

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

April 6, 2023

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

1. BASSEL KHADRA V. STEPHANIE WU

PFL20200697

On January 5, 2022, Petitioner filed a Request for Order (RFO) requesting a Child Custody Evaluation pursuant to Family Code section 3111 to determine custody and visitation orders as well as a move-away request. Petitioner agreed to pay the costs of the evaluation subject to reallocation.

At the hearing on the RFO, the court granted the motion and ordered Petitioner to pay the costs of the 3111 Evaluation subject to reallocation. The parties presented the court with a stipulation appointing Deborah Barnes as the child custody evaluator. A review hearing was set for July 28th for receipt of the 3111 report. The July 28th hearing was continued repeatedly as the court had not received the 3111 report.

On January 31st the court finally received the 3111 report wherein the 3111 evaluator makes several recommendations regarding parenting time, therapy, and parenting courses for both parents. Minor's Counsel filed a Declaration of Minor's Counsel on April 3, 2023. The court finds this to be late filed pursuant to Civil Procedure section 1005(b) which states all reply papers are to be filed at least five court days before the hearing date. Section 12c states, "[w]here any law requires an act to be performed no later than a specified number of days before a hearing date, the last day to perform that act shall be determined by counting backward from the hearing date, *excluding the day of the hearing* as provided by Section 12." Cal. Civ. Pro. § 12c. Section 1005(b) in conjunction with Section 12c would have made the last day for filing Respondent's Supplemental Declaration on March 30th. Therefore, it is late filed and has not been considered by the court.

The court has reviewed the aforementioned filings of the parties as well as the 3111 report and determined the recommendations contained in the report appear to be in the best interests of the minor. As such, the recommendations as stated in the January 25, 2023 Child Custody Evaluation Report are hereby adopted as the orders of the court.

TENTATIVE RULING #1: THE RECOMMENDATIONS AS STATED IN THE JANUARY 25, 2023 CHILD CUSTODY EVALUATION 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.

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

2. DANIELLE HOPKINS V. JOHN HOPKINS

PFL20170221

Respondent is seeking final disclosures and a hearing in order to finalize the dissolution of the marriage. He filed his Request for Order (RFO) on January 18, 2023 and mail served it on March 16th. Petitioner filed and served her Responsive Declaration to Request for Order on March 23rd.

The requests made by Respondent in his RFO are somewhat unclear. He is requesting a judgment to finalize the dissolution of marriage. He would also like “a hearing to request final disclosure.” To the extent he seeks to bifurcate the proceedings, Petitioner objects on the basis that Respondent failed to include the required FL-315. On the matter of a hearing, Petitioner asks for a continuance in order to allow the parties additional time to negotiate settlement or, in the alternative, Petitioner would like the court to set a short cause evidentiary hearing to present the matter of reimbursement for living expenses paid for Respondent by Petitioner’s separate property.

“In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.” Fam. Code § 2337(a). To request such a bifurcation the party making the request shall use form FL-315 which has been adopted for mandatory use. Cal. Rule Ct. 1.31. Here, Respondent appears to be requesting bifurcation to obtain a status only judgment. Given his failure to file the requisite FL-315 the request must be denied. However, the court denies the request without prejudice should Respondent choose to raise the request again by filing the proper forms.

Respondent’s request for a hearing to request final disclosures is likewise denied. Final disclosures may be requested from the opposing party without the need for a hearing.

TENTATIVE RULING #2: RESPONDENT’S REQUEST FOR BIFURCATION AND A JUDGMENT TO FINALIZE DISSOLUTION IS DENIED WITHOUT PREJUDICE DUE TO FAILURE TO FILE FL-315. RESPONDENT’S REQUEST FOR A HEARING TO REQUEST FINAL DISCLOSURES IS DENIED. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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3. DAVID RITCHIE V. MARIANNE LANSPA

PFL20180627

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on December 23, 2022. There is no Proof of Service on file showing Petitioner was personally served with the OSC. The matter is dropped from calendar due to lack of proper service.

TENTATIVE RULING #3: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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4. ERIKA SANDOVAL V. JUSTIN DEAN PAINTER

PFL20200280

Petitioner seeks an order compelling Respondent's Preliminary Declaration of Disclosure. The Request for Order (RFO) was filed December 16, 2022, and mail served on January 24, 2023. Respondent has not opposed the RFO.

According to Petitioner her Preliminary Declaration of Disclosure was served on July 26, 2021. Counsel for Petitioner sent two meet and confer letters requesting the same from Respondent. As of the writing of the RFO, Petitioner had yet to receive the disclosures. Petitioner now requests an order compelling Respondent to serve his disclosures as well as \$10,000 in attorney's fees.

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. Accordingly, Respondent is hereby ordered to serve a fully completed and properly executed Preliminary Declaration of Disclosure no later than April 20, 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. However, imposition of sanctions in the amount of \$10,000 appears unjust as the sanctions in this context are meant to reimburse the moving party for costs and fees associated with meeting and conferring and compelling the disclosure. The court finds it to be more likely the associated costs to have been approximately \$3,000. As such, Respondent is ordered to pay Petitioner \$3,000 as and for attorney's fees pursuant to Family 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 \$500 due and payable on the 15th of each month beginning with April 15, 2023 and continuing until the amount is paid in full (approximately 6 months). If any amount is

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missed or late, the entire amount will become immediately due and payable with legal interest thereon.

TENTATIVE RULING #4: 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 \$3,000 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 \$500 DUE AND PAYABLE ON THE 15th OF EACH MONTH BEGINNING WITH APRIL 15, 2023 AND CONTINUING UNTIL THE AMOUNT IS PAID IN FULL (APPROXIMATELY 6 MONTHS). IF ANY AMOUNT IS MISSED OR LATE, THE ENTIRE AMOUNT WILL BECOME IMMEDIATELY DUE AND PAYABLE WITH LEGAL INTEREST THEREON.

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5. JESSICA CHOW V. CHRIS JEN WANG

PFL20210060

Respondent filed a Request for Order (RFO) and Declaration on November 10, 2022, requesting the court make orders as to the refinance or sale of the former marital home located at 576 Powers Drive in El Dorado, California as well as to compel production of documents. Respondent requested the court order Family Code section 271 sanctions against Petitioner. Hearing on the RFO was set for February 2, 2023.

Petitioner filed a Responsive Declaration on January 24, 2023 which was considered late and not considered by the court.

The parties appeared for hearing on February 2nd. At that time the court granted Respondent's request for Petitioner to remove Respondent and Respondent's brother from the title of the former marital home through a refinance. Refinance was ordered to be completed as soon as possible. If the apartment property sold prior to April 6, 2023, then Respondent was to be paid the equalizing payment from Petitioner's proceeds of the sale. The court denied Respondent's request for interest on the equalizing payment as it exceeded the terms of the stipulation amongst the parties. The parties were admonished to comply with the court's March 2, 2022 order. To the extent that any retirement documents had not already been produced, such documents were ordered to be produced no later than February 16, 2023. Parties were reminded all prior orders remain in full force and effect and failure to comply with the court's orders may result in a contempt action being brought. The court reserved on Respondent's request for 271 sanctions. The court set a review hearing for the present date to address the status of the sale of the property.

On March 2nd the parties filed a Stipulation and Order which was signed by the court the same day. The parties stipulated to transfer the Powers Drive property to Petitioner in exchange for an equalization payment to Respondent. Petitioner was to refinance the home into her name only within 60 days of the date of the agreement. If an extension was needed, the parties agreed to meet and confer on the matter.

Petitioner's Supplemental Declaration was filed on March 23rd and the signature is dated March 23rd, however, the Proof of Service indicates the declaration was served on February 23rd. It is unclear if this document was actually served and can be considered by the court.

The parties are ordered to appear.

TENTATIVE RULING #5: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THE STATUS OF THE REFINANCE AND THE SALE OF THE APARTMENT PROPERTY.

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6. KARA HERSOM V. JESSE TABORSKY

PFL20190244

Petitioner filed a Request for Order (RFO) on August 16, 2022 requesting the court modify the child custody and parenting time orders as well as the child support orders. Petitioner also requested attorney's fees and an order for Respondent to provide her the healthcare information and insurance cards. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on September 14, 2022 and a review hearing on November 3, 2022. Petitioner filed an Income and Expense Declaration the same day. Respondent was personally served on September 2, 2022.

Petitioner asserts Respondent has had no contact with the minor since October 2020. Petitioner is requesting the court grant her sole legal and sole physical custody of the minor. Petitioner requests guideline child support based on a 0% timeshare. Additionally, Petitioner is requesting Respondent pay one-half of work-related childcare and one-half of extracurricular activities. Petitioner also requests Respondent pay her attorney's fees pursuant to Family Code section 2030. In her Declaration for Attorney's Fees, Petitioner states there is no child support order in this case.

Only Petitioner appeared for the CCRC appointment on September 14, 2022. As such, a single parent report with no agreements or recommendations was filed. A copy of the report was mailed to the parties on September 20, 2022.

Respondent filed an Income and Expense Declaration on October 24, 2022. Respondent filed a Responsive Declaration on November 2, 2022. Petitioner was served with the Responsive Declaration and Income and Expense Declaration by mail on November 2, 2022. Respondent objects to Petitioner's requested modifications.

On November 3, 2022, the parties appeared for the hearing and presented oral argument. The court rereferred the parties to CCRC for an appointment on November 21, 2022 and a further review hearing on February 2, 2023. The court found the Department of Child Support Services (DCSS) is a party to the case and directed Petitioner to provide notice of the request to modify child support.

On November 21, 2022, only Respondent appeared for the CCRC appointment, despite counsel for Petitioner being present at the hearing and receiving the referral to CCRC. A single parent report was filed with the court on December 14, 2022. A copy of the report was mailed to the parties on December 21, 2022.

The court issued its tentative ruling on February 1st wherein the court noted there was still no Proof of Service showing DCSS was served with the RFO. Further Petitioner failed to appear at the CCRC session that was scheduled on her RFO. The court dropped the matter from calendar due to lack of proper service. Petitioner and her counsel appeared for hearing on February 2nd and requested a continuance. The court granted the request, and the hearing was continued to the present date.

There have been no additional filings since the prior hearing date. The matter is dropped from calendar.

TENTATIVE RULING #6: THE MATTER IS DROPPED FROM CALENDAR.

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7. SARAH MACCHIA V. GEORGE MACCHIA

22FL1202

This matter is set to be heard on two pending Requests for Order (RFO) and a review of Child Custody Recommending Counseling (CCRC).

Custody and Visitation

The Petition for Dissolution of Marriage was filed on December 28, 2022. Petitioner requested no custody or visitation to Respondent as she feels he is a danger to the children. The Petition was served on December 30th and the Response and Request for Dissolution of Marriage was filed thereafter on January 17th. The parties were referred to CCRC for an appointment on February 1st and a review hearing was set for the present date.

Both parties attended CCRC as scheduled. The CCRC counselor issued a report on March 14th which was mailed to the parties on March 16th. Respondent filed a Supplemental Attorney Declaration but there is no proof of service for this document so the court has not read or considered it.

The court has reviewed the report and the recommendations contained therein. It appears the recommendations as listed in the report are in the best interest of the children. The court hereby adopts the recommendations contained in the March 14th CCRC report as the orders of the court.

Retrieval of Personal Property

Respondent requests an order allowing him to enter the marital residence to retrieve his personal property. He filed his RFO and an Attorney Declaration in Support of Respondent's Request for Order on February 21, 2023 and mail served them on February 24th.

Respondent states that on December 30, 2022, he was met at the door of the residence by Petitioner's attorney who handed him a suitcase with some clothing and his laptop and monitor had been left out in the rain. He has since attempted to arrange a civil standby with the El Dorado Sheriff's Department to assist him in retrieving his property, but he was told that they would need a signed court order to do so. Counsel for Respondent has attempted to resolve the matter informally numerous times but was told only that Respondent's things had been bagged up and placed in the garage, he would not be allowed in the home, and he would need to arrange for a Sheriff standby.

Respondent's RFO is granted. Petitioner and Respondent are to meet and confer and choose a mutually agreeable date and time during which Respondent will be given two hours enter the residence and obtain his separate property. If the parties cannot agree on a date by April 13th then Respondent is to choose a date and time for the retrieval and give Petitioner at

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least 48 hours notice prior to that date. Respondent is to arrange for a civil standby with the El Dorado County Sheriff to be present at the time of the retrieval.

Sale of Marital Residence

Respondent filed a Request for Order (RFO) on February 3, 2023, seeking an order to sell the marital residence. The RFO and all other required documents were served electronically on February 9th.

According to Respondent there are currently two outstanding mortgages on the marital residence amounting to monthly payments of \$2,707.74. In light of the mortgage payments, coupled with the additional debt owed by the parties, Respondent is concerned that once support orders are issued he will not be able to afford all payments as well as his own living expenses. He notes that Petitioner is not currently employed. Respondent requests the marital home be immediately listed for sale with proceeds of the sale to pay off existing credit card debt, both mortgages, and the loan from Respondent's parents. Any remaining proceeds he requests be placed in a trust account with his attorney until order of the court or an agreement between the parties on the division thereof.

It is a longstanding tenant of the law that the court shall divide the community estate of the parties equally. Cal. Fam. Code 2550. 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). However, when minor children are involved the court is to consider the best interest of the children and minimize the impact of the dissolution proceedings as necessary. *See* Fam Code §§ 3800 to 3810.

Here, while Petitioner has not opposed the RFO, the court is concerned that Petitioner and the minor children currently reside in the home and there has been no information that Petitioner has another source of income to find housing for herself and the children in the face of an order to sell the home. This is especially if the court were to issue an order placing the proceeds of the sale into a trust account as opposed to being divided amongst the parties. Further, there has been no information establishing the credit card debt and the loan to Respondent's parents as community debt. Thus, the court is concerned with ordering the proceeds of a significant community asset to pay off debt which has not yet been deemed community debt. Finally, there are no current requests for child or spousal support, which appears to be the driving force behind Respondent's RFO.

In light of the court's need for additional information and the premature nature of the request, Respondent's RFO is denied without prejudice.

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TENTATIVE RULING #7: THE COURT HEREBY ADOPTS THE RECOMMENDATIONS CONTAINED IN THE MARCH 14TH CCRC REPORT AS THE ORDERS OF THE COURT. RESPONDENT'S RFO TO RETRIEVE HIS SEPARATE PROPERTY IS GRANTED. PETITIONER AND RESPONDENT ARE TO MEET AND CONFER AND CHOOSE A MUTUALLY AGREEABLE DATE AND TIME DURING WHICH RESPONDENT WILL BE GIVEN TWO HOURS ENTER THE RESIDENCE TO RETRIEVE HIS SEPARATE PROPERTY. IF THE PARTIES CANNOT AGREE ON A DATE BY APRIL 13TH THEN RESPONDENT IS TO CHOOSE A DATE AND TIME FOR THE RETRIEVAL AND GIVE PETITIONER AT LEAST 48 HOURS NOTICE PRIOR TO THAT DATE. RESPONDENT IS TO ARRANGE FOR A CIVIL STANDBY WITH THE EL DORADO COUNTY SHERIFF TO BE PRESENT AT THE TIME OF THE RETRIEVAL. RESPONDENT'S RFO TO SELL THE MARITAL RESIDENCE IS DENIED WITHOUT PREJUDICE.

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