

Tentative Rulings

Law & Motion and Family Law Calendar for October 14, 2015

October 8, 2015, 4:00p.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, October 9, 2015 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 do 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. PR07-6363– Conservatorship of Curran

Tentative Ruling: **No appearance required.** The court has received and reviewed the investigator's report, and finds that continued conservatorship is necessary and in the best interests of the conservatee. The court will schedule the next review for August 14, 2017, at 9:00a.m.

Case No. PR15-00039– Conservatorship of Mason

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR14-00003 – Estate of Marks

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. The First and Final Accounting and Report of Status of Administration of Estate and Petition for Settlement thereof; for Denial of Creditor's Claim; for Attorney and Executor Compensation; and for Extraordinary Compensation are approved. Petitioner is to prepare the Order.

Case No. PR06-6328 – Guardianship of Michaud

Tentative Ruling: **Appearance required.**

Case No. PR15-00038 – Guardianship of Givens

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. AD15-00001 – Matter of the Petition of Shelters

Tentative Ruling: **Appearance required.** The court notes that petitioner's counsel has filed a memorandum of points and authorities. However, there is no substitution of attorney in the file, as required. The court will set the matter for a hearing.

Civil – 9:30 a.m.

Case No. CV15-00110 – In Re: McClure

Tentative Ruling: **Appearance required.** The court, not having received any additional information from the petitioner, intends to adopt its previous tentative ruling and deny the petition.

Case No. CV15-00101 – Lewis vs. Main Street Sports Bar

Tentative Ruling: **Sustained, without leave to amend.** Defendants’ demurrer is sustained, without leave to amend. (The court notes that the heading on the demurrer documents indicates the Law Office of David A. Wallis represents defendant “Dona Niskern”. The court presumes this is a clerical error, as counsel’s declaration states that counsel represents the named defendants in this case.) The complaint provides no facts that would be sufficient to state a cause of action against these defendants for defamation. Civil Code section 46 provides: “Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or want of chastity; or
5. Which, by natural consequence, causes actual damage.

A slander that falls within the first four subdivisions of section 46 is slander per se and requires no proof of actual damage. A slander that does not fit into those four subdivisions is slander per quod, and special damages are required for there to be any recovery for that slander.

Here, the complaint alleges only one statement made by a previous bartender of the plaintiff business, who allegedly stated: “There goes the Stalker”. The statement does not fall within one of the four categories of slander. The statement could not reasonably have been understood to be stating actual facts about plaintiff, and it is merely an expression of subjective judgment by the speaker. Nor does the complaint provide any facts that any of the plaintiffs made this statement or any other statements that would fall under Civil Code section 46. Finally, the complaint contains no allegation of actual damage. The court sustains the demurrer without leave to amend, as it does not appear to the court that any amendment could provide an actionable cause for defamation.

Case No. CV14-00102 – Stevenson vs. Hildebrandt

Tentative Ruling: **Denied.** Defendant Brian Hildebrandt’s (hereinafter “Brian”) Motion for Summary Judgment is denied. This litigation involves an altercation that occurred between two of the plaintiffs and two of the three remaining defendants, which resulted in personal injury to the plaintiffs and the two defendants, Logan and Scott Hildebrandt, convicted of criminal charges. In their first amended complaint, plaintiffs allege one count against Brian, the father of the Logan and Scott, for conspiracy to commit a tort or in the alternative, aiding and abetting a tort. Essentially, the FAC alleges Brian and another defendant Enzey, who settled with the

plaintiffs, were either aware of and agreed to the pending acts of Logan and Scott, or aided and abetted in committing the assault and battery.

A motion for summary judgment may be granted only if there is no triable issue of material fact. (Code of Civil Procedure, section 437c., subd. (c).) Brian's motion indicates there is no evidence to suggest that he had anything whatsoever to do with the fight. Portions of depositions were provided to show that there is no evidence that Brian encouraged his sons to confront or assault the plaintiffs. However, the plaintiffs provided portions of depositions that indicate Brian had information about a dispute involving a restraining order between one of the plaintiffs, LePage and a family friend, Enzey, and that his sons had no knowledge of the dispute. Brian left a neighbor's house, where a party was taking place, with knowledge of the dispute and had contact with his sons, Logan and Scott. Shortly thereafter, his sons returned and attacked the plaintiffs without provocation. The inference is that Logan and Scott would not have attacked the plaintiffs without knowledge of this dispute, and because they did not even know the plaintiffs, the only way they could have known was if Brian told them. A fact-finder could thus infer from plaintiffs' evidence that Brian informed his sons of the previous dispute between LePage and Enzey, and this information provided Logan and Scott with a reason to confront and assault LePage. Brian's reply brief points out that LePage testified he believed Enzey told Scott about the restraining order dispute. Yet, Enzey testified he never spoke with Scott or Logan about LePage. Apparently, neither Logan nor Scott testified as to who, if anyone, told them about the dispute between Enzey and LePage.

Here, there are triable issues of material fact. Accordingly, defendant's motion for summary judgment is denied.

Family Law – 10:30 a.m.

Case No. FL15-00171 - Beever vs. Grimler

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the respondent.

Case No. FL02-22955 – Burns vs. Dean

Tentative Ruling: **Appearance required.** The court will reset the contested hearing.

Case No. FL10-00304 – Champlin vs. Hecker

Tentative Ruling: **Appearance required.** The court will reset the contested hearing.

Case No. FL15-00142 – Mar. of DeGraff

Tentative Ruling: **Appearance required.** The court will set a contested hearing, if necessary.

Case No. FL15 –00120 - Gomez vs. de la Cruz

Tentative Ruling: **No appearance required.** The court will confirm the contested hearing on November 12, 2015, at 9:00a.m.

Case No. FL10-00016 – Mar. of Ullrich

Tentative Ruling: **Appearance required.**

Case No. FL14-00138 – Newlove – vs. Newlove-Mullen

Tentative Ruling: **Appearance required.** The court intends to order a custody evaluation.

Case No. FL04-24343 – Mar. of Pence

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the petitioner, yet petitioner has filed a response.

Case No. FL09-00302 – Mar. of Runge

Tentative Ruling: **Appearance required.** The court will set the matter for a contested hearing.

Case No. FL15-00055 – Mar. of Taylor

Tentative Ruling: **No appearance required.** The court notes there is no proof of service on the respondent.

Case No. FL03-23794 – Mar. of Wirtz

Tentative Ruling: **No appearance required.** The court has signed a stipulation.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. FL15-00105 – Pluff vs. Beam

Tentative Ruling: **No appearance required.** This matter is continued to October 21, 2015, at 1:00p.m. in Department Three.

Case No. LC14-00216 – Cach, LLC vs. Bodhaine

Tentative Ruling: **Appearance required.** The court will reset the date for trial.

Case No. CV15-00033 – Carlson vs. Mason

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. CV14-00195 – CSAA Insurance Exchange vs. Ferrellgas

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. CV14-00156- Sebring vs. Peterson

Tentative Ruling: **Appearance required.** The court will confirm the date for mediation.