

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

16. DEPARTMENT OF CHILD SUPPORT SERVICES V. DAVID NIEVES (OTHER PARENT: SARAH EDENS)

PFS20120109

Respondent filed an ex parte application for emergency custody orders on August 23, 2022. Other Parent filed a Responsive Declaration on the same date. On August 24, 2022, the court ordered the minors to remain in the state of California and for the parties to attend Child Custody Recommending Counseling (CCRC) and set the matter for a review hearing.

On August 24, 2022, Respondent filed a Request for Order (RFO) formally requesting the same orders requested in the ex parte filing, namely that the minors remain in California. Other Parent was personally served on September 4, 2022.

Other Parent has not filed a Responsive Declaration to the RFO, only to the ex parte request. In her Declaration she states she does not plan on moving for at least four to six months. She would like the current orders to remain in full force and effect until she has an opportunity to file a RFO to establish child custody and visitation.

The parties and minors attended CCRC on September 27, 2022 and were unable to reach any agreements. A report with recommendations was filed on September 29, 2022. Copies were mailed to the parties on the same day. The report recommends the two eldest minors remain in California with Respondent while the youngest be permitted to relocate with Other Parent to Tennessee. The report contains recommendations for parenting time as well as holiday, transportation, and telephone contact.

The court has read and considered the CCRC report and finds the recommendations to be premature, given there is currently no RFO requesting a move-away order. Other Parent does not specifically make a request for move-away in her declaration responding to the RFO. Additionally, while the responding party may request relief related to the orders requested in the moving papers, unrelated relief must be sought by scheduling a separate hearing and filing a separate FL-300 form. Cal. Rule Ct. Section 5.92(g)(2). Therefore, the court finds the move-away request is not properly before the court, and does not adopt the recommendations of the CCRC report.

All current orders remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #16: ALL CURRENT ORDERS REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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17. DENA DAVIDSON V. JOSHUA DAVIDSON

22FL0201

Petitioner filed a Request for Order (RFO) on September 2, 2022. Respondent was served by mail on September 8, 2022; however, the Proof of Service was signed by Petitioner, and therefore, defective.

Respondent has not filed a Responsive Declaration.

Further, even if the RFO had been properly served, Petitioner has merely asserted Respondent purchased real property without informing her. Petitioner has failed to state when the property was purchased, or the source of funds Respondent used to purchase the property. Petitioner has filed no evidence to support her claims. Therefore, the court would have denied the motion on the merits if service had been proper.

The matter is dropped from calendar due to lack of proper service.

TENTATIVE RULING #17: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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

18. JUSTIN REEDY V. KAYLA MCKINNEY

PFL20180289

On July 29, 2022, Petitioner filed a Request for Order (RFO) requesting, among other things, school selection orders. Respondent was served by mail on August 5, 2022. On August 16, 2022, Respondent filed an RFO requesting custody and visitation orders as well as an order regarding school selection. This RFO was properly served via U.S. mail on August 23rd. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was set for October 13, 2022.

The July RFO came before the court for hearing on September 15, 2022. At that time the court noted the overlap in issues asserted by the July and August RFOs. The court then continued the issue of school selection to join with the October 13th hearing date.

In Petitioner's July RFO he requested the court order Respondent to select three of the four schools she proposed in her April 25, 2022 declaration, which were Natomas Station, Sandra J. Gallardo, Silva Valley and Oak Meadow, and present them to Petitioner. Petitioner notes that during the May 12th hearing he was ordered to present three schools to Respondent. According to Petitioner it was the court's intent to have each parent choose three schools.

In Respondent's RFO, she requests the following: (1) Modify the current joint legal custody order to sole legal custody for Respondent; (2) Grant Respondent primary custody and award Respondent custody from Monday after school until Friday before school and Petitioner custody from Friday after school until Monday before school every week, except Respondent to have every fifth weekend; (3) Order Petitioner not to enroll the minor into transitional kindergarten at a Parochial school or any school as he is in contempt of court. Respondent maintains that she provided a list of four schools for the parties to utilize in choosing a school. Petitioner was then ordered to choose three of the four, with at least one midway between the parties. Respondent states that Petitioner has refused to do so.

On September 1st, Petitioner filed his Responsive Declaration to the RFO. He followed that with Petitioner's Supplemental Declaration on Midway Points which was filed on September 9th and then an amended version of this document on September 22nd. Petitioner asks the court to deny Respondent's requests and continue the current custody arrangement or grant Petitioner sole legal and primary physical custody of the child with Petitioner's parenting time from Sunday at 6:30 through Friday after school, remove the requirement to consent to religious activities/institutions from the legal custody orders, Order the minor's Medi-Cal coverage to be moved to Petitioner's case in Sacramento County and/or specify play therapy through Sac County – Pacific Clinics. Petitioner also requests that the court modify its previous order so that each parent will be required to select three schools between the residences of the parties, one of which must be midway. He asks that the court keep the exchange location at the Rancho Cordova Police Department instead of changing it per Respondent's request since she voluntarily chose to move.

The parties attended CCRC on September 9th and a report was issued on September 27th. The parties were unable to reach any agreements at CCRC but the mediator did recommend that the minor attend a Montessori or public school near Respondent, she also recommended Petitioner to have only

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supervised visits with the minor twice per week for two hours on each visit, and Respondent to have sole legal custody.

Petitioner filed a declaration in response to the CCRC report on October 10th. Proof of Service indicates it was served by mail on Respondent on October 7, 2022, which was untimely of the October 13, 2022 hearing.

On October 13, 2022, the parties appeared for the hearing and requested the matter be continued to join with the RFO set for November 3, 2022. The court continued the matter and stayed its tentative ruling pending the next hearing date.

Petitioner filed an RFO on August 31, 2022 requesting a change of venue to Sacramento County. Proof of Service shows Respondent was served by mail on October 7, 2022. The Department of Child Support Services was not provided notice. Petitioner requests the case be transferred to Sacramento County as neither party resides in El Dorado County. Petitioner has resided in Sacramento County for 13 years. Respondent recently relocated to Roseville, in Placer County. Petitioner requests both the family law case (Case number PFL20180289) and the child support (Case number PFS20180159) be transferred to Sacramento County.

Respondent has not filed a Responsive Declaration to the August 31, 2022 RFO to change venue.

On October 26, 2022, Petitioner filed a Supplemental Declaration requesting a continuance of the November 3, 2022 hearing. Respondent was served by mail on October 27, 2022. The court finds Petitioner's Supplemental Declaration to be untimely as it was not filed at least 10 days prior to the hearing. Therefore, the court has not considered the Supplemental Declaration.

The court has reviewed the above referenced filings of the parties as well as the CCRC report. The court finds and orders the following, which the court believes is in the best interest of the minor:

The court adopts the recommendations of the CCRC report with the following modifications:

Respondent shall have sole legal custody of the minor.

The parties shall have joint physical custody; Petitioner shall have parenting time from Friday at 4:30 pm until Sunday at 6:00 pm the 1st, 2nd, 3rd, and 5th weekend. Respondent will have the minor all other times and every 4th weekend of the month. The exchanges shall take place at the Sacramento County Sheriff's Office located at 4510 Orange Grove Avenue, Sacramento, CA 95641.

The court maintains the holiday schedule.

Petitioner's request for an order changing the minor's Medi-Cal coverage to Sacramento County and/or an order specifying play therapy through Sacramento County – Pacific Clinics is denied without prejudice as it is not properly before the court. Petitioner makes his request in his declaration responding to the RFO. However, while the responding party may request relief related to the orders requested in the moving papers, unrelated relief must be sought by scheduling a separate hearing and filing a separate FL-300 form. Cal. Rule Ct. Section 5.92(g)(2).

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The court denies Petitioner's request to change venue to Sacramento County. First, as to the child support case, DCSS was not properly noticed of the motion. Therefore, the court denies the request to change venue of the child support case. Next, as to the Family Law case, Petitioner has not provided sufficient grounds upon which the court should grant his request. (CCP §§ 397, 397.5.) There are numerous issues pending before this court. Therefore, the motion is denied without prejudice.

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 #18: RESPONDENT SHALL HAVE SOLE LEGAL CUSTODY OF THE MINOR. THE PARTIES SHALL HAVE JOINT PHYSICAL CUSTODY; PETITIONER SHALL HAVE PARENTING TIME FROM FRIDAY AT 4:30 PM UNTIL SUNDAY AT 6:00 PM THE 1ST, 2ND, AND 5TH WEEKEND. RESPONDENT WILL HAVE THE MINOR ALL OTHER TIMES AND EVERY 4TH WEEKEND OF THE MONTH. THE EXCHANGES SHALL TAKE PLACE AT THE SACRAMENTO COUNTY SHERIFF'S OFFICE LOCATED AT 4510 ORANGE GROVE AVENUE, SACRAMENTO, CA 95641. THE COURT MAINTAINS THE HOLIDAY SCHEDULE. PETITIONER'S REQUEST FOR AN ORDER CHANGING THE MINOR'S MEDI-CAL COVERAGE TO SACRAMENTO COUNTY AND/OR AN ORDER SPECIFYING PLAY THERAPY THROUGH SACRAMENTO COUNTY – PACIFIC CLINICS IS DENIED WITHOUT PREJUDICE AS IT IS NOT PROPERLY BEFORE THE COURT. PETITIONER MAKES HIS REQUEST IN HIS DECLARATION RESPONDING TO THE RFO. HOWEVER, WHILE THE RESPONDING PARTY MAY REQUEST RELIEF RELATED TO THE ORDERS REQUESTED IN THE MOVING PAPERS, UNRELATED RELIEF MUST BE SOUGHT BY SCHEDULING A SEPARATE HEARING AND FILING A SEPARATE FL-300 FORM. CAL. RULE CT. SECTION 5.92(G)(2). THE COURT DENIES PETITIONER'S REQUEST TO CHANGE VENUE TO SACRAMENTO COUNTY. 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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20. PATRICIA DAVY V. CHARLES DAVY

PFL20200494

The matter was previously set for a child support review hearing on August 8, 2022. On August 8, 2022, the child support Commissioner recused himself and the matter was reassigned to Judge Bowers and set for a further hearing on November 3, 2022. The court has continued to reserve jurisdiction for retroactive modification to the date of the filing of the Request for Order (RFO), February 28, 2022.

The Department of Child Support Services (DCSS) filed a Responsive Declaration on April 14, 2022, consenting to guideline child support. Parties were served by mail on April 15, 2022.

Petitioner filed an Income and Expense Declaration on August 1, 2022. Upon review of the court file, there is no Proof of Service showing Respondent and DCSS were served with the Income and Expense Declaration.

Respondent has not filed an updated Income and Expense Declaration.

Parties are ordered to appear. Parties are ordered to file and serve all necessary parties and the court with updated Income and Expense Declarations if they have not already done so.

TENTATIVE RULING #20: PARTIES ARE ORDERED TO APPEAR. PARTIES ARE ORDERED TO FILE AND SERVE ALL NECESSARY PARTIES AND THE COURT WITH UPDATED INCOME AND EXPENSE DECLARATIONS IF THEY HAVE NOT ALREADY DONE SO.

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21. SUMMER MULHOLLEN V. BRIAN MULHOLLEN

PFL20140228

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) on September 8, 2022. Upon review of the court file, there is no Proof of Service showing Respondent was personally served with the OSC. As such, the matter is dropped from calendar.

TENTATIVE RULING #21: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.