

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, December 6, 2024 9:30 a.m.
Courtroom 21 –Hon. Kinna Patel Crocker
3055 Cleveland Avenue, Santa Rosa CA 95403**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 160-223-6856

Passcode: 876992

<https://sonomacourt-org.zoomgov.com/j/1602236856>

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 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. 23FL00532 Garfia/Viramontes Dissolution

APPEARANCES REQUIRED.

2. 24FL00871 Freeman, III vs Shannon

Motion to Quash Petitioner’s Action DENIED.

Facts

Petitioner filed this action on April 29, 2024 to establish his parental relationship to the minor child (the “Child”) of Respondent. He also seeks joint legal and physical custody of the Child as well as visitation rights.

The County of Sonoma Department of Child Support Services (“DCSS”) filed its own supplemental complaint to establish parentage of both parties on June 6, 2024.

On September 17, 2024, Petitioner filed a proof of unsuccessful service on Respondent at an address in Sonoma. It states that Petitioner’s process server tried to serve Respondent on May 14, 2024 but that Respondent’s mother told the server that Respondent had “moved out three weeks ago....”

Petitioner then filed a proof of service for the summons and petition on September 26, 2024, showing personal service on Respondent on September 22, 2024 at an address in Kentucky.

Respondent filed a Request for Order and Motion to Quash Petitioner's Action based on lack of jurisdiction. Prior to the hearing of November 22, 2024, Petitioner filed a peremptory challenge pursuant to Code of Civil Procedure section 170.6. The challenge was granted and the matter rescheduled to a different department with a hearing of December 6, 2024.

Motion

Respondent in her Request for Order ("RFO") and Motion to Quash Petitioner's Action claims to be specially appearing to quash this petition on the ground that there is a lack of jurisdiction pursuant to Family Code section 3400, et seq., and the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA"). She contends that although she and the Child were in California when Petitioner filed the action, and the Child was born in California, she and the Child moved to Kentucky on May 9, 2024, before she was served with the summons and petition or was aware of the proceeding. She relies specifically on Code of Civil Procedure section 418.10 and Family Code sections 3421 and 3423.

Petitioner opposes the motion. He contends that California has jurisdiction over Respondent and the Child pursuant to Family Code section 3421 because the Child was conceived in this state and born in the state, and both the Child and Respondent were still residing in this state when he filed this action. He also asserts that he has not been served with, and is not aware of, any custody or similar orders, Respondent, with the help of her mother, actively hid with the Child to avoid service and secretly went to Kentucky, and regardless of this court's jurisdiction to make custody determinations, this court still has jurisdiction to require a parentage test and make a parentage determination.

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 (discussing the applicability of Code of Civil Procedure section 473 when a party seeks relief from orders in family proceedings).

CCP section 418.10 allows a defendant to file a motion to quash service of summons or stay or dismiss the action on other bases, including lack of personal jurisdiction of the courts of the state of California. Normally, the motion must be made within the 30-day time period for responding to the complaint or petition. CCP section 418.10(a).

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. CCP section 410.10.

Fam. Code section 7620, however, specifically governs both venue and jurisdiction in California regarding actions to determine parentage and child support under the Uniform Parentage Act. Fam. Code section 7602 states, “The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.” Section 7620 subdivision (a) sets forth the bases for personal jurisdiction in California and states, in full,

A person who has sexual intercourse or causes conception with the intent to become a legal parent by assisted reproduction in this state, or who enters into an assisted reproduction agreement for gestational carriers in this state, thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse or assisted reproduction, or who may have been conceived as a result of that assisted reproduction agreement.

Subdivision (b) applies only to children “conceived pursuant to an assisted reproduction agreement for gestational carriers,” and no party has contended that such a situation is involved here.

Subdivision (c) sets forth the specific bases for venue and states, in full,

An action under this part shall be brought in one of the following:

- (1) The county in which the child resides or is found.
- (2) If the child is the subject of a pending or proposed adoption, any county in which a licensed California adoption agency to which the child has been relinquished or is proposed to be relinquished maintains an office.

(3) If the child is the subject of a pending or proposed adoption, the county in which an office of the department or a public adoption agency investigating the petition is located.

(4) If the parent is deceased, the county in which proceedings for probate of the estate of the parent of the child have been or could be commenced.

(5) If the child was conceived pursuant to an assisted reproduction agreement for gestational carriers, any county described in subdivision (e) of Section 7962.

In a proceeding to, among other things, determine parentage, a California court may exercise personal jurisdiction over a nonresident individual or their guardian or conservator if “the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse.” Fam. Code section 5700.201(a)(6). These statutes effectively confer personal jurisdiction in an action based on the act of conceiving a child in California, which cause direct consequences in California in the form of a burden on the resident parent and potentially the state welfare system. *County of Humboldt v. Harris* (1988) 206 Cal.App. 3d 857, 860-864. These provisions accordingly confer jurisdiction based on the nonresident's forum-related activities, making them consistent with due process. *Ibid.* In *County of Humboldt*, a father in Nevada was found to be subject to California jurisdiction in an action to establish parentage, fix child support, and obtain public assistance support reimbursement because the child was conceived, born, and raised in California and the mother was a California resident.

Fam. Code section 5700.201 lists bases for jurisdiction over a nonresident in actions to determine parentage or support. It states, in pertinent part,

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

..

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

...

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

... or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child-support order of another state unless the requirements of Section 5700.611 are met, or, in the case of a foreign support order, unless the requirements of Section 5700.615 are met.

Under the UCCJEA at Fam. Code sections 3400, et seq., Fam. Code section 3421 sets forth the jurisdiction to make an initial child custody determination. It states, in pertinent part and with emphasis added,

(a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if *any* of the following are true:

(1) This state *is the home state of the child on the date of the commencement of the proceeding*, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction....

(3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428.

(4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

(b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) *Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.*

...

Fam. Code section 3423 states, in full,

Except as otherwise provided in Section 3424, a court of this state *may not modify a child custody determination made by a court of another state unless* a court of this state has jurisdiction to make an initial determination under paragraph (1) or (2) of subdivision (a) of Section 3421 and either of the following determinations is made:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 3422 or that a court of this state would be a more convenient forum under Section 3427.

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Respondent relies on Fam. Code section 3421 to argue that this court lacks jurisdiction to make the orders which Petitioner requests in his petition. She sets forth the bases for California jurisdiction in section 3421 as listed above, admits that California has jurisdiction as long as any one of the bases applies, and admits that at least subdivision (a)(1) applies where “This state is the home state of the child on the date of the commencement of the proceeding....” She admits that she gave birth to the Child on March 31, 2024 in California, specifically this very county, and was living in this county in California with the Child at the time that Petitioner filed this action. Memorandum of Points and Authorities (“Ps&As”) 3: 25-4:1; Declaration of Ahna L. Shannon (“Shannon Dec.”) ¶¶2-3. By her own admission, therefore, this state has jurisdiction pursuant to Fam. Code section 3421(a)(1). Nonetheless, she contends that this court lacks jurisdiction because she took the Child and moved to Kentucky on May 9, 2024, more than 40 days after giving birth to the Child in this state and about 10 days after Petitioner filed this action on April 29, 2024. Shannon Dec., ¶3. However, this is groundless since it is immaterial when she was served. She makes this argument after she herself quotes the language stating that there is jurisdiction if she lived here “on the date of the commencement of the proceeding,” which she admits was the case.

Respondent also admits that Petitioner’s process server served her in this action in Kentucky on September 5, 2024, one day before she then filed her own action (the “EPO Action”) for Emergency Protective Order (“EPO”) in a court in Kentucky (the “Kentucky Court”) on September 6, 2024. She notes that the Kentucky Court in the EPO Action issued a temporary EPO and she

later filed on September 26, 2024 a new action in the court in Kentucky (the “Custody Action”) for custody of the Child, but that action is pending and there is no order in that action.

She also argues that this court lacks jurisdiction because a court of this state may not alter a custody order made in another state under Fam. Code section 3423 unless the stated circumstances apply. She is correct in her recitation of the law but unequivocally incorrect in her argument. As explained above, she herself admits that she has only filed an application for a custody order in Kentucky, that request is pending, and there is no custody order in Kentucky. She points to the EPO, but that is not a custody order. She also admits that she filed her Kentucky matters after Petitioner filed this action and served her with the summons and petition. Moreover, even if there were a custody order in Kentucky, that would simply prohibit this court from altering it absent the circumstances set forth in Fam. Code section 3423. That does not remove this court of jurisdiction, specifically jurisdiction to resolve the requested parentage determination.

This court has jurisdiction and acquired jurisdiction already. There is no custody order related order in Kentucky or any other state.

Conclusion

The court DENIES the motion in full. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

3. 24FL01836 Costa vs Caldwell

Motion to Quash Proceedings CONTINUED to the law and motion calendar of December 20, 2024, in Department 21 at 9:30 a.m. because there is no proof of service showing notice of this hearing. Prior to the new hearing, the moving party must file timely proof of service in accord with California Rule of Court 3.1300, demonstrating service of notice of the hearing.

Facts

Petitioner filed his Petition to Determine Parental Relationship on September 9, 2024, seeking to establish his parental relationship to the minor child (the “Child”) of Respondent. He

alleges that the Child was the result of sexual intercourse in this state and lives or is found in this county. He seeks joint legal custody.

Petitioner on September 9, 2024 filed a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) stating that the Child was born in Palo Alto, California on February 3, 2022 and currently lives with Petitioner in Santa Rosa, California, having previously lived with Respondent in Minneapolis, MN.

Respondent filed her UCCJEA declaration on October 17, 2024. In it, she also states that the Child was born in Palo Alto, California, and that the Child has lived with Petitioner in Santa Rosa since September 8, 2024, having previously lived with Respondent in Minneapolis.

Motion

In her Request for Order (“RFO”) and Motion to Quash Proceedings, Respondent moves the court to quash the petition on the grounds that California lacks jurisdiction. She bases this argument on the assertion that, although the Child was born in California and first lived in California, and the Child has since September 8, 2024 been living again in California, in the interim she lived her entire life in Minnesota, where Respondent herself lives.

There is no opposition.

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 (discussing the applicability of Code of Civil Procedure section 473 when a party seeks relief from orders in family proceedings).

Service and Notice

There is no proof of service or other indication that Petitioner has been served or received notice. The court must therefore CONTINUE this motion. Respondent must file a timely proof of

service prior to the new hearing, in accord with applicable law and rule, demonstrating proper service on Petitioner of the moving papers and notice of the new hearing.

Memorandum of Points and Authorities

Respondent has filed no memorandum of points and authorities or cited any authority for the request, or provided any legal analysis whatsoever. This hampers the court's ability to consider the request properly, fails to give the other party notice of the grounds for the request, and is technically grounds for denial. Respondent shall file a memorandum of points and authorities and serve Petitioner such document along with the moving papers and notice of the new hearing.

Conclusion

The court CONTINUES the motion, as explained above, because there is no proof of service.

4. SFL085645 Yokem vs Warren

Motion for Change of Venue DENIED as explained herein.

Facts

Protected Parent ("Yokem") commenced this action by filing a request for domestic violence restraining order on April 29, 2020, seeking a domestic violence restraining order ("DVRO") protecting her and her two minor children (the "Children") from restrained parent, ("Warren"). The court issued a temporary DVRO ("DVTRO") before issuing a DVRO on May 26, 2020. Further litigation regarding related issues continued through December 9, 2020, when the court issued a second amended DVRO, expiring on May 26, 2023. Nothing further occurred in this action until Yokem filed a notice of limited scope representation by attorney Morna Challoner ("Challoner") and Request for Order ("RFO") and Motion for Change of Venue on September 26, 2024.

On October 21, 2024, Yokem obtained a court order allowing her to serve Warren by publication on the basis that she has been unable to find a current address at which to serve him.

Motion

In her Request for Order (“RFO”) and Motion for Change of Venue, Yokem moves the court to “change venue” to Pike County, Missouri (“Pike County”). She relies on Code of Civil Procedure section 397 and contends that she has lived in Pike County since January 2021, after she moved away and the Children returned to her care in January 2021 following a Criminal Protective Order from the Santa Rosa Police Department (“SRPD”).

There is no opposition.

Applicable Authority

According to the Family Law Rules of the California Rules of Court (“CRC”) 5.2(d), and Family 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”), and specifically motions to vacate pursuant to CCP section 473 or proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. 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 (applicability of Code of Civil Procedure section 473).

Service and Notice

As explained above, Yokem obtained an order allowing her to serve Warren by publication. She has filed proof of service demonstrating such service.

Discussion

Yokem relies on CCP section 397(c), which allows the court to make a venue determination, and transfer venue from one county to another, based on issues of convenience and justice. However, that provision is limited to *venue*, i.e., determining the *proper court, or “place of trial,” in California* where an action should be litigated. CCP sections 395, 396, 396a, 396b, 397; *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833. As the court in *California State Parks Foundation* explained,

“The term ‘venue’ denotes the particular county within the state where a case is to be heard. [Citations.] Which county constitutes the proper venue in a particular case is determined

according to the venue statutes—section 392 et seq. In applying these statutes to determine the county (or counties) where venue is proper, the courts generally look to the main relief sought, as determined from the complaint as it stands at the time of the motion for change of venue. [Citation.] Generally (but with numerous exceptions), when the main relief sought in a case does not relate to rights in real property, the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action.’ (§ 395, subd. (a).)” [Citation.]

Yokem is in fact addressing an issue of jurisdiction of a state’s court. Family Code 3427 governs the authority of the courts of California to decline to exercise jurisdiction based on a finding that California is an inconvenient forum. Section 3427(a) states that a California court may do so on a motion of the court or a party “at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum.” Subdivision (b) mandates that “before” making such a determination, the court first “shall consider whether it is appropriate for a court of another state to exercise jurisdiction,” and “shall allow the parties to submit information and shall consider all relevant factors...” It lists factors which the court is to consider, including, among others,

- (1) Whether domestic violence has occurred and is likely to continue... and which state could best protect the parties and the child.
- (2) The length of time the child has resided outside this state.
- (3) The distance between the court in this state and the court in the state that would assume jurisdiction.
- (4) The degree of financial hardship to the parties in litigating in one forum over the other.
- (5) Any agreement of the parties as to which state should assume jurisdiction.
- (6) The nature and location of the evidence required.
- (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.
- (8) The familiarity of the court of each state with the facts and issues in the pending litigation.

Subdivision (c) adds that if the court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

Fam. Code section 3422 governs continuing jurisdiction of the courts of this state.

Respondent relies on subdivision (a) which states, in full,

(a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 has exclusive, continuing jurisdiction over the determination until either of the following occurs:

(1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships.

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

At this point, Yokem has a potentially valid argument that Missouri may be an appropriate jurisdiction to handle the proceedings, but she has failed to address the issue of jurisdiction. She has not discussed the authority or applicable standards for jurisdictional issues and has presented insufficient factual grounds for making such a determination. Her request to transfer venue is improper as this is not an issue of venue.

The court DENIES the motion, without prejudice to Yokem filing an action in Missouri or bringing a proper motion based on the applicable authority and standards regarding jurisdiction.

Conclusion

The motion is DENIED as set forth above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

5. SFL090620 Patel/Patel Dissolution
APPEARANCES REQUIRED.