

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, March 21, 2025 9:30 a.m.
Courtroom 23 –Hon. Shelly J. Averill
3055 Cleveland Avenue, Santa Rosa**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 160-825-4529

Passcode: 611386

<https://sonomacourt-org.zoomgov.com/j/1608254529>

TO JOIN “ZOOM” BY PHONE:

By Phone (same meeting ID and password as listed above):

(669) 254-5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, it will be necessary for you to contact the department’s Judicial Assistant by telephone at (707) 521-6729 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties of their intent to appear.

1. SFL15804, Andrews Dissolution

Recent Procedural History

On December 2, 2024, Respondent filed the pending Request for Order requesting “C.C.P. 1094.5 Review the decision from 12/1/23 State Hearing CS23261001: Void Orders/Return Money.” The matter was initially set to be heard on February 21, 2025.

Pursuant to Local Rule of Court 9.19.E.1, a Tentative Ruling was posted by Judge Ornell prior to the time set for hearing. Judge Ornell was covering Judge Averill’s calendar on February 21, 2025, and ultimately continued the matter to March 21, 2025, at 9:30 in Department 23 to allow the Respondent to serve the other parties to the action.

On February 21, 2025, the Court also entered an order deeming the Respondent’s Request for Order filed on December 2, 2024.

On March 17, 2025, Respondent filed Proofs of Service confirming that all parties have now been served.

On March 4, 2025, the Sonoma County Department of Child Support Services filed a Responsive Declaration to the Request for Order.

This Court adopts the previously posted tentative ruling, as amended, as its own after review of the pleadings and procedural history in this matter.

Motion for CCP 1094.5 Review of the Decision from 12/1/23 State Hearing # CS23261001: Void Orders / Return Money is DENIED.

Facts

Petitioner filed this action for dissolution of marriage with minor children (the “Children”) on August 30, 2002. The parties engaged in extensive litigation over, among other things, domestic violence, restraining orders, child custody, visitation, and child support. As of January 2025, the Children are no longer minors, the youngest having been born in 1997 and having reached the age of 18 in 2015.

The Sonoma County Department of Child Support Services (“DCSS”) appeared in the case in order to obtain and enforce orders that Respondent pay support. On August 1, 2005, the court entered an order requiring Respondent to pay specific spousal and child support. Contempt proceedings against Respondent were conducted repeatedly in 2006 through 2016, with the court issuing contempt warrants against Respondent due to his failure to comply with court orders, including the prior orders that he pay child support.

In May 2012, the court made a further order regarding Respondent’s obligations to pay previously ordered child support. In November 2012, the court entered a judgment on the reserved issues, including custody and visitation.

On February 25, 2013, Respondent filed a notice of appeal of the judgment after trial. The court issued notices of default on appeal for failure to deposit the funds for transcribing the proceedings. Respondent filed a request for order to show cause (“OSC”) in the court of appeal seeking an order to the clerk of this court to show why the record on appeal had not been prepared and lodged with the court of appeal. The court of appeal denied that request for OSC on June 11, 2013. The order denying the request explained that the court reporter had no obligation to prepare the transcript, Respondent failed to demonstrate that no balance was due for the preparation of the reporter’s transcript, Respondent submitted an incorrect form to the Court Reporters Board (the “Board”), and Respondent had failed to submit a proper application for payment from the Transcript Reimbursement Fund, so that any delay in procuring the reporter’s transcript was the fault of Respondent.

Proceedings were continued pending Respondent’s need to reapply to the Board and provide proof of submission and subsequently further, repeated contempt proceedings took place regarding Respondent. On October 7, 2014, the court issued a notice of Respondent’s final default on appeal for failure to perform the acts required in order to procure the filing of the record in the time allowed.

On December 18, 2014, the court of appeal dismissed Respondent’s appeal and issued a remittitur ordering that Petitioner in this action be awarded costs on appeal.

Respondent filed a request for an injunction staying all court proceedings pursuant to CCP section 526(1)(1) and (6) on the basis that he had not been afforded an administrative hearing pursuant to Fam. Code section 17520. On November 19, 2018, the court issued an order denying Respondent’s request.

Respondent filed a challenge for cause as to Commissioner Becky Rasmussen (“Comm. Rasmussen”). In January 2019, the court denied the challenge.

Respondent then filed a motion for peremptory challenge, which this court denied as untimely on January 30, 2019.

Meanwhile, DCSS on August 27, 2018, filed a motion to establish child support arrears payments (the “Arrears Motion”). In the Arrears Motion, the DCSS sought an order establishing a payment plan for the previously ordered child-support payments which Respondent had been ordered to make but had failed to make. On January 30, 2019, the matter went to a hearing on the DCSS Arrears Motion to set a payment plan for payment of arrears of child support. The court found, among other things, that Respondent had refused to provide his required Income and Expense Declaration (“IED”) or answer questions on his finances and employment; and that Respondent appeared capable of paying the required support so ordered him to pay \$362 per month toward the support arrears.

Respondent filed a motion for an order that all orders which Comm. Rasmussen issued are void and annulled. The court denied that motion on March 15, 2019, on the ground that the law on which Respondent relied was inapplicable and did not support his motion.

Respondent on March 25, 2019, filed a notice of appeal and on April 25, 2019, filed a designation of record on appeal.

On March 26, 2019, this court issued a notice of default for failure to procure the record and of his need to deposit \$100 with the court clerk or file an updated fee waiver within 15 days or the appeal would be dismissed. The court issued another such notice on April 5, 2019, for failure to procure the record on appeal and deposit a notice designating the record, again noting that the appeal would be dismissed if Respondent failed to comply within 15 days. On April 25, 2019, Respondent filed his designation of record.

However, on April 26, 2019, this court notified Respondent of his default on appeal for failure to perform the acts necessary to procure the record on appeal, specifically the failure to deposit the required funds for the cost of transcription. Respondent filed a response to the default. The court issued a notice of final default on appeal on May 20, 2019, on the ground that Respondent had not cured the clerk’s default within the deadline.

Respondent’s appeal was dismissed and on February 6, 2020, the court of appeal issued a remittitur, ordering that Petitioner in this action be awarded costs on appeal.

No further proceedings or filings occurred in this action until October 21, 2024, when attorney Thomas Camp (“Camp”) substituted into this action as Respondent’s attorney. Respondent subsequently filed his IED and the instant Request for Order (“RFO”) and Motion for CCP 1094.5 Review of the Decision from 12/1/23 State Hearing # CS23261001: Void Orders / Return Money.

Motion

In his RFO and Motion for CCP 1094.5 Review of the Decision from 12/1/23 State Hearing # CS23261001: Void Orders / Return Money, Respondent moves the court to find “current orders of

this court and all previous orders to be voided as a matter of law.” He contends that “[i]t was established by state transcription board agency that fraud had been committed, by the court (Re Becki Peterson), on Oct. 19, 2023, and again in the Cal. State administrative court decision on Nov. 26, 2023, and in the supplemental order from D.C.S.S. on Dec 12, 2023, both in their findings of FACT.”

Applicable Authority

According to the Family Law Rules of the California Rules of Court (“CRC”) 5.2(d), and Family Code (“Fam. Code”) section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure (“CCP”). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022 (discovery); *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (explaining the applicability of CCP section 473 to family proceedings).

Respondent’s papers fail to explain the exact nature of this motion or indicate the applicable authority. Respondent’s RFO cites CCP section 1094.5, governing administrative writs of mandate but he does not discuss law on writs of mandate in any way and instead only cites authority regarding lack of a transcript to review on appeal.

Administrative mandate under CCP section 1094.5 governs review of final administrative decisions taken after a hearing, where the body had discretion in determining the facts. CCP section 1094.5(a). Review is restricted solely to the administrative record. CCP section 1094.5. Section 1094.5(b) states that in cases of administrative mandamus the test is “whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” It also sets forth a test for abuse of discretion, which “is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

Substantive Discussion

Respondent fails to explain any authority for this motion, how CCP section 1094.5 applies, or even what order he is challenging. Respondent appears to be challenging “all” orders in this case, but he also refers to a December 12, 2023, decision in an administrative proceeding with the California DCSS (the “State DCSS”).

The last orders in this action were the 2019 and 2020 dismissal of his last appeal and remittitur from the court of appeal ordering that Petitioner recover costs on appeal. His prior appeal to the court of appeal was dismissed as well. He fails to explain the authority allowing him to challenge in this court a decision of the court of appeal, which this court cannot review, or the basis for challenging orders which became final more than five years ago. The record of this case also shows that Respondent failed to pay for or procure transcripts for appeal and he fails to explain how this renders all decisions in this court, or the court of appeal, void in any way. This court notes that a party may challenge the decisions of a court of appeal by filing a petition for review with the Supreme Court, which the party must do within 10 days after the decision of the court of appeal becomes final. CRC 8.500. Moreover, a party must challenge the decision of a trial court, such as this, by properly bringing an appeal in the court of appeal and doing so within the earliest of 60 days after service of the notice of entry of judgment or 180 days after entry of judgment. CRC

8.100, 8.104. Respondent has failed to take any of these actions and the applicable deadlines expired several years ago.

Respondent similarly fails to explain the basis for challenging the State DCSS administrative proceeding. This also was decided just under one year before he filed the instant motion.

Respondent's discussion regarding the citation issued to reporter Becky Peterson ("Peterson") in this action also is insufficient. He shows that a citation was issued against Peterson for violations based on the finding that she certified two original transcripts with slightly different content. As far as the court can determine, this was limited to the finding that a transcript contained the words "I'll look at it in October" for one speaker, but the stenographic notes did not contain those words. Even if Respondent provided authority for the relief he seeks, he fails to demonstrate or explain how the conduct attributed to the court reporter had any effect on the outcome of the findings in his case. He fails to indicate that this defect was material to this action in any manner and fails to explain how this specific transcript for this specific hearing of September 18, 2013, affects any of the orders in this action, before or after, and how it could possibly provide a basis for vacating all of the orders. This court also notes that the underlying debt for support which Respondent is challenging was based on orders issued several years before the hearing in which the defective transcript occurred.

In short, the court finds no basis for this motion or anything which would allow it to grant Respondent's request.

Conclusion

The entire basis of Respondent's Request for Order is the administrative finding against Certified Court Reporter Becki Peterson who was not the court reporter present on the January 2019, court date when the \$362.00 amount complained about in the moving papers, section 3 subsection b. was made. "I want to change a current court order for child support filed on Jan. 20, 2019....Court orders are to pay \$362 on arrears." For this and all of the foregoing reasons, Respondent's request is denied in its entirety.