

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

1. AMANDA ALESSANDRO V. JEREMY ALESSANDRO

PFL20200677

On September 22, 2022, parties stipulated to participating in a Family Code section 3111 evaluation. The court accepted the parties' stipulation and adopted it as its order. The court set a review hearing for receipt of the 3111 Evaluation for January 26, 2023.

Having not received the 3111 Evaluation by January 26th the court continued the matter to the present hearing date to allow Ms. Stillely additional time to complete her report. It appears the court still is not in receipt of the 3111 Evaluation report. The parties are ordered to appear to update the court on the status of the report.

TENTATIVE RULING #1: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THE STATUS OF THE 3111 EVALUATION REPORT.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

2. APRIL LOCKHART V. DAVID MERCADO

PFL20200534

Respondent has filed a Request for Order (RFO) seeking custody and visitation orders as well as an order replacing Minor's Counsel. The RFO was filed February 27, 2023. It was electronically served on March 17th. Petitioner filed a Responsive Declaration to Request for Order on March 20th. There is no Proof of Service indicating the responsive declaration was served on Respondent, as such, the court has not read or considered it. The parties were referred to attend Child Custody Recommending Counseling (CCRC) on March 23, 2023 and a hearing on the RFO was set for the present date.

On May 9th Respondent filed and served another Declaration, however this document is late filed and has not been read or considered.

Currently the parties share joint legal and joint physical custody of their minor child. Minor's Counsel has final decision-making authority when the parties are unable to agree. Respondent asks that he be granted legal custody and decision making authority, or, in the alternative, that a new Minor's Counsel be appointed. He notes current counsel, Dennis Brimmer, is unresponsive which makes it difficult to have any decisions made for the minor. He also states that Minor's Counsel has not shown up to the last two hearings.

The parties attended CCRC on March 23rd as ordered and were able to reach a full agreement. The agreement is set forth in the CCRC report dated March 23, 2023.

The court has reviewed the aforementioned filings and finds the agreement of the parties to be in the best interest of the child. The court adopts the agreement as stated in the March 23, 2023 CCRC report as the order of the court. Dennis Brimmer is relieved from his position as Minor's Counsel. The court appoints Kelly Bentley as Minor's Counsel.

TENTATIVE RULING #2: THE COURT ADOPTS THE AGREEMENT AS STATED IN THE MARCH 23, 2023 CCRC REPORT AS THE ORDER OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. DENNIS BRIMMER IS RELIEVED FROM HIS POSITION AS MINOR'S COUNSEL. THE COURT APPOINTS KELLY BENTLEY AS MINOR'S COUNSEL. 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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

3. BRAD SIMI V. TRACI VREEDE

PFL20130039

Respondent filed a Request for Order (RFO) on August 24, 2022, requesting sole legal and physical custody of the minor and supervised parenting time for Petitioner. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on September 13, 2022 and a review hearing on October 13, 2022. Petitioner was served electronically and by mail on August 25, 2022.

Respondent made her requests on the basis of her belief that Petitioner is suffering from a substance abuse problem and/or mental health issues. She claimed Petitioner acted inappropriately around the minor, including driving recklessly and disparaging the Respondent and maternal family to the minor. Respondent further stated that Petitioner spends his parenting time out working, therefore, leaving the minor with the stepmother. Respondent requested the court grant her sole legal and physical custody, order Petitioner to substance abuse test, and that his parenting time be supervised. In the alternative, Respondent requested she be given final decision-making authority, and Respondent's parenting time be limited to one overnight every other weekend.

Both parties attended CCRC on September 13, 2022 but were unable to reach any agreements. A report with recommendations was filed on September 30, 2022 and mailed to the parties on October 3, 2022.

Petitioner filed a Responsive Declaration on September 27, 2022. Respondent was served by mail and electronically on September 27, 2022. Petitioner objected to Respondent's requested changes. Petitioner admitted he lost his temper and did make inappropriate comments about Respondent and the maternal family in front of the minor. Petitioner also stated he apologized to the minor for this behavior. Petitioner requested the court affirm the current orders, and further clarify that Petitioner shall have the minor until 5:00 pm on Monday holidays that fall on his weekends and the court set one additional weekend each quarter. Petitioner also requested the parties have a 2-2-3 schedule for the summer. Petitioner also requested the Respondent only use the minor's legal last name.

Respondent filed a Supplemental Declaration on October 5, 2022. Petitioner was served electronically on October 5, 2022. Respondent also filed two additional Declarations on October 4, 2022, both of which were served electronically on October 4, 2022. Respondent reiterated her original request for sole legal and physical custody of the minor.

The parties appeared before the court on October 13th for hearing on the RFO. At that time, they presented the court with a stipulation adopting the tentative ruling of the court with modifications. The court adopted the stipulation and the CCRC report with the following modifications: The parties were to continue to share joint custody, with Petitioner having

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

parenting time every other weekend. This was ordered to be the parenting plan throughout the year. The minor was to attend therapy with Micaela Van Dine, LMFT at a frequency and duration as directed by the therapist. The parties were ordered to use the talkingparents.com application to communicate about the needs of the minor. Petitioner was ordered not to consume alcohol, narcotics, or restricted dangerous drugs within 24 hours before or during his parenting time. The court adopted and reaffirmed the respect guidelines. Both parties were ordered to enroll in and complete a co-parenting class. Parties were to file proof of completion with the court and serve the other party. Petitioner indicated that he was enrolled in therapy. In lieu of attending anger management classes he was to address anger management in therapy and provide proof of the issue being addressed within 31 days of the hearing date. Respondent shall ensure the minor uses her legal last name for all purposes. The court re-referred the parties to CCRC with an appointment on March 22, 2023 and the matter was set for review hearing on the present date.

On November 17, 2022, Petitioner filed a Declaration which included a letter from his therapist indicating his attendance and stating that he is complying with the court orders. The Declaration along with his Income and Expense Declaration were both mail served on November 30th.

On April 10, 2023, Respondent filed an Ex Parte Application and Declaration for Orders and Notice requesting that all visitation between Petitioner and the minor cease until the May 11th hearing date. The court denied the request based on insufficient evidence but reminded Petitioner of the respect guidelines and warned that failure to follow them may result in a change to the custody/parenting plan orders.

The parties attended CCRC as scheduled, and a report was prepared on May 2nd. The court has reviewed the recommendations contained in the CCRC report and finds them to be in the best interest of the minor. As such, the court hereby adopts the recommendations contained in the May 2nd CCRC report as the orders of the court with the following modification. Counseling Section 2 shall be modified to add the following sentence: "Father is to continue anger management counseling at a frequency and duration as determined by the counselor."

TENTATIVE RULING #3: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE MAY 2ND CCRC REPORT AS THE ORDERS OF THE COURT WITH THE FOLLOWING MODIFICATION. COUNSELING SECTION 2 SHALL BE MODIFIED TO ADD THE FOLLOWING SENTENCE: "FATHER IS TO CONTINUE ANGER MANAGEMENT COUNSELING AT A FREQUENCY AND DURATION AS DETERMINED BY THE COUNSELOR." 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.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

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.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

4. CHRISTINA ENSLEY V. JAMES ENSLEY

22FL1143

Petitioner filed a Request for Order (RFO) on February 14, 2023, after the court denied her request for emergency ex parte orders to modify custody and parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on March 15, 2023 and a review hearing on May 11, 2023. Petitioner is requesting a modification of child custody and parenting time orders, as well as Family Code section 2030 attorney fees and Family Code section 271 sanctions. Respondent was served by mail on February 14, 2023. Petitioner filed an Income and Expense Declaration and attorney Declaration regarding attorney's fees on February 10, 2023. Respondent was served by mail on February 14, 2023.

Petitioner asserts Respondent has a significant substance abuse issue which places the minors in harms way. Petitioner is requesting the court order Respondent's parenting time be supervised. Petitioner is also requesting the court appoint Minors' Counsel for the minors. Petitioner is requesting Family Code section 2030 attorney's fees as she earns less than Respondent.

Subsequent to filing the RFO, Petitioner filed a request for a for a Domestic Violence Restraining Order. That matter is currently set for an evidentiary hearing on June 14, 2023.

On March 9, 2023 the court issued an ex parte minute order changing the appointment date for CCRC from March 15, 2023 to March 30, 2023 due to the unavailability of the counselor. Petitioner was directed to provide notice to Respondent.

Petitioner electronically served Respondent a copy of the ex parte minute order regarding CCRC on March 14, 2023.

Only Petitioner appeared for the CCRC appointment on March 30, 2023. As such a single parent report was filed with the court on March 30, 2023. Copies were mailed to the parties on April 3, 2023.

Respondent has not filed a Responsive Declaration or an Income and Expense Declaration.

On its own motion the court continues this matter to join with the evidentiary hearing currently set for June 14, 2023 at 8:30 in Department 5. The court finds the court must adjudicate the Domestic Violence Restraining Order prior to determining the custody and parenting plan orders. Further, the court does not have the requisite information before it to make a determination on the Family Code section 2030 attorney's fees request, as Respondent has failed to file an Income and Expense Declaration. Further, Petitioner's is nearly out of date. The court orders both parties to file Income and Expense Declarations at least 10 days prior to

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

the June 14th hearing. The court reserves jurisdiction on the request for attorney's fees pursuant to Family Code section 2030. As to the request for attorney's fees pursuant to Family Code section 271, the court also continues that request to June 14, 2023 and reserves jurisdiction and adds Respondent's failure to timely file an Income and Expense Declaration to the issues to be considered under this provision.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #4: ON ITS OWN MOTION THE COURT CONTINUES THIS MATTER TO JOIN WITH THE EVIDENTIARY HEARING CURRENTLY SET FOR JUNE 14, 2023 AT 8:30 IN DEPARTMENT 5. THE COURT FINDS THE COURT MUST ADJUDICATE THE DOMESTIC VIOLENCE RESTRAINING ORDER PRIOR TO DETERMINING THE CUSTODY AND PARENTING PLAN ORDERS. FURTHER, THE COURT DOES NOT HAVE THE REQUISITE INFORMATION BEFORE IT TO MAKE A DETERMINATION ON THE FAMILY CODE SECTION 2030 ATTORNEY'S FEES REQUEST, AS RESPONDENT HAS FAILED TO FILE AN INCOME AND EXPENSE DECLARATION. FURTHER, PETITIONER'S IS NEARLY OUT OF DATE. THE COURT ORDERS BOTH PARTIES TO FILE INCOME AND EXPENSE DECLARATIONS AT LEAST 10 DAYS PRIOR TO THE JUNE 14TH HEARING. THE COURT RESERVES JURISDICTION ON THE REQUEST FOR ATTORNEY'S FEES PURSUANT TO FAMILY CODE SECTION 2030. AS TO THE REQUEST FOR ATTORNEY'S FEES PURSUANT TO FAMILY CODE SECTION 271, THE COURT CONTINUES THAT REQUEST TO JUNE 14TH AND RESERVES JURISDICTION AND ADDS RESPONDENT'S FAILURE TO TIMELY FILE AN INCOME AND EXPENSE DECLARATION TO THE ISSUES TO BE CONSIDERED UNDER THIS PROVISION. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT.

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.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

5. DEIRDRE WALKE V. RICHARD WALKE JR.

PFL20210452

Petitioner filed an ex parte request for issue sanctions as well as attorney fees as sanctions on January 27, 2023. The court granted the request as an order shortening time and set the matter for a hearing on February 7, 2023. On February 7, 2023, parties appeared and presented argument. The court directed parties to meet and confer on the outstanding discovery issues. The trial was reset to June 6 and 7, 2023. The court reserved jurisdiction on the issue of monetary sanctions and set a further review hearing on the request for issue sanctions for March 16, 2023 which was ultimately continued to the present date.

In preparation for the hearing, Petitioner filed and served her Supplemental Declaration of Attorney Amber White on May 1st. Likewise, Respondent filed and served a Supplemental Declaration of Attorney Matthew D. Obregon and a Supplemental Declaration of Attorney Nabil Samaan on May 2nd.

Petitioner seeks issue sanctions against Respondent regarding all discovery requests with which he failed to comply. She also requests monetary sanctions pursuant to Family Code section 271 and Civil Procedure section 2030.300(e) and 2031.310(i). Petitioner served Demand for Production of Documents and Special Interrogatories on April 27, 2022. Respondent provided responses that Petitioner deemed insufficient and, after making an effort to meet and confer, Petitioner filed her Motion to Compel which was granted. Respondent was ordered to amend his discovery responses and to provide an accounting of the rental income received and amounts paid, as well as deliver the rental income to a joint account of the parties. To date, Petitioner argues a variety of documents remain outstanding.

Respondent opposes the motion on the basis that he has produced over six thousand documents and he feels all documents relevant to settlement have been produced. He opposes Petitioner's request for Family Code section 271 sanctions, stating that he is the only party who has made a viable settlement offer and as such, his actions do not frustrate the policy of the law which is to promote settlement and reduce litigation costs. Additionally, he argues sanctions pursuant to Civil Procedure section 2031.310(i) are not warranted as he has acted in good faith to provide full and complete responses to each meet and confer letter. Respondent asks the court to close discovery.

Civil Procedure section 2023.030 vests the court with authority to order issue sanctions thereby deeming the facts of a matter established against the party who engages in a misuse of the discovery process or precluding that party from supporting or opposing designated claims or defenses. Failure to respond to an authorized form of discovery, such as requests for production of documents, constitutes a misuse of the discovery process. Cal. Civ. Pro. Section 2023.010. Failure to obey an order compelling production of documents may also subject a

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

party to issue sanctions. Cal. Civ. Pro. § 2025.480(k). The court holds broad discretion over the imposition of discovery sanctions. Calvert Fire Inx. Co. v. Cropper, 141 Cal. App. 3d 901 (1983).

According to Respondent he has produced approximately 6,170 pages of documents to date. He states “[a]t this point HUSBAND and his attorney do not believe that further discovery is needed. All relevant information that will facilitate settlement has been disclosed...” Notably, Respondent is not saying that no additional responsive documents exist or are in his possession or control. Instead, he states only that in his, and his attorney’s, opinions no additional discovery is needed. This is irrelevant. The issue is whether or not all responsive documents that are likely to lead to the discovery of admissible evidence have been produced, not whether the party and his counsel feel that nothing additional is necessary.

While it does appear that Respondent may not be entirely forthcoming with all of his responses, the court is simply unable to award issue sanctions as Petitioner has failed to make her request with specificity. The documents she requests be produced span an array of issues such as Respondent’s income, mortgage payments, security deposits, etc. An issue sanction allows the court to find a material fact in favor of the party requesting the sanction and precludes the noncompliant party from offering evidence otherwise. Here, it is unclear what factual findings Petitioner would like the court to make. For example, regarding Respondent’s failure to produce his El Dorado County paystubs, is Petitioner requesting the court preclude Respondent from submitting any evidence of his income at trial? Or is she asking for a finding that Respondent makes a specified amount of income from El Dorado County and he is precluded from submitting evidence otherwise? The court is not inclined to impose issue sanctions where it is unclear what Petitioner is even asking for. Moreover, while there does appear to be some documents missing, Respondent has engaged in substantial compliance across all issues. While his responses may still fall short of the duties imposed on him by the Civil Discovery Act, it does not appear to be such woeful noncompliance as to warrant across the board issue sanctions on each of topic included. Accordingly, Petitioner’s request for issue sanctions is denied.

While the court is not inclined to impose issue sanctions, there does appear to be grounds for monetary sanctions. The court may order sanctions pursuant to Family Code section 271 which 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 between the parties....” In making an award under Section 271, “...the court shall take into consideration all evidence concerning the parties’ incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed...” *Id.*

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

In addition to 271 sanctions, the court may impose monetary sanctions against a party, or attorney, who “engages in conduct that is a misuse of the discovery process” unless the court finds the noncompliant party to have acted with substantial justification or some other circumstance would make the imposition of sanctions unjust. Cal. Civ. Pro. § 2023.030. Sanctions imposed are to include “...the reasonable expenses, including attorney’s fees, incurred by anyone as a result of...” the conduct of the party subject to sanction. Cal. Civ. Pro. 2023.030(a) & 2023.020. Misuse of the discovery process includes, but is not limited to, failing to respond or submit to an authorized method of discovery and failing to comply with an order compelling production of documents. Cal. Civ. Pro. § 2023.010(d). Cal. Civ. Pro. Section 2023.010 & Cal. Civ. Pro. § 2025.480(k).

“A party to whom a demand for inspection, copying, testing, or sampling has been directed *shall respond separately to each item or category of item* by any of the following:” (1) a statement that the party will comply, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210 (emphasis added). A statement that the party will comply shall include a statement “that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.” Cal. Civ. Pro. § 2031.220. A statement of inability to comply shall “affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.” Cal. Civ. Pro. § 2031.230.

Respondent’s amended responses repeatedly fall short of the standard set by the Civil Discovery Act. Some documents are provided but not others with no explanation as to why the missing documents were not included or who may be in possession of them. When documents are provided Respondent repeatedly fails to indicate that those provided make up all of the documents that are responsive to the request which are in the possession, custody or control of Respondent. Without these representations, Petitioner has no reason to believe that Respondent has been forthcoming with all of the documents in his control. Additionally, for those responses that have been amended to be in compliance with the code, it has taken multiple meet and confer efforts from Petitioner to get them to that point. Efforts which have surely caused her to incur attorney’s fees.

On October 6, 2022, the court issued its order compelling Respondent to amend his responses which he did, but they were still not complete. Petitioner filed her Motion for Issue Sanctions on January 27th and the parties were ordered to meet and confer. Once again,

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

Respondent amended his responses and once again he provided additional information and documents which should have been produced pursuant to the court's order compelling production in the first place without the need for filing a second discovery motion.

Petitioner requests sanctions in the amount of \$5,700, though she does not provide any substantiation for the amount requested. The court finds this amount to be too high and unlikely to be entirely related to the pending motion. As such, the court awards Petitioner \$2,000 as and for discovery and Section 271 sanctions.

TENTATIVE RULING #5: PETITIONER'S MOTION FOR ISSUE SANCTIONS IS DENIED. PETITIONER'S REQUEST FOR MONETARY SANCTIONS IS GRANTED. RESPONDENT IS TO PAY PETITIONER \$2,000 AS AND FOR DISCOVERY AND SECTION 271 SANCTIONS. SANCTIONS ARE PAID OR BEFORE JUNE 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 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

May 11, 2023

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

6/7. JAYMIE CEDENO V. RAFAEL CEDENO

22FL0623/22FL0878

This matter is before the court on two separate issues. First, a review of Child Custody Recommending Counseling (CCRC). Second, a hearing on the Request for Order (RFO) filed by Petitioner on July 11, 2022.

Petitioner filed a Request for Domestic Violence Restraining Order (DVRO) on September 14, 2022. The parties appeared before the court on February 14, 2023 for hearing on the DVRO. At that time, they presented the court with a request for referral to CCRC and a stipulation to continue the hearing. The court continued the DVRO hearing to May 30, 2023. The parties were referred to CCRC with an appointment on March 9th and a review of CCRC set for May 11th. The parties attended CCRC as scheduled, and the court is in receipt of the report prepared by the CCRC counselor. The court has reviewed the report and the recommendations contained therein. However, the court cannot rule on the matters of custody and visitation without first making findings pursuant to Family Code section 3044. As such, the CCRC review is continued to join with the DVRO hearing set for May 30, 2023 at 8:30 am in Department 5.

On July 11, 2023, Petitioner filed an RFO seeking orders regarding custody, visitation, child support, spousal support and property control. Again, without first making orders on the DVRO, the court is unable to rule on the RFO. As such, the hearing on the RFO is continued to join with the DVRO hearing set for May 30, 2023 at 8:30 am in Department 5.

TENTATIVE RULING #6/#7: THIS MATTER IS CONTINUED TO JOIN WITH THE DVRO HEARING SET FOR MAY 30, 2023 AT 8:30 AM IN DEPARTMENT 5. THE COURT RESERVES JURISDICTION ON CHILD AND SPOUSAL SUPPORT BACK TO THE DATE OF FILING THE RFO.

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.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

8. JENNIFER BARRY V. MARK BARRY

22FL0585

On January 12, 2023, the court rereferred the parties to Child Custody Recommending Counseling (CCRC) for an appointment on March 9, 2023 and a further review hearing on May 11, 2023.

The parties both attended CCRC on March 9, 2023 but were unable to reach any agreements. A CCRC report with recommendations was filed on April 7, 2023 and copies were mailed to the parties on the same day.

Petitioner filed a Supplemental Declaration on April 27, 2023. Respondent was served electronically the same day. Petitioner takes issue with substantial portions of the CCRC report. Petitioner, however, does agree to the parenting time recommendations with the step-up times, contingent on Respondent remaining clean and sober and continuing to participate in the court ordered services. Petitioner proposes Respondent's parenting time be the 1st, 2nd, 4th, and 5th Saturdays and Sundays of each month. For Step 1 the times to be from 12-4 pm; for Step 2, from 12-6 pm; and for Step 3 from 10 am- 6:00 pm. Petitioner requests the parties use the talkingparents.com application for scheduling events for extracurricular activities so that both parents are able to participate at different times. Petitioner requests the court not adopt the holiday schedule. Petitioner also does not agree to the exchanges taking place at a police station. Petitioner requests the exchanges take place at the Pollock Pines Safeway. Petitioner also requests the exchanges be brief and peaceful, and that neither parent communicate during the exchanges. Petitioner also requests the court modify the phone contact from Monday and Wednesday to Tuesday and Thursday at 7:00 pm and that the parties' use the talkingparents.com application.

Respondent filed a Supplemental Declaration on May 1, 2023. Petitioner was electronically served the same day. Respondent is also requesting modification of the CCRC recommendations. Respondent requests Step 2 be eight-hour visits and that Step 3 be every other weekend over nights from Friday at 5 pm until Sunday at 5:00 pm. Respondent also proposes clarification of the holiday schedule, with a proposal of what defines the holiday and which party shall have odd and which party shall have even years. Respondent agrees to the Tuesday and Thursday phone calls. Respondent requests an additional phone call on Friday rather than Sunday as recommended in the CCRC report. Respondent proposes for Step 1, that exchanges take place at the Sacramento Food Co-op or somewhere in the downtown Sacramento area, as he will be commuting from Fresno. Upon Respondent's proposed Step 2, Respondent is requesting the exchanges take place in Modesto, the halfway point between Fresno and Pollock Pines, at a public location agreed to by Petitioner. Respondent objects to the no third-party contact provision as recommended in the CCRC report. Respondent is agreeable to four additional months of Soberlink testing. Any additional Soberlink testing

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

Respondent requests be at Petitioner's expense. Respondent agrees to continue individual therapy and follow the recommendations of his therapist. Respondent does not agree to reunification therapy with the minors. However, he does agree with conjoint therapy with everyone, with the costs to be split equally. Respondent substantially agrees to the remaining recommendations. Respondent requests Petitioner provide proof of the minor C.B.'s enrollment in school and that he be included in all communication from the school.

Respondent additionally filed supervised visitation reports from March 1, 2023 through April 29, 2023 on May 1, 2023. Petitioner was served a copy electronically on May 1, 2023.

The court has read and considered the filings as outlined above. The court makes the following findings and orders: Petitioner continues to have sole legal and physical custody. The court adopts the recommendations as set forth in the April 7, 2023 filed CCRC report with modifications. The court adopts the parenting time provisions as follows: Respondent's parenting time be the 1st, 2nd, 4th, and 5th Saturdays and Sundays of each month.

Step 1: Respondent shall have four-hour visits from 12-4 pm on Saturday and Sunday beginning May 13, 2023 and last for six weeks contingent on Respondent's continued compliance with Soberlink testing.

Step 2: Respondent shall have six-hour visits from 12-6 pm on Saturday and Sunday beginning June 24, 2023 and last for six weeks contingent on Respondent's continued compliance with Soberlink testing.

Step 3: Respondent shall have eight-hour visits from 10 am- 6:00 pm on Saturday and Sunday beginning August 5, 2023 and lasting for six weeks contingent on Respondent's continued compliance with Soberlink testing.

Respondent's parenting time will take place in the greater El Dorado County area (El Dorado, Sacramento, and Placer Counties) The exchanges shall take place at the El Dorado County Sheriff's Department in Diamond Springs. The exchanges shall be brief and peaceful and neither parent will discuss co-parenting issues during the exchanges.

The court is not adopting the Holiday schedule, with the exception of Mother's Day, Petitioner will have parenting time Mother's Day.

Either party must have written permission or court permission to take the minors out of the state of California.

Petitioner must make the minors available for phone and/or video contact with Respondent on Tuesday, Thursday, and Friday at 7:00 pm. If the contact is to be through the talkingparents.com application, Petitioner is to pay for the premium service. The minors may

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

have telephone access to each parent. The parties are to use talkingparents.com to communicate about the minors' education, health, and general welfare.

The court adopts the respect guidelines as set forth.

The court adopts the Alcohol/Substance Abuse provisions as set forth.

The court is not adopting the third-party contact provisions.

Respondent is to continue in his individual therapy and follow the recommendations of his therapist as to the frequency and duration of therapy.

The court is not adopting the recommendation as to reunification therapy for Respondent and the minors.

Petitioner is to be reassessed for further individual therapy and follow the recommendations of the individual therapist as to the frequency and duration of therapy.

The court is not adopting the recommendation as to co-parenting therapy for the parties. The parties are to enroll in and complete a co-parenting class and provide the court proof of completion if they have not already done so.

Petitioner is to provide Respondent quarterly updates on the minor C.B.'s progress in school, including her grades and testing scores through the talkingparents.com application.

The court sets a further review hearing for September 21, 2023 to review the parenting plan and assess Respondent's progress and determine whether to proceed to overnights.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #8: PETITIONER CONTINUES TO HAVE SOLE LEGAL AND PHYSICAL CUSTODY. THE COURT ADOPTS THE RECOMMENDATIONS AS SET FORTH IN THE APRIL 7, 2023 FILED CCRC REPORT WITH MODIFICATIONS. THE COURT ADOPTS THE PARENTING TIME PROVISIONS AS FOLLOWS: RESPONDENT'S PARENTING TIME BE THE 1ST, 2ND, 4TH, AND 5TH SATURDAYS AND SUNDAYS OF EACH MONTH. STEP 1: RESPONDENT SHALL HAVE FOUR HOUR VISITS FROM 12-4 PM ON SATURDAY AND SUNDAY BEGINNING MAY 13, 2023 AND LAST FOR SIX WEEKS CONTINGENT ON RESPONDENT'S CONTINUED COMPLIANCE WITH SOBERLINK TESTING. STEP 2: RESPONDENT SHALL HAVE SIX-HOUR VISITS FROM 12-6 PM ON SATURDAY AND SUNDAY BEGINNING JUNE 24, 2023 AND LAST FOR SIX WEEKS CONTINGENT ON RESPONDENT'S CONTINUED COMPLIANCE WITH SOBERLINK TESTING. STEP 3: RESPONDENT SHALL HAVE EIGHT-HOUR VISITS FROM 10 AM- 6:00 PM ON SATURDAY AND SUNDAY BEGINNING AUGUST 5, 2023 AND LASTING FOR SIX WEEKS CONTINGENT ON RESPONDENT'S CONTINUED COMPLIANCE WITH SOBERLINK TESTING. RESPONDENT'S

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

PARENTING TIME WILL TAKE PLACE IN THE GREATER EL DORADO COUNTY AREA (EL DORADO, SACRAMENTO, AND PLACER COUNTIES) THE EXCHANGES SHALL TAKE PLACE AT THE EL DORADO COUNTY SHERIFF'S DEPARTMENT IN DIAMOND SPRINGS. THE EXCHANGES SHALL BE BRIEF AND PEACEFUL AND NEITHER PARENT WILL DISCUSS CO-PARENTING ISSUES DURING THE EXCHANGES. THE COURT IS NOT ADOPTING THE HOLIDAY SCHEDULE, WITH THE EXCEPTION OF MOTHER'S DAY, PETITIONER WILL HAVE PARENTING TIME MOTHER'S DAY. EITHER PARTY MUST HAVE WRITTEN PERMISSION OR COURT PERMISSION TO TAKE THE MINORS OUT OF THE STATE OF CALIFORNIA. PETITIONER MUST MAKE THE MINORS AVAILABLE FOR PHONE AND/OR VIDEO CONTACT WITH RESPONDENT ON TUESDAY, THURSDAY, AND FRIDAY AT 7:00 PM. IF THE CONTACT IS TO BE THROUGH THE TALKINGPARENTS.COM APPLICATION, PETITIONER IS TO PAY FOR THE PREMIUM SERVICE. THE MINORS MAY HAVE TELEPHONE ACCESS TO EACH PARENT. THE PARTIES ARE TO USE TALKINGPARENTS.COM TO COMMUNICATE ABOUT THE MINORS' EDUCATION, HEALTH, AND GENERAL WELFARE. THE COURT ADOPTS THE RESPECT GUIDELINES AS SET FORTH. THE COURT ADOPTS THE ALCOHOL/SUBSTANCE ABUSE PROVISIONS AS SET FORTH. THE COURT IS NOT ADOPTING THE THIRD-PARTY CONTACT PROVISIONS. RESPONDENT IS TO CONTINUE IN HIS INDIVIDUAL THERAPY AND FOLLOW THE RECOMMENDATIONS OF HIS THERAPIST AS TO THE FREQUENCY AND DURATION OF THERAPY. THE COURT IS NOT ADOPTING THE RECOMMENDATION AS TO REUNIFICATION THERAPY FOR RESPONDENT AND THE MINORS. PETITIONER IS TO BE REASSESSED FOR FURTHER INDIVIDUAL THERAPY AND FOLLOW THE RECOMMENDATIONS OF THE INDIVIDUAL THERAPIST AS TO FREQUENCY AND DURATION OF THERAPY. THE COURT IS NOT ADOPTING THE RECOMMENDATION AS TO CO-PARENTING THERAPY FOR THE PARTIES. THE PARTIES ARE TO ENROLL IN AND COMPLETE A CO-PARENTING CLASS AND PROVIDE THE COURT PROOF OF COMPLETION IF THEY HAVE NOT ALREADY DONE SO. PETITIONER IS TO PROVIDE RESPONDENT QUARTERLY UPDATES ON THE MINOR C.B.'S PROGRESS IN SCHOOL, INCLUDING HER GRADES AND TESTING SCORES THROUGH THE TALKINGPARENTS.COM APPLICATION. THE COURT SETS A FURTHER REVIEW HEARING FOR SEPTEMBER 21, 2023 TO REVIEW THE PARENTING PLAN AND ASSESS RESPONDENT'S PROGRESS AND DETERMINE WHETHER TO PROCEED TO OVERNIGHTS. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

10. ST. OF OREGON V C. GRAYSON, II (OTHER PARENT KELLY STEVENSON) PFS20100278

On February 23, 2023, Respondent filed an Ex Parte Application and Declaration for Orders and Notice. By way of his ex parte application Respondent requested sole legal and physical custody of the children with parenting time to Other Parent every other weekend from Friday at 8:00 pm to Sunday at 6:00 pm. He further requested Petitioner's parenting time to be supervised until she produces negative drug tests for a year. Other Parent opposed the ex parte.

On February 24th the court issued the following ruling on the ex parte application: Respondent to have temporary sole legal and physical custody of the minors. Other Parent shall have parenting time every other weekend from Friday at 8:00pm to Sunday at 6:00 pm to be supervised by a mutually agreed-upon supervisor. If the supervisor believes Other Parent is under the influence, the visit will be immediately terminated. Parties are to attend Child Custody Recommending Counseling (CCRC). A review hearing was set for May 11th.

Following the ex parte orders Respondent filed his regularly noticed Request for Order (RFO) making the same requests as set forth in the ex parte application. The temporary ex parte orders and the RFO were personally served on February 22nd.

Other Parent filed a Declaration in response to the RFO on March 20th. There is no Proof of Service on file evidencing this document was properly served on Respondent. As such, the court has not read or considered it.

As previously stated, Respondent requests the court award him sole legal and physical custody and grant Other Parent supervised visitation ever other weekend from Friday at 8:00pm to Sunday at 6:00pm. The supervisor is to be mutually agreed upon and this schedule is to continue for one year while Other Parent produces a negative drug and alcohol test and attends therapy weekly. If Other Parent produces a positive drug or alcohol test in that time, her parenting time will be suspended until she can produce three weeks of negative testing.

The parties attended CCRC on March 23, 2023 and a report was issued on April 13, 2023. According to CCRC, Other Parent requests her parenting time be from Sunday evening to Thursday evening and Respondent's time to be from Thursday evening until Sunday evening. While the CCRC counselor notes Other Parent's participation in rehabilitation efforts, he remains concerned about her ability to retain her sobriety and her disregard for the no-contact order regarding her husband. The CCRC report sets forth several recommendations made by the CCRC counselor.

When making orders regarding custody or visitation the court is to consider (1) the state's policy to ensure the child has frequent and continuing contact with both parents after a separation and (2) the health, welfare, and safety of the child. Cal. Fam. Code § 3020. Where

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

May 11, 2023

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

these two factors are in conflict, the health, welfare, and safety of the child trumps the policy regarding parental contact. *Id.* at (c). This is a balancing act not easily determined.

While the court is optimistic that Other Parent is actively engaged in treatment for her alcohol addition, there is a significant history of relapse. Additionally, the court notes that the no contact order between the children and Mr. Stevenson is still in place and there is no evidence to indicate that Mr. Stevenson is a safe person for the children to be around. Ultimately, if the court were to adopt the recommendations of the CCRC report, the court is concerned with Step 3 of the plan wherein Other Parent would have the children every week from Sunday at 6:00 pm until Thursday before school. Given that Other Parent is married to Mr. Stevenson and has two small children with him, this schedule is impractical with the no contact order in place. As such, the court declines to adopt that part of the CCRC recommendations. However, the court does feel it is appropriate to adopt the remaining recommendations as stated in the CCRC report as the orders of the court. The court sets a review hearing for 9/7/2023 at 8:30 am in Department 5. Parties are to file and serve supplemental declarations no later than 10 days prior to the hearing date. Supplemental declarations are to update the court on the status of the visits and Other Parent's sobriety.

TENTATIVE RULING #10: THE COURT ADOPTS THE RECOMMENDATIONS OF THE CCRC REPORT AS THE ORDERS OF THE COURT WITH THE FOLLOWING MODIFICATION. STEP 3 OF THE STEP-UP PLAN IS NOT ADOPTED. A REVIEW HEARING IS SET FOR 9/7/2023 AT 8:30 AM IN DEPARTMENT 5. PARTIES ARE TO FILE AND SERVE SUPPLEMENTAL DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. SUPPLEMENTAL DECLARATIONS ARE TO UPDATE THE COURT ON THE STATUS OF THE VISITS AND OTHER PARENT'S SOBRIETY.

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.