all outstanding amounts are paid in full. This amount may be adjusted upon motion by Respondent wherein he provides the court with additional information regarding his monthly income. Arrears payments are due and payable on the 1<sup>st</sup> of each month beginning with April 1<sup>st</sup>. If any payment is missed or late, the entire amount, plus legal interest, will become due and payable within five days of the missed payment. Additionally, Respondent is ordered to provide Petitioner and DCSS with the name and contact information for his current employer no later than April 1, 2023.

**TENTATIVE RULING #3: RESPONDENT IS TO MAKE MONTHLY ARREARS PAYMENTS IN THE AMOUNT OF \$250 PER MONTH UNTIL ALL OUTSTANDING AMOUNTS ARE PAID IN FULL. ARREARS PAYMENTS ARE DUE AND PAYABLE ON THE 1<sup>ST</sup> OF EACH MONTH BEGINNING WITH APRIL 1<sup>ST</sup>. IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT, PLUS LEGAL INTEREST, WILL BECOME DUE AND PAYABLE WITHIN FIVE DAYS OF THE MISSED PAYMENT. RESPONDENT IS ORDERED TO PROVIDE PETITIONER AND DCSS WITH THE NAME AND CONTACT INFORMATION FOR HIS CURRENT EMPLOYER NO LATER THAN APRIL 1, 2023. 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**

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**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. JASON HARDOUIN V. JENAE NORELL**

**22FL0118**

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) alleging Respondent has violated the parties' Stipulation and Order of March 12, 2019 and the court's orders of October 1, 2021. Respondent was personally served on December 12, 2022.

The parties appeared for arraignment on February 2, 2023, at which time the court appointed Respondent a Public Defender and continued the matter to the present hearing date in order to afford Respondent the opportunity to speak with counsel.

The parties are ordered to appear for arraignment.

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

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**6. KAYLA STABILE V. SEAN STABILE**

**PFL20180042**

Petitioner seeks orders for child custody and visitation. The Request for Order (RFO) was filed January 23, 2023 and was served, along with all other required documents, on January 25<sup>th</sup>. On March 13<sup>th</sup>, Petitioner filed a request for dismissal, without prejudice, asking the court to remove the January 23<sup>rd</sup> RFO from calendar.

The matter is dropped from calendar.

**TENTATIVE RULING #6: THE MATTER IS DROPPED 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 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. KIMBERLY CLINE V. MICHAEL CLINE**

**PFL20120356**

Minor's Counsel filed a Request for Order (RFO) on November 16, 2022, requesting the court modify child custody, parenting time, a move-away request, and revoke the order for a 730 evaluation. Petitioner and Respondent were served by mail on November 22, 2022.

Petitioner filed a Responsive Declaration and Memorandum of Points and Authorities on January 18, 2023. Respondent and Minor's Counsel were served electronically on January 18, 2023. Petitioner objected to Minor's Counsel's requests. Petitioner requested the court maintain the order for the 730 Evaluation with the added issue of the move-away request to be included. Petitioner requested a full evidentiary hearing on the move-away request.

Minor's Counsel filed a Statement of Issues and Contentions and Requested Orders on January 24, 2023, Respondent filed a Responsive Declaration on January 26, 2023, and Petitioner filed a Supplemental Declaration on January 26, 2023. None of these documents were considered by the court as they were late filed for the February 2<sup>nd</sup> hearing date.

The parties appeared for hearing on the aforementioned requests on February 2, 2023, at which time the court denied Minor's Counsel's request to vacate the 730 Evaluation and granted Petitioner's request to modify the scope of the evaluation to include the potential relocation of the minor to California. The parties requested, and the court granted, a continuance to the present hearing date to allow the parties to obtain an estimated time of completion for the 730 Evaluation. Parties were ordered to file supplemental declarations no later than 10 days prior to the hearing date. The parties were also given a date of June 5<sup>th</sup> for trial setting on the move away issue.

Petitioner filed an Attorney Statement re Trial Estimate on March 13, 2023. It was electronically served on March 9<sup>th</sup>. Petitioner estimates the duration of the move away trial to be 7 days given the number of expected witnesses and the careful consideration that must be given when one parent requests the minor move away from the other parent.

The parties are ordered to appear to update the court on the status of the 730 Evaluation.

**TENTATIVE RULING #7: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THE STATUS OF THE 730 EVALUATION.**

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**8. KIMBERLY COVINGTON V. BRYAN WICKHAM**

**22FL0957**

Petitioner seeks orders regarding Respondent's work status. The Request for Order (RFO) was filed January 11, 2023 and mail served thereafter on February 22, 2023. Respondent filed and served his Responsive Declaration to Request for Order on March 16, 2023. No reply has been filed.

Specifically, Petitioner requests the following orders: (1) An order issuing a *Gavron* warning to Respondent pursuant to Family Code §4330(b); (2) An order directing Respondent to immediately seek full-time employment commensurate with his ability to earn; (3) An order that Respondent submit at least 5 job applications each week and forward copies of the same to Petitioner's counsel on a weekly basis along with a summary of job seeking efforts until he obtains full-time employment commensurate with his ability to earn. Said summary is to include dates, names, addresses, telephone numbers, and company information of contacts that Respondent communicates with regarding his efforts to obtain employment; and (4) An order directing Respondent to immediately cooperate with, and participate in, a vocational evaluation pursuant to Family Code §4331, with David Ritz, MA, CRC.

According to Respondent he is currently employed full time earning minimum wage. He feels this reflects his current earning ability. He notes that his current employment is relatively new and is concerned that an immediate vocational evaluation would require him to take time off work. He would agree to a vocational evaluation to take place in approximately September.

Given that Respondent is currently employed, it appears a *Gavron* warning and orders directing Respondent to find employment are not necessary. Regarding the request for a vocational evaluation, Family Code section 4331 vests the court with authority to order such an evaluation upon a finding of good cause. (Fam. Code §4331(b).) It is unclear if Petitioner would like the vocational evaluation to determine if Respondent's earning capacity is above his current earnings, or if the fact that Respondent is now gainfully employed is sufficient to assuage Petitioner's concerns. There is no information in the moving papers regarding Respondent's prior earning history and whether or not it exceeds minimum wage. That said, the court does not find good cause to order a vocational evaluation at this time.

Petitioner's Request for Order is denied. All prior orders remain in full force and effect.

**TENTATIVE RULING #8: PETITIONER'S REQUEST FOR ORDER IS DENIED. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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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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**9. KIMBERLY DEVAUGHN V. MARK B. DEVAUGHN**

**PFL20180127**

Counsel for Respondent has filed a Motion to be Relieved as Counsel. The motion was filed on January 30<sup>th</sup> and thereafter properly served on February 2<sup>nd</sup>.

Counsel cites Business and Professions Code section 6068(e), and California Rules of Professional Conduct, rule 1.16 as his basis for his assertion that the facts giving rise to his request to be relieved are confidential. If the court is in need of additional information to establish good cause for his withdrawal then he requests an in-camera hearing.

The parties are ordered to appear.

**TENTATIVE RULING #9: THE PARTIES ARE ORDERED TO APPEAR.**

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**10. LINDA FULLERTON V. LARRY FULLERTON**

**PFL20210556**

Petitioner requests an order compelling Respondent to serve his preliminary disclosures. The Request for Order (RFO) was filed on November 14, 2022 and served thereafter on November 21<sup>st</sup>. Respondent has not opposed the RFO.

According to Petitioner, her preliminary disclosures were served per code on March 20, 2022. She has since requested Respondent's disclosures numerous times by way of meet and confer efforts between her counsel and Respondent's. On October 14, 2022, a demand for service of the disclosure was sent pursuant to Family Code section 2107. No such disclosures were received. Petitioner now requests an order directing Respondent to serve his preliminary disclosures within 15 days of the hearing date. She further requests the court reserve jurisdiction on the matter of attorney's fees and/or sanctions until the time of trial.

Family Code section 2104 imposes on each party the obligation of making a preliminary disclosure of assets within the timeframe specified. For the party responding to a Petition for Dissolution, the disclosure is due either concurrently with the response or within 60 days of filing the same. Where a party fails to comply with Section 2104, the complying party may, among other things, file a motion to compel. Fam. Code § 2107(b)(1).

Here, Petitioner has established that she has complied with the disclosure requirements of Section 2104. Respondent, on the other hand, has not. Even in the face of a request for compliance from Petitioner. The law is clear in this regard. Respondent is required to make his disclosures. As such, Petitioner's Request for Order is granted. Respondent is to prepare and serve his preliminary disclosures no later than April 14, 2023. The court reserves jurisdiction on the issue of attorney's fees/sanctions until the time of trial.

**TENTATIVE RULING #10: PETITIONER'S REQUEST FOR ORDER IS GRANTED. RESPONDENT IS TO PREPARE AND SERVE HIS PRELIMINARY DISCLOSURES NO LATER THAN APRIL 14, 2023. THE COURT RESERVES JURISDICTION ON THE ISSUE OF ATTORNEY'S FEES/SANCTIONS UNTIL THE TIME OF TRIAL. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**11. MIRANDA KENNY V. CHRISTOPHER VON HAESLER**

**22FL1214**

Petitioner has filed a Request for Order (RFO) seeking orders for child custody and visitation. The RFO was filed on the heels of a Petition to Determine Parental Relationship which names only Mr. Von Hesler as the Respondent. It appears Respondent was served with both documents on January 24<sup>th</sup>. There is no indication that the child's mother has been informed of the pending petition. The matter is dropped from calendar due to lack of proper service to the mother.

**TENTATIVE RULING #11: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE TO THE MOTHER.**

**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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**12. NATALIE C. FREIBERG V. ERIC M. FREIBERG**

**PFL20160530**

Respondent requests the set-aside or modification of the judgment entered on November 29, 2021 as well as additional orders related thereto. The Request for Order (RFO) was filed on January 4, 2023, and personally served on March 5, 2023. Petitioner has not opposed the RFO.

The orders requested by Respondent are as follows: (1) To partially set aside or, in the alternative modify, the Judgment of November 29, 2021 as it relates to the real property located at 2901 Coon Creek, Greenwood, CA; (2) An order addressing the omitted debt of the mortgage on the Coon Creek property; (3) To award Respondent the Coon Creek property in exchange for the payment to Petitioner of one-half of the appraised or otherwise agreed upon value of the property; (4) In the event Petitioner retains any portion of the Coon Creek property, then an order directing Petitioner to reimburse Respondent *pro tanto* for mortgage payments made by Respondent since the Judgment.

According to Respondent the November 29, 2021 Judgment awards half of the Coon Creek property to Respondent, and half to Petitioner. Respondent did not agree to this, and the judgment was entered by way of default. The parties have looked into whether or not the parcel can be split into two legal parcels, but only at an extraordinary cost. Further, the judgment is silent as to the mortgage, which is an asset the court retains jurisdiction of pursuant to Family Code section 2556. Respondent has solely paid the mortgage since separation.

Where a party fails to timely file a responsive pleading to a properly served petition, the default of that party may be taken and a default judgment may thereafter be entered. Cal. Civ. Pro. § 585. Entry of defendant's default cuts off the defendant's right to file pleadings and motions, other than a motion to set aside the default" *See Steven M. Garber & Assoc. v. Eskandarian*, 150 Cal. App. 813 (2007); *See also Mackie v. Mackie*, 186 Cal. App. 2d 825 (1960).

Here, Respondent is not requesting to have his default set aside and he gives no grounds to do so. Instead, his RFO seeks to set aside or modify the substance of the default judgment taken against him. Respondent has no standing to bring such a motion. The default taken against him precludes the court from reaching this matter on the merits. As such, the RFO is denied without prejudice due to Respondent's lack of standing.

**TENTATIVE RULING #12: THE RFO IS DENIED WITHOUT PREJUDICE DUE TO RESPONDENT'S LACK OF STANDING.**

**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**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 30, 2023

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

**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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 30, 2023

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

**13. TINA R. STRICKLAND V. MATTHEW R. STRICKLAND**

**PFL20190792**

Respondent has filed two Requests for Order (RFO), both of which were filed on January 13, 2023. By way of his RFOs Respondent seeks the following orders: (1) Entry of the Third Appellate District court verdict in Sup. Ct. No. P19CRF0326; (2) Move out order for Petitioner to move out of the marital residence which Respondent asserts is his separate property; (3) Vacate the standing Criminal Protective Order (CPO). The RFOs were mail served on January 10, 2023. Petitioner filed and served her Responsive Declaration to Request for Order on March 17, 2023.

Requests for Judicial Notice

Respondent is asking the court to “enter” the verdict on his criminal appeal into the family law case. The court is interpreting this to be a Request for Judicial Notice. Petitioner also makes a Request for Judicial Notice asking the court to take notice of the RFO and supporting documentation, specifically the image of a text message attached to the RFO, filed by Petitioner on August 13, 2021.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including “[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.”

Section 452 provides that the court “may” take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court “shall” take judicial notice of any matter “specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request...to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.” Cal. Evid. Code § 453.

The documents at issue fall well within the confines of Section 452. Respondent has complied with the requirements of Section 453 by providing all parties with sufficient notice of the request and providing the opposing party and the court a copy of the document requested to be noticed. As such, the statute mandates that notice be taken by the court. Respondent’s Request for Judicial Notice of the Third Appellate District verdict in Case No C094987 (Sup. Ct. No. P19CRF0326) is granted.

Petitioner, likewise, has provided the opposing party sufficient notice of the request and has furnished sufficient information to the court to rule on the request. While the August 13, 2021 RFO was not attached to the filing it is a part of the court’s file and it was served on the

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March 30, 2023

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opposing party at the time of the original filing. Thus, Petitioner's Request for Judicial Notice of the August 13, 2021 RFO and all supporting documentation filed therewith is hereby granted.

Property Control

Respondent is requesting a move out order directing Petitioner to move out of the home located at 4650 Live Oak Rd., Diamond Springs, CA 95619 no later than June 30, 2023. Respondent states the home is his separate property and attached a copy of the grant deed evidencing as such.

Petitioner notes a division of property Judgment was already issued on January 10, 2023. She asks the court to deny Respondent's request to re-adjudicate the division of assets and deny the request directing her to move out of the former family residence as she has already moved out.

Civil Procedure Section 473(b) governs the circumstances in which a party may be relieved of the terms of a judgment, dismissal, order or other proceeding in instances of mistake, inadvertence or excusable neglect. Cal. Civ. Pro. § 473(b). Here, Respondent has provided no facts to establish mistake, inadvertence or excusable neglect. As such, the court declines to set aside the Judgment of January 10, 2023 and relitigate the issue of division of assets. Further, as stated by Petitioner, she has already moved out of the subject home and therefore the matter is moot.

Respondent's request for a move out order is denied. All prior orders, and judgments not in conflict with this order remain in full force and effect.

Criminal Protective Orders/Custody and Visitation

Respondent asks the court to vacate the CPO Petitioner has against him. According to Respondent, Petitioner was a witness in the criminal matter pending against Respondent and was intended to be in place only until the criminal case had resolved. Respondent states that the CPO is still in place and is to continue until 2024. He would like the CPO terminated so he can return to his home after his release.

Petitioner does not address the issue of setting aside the CPO directly but does ask the court to deny Respondent's request to revisit and reinstate his legal custody and visitation until such time as he is paroled from prison and files a motion with the court.

Respondent's request to terminate the CPO is denied. This court lacks the jurisdiction to modify or set aside a CPO. All prior orders not in conflict with this order remain in full force and effect.

LAW & MOTION TENTATIVE RULINGS

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**TENTATIVE RULING #13: RESPONDENT'S REQUEST FOR JUDICIAL NOTICE OF THE THIRD APPELLATE DISTRICT VERDICT IN CASE NO C094987 (SUP. CT. NO. P19CRF0326) IS GRANTED. PETITIONER'S REQUEST FOR JUDICIAL NOTICE OF THE AUGUST 13, 2021 RFO AND ALL SUPPORTING DOCUMENTATION FILED THEREWITH IS HEREBY GRANTED. RESPONDENT'S REQUEST FOR A MOVE OUT ORDER IS DENIED. ALL PRIOR ORDERS, AND JUDGMENTS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT'S REQUEST TO TERMINATE THE CPO IS DENIED. 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.**