

L & M Tentatives for 5-24-24  
Department 22  
Judge Pennypacker

**1. 23FL00566**

**Motion for Change of Order Transferring Case to Appropriate Court  
(Change of Venue) DENIED** as explained herein.

**Facts**

Petitioner Tiffany Parker (“Parker”) filed this action on November 17, 2023 in order to determine the parental relationship of Respondent Santos Soto III (“Soto”) to two minor children (collectively, the “Children”), Genevieve Eva Parker-Soto (“Genevieve”) and Vivienne Rose Parker Soto (“Vivienne”). She also seeks custody of the Children, among other orders, and alleges that they reside in this county.

Soto does not dispute that he is the father of the Children and instead has argued that he should have custody based on his assertions that Parker has a demonstrated history of domestic violence. In his Amended Response to Petition to Determine Parental Relationship, filed on January 12, 2024, he also alleges that he and Parker are the parents and the Children reside in this county. He adds that parentage has been determined by a voluntary declaration and that he seeks legal and physical custody of the Children. He explained to this court that he had already obtained a domestic violence restraining order (“DVRO”) against Parker in FDV-23-817008, an action which he filed in the Superior Court of California in the City and County of San Francisco (“San Francisco”), where he resides.

On January 26, 2024, this court ordered a related action, SFL094144, Tiffany Parker v. Santos Soto, III (“Parker’s First DV Action”), to be consolidated with this action. In Parker’s First DV Action, Parker sought a DVRO against Soto,

which was denied, although the issue continued to be litigated.

On April 25, 2024, this court order another related action, 24FL00162, Tiffany Parker v. Santos Soto, III (“Parker’s Second DV Action”), to be consolidated with this action, with this as the lead action. In Parker’s Second DV Action, Parker again sought a DVRO against Soto. The request was denied and no further proceedings had taken place in that action prior to consolidation.

On May 17, 2024, Parker filed a form for substitution of attorney naming Kelly Reiter as her attorney.

### **Motion**

In his Motion for Change of Order Transferring Case to Appropriate Court (Change of Venue), Soto moves the court to transfer venue to San Francisco. Relying on Code of Civil Procedure (“CCP”) sections 394(a) and 397(b), and (d), he argues that he is currently pursuing a civil rights claim against the County of Sonoma and the Superior Court of California, County of Sonoma (“Sonoma Court”) regarding domestic violence, custody, and property, making impartial proceedings impossible. He also contends that the proceedings should be heard in San Francisco because of his prior, pending domestic violence case filed in that court.

Parker opposes this motion, arguing that the Children have lived in Sonoma County for over a year and have never lived in San Francisco and that the courts determined in a joint call that venue is proper in this county.

### **Discussion**

According to the Family Law Rules of the California Rules of Court (“CRC”) at 5.2(d), provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided.

The provisions in the Code of Civil Procedure governing venue in civil actions, at section 395, et seq., therefore generally apply to actions under the Family Code. *Forster v. Sup.Ct.* (1992) 11 Cal.App. 4th 782, 787 (stating that absent the application of specific statutes, venue rules “applicable to civil actions generally” apply to proceedings under the Family Code). Determining proper venue is a question of determining the “place of trial,” i.e., the superior court and the county in California where an action should be filed and litigated. CCP sections 395, 396, 396a, 396b, 397; *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 833.

CCP sections 395 and 396 generally apply to actions under the Family Code, specifically actions for marital dissolution, nullity or marriage, legal separation, and support obligations. CCP section 395(a). For actions regarding support obligations under Fam.Code section 3900, venue is proper in the county where the child resides.

Fam.Code section 7620, however, specifically governs both venue and jurisdiction in California regarding actions to determine parentage and child support, i.e., in actions brought under the Uniform Parentage Act, the part containing the provision. Subdivision (a) sets forth the bases for personal jurisdiction in California. 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 that an action shall be brought in one of the listed counties. The only one which appears to be applicable is subdivision (c)(1) which states, that venue is to be in “[t]he county in which the child resides or is found.”

Soto refers to CCP section 394, but that provision only applies to against by or against a city, county, or other local agency. Subdivision (a) states, in pertinent

part and with emphasis added,

any action or proceeding brought by a county... against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, *other than the plaintiff...* and *other than that in which the defendant resides, or is doing business, or is situated.*

In other words, either party may request the court to transfer the action to a “neutral” county. See *Westinghouse Elec. Corp. v. Sup.Ct.* (1976) 17 Cal.3d 259, 266.

Soto also relies on CCP section 397(b) and (d). Section 397 states that the court “may,” on a motion, transfer venue in the stated circumstances. These include: (b), “When there is reason to believe that an impartial trial cannot be had therein”; and (d), “When from any cause there is no judge of the court qualified to act.” Transfer under these provisions is discretionary and within the sound discretion of the trial court. See *Paesano v. Sup.Ct.* (1988) 204 Cal.App.3d 17, 20-21.

As explained in *Ohio Casualty Ins. Group v. Superior Court* (App. 3 Dist. 1994) 30 Cal.App.4th 444, at 452, the statute providing that a court may change the place of trial when there is reason to believe that an impartial trial cannot be had “requires a showing of actual prejudice to the moving party, and whether the showing has been made is left to the discretion of the trial court. [Citation.]”

The wife in *In re Marriage of Fenton* (App. 1 Dist. 1982) 134 Cal.App.3d 451 moved to disqualify all judges in the county and for designation of out-of-county judge on the ground that she could not obtain a fair trial. The trial court denied the motion and the court of appeal affirmed, explaining, at 456-457, that even if the wife’s chosen procedure were acceptable, she had failed to show the requisite prejudice. The court noted that the wife could have moved for change of venue or for disqualification of individual judges, but did not actually address the

propriety of bringing a single motion to disqualify all judges in the county.

As the court noted in *In re Marriage of Fenton*, at 456-457, a party claiming that judges are prejudiced or not qualified may bring motions to disqualify the judge and obtain assignment of a new judge, pursuant to CCP section 170.6. As this provision explains, at subdivision (a)(4), if there is no available qualified judicial officer in the county to hear the proceeding, “the Chair of the Judicial Council shall assign some other judge, court commissioner, or referee” to hear the matter.

The court in *People v. Spring Val. Co.* (App. 1952) 109 Cal.App.2d 656 affirmed a trial court’s order denying a motion to transfer venue based on, among other things, the disqualification of local judges. In addition to noting that it was not clear that all of the judges in the county were disqualified, the court explained that, “even if all the judges are disqualified, such situation does not require a removal. A qualified judge may be assigned for the trial, just as was done in connection with the motions to transfer. [Citation.]”

Preliminarily, venue for this proceeding appears to be proper in this county. The petition states that the Children resided in this county at the time that it was filed. Soto himself, as noted above, also states in his amended response to the petition that the Children reside in this county. Soto has not demonstrated to the contrary. Parker in her responsive declaration reiterates that the Children live in Sonoma and have done so for over a year, and that they have never lived in San Francisco.

Soto also has not demonstrated a basis for transferring venue due to inability to obtain an impartial trial or lack of qualified judicial officers. His assertions, although lengthy, are confusing, jumbled, and lacking in either clear detail as to the actual bases raised, or any evidentiary support. He provides many details about statements in pleadings or in other filings, or at hearings, but nothing about these

supports his position and he offers no clear explanation about them. He refers to a lawsuit which he is going to file but it is not clear if he filed it or the basis for it, or how it may affect these proceedings. He has failed to demonstrate any clear basis for finding that he cannot obtain an impartial trial, or that there are no qualified judicial officers who may hear the case, or why he may not instead resort to efforts to disqualify specific judicial officers. Parker asserts that Soto has no evidence to support his claims in this regard and has not provided any to her, while he has not filed any complaint naming this court as a defendant.

### **Conclusion**

As explained above, the court DENIES the motion without prejudice to Soto seeking such relief based on a proper showing should circumstances warranting a transfer of venue arise.

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.

## **2. SFL081885 OCAMPO DISSOLUTION**

Motion to be Relieved as Counsel is granted. Petitioner's attorney of record, Robert A. Montgomery, is hereby relieved as counsel.