

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

July 21, 2022

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

15. CASEY HENLE V. NATALIA HENLEY

21FL0219

On May 3, 2022, Respondent filed an ex parte request for emergency temporary sole physical and sole legal custody of the minors, with Petitioner to have supervised visitation, as well exclusive use of the home and vehicle. Petitioner filed a responsive declaration asking the court to deny the request, as there is a current Domestic Violence Restraining Order (DVRO) in place protecting Petitioner and the minors from Respondent. On May 4, 2022 the court denied Respondent's ex parte requests.

On May 4, 2022, Respondent filed a Request for Order (RFO) making the same requests as set forth in the ex parte request as well as requesting an order vacating the current DVRO. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on June 10, 2022 and a review hearing on July 21, 2022. Upon review of the file, there is no Proof of Service showing Petitioner was served with the RFO.

Nevertheless, Petitioner appeared at the CCRC appointment, therefore, the court finds Petitioner had notice of the CCRC referral. Respondent failed to appear for the CCRC appointment and failed to complete the CCRC questionnaire. As such a single parent CCRC report was filed with no agreements or recommendations. A copy of the report was mailed to the parties on June 10, 2022.

Petitioner has not filed a Responsive Declaration to the RFO.

The court finds that Respondent failed to appear at the CCRC appointment that was set at her request. The court cannot find Respondent properly noticed Petitioner of the RFO. Therefore, the RFO is denied. Further, even if the court had decided the RFO on the merits, the court finds Respondent has failed to rebut the Family Code section 3044 presumptions. Therefore, the current orders for custody and parenting time remain in the minors' best interests. Respondent has failed to present any grounds on which the other requested orders should be granted. As such, the RFO is denied.

All prior orders remain in full force and effect. Respondent shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #15: RESPONDENT'S RFO IS DENIED. 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.

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16. DAVID MERCADO V. APRIL LOCKHART

PFL20180104

On May 23, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt, alleging eight counts of contempt against Respondent. Respondent was personally served on June 10, 2022. Petitioner concurrently filed a Request for Order (RFO) requesting Family Code section 271 sanctions. Petitioner was served with the RFO personally on June 10, 2022.

Respondent has not filed a responsive declaration.

Petitioner has failed to plead any facts in support of the request. Petitioner does not allege any actions by Respondent that would warrant Family Code section 271 sanctions. The court denies Petitioner's request for Family Code section 271 sanctions.

Parties are ordered to appear for an arraignment on the Order to Show Cause and Affidavit for Contempt.

TENTATIVE RULING #16: PARTIES ARE ORDERED TO APPEAR FOR AN ARRAIGNMENT ON THE ORDER TO SHOW CAUSE AND AFFIDAVIT FOR CONTEMPT. THE COURT DENIES PETITIONER'S REQUEST FOR 271 SANCTIONS.

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17. EHREN THOMAS ELLENBURG V. KRISTIN ELLENBURG

PFL20150460

On May 3, 2022, Respondent filed an Ex Parte Application and Declaration for Orders and Notice requesting the restoration of joint legal custody. The matter was set to be heard on July 21, 2022, on the regular law and motion calendar. Respondent then filed a Request for Order making the same request as previously made. The parties were referred to Child Custody Recommending Counseling (CCRC). There is no proof of service on file for the RFO or the CCRC referral. On June 9, 2022, Respondent sent a letter to the court indicating that the RFO had not been served and asking for the CCRC date and the hearing date to be removed from calendar.

TENTATIVE RULING #17: THE MATTER IS DROPPED FROM THE COURT'S CALENDAR.

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

18. GEORGIA WANLAND V. DONALD WANLAND

PFL20190812

On April 28, 2022, Respondent filed Respondent's Motion in Limine #3 to Exclude Evidence and Arguments at Spousal Support Hearing and Declaration in Support. There is no proof of service on file with the court. However, the court has received a request for remote appearance for the hearing on this motion by Petitioner's counsel which stands to reason that Petitioner and her counsel do have actual knowledge of the motion.

Respondent seeks an order precluding "all evidence and arguments that could be proffered by Petitioner, including all witnesses, financial information, exhibits, documents, and arguments in support of Petitioner's positions." His reason being that Petitioner has failed to disclose financial information, witnesses, documents, exhibit lists, and argument statements as required by various court rules.

On May 6, 2022, Petitioner filed a proof of service with the court indicating that Respondent was served with Petitioner's trial binder, trial brief, Statement of Issues & Contentions, Income and Expense Declaration, Production of Documents, and Witness list on April 21, 2022.

The parties are ordered to appear for oral argument on the matter.

TENTATIVE RULING #18: THE PARTIES ARE ORDERED TO APPEAR.

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

19. JAMMIE HICKS V. MATTHEW HICKS

PFL20170682

On January 28, 2022, Petitioner filed an Ex Parte Request for Order requesting the court order the minor not be allowed in the presence of Respondent's girlfriend. Respondent was properly noticed of the ex parte request. On January 31, 2022, Judge Ashworth granted the ex parte request and ordered Respondent not to allow the minor to have contact with or be left in the presence of his significant other. Parties were referred to Child Custody Recommending Counseling (CCRC) and ordered to return to court for a review hearing. Petitioner was ordered to provide Respondent with notice of the motion on or before February 10, 2022.

Upon review of the court file, there is no Proof of Service showing Respondent was served with the RFO or the referral to CCRC.

Nevertheless, both parties appeared at the CCRC appointment and fully discussed the issues set forth in the RFO. Therefore, the court finds Respondent has actual notice of the RFO. Parties were not able to reach an agreement at CCRC and a report with the counselor's recommendations was filed. A copy of the report was mailed to the parties on April 11, 2022.

The CCRC report recommends the court appoint either a CASA or minor's counsel to the case to investigate and provide the court with more information about Respondent's girlfriend's criminal matter, her ability to have contact with the minor, and the minor's safety in the house. Parties to continue to share joint legal custody. Pending the report from CASA or minor's counsel, the current ex parte order shall remain in full force and effect. Pending a report from CASA or Minor's Counsel, Petitioner shall have primary physical custody and Respondent shall have parenting time on alternating Friday mornings to Tuesday Mornings and from Friday morning to Monday evening on the opposing weeks. Respondent's significant other shall not be in his home during his parenting time and if he cannot ensure this, then he shall forfeit that week's parenting time with the minor. Parties are to participate in co-parenting counseling. Petitioner shall provide Respondent the names of three potential therapists no later than May 13, 2022. Respondent shall select a therapist no later than May 27, 2022. The parties shall provide CASA or Minor's Counsel the name of the therapist and the date of the first appointment. The parties shall use talkingparents.com to discuss the minor's physical health, education, and general welfare.

On April 21, 2022, the court adopted its tentative ruling, adopting the recommendations contained in the CCRC report with the following modifications: the court appointed CASA to the case. The CASA was to investigate and provide the court a report with more information about the Respondent's girlfriend's criminal case in Merced County. CASA was also to report on whether Respondent's girlfriend should have the ability to have contact with the Minor and the minor's safety in Respondent's home if girlfriend is present. The court adopted the remainder of the CCRC report without modification. The court set a review hearing for July 21, 2022 for receipt of the CASA report.

On July 6, 2022, CASA filed a report. A copy of the report was emailed to the parties on July 6, 2022. The CASA spoke with Respondent's significant other's probation officer. There are currently no restrictions for the significant other being around minors. There is currently another minor residing in the home with Respondent and the significant other. The significant other is not required to be in

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psychological counseling. The CASA observed Respondent's home and found no safety concerns. The CASA noted that parties selected a co-parenting counselor as ordered by the court, however, co-parenting counseling has not commenced. Parties are waiting for Petitioner to have new medical benefits in place to offset the cost of counseling. Additionally, the parties are not using the talkingparents.com application, as the free version does not include the texting feature, only email. Parties prefer to communicate via a texting application on their phones.

Neither party has filed a Supplemental Declaration.

The court finds that there are currently no restrictions on Respondent's significant other's ability to be around minors imposed by probation, however, the significant other was convicted of three counts of felony child abuse, serious crimes. The court remains concerned about the minor L.H.'s safety. The court has no information about any rehabilitative services the significant other has participated in, if any. The court modifies the no contact order to allow Respondent's significant other to be in the home, however, she is not to be left alone with, or provide any childcare for L.H. No one shall use any form of corporal punishment for the minor.

The court further finds that the parties have failed to participate in co-parenting counseling as ordered by the court. The court orders parties to engage in co-parenting counseling forthwith. The court further orders CASA to remain on the case and provide the court with an update on the parties' participation in co-parenting counseling as well as an update on the minor in Respondent's home with significant other being in the home as well during Respondent's parenting time. The CASA report should also include any additional information about the significant other's rehabilitative efforts since her conviction. The court sets a further review hearing on October 20th, 2022 at 1:30 PM in Department 5 for an update on those issues.

All prior orders remain in full force and effect. Petitioner shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #19: THE COURT SETS A FURTHER REVIEW HEARING AND ORDERS AN UPDATED CASA REPORT. THE UPDATED CASA REPORT SHALL INCLUDE INFORMATION ABOUT THE PARTIES' PROGRESS IN CO-PARENTING COUNSELING, THE INTEGRATION OF RESPONDENT'S SIGNIFICANT OTHER INTO THE HOME DURING HIS PARENTING TIME WITH THE MINOR, AND ANY REHABILITATIVE EFFORTS/SERVICES RESPONDENT'S SIGNIFICANT OTHER HAS MADE SINCE HER CONVICTION. THE MATTER IS SET FOR A FURTHER REVIEW HEARING ON OCTOBER 20TH, 2022 AT 1:30 PM IN DEPARTMENT 5. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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20. JESSICA DOUGLAS V. JORDAN DOUGLAS

PFL20140114

On May 2, 2022, Respondent filed an ex parte request for emergency temporary sole physical and legal custody of the minors and for Petitioner's visitation and phone calls to be supervised. On May 3, 2022, the court granted the ex parte request. Respondent filed a Request for Order (RFO) on May 3, 2022, requesting the court make custody and parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on June 8, 2022 and a review hearing on July 21, 2022. Respondent was ordered to provide notice to Petitioner on or before May 13, 2022. Upon review of the court file, there is no proof of service showing Petitioner was served with the RFO or referral to CCRC.

Nevertheless, both parties participated in CCRC and were able to reach an agreement. A copy of the report was mailed to the parties on June 10, 2022.

Petitioner filed a Responsive Declaration on July 8, 2022. Respondent was served by mail on July 7, 2022. Petitioner requests the court adopt the agreement of the parties as set forth in the CCRC report as to the summer schedule, joint legal custody, and communications aspects. Petitioner requests frequent, regular, and unsupervised contact with the minors either in North Dakota or California. Petitioner asserts she has never been inappropriate around the minors. Petitioner also requests regular unsupervised phone calls with the minors. Petitioner requests the court order the minors be returned to California upon proof of her rehabilitation. Petitioner requests she be added as a parent and emergency contact to all enrollment, registration, or other documents regarding the minors. Petitioner requests the court order Respondent to provide all schedules for all the minors' activities. Petitioner requests the court order the minors' therapists release all information from the therapy sessions to both parties. Last, Petitioner request the court set a further review hearing prior to the start of the school year. Petitioner asserts in her declaration she has completed 30 days of inpatient treatment and now has 120 days of sobriety.

Respondent filed a Reply Declaration on July 15, 2022. Petitioner was served both electronically on by mail on July 15, 2022.

The court finds it needs additional information from the parties. Therefore, parties are ordered to appear for the hearing.

TENTATIVE RULING #20: PARTIES ARE ORDERED TO APPEAR.

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July 21, 2022

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

21. MARIA VARGAS-COOK V. REILLY COOK

PFL20180521

On June 9, 2022, the court adopted its tentative ruling ordering the minors to be interviewed by the Child Custody Recommending Counseling (CCRC) Counselor and setting a further review hearing for July 21, 2022. Additionally, the tentative ruling denied Petitioner's request for Family Code section 2030 attorney fees and granted Minors' Counsel's request to suspend conjoint therapy between the minors and Petitioner.

On June 21, 2022, the children participated in the CCRC appointment. A report was filed on June 21, 2022. A copy of the report was mailed to the parties on June 22, 2022. The recommendation set forth in the report is for the minors have parenting time with Petitioner on the second weekend of the month, in their discretion. The counselor also recommends Petitioner participate in a mental health assessment with a licensed clinician and to provide the clinician with a copy of the CCRC reports. Petitioner to follow the treatment plan of the clinician.

Minors' Counsel filed a Statement of Issues and Contentions on July 11, 2022. Parties were served by mail the same day. Minors' Counsel requests the court adopt the recommendation as set forth in the CCRC report with the modification that the minors contact Minors' Counsel if they do not want to participate in the monthly parenting time with Petitioner. The minors communicate regularly with Minors Counsel via email. This will avoid the parties needing to communicate with each other on this issue.

Neither party has filed a Supplemental Declaration.

The court has read and considered the above filings and makes the following findings and orders:

The court adopts the recommendations as set forth in the CCRC report dated June 21, 2022, with the following modifications: the minors shall have parenting time with Petitioner on the second weekend of each month. Should they not wish to participate in that month's parenting time, they must notify Minors' Counsel on or before the Wednesday preceding the parenting time. This is a minimum order. Should the minors want additional time with Petitioner, they may contact Minors' Counsel to request additional time. Petitioner is to participate in a mental health assessment with a licensed clinician and shall provide the clinician with a copy of the CCRC reports. Petitioner shall follow the treatment plan of the clinician.

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

TENTATIVE RULING #21: THE COURT ADOPTS THE RECOMMENDATIONS OF THE CCRC COUNSELOR AND MINORS' COUNSEL AS MODIFIED ABOVE. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. MINORS' COUNSEL SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

22. STEPHANIE HANSON V. CHRISTOPHER HANSON

22FL0390

On April 29, 2022, Petitioner filed a Request for Order (RFO) requesting she be awarded sole legal custody and the parties maintain joint physical custody of the minor children. The RFO and all other necessary documents, were personally served on May 2, 2022.

On May 16, 2022, Respondent filed his Responsive Declaration to Request for Order indicating that the parties had conferred on the issues raised in the RFO and they had agreed to continue sharing joint legal and physical custody. The response was properly served via U.S. Mail on May 16, 2022.

The parties attended CCRC on May 25, 2022 and were able to reach numerous agreements regarding the issues of legal and physical custody. CCRC issued its report on May 26, 2022, codifying the agreements reached. The CCRC report was mailed to all parties on July 6, 2022. The court has not received any objection to the CCRC report.

Having reviewed the filings of the parties and the CCRC report, the court finds that the agreements listed in the CCRC report are in the best interest of the minor children. Accordingly, the court hereby adopts the agreements in the CCRC report as the orders of the court.

TENTATIVE RULING #22: THE AGREEMENTS CONTAINED WITHIN THE CCRC REPORT ARE ADOPTED AS THE ORDERS OF THE COURT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.