

Tentative Rulings for November 10, 2021
Department 403

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: **City of Fresno et al. v. Kevorkian et al.**
Superior Court Case No. 21CECG02816

Hearing Date: November 10, 2021 (Dept. 403)

Motion: by the City of Fresno to Abate Substandard Buildings; for Appointment of Receiver; and for Attorney's Fees

Tentative Ruling:

To grant the petition to abate substandard building and for appointment of California Receivership Group, Inc., through Mark S. Adams, Esq., as receiver as to respondents' properties located at 104 East Sierra Avenue, Fresno, California. To grant petitioners' request for attorney's fees and costs from respondents.

Explanation:

Abatement and Receivership

Under Health and Safety Code section 17980.6:

If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part.

Such notice to abate must be provided by, among other means, posting a copy of the notice in a conspicuous place on the property, and in a prominent place on each affected residential unit. (Health & Saf. Code § 17980.6.) The notice shall include the name, address and telephone number of the agency issuing the notice; the date, time and location of any public hearing or proceeding concerning the notice; and information that the lessor cannot retaliate against a lessee pursuant to Civil Code section 1942.5. (*Ibid.*) If the owner fails to comply within a reasonable time with the terms of the notice to abate, the enforcement agency may seek, and the court may order, the appointment of a receiver. (*Id.*, § 17980.7, subd. (c).) The enforcement agency must provide proof of notice of intent to seek the appointment of a receiver posted in a prominent place, and mailed first-class to all persons with a recorded interest in the real property. (*Ibid.*)

Here, several violations of the Health and Safety Code at a mobile home park located at 104 East Sierra Avenue, Fresno California (the "Property") were cited following various inspections by the California Department of Housing and Community

Development beginning in July 2020 through June 2021. (Declaration of Michael Barberi, ¶¶ 1-3, 6, 9-10, and Ex. 12, 13 to the Petition.) Thereafter, on July 28, 2021, petitioners issued Notices to Abate pursuant to Health and Safety Code section 17890.6. (Declaration of Amanda Yanovsky, ¶ 11, and Ex. 6 to the Petition.) On September 14, 2021, petitioners issued a 72-hour notice of intent to file the instant petition. (*Id.*, ¶ 14, and Ex. 9 to the Petition.) On September 21, 2021, service of the same to the real property owners of record was made on Emory Wishon, who accepted service on their behalf. (Declaration of Christina A. Roberson, ¶ 13, and Ex. F thereto.) On September 24, 2021, petitioners filed the present action.

Petitioners demonstrate sufficient compliance with the Health and Safety Code to seek appointment of a receiver. The Property has multiple code violations, including excess trash, rubbish, tent-like structures, abandoned or inoperable vehicles, and combustible materials; abandoned, inoperable or improperly parked vehicles blocking access to lots, egress and ingress, common areas, and fire lanes; unmarked roadways that do not show direction of traffic or where parking is prohibited; no visible lot address numbers; substandard units; damaged and deteriorated roadways resulting in lack of proper grading; and no posted emergency preparedness plan. (See, e.g., Yanovsky Decl., ¶¶ 11-12, and Ex. 6 to the Petition.) It appears that the violations are serious enough to pose a significant health and safety risk to the tenants of the Property, including increased unlawful activity and fire hazards. (Declaration of Dustin Freeman, ¶¶ 1-3, 5-8; Declaration of Jay Tracy, ¶¶ 1-3, 5-8.) Further, petitioners complied with the notice provisions of the statutes.

Respondents oppose the present petition.¹ Respondents concede that their efforts to abate the issues cited have been slow, but are committed and willing to address all of the issues. Respondents state that roadways have been striped to indicate direction of traffic, fire lane parking restrictions have been marked, lots have received number identifiers, substandard units have been removed or refuse, the mobile homes damaged due to fire have been completely removed, some roads have been repaved, and the ones that have not will be repaved once the source of nuisance water is corrected by the adjacent mobile home via legal action, an emergency preparedness plan was posted, and legal actions will be initiated to cause the various tenants to comply with clearing excess refuse. (See Declaration of John H. Frost, ¶¶ 1-2, 6-15, and exhibits thereto; Declaration of Judy Chi-Dee Tsai, ¶¶ 1-2, 4-9, 21-22.) Respondents argue that, though they have been slow to act, petitioners share blame in the delay.

Though respondents argue that the Barberi Declaration fails to establish that the California Department of Housing and Community Development notices issued satisfy Civil Code section 798.56, respondents cite no authority to support any finding that the Department was under any obligation to initiate terminations of tenancy on behalf of respondents as management. (See Civ. Code § 798.56.) Rather, petitioners declare, and respondents do not refute, that investigations of the conditions of the Property have been ongoing since July 2019. (Barberi Decl., ¶ 5.) Petitioners further submit, and respondents do not refute, that several inspections noting violations occurred, with notice to

¹ Though the opposition is untimely under Health and Safety Code section 17990, the court exercises its discretion and considers the opposition. (Cal. Rules of Court, Rule 3.1300(d).)

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Tentative Ruling

Re: ***In re Carlos Rodriguez***
Superior Court Case No. 21CECG02536

Hearing Date: November 10, 2021 (Dept. 403)

Motion: Petition to Compromise Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice.

Explanation:

The petitioner, Andrea Rodriguez is the minor's grandmother, and thus is not able to compromise the minor's claim without being appointed as guardian ad litem. (Prob. Code, § 3411, subd. (a) [Parent entitled to custody or (*inter alia*) guardian of the estate may file petition]; Code Civ. Proc., § 372, subd. (a) [guardian of the estate or (*inter alia*) guardian ad litem has power to compromise claim].) While petitioner was once the minor's guardian (Fresno Superior Court Case No. 08CEPR00639), that case has now been dismissed, and furthermore it was a guardianship of the person, only, and not of the minor's estate.

Petitioner has not yet been appointed as guardian ad litem, and cannot be appointed as such at this juncture because she is self-represented. A non-attorney appointed as guardian ad litem cannot act in pro per, since doing so would constitute the unlawful practice of law. (Bus. & Prof. Code, § 6125; *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 965.) The court realizes that Mr. DeMaria cannot represent Ms. Rodriguez since he represents the insurer for the at-fault driver. Even so, Ms. Rodriguez, as grandmother, has no power to compromise the claim without appointment as guardian ad litem, and she cannot be so appointed without being represented by an attorney. The belated filing of an amended petition and a new application for appointment of guardian ad litem which deletes reference to Mr. DeMaria in the box at the top of the first page is inadequate to address this issue.

Also, there is no information provided as to whether the settling at-fault driver, Raul Morales, has other assets from which to pay a wrongful death settlement. Item 10 of the Petition indicates that petitioner has investigated issues such as this, but since there is no independent counsel representing petitioner, the court must see some evidence regarding Mr. Morales' ability or inability to provide settlement funds from sources other than his insurance policy. At the very least, petitioner should present a declaration from Mr. Morales on this issue.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

