

TENTATIVE RULINGS

FOR: January 8, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom

Join by Video (Preferred)

<https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZW51UFJYZz09>

Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 899 0261 1018 **Password:** 776773

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

David Tickle v. Ann West

20CV001036

DEMURRER TO THE COMPLAINT

TENTATIVE RULING: Defendant Ann West did not meet and confer before filing the demurrer as required under Code of Civil Procedure section 430.41. Rather than delay this matter to conduct what likely would be a futile effort to meet and confer, the Court reaches the merits of the demurrer. West is reminded of her obligation to follow the Code of Civil Procedure and California Rules of Court.

Defendant Ann West's demurrer to the complaint on the ground of lack of subject matter jurisdiction [Code Civ. Proc., § 430.10, subd. (a)] is **OVERRULED**. West argues the family court has continuing and exclusive jurisdiction due to the August 5, 2015 Judgment of

Dissolution in Case No. 26-65601 pursuant to Family Code sections 2550 and 2556.¹ West has not demonstrated either section applies for purposes of this demurrer. Section 2550 requires the family court to “expressly reserve[] jurisdiction” to make a property division in its judgment. The family court did not check items 4(e) [judgment on reserved issues] or 4(g) [jurisdiction reserved over all other issues] in the judgment of dissolution to reserve jurisdiction. Even if the family court reserved jurisdiction, section 2550 governs the division of “the community estate,” but Tickle alleges the property at issue is his personal property, not community estate property. (Compl., ¶¶ 5-8.) Section 2556 applies to community estate assets that have not been previously adjudicated by a judgment. The provision does not apply because, as noted, Tickle alleges the property at issue is his personal property. Neither section mentions a family court’s continuing jurisdiction over separate property.

West’s demurrer to the complaint on the ground of failure to state sufficient facts [Code Civ. Proc., § 430.10, subd. (e)] is **OVERRULED**. West contends the statute of limitations bars the action, but cites to Code of Civil Procedure section 473, subdivision (b), which is the provision authorizing a party to move to set aside a judgment based on mistake, inadvertence, surprise, or excusable neglect. West is conflating two separate legal issues. Section 473 is not implicated because this civil action is based on a purported oral agreement that purportedly had nothing to do with the dissolution action or with community property based on the allegations that the property at issue is Tickle’s personal property. Nor is the two-year statute of limitations for breach of oral contract violated as Tickle alleges he requested the return of his personal property within the last two years and West has refused to allow him to retrieve the property. (Compl., ¶¶ 6, 8; Code Civ. Proc., § 339(1) [two-year limitations period applies to oral contract claims].)

West maintains the alleged verbal agreement violates the statute of frauds under Civil Code section 1624, subdivision (a). The statute of frauds does not apply because the purported oral agreement could have been terminated, i.e., performed, in one year if the personal property had been returned or retrieved. (See *Abeyta v. Sup. Ct.* (1993) 17 Cal.App.4th 1037, 1044 [“[I]f a terminating condition can occur within one year a contract is outside the statute of frauds ‘even though performance of the contract may extend longer than one year’”].)

West’s request for judicial notice is **GRANTED** as to the August 5, 2015 Judgment of Dissolution between the parties in Case No. 26-65601. To the extent Tickle objects to the

¹ Section 2550 states: “Except upon the written agreement of the parties, or on oral stipulation of the parties in open court, or as otherwise provided in this division, in a proceeding for dissolution of marriage or for legal separation of the parties, the court shall, either in its judgment of dissolution of the marriage, in its judgment of legal separation of the parties, or at a later time if it expressly reserves jurisdiction to make such a property division, divide the community estate of the parties equally.”

Section 2556 provides: “In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability.”

request, any objection would be overruled as the Court would simply take judicial notice of the relevant document on its own motion.

West shall file her answer within 10 calendar days of service of notice of entry of order.