

Tentative Rulings

Law & Motion and Family Law Calendar for April 8, 2019

April 4, 2019, 4:00 p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530-283-6305 by 12:00 noon, April 5, 2019. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

If you appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Probate – 9:00 a.m.

Case No. PR07-6374 Conservatorship of Davis, Elena Christina

Tentative Ruling: **No appearance required.** The Court finds that notice has been given as required by law and no opposition to the Petition to change venue has been filed. The Court finds that the move of the Conservatee to Amador County is in the Conservatee's best interests and the Court grants the Petition and will sign an order transferring the conservatorship to Amador County.

Case No. PR19-00010 Estate of Hall, Barbara J.

Tentative Ruling: **Appearance required.** The Court finds that notice has been given as required by law. The Court notes there have been no waiver of bond and will discuss Petitioner's request that no bond be required.

Case No. PR18-00042 Estate of Niebauer, Peter B

Tentative Ruling: **No appearance required.** The Court finds that notice has been given as required by law. The Court has reviewed the Inventory and Appraisal and First and Final Accounting. The Court grants the Petition for Final Distribution and the Court will sign an Order submitted by Petitioner.

Case No. PR14-00007 Guardianship of Cabral, Luke Ray

Tentative Ruling: **No appearance required.** The Court has reviewed the Confidential Guardianship Status Report and the Court finds it is in the minor's best interests to continue the guardianship. The Court will set the annual review hearing for April 6, 2020, at 9 a.m. The clerk of the court is reminded to send a copy of this Minute Order to the guardian informing the guardian of the duty to file a confidential status report prior to the next review hearing.

Case no. PR14-00011 Guardianship of Johnson, Gauge Brett Michael

Tentative Ruling: **No appearance required.** The Court has not received the Confidential Guardianship Status Report and orders the review hearing to be continued to May 13, 2019, at 9:00 a.m. A copy of this Order is to be sent to the Guardians who are ordered to be personally present on that date.

Case No. PR19-00007 Guardianship of Marro, Ariana Rose

Tentative Ruling: **No appearance required.** The Court has not received the guardianship investigative report. This matter is continued to April 22, 2019, 9:00 a.m. for receipt of the report. The Temporary Guardianship will remain in full force and effect to the next hearing date.

Case No. PR19-00009 Matter of Galloway, Kenneth J.

Tentative Ruling: **No appearance required.** The Court finds that notice has been given has been given as required by law and no opposition to the Petition has been filed. The Court grants the Petition to Determine Succession to Real Property and will sign an order submitted by Petitioner.

Civil Law and Motion – 9:30 a. m.

Case No. CV17-00106 Bennett, Sara vs. Kuneman, William et al

Tentative Ruling: Prior to the first trial date in October 2018, Plaintiffs filed a Motion in Limine to exclude any testimony by an expert general contractor who Defendants intend to call regarding the costs of repairs and improvements made to trust real property. No opposition has been filed by Defendant to that Motion.

In reviewing the pleadings filed to date, the Court notes in Defendant Kuneman’s Witness List and Trial Brief, Defendant has listed “Dan Meshor – General Contractor” as a potential trial witness and indicated that Meshor will testify as a witness “as to the costs involved in renovating the cabin”. In her in limine motion, Plaintiff’s counsel indicates she has been informed by Defendant’s counsel that he intends to call Mr. Meshor as an expert witness who will testify about the costs of repairs and renovations which Defendant allegedly made to the trust property in 2003 and 2004.

The issue to be decided by the Court involves Defendant Kuneman’s argument that he is entitled to be reimbursed for the costs of materials and supplies for the repairs and improvements he allegedly made to the trust property over 15 years ago. Defendant contends he made the repairs and improvements himself. In his Trial Brief, Defendant contends that the records of his payments for materials and supplies used in the improvements were kept by the deceased trustor and “...were most likely destroyed in an RV fire years ago.”

Per Evidence Code section 801(a), the proposed expert testimony must concern an issue that will help this Court as the trier of fact and be otherwise admissible. Here, it appears through this expert testimony of a general contractor who was not originally involved in 2003 and 2004, Defendants are seeking to establish the cost of materials and supplies allegedly purchased by Defendant Kuneman at that time, and that he then used for repairs, renovations or improvements performed by himself. The original evidence of invoices and bills for those repairs etc. were allegedly lost in “a fire years ago.” Defendant seeks to use the expert’s testimony to reconstruct

The amount of those costs.

The amount of those invoices and bills is unquestionably hearsay evidence which is “case specific”. It is now clear under *People v. Sanchez* (2016) 63 C4th 665, 675 that an expert cannot testify about specific details of hearsay evidence on which the expert relies in forming an opinion without that evidence being independently admissible. This expert has no personal knowledge as to the contents of those bills and invoices for the materials and supplies which were allegedly used for the repairs, improvements, or renovations. Moreover, it is clear that his testimony as to those material and supplies costs is not that testimony which is the subject of expert testimony, notwithstanding the fact any testimony as to those costs for specific items and materials over 15 years ago is highly speculative.

Not only does this Court find under *Sanchez* that this expert cannot give his opinion as to these costs when he is relying upon inadmissible case specific hearsay regarding the repairs and improvements, but his testimony is not admissible under the secondary evidence rule in Evidence Code sec. 1521. The costs of those repairs and invoices as set forth in the bills and invoices which Defendant does not have 15 years later are the best evidence of those costs. Although section 1521 permits the introduction of secondary evidence to prove the contents of a writing which has allegedly been destroyed, the proponent of the evidence must still establish an exception to the hearsay rule for the information contained in those bills and invoices to be admissible. (*Pajaro Valley etc. v. McGrath*(2005) 128 CA4th 1093, 1108.) This witness’ testimony is potentially secondary evidence of the costs, but the content of those bills is clearly hearsay and therefore inadmissible secondary evidence. (*Ibid.*)

For the foregoing reasons, the Court grants Plaintiffs’ Motion in Limine excluding the testimony of the general contractor on the issue of the 2003-2004 repair and improvement costs for which Defendants seek reimbursement.

Case No. CV18-00016 Creedon, Jeffrey vs. Plumas District Hospital, et al

Tentative Ruling: Defendant Plumas District Hospital (“Defendant”) has filed a motion for summary judgment, or in the alternative, summary adjudication against Plaintiff Jeffrey Creedon (“Plaintiff”). As set forth below, the Motion for Summary Judgment is granted in its entirety.

The Court has reviewed all pleadings filed in support of the Motion. The Court has also reviewed the Request for Judicial Notice filed by Defendant and grants the Request and thereby takes judicial notice of Exhibit A.

Plaintiff has filed no opposition to the Motion. However, even when no opposition has been filed, the moving party, Defendant in this instance, still has the burden of establishing evidentiary facts demonstrating Defendant’s entitlement to summary judgment or summary adjudication. (*Quintilliani v. Mannerino*(1998) 62 CA4th 54, 59-60.)

To prevail on a motion for summary judgment, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.*(2001)25 C4th 826, 850.) Therefore, this Defendant bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact as to each element of these three causes of action. (Code of Civil Procedure sec. 437c; *Aguilar, supra*, at. 850.) This Courts find that

based upon the evidence produced in its supporting Declarations, this Defendant has sustained its initial burden of proof.

Once the moving party presents evidence sufficient to sustain judgment in its favor, the burden then shifts to the opposing party to show that a triable issue of one of more material facts exists as to each cause of action. (CCP section 437c(p)(1), (2); Ibid.) If the opposing party does so as to one cause of action, the motion for summary judgment fails. In this case, the opposing party Plaintiff has not filed any opposition or declarations in opposition to this Motion.

Here, the Plaintiff's Second Cause of Action is for breach of an implied contract. In order to prevail on a cause of action for breach of a contract, the Plaintiff must prove the contract, the Plaintiff's performance of the contract or a legal excuse for nonperformance, the breach by Defendant, and resulting damages to the Plaintiff. Richman v. Hartley(2014)224 CA4th 1182, 1186.)

There is no question that the Defendant Hospital hired Plaintiff Creedon as an at-will employee.(UMF 1, Decl. of J. Kepple , paragraph 2.). Plaintiff accepted Defendant's offer of employment by signing his offer of acceptance in April 2012.(UMF 1; Decl. of N. Deming, para. 3, Ex. B.) The Plaintiff also acknowledged he was subject to the Employee Handbook and its contents which also stated he was an at-will employee, and signed the Handbook Acknowledgment (UMF 2, Deposition of Creedon, 22:16-18, 23:4-5;61:23-62:6)

Further, only the Defendant's CEO had the power or authority to enter into any agreement for employment contrary to an at-will relationship. (UMF 1: Deming Declaration Ex. C.) Plaintiff's at-will status could only be changed by an express written agreement signed by both the CEO and Plaintiff and the Plaintiff's signed agreement for at-will employment was an integrated agreement with respect to the at-will nature of the Plaintiff's employment with the Defendant.(Ibid.).

Plaintiff also admitted that there was no requisite writing which changed the at-will nature of his employment relationship at any time while he was employed by Defendant.(Deposition of Creedon, 141:18-20.) Dr. Kepple was the Defendant's CEO during Plaintiff's employment and he never changed Plaintiff's employment to any status other than at-will.(Kepple Decl. para.1-2; Creedon Depo. 26:22-27:2, 141:18-20.) Lastly, Plaintiff was not a member of a union.(UMF 1, Creedon Depo. 20:17-19.)

As in the instant case, where there is an at-will provision in an express integrated written employment agreement, there cannot be an implied agreement to the contrary.(Faigin v. Signature Group Holdings, Inc.(2012) 211 CA4th 726, 739.) Courts have routinely granted summary judgment on this very issue when there is an express at-will employment agreement.(See Halvorsen v. Aramark Unif. Servs.(1998)65CA4th 1383.) Therefore, as a matter of law, Plaintiff never had an implied employment contract with Defendant and could not have breached any implied contract when his employment was terminated in February 2017.

In the Third Cause of Action, Plaintiff alleges that the Defendant breached the covenant of good faith and fair dealing contained in an implied employment between Plaintiff and Defendant. As previously set forth at length, there is no disputed material fact that the Plaintiff was anything other than an at-will employee and his only employment agreement was the integrated written at-will agreement. Here, Plaintiff's allegation that the Defendant breached the implied covenant of good faith and fair dealing can only be based upon his claim that the Defendant breached an implied contract.(RJN Exhibit A.) As previously discussed, the material

undisputed facts establish that there was no implied employment contract and therefore, there was no breach of an implied covenant of good faith and fair dealing in this case.

Lastly, in his First Cause of Action, Plaintiff has alleged that his termination was “...in violation of public policy.” As previously discussed, the undisputed material facts are that Plaintiff was an at-will employee. The Court finds that there is no statute or public policy which requires a procedural process for discharge of an at-will employee and the Courts have routinely affirmed summary judgments on behalf of an at-will employer. (See Hollister v. Forsythe(9th Cir. 1994)22 F.3d 950, 954; Hill v. Cal. State Univ.(1987)193 CA3d 1081, 1088.). Further, over the years, all courts have consistently upheld the principle that an at-will employee does not have a protectable property interest that requires a pre-termination procedure and Loudermill or Skelly rights or hearings.

Once again, as previously discussed it is undisputed that Plaintiff was at-will employee and therefore, as a matter of law, his termination was not in violation of any public policy, statute, or case law.

The Court finds that Plaintiff cannot establish the elements of any of the three causes of action set forth in his Complaint and pursuant to Code of Civil Procedure sections 437c(a) and 437c(p)(2), the Court grants summary judgment in favor of the Defendant Plumas District Hospital against Plaintiff Jeffrey Creedon and Defendant shall be entitled to court costs.

The Court will sign the proposed Judgment submitted by Defendant’s counsel pursuant to CCP section 437c(g) and Rule of Court 3.1312.

Case No. CV18-00253 Matter of 629 East Mountain Ridge Rd., Lake Almanor, CA 9613

Tentative Ruling: **No appearance required.** The Court has signed the proposed Order for the March 11, 2019 hearing and has reviewed the Reply filed on behalf of claimant Lake Almanor Country Club regarding Allied Trustee Services. In light of the representations submitted by counsel, the Court finds that the only remaining claimant entitled to the remaining funds is Stephen Hamilton. Accordingly, the Court finds that any funds remaining after the distributions pursuant to March 11, 2019, are to be distributed by the court clerk to claimant Stephen Hamilton. Further, Petitioner Western Progressive, LLC is discharged from any and all liability as to all potential claims of each any claimant, and is hereby dismissed from this action with prejudice. Counsel shall prepare and submit the proposed Order incorporating this tentative ruling.

Case No. CV19-00031 Petition of Bell, Margaret Elaine

Tentative Ruling: **No appearance required.** The Court has reviewed the Petitioner and Proof of Publication, and no opposition having been filed, the Court grants the Petition for name change.

Case No. CV16-00174 Taylor, Kimberly vs. West Almanor Community Club

Tentative Ruling: **No appearance required.** The Court has reviewed the Ex Parte Application filed by Defendant and based upon the stipulation of counsel, the Court orders that Defendant’s Motion for Summary Judgment can be heard on May 13, 2019, at 9:30 p.m.

Family Law – 10:30 a.m.

Case No. FL18-00214 Blust, Danielle vs. Teixeira, Gabriel

Tentative Ruling: **Appearance required.** This case is on for Case Management Conference and status on signing a Mediation Agreement. The parties have submitted a signed Agreement and the Court signs the Agreement, which is now an order of the Court. The Court will also discuss the status of entry of a Judgment on all outstanding issues.

Case No. FL18-00167 Borghi, Nicholas J. vs. Borghi, Lela Ann

Tentative Ruling: **Appearance required.** Petitioner/Father has not filed a proof of service for the Temporary Orders and the parties need to attend mediation on 4/23/19. The Court will continue this hearing to the next Family Law calendar date on May 13, 2019, at 10:30 a.m. for results of mediation. The Court will discuss the status of the Temporary Emergency Orders.

Case No. FL16-00135 Burgueno, Joanne vs. Sweeney, Bret

Tentative Ruling: **Appearance required.** The Petitioner/Mother has filed a Request for Order on 2/27/19 and there is no proof of service filed on Respondent for that Request. The Court will discuss whether there has been a mediation appointment set as ordered. Petitioner has also filed another Request for Temporary Emergency Orders which was partially granted on March 28, 2019, and which is set for hearing on April 22, 2019, at 10:30 a.m. There is no proof of service for that Request and the Court will take the first Request for Order off-calendar but any future mediation appointment should be kept.

Case No. FL19-00030 Dillard, Jeremiah James vs. Driechel, Brandi

Tentative Ruling: **No appearance required.** The parties have reached an agreement on outstanding issues and signed a Stipulation and Order. The Court will sign that Order and the Petitioner's Request for Order is taken off-calendar.

Case No. FL18-00224 Dunnington, Julieanne vs. Dunnington, Joshua

Tentative Ruling: **Appearance required.** No agreement was reached in mediation. The Court will discuss the status of visitation, Respondent's completion of Anger Management Class, and input from the minor through a custody evaluation.

Case No. FL12-00016 Elston, Nicholas J vs. Castillo, Adriana M

Tentative Ruling: **Appearance required.** The Court will discuss the status of mediation and where the child is living.

Case No. FL13-00252 McPherson, Aaron vs. McPherson, Sara

Tentative Ruling: **Appearance required.** No proof of service of the Request for Order has been filed. The Court will discuss the status of any request to move to Oregon and mediation as ordered. No opposition has been filed by the Respondent/Father.

Case No. FL18-00004 Swithenbank, Stephanie vs. Quintana, Federico

Tentative Ruling: **Appearance required.** The Court has received the signed Mediation Agreement and will discuss the status of the Temporary Restraining Orders.

Case No. FL16-00219 Williams, Camille vs. Cumbra, Jack

Tentative Ruling: **Appearance required.** The parties have reached a mediation agreement filed on March 14, 2019, and the Court will sign that Agreement which will become a court order. The Court will discuss the status of the Temporary Restraining Orders and whether the Petitioner intends to proceed to obtain a permanent restraining order.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV18-00169 Allstate Insurance Company a/s/o Norman R. Cote vs. PG & E

Tentative Ruling: **No appearance required.** Counsel indicates the Notice of Stay filed on 2/11/19 is still in effect. This case is continued to August 26, 2019, at 1:30 p.m. regarding status of bankruptcy stay. Parties are to serve updated Case Management Statements and can appear telephonically if the stay has been lifted.

Case No. LC18-00219 Bank of America vs. Achter, Ashley

Tentative Ruling: **No appearance required.** Plaintiff's counsel indicates the parties have reached a settlement agreement and requests a continuance to have the paperwork entered. The CMC will be continued to June 10, 2019, at 1:30 p.m. for entry of dismissal per the settlement. If the dismissal has been entered before that date, counsel does not have to appear.

Case No. LC18-00063 Cavalry SPV I vs. Felker, Kory

Tentative Ruling: **No appearance required.** Plaintiff has filed a Notice of Settlement indicating the settlement is conditional and the case will be dismissed by February 11, 2020. This matter is continued to April 13, 2020, at 1:30 p.m. and if a request for dismissal has not been filed by that date, the case will be dismissed by the Court unless the parties show good cause why it should not be dismissed per Rule of Court 3.1385.

Case No. LC18-00223 Cavalry SPV I, LLC vs. Everhart, Patricia

Tentative Ruling: **Appearance required.** Plaintiff has not timely served the Defendant in violation of Rule of Court 3.740 (e) and has not filed a Case Management Statement. This

matter will be set for an order to show cause why monetary sanctions should not be imposed for hearing on May 13, 2019, at 1:30 p.m.

Case No. CV16-00014 J&S Custom Homes, Inc. vs. Nakoma Associates, LP

Tentative Ruling: **Appearance required.** The Court will discuss the status of discovery and future dates for case management.

Case No. CV18-00217 Peterson, Richard vs. Shasta-Siskiyou Transport, el

Tentative Ruling: **No appearance required.** This case was previously set for the first Case Management Conference on this date and the Court notes Plaintiff has not timely filed a case management statement in violation of Rule of Court 3.725(a). This case is also set for discovery motions on the next civil law and motion hearing date on April 22, 2019, at 9:30 a.m. This Case Management Conference will be continued to that date and time and if Plaintiff's Case Management Statement is not filed before April 22, 2019, an order to show cause shall be issued as to why reasonable monetary sanctions should not be imposed for failure to timely file that Statement.