

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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. The RFO was set to be heard on March 3, 2022.

On February 28, 2022, Petitioner requested the court continue the hearing to April 28, 2022 as service had not yet occurred. The hearing was continued as requested.

On March 1, 2022, Petitioner filed a Proof of Service by Mail showing service of the filing upon Respondent and Minor's Counsel the same day.

The court did not receive a Responsive Declaration or Opposition from Minor's Counsel or Respondent.

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 to the present date.

To date, the court has not received neither the 3111 report, nor a status declaration from either party. The parties are ordered to appear to update the court on the status of the 3111 Evaluation.

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

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

2. BRIAN LYNCH V. MICHELLE LYNCH

PFL20100667

Petitioner filed a Request for Order (RFO) on August 23, 2022, requesting the court order the enforcement of prior orders or in the alternative, enforcement of the judgment. Upon review of the court file, there is no proof of service showing Respondent was served with the RFO. As such, the matter is dropped from calendar.

TENTATIVE RULING #2: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF SERVICE.

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3. BRYAN CHAIX V. KRISTINA MCKINNEY NEIDIGER

PFL20200265

The parties attended a Mandatory Settlement Conference on June 13, 2022, at which time they were able to resolve the vast majority of their issues except for the issues of schooling and a parenting schedule. In an attempt to resolve those issues, the parties agreed to attend co-parenting counseling and set a review hearing with the court for September 22, 2022. The hearing was eventually continued to the present hearing date. The only issue currently outstanding is that of a parenting schedule.

On October 24th Petitioner's Supplemental Declaration Regarding Custody and Visitation Issues was filed. It was mail served on the 21st and then again on the 26th. Respondent has not filed a responsive declaration.

According to Petitioner, he has sent a proposed schedule to Respondent but has been waiting approximately 2 months for a response. Instead of asking to continue the hearing again, he asks the court to make the scheduling order as set forth in his supplemental declaration.

The court has reviewed Petitioner's filing and it does appear that the proposed schedule would allow the children to spend roughly equal parenting time with the parties and still facilitate their remaining in school in Davis. It does appear that this schedule would be in the best interest of the minors. However, the court notes the filing date was just nine days prior to the hearing date, and Respondent has not filed anything regarding her position on the matter. That said, the parties are ordered to appear to address the proposed parenting schedule and afford Respondent the opportunity to be heard should she choose to do so.

TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR TO ADDRESS PETITIONER'S PROPOSED PARENTING SCHEDULE. RESPONDENT IS TO INFORM THE COURT IF SHE IS IN AGREEMENT WITH THE PROPOSED SCHEDULE AND, IF NOT, PRESENT ARGUMENT AS TO WHY NOT.

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4. DAVID RAINALDI V. SAMANTHA BRAHAM

PFL20160044

On August 15, 2022, Petitioner filed an Ex Parte Application and Declaration for Orders and Notice seeking joint legal and sole physical custody, and orders for professionally supervised visitation and phone calls between Respondent and the child. The court granted the ex parte, referred the parties to mediation, and set the matter for hearing on the present hearing date. On August 16th Petitioner filed a Request for Order (RFO) seeking the same orders requested in the ex parte.

This is a motion made following a final judgment which was entered on March 28, 2018. Respondent was personally served on August 26th. Given that service was effectuated personally, instead of by mail, no post-judgment address verification form is necessary. Fam. Code 215(b).

On September 14th Petitioner alone participated in CCRC. As such, CCRC prepared a single parent report and was unable to make any recommendations.

On October 21st, Petitioner filed a supplemental declaration listing numerous missed and incomplete visits between Respondent and the minor.

The court has reviewed the aforementioned filings and finds it is in the best interest of the child for Petitioner to have sole physical custody. Respondent shall have professionally supervised visitation one time per week for two hours. Respondent may have phone or video contact with the minor two times per week for 15 minutes each. Petitioner is to determine reasonable times for the calls to occur. The parties are to continue sharing joint legal custody.

TENTATIVE RULING #4: PETITIONER IS TO HAVE SOLE PHYSICAL CUSTODY. RESPONDENT SHALL HAVE PROFESSIONALLY SUPERVISED VISITATION ONE TIME PER WEEK FOR TWO HOURS. RESPONDENT MAY HAVE PHONE OR VIDEO CONTACT WITH THE MINOR TWO TIMES PER WEEK FOR 15 MINUTES EACH. PETITIONER IS TO DETERMINE REASONABLE TIMES FOR THE CALLS TO OCCUR. THE PARTIES ARE TO CONTINUE SHARING JOINT LEGAL CUSTODY. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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5. DERRICK MILBURN-HARSHA V. ALYSSA DUMAS-BRONNER

PFL20190741

Respondent filed a Request for Order (RFO) on August 8, 2022, requesting the court modify the parenting time orders as well as requesting orders regarding claiming the minor as a dependent for tax purposes. Respondent also requests the court grant her attorney's fees. Petitioner was served by mail on August 10, 2022.

Respondent is requesting Petitioner have his parenting time in California and that it be supervised. Respondent is requesting that the court designate which parent can claim the minor as a dependent for tax purposes for tax year 2021 and all tax years going forward. Respondent is requesting Petitioner be ordered to amend his tax return or in the alternative reimburse her for the \$3,500 he received by claiming the minor on his taxes. Respondent is requesting attorney fees. Respondent asserts in her declaration that Petitioner has been negligent in his care for the minor as he applied sunscreen to the minor which caused an allergic reaction. Respondent asserts Petitioner did not have an appropriate level of concern for the minor following the allergic reaction. Respondent states there are currently no orders regarding which parent may claim the minor as a dependent for tax purposes. Respondent states she has 85% custody, and therefore, should be able to claim the minor for tax purposes.

Petitioner filed a Responsive Declaration and Income and Expense Declaration on October 14, 2022. Respondent was served by mail on October 14, 2022. Petitioner objects to any modification of the parenting plan orders. Petitioner states in his declaration he was aware of the minor's sensitive skin, but did not know which sunscreen to use. He attempted to find out from Respondent, however, did not receive a response. He selected a sunscreen for sensitive skin, but the minor did react to it. Petitioner asserts he was concerned and did treat the minor with Benadryl for the allergic reaction. Petitioner also asserts Respondent has altered the photographs she filed with the court by enhancing the saturation to make the rash appear darker and more pronounced. Petitioner agrees to Respondent claiming the minor as a dependent for tax purposes beginning tax year 2022. Petitioner also agrees to reimbursing Respondent for \$1,500 via payments of \$100 and waiving his right to seek reimbursement from Respondent for \$2,000 which he claims Respondent took from his bank account after the parties separated. Petitioner is also seeking attorney fees.

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

The court denies Respondent's request to modify parenting time. The court does not find Petitioner's actions to have been abusive or neglectful. Parenting often involves missteps. It appears that is what occurred with the sunscreen this summer. Petitioner used a sunscreen for sensitive skin, which unfortunately was not compatible with the minor's skin. Respondent could have been proactive by sending the appropriate sunscreen with the minor, thereby avoiding the situation entirely. Petitioner took appropriate actions to mitigate the allergic reaction. The prior orders for parenting time remain in full force and effect.

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The court designates Respondent as the parent to claim the minor as a dependent for tax purposes. In order to claim a “qualifying child” for tax purposes, the child must be a son or daughter...of the taxpayer. (IRC section 152(c)(2)). A “qualifying child” must also meet all the following requirements: 1. Principal residence: the child must have the same principal place of abode as the taxpayer for more than one-half of the taxable year. 2. U.S. citizenship: the child must have been a U.S. citizen at some time during the tax year 3. Limited self-support: the child cannot have provided over one-half of his or her own support 4. Age: the child must be under age 19

Here the factor at issue is the principal residence of the minor. The court finds Respondent has primary physical custody of the minor as the minor resides with Respondent approximately 85% of the year. Therefore, the court finds it is appropriate for Respondent to claim the child tax credit. As such, the court orders Petitioner to reimburse Respondent for the \$3,500 credit he received. Petitioner may make monthly payments of \$150 until the amount is paid in full. The court denies Petitioner’s request to offset the amount by \$2,000. The court finds that to be affirmative relief that is beyond the scope of Respondent’s RFO.

The court denies Respondent’s request for attorney fees and costs. Respondent has failed to file an Income and Expense Declaration as required by statute and local rules. Respondent has failed to file the requisite Family Law Judicial Council forms for the court to adjudicate the request. Therefore, Respondent’s request is denied.

The public policy of Family Code section 2030 is to provide “at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation.” (*IRMO Keech* (1999) 75 Cal. App. 4th 860, 866) This assures each party has access to legal representation to preserve each party’s rights. It “is not the redistribution of money from the greater income party to the lesser income party,” but rather “parity”. (*Alan S. v Superior Court* (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party’s case adequately. In addition to the parties’ financial resources, the court may consider the parties’ trial tactics. (*IRMO Falcone & Fyke* (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (*IRMO Keech, supra*, at 860).

Petitioner has stated in his declaration that he believes Respondent is working cleaning homes. However, Petitioner also stated in his Income and Expense Declaration that he believes Respondent to be unemployed. The court does not have the requisite information before it to make a determination about Respondent’s ability to pay not only her attorney’s fees, but also Petitioner’s attorney’s fees. However, the court does not believe there to be a disparity between the parties’ financial circumstances which would allow either party greater access to legal representation. Therefore, the court denies Petitioner’s request for attorney’s fees.

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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TENTATIVE RULING #5: THE COURT DENIES RESPONDENT'S REQUEST TO MODIFY THE PARENTING PLAN. THE COURT GRANTS RESPONDENT'S REQUEST TO BE DESIGNATED THE PARENT TO CLAIM THE CHILD TAX CREDIT. THE COURT GRANTS RESPONDENT'S REQUEST FOR PETITIONER TO REIMBURSE RESPONDENT FOR THE 2021 CHILD TAX CREDIT. PETITIONER IS TO PAY RESPONDENT \$150 UNTIL THE BALANCE IS PAID IN FULL. THE COURT DENIES RESPONDENT'S REQUEST FOR ATTORNEY FEES AND COSTS. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY FEES. 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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6. DESTINEE MICHAELS V. JOHN HARTSOUGH

PFL20110590

On September 2, 2022, Petitioner filed her Request for Order (RFO) which was thereafter personally served on September 14, 2022. In her RFO Petitioner requests sole legal and sole physical custody pending Respondent's submittal to a hair follicle or fingernail test. The parties were referred to Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was scheduled for November 3, 2022.

Petitioner alone attended CCRC as scheduled. A report was issued but due to Respondent's lack of participation the CCRC counselor was unable to make any recommendations.

Petitioner filed a Declaration in support of her RFO on October 11, 2022 however there is no Proof of Service indicating that Respondent was served with the declaration. As such, the court cannot consider it.

The court finds it is the best interest of the minor to award Petitioner temporary sole physical custody. Respondent is to have professionally supervised visits twice per week for a period of 4 hours each. Visits may be non-professionally supervised if the parties mutually agree. Scheduling for the visits is to be agreed upon by the parties. The parties are to continue to share joint legal custody.

Respondent is to undergo a hair follicle or nail test no later than December 1, 2022 and provide the results to Petitioner and the court. Testing is to be done at Respondent's sole expense. If the test is negative the parties are to return to the physical custody schedule in place prior to the date of this ruling. If the test is positive, Respondent must participate in an alcohol and drug assessment and complete any and all treatment recommendations. Upon successful completion thereof, Respondent may file a request with the court to consider resuming the prior physical custody arrangement.

TENTATIVE RULING #6: PETITIONER'S REQUEST FOR TEMPORARY SOLE PHYSICAL CUSTODY IS GRANTED. RESPONDENT IS TO HAVE PROFESSIONALLY SUPERVISED VISITS TWICE PER WEEK FOR A PERIOD OF 4 HOURS EACH. VISITS MAY BE NON-PROFESSIONALLY SUPERVISED IF THE PARTIES MUTUALLY AGREE. SCHEDULING FOR THE VISITS IS TO BE AGREED UPON BY THE PARTIES. THE PARTIES ARE TO CONTINUE TO SHARE JOINT LEGAL CUSTODY. RESPONDENT IS TO UNDERGO A HAIR FOLLICLE OR NAIL TEST NO LATER THAN DECEMBER 1, 2022 AND PROVIDE THE RESULTS TO PETITIONER AND COURT. TESTING IS TO BE DONE AT RESPONDENT'S SOLE EXPENSE. IF THE TEST IS NEGATIVE THE PARTIES ARE TO RETURN TO THE PHYSICAL CUSTODY SCHEDULE IN PLACE PRIOR TO THE DATE OF THIS RULING. IF THE TEST IS POSITIVE, RESPONDENT MUST PARTICIPATE IN AN ALCOHOL AND DRUG ASSESSMENT AND COMPLETE ANY AND ALL TREATMENT RECOMMENDATIONS. UPON SUCCESSFUL COMPLETION THEREOF, RESPONDENT MAY FILE A REQUEST WITH THE COURT TO CONSIDER RESUMING THE PRIOR PHYSICAL CUSTODY ARRANGEMENT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER ARE TO REMAIN IN FULL FORCE AND EFFECT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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7. JACKIE LIMPACH V. JERRY LIMPACH

PFL20080549

On August 26, 2022, Petitioner filed a Request for Order (RFO) requesting the court order Respondent to pay for the preparation of the Qualified Domestic Relations Order (QDRO) for equal division of Respondent's 401K account. Petitioner also requests attorney's fees and costs. Petitioner concurrently filed an Income and Expense Declaration. Respondent was personally served via substitute service on September 12, 2022 as well as by mail on September 13, 2022.

Petitioner asserts in her Declaration the Judgment entered on December 19, 2012, ordered Respondent to pay for the preparation of the QDRO for his 401K retirement account. Petitioner asserts to date that has not occurred. Petitioner requests attorney's fees and costs pursuant to Family Code section 2030 for having to prepare and file this RFO.

Respondent filed a Responsive Declaration and Income and Expense Declaration on October 24, 2022. Petitioner was served by mail on October 24, 2022. Respondent requests the court deny Petitioner's request. Respondent asserts in his declaration the parties cashed out Respondent's 401k in January of 2009, and therefore it was not in existence in December of 2012. Respondent states in his Declaration, the parties were residing together in 2009 and needed to pay off outstanding property taxes and mortgage payments for the community residence. Petitioner was aware of this and agreed to the decision at that time. Respondent has attached as Exhibit A a statement from the 401K showing a \$0 balance as of December 31, 2009. Respondent further declares, that while Petitioner may have initiated dissolution proceedings in 2008, he was not served with the Petition and Summons until June 18, 2012. Respondent raises the claim that the default judgment failed to adjudicate Petitioner's State Teachers Retirement System (STRS). Petitioner received a distribution in excess of \$10,000 from her STRS account in 2021. Respondent asserts this is an omitted community asset which should have been divided equally. Respondent also requests the court order Petitioner pay his attorney fees.

The court denies Petitioner's request to order Respondent to pay for the preparation of a QDRO for his 401K account. Based on Respondent's Exhibit A, as of December 31, 2009 the account had a zero balance. The court finds the preparation of a QDRO for an account with a zero balance to be unnecessary. Further, based on Respondent's declaration, the withdrawal of funds was a mutual decision to benefit the community. Respondent was not served with the Petition and Summons for the Dissolution until June 28, 2012, and therefore, the Automatic Temporary Restraining Orders (ATROs) were not in effect.

The court denies Petitioner's request for attorney fees as well as Respondent's request for attorney fees. The public policy of Family Code section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." (*IRMO Keech* (1999) 75 Cal. App. 4th 860, 866) This assures each party has access to legal representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity". (*Alan S. v Superior Court* (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's

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case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. (*IRMO Falcone & Fyke* (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (*IRMO Keech, supra*, at 860). Here, the court finds there is no disparity between the parties and each as equal access to effective legal representation.

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 #7: THE COURT DENIES PETITIONER'S REQUEST FOR ORDER. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY FEES AND COSTS. THE COURT DENIES RESPONDENT'S REQUEST FOR ATTORNEY FEES. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT.

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8. JAIME LUPER V. RICHARD LIMING

PFL20180266

Respondent filed a Request for Order (RFO) on August 22, 2022, requesting the court modify the current child support orders as well as make orders regarding the minor's cell phone and Petitioner to provide Respondent with an itinerary for any out of county travel. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail and electronically on September 8, 2022. Respondent has not filed a Proof of Service showing the Department of Child Support Services (DCSS), who is providing enforcement services on the case, was served.

Respondent is requesting modification of the child support orders as the minors are currently in his sole physical and legal custody. Respondent has parenting time every other weekend. Respondent also requests the parties' minor daughter keep her cell phone with her and the GPS services on during Petitioner's parenting time. Respondent requests the court order Petitioner provide Respondent advance notice of any out of county travel with the minors, including an itinerary, and Respondent approve such plans in advance. Respondent asserts Petitioner is a flight risk with the minors.

DCSS filed a Responsive Declaration on October 28, 2022. Therefore, the court finds they have actual notice of the RFO. The court finds good cause to waive any defect in notice. DCSS agrees to guideline child support and request the matter be set on the child support calendar to be heard by the child support Commissioner pursuant to Family Code Section 4251.

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

The court continues the request for modification of child support to the child support calendar to be heard by the child support Commissioner. Petitioner is ordered to file and serve an Income and Expense Declaration at least 10 days prior to the hearing.

The court grants Respondent's request that the parties' minor daughter keep her cell phone with her at all times during Petitioner's parenting time and that the GPS function be enabled. Petitioner shall provide Respondent at least 21 days advance notice of any out of county travel plans, including an itinerary with destinations and if travel is to be overnight, for lodging locations.

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: THE COURT CONTINUES THE REQUEST TO MODIFY CHILD SUPPORT TO DECEMBER 12, 2022 AT 8:30 AM IN DEPARTMENT 5. PETITIONER IS TO FILE AND SERVE AN INCOME AND EXPENSE DECLARATION AT LEAST 10 DAYS PRIOR TO THE HEARING. THE COURT GRANTS RESPONDENT'S REQUEST THAT THE PARTIES' MINOR DAUGHTER KEEP HER CELL PHONE WITH HER AT ALL TIMES DURING PETITIONER'S PARENTING TIME AND THAT THE GPS FUNCTION BE ENABLED. PETITIONER SHALL PROVIDE RESPONDENT AT LEAST 21 DAYS ADVANCE NOTICE OF ANY OUT OF COUNTY TRAVEL PLANS, INCLUDING AN ITINERARY WITH DESTINATIONS AND IF TRAVEL IS TO BE OVERNIGHT, FOR LODGING LOCATIONS. 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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9. JESUS NEGRON FLORES JR V. ALEXANDRIA WASHBURN

PFL20200647

Respondent filed an Order to Show Cause and Affidavit for Contempt (OSC) on September 14, 2022. The OSC was properly served via personal service on September 26, 2022. Respondent alleges Petitioner has repeatedly failed to comply with numerous court orders for the parties to participate in co-parenting counseling. The parties are ordered to appear for arraignment.

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

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10. 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 health care 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 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 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.

The court notes a Notice of Return to Respondent regarding his request for telephonic appearance at CCRC was sent on September 22, 2022. It is unclear why the request was returned to Respondent.

Upon review of the court file, it appears the Department of Child Support Services (DCSS) is a party to the case. Parties submitted a stipulation to guideline child support on September 29, 2021. Respondent was ordered to pay \$1,432 per month as and for guideline child support effective November 1, 2021. Additionally, Respondent was ordered to pay \$600 as and for reasonable childcare costs. In calculating guideline child support, a timeshare of 0% was used for Respondent. A copy of the September 29, 2021 orders was served on the parties by mail on October 5, 2021.

Petitioner failed to serve DCSS. As such, the RFO is not properly before the court. The court drops the matter from calendar due to lack of proper service.

TENTATIVE RULING #10: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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11. LINDSAY HANRIHAN V. MICHAEL HANRIHAN

PFL20170841

Petitioner filed a Request for Order (RFO) on August 30, 2022, requesting the court enforce the prior orders for control of the business as well as the Respondent be ordered to restore Petitioner on the business accounts. Petitioner is also requesting the court order payment of the mortgage for the family resident from the business accounts and attorney's fees and costs. Respondent was served on August 30, 2022 by mail.

Petitioner states in her Declaration that parties had a stipulated agreement filed with the court March 22, 2018, which granted Petitioner exclusive control and management of the community business Precision Pools, including all financials of the business until further court order. Petitioner is requesting the court enforce that order as well as order Respondent to not encumber the business or family residence with any debt, liens, or loans. Respondent to cooperate in restoring passwords to the business account to allow Petitioner access. Respondent to cooperate in clearing the business warehouse of the non-business-related clutter, as well as restoring the doors on the office space. Petitioner also requests attorney's fees in the amount of \$3,500 for having to file this motion, which the court reasonable infers are Family Code section 271 fees. Petitioner states parties had reached a Marriage Settlement Agreement (MSA) earlier this year, wherein the business would be awarded to Respondent. In anticipation of Petitioner turning over control of the business to Respondent a new bookkeeper was hired. However, shortly thereafter, Respondent refused to sign the MSA and removed Petitioner from all the necessary business accounts. Respondent has continued to violate the prior orders.

Respondent has not filed a Responsive Declaration.

The court grants Petitioner's request to enforce the March 22, 2018 order. The March 22, 2018 remains in full force and effect. Petitioner shall continue to have exclusive control and management of the community business, Precision Pools. Respondent is ordered to restore Petitioner on all the business accounts and restore and/or modify all passwords to allow Petitioner to regain access to all bank accounts, email, and business programs. Respondent shall clear the warehouse of all non-business-related clutter and restore the doors to the office space within the warehouse.

The court reserves on Petitioner's request for attorney's fees until the trial currently set for December 6, 2022. The court finds it requires additional information about Respondent's income prior to ruling on the request. Respondent is ordered to file and serve an updated Income and Expense Declaration at least 10 days prior to the trial.

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

TENTATIVE RULING #11: THE COURT GRANTS PETITIONER'S REQUEST TO ENFORCE THE MARCH 22, 2018 ORDER. THE MARCH 22, 2018 REMAINS IN FULL FORCE AND EFFECT. PETITIONER SHALL CONTINUE TO HAVE EXCLUSIVE CONTROL AND MANAGEMENT OF THE COMMUNITY BUSINESS, PRECISION POOLS. RESPONDENT IT ORDERED TO RESTORE PETITIONER ON ALL THE BUSINESS ACCOUNTS AND RESTORE AND/OR MODIFY ALL PASSWORDS TO ALLOW PETITIONER TO REGAIN

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ACCESS TO ALL BANK ACCOUNTS, EMAIL, AND BUSINESS PROGRAMS. RESPONDENT SHALL CLEAR THE WAREHOUSE OF ALL NON-BUSINESS-RELATED CLUTTER AND RESTORE THE DOORS TO THE OFFICE SPACE WITHIN THE WAREHOUSE. THE COURT RESERVES ON PETITIONER'S REQUEST FOR ATTORNEY'S FEES UNTIL THE TRIAL CURRENTLY SET FOR DECEMBER 6, 2022. THE COURT FINDS IT REQUIRES ADDITIONAL INFORMATION ABOUT RESPONDENT'S INCOME PRIOR TO RULING ON THE REQUEST. RESPONDENT IS ORDERED TO FILE AND SERVE AN UPDATED INCOME AND EXPENSE DECLARATION AT LEAST 10 DAYS PRIOR TO THE TRIAL. ALL PRIOR ORDERS NOT IN CONFLICT WITH THE ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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12. LISA THOMASON V. LOUIS MOLAKIDES

PFL20210494

On May 17, 2022, Respondent filed a Request for Order (RFO) requesting the court order the parties to participate in a Family Code Section 3111 evaluation, with Respondent to cover the expense subject to reallocation. Petitioner was served with the RFO electronically on May 18, 2022. Respondent requested the court modify the standing parenting plan pending return of the 3111 evaluation. The matter was set to be heard on July 14, 2022.

Petitioner filed a Responsive Declaration on June 3, 2022 wherein he agreed to a 3111 evaluation.

At the July 14, 2022 hearing the court granted Respondent's request for a Family code Section 3111 evaluation. Respondent was ordered to pay the expense of the evaluation subject to reallocation. Parties were to utilize either Jack Love or Eugene Roeder. The court set a review hearing for return of the 3111 evaluation report on November 3, 2022.

On August 18, 2022, the court signed an order appointing Jack Love, LMFT as the 3111 evaluator. On October 26, 2022, Respondent filed and served a Supplemental Declaration of Respondent asking the court to make immediate emergency orders awarding him sole legal and physical custody of the children and Petitioner to have only supervised visitation, at her expense, on Wednesdays, Thursdays, and Fridays. He also asks for an order precluding Petitioner from placing any sort of tracking, surveillance or listening device on the children or their belongings while in his care. Respondent states that the 3111 evaluation has not yet begun but given that Petitioner is violating the current no contact order he feels immediate custody orders are necessary.

The court notes Respondent's declaration was untimely as it was not filed the requisite ten days prior to the hearing date. Further, a supplemental declaration is not the proper means for making a request for sole legal and sole physical custody. Such a request is to be made by way of an RFO or, if the requisite exigent circumstances exist, an ex parte application. Accordingly, the court declines to rule on Respondent's requests for sole physical and legal custody.

The matter is continued to February 2, 2023 at 8:30 AM in department 5 for a review of the 3111 report.

TENTATIVE RULING #12: THE COURT DECLINES TO RULE ON RESPONDENT'S REQUESTS FOR SOLE PHYSICAL AND LEGAL CUSTODY. THE MATTER IS CONTINUED TO FEBRUARY 2, 2023 AT 8:30 AM IN DEPARTMENT 5 FOR A REVIEW OF THE 3111 REPORT.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

13. MICHAEL JOHNSON V. KIMBERLY JOHNSON

PFL20210500

On September 1, 2022 parties appeared for a hearing on Respondent's RFO. The court ordered temporary spousal support, as well as arrears, and ordered Respondent to participate in a vocational evaluation. The court denied Respondent's requests for Family Code Section 2030 attorney fees and request for a forensic accountant. The court continued the matter to November 3, 2022 to address the issue of Petitioner's bonus income as well as a review of the vocational evaluation. The court reserved jurisdiction to modify spousal support retroactively to the date of the order.

Respondent filed a Supplemental Declaration and Income and Expense Declaration on October 17, 2022. Petitioner was served by mail on October 17, 2022. Respondent asserts Petitioner failed to disclose his annual bonus income. Respondent has attached a proposed guideline calculation for temporary spousal support. Respondent also asserts Petitioner's claim of \$620 in monthly losses for rental income is improper for purposes of calculating support.

Petitioner has not filed a Supplemental Declaration.

The court is not in receipt of the Vocational Evaluation.

The court finds it needs additional evidence prior to being able to rule on the matter. Parties are ordered to appear for the hearing.

TENTATIVE RULING #13: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

14. STACY BRADT V. JACOB BRADT

PFL20100177

Respondent filed a Request for Order (RFO) on September 9, 2022 requesting the court modify the child support orders. Respondent filed an Income and Expense Declaration on September 8, 2022. Petitioner was served by mail on September 12, 2022. Respondent is requesting the court order guideline support in the amount of \$759 per month per the attached DissoMaster. Respondent states Petitioner's income should be calculated at \$4,333 per month as that is full time employment at \$25 per hour. Respondent states no basis for this assertion.

Petitioner filed a Responsive Declaration and Income and Expense Declaration on October 12, 2022. Respondent was served by mail on October 11, 2022. Petitioner agrees to guideline child support but requests the court utilize the actual time shares for custody of the minors. Petitioner states the minor R.B. lives with her full time and has had one overnight with Respondent since June 2022. The minor L.B. resides in Respondent's care full time and has one weekend per month with Petitioner.

Based on Respondent's September 8, 2022 filed Income and Expense Declaration, he has an average monthly income of \$10,995. Respondent has deductions of \$305 for a monthly 401K contribution, \$697 for other child support paid, and \$450 for medical expenses. Respondent has included a hardship deduction of \$155 in his proposed DissoMaster, however, the court is unclear what that corresponds with. Respondent has also included \$350 for child support add-ons for travel expenses for visitation and the minor's education needs, but has provided no explanation for these costs.

Based on Petitioner's October 12, 2022 filed Income and Expense Declaration, she currently has an average monthly income of \$408. Petitioner states she has been unable to work full time due to becoming ill with Covid in June 2022. Petitioner has a deduction of \$276 per month for property taxes.

The court finds the timeshare for Respondent with R.B. to be 0%. The court finds the timeshare for Petitioner with L.B. to be 2%. The court finds Petitioner is capable, able, and has the opportunity to work full time. Therefore, the court imputes fulltime minimum wage salary for Petitioner at \$15 per hour. While Petitioner was ill in June of this year, she has not provided evidence that she is unable to return to full time work.

Based on these timeshares and figures as set forth above, the court finds guideline child support to be \$1,042 per month payable by Respondent to Petitioner. (See attached DissoMaster.) This order is effective October 1, 2022. Respondent shall pay Petitioner \$1,042 as and for child support until further order of the court or termination by operation of law. Payment is due the 1st of each month.

The prior order for child support was for \$1,250 per month. The court finds the new order results in an overpayment of \$416, for October and November. Respondent is authorized to deduct \$104 per month from the \$1,042 payment, for a total payment of \$938 for the next four months. (December-March). Beginning on April 1, 2023 the payments will return to \$1,042 per month. The court denies Respondent's request to modify the order effective March 1, 2022, as that predates the filing of the RFO and the court does not have jurisdiction to modify the order retroactively.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

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 #14: THE COURT FINDS GUIDELINE CHILD SUPPORT TO BE \$1,042 PER MONTH PAYABLE BY RESPONDENT TO PETITIONER. (SEE ATTACHED DISSOMASTER.) THIS ORDER IS EFFECTIVE OCTOBER 1, 2022. RESPONDENT SHALL PAY PETITIONER \$1,042 AS AND FOR CHILD SUPPORT UNTIL FURTHER ORDER OF THE COURT OR TERMINATION BY OPERATION OF LAW. PAYMENT IS DUE THE 1ST OF EACH MONTH. THE COURT FINDS THIS ORDER RESULTS IN AN OVERPAYMENT OF \$416. RESPONDENT IS AUTHORIZED TO DEDUCT \$104 PER MONTH FOR A TOTAL PAYMENT OF \$938 FOR THE NEXT FOUR MONTHS. (DECEMBER-MARCH). BEGINNING ON APRIL 1, 2023 THE PAYMENTS WILL RETURN TO \$1,042 PER MONTH. THE COURT DENIES RESPONDENT'S REQUEST TO MODIFY THE ORDER EFFECTIVE MARCH 1, 2022, AS THAT PREDATES THE FILING OF THE RFO AND THE COURT DOES NOT HAVE JURISDICTION TO MODIFY THE ORDER RETROACTIVELY. 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.

ATTORNEY (NAME AND ADDRESS): EDC Court California ATTORNEY FOR:	TELEPHONE NO:	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
DISSOMASTER REPORT 2022, Monthly		CASE NUMBER: <div style="font-size: 1.5em; font-family: cursive;">PFL20100177</div>

Input Data	Father	Mother	Guideline (2022)	Cash Flow Analysis	Father	Mother
Number of children	1	1	Nets (adjusted)	Guideline		
% time with Second Parent	0%	2%	Father	6,613	Payment (cost)/benefit	(1,042) 1,042
Filing status	Single	HH/MLA	Mother	2,604	Net spendable income	5,571 3,647
# Federal exemptions	2*	2*	Total	9,217	% combined spendable	60.4% 39.6%
Wages + salary	10,995	2,600	Support		Total taxes	3,235 (4)
401(k) employee contrib	305	0	CS Payor	Father	# WHA	4 6
Self-employment income	0	0	Presumed	1,042	Net wage paycheck/mo	7,630 2,351
Other taxable income	0	0	Basic CS	1,042	Comb. net spendable	9,218
Short-term cap. gains	0	0	Add-ons	0	Proposed	
Long-term cap. gains	0	0	Presumed Per Kid		Payment (cost)/benefit	(1,134) 1,134
Other gains (and losses)	0	0	Robert	1,495	Net spendable income	5,681 3,564
Ordinary dividends	0	0	Lillian	(453)	NSI change from gdl	110 (83)
Tax. interest received	0	0	Spousal support	blocked	% combined spendable	61.4% 38.6%
Social Security received	0	0	Total	1,042	% of saving over gdl	401.3% -301.3%
Unemployment compensation	0	0	Proposed, tactic 9		Total taxes	3,033 170
Operating losses	0	0	CS Payor	Father	# WHA	6 3
Ca. operating loss adj.	0	0	Presumed	1,134	Net wage paycheck/mo	7,816 2,243
Roy, partnerships, S corp, trusts	0	0	Basic CS	1,134	Comb. net spendable	9,245
Rental income	0	0	Add-ons	0	Percent change	0.3%
Misc ordinary tax. inc.	0	0	Presumed Per Kid		Default Case Settings	
Other nontaxable income	0	0	Robert	1,587		
New-spouse income	0	4,407	Lillian	(453)		
Adj. to income (ATI)	0	0	Spousal support	blocked		
SS paid other marriage	0	0	Total	1,134		
Ptr Support Pd. other P'ships	0	0	Savings	27		
CS paid other relationship	697	0	Total releases to Father	1		
Health ins(Pd by party)	450	0				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	0	284				
Other medical expenses	0	0				
Property tax expenses	0	284				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				



LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

15. TODD FUJIWARA V. KRIS FUJIWARA

PFL20150424

Petitioner filed a Request for Order (RFO) on August 1, 2022. It was served via U.S. mail on August 29, 2022. By way of his RFO, Petitioner requests a change in primary custody of the minor given Respondent's failure to abide by the court's June 30, 2022 tentative ruling regarding the summer visitation schedule. He feels Respondent is alienating the minor against him and having inappropriate custody discussions with the minor. He asks the court to impose penalties on Respondent for non-compliance of court orders but does not specify what penalties.

The parties participated in Child Custody Recommending Counseling (CCRC) on September 15, 2022. A report was issued and mailed to the parties. While the parties were unable to reach any agreements at CCRC, the CCRC counselor did make recommendations regarding custody, a parenting plan, and additional provisions.

Minor's Counsel filed a Statement of Issues and Contentions on October 21, 2022. The recommendations of Minor's Counsel are similar to that of CCRC in that Minor's Counsel feels individual therapy for the minor is warranted. She feels the minor should be allowed to choose when and if to see Petitioner. She feels the minor and Petitioner should begin reunification therapy in three months at a pace and for a duration, as determined by the therapist.

Respondent filed a Responsive Declaration to Request for Order on October 24, 2022. Respondent asks the court to adopt the recommendations contained in the CRC report.

Petitioner's Supplemental Declaration was also filed on October 24, 2022. In his supplemental declaration Petitioner requests to following orders: (1) Remove the minor from Respondent's custody; (2) Petitioner to have immediate custody and visitation with the minor; (3) 3111 or 730 evaluation ordered by the court and paid for by Respondent; (4) Enforcement of the March 15, 2022 stipulation and court order for Respondent to have a phone call scheduled once per week on Sundays at 7:00 pm; (5) Enforcement of custody schedule; Respondent withheld 2022 spring break visitation between the minor and Petitioner; (6) Sanctions against Respondent for not abiding by mutually agreed upon March 15, 2022 stipulations regarding phone time and spring break 2022; (7) Reimbursement for spring break travel to include the cost of airfare and gas to travel to and from the courthouse and cost of accommodations paid but could not get refunded; (8) Sanctions against Respondent for repeated and continuing custody discussions with the minor; (9) Enforcement of court order requiring Respondent to reimburse Petitioner for Respondent's share of the minor's transportation costs; (10) Disregard the minor's March 15, 2022 testimony; (11) Order the minor to see a therapist who is trained and proficient with diagnosing and treating family systems issues, splitting behavior, pathogenic parenting and Parental Alienation Syndrome; (12)

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

If the court is not inclined to immediately remove the minor from Respondent's custody, Petitioner requests a trial on the issue.

Regarding Petitioner's requests for the court to enforce the March 15, 2022 stipulation and order, and sanction Respondent for not abiding thereto, the court notes that Petitioner has filed an Order to Show Cause regarding the alleged violations which is set to be heard on January 5, 2023. Therefore, the court declines to rule on these matters.

Petitioner's requests for reimbursement of his costs for spring break travel and his request for reimbursement of his share of the minor's transportation costs are denied as they are not properly before the court since they were not raised in the initial RFO and Respondent has not been properly afforded the opportunity to be heard. "...[U]nrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300)..." Cal. Rule Ct. 5.92(g)(2).

Regarding custody and visitation, the court has reviewed the filings of the parties as well as the CCRC report and it appears the best interest of the minor is to ensure her mental health needs are being met. It does not appear that pressuring her to do anything for time being would be in the minor's best interest, or in the interest of preserving and rebuilding the minor's relationship with her father. The court adopts the recommendations contained in the CCRC report as the ruling of the court with the following modifications: Provision number 3 under the Additional Provisions section shall be amended to read – "Petitioner and the minor shall commence reunification therapy three months after the minor has begun her individual therapy, so long as the minor's therapist deems it therapeutically appropriate to do so. If the minor's therapist does not believe reunification therapy to be in the minor's best interest at three months, then such therapy shall commence as soon as the minor's therapist deems appropriate. Reunification therapy shall be at a frequency and duration as determined by the therapist. The parties and the minor are to abide by the therapist's treatment recommendations." Additionally, the parties are to choose a therapist for the minor who is in Respondent's insurance plan network. Respondent is to provide Petitioner with the name of three therapists no later than November 10, 2022. Petitioner is to choose one of the three therapists no later than November 17, 2022. The minor is to be enrolled in therapy as soon as reasonably practical after the parties agree on a therapist.

Petitioner's request for a 3111 or 730 evaluation is denied without prejudice. Requiring the minor to undergo additional legal evaluations does not appear to be in her best interest at this time.

TENTATIVE RULING #15: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED IN THE CCRC REPORT AS THE RULING OF THE COURT WITH THE FOLLOWING MODIFICATIONS:

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

November 3, 2022

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

PROVISION NUMBER 3 UNDER THE ADDITIONAL PROVISIONS SECTION SHALL BE AMENDED TO READ – “PETITIONER AND THE MINOR SHALL COMMENCE REUNIFICATION THERAPY THREE MONTHS AFTER THE MINOR HAS BEGUN HER INDIVIDUAL THERAPY, SO LONG AS THE MINOR’S THERAPIST DEEMS IT THERAPEUTICALLY APPROPRIATE TO DO SO. IF THE MINOR’S THERAPIST DOES NOT BELIEVE REUNIFICATION THERAPY TO BE IN THE MINOR’S BEST INTEREST AT THREE MONTHS, THEN SUCH THERAPY SHALL COMMENCE AS SOON AS THE MINOR’S THERAPIST DEEMS APPROPRIATE. REUNIFICATION THERAPY SHALL BE AT A FREQUENCY AND DURATION AS DETERMINED BY THE THERAPIST. THE PARTIES AND THE MINOR ARE TO ABIDE BY THE THERAPIST’S TREATMENT RECOMMENDATIONS.”

ADDITIONALLY, THE PARTIES ARE TO CHOOSE A THERAPIST FOR THE MINOR WHO IS IN RESPONDENT’S INSURANCE PLAN NETWORK. RESPONDENT IS TO PROVIDE PETITIONER WITH THE NAME OF THREE THERAPISTS NO LATER THAN NOVEMBER 10TH. PETITIONER IS TO CHOOSE ONE OF THE THREE THERAPISTS NO LATER THAN NOVEMBER 17TH. THE MINOR IS TO BE ENROLLED IN THERAPY AS SOON AS REASONABLY POSSIBLE AFTER THE PARTIES HAVE AGREED ON A THERAPIST. PETITIONER’S REQUEST FOR A 3111 OR 730 EVALUATION IS DENIED WITHOUT PREJUDICE. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.