Tentative Rulings
Law & Motion and Family Law Calendar for April 10, 2017

April 6, 2017, 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, April 7, 2017. 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. PR17-00009 – Estate of McNamara

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Probate is granted.

Case No. PR14-00007– Guardianship of Cabral

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the annual review hearing for April 9, 2018, at 9:00a.m. The clerk is reminded to send notice to the guardians one month prior to this date, informing the guardians of the duty to file a status report prior to the review hearing.

Case No. PR14-00011 – Guardianship of Johnson

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the annual review hearing for April 9, 2018, at 9:00a.m. The clerk is reminded to send notice to the guardians one month prior to this date, informing the guardians of the duty to file a status report prior to the review hearing.

Case No. CV17-00011 – In Re Bowden Living Trust

Tentative Ruling: **Granted.** The court grants the Petition for Order Confirming Trust Assets.

Case No. PR16-00035 – Matter of the Donald and Beverly Donato Revocable Trust

Tentative Ruling: **Appearance required.**

Civil – 9:30 a.m.

Case No. LC15 - 00059, 56, 58, 55 – Almanor Lakefront LLC vs. Owens and related cases

Tentative Ruling: **Appearance required.**

Case No. LC15 - 00111 – Barnes vs. Hammond

Tentative Ruling: **No appearance required.** The court has received correspondence from plaintiff's counsel, requesting this matter be taken off calendar. The court continues this matter to May 8, 2017, for a case management conference at 1:30p.m. Plaintiff is to give notice to the defendants.

Case No. CV16 – 00121 – Greene vs. Miller

Tentative Ruling: **Denied**. The motions by defendant, Janet Miller ("Miller"), for summary judgment on the first amended complaint ("FAC") and for summary adjudication of the first and second causes of action of Miller's cross-complaint, are denied. All requests for judicial notice are granted.

The authenticity of the recorded documents upon which Miller bases her motions is undisputed. (*See*, *e.g.*, UMF13, Exhibit F (subdivision map ("Map"), filed by Lucien and Mary Musso ("Mussos") and recorded on November 22, 1982); UMF 25, Exhibit H (declaration of restrictions ("Declaration"), executed by the Mussos and recorded on the same date); UMF1-5, Exhibits L, Z and S (through mesne transfers commencing after November 1982, Miller owns Parcel #2, Perry and Suzanna Greene ("Greenes") own Parcel #1 and Maria Lucero ("Lucero") owns Parcel #4, as shown on the Map).) All deeds, pursuant to which the Mussos initially transferred lots to the parties' predecessors in interest, referred to the Map for the legal description of each parcel and provided as follows:

(1) 1986 grant deed, granting to Miller's predecessor in interest (her husband, as a single man) Parcel #2, with no express language granting or reserving any easements (UMF 14, Exhibit I);

(2) 1989 grant deed, granting Parcel #4 to Miller and her husband, with language excepting Easement No. 1 (labeled as Musso Drive on the Map) and Overload Road, both of which cross Parcel #4, and granting Easement No. 4 (Overload Road)[1], to the extent it crosses over Parcel #3 (UMF15, Exhibit M); and

(3) 1990 grant deed, granting Parcel #1 to the Greenes' remote predecessor in interest, "together with . . . Easement No. 1" and granting Easement No. 4 (UMF 22, Exhibit N).

[1] This easement appears to have been created by an earlier subdivision map. (UMF 11, Exhibit C.)

Over a century ago, the Supreme Court, noting that the right to use streets shown on a plat map extends to all streets, not just those needed for ingress from, and egress to, public roads, explained:

> The making and filing of . . . [a signed and acknowledged plat map] is equivalent to a declaration that [the right to use the streets shown on the map] is attached to each lot as an appurtenance. A subsequent deed for one of the lots, referring to the map for the description, carries such appurtenance as incident to the lot. (*Danielson v. Sykes* (1910) 157 Cal. 686, 690 ("*Danielson*").)

In *Mikels v. Rager* (1991) 232 Cal.App.3d 334 ("*Mikels*"), the court noted that this

> . . . reference-to-a-map method of creating an easement by implication presupposes . . . an intent on the part of the original grantor, by depicting the road on the map and by referring to the map in the deed, to create an easement, as opposed to depicting the road and referring to the map for purposes of description only or as an aid in identification, this intent being unambiguously shown by the creation and depiction on the map of new streets . . .. (*Id.*, at 359.)

Hence, as a matter of well-established law, the Map is the "equivalent to a declaration" that Easement No. 1 is appurtenant to each parcel in the subdivision (*Danielson, supra*), with the Mussos' intent to create that easement "unambiguously shown" by the creation and depiction of Musso Drive, a new street, on the Map. (*See*, Exhibits C, F; *Mikels, supra*.)

Further, the Supreme Court has ruled that declarations of covenants, conditions and restrictions which set forth a common plan are enforceable, if they are of record when a purchaser acquires the property (*Citizens for Covenant Compliance v. Anderson* (1995) 12 Cal.4th 345, 349), and thus the Declaration, recorded before any lot was transferred, is enforceable against all parcels herein.

The Declaration states that the Mussos intended to sell the parcels in accordance with a common plan for the use and maintenance of the private roads within the subdivision (Declaration, Exhibit H, pp. 1-3); however, there is also language stating that the Mussos will be responsible for granting and reserving all easements and that no easement will become effective "as to new parcels" unless reservations or grants are included in each deed. (*Id.*, pp. 1, 3.) The Map, which is attached to the Declaration, similarly states that the easements will not become effective unless included as reservations and grants in the individual deeds. (Map, Exhibit F.)

Miller contends that the correct interpretation of this language, in conjunction with the language in the initial deed for Parcel #2 (which neither granted nor reserved any easement), establishes that Easement No. 1 never became effective to either burden or benefit Parcel #2, and thus the Declaration is not enforceable against her or her property.[2] Miller cites no legal authority in support of this interpretation.

The general rule is that covenants, conditions and restrictions,

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[2] Miller thus seeks summary judgment and adjudication, because all of the plaintiffs' causes of action are founded on the proposition that Easement No. 1 is appurtenant to Parcel #2, and Miller's second and third causes of action are based, in part, on the nonexistence of that easement.

> . . . enacted for the benefit of all [] homeowners, are "to be interpreted so as to give effect to the main purpose of the contract ... [and] where a contract is susceptible of two interpretations, the courts shall give it such a construction as will make it lawful, operative, definite, reasonable and capable of being carried into effect [citation] ... [and] avoid an interpretation which will make [the CC&Rs] extraordinary, harsh, unjust, inequitable or which would result in absurdity." (*Battram v. Emerald Bay CC&R Committee* (1984) 157 Cal.App.3d 1184,1189.)

Rather than making the Declaration operational and capable of being carried into effect, Miller's interpretation renders both it and Easement No. 1 ineffective. The interpretation also leads to an absurd result. If it was the Mussos' intent, with the first parcel they transferred, to nullify the Declaration, why did they execute and record it in the first place? (*See*, *Costa Serena Owners Coalition v. Costa Serena Architectural Committee* (2009) 175 Cal.App.4th 1175, 1199 (language followed when "clear and not absurd").)

Accordingly, the Court turns to extrinsic evidence to ascertain, if possible, the Mussos' intent with regards to the Declaration and Map. (*See*, *e.g.*, *City of Hope National Medical Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 393 (conduct after execution of contract and before dispute may reveal intentions).) In addition to the recorded deeds described above, that evidence includes the following:

(1) 1992 grant deed, from Miller and her husband to Lucero's remote predecessor in interest of Parcel #4 (UMF 19, Exhibit O);

(2) Use, by Miller and her husband, of Musso Drive across Parcel #4 for "over twenty years" (UMF 33, Declaration of Miller ("Miller Decl."), para. 2); and

(3) Parcel #2 is land-locked if Easement No. 1 is not appurtenant thereto. (UMF #32, Miller Decl., para. 7).

While Miller contends that the language of the original deed for Parcel #2 reflects the Mussos' intent to deny that lot any appurtenant easements as shown on the Map, she admits that she and her husband used Musso Drive when they owned Parcel #4 (from 1989 to 1992) and for another 17 years. One could reasonably infer from this evidence that the Millers understood that there existed an easement appurtenant to their property, which ran across Parcel #4.

Additionally, one can infer, from the evidence that the Mussos expressly granted Easement No. 1 in the deed for Parcel #1, that it was their intention that Musso Drive was to be effective as an easement along its entire length, as set forth in the Map and in accordance with the Declaration. Similarly, one could infer that the exception of Easement No. 1 and Overload Road in the grant deed of Parcel #4 reflects the Mussos' intention that Parcel #4 be burdened thereby, for the benefit of Parcels #1 and 2, both of which would have otherwise been landlocked.

These competing inferences raise triable issues of a material fact, *i.e.*, the Mussos' intent, in executing and recording the Map, Declaration and the deeds originally transferring the three parcels owned by the parties herein, with respect to the effectiveness of Easement No. 1. Accordingly, summary judgment and adjudication is denied. (*See, Hepp v. Lockheed-California Company* (1978) 86 Cal.App.3d 714,718 (summary judgment not proper where inferences

deducible from papers submitted contradicted by other inferences which raise triable issue of fact).)

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

Tentative Ruling: **Appearance required.** The court approves a telephonic appearance by CourtCall, and informs the parties and counsel that the court intends to appoint a discovery referee to review the discovery motions filed by both parties, and make a recommendation to the court, pursuant to CCP 639(a)(5) and 640. The court requests counsel propose up to three discovery referees, if there is no agreement on the referee.

Case No. CV15-00137 – Root vs. County of Plumas

Tentative Ruling: **Denied.** The alternative motions for summary judgment or adjudication of issues filed by defendant County of Plumas ("Plumas") are denied in full. Plaintiffs' Request for Judicial Notice ("RJN") is granted.

Plumas seeks to negate the necessary element, in the first cause of action, of Jason Root's status as a "dependent adult," which is defined in The Elder Abuse and Dependent Adult Civil Protection Act ("The Act") as any person between the ages of 18 and 64 years who "(a). . . has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights . . . [or] (b) is admitted as an inpatient to a 24-hour health facility . . .." (*Section 15610.23*.)[1]

It is alleged in the Complaint, filed October 6, 2015 ("Complaint"), that Mr. Root was 35 years old and admitted as an inpatient to a 24-hour health care facility. (*Id.*, paras. 1, 19.) However, plaintiffs do not dispute Plumas' showing that Sierra House, where Mr. Root resided, was an adult residential, not a health care, facility (Plaintiffs' Separate Statement, UMF Nos. 1-15) and thus concede that Mr. Root does not fall under the definition of a dependent adult under *section 15610.23(b)*.[2]

It is also alleged that Mr. Root had ". . . substance abuse and other mental health issues, . . .was immediately placed on medications to control his behavior and reported depression . . .," and that the defendants ". . . administered chemical restraints knowing that Mr. Root was incapable of giving consent." (*Id.*, Complaint, paras. 11, 21.) Liberally construed, these allegations are legally sufficient to raise the issue of whether Mr. Root had "physical or mental limitations that restrict[ed] his . . . ability to carry out normal activities," and thus was a dependent adult under *section 15610.23(a)*. (*See, Pultz v. Holgerson* (1986) 184 Cal.App.3d 110, 116 (allegations of complaint must be liberally construed when ruling on motion for summary judgment).)

Plumas has produced no material fact or supporting evidence on the material issue of Mr. Root's status as a dependent adult under *section 15610.23(a)*. (*See*, *O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 804 (defendant ". . . 'must show that under no

[1] All statutory references are to the *Welfare & Institutions Code* unless otherwise noted.

[2] Liability under The Act does not ultimately turn upon whether Sierra House was a health care facility, but, instead, upon its relationship to Mr. Root, if he is found to be a dependent adult. (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148,158.)

possible hypothesis within the reasonable purview of the allegations of the complaint is there a material question of fact which requires examination by trial.' [citation]").) It thus has failed to meet its initial burden. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 850-851 (moving party must produce sufficient evidence to make prima facie showing).) Further, plaintiffs have produced evidence which tends to show that Mr. Root had been a conservatee of the Public Guardian, raising a triable issue as to whether Mr. Root was able to carry out normal activities or to protect his rights. (*See*, Inventory and Appraisal, In Re: Root, PR11-00046, Exhibit A to RJN.)

The motion for summary adjudication of the second and third causes of action, on the grounds of immunity, is unsupported by any undisputed material fact or evidence, and Plumas has thus failed to sustain its initial burden as to these causes. (*Aguilar, supra,* 24 Cal.4th at 850-851.) Further, liability may be imposed on a public entity for injuries proximately caused by its employees when acting within the scope of their duties. (*Government Code section 815.2(a)*.)

Family Law – 10:30 a.m.

Case No. FL16-00167 – Mar. of Ayotte

Tentative Ruling: **Appearance required.** The court has not received the mediated agreement. If the agreement is filed prior to the hearing, this matter may be taken off calendar.

Case No. FL12-00251 – Mar. of Tanguay

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