

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 22, 2022

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

12. ASHLEY BURGERS V. STEVEN BURGERS

22FL0816

Petitioner filed a Request for Order (RFO) on October 4, 2022, requesting the court make custody and parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on October 31, 2022 and a review hearing on December 22, 2022. Upon review of the court file, there is no Proof of Service showing Respondent was served.

Both parties appeared for the CCRC appointment, however, were unable to reach any agreements. A report with recommendations was filed on November 4, 2022. A copy was mailed to the parties on November 4, 2022.

Respondent has not filed a Responsive Declaration.

As both parties appeared for CCRC Respondent is aware of Petitioner's request for custody and visitation. The court finds good cause to proceed with the matter despite the lack of Proof of Service. The court has read and considered the CCRC report and finds the recommendations to be in the best interest of the minor. The court adopts the recommendations of the November 4, 2022 dated CCRC report. The parties shall have joint legal custody. The minor shall reside primarily with Petitioner. The court adopts the parenting plan as set forth. The court adopts the additional provisions, including the provisions for alcohol treatment, with the following modification: Respondent shall enroll in and complete any recommended services from the AOD assessment. The court adopts the additional provisions as to alcohol and substance use, alcohol testing, no exposure to secondhand smoke, transportation, and holiday schedule. The court adopts the respect guidelines. The parties shall use talkingparents.com or similar application to relay information about the minor's education, health, and general welfare.

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 #12: THE COURT ADOPTS THE RECOMMENDATIONS OF THE NOVEMBER 4, 2022 CCRC REPORT WITH THE MODIFICATION AS SET FORTH ABOVE. 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.

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

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**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.**

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

13. ASHLEY SPIEGELBERG V. AUSTIN SUTTON

PFL20190367

On October 6, 2022, the court rereferred the parties to Child Custody Recommending Counseling (CCRC) for an appointment on October 26, 2022. The court directed that the child be made available to the Counselor at his request. The court ordered the parties to have joint legal custody with Petitioner having temporary sole physical custody. Petitioner was ordered to complete a hair follicle test for drugs and/or alcohol on or before October 20, 2022. The court set a review hearing date of December 22, 2022.

On November 2, 2022, Petitioner submitted a Declaration with the test results from the hair follicle test. Respondent was served by mail on November 2, 2022. The test was negative for all substances, except marijuana.

The CCRC report was not filed until December 13, 2022 and not mailed to the parties until December 16, 2022. Therefore, the court continues the matter to join with the matter currently set for February 16, 2022 at 8:30 AM in Department 5.

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

TENTATIVE RULING #13: THE COURT CONTINUES THE MATTER TO JOIN WITH THE MATTERS CURRENTLY SET FOR FEBRUARY 16, 2022 AT 8:30 AM IN DEPARTMENT 5. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER 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 MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.

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

14. CAROL CARLISLE V. WILLIAM CARLISLE

PFL20150037

On August 4, 2022, the parties appeared for an arraignment on an Order to Show Cause and Affidavit for Contempt filed by Petitioner on April 8, 2022, as well as Petitioner's Request for Order (RFO) for violation of terms of conditional release. Respondent had not yet retained counsel. The court continued the matter to September 1, 2022 to allow Respondent to retain counsel.

On September 1, 2022, parties appeared for the arraignment. Respondent appeared without retained counsel. The court appointed the Public Defender as Respondent had previously been appointed counsel in prior contempt proceeding due to failing to retain counsel in a timely fashion. The court continued the arraignment to October 13, 2022, and ordered the clerk to provide notice to the Public Defender's Office.

Parties appeared on October 13, 2022. The Public Defender's Office was unable to accept appointment due to Respondent not meeting the financial criteria for appointed counsel. The court relieved the Public Defender's Office and continued the matter. The court directed Respondent to retain counsel and advised Respondent the court intended to proceed with the arraignment at the next hearing date.

Parties are ordered to appear for the continued arraignment hearing.

TENTATIVE RULING #14: PARTIES ARE ORDERED TO APPEAR FOR THE CONTINUED ARRAIGNMENT HEARING.

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16. DAVID DEITSCH V. CAROLYN DEITSCH

PFL20140530

Respondent filed a Request for Order on October 7, 2022, requesting the court order Petitioner be compelled to respond. Upon review of the court file, there is no Proof of Service showing Respondent was properly served.

Petitioner has not filed a Responsive Declaration.

The court drops the matter from calendar due to lack of proper service.

TENTATIVE RULING #16: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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**18. EL DORADO COUNTY DCSS V. KEVIN BAIRD (OTHER PARENT: THERESA-JEAN WILLIAMS)
22FL0933**

Other Parent filed a Request for Order (RFO) on October 7, 2022, requesting the court make child custody and parenting plan orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on October 31, 2022 and a review hearing on December 22, 2022. Respondent was served by mail on October 25, 2022.

Other Parent requests the court order sole physical and legal custody to Other Parent. Other Parent requests Respondent have supervised parenting time due to substance abuse.

Only Other Parent appeared for the CCRC appointment. As such a single parent report with no agreements or recommendations was filed. A copy of the report was mailed to the parties on November 10, 2022.

The parties are ordered to appear for the hearing.

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

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19. JESSICA TURNBULL V. JUSTIN TURNBULL

PFL20180517

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) on October 6, 2022. Petitioner asserts Respondent has violated the court's order that the minor have no contact with Crystal Challoner. Upon review of the court file there is no Proof of Service showing Respondent was personally served with the OSC. However, the court notes, there is a notice of return from the Clerk's Office returning a Proof of Service due to errors which was filed on November 9, 2022. The court further notes, the Proof of Service was returned to Respondent, rather than to Petitioner. Therefore, Petitioner has not been provided the opportunity to correct the errors on the Proof of Service.

The court orders parties to appear for the hearing.

TENTATIVE RULING #19: PARTIES ARE ORDERED TO APPEAR.

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20. LISA VISCONTI V. SEAN ELLIOTT

22FL0256

Petitioner filed a Request for Order (RFO) on August 1, 2022, requesting the court makes orders as to child custody, parenting time, and child support. The parties were referred to Child Custody Recommending Counselling (CCRC) for an appointment on September 1, 2022 and a review hearing on October 20, 2022.

Neither party appeared for the CCRC appointment on September 1, 2022.

On October 6, 2022, Petitioner filed a Request to Reschedule the court hearing and rereferral to CCRC. The court granted the request and rereferred the parties to CCRC for an appointment on October 31, 2022 and a review hearing on December 22, 2022. Respondent was served on October 24, 2022.

Parties reached a full agreement and signed a stipulation as to custody and parenting time. The court signed and adopted the parties' agreement on November 2, 2022. Therefore, the court finds the request for child custody and parenting time in now moot.

Petitioner filed an Income and Expense Declaration on December 6, 2022. There is no Proof of Service showing Respondent was served with the Income and Expense Declaration. Therefore, the court cannot consider this document. Additionally, it does not appear Respondent was served a blank copy of the FL-150.

Respondent has not filed an Income and Expense Declaration.

As, the court does not have Income and Expense Declarations it can consider from either party, the court drops the matter from calendar due to lack of proper service.

TENTATIVE RULING #20: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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.

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21. ROBERT THORNTON V. MELISSA MEANOR

PFL20140803

On May 3, 2022, Petitioner filed a Request for Order (RFO) requesting a modification of child custody orders. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on June 30, 2022 and a review hearing on August 11, 2022. Upon review of the court file there is no Proof of Service showing Respondent or Minors' Counsel were served with the RFO and referral to CCRC.

Nevertheless, both parties appeared at the CCRC appointment and were able to reach a full agreement. A copy of the CCRC report was mailed to the parties, including Minors' Counsel on August 3, 2022.

On August 11, 2022, the court adopted the agreement of the parties as it was in the best interest of the minors and it does not substantively modify the current custody and parenting time orders, but rather allowed Petitioner to proceed with the court's prior order. The court ordered Petitioner shall provide Respondent with the names of three therapists qualified to provide the parties and court with a Forensic Substance Abuse Evaluation on or before September 1, 2022. Respondent shall select one of the three and provide the name to Petitioner on or before September 15, 2022. Petitioner will then begin the evaluation process at the soonest available appointment.

On August 11, 2022, Petitioner filed another RFO requesting to change child custody. Upon review of the court file there is no Proof of Service showing Respondent or Minor's Counsel were served with the RFO as required by law. Further, the court finds the RFO is deficient on its face as Petitioner has failed to state what changes are being requested and why the court should grant any changes. Petitioner merely declares he has done everything the court has asked of him. Additionally, the court finds this RFO was filed the day the court adopted its tentative ruling, and there has been no additional information plead to warrant modifying the orders made on August 11, 2022.

Respondent filed a Responsive Declaration on September 29, 2022. Petitioner and Minor's Counsel were served by mail on September 29, 2022. Respondent asserts in her declaration she was served 15 days prior to the hearing, which does not comply with Code of Civil Procedure 1005. Respondent requests the court deny Petitioner's RFO, as there are no requested changes to the current orders. Respondent further requests the court order Family Code (FC) Section 271 sanctions.

Minor's Counsel filed a Declaration on October 3, 2022 and a Proof of Service showing the parties were served electronically on October 2, 2022. Minor's Counsel also raises the issue that Petitioner has failed to state what change he is requesting to the current orders. Minor's Counsel requests the court continue the matter to allow Petitioner the opportunity to provide the court with documentation "he has done everything the court has asked" and to allow Respondent an opportunity to file a Responsive Declaration.

On October 6, 2022, the court adopted its tentative ruling denying Petitioner's request to modify child custody and parenting time. The court found Petitioner had filed a motion which was wholly deficient. Petitioner failed to even state what change he was requesting. Petitioner failed to include any declaration or supporting evidence, save his conclusory statement that he had done

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everything the court has required of him. Finally, Petitioner filed this request the day the court adopted the current orders. There was no showing of any change in circumstances or how any requested change would be in the minor's best interest. Therefore, the court denied Petitioner's request.

The court reserved jurisdiction on and continued Respondent's request for Family Code Section 271 sanctions to December 15, 2022. Petitioner was ordered to file and properly serve an Income and Expense Declaration at least 10 days prior to December 15, 2022.

On December 15, 2022, the court continued all matters to join with the hearing set on December 22, 2022.

Vexatious Litigant

Respondent filed a Request for Order (RFO) on September 29, 2022, requesting the court deem Petitioner to be a vexatious litigant. Petitioner and Minor's Counsel were served by mail on September 30, 2022.

Respondent sets forth in her Declaration nine instances of Petitioner filing RFOs in the last three years, including three ex parte requests filed in 2019, all of which were denied, and other various RFOs. Respondent asserts Petitioner's requests have been dropped from calendar due to a lack of proper service or Petitioner has requested oral argument and failed to appear on several instances.

Petitioner has not filed a Responsive Declaration.

A vexatious litigant is one who has repeatedly, in pro per, relitigated final determinations against him or her or who has repeatedly, in pro per, filed unmeritorious motions, pleadings, or other papers, or engaged in frivolous tactics solely intended to harass or cause delay. Cal. Civ. Pro. §391(b); *See also* PBA, LLC v. KPOD, Ltd., 112 Cal. App. 4th 965 (2003). Where a party is deemed a vexatious litigant, the court may enter an order "...which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice, or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court." Cal. Civ. Pro. § 391.7(a). "For purposes of this section, 'litigation' includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code...for any order." Cal. Civ. Pro. § 391.7(d). Historically, as few as three motions on the same issue, all of which seek the same relief that has already been denied, may be sufficient to have a party deemed a vexatious litigant. *See* Goodrich v. Sierra Vista Reg'l Med. Ctr., 246 Cal. App. 4th 1260 (2016).

Petitioner has filed three requests in 2022 to have the court's rulings set aside, essentially seeking to have issues already ruled upon reconsidered. Given the overall number of filings, most but not all of which have been denied, and repeated requests to relitigate the

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same issues, it is inarguable that Petitioner's actions are approaching harassment and have caused Respondent to unnecessarily incur time off from work for CCRC appointments and court hearings and spend additional time responding to Petitioner's requests.

If Petitioner is deemed a vexatious litigant, Petitioner would be prohibited from making any in propria persona filing of any new litigation, petition, application, or motion in the State of California without first obtaining leave of the presiding justice or presiding judge where the litigation is proposed to be filed. Disobedience of this order may be punishable as contempt of court. The court finds this is a serious remedy to the issues at hand and is not inclined to deem Petitioner a vexatious litigant at this time. The court continues Respondent's request for 90 days. If Petitioner continues his pattern of filing RFOs immediately following the court not ruling in his favor, the court may be inclined to grant Respondent's request.

October 7, 2022 filed RFO

The court denies Petitioner's request to modify child custody and parenting time. Petitioner has filed a motion which is wholly deficient. Petitioner once again requests the custody and parenting time go back to 50/50, and again has failed to include any declaration or supporting evidence, save his conclusory statement that he has done everything the court has required of him. Petitioner again filed this request the day after the court adopted the current orders. There has been no showing of any change in circumstances or how any requested change would be in the minor's best interest. Therefore, Petitioner's RFO is denied.

Respondent's Request for Family Code 271 Sanctions

Respondent makes her request for 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 and attorneys." The court notes Petitioner's repeated filings on the same issue. It appears that Petitioner has not made attempts to amicably resolve these issues without the need for court intervention. This is clearly not in keeping with the court's policy to promote settlement and reduce the cost of litigation. Respondent's request for sanctions is granted. Petitioner is to pay Respondent \$90 in sanctions. Petitioner may make payments of \$10 per month due on the 15th of each month until the entire amount of \$90 has been paid.

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 #21: THE COURT CONTINUES RESPONDENT'S REQUEST TO DEEM PETITIONER A VEXATIOUS LITIGANT FOR 90 DAYS TO MARCH 23, 2023 AT 1:30 PM IN DEPARTMENT 5. ANY SUPPLEMENTAL DECLARATIONS ARE DUE AT LEAST 10 DAYS PRIOR TO THE HEARING. THE COURT DENIES PETITIONER'S RFO FOR THE REASONS SET FORTH ABOVE. THE COURT GRANTS RESPONDENT'S REQUEST FOR FAMILY CODE SECTION 271 SANCTIONS IN THE AMOUNT OF \$90. PETITIONER IS TO PAY RESPONDENT \$90 IN SANCTIONS. PETITIONER MAY MAKE PAYMENTS OF \$10 PER MONTH DUE ON THE 15TH OF EACH MONTH UNTIL THE ENTIRE AMOUNT OF \$90 HAS BEEN PAID. 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 MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.

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22. TREVOR GREEN V. TIANNA SAUERS

22FL0923

Petitioner filed a request for ex parte emergency orders on October 7, 2022. On October 10, 2022, the court granted the ex parte request granting Petitioner temporary sole physical custody of the minor and supervised visitation to Respondent. The court set a review hearing for December 22, 2022, however, the court did not refer the parties to Child Custody Recommending Counseling (CCRC).

On October 10, 2022, Petitioner filed a Request for Order (RFO) making the same requesting the court make orders as to child custody and parenting time. Upon review of the court file, there is not Proof of Service showing the RFO was served on Respondent. Further there is no Proof of Service showing Respondent was served with the ex parte orders.

The court vacates the ex parte orders and drops the matter from calendar due to lack of proper service.

TENTATIVE RULING #22: THE COURT VACATES THE EX PARTE ORDERS AND DROPS THE MATTER FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

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.