

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division
Stanley Mosk Dept. - 46

BD602801

JEAN PIERRE GUY GILLAIN VS ZOE DORAN MCLELLAN

September 29, 2020

8:30 AM

Honorable Bruce G. Iwasaki, Judge

Martin Godderz, Judicial Assistant

Sandra Geco (#3806), Court Reporter

NATURE OF PROCEEDINGS: Request for Order Hearing re custody and visitation/see Sept. 17, 2020 minute order

The following parties are present for the aforementioned proceeding:

Jean Gillain, Petitioner
Lawrence Markey, Attorney for Petitioner

The matter is called for hearing. The Court notes at 9:18 p.m., there have been no appearances made on behalf of the Respondent. The clerk represents the staff has not received any phone call or message from the Respondent regarding why the Respondent is absent.

Maria Morioka and Anthony Wilson are affirmed and testify on behalf of the Petitioner.

Order on Respondent's DVRO request filed July 19, 2019 and request for orders to modify child custody filed February 14, 2019.

On September 29, 2020, the Court conducted a hearing on Respondent Mother Zoe McLellan's request for a domestic violence restraining order (DVRO) filed July 19, 2019, and her request for modification of child custody orders filed February 14, 2019. The custody orders concern the parties' minor child, Sebastian (dob October 16, 2012). Petitioner Father Jean-Pierre Guillain filed opposition to both requests and appeared with counsel. Respondent did not appear in person or by LACourtConnect for the hearing and did not call the court to request a continuance or explain her failure to attend. Respondent was given notice that the hearing on her two requests was to commence today at 8:30 a.m. At 9:18 a.m. the Court proceeded with the hearing.

The Court denied Respondent's DVRO request with prejudice for lack of evidence. A previously issued TRO had already been dissolved.

The Court denied Respondent McLellan's RFO to modify custody of Sebastian. Petitioner Guillain requested affirmative relief as part of his responsive declaration filed April 15, 2019, and the hearing proceeded on that request. The Court received an offer of proof regarding Petitioner's testimony, and received the testimony of Maria Morioka and Anthony Wilson.

The Court finds and orders:

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Jurisdiction and findings under Family Code section 3048

1. The Court has jurisdiction to make orders regarding child custody under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 *et seq.*).
2. Notice of today's hearing was given to Respondent. Respondent was given notice of the hearing by the clerk and her specially appearing attorney Ms. Summers acknowledged the hearing date when the matter was scheduled on September 17, 2020. In addition, on September 21, 2020, Respondent McLellan filed an amended witness list that listed today's hearing location, date, and time. Both parties received an opportunity to be heard.
3. The custody and visitation rights of each party are set forth in this order.
4. A violation of this order may subject the party in violation to civil or criminal penalties or both.
5. The country of habitual residence of the child Sebastian is the United States of America, and the home state for all purposes is the State of California.

Respondent mother has violated court orders and failed to appear with the child.

The Judgment in this case, entered April 14, 2016, granted the parties joint legal custody and joint physical custody of Sebastian. Following a modification hearing in 2018, the Court modified the parenting schedule, but, in the minute order filed May 29, 2018 and order after hearing filed July 26, 2018, both parties continued to have joint legal and physical custody. In conjunction with Respondent's DVRO request filed July 9, 2019 Respondent was granted temporary sole legal custody and physical custody with no visitation to Petitioner Guillain. Respondent was also ordered not to move the child from California without court order. The DVRO proceeding was continued for more than a year while Respondent kept custody of Sebastian and moved him outside the state. On July 17, 2020, after Respondent again failed to appear for the hearing, the Court dissolved the temporary restraining order, ordered that the parties share joint legal custody of Sebastian, and ordered Respondent to produce to Petitioner the child's school and medical records.

Respondent violated Family Code section 3063 by moving with the child to Louisiana without Court approval. On July 7, 2020 this Court ordered Respondent to have Sebastian physically present in the courthouse on July 17, 2020. She failed to comply with that order. As noted, Respondent McLellan failed to appear for the hearing on the two requests she sought.

The Court finds that Respondent appears to have abducted Sebastian and intentionally violated court orders. The Court finds that Respondent Mother's conduct jeopardizes the health, safety and welfare of Sebastian. The Court finds that Respondent is not the parent likely to support frequent and continuing contact between Petitioner and Sebastian. Based on the evidence received, it is in the child's best interests to award physical custody of Sebastian to Petitioner Father Guillain.

Custody orders.

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The Court orders that the parties shall share joint legal custody of Sebastian. The Court orders that pending the hearing on November 9, 2020 set forth below, Petitioner Father Guillain is awarded sole physical custody of Sebastian forthwith, with no visitation ordered for Respondent Mother McLellan until she appears for the hearing and shows cause why the custody and visitation orders should be modified. Respondent Mother is ordered to communicate with Petitioner's counsel forthwith to arrange a peaceful exchange of Sebastian before the court hearing on November 9, 2020. The Court shall make appropriate orders under Family Code section 3130, et seq.

November 9, 2020 hearing date.

The hearing on Petitioner Guillain's request for custody orders is continued to Monday, November 9, 2020 at 8:30 a.m. in Department 46, Room 500, of the Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles. Respondent McLellan is ordered to attend in person. Respondent's amended witness list is stricken. She may file and serve one for the November 9, 2020 hearing. On or before October 6, 2020, Respondent is ordered to file and serve upon Petitioner's counsel her telephone number.

SO ORDERED.



Hon. Bruce G. Iwasaki
Judge of the Superior Court

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, Sherri R. Carter, Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Entry of the above minute order of September 29, 2020 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: September 29, 2020

By: /s/ Martin Godderz
Martin Godderz, Deputy Clerk

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