TENTATIVE RULINGS
LAW & MOTION CALENDAR
Thursday, August 6, 2026 9:00 a.m.
Courtroom 21 –Hon. Kinna Patel Crocker
3055 Cleveland Avenue, Santa Rosa CA 95403

<u>TO JOIN "ZOOM" ONLINE:</u>
Meeting ID: 160-223-6856
Passcode: 876992
https://sonomacourt-org.zoomgov.com/j/1602236856

<u>TO JOIN "ZOOM" BY PHONE:</u>
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/counsel of their intent to appear.

1. **<u>SFL65683, Russell v. Russell</u>**

Motion CONTINUED to the law and motion calendar on September 17, 2026 at 9:00am in Department 21.

<u>Facts</u>

The parties entered into a Marital Settlement Agreement ("MSA"), incorporated into a judgment (the "Judgment") entered on July 2, 2014. Among other things, the Judgment, through the MSA, states that Petitioner has the right to remain in the parties' residential real property (the "Home") until the youngest of the children graduates from high school, and that "[a]t that time the property will be put up for sale," with the parties splitting the equity on the Home upon sale, along with some related terms regarding expenses, loan principal, and repairs.

The youngest of the children turned 18 in October 2024 and graduated from high school in June 2025. The parties listed the Home for sale at some point thereafter, but the sale was not successful. The parties attempted to negotiate over the sale and the possibility of Petitioner buying out Respondent, but they could not reach an agreement.

Petitioner filed a motion for buyout of the family home and assumption of the mortgage loan (the "Assumption Motion"). At the hearing on July 13, 2026, the court granted the motion with respect to an order for Petitioner to assume the mortgage loan and ordered Respondent to cooperate and sign the papers necessary for the transaction (the "Assumption Order").

<u>Motion</u>

In his Motion for Enforcement of Judgment ("Enforcement Motion"), Respondent moves the court to enforce the Judgment by ordering sale of the Home, ordering Petitioner to pay ½ of the fair market rental value for the period of June 10, 2025 until close of escrow for the sale, plus monetary sanctions pursuant to Family Code section 271.

There is no opposition. However, the Court considered Petitioner's Assumption Motion as an opposition, as the issues are identical to those raised in Respondent's Enforcement Motion.

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.

The rules regarding the period of enforceability and renewal of judgments in the Enforcement of Judgments Law ("EJL") at CCP section 683.010 et seq. do not limit the court's discretion when enforcing Family Code judgments and orders. Fam.Code section 291. Accordingly, a money judgment or judgment for possession or sale of property made or entered under the Family Code, including a judgment for child, family or spousal support, is enforceable until paid in full or otherwise satisfied. Fam.Code section 291(a); *Schelb v. Stein* (2010) 190 Cal.App. 4th 1440, 1447.

It is well established that a marital settlement agreement ("MSA") incorporated into a judgment provides the terms of that judgment and is thus enforceable as a judgment while the terms of an MSA not so incorporated are enforced through the manner for enforcing a contract, but they are still enforceable and generally controlling. See, e.g., *Marriage of Umphrey* (1990) 218 Cal.App. 3d 647, 656. Courts construe the terms of an MSA with the goal of giving effect to the mutual intent of the parties so that the terms of the MSA control as long as they are clear and unambiguous. *Hibberd, supra, 1013*.

Courts have authority to enforce a judgment, including one which incorporates an MSA. CCP §128 gives the court the power to control the proceedings before it, preserve and enforce order, compel obedience to judgments, orders, etc.; and make orders and process "conform to law and justice." The court in *Venice Canals Resident Home Owners Ass'n v. Superior Court In and For Los Angeles County* (1977) 72 Cal.App.3d 675, at 679, explained,

> The inherent power of the trial court to exercise reasonable control over litigation before it, as well as the inherent and equitable power to achieve justice and prevent misuse of processes lawfully issued is well established [Citations]; the court may make discretionary orders with reasonable conditions; and even make subsequent limitations and modifications of prior orders in order to achieve justice [Citation]…."

Courts therefore have inherent power to control judicial proceedings in order to insure orderly administration of justice and to see to it that all persons indulge in no act or conduct calculated to obstruct administration of justice. *People v. Smith* (1970) 13 Cal.App.3d 897.

Accordingly, as explained in *In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, at 1439-1440, courts may enforce the terms of MSAs incorporated into judgments when enforcing those judgments, and "[m]arital settlement agreements incorporated into a dissolution judgment are construed under the statutory rules governing the interpretations of contracts generally."

Discussion

The court considers, in light of equity and the history of this case, that it is premature to grant the motion. The court also finds that there is no basis, considering the evidence presented and the court's knowledge of the history of this issue, for finding Respondent to be entitled to rent from June 2025 to the sale of the Home. The court notes it is disingenuous for Respondent to argue strict adherence to the Judgment terms while at the same time requesting relief in the form of rent, which is clearly not a term of the Judgment.

The Judgment contained few terms and did cover contingencies in the event that the parties put the Home on the market but were unable to sell it. The history, and evidence presented in Respondent's Enforcement Motion, clearly demonstrate that the parties attempted after June 2025 to sell the Home, but failed to do so, with the result that they jointly decided to take it off the market. They both engaged in ongoing negotiations over how to handle the sale which included the possibility of Petitioner purchasing Respondent's interest. Evidence has been presented to this court already, including in the Assumption Motion, showing that Respondent had at times agreed to the idea of Petitioner buying him out, sought more money, and then refused to a buyout altogether without providing an explanation. The court already made determinations on that evidence, as to those facts, when it issued the Assumption Order. This court has also already determined that Respondent has in part allowed the delays to continue, without explanation or clear effort to resolve the issue in a reasonable manner. He delayed responding to Petitioner's communications; he initially appeared to be willing to the buyout but then changed his position. Moreover, it is clear that at least much of the delay in the sale was not the fault of Petitioner, and that she cooperated in putting the Home on the market. The lack of any contingency terms or other terms regarding the details of efforts to sell the Home leaves uncertainty over the exact details of how to handle this matter, and the court exercises its discretion in this regard in line with the authority set forth above.

Finally, this court in the Assumption Order has already directed fundamental steps to be taken towards the possible buyout by Petitioner. Since the court only recently issued that order, the court finds, at this time, the most appropriate course is to wait until the parties have complied with the Assumption Order and had a reasonable time to determine if they can agree to a buyout by Petitioner. The court therefore CONTINUES the matter and DIRECTS BOTH parties to comply with the Assumption Order and enter into good-faith negotiations with the goal of Petitioner buying out Respondent. The court directs both parties to file an update on the facts and events, without any further legal argument, no later than 9 court days prior to the next hearing. The court will make further determination on whether to grant any part of this motion at the next hearing and may further continue it depending on the circumstances.

2. **SFL086666, Longmire v. Longmire**

Motion to Set Aside Default and Default Judgment DENIED.

Facts

Petitioner filed this action for dissolution of marriage without minor children on August 31, 2020. Respondent filed her response on September 16, 2020.

The parties, with their respective attorneys, took part in a judicially supervised settlement conference on August 18, 2022. At the conference, they entered into a settlement agreement (the "Settlement"), which they entered into on the record, setting forth the terms on the record, as set forth in the minute order.

Following the settlement conference, Respondent's attorney, Sheila Craig ("Craig"), substituted out on October 31, 2022, leaving Respondent self-represented. Nothing more occurred until a compliance hearing on November 10, 2022, which both parties attended. The court held a discussion on the Settlement and final resolution but continued the matter to December 8, 2022. At the December 2022 hearing, both parties were again present. The court noted that "Ms. Cray" (intended to be Craig) was supposed to prepare a final judgment but failed to do so and that if the proposed judgment being presented was not signed by December 12, 2022, Petitioner could file a motion and ask for attorney's fees. It continued the matter to February 9, 2023. At the February 2023 hearing, the parties were again present. After an update, the court continued the matter to July 13, 2023. At the July 2023 hearing, the parties were present and the court instructed Respondent to provide a letter regarding homeowners insurance before continuing the matter to September 14,

2023. At the September 2023 hearing, the parties were present and Petitioner provided an update, explaining that Respondent was refusing to sign the documents to finalize the Settlement and Judgment. Petitioner explained that he would file a motion and the court dropped the matter. Nothing more occurred, however, until September 2024, when Respondent filed a request for a case resolution conference. At the subsequent case resolution conference on February 27, 2025, the court discussed the matter with the parties, who were both present, and continued the matter to June 12, 2025.

On the day of the February conference, Petitioner filed a Motion to Enforce Settlement & Enter Judgment (CCP 664.6) on February 27, 2025. He argued that the record showed that Respondent entered into the Settlement and stated that she understood the terms and agreed to them. He also pointed out that Craig, Respondent's own attorney, prepared the final written Marital Settlement Agreement document (the "MSA"), which she sent to Respondent. However, he further explained, following the Settlement on the record, Respondent refused to comply and by October 2022, only two months after the parties had entered into the Settlement, she had refused to sign the MSA which her own attorney had prepared. He explained that Respondent continued to refuse to sign the MSA or otherwise comply with the Settlement and instead continued to try to renegotiate. Respondent filed a written opposition to the motion.

The court issued a tentative motion in which it granted the motion, explaining that there was no dispute that the parties had entered into the Settlement with the terms which Petitioner set forth and that Respondent refused to sign the final MSA which her own attorney had prepared. The court also pointed out that the evidence, including Respondent's own evidence presented in her opposition, contradicted Respondent's claims that Petitioner's attorney failed to communicate with her about the issue. The court further explained that Respondent only vaguely claimed that the Settlement was not fair but provided no clear explanation or evidence, doing nothing more than implying that there may be hidden assets. Although Respondent had opposed the motion in writing, she did not contest the court's tentative ruling, which the court adopted (the "Enforcement Order").

Respondent subsequently filed a Request for Order ("RFO") and Motion to Set Aside Judgment, Breach of Fiduciary Duty, Section 271 Sanctions, moving the court to set aside an order or judgment and to award her sanctions. The court found the motion to be fundamentally defective because Respondent failed to clarify exactly what order or judgment she wanted to be set aside, the specific relief sought, legal authority, or factual grounds for the relief. After the hearing of September 18, 2025, the court denied the motion without prejudice to Respondent bringing another such motion.

On December 29, 2025, the court entered a judgment of dissolution. The same day, Petitioner filed a notice of entry of judgment with proof of service showing service on Respondent.

<u>Motion</u>

In a new RFO and Motion to Set Aside Default and Default Judgment, Respondent moves the court to set aside "the default and default judgment" pursuant to Code of Civil Procedure section 473(b) and (d), Family Code section 2122, and the court's inherent equitable powers based on based on mistake, inadvertence, surprise, or excusable neglect, as well as fraud, concealment, duress, mental incapacity, perjury, failure to comply with disclosure requirements, and newly discovered evidence. She challenges the order granting Petitioner's motion to enforce judgment, arguing that she never entered into an MSA, enforcement was obtained without an evidentiary hearing, her prior counsel told her that she would "lose everything" if she did not agree and then abandoned her; there was no compliance with, or waiver of, mandatory disclosures; and the judgment is unequal.

There is no opposition.

<u>Applicable Authority</u>

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).

Relief from orders, due to default or otherwise, in family law cases may be based on the grounds generally applicable to motions to vacate under CCP section 473, or, after that deadline, only in accordance with the grounds in Fam. Code sections 2121, 2122, and 3691. *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (Fam. Code section 2122 governs relief from judgment while Fam. Code section 3691 governs relief from support orders other than judgment); see also *In re Marriage of Tavares* (2007) 151 Cal.App.4th 620. As the *Marriage of Zimmerman* court explained,

> Aside from the six-month period specified in Code of Civil Procedure section 473, subdivision (b) for moving to set aside an order, section 3691 is the exclusive set-aside remedy. An authority stated, "After the CCP § 473(b) six-month time limit has run, the trial court may ... relieve a party from a support order ... based only on the grounds and within the time limits set forth in Fam.C. § 3690 et seq…." [Citation.]

An order setting aside the default is discretionary where based on mistake, inadvertence, surprise, or excusable neglect. CCP § 473(b). There is a policy in favor of hearing cases on their merits and the motion to vacate should be granted if the moving party shows a credible, excusable explanation. *Elston v. City of Turlock* (1985) 38 Cal.3d 227. The provision of this section authorizing court to relieve party from a judgment or order resulting from mistake, inadvertence, surprise or excusable neglect is remedial in its nature and is to be liberally construed so as to dispose of cases on their merits. *Ramsey Trucking Co. v. Mitchell* (1961) 188 Cal.App.2d Supp. 862.

"Surprise" is "some condition or situation in which a party... is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." *Credit Managers Ass'n of So. Calif. v. National Independent Business Alliance* (1984) 162 Cal.App.3d 1166, 1173.

"Excusable neglect" comes down to whether the moving party has shown a reasonable excuse for the default. *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905. The moving party must show that the default would not have been avoided through ordinary care. *Elms v. Elms* (1946) 72 Cal.App.2d 508, 513. The test ultimately is thus one of reasonable diligence. *Jackson v. Bank of America* (1983) 141 Cal.App.3d 55, 58. A showing that the defendant was unable to understand what he was served with is sufficient to justify relief. *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208. Another valid basis is if the defendant mislaid or misfiled the papers and as a result failed to obtain an attorney in time. *Bernards v. Grey* (1950) 97 Cal.App.2d 679, 683-686. Simply forgetting about the lawsuit or being too "busy" is not adequate. *Andrews v. Jacoby* (1919) 39 Cal.App. 382, 383-384. Excusable neglect by attorneys includes situations where, despite reasonable supervision, an attorney's secretary misfiled papers or failed to enter an appearance date. *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234; *Alderman v. Jacobs* (1954) 128 Cal.App.2d 273.

Significant health problems or family tragedies may be sufficient to support a showing of mistake, inadvertence, surprise, or excusable neglect. *Shapiro v. Clark* (2008) 164 Cal.App.4th 1128 (death of a son is sufficient excuse); *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208; *Fink & Schindler Co. v. Gavros* (1925) 72 Cal.App.688 (illness sufficient excuse where party had tried to hire attorney before falling ill).

A judgment may be set aside where void pursuant to CCP section 473(d). Such an order may apply where there is lack of actual or constructive notice and no valid service. *Lovato v. Santa Fe Int'l Corp.* (1984) 151 Cal.App.3d 549, 553 (void for lack of notice where discovery requests served only on defendant's attorney, who had been suspended by state bar and lacked authority to represent party); *Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313 (lack of proper service renders judgment void). Where the judgment is void, the moving party need not show a meritorious defense. CCP section 473(d); *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 86-87. However, where the motion is based on lack of, or improper, service, where there has been actual notice, substantial compliance with the service requirements will defeat a motion to vacate. *Gibble, supra.*

Fam. Code section 2122 sets forth the various bases for relief pursuant to that provision. Aside from stipulated judgments, the grounds include actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding; perjury in the preliminary or final declaration of disclosure, the waiver of the final declaration of disclosure, or in the current income and expense statement; duress; and mental incapacity.

In proceedings to set aside pursuant to Fam.Code section 2121, the court also "shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief." Fam.Code section 2121(b); see also *Marriage of Walker* (2012) 203 Cal.App. 4th 137, 146; *Marriage of Brewer & Federici* (2001) 93 CA4th 1334, 1345; *Marriage of Varner* (1997) 55 Cal.App.4th 128, 137.

In other words, the moving party bears the burden of demonstrating both the presence of at least one of the statutory grounds for relief and that the circumstances resulted in a material disadvantage to the moving party. *Marriage of Kieturakis* (2006) 138 Cal.App. 4th 56, 89; *Marriage of Rosevear* (1998) 65 Cal.App. 4th 673, 685.

Discussion

In her moving papers, Respondent cites as grounds for relief the full range of grounds set forth in CCP section 473(b) and (d) as well as the full range set forth in Fam. Code section 2122, as outlined above.

Preliminarily, there has been no "default" in this case. Respondent is apparently, once again, challenging the Enforcement Order, which resulted in the Judgment. She opposed that motion in writing but did not contest the tentative ruling granting the Enforcement Order.

Respondent once again repeats the arguments and factual assertions which she made in opposition to the underlying motion to enforce the judgment. She contends that her then-attorney, Craig, pressured her into entering the Settlement, misinformed her of the situation, and then abandoned her. She also claims that Craig failed to represent her effectively and she never received required disclosures or a trial. The result, she argues, was that she felt pressured into entering the Settlement and lacked sufficient information to make an informed decision. She provides no evidence in support of her claims but fails to explain that this evidence is new, that she failed to present it before, or why she was unable to present it. She also presents claims regarding each parties' share of income and use of assets during the marriage, complaining that Petitioner made less but spent more during the marriage, rendering their relationship unequal. Her arguments and evidence are vague, unclear, and lacking in credibility.

Most fundamentally for this motion, Respondent presents no apparent discussion supporting the requested relief with respect to the underlying motion and Enforcement Order, which resulted in the entry of Judgment. In order to obtain the relief sought at this point, Respondent must challenge the Enforcement Order on the grounds set forth in CCP section 473 and Fam. Code section 2122.

Although she cites all of those grounds, her actual discussion goes only to validity of the underlying MSA which the Enforcement Order enforces. These issues were already addressed in substantially the same form in Petitioner's prior motion to enforce the Settlement, which this court granted. Respondent had opposed that motion in writing, basically raising the same arguments she presents now, albeit with some differences in detail. She is therefore merely rearguing matters previously decided. Moreover, Respondent did not contest the tentative ruling granting the motion, even though she had opposed that motion and therefore clearly had full notice of it. Nothing Respondent presents supports relief regarding the Enforcement Order on any of the grounds cited.

Conclusion

The court DENIES the motion. 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 5.125.

3. **SFL088355, Petition of Timberlake**

Motion to Intervene and to Invalidate Order Terminating Mother's Parental Rights DENIED.

Facts

On May 4, 2021, Petitioner filed this action against Respondent on behalf of the parties' then-minor child, ("Child") to declare the Child free from parental control of Respondent pursuant to Family Code section 7820, et seq. Petitioner alleges there was an active restraining order against Respondent protecting Petitioner and Child; Petitioner had sole legal and physical custody of Child; Respondent had failed to take advantage of her visitation rights with Child; Respondent had no contact with Child for more than a year; Respondent had abandoned Child and provided no support for Child; and, Respondent was a homeless habitual drug user. Child is still a minor.

This action arises from the parties' action for dissolution of marriage with minor child, SFL74467 (the "Dissolution Action"). Judgment in the Dissolution Action was entered in February 2017 but the parties continued to litigate over issues including child support and visitation. Ultimately, the court in the Dissolution Action awarded Petitioner full legal and physical custody over the Child. Petitioner has retained full legal and physical custody since that decision in the Dissolution Action. Litigation in the Dissolution Action occurred up through August 3, 2021, when the court issued a domestic violence restraining order ("DVRO") protecting Petitioner and Child and restraining Respondent.

Petitioner filed a Petition to Terminate Parental Rights on May 4, 2021 and applied for a court order to serve Respondent by publication. The court granted the order and Petitioner subsequently filed proof of such service on August 3, 2021.

On August 11, 2021, the court granted the petition and entered an order terminating Respondent's parental rights (the "Termination Order"). The Termination Order was filed on August 13, 2021.

Respondent filed a Request for Order ("RFO") and Motion to Set Aside in which she moved the court to set aside the Termination Order and to order joint physical custody of Child. The court denied the motion after a hearing.

Motion

Pinoleville Pomo Nation ("Tribe") has now filed a Request for Order ("RFO") and Motion to Intervene and to Invalidate Order Terminating Mother's Parental Rights. It moves the court to allow it to intervene in this action and to set aside the Termination Order. It contends that it has a right to intervene pursuant to the Indian Child Welfare Act of 1978 ("ICWA") at 25 U.S.C. section 1911. It also contends that the Termination Order is voidable because it was issued in violation of the ICWA because the court at the time never inquired in the proceeding on the petition to terminate Respondent's parental rights whether the Child was an Indian child; the Tribe was never notified of the hearing; and the court never appointed counsel to represent the indigent Indian despite knowing that she was representing herself and could not afford an attorney.

Respondent has filed a statement that she fully supports the motion and joins in the motion, submitting her own arguments.

Petitioner opposes the motion, setting forth the history of the litigation with the Judgment giving Petitioner legal and physical custody having become final and explaining that the Tribe had notice of the request for the Termination Order by July 2021, prior to the hearing. Petitioner asserts that she formally contacted the Bureau of Indian Affairs ("BIA") prior to the hearing to provide notice of the pending termination proceedings. She asserts that the Tribe responded with a formal letter on July 19, 2021. She refers to other evidence demonstrating the Tribe's knowledge and actions contacting Petitioner regarding the Child in 2022. Petitioner also requests sanctions for attorney's fees and costs and again asks the court to find Respondent to be a vexatious litigant.

Respondent has filed a reply, reasserting her arguments.

Applicable Authority and Discussion

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).

Fam. Code sections 7800, et seq., govern proceedings regarding minors' freedom from parental custody and control. Fam. Code section 7882 authorizes service by publication on a parent who cannot be served or whose residence is unknown. Fam. Code section 7894 sets forth the conclusive effect of an order declaring a child to be free from a parent's custody and control and states, in full and with emphasis added,

> (a) An order and judgment of the court declaring a child free from the custody and control of a parent or parents under this part *is conclusive and binding* upon the child, upon the parent or parents, and upon all other persons who have been served with citations by publication or otherwise as provided in this part.
> (b) After making the order and judgment, *the court has no power to set aside, change, or modify it*.
> (c) Nothing in this section limits the right to appeal from the order and judgment.

According to 25 USC section 1902, Congress adopted the Indian Child Welfare Act of 1978 ("ICWA"), at 25 USC section 1901, et seq., in order to further a policy to

> protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

It therefore expressly states that the purpose of the ICWA is to provide protections for Indian children and their relationship with their families with respect to "the removal of Indian children from their families and the placement of such children in foster or adoptive homes…." The ICWA further indicates that it applies to "child custody proceedings" involving Indian children. 25 USC section 1901.

The ICWA sets forth the applicable definitions at 25 USC section 1903. Subdivision (1) defines the specific circumstances which amount to a "child custody proceeding." These include, among others, (ii) "termination of parental rights," defined as "any action resulting in the termination of the parent-child relationship." However, subdivision (1) adds that "Such term or terms shall *not include a placement based* upon an act which, if committed by an adult, would be deemed a crime or *upon an award, in a divorce proceeding, of custody to one of the parents.*" Emphasis added.

According to subdivision (4), ' "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe *or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe*." Emphasis added. Subdivision (5) defines "Indian child's tribe" as, among others, "(a) the Indian tribe in which an Indian child is a member or eligible for membership…." Subdivision (9) defines "parent" as, among others, "any biological parent or parents of an Indian child…. It does not include the unwed father where paternity has not been acknowledged or established."

25 USC section 1911 sets forth the Indian Tribe jurisdiction and rights in "child custody proceedings." The only provision applicable here, and the one on which the Tribe relies, is subdivision (c), which states that an Indian Tribe may intervene in any state court proceeding for the placement of an Indian Child in foster care or termination of parental rights to an Indian Child. It states, in full, "In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding."

25 USC section 1912 sets forth procedural requirements and safeguards in pending court proceedings, as the Tribe correctly notes. These include subdivision (a), which states, that "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner…." It adds that no such proceeding may be held until at least ten days after the parent, or Indian Tribe or Indian Custodian has received the requisite notice. Subdivision (b) adds that where the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel.

As the court explained in *In re Isaiah W*. (2016) 1 Cal.5th 1, the ICWA imposes certain mandatory procedural protections with which courts must comply before making orders terminating parental rights of a child where the child may be a tribal member. However, the applicable authority does not provide for a party to seek to vacate a termination order based on the ICWA after that order has become final and after the applicable deadlines for challenging the order have expired which, in this case, occurred several years ago. In *In re Isaiah W*., the court expressly explained that the mother raising the protections of the ICWA was allowed to challenge the termination order even though she had failed to challenge an initial order finding the child not subject to the ICWA. The mother had timely challenged the termination order itself and the Supreme Court found that the juvenile court had had an ongoing duty to comply with ICWA requirements after making the initial applicability order and up through making the termination order. The specific protections addressed in *In re Isaiah W.*, moreover, apply to "juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care." This situation does not fall within that category because the Child here was living with the other natural parent, the Petitioner, who already had full legal and physical custody of the Child.

The Tribe and Respondent are correct about the Tribe's right to intervene and the protections regarding such proceedings to which the ICWA provisions apply. However, the ICWA itself, as noted above, expressly and unequivocally states that these provisions do not apply to proceedings to terminate parental rights based upon "an award, in a divorce proceeding, of custody to one of the parents." 25 USC section 1903(1). This proceeding is for termination of parental rights based upon "an award, in a divorce proceeding, of custody to one of the parents." The provisions on which the Tribe and Respondent rely accordingly do not support the motion.

<u>Petitioner's Other Requests</u>

Petitioner also requests sanctions for attorney's fees and costs and again asks the court to find Respondent to be a vexatious litigant. However, Petitioner is self-represented and appears to have no legal fees. There is also no clear basis for awarding any sanctions at this time. Should Petitioner again seek a declaration that Respondent is a vexatious litigant, she must do so in a proper, noticed motion. Moreover, at this time, there is no basis for such a determination. The Tribe, not Respondent, filed this motion and although Respondent has joined in the motion, she has done so through counsel. Such circumstances cannot support a vexatious litigant determination. The court DENIES these requests.

<u>Conclusion</u>

The court DENIES the motion. 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 5.125.

4. **<u>23FL00156, Rodriguez Ortiz v. De Jesus Ramirez</u>**

Motion to be Relieved as Counsel by Attorney Hernandez Castillo GRANTED.

5. **<u>24FL02152, DeGolia v. DeGolia</u>**

Motion to be Relieved as Counsel by Attorney Coffey GRANTED.

6. **<u>25FL02349, Martinez v. Martinez</u>**

APPEARANCES REQUIRED.

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7. **<u>26FL00142, Barrett v. Goodreau</u>**

Motion CONTINUED to the law and motion calendar on August 20, 2026 at 9:00am in Department 21. No further briefing will be considered.