

Department 11 - Law and Motion Calendar

June 6, 2022 at 10:00 a.m.

(ALL MATTERS WILL BE HEARD IN DEPT. 4)

Crandell

v.

Crandell

(Case No. 193585)

Mr. Crandell filed a request for order to reduce spousal support. He contends Ms. Crandell is cohabitating with her fiancé, which triggers a presumption affecting the burden of proof regarding a decreased need for support. The statute at issue is Family Code, section 4323, which partially reads:

“Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a non-martial partner. Upon a determination that circumstances have changed, the court may modify or terminate the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1.”

“Cohabitation may reduce the need for spousal support because ‘sharing a household gives rise to economies of scale. Also, more importantly, the cohabitant's income may be available to the obligee spouse.’ (*In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1159).” “[T]he Legislature created the presumption ... based on thinking that cohabitation ... creates a change of circumstance so tied in with the payment of spousal support as to be significant enough by itself to require a re-examination of whether such need for support continues in such a way that it still should be charged to the prior spouse” (*In Re Marriage of Geraci* (2006) 144 Cal.App.4th 1278, 1298-1299). Ms. Crandell confirms she is engaged to be married, but contends support should remain as ordered because presently “there are no legal or financial obligations between her and her fiancé.” Ms. Crandell’s statement overlooks the intent of section 4323, which is to impose a rebuttable presumption that there exists a lesser need for support because she is cohabitating with her fiancé. Cohabitation is the issue, not marriage. Based on the state of the pleadings, the Court assumes cohabitation is occurring, which Ms. Crandell has not denied.

There being cohabitation a change in circumstance arises that requires the Court to analyze support in line with the statutory presumption. To do so, the Court makes the following ORDERS:

1. Ms. Crandell shall file and serve an FL-150 Income and Expense Declaration and the FL-157 Spousal or Domestic Partner Support Declaration Attachment. This is to be done by June 13, 2022.
2. The Court continues the matter to June 20, 2022, at 10:00 a.m.
3. It is the Court's tentative position that any decrease in support will be made effective June 1, 2022.

Davis

v.

Nuss

(Case No. 0189131)

On April 28, 2022, Ms. Davis filed for emergency orders regarding custody and visitation. The allegations suggest that Mr. Nuss caused physical injury to their minor child, which was reported to CPS. Orders were issued on April 28, 2022, stopping visitation between the minor child and Mr. Nuss. Mr. Nuss was expected to the minor child's therapist.

Mr. Nuss has filed a response to the request for order. He contends Ms. Davis is fabricating events to prevent Mr. Nuss from having access to their child. He contends the CPS reporting, the alleged failure to administer antibiotics and others are "blatantly false". A hearing has been set for June 7, 2022, to address the issues of custody and visitation, but the Court has concerns with that hearing proceeding forward now that there exists an outstanding allegation of contempt involving the same issue of visitation.

On April 28, 2022, Mr. Nuss filed an Order to Show Cause and Affidavit for Contempt. He alleges that Ms. Davis has knowingly refused to follow the court's order pertaining to visitation. He lists three incidents of contempt. The matter will be heard on June 6, 2022. At that time, Ms. Davis will be arraigned and a future hearing date will be set on the contempt allegations. The parties should be prepared to address how the contempt filing could impact the June 7, 2022, hearing date, if at all. Specifically, the Court would like the parties to address whether the contempt issues be made part of the request for order on June 7, 2022.

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Sande

v.

Sande

(Case No. 198971)

Ms. Sande has filed a request for order regarding personal property, attorney fees, and sanctions under Family Code, section 271. She contends an agreement had been reached to retrieve certain personal property items, which Mr. Sande has breached. In preparation to honor the agreement, she arranged a U-Haul to retrieve the property. Upon arriving at the residence, she was allegedly denied access to a majority of the property. She was ignored by Mr. Sande when trying to address the issue, she contends. She seeks sanctions in the sum of \$2,500 “for his conduct” and requests a decision on the issue of attorney fees. The attorney fee request was taken under submission on April 22, 2022.

Mr. Sande filed a response that denies restricting access to the residence and suggests all items were given as planned. Photographs were attached to the response that show items being loaded into the U-Haul. As to support, he contends a check of \$2,669.00 was sent to Ms. Sande on May 10, 2022, and has yet to be negotiated. He believes the spousal support obligation will soon impose hardship because he cannot pay particular bills, which he contends will impact the credit rating of each party. He asks for a “reasonable amount of time” to catch-up on support; however, the request for order being heard on June 6, 2022, did not put spousal support at issue. The Court is therefore without jurisdiction to address support (See Family Code, section 213 [In a hearing on a motion, other than for contempt, the responding party may seek affirmative relief alternative to that requested by the moving party, **on the same issues raised by the moving party**, by filing a responsive declaration within the time set by statute or rules of court].”)

As for the property, the Court TENTATIVELY believes a hearing is necessary to sort through the issues before ruling on the motion and any request for sanctions. The reason for the Court’s apprehension is the strong factual disagreement on whether numerous items of property existed and/or were provided to Ms. Sande. Notwithstanding, if any property relating to Ms. Sande’s business remains in the possession of Mr. Sande, the Court intends that this property be accessible to Ms. Sande as soon as possible. The parties should come prepared to address that particular issue with all other property and sanctions to be addressed at the future hearing date.

Stefani

v.

Stefani

(Case No. 199323)

Ms. Stefani has filed a request for order putting at issue custody, visitation, child support, spousal support, and attorney fees. The motion was served, via e-mail. Attached to the proof of service is an email message from Ms. Lauser to Ms. Chase. The message requests confirmation that the Kinney Law Firm is agreeable to accepting service, via e-mail; however, that same message refers to Mr. Kinney having previously refused such service. Uncertainty exists on whether the motion has been properly served under California Code of Civil Procedure, section 1010.6 (Electronic Service of Documents). That concern is further warranted given the Respondent has yet to file a responsive pleading or the necessary income and expense declaration.

Petitioner should come prepared to address the issue of service as contemplated in section 1010.6. If service has been had, the Court will Order a responsive declaration be filed along with an income and expense declaration by Mr. Stefani. Additionally, each party is to file a proposed calculation for child and spousal support using one of the certified programs for doing so.

Stock

v.

Stock

(Case No. 182983)

Ms. Stock filed a request for order that seeks to change visitation between Mr. Stock and their minor daughter. The request asks that physical custody be awarded to Ms. Stock and that Mr. Stock have visitation on the 1st, 2nd, 3rd, and 4th weekends of the month from Thursday to Sunday.

Ms. Stock also raises issue with the child's school. She contends the school location has changed several times to accommodate Mr. Stock's significant other's schedule. Now that Mr. Stock and his significant other have reconciled, a request to change the child's school has again resurfaced. Ms. Stock also requests that the significant other not be the responsible adult that cares for the minor child in Mr. Stock's absence.

The motion was served on May 10, 2022, according to the proof of service. The Court is without a responsive declaration and orders one be filed. Should a response not be filed, the Court intends to issue orders on what information it has.

The parties should come prepared to address the issue of child custody recommended counseling, i.e. whether they have reported to Family Court Services as ordered at Section 6 of the FL-300 form.

Tumino

v.

Tumino

(Case No. 195081)

Mr. Tumino filed a request for order seeking one-half of the stimulus proceeds received by Ms. Tumino and to change child support. The matter came regularly for hearing on May 23, 2022, and then continued to today's date to allow Ms. Tumino to file a responsive pleading and the necessary income and expense declaration. As of the drafting of this tentative decision, the documents have not been received by the Court. The Court orders a response be filed along with an income and expense declaration.

Pursuant to a stipulated judgment, Mr. Tumino is paying \$1,400.00 per month in support. He contends the earnings of Ms. Tumino have substantially changed since entry of judgment. How so? She is an esthetician and her work had become nonexistent because of the Covid shutdown, but has since changed and "she is now leading a lavish lifestyle and traveling frequently" (See Mr. Tumino's Attachment to the FL-300). He also identifies Ms. Tumino as the sole recipient of the \$4,000.00 in IHSS funding (for their children) received monthly. To the extent possible and with the information available, each party shall come to Court with a proposed calculation of child support.

In regards to the stimulus payment, Mr. Tumino contends \$14,000.00 has been received and negotiated by Ms. Tumino. She admits this, allegedly. He is asking for one-half of this amount (\$7,000.00). Having conferred with the judgment, the Court tentatively sides with Mr. Tumino on this issue, but reserves on the final decision until after considering Ms. Tumino's responsive declaration.

Lumgair

v.

Lumgair

(Case No. 198561)

The matter is set for status conference regarding financial issues made part of the April 15, 2022, request for order. Both parties have filed income and expense declarations; however, Ms. Lumgair's shows zero income with the date of her last employment being 2015. Mr. Lumgair's responsive declaration suggests she is now earning \$2,480.00 per month. Assuming this information to be accurate, Ms. Lumgair is ordered to file a current income and expense declaration.

Assuming the parties believe orders can arise from the status conference, each party should come to court with a proposed calculation for support.

Putnam

v.

McDonald

(Case No. 198133)

Ms. Putnam has filed a request for order and served the same on May 19, 2022, via mail. Service appears untimely. California Code of Civil Procedure, section 1005, states:

"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing.... However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by ... 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States."

Mr. McDonald resides in Portland, Oregon. The required notice is insufficient to hear the matter on June 6, 2022. The Court continues the matter to June 20, 2022, at 10:00 a.m. in Dept. 11 for further proceedings on Ms. Putnam's request for order. Ms. Putnam shall give notice of the continued hearing date to Mr. McDonald.

Ross

v.

Ross

(Case No. 199141)

The matter is set for further proceedings on child custody recommended counseling and domestic violence restraining order. Mr. Ross has also filed a motion for child support, spousal support and attorney fees, which he served, via mail, on April 22, 2022. Ms. Ross has yet to file a responsive pleading or the necessary income and expense declaration.

The Court notes the proposed support calculation (Xspouse calculation) identifies Mr. Ross earning \$14,000 monthly with a net adjusted income of \$9,541.00; however, the income and expense declaration puts his income at zero. Assuming this is correct, the Court requests an amended proposed calculation be brought to the hearing on June 6, 2022.

As to the domestic violence restraining order and issues of custody and visitation, the Court will seek a status on all issues. The parties should come prepared to address whether a Family Code, section 3044 advisement has occurred and whether a hearing on the request for restraint should occur prior to deciding issues of custody and visitation.