

Court of Appeal, Second Appellate District - No. B243517

NOV 20 2019

Jorge Navarrete Clerk

S258611

**IN THE SUPREME COURT OF CALIFORNIA**

Deputy

**En Banc**

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In re the Marriage of PAUL HERRIOTT and ALICJA HERRIOTT.

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PAUL HERRIOTT, Respondent,

v.

ALICJA HERRIOTT, Appellant.

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The petition for review is denied.

CANTIL-SAKAUYE

*Chief Justice*

Appendix "A"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DIVISION p

In re the Marriage of PAUL HERRIOTT and ALICJA HERRIOTT.

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PAUL HERRIOTT,  
Respondent,  
v.  
ALICJA HERRIOTT,  
Appellant.

B243517  
Los Angeles County Super. Ct. No. BD415787

COURT OF APPEAL - SECOND DIST.

**FILED**  
Sep 12, 2019

DANIEL P. POTTER, Clerk

J. Graham Deputy Clerk

THE COURT:

Motion to recall the Remittitur by appellant filed Sept. 5, 2019 is DENIED.

Elwood Lui, Administrative Presiding Justice  
Administrative Presiding Justice

Appendix "B"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

In re the Marriage of PAUL HERRIOTT and  
ALICJA HERRIOTT.

Case No.: B243517  
(SUPERIOR Ct. No.: BD415787)  
Los Angeles County

PAUL HERRIOTT

Respondent,

v.

ALICJA HERRIOTT,

Appellant.

ORDER

COURT OF APPEAL – SECOND DIST.

**FILED**

May 28, 2013

JOSEPH A. LANE, Clerk

J. GUZMAN Deputy Clerk

Appellant Alicja Herriot filed a Notice of Appeal on August 24, 2012 in the above entitled matter seeking review of an order terminating spousal support entered on January 25, 2012 by the Los Angeles Superior Court. The Case Information Statement also indicates Appellant is seeking review of an order on Child Support and medical insurance entered on April 4, 2012 pursuant to the January 25, 2012 order. This Court issued a Notice to Parties on March 4, 2013 directing Appellant to show cause in writing why this Appeal had merit and was not taken for purposes of harassment or delay. Appellant's Response was received and filed on March 15, 2013. Respondents' Response and Supporting Documents was received and filed on March 25, 2013.

The Court has read and considered the pleadings of the parties and the available record. The Court finds that the following facts are germane to the disposition of this Appeal:

- a. The January 25, 2012 order at issue in this matter is an order after judgment and is appealable.
- b. The deadline to file a Notice of Appeal from the January 25, 2012 order was July 23, 2012.
- c. Appellant filed the Notice of Appeal on August 24, 2012. This was 212 days after entry of the order.
- d. The timely filing of a Notice of Appeal is jurisdictional and the Court of Appeal has no authority to prosecute an appeal which has been untimely filed.

Appendix "C" #3

- e. With respect to the April 4, 2012 order on child support and medical insurance; Appellant fails to address the issue of the merits of an appeal from this order. Appellant has thus failed to meet the burden of showing that the appeal of this order has merit and has not been taken for purposes of harassment or delay.
- f. Because Appellant has not met the burden of showing that this appeal has merit and the court has no jurisdiction to prosecute an untimely appeal, it has no authority to issue a prefiling order in this appeal and the request for a prefiling order must be denied.

The request for a prefiling order is denied. On the Court's own motion, the Notice of Appeal in the above-entitled matter filed August 24, 2012 is hereby dismissed. IT IS SO ORDERED.

Code of Civil Procedure § 391.7(c);  
California Rules of Court, Rule 8.104(a) (1) – (3);  
*Adaimy v. Ruhl* 160 Cal.App.4<sup>th</sup> 583, 586-588, 72 Cal.Rptr.3d 926, 928-929;  
*Delmonico v. Laidlaw Waste Systems, Inc.* 5 Cal.App.4<sup>th</sup> 81, 83-86, 6 Cal.Rptr.2d 599, 600-602;  
*In re Estate of Crabtree* 4 Cal.App.4<sup>th</sup> 1119, 1125, 6 Cal.Rptr.2d 224, 226-227;  
[4 Cal. Jur. 3d Appellate Review § 381].



Boren, Administrative Presiding Justice

**FILED**  
LOS ANGELES SUPERIOR COURT

MAR 13 2012

JOHN A. CLARKE, CLERK  
BY CARL DUNNELL, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**In re the Marriage of:**

**PAUL HERRIOTT,**

**Petitioner,**

**and**

**ALICJA HERRIOTT,**

**Respondent.**

Case No.: BD 415 787

**ORDER ON RESPONDENT'S OSC  
FILED FEB. 3, 2012**

This is a post-judgment matter involving a multitude of court proceedings filed by Respondent Alicja Herriott over the past 18 months. On February 3, 2012, Respondent filed an OSC for child support, spousal support, and "contesting January, 25.12 Order (sic)." Having reviewed the OSC, the Court finds that it is, in essence, a motion for reconsideration.<sup>1</sup>

Under C.C.P. 1008, a motion for reconsideration may be granted only upon "new or different facts, circumstances, or law." The party asking for reconsideration must state by affidavit what new or different facts, circumstances, or law are claimed. C.C.P. §1008(a). The Court reviewed Ms. Herriott's OSC carefully and could find no new or different facts, circumstances, or law since the January 25, 2012 ruling.

<sup>1</sup> Respondent's OSC points out a clerical error in the Order After Hearing of Jan. 25, 2012. The Order has a check mark in a box that Respondent was present. She was not. The Court has ordered the clerk to remove the checkmark.

**ORDER ON RESPONDENT'S OSC FILED FEB. 3, 2012**

1 of 2

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Appendix "D"

1       Precisely one year ago, on February 3, 2011, Respondent also filed an OSC that was also,  
2 in essence, a motion for reconsideration. This Court issued a written decision pointing out the  
3 legal standard for such a request and Respondent's failure to meet it. The Court also gave her  
4 additional time to try to meet that standard, but still she was unable to demonstrate any new or  
5 different facts, circumstances, or law. Thus there is no question that Respondent is familiar with  
6 the legal standard for a motion for reconsideration. There also is no question that she has failed  
7 to meet it this time, also.

8       Therefore the OSC filed by Respondent on February 3, 2012 is DENIED.

9       In the alternative, if the Court were to reconsider, it would issue the same decision as  
10 before. At today's hearing, the Court allowed Respondent to set forth all the evidence and  
11 argument that she would have at the January 25, 2012 hearing, including a (hearsay) statement  
12 from one of the parties' adult children, and information on the drug abuse of another one of the  
13 parties' adult children. None of the evidence or argument presented is sufficient to lead the  
14 Court to modify its prior decision. Therefore, the January 25, 2012 Order After Hearing (as  
15 corrected per footnote 1) will remain in full force and effect.

16       IT IS SO ORDERED.

17       DATED: ~~MAR 13 2012~~, 2012

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20       Christine Byrd  
21       JUDGE OF THE SUPERIOR COURT  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY  <b>FILED</b> LOS ANGELES SUPERIOR COURT JAN 25 2012 JONNA CLARKE CLERK BY GAIL RUSSELL, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: Department 65 CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME:		
PETITIONER/PLAINTIFF: Paul Herriott  RESPONDENT/DEFENDANT: Alicja Herriott  OTHER PARTY:		
FINDINGS AND ORDER AFTER HEARING		CASE NUMBER: BD 415 787

1. This proceeding was heard  
 on (date): January 25, 2012 at (time): 8:30 a.m. in Dept.: 65 Room:  
 by Judge (name): Christine Byrd ☐ Temporary Judge  
 On the order to show cause, notice of motion or request for order filed (date): 12-9-11 by (name): Paul Herriott
- a. ☒ Petitioner/plaintiff present ☒ Attorney present (name): Shelly M. Mandell, Esq.  
 b. ☒ Respondent/defendant present ☐ Attorney present (name):  
 c. ☐ Other party present ☐ Attorney present (name):

## THE COURT ORDERS

2. Custody and visitation/parenting time: As attached ☐ on form FL-341 ☐ Other ☒ Not applicable  
 3. Child support: As attached ☐ on form FL-342 ☐ Other ☒ Not applicable  
 4. Spousal or family support: As attached ☒ on form FL-343 ☐ Other ☐ Not applicable  
 5. Property orders: As attached ☐ on form FL-344 ☐ Other ☒ Not applicable  
 6. Attorney's fees: As attached ☐ on form FL-346 ☐ Other ☒ Not applicable  
 7. Other orders: ☐ As attached ☒ Not applicable  
 8. All other issues are reserved until further order of court.  
 9. ☐ This matter is continued for further hearing on (date): at (time): in Dept.:  
 on the following issues:

Date:

JAN 25 2012



JUDICIAL OFFICER

Approved as conforming to court order.

CHRISTINE BYRD

SIGNATURE OF ATTORNEY FOR ☐ PETITIONER / PLAINTIFF ☐ RESPONDENT/DEFENDANT ☐ OTHER PARTY

PETITIONER/PLAINTIFF: Paul Herriott RESPONDENT/DEFENDANT: Alicja Herriott OTHER PARENT:	CASE NUMBER: BD 415 787
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### SPOUSAL, PARTNER, OR FAMILY SUPPORT ORDER ATTACHMENT

TO ☒ Findings and Order After Hearing ☐ Judgment ☐ Other (specify):

#### THE COURT FINDS

- A printout of a computer calculation of the parties' financial circumstances is attached for all required items not filled out below.
- Net income. The parties' monthly income and deductions are as follows (complete a, b, or both):
 

	Total gross monthly income	Total monthly deductions	Total hardship deductions	Net monthly disposable income
a. Petitioner: <input type="checkbox"/> receiving TANF/CalWORKS				
b. Respondent: <input type="checkbox"/> receiving TANF/CalWORKS				
- Other factors regarding spousal or partner support
  - ☐ The parties were married for (specify numbers): \_\_\_\_\_ years \_\_\_\_\_ months.
  - ☐ The parties were registered as domestic partners or the equivalent on (date): \_\_\_\_\_
  - ☐ The Family Code section 4320 factors were considered, as listed in Attachment 3c.
  - ☐ The marital standard of living was (describe): \_\_\_\_\_

☐ See Attachment 3d.

- e. ☒ Other (specify):  
See attached analysis of Family Code section 4320 factors.

#### THE COURT ORDERS

- a. The ☐ petitioner ☐ respondent must pay to the ☐ petitioner ☐ respondent  
 as ☐ temporary ☐ spousal support ☐ family support ☐ partner support  
 \$ \_\_\_\_\_ per month, beginning (date): \_\_\_\_\_, payable through (specify end date): \_\_\_\_\_  
☐ payable on the (specify): \_\_\_\_\_ day of each month.  
☐ Other (specify): \_\_\_\_\_
- ☐ Support must be paid by check, money order, or cash. The support payor's obligation to pay support will terminate on the death, remarriage, or registration of a new domestic partnership of the support payee.
- ☐ An earnings assignment for the foregoing support will issue. (Note: The payor of spousal, family, or partner support is responsible for the payment of support directly to the recipient until support payments are deducted from the payor's earnings, and for any support not paid by the assignment.)
- ☐ Service of the earnings assignment is stayed provided the payor is not more than (specify number): \_\_\_\_\_ days late in the payment of spousal, family, or partner support.



PETITIONER/PLAINTIFF: Paul Herriott RESPONDENT/DEFENDANT: Alicja Herriott OTHER PARENT:	CASE NUMBER: BD 415 787
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5. ☐ The parties must promptly inform each other of any change of employment, including the employer's name, address, and telephone number.
6. ☒ **NOTICE:** It is the goal of this state that each party must make reasonable good faith efforts to become self-supporting as provided for in Family Code section 4320. The failure to make reasonable good faith efforts may be one of the factors considered by the court as a basis for modifying or terminating support.
7. ☐ This order is for family support. Both parties must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this order. The parents must notify the court of any change of information submitted within 10 days of the change by filing an updated form. Form FL-192, *Notice of Rights and Responsibilities and Information Sheet on Changing a Child Support Order*, is attached.
8. ☐ The issue of spousal or partner support for the ☐ petitioner ☐ respondent is reserved for a later determination.
9. ☐ The court terminates jurisdiction over the issue of spousal or partner support for the ☐ petitioner ☐ respondent.
10. ☒ Other (specify):

Spousal support terminates April 30, 2012.

**NOTICE:** Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

**THIS IS A COURT ORDER**

1 SHELLY M. MANDELL, State Bar No. 138916  
 2 NELLY TRIPHON, State Bar No. 179335  
 3 SHELLY M. MANDELL, A PROFESSIONAL LAW CORPORATION  
 4 3415 South Sepulveda Boulevard  
 5 Suite 630  
 6 Los Angeles, California 90034  
 7 (310) 387-5800

CONFORMED COPY  
 ORIGINAL FILED  
 Superior Court Of California  
 County Of Los Angeles

APR. 04 2012

John A. Clance, Executive Officer/Clerk  
 By: C. Bushnell, Deputy

Attorneys for Petitioner,  
 PAUL HERRIOTT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES**

IN RE THE MARRIAGE OF:

PETITIONER: PAUL HERRIOTT

and

RESPONDENT: ALICJA HERRIOTT

Case No. BD 415787

[Assigned to Dept. 65  
 Hon. Christine Byrd, Presiding]

**ORDER AFTER HEARING**

DATE: January 25, 2012  
 TIME: 8:30 A.M.  
 DEPT: 65

The Court's Order to Show Cause re medical insurance for the parties' minor child, Adam, came on regularly for hearing on January 25, 2012, in Department 65 of the above-entitled Court. Shelly M. Mandell and Nelly Triphon appeared on behalf of Petitioner, Paul Herriott, who was present. Respondent, Alicja Herriott, was not present. Amanda Park appeared on behalf of Los Angeles County Child Support Services Department.

Having read Respondent's Responsive Declaration, and having heard argument of counsel, and good cause appearing,

**THE COURT MAKES THE FOLLOWING ORDERS:**

1. Petitioner, Paul Herriott, is hereby granted legal authority to obtain medical records and medical information for the parties' minor child, Adam Herriott, born December 21, 1994, [hereinafter "Adam"] for the purpose of obtaining medical insurance for Adam. Petitioner can start with obtaining medical information and records pertaining to Adam from

1 Nancy Griffith, M.D. and the South Bay Family Medical Group.

2 2. Petitioner shall have access to Adam's medical records and Petitioner shall have  
3 the right to consult with professionals who are providing services to Adam. Petitioner shall  
4 have the legal right to consult with any and all of Adam's doctors and health practitioners.

5 3. Respondent, Alicia Harriott, shall forthwith provide to Petitioner's counsel, Shelly  
6 M. Mandell [3415 S. Sepulveda Blvd., Suite 630, Los Angeles, CA 90034; (310) 397-5800],  
7 the following information:

8 a. The names and addresses of all of the doctors and health practitioners  
9 who have treated or examined Adam within the past two years.

10 b. The date of onset/treatment (month/year) of Adam's asthma and the date  
11 Adam's asthma ended or if it is still under treatment.

12 4. The prior orders regarding medical insurance and child support are modified as  
13 follows:

14 a. Petitioner shall obtain and pay for health insurance for Adam. It is  
15 anticipated that the health insurance premium will be \$195 per month.

16 b. Once Petitioner starts paying for health insurance premium for Adam, \$48  
17 per month shall be deducted from Petitioner's monthly child support obligation which is  
18 currently \$794 per month. Thus, once Petitioner starts paying said health insurance premium  
19 for Adam, his monthly child support obligation shall be reduced from \$794 per month to \$746  
20 per month. Petitioner shall pay to Respondent the sum of \$746 per month as and for child  
21 support, payable one-half on the 1st day and one-half on the 15<sup>th</sup> day of each month,  
22 commencing in the month that Petitioner starts to pay for Adam's medical insurance premium,  
23 and continuing until Adam reaches the age of 18 years, marries, dies, or is otherwise  
24 emancipated, or further order of court, whichever first occurs. Child support shall continue for  
25 an unmarried child who has attained the age of 18 years, is a full-time high school student, and  
26 who is not self-supporting, until the time the child completes the 12<sup>th</sup> grade or attains the age  
27 of 19 years, whichever first occurs.

28 c. Petitioner's counsel, Shelly M. Mandell, shall give Los Angeles County

1 Child Support Services Department notice of when Petitioner commences payment of said  
2 health insurance premium and when said deduction and new child support amount shall  
3 commence.

4 5. The Court finds that Respondent no longer qualifies for a fee waiver of court fees  
5 and revokes Respondent's fee waiver for all future hearings.

6 6. Counsel for Petitioner shall prepare the Order After Hearing on these issues.  
7

8 **APPROVED AS TO CONFORMING TO COURT'S ORDERS:**  
9

10 Los Angeles County CSSD

11 Dated: 3/12/12

*AMANDA PARK*  
12 **AMANDA PARK, Attorney**

13 **SO ORDERED:**  
14

15 Dated: APR 04 2012

**CHRISTINE BYRD**

**JUDGE OF THE SUPERIOR COURT**  
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