

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, May 3, 2024, 9:30 a.m.
Courtroom 20 –Hon. Paul J. Lozada
3055 Cleveland Avenue, Santa Rosa**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 161-646-8743

Passcode: 026215

<https://sonomacourt-org.zoomgov.com/j/1616468743>

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 -6732 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. 23FL00623, Carr Dissolution

Petitioner Laura P. Carr moves unopposed to set aside the order entered granting her request for order of spousal support and attorney’s fees on February 1, 2024. The request is **DENIED without prejudice**.

Petitioner filed a petition for dissolution without minor child against self-represented Respondent Wayne S. Carr. The Court previously granted her request for order for spousal support in the amount of \$1,500.00 and for attorney’s fees of \$5,000.00. She supplied the following facts in support of her previously request: (1) Respondent operates and is paid from the community’s chiropractic business and has failed to share how much he gets from his earnings; (2) Petitioner earns roughly \$1,000.00 per month from social security and \$525 from Respondent, which is not enough for her to get by; (3) Respondent pays for the car payment, car insurance, and garbage pickup; and (4) Petitioner estimates that Respondent earns around \$7,000 per week based on information found on Google from his clients’ ratings.

These facts remain virtually the same, but Petitioner now requests to set aside the previous order and award her an increased spousal support and attorney’s fees in the respective amounts of \$3,500.00 and \$7,000.00. As Petitioner has not provided any different factual information or any legal support to set aside the previous order, the Court will deny this motion.

Moreover, Petitioner has failed to file documents as discussed at the prior hearing on this motion.

At the prior hearing, Petitioner informed the court of a clerical error and sought a continuance to correct it while also noting that the other party, Respondent, was obtaining an attorney and that this would give time for him to respond. The court continued the matter to May 3, 2024, and directed Petitioner’s attorney to serve a notice of the continued hearing.

Respondent has filed nothing regarding this motion and there is no attorney substitution on behalf of Respondent, meaning that he is still officially self-represented.

Petitioner did file a proof of service for the order on the last hearing, but this only shows e-mail service on Respondent himself and an attorney. This is ineffective since the attorney is not Respondent's attorney of record and e-mail service on a self-represented party is ineffective unless there is a proper agreement for such service. California Rule of Court ("CRC") 2.251(c)(3)(B); Code of Civil Procedure ("CCP") section 1010.6.

Petitioner otherwise has not filed any new papers regarding this motion, despite the discussion at the prior hearing.

The denial of this motion is without prejudice to Petitioner seeking such relief based on a properly noticed motion with sufficient supporting facts, evidence, authority, and explanation warranting such relief.

It is SO ORDERED.

2-3. SFL092723, Prosser Dissolution

Motion to Set Aside Support Order Under Family Code section 3691 DENIED without prejudice because the moving party fails to provide supporting evidence. This ruling is without prejudice to Respondent bringing a new, proper and complete, motion for the same relief.

Facts and History

Petitioner Griselda Prosser ("Petitioner") filed this action for marital dissolution without minor child on January 4, 2023. She filed proof of service for the summons and petition on January 6, 2023, showing service on Respondent personally at Petitioner's residence, 931 Olive Street, Santa Rosa, CA 95407, at 4:03 p.m. on January 5, 2023. Respondent failed to appear so on February 22, 2023, Petitioner obtained entry of default against him.

Petitioner filed a first amended petition ("FAP") on April 27, 2023, and filed proof of service for the FAP showing personal service on Respondent at Petitioner's residence, 931 Olive Street, Santa Rosa, CA 95407, at 2:00 p.m. on April 30, 2023. Again, Respondent failed to appear so on June 15, 2023, Petitioner obtained entry of default against him. Judgment was entered.

Notice of entry of judgment was filed on June 22, 2023, and mailed to the parties the same day. The notice was mailed to Respondent at 2820 Apple Valley Ln., #2, Santa Rosa, CA 95403.

Respondent filed a Motion to Set Aside Support Order Under Family Code section 3691. The motion was initially set for February 16, 2024, but the court continued it to March 15, 2024, upon Respondent's request to reschedule the hearing. At the hearing on March 15, 2024, both parties were present, but the court continued that motion again, to May 3, 2024, due to defects in service and notice in order to ensure that both parties had sufficient notice and opportunity to address the subject of the motion.

Motion

In the continued a Motion to Set Aside Support Order Under Family Code section 3691, Respondent moves the court to set aside the judgment, and specifically the orders regarding the division of assets. He asserts that when Petitioner filed this action, he and she discussed the dissolution together and he relied on her communications regarding the matter. He asserts that Petitioner informed him that there was nothing he needed to do aside from signing some papers, and that the assets and debts would be split according to each party's own individual assets and debts and otherwise that all would be split evenly. However, he claims, he subsequently discovered that Petitioner, contrary to her representations, had obtained an order distributing the assets and debts unfairly and unequally, among other things an order making him responsible for all of the debts which she had individually incurred prior to their marriage.

Although the court was not aware of it prior to the last hearing, Petitioner filed a document the day before the last hearing which is apparently intended as an opposition in response to this motion. The document lacks any clear reference to this motion or RFO and is identified solely as a declaration. However, the substance of the document is directed to this motion.

Service and Notice

As noted, the court previously decided to continue this motion because there was no proof of service showing service of the moving papers or notice of this hearing, or of the order continuing the hearing. At the prior hearing, however, both parties appeared and addressed the issues of service and notice. They accepted service and notice and agreed to provide papers to the opposing party. The court informed the parties when they were present that it was continuing the motion to this hearing date on May 3, 2024.

Discussion

According to the Family Law Rules of the California Rules of Court, at 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 setting aside defaults, judgment, or other orders pursuant to CCP section 473. See *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (discussing the applicability of CCP section 473 when a party seeks relief from orders in family proceedings).

Relief from support 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

In addition to relief based on CCP section 473, a court may grant relief from a *judgment* adjudicating support or the division of property in accord with Family code section 2120, et seq. Family Code sections 2120, 2121; see also *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). Section 2121 governs the authority to provide relief and states, in full,

(a) In proceedings for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court may, on any terms that may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter.

(b) In all proceedings under this chapter, before granting relief, the court 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.

Section 2122 sets forth the grounds and time limits for relief and is similar to, but slightly different from, section 3691, governing relief from support orders. It states, in pertinent part,

The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

...

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. An action or motion based on mistake shall be brought within one year after the date of entry of judgment.

(f) Failure to comply with the disclosure requirements of Chapter 9 (commencing with Section 2100). An action or motion based on failure to comply with the disclosure requirements shall be brought within one year after the date on which the complaining party either discovered, or should have discovered, the failure to comply.

Respondent mentions Fam. Code section 3691 rather than Fam. Code sections 2121 and 2122. Section 3691 is not applicable because this matter involves a judgment with distribution of assets and debts rather than a support order, and Respondent wishes to challenge the distribution of assets and debts. However, they set forth some of the same grounds and the standards and analysis are, for the same grounds, the same.

In proceedings to set aside pursuant to Fam.Code section 2121, the court “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.C. § 2121(b); see also *Marriage of Walker* (2012) 203 Cal App. 4th 137, 146. 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.

The motion appears most clearly to raise the fraud-based ground as set forth in section 2122: actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. This is also a basis for setting aside under Fam.Code section 3691. This fundamentally sets forth the standard of extrinsic fraud or mistake as applied in the court's extrinsic power to set aside in civil matters. Accordingly, fraudulently inducing the other party not to retain counsel or not to appear in the action will be a basis for relief. See *Marriage of Stevenot* (1984) 154 Cal App. 3d 1051, 1060-1067; see also *Kuehn v. Kuehn* (2000) 85 Cal App. 4th 824, 833. As the court stated in *Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, at 1114, "the strongest examples of extrinsic fraud occur when the aggrieved party is induced not to appear, relying on representations, in the context of a confidential relationship, that his interest will be protected."

Respondent's explanation clearly sets forth a basis for vacating the default judgment. He asserts that Petitioner fraudulently induced him not to take part in the proceedings in the manner set forth above. He also asserts that this resulted in an improper distribution of assets and debts to his detriment, as explained in the motion.

However, Respondent fails to provide evidence, such as a declaration signed under penalty of perjury in compliance with CCP section 2015.5. This statute mandates that a declaration, in order to be admissible evidence, be signed under penalty of perjury and show that it is either signed within this state, along with the place in the state where signed, or that it be signed under the laws of this state. Any declaration that fails to meet this requirement is inadmissible hearsay. *Kulshrestha v. First Union Comm'l Corp.* (2004) 33 Cal.4th 601, 612.

This court noted before the prior hearing that were it to find proper service and notice, and accordingly reach the merits of this motion, the court would deny the motion without prejudice based on the lack of admissible evidence. This ruling, the court indicated, would be without prejudice to Respondent bringing a new, proper and complete, motion for the same relief.

Petitioner's declaration filed on March 14, 2024, opposes the relief requested in this motion. In addition to providing information regarding the parties' underlying financial and property status, as well as other issues, Petitioner states that she was not aware of any brain infection which Respondent claims was afflicting him and that she had Respondent served with the petition in this case. The information in her declaration does not provide a basis for denying the motion.

Ultimately, Respondent presents a facially valid basis for the relief requested but he fails to provide any actual evidence to support his assertions.

Conclusion

The motion is DENIED without prejudice to Respondent bringing a new, proper and complete, motion for the same relief. 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.

It is SO ORDERED.

4. SFL093415, Cruse v Otani

Motion to Compel Respondent's Discovery Responses GRANTED as explained herein. Sanctions AWARDED to the moving party and against Respondent in the amount of \$1,114.72.

Facts

Petitioner filed this action to obtain a domestic violence temporary restraining order ("TRO"). A substitution of attorney was filed on behalf of Respondent on January 9, 2024, by which the firm of Vivian & Agil substituted in as Respondent's attorneys, replacing prior counsel Debra Bel ("Bel").

On August 25, 2023, Petitioner served Respondent's then-attorney, Bel, with a Request for Production of Documents, Set One ("RFPs"), with responses due September 26, 2023. Carillo Dec. ¶1. Bel sent an e-mail on the due date requesting an extension, so Petitioner's attorney followed up with Bel to schedule a phone call the next day, but Bel did not respond. Id., ¶2. After Petitioner made further efforts to discuss this with Bel, eventually the parties agreed to extend the response deadline to November 10, 2023, but Bel failed to respond to subsequent efforts to discuss the status of the discovery until Bel e-mailed on November 13, 2023, stating that production was still planned, even though the deadline had passed by then. Id., ¶¶3-7. Respondent provided a flash drive the next day, November 14, 2023, with some responsive documents but no written responses, and despite Petitioner's efforts to resolve the matter informally, Petitioner has still received nothing more. Id., ¶¶8-12.

Petitioner filed a Motion to Compel Respondent's Discovery Responses, moving the court to compel Respondent to provide written responses, without objections, to the RFPs. At the hearing on February 16, 2024, the court continued the motion to May 3, 2024, because there was no proof of service for the motion or showing notice of the hearing.

Motion

Petitioner moves the court to compel Respondent to provide written responses, without objections, to the RFPs. Petitioner also moves the court for an award of monetary sanctions in the amount of \$3,115.

There is no opposition.

Service and Notice

The moving party has now complied with the court's order at the prior hearing continuing this matter and directing the moving party to file proof of service. The new proof of service filed on April 25, 2024, shows service on respondent of the moving papers and the notice of the current hearing.

Substantive Discussion

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 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.

Where a party seeks to compel responses to requests for inspection or production under CCP § 2031.300, the moving party need only demonstrate that the discovery was served, the time to respond has expired, and the responding party failed to provide a timely response. See *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411. The responding party must verify substantive responses. CCP § 2031.250. Where a response is unverified, the response is ineffective and is the equivalent of no response at all. See *Appleton v Sup.Ct.* (1988) 206 Cal.App.3d 632, 636. Failure to provide a timely written response waives all objections. CCP §2031.300. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP § 2031.300. Where a party has failed to make a written response on time to a request for production, the first step is not to compel production but, as with interrogatories, to compel a response. CCP § 2031.300.

Petitioner has met her burden here. As set forth above, she shows that she served the RFPs and Respondent has failed to provide a written response, even though Petitioner granted him an extension for doing so. The extended deadline expired prior to Petitioner filing this motion. The delivery to Petitioner, after the extended deadline, of a collection of documents without any written response is not only untimely but is also ineffective. As stated, Respondent must provide a formal, written response. A timely response must have included proper objections or, for substantive responses, been verified. **Objections are now waived**, and Respondent must provide a verified, written response without objections.

The court GRANTS the motion.

Sanctions

For compelling responses to production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP §§2023.010, 2023.030, 2031.300.

In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP § 2023.040. The sanctions are limited to the “reasonable expenses” related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

Petitioner requests sanctions in the amount of \$3,115. This includes fees and costs already incurred consisting of \$1,114.72 related to this discovery, with an hourly rate of \$450. Carrillo Dec.in Support of Petitioner’s Request for Attorneys Fees. It also includes an additional \$2,000 anticipated for the

hearing on this motion. Ibid. There is no detail regarding the time and expenses supposedly incurred on this motion, but the amount requested appears facially reasonable. However, there is no basis for including in discovery sanctions award an amount of anticipated future fees or costs. There is also no basis for the claim that attending the hearing on this matter will result in another \$2,000 in fees.

The court AWARDS to the moving party and against Respondent sanctions of \$1,114.72.

Conclusion

Motion GRANTED 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.

It is SO ORDERED.