

Tentative Rulings for January 25, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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 above rule also applies to cases listed in this "must appear" section.***

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: ***In Re: Mohamed Qassim Muffah***
Superior Court Case No. 24CECG00031

Hearing Date: January 25, 2024 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

Petitioner has not substantiated the medical expenses for American Ambulance or for the treatment received on February 11, 2021 at Family Health Care Network Surgical Services. An Account Inquiry Details was attached for Family Health Care Network Surgical Services, but this is not a final bill. No billing records were attached for American Ambulance. While the Medi-Cal lien for treatment received at Fresno Community Hospital on January 30, 2021 was attached, billing records for each medical provider must be attached to the Petition. Additionally, the Petition notes that information is unknown regarding the medical expenses. (Petition, No. 12.) The court will not grant a Petition where the minor's complete medical expenses are unknown and unsubstantiated.

Additionally, Petitioner did not check the box in Number 9. Number 9 is where Petitioner indicates a careful and diligent inquiry has been made regarding the incident and injuries. The court will not grant a Petition where there is no affirmation that such inquiry has been made.

Pursuant to California Rules of Court, Rule 3.1312 and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: jyh **on** 1/24/24 .
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***In re: 5553 E. Lorena Ave., Fresno, CA 93727***
Superior Court Case No. 23CECG02741

Hearing Date: January 25, 2024 (Dept. 503)

Motion: Hearing re Claims to Surplus Funds

Tentative Ruling:

To grant claimant Faith Foster's and claimant Jacklyn R. Johnson's claims for disbursement of surplus funds from the foreclosure sale of property located at 5553 E. Lorena Avenue, Fresno, California 93727. (Civil Code, § 2924j) Each is entitled to an equal share of the \$94,994.05 in surplus funds deposited with the court. However, Faith Foster's share shall be reduced by \$495 in order to reimburse the court for the filing fees which were initially waived. (Gov. Code, § 68637, subd. (b).)

The Clerk of the Court shall pay the funds deposited with the Clerk in this action on September 27, 2023, together with any accrued interest as directed: 50% to Faith Rael Foster, with this amount reduced by \$495, as directed above, and 50% to Jacklyn Johnson.

Explanation:

Civil Code section 2924j governs the surplus funds deposited with the court by a trustee who has conducted a nonjudicial foreclosure but is unable to determine the priority of claims to the remaining proceeds after payment of costs, expenses and secured obligations under Civil Code section 2924k. Here, the Trustee's petition to deposit the surplus with the clerk was granted on September 20, 2023, and on September 27, 2023, the trustee deposited the amount of \$94,994.05. Once this deposit was made, the trustee was discharged of any further responsibility for the surplus funds. (Civ. Code, § 2924j, subd. (c), 2d par., 2d sent.)

Section 2924j requires the court to set a hearing within 90 days of the trustee's deposit, and consider all claims filed at least 15 days before the hearing date. (Civ. Code, § 2924j, subd. (d).) The clerk must serve written notice of the hearing on all claimants identified in the trustee's declaration. (*Ibid.*) The clerk has done so here, and the court continued the initial hearing on December 13, 2023, because even though no claims were filed, it was clear that at least one claimant had attempted to e-file her claim but this was rejected for want of a filing fee or successful fee waiver. Now, two claims have been filed, one by Faith Rael Foster, granddaughter of a deceased child of the deceased property owner Charlotte Byrd, and one by Jacklyn R. Johnson, daughter of Charlotte Byrd.

"The court shall distribute the deposited funds to any and all claimants entitled thereto." (Civ. Code, § 2924j, subd. (d).) A claimant of surplus sale proceeds bears the burden of proving his or her entitlement to the proceeds. (Banc of America Leasing &

Capital, LLC v. 3 Arch Trustee Services, Inc. (2009) 180 Cal.App.4th 1090, 1103-1104.) Surplus proceeds of a non-judicial foreclosure sale must be distributed pursuant to Civil Code section 2924k, subdivision (a), which provides, in pertinent part, that "the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds . . . to the . . . trustor's successor in interest." Each claimant has presented evidence of their respective relationship to Charlotte Byrd. There are no other claims to the surplus funds. Therefore, they would each be entitled to an equal share of the funds, since Jacklyn R. Johnson takes one share as child of Charlotte Byrd, and Faith Rael Foster is entitled to the share of her father, the predeceased child of Charlotte Byrd.

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 adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: jyh **on** 1/24/24.
(Judge's initials) (Date)