

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 12
APRIL 09, 2025
8:30 a.m.

1. BENJAMIN LEONBERGER V. KRYSTAL HUNT

SFL20140048

This matter is before the court on the Request for Orders (RFO) filed by the Respondent on January 28, 2025. Her request is to modify Custody and Visitation to allow her to relocate to Kansas and take the parties' daughter (VL age 13) with her.

The Petitioner was served by mail with the RFO on January 29, 2025, per the Proof of Service filed February 03, 2025.

The parties were referred to CCRC and both attended the session on February 21, 2025.

The Petitioner did not file a Responsive Declaration but voiced his opposition to the proposed "Move Away" to the CCRC Counsellor.

The CCRC report was submitted on March 12, 2025. The parties were each sent a copy of the report on March 12, 2025, per the Clerk's Certificate of Mailing which was, also, filed on March 12, 2025.

Neither party submitted a supplemental declaration after receipt of the CCRC report.

The CCRC report contains a "Move Away" analysis and an interview with VL. VL expressed a desire to move with Respondent to Kansas to the CCRC counsellor, but the CCRC counsellor expresses reservations about the minor's position. The report provides a visitation schedule for visits with the Petitioner if the move to Kansas is approved or for the Respondent if the move to Kansas is denied. The CCRC counsellor recommends that "... the child should continue to reside in the state of Nevada as all her developmental needs would continue to be met at this time."

The preliminary legal analysis the Court must engage in is determination as to whether a "final judicial custody determination" (*F.T. v. L.J.* (2011) 194 CA4th 1) has been made such that Respondent can argue pursuant to *Marriage of Burgess* (1996) 13C4th 25 and *Marriage of LaMusga* (2004) 32 C4th 1072 and FC Sec. 7501 (which specifically codified the *Burgess* decision) that she has a presumptive right to change the residence of VL.

If so, the Petitioner would have to prove detriment to VL from the proposed move in order to stop the move.

If there is no "final judicial custody determination", the analysis of the Court is by the "Best Interests" standard per Family Code Sec. 3040.

The current order is the FOAH entered December 09, 2022, which grants the parents Joint Legal custody and sole physical custody to the Respondent. The Petitioner has visits on all but the 4th weekend of each month from Friday after school to Sunday at 5:00 pm. There is no mention on the order that the custody and visitation terms are intended as a "final judicial custody determination." Additionally, the minutes of the hearing of November 30, 2022, which yielded the December 09, 2022, FOAH state "Temporary Orders".

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The Court finds that the orders in this case do not establish a “final judicial custody determination” for which reason the Court approaches the requested “move Away” applying the “Best Interest standard.”

For the best interest analysis, the information of the CCRC is very helpful to the Court. However, the Court needs more information from the parties before making a final decision in this matter, for which reason the parties are ordered to appear.

The Court is likely to establish an interim order pending a further evidentiary hearing to be held in the coming Summer.

TENTATIVE RULING #1: THE PARTIES ARE ORDERED TO APPEAR.

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2. CAMILLE JACOBSEN V. JASON JACOBSEN

23FL1250

This matter came before the court initially on the Respondent's Request for Order (RFO) filed November 19, 2024 seeking modification of orders for his visitation with the parties' twin sons (RJ and XJ, both 14). The visitation order which Respondent sought to modify is a component of a ROAH found in case 23FL1096 and first entered in that action as a TRO on November 06, 2023 and later amended on January 10, 2024. On June 25, 2024, the court signed a stipulation and order for a one-year ROAH on the same terms and conditions of the January 10, 2024 Amended TRO. The formal ROAH was executed and filed on July 03, 2024.

The ROAH awards the parties Joint Legal custody of their sons, grants Petitioner sole physical custody and allows the Respondent to have nonprofessionally supervised visits "at children's discretion." The ROAH is set to expire at midnight on June 26, 2024, which is 18 days after the 15th birthday of the parties' sons.

In this case (23FL1250) a Judgment for dissolution of the parties was entered on March 03, 2025. The Custody/Visitation terms of the Judgment grant the parties Joint Legal Custody, and sole physical custody to the Petitioner ". . . in such a manner as to assure the children of frequent and continuing contact with both parents." Further, the Judgment reserves jurisdiction for the court ". . . to make further orders regarding child custody and visitation" at this hearing.

The parties attended CCRC on December 09, 2024 and a CCRC report was submitted on January 17, 2025. Copies of the report were sent to the parties on January 17, 2025 as shown by the Clerk's Certificate of Mailing filed that same date.

In addition to reading and considering the CCRC report, the court has read the relevant filings in both this case and the DV case (23FL1096).

The Court is not adopting the recommendations of the CCRC report for the following reasons:

The issue underlying this case is the boys' desire not to have contact with their father. The Court does not doubt that the boys have said so as there is evidence that they have told both the reunification therapist and their mother so.

The court's analysis addresses the following questions:

- 1) To what extent has father's conduct, if at all, caused and therefore justified the boys' decision not to engage with him?
- 2) To what extent, if at all, has mother fostered the boys' reticence by behavior that encourages or reinforces their decision not to engage with their father?
- 3) To what extent is the boys' decision based on their desire to spend time with friends and to pursue their interests rather than to spend time with any adult, including their parents?

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- 4) What can the court order to assist the parties in their stated goal of reunification?

On the first question, the most significant evidence is the very existence of the ROAH and the presumptions the court is required to apply per Family Code Sec. 3044(a).

As there was no hearing in the DV case, the Court has only the assertions made by mother in her DV-100 filing to determine what the boys experienced. Father did not file a DV-120 Response.

The CCRC counsellor did not interview the boys to provide the court further understanding of their experiences with father and further explanation for their decision not to want to have contact with their father.

In his RFO filed November 19, 2024, father does not explain any past behavior on his part or describe efforts made by him to address any parenting or behavioral issues he has but rather blames mother as refusing “to minimally engage our sons in court ordered therapy.” (Declaration p. 2 l. 9)

In her Responsive Declaration (filed January 08, 2025), mother, along with denying that she has not complied with the therapy orders, states that the boys “. . . have been present when [father] was violent during our marriage and they fear his moods and temper.” (Responsive Declaration p. 2 ll. 6-7).

Attached to mother’s supplemental declaration filed April 02, 2025 is a letter from the reunification therapist, Colleen Klym, in which she states that the boys “. . . are not interested in seeing their father at this time.” No further explanation or reasoning is offered.

What is most disconcerting to the court is the absence of any acknowledgment of wrong by father or of any evidence of corrective efforts per FC 3044(b).

On the evidence in both files the court must conclude that the assertions justifying the ROAH are true and so must find that the decision of the boys not to engage with their father is justified.

Turning to the second question of the court’s analysis: the only evidence that mother is promoting the boys’ decision not to see their father or that she is sabotaging the reunification counselling effort is father’s assertion that she is doing so.

Mother’s willingness to sign stipulations for counselling and to take the boys to counselling shows that she is actively trying to remedy the problem. Ms. Klym, in the letter referenced above, states that mother offers the boys opportunities to see their father and to come to therapy “as often as they like.”

However, and turning to the third question posed by the court, Ms. Klym, in the same letter, acknowledges that scheduling sessions “. . . can be challenging as the boys are invested in doing well in school and not particularly in therapy. They enjoy hanging out with friends, playing volleyball and video games and missed a therapy session because they had received a free ski pass.”

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It is evident that the boys are not invested in reunification because they would rather be having fun than spending time in therapy. If the decision for therapy and reunification is left to the boys, it will not happen.

As to the last question:

The court accepts that the stipulations and orders for therapy and reunification represent the sincere belief of the parties that it is in their sons' best interest to address and fix the rift between them and their father. It is hard for the court to believe that ignoring the issue won't be detrimental to the boys' overall mental health in the long run.

The court's mandate is to act in the best interests of the children, which is not the same as complying with the children's wishes. To that end the court deems it appropriate to restore decision making to the parties.

It is hoped that the pace of reunification will improve when the parties are given more specific directions. The court declines to order individual therapy for the boys as reunification therapy has not yet been given a fair shot. Additionally, the court does not want to add additional therapy for the boys given that they are already resistant to therapy and have already begun a relationship with Ms. Klym.

In addition to the orders in the Judgment, the court orders as follows:

Father's visits shall be at the parents' discretion following the advice of the reunification therapist.

Mother shall ensure that the boys attend at least 2 therapy sessions per month, unless the therapist recommends fewer sessions.

Mother shall provide father a report every 60 days of the boys' attendance and progress in therapy.

Father shall follow the recommendations of the reunification therapist regarding any programs, classes, etc. that he should complete.

Father may send appropriate cards or letters to the boys for their birthday and other holidays or special occasions.

TENTATIVE RULING #2: THE CUSTODY AND VISITATION ORDERS IN THE PARTIES' JUDGMENT FOR DISSOLUTION ARE SUPPLEMENTED AS FOLLOWS:

- 1. FATHER'S VISITS SHALL BE AT THE PARENTS' DISCRETION FOLLOWING THE ADVICE OF THE REUNIFICATION THERAPIST.**
- 2. MOTHER SHALL ENSURE THAT THE BOYS ATTEND AT LEAST 2 THERAPY SESSIONS PER MONTH, UNLESS THE THERAPIST RECOMMENDS FEWER SESSIONS.**
- 3. MOTHER SHALL PROVIDE FATHER A REPORT EVERY 60 DAYS OF THE BOYS' ATTENDANCE AND PROGRESS IN THERAPY.**
- 4. FATHER SHALL FOLLOW THE RECOMMENDATIONS OF THE REUNIFICATION THERAPIST REGARDING ANY PROGRAMS, CLASSES, ETC. THAT HE SHOULD COMPLETE.**

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5. FATHER MAY SEND APPROPRIATE CARDS OR LETTERS TO THE BOYS FOR THEIR BIRTHDAY AND OTHER HOLIDAYS OR SPECIAL OCCASIONS.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY PHONE CALL TO THE COURT AT (530) 573-3042 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 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY PHONE CALL 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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3. HERVE GOGUELY V. SYLVIE GOGUELY

24FL0466

This matter is before the Court on the Petitioner's Request for Order (RFO) filed on February 13, 2025. The original hearing date, March 19, 2025, was continued based on stipulation of the parties. The RFO seeks an award of Attorney's fees as a sanction pursuant to Family Code section 271, an order compelling the Respondent to provide Preliminary Declaration of Disclosure (PDD), and to set Trial and MSC dates.

Proof of Service filed February 13, 2025, shows that the RFO was served by mail on counsel of record for the Respondent on February 12, 2025.

There is no Responsive Declaration in the Court's file.

There is a Declaration regarding service of PDD filed by the Respondent on February 27, 2025.

The Court deems the filing by the Respondent of his proof of PDD to have made moot that request of the RFO.

The Court continues the request for Attorney's fees as a sanction to time of Trial of this matter.

The parties are ordered to appear to participate in the selection of Trial and MSC dates.

TENTATIVE RULING #3: THE REQUEST FOR COMPLIANCE WITH DISCLOSURE IS MOOT. THE REQUEST FOR ATTORNEY'S FEES AS A SANCTION IS CONTINUED TO TIME OF TRIAL. APPEARANCES ARE REQUIRED AT 8:30 A.M., WEDNESDAY, APRIL 09, 2025, IN DEPARTMENT 12 TO SELECT TRIAL AND MSC DATES.

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4. JOSEPH GIANQUENTO V. DYANI GIANQUENTO

24FL1257

Before the Court is the Petitioner's Request for Order (RFO) regarding child custody and visitation filed February 05, 2025. That same day, the Court referred the parties to a CCRC session scheduled for February 24, 2025.

There is no proof of service for the RFO. However, Respondent filed a responsive declaration on March 11, 2025. Proof of service shows the responsive declaration was served upon Petitioner by mail on March 12, 2025.

The CCRC report from the session on February 24, 2025, was not received by the Court until April 02, 2025. A copy of the report was mailed to each of the parties that same day. The Court, on its own motion, continues the matter to April 23, 2025, to allow the parties sufficient time to receive and review the report, and submit supplemental declarations if desired. Supplemental declarations shall be filed and served no later than April 16, 2025.

TENTATIVE RULING #4: THE COURT, ON ITS OWN MOTION, CONTINUES THE MATTER TO 8:30 A.M., WEDNESDAY, APRIL 23, 2025, IN DEPARTMENT 12 TO ALLOW THE PARTIES SUFFICIENT TIME TO RECEIVE AND REVIEW THE CCRC REPORT. SUPPLEMENTAL DECLARATIONS SHALL BE FILED AND SERVED NO LATER THAN APRIL 16, 2025.