

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 2, Honorable Drew C. Takaichi, Presiding**  
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113  
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS**

**DATE: June 13, 2024**

**TIME: 10:00 A.M.**

**\*\*\*NOTICE\*\*\***

**APPEARANCES IN DEPT. 2 MAY BE IN PERSON OR  
REMOTE THROUGH MICROSOFT TEAMS**

**PLEASE GO TO:**

**[https://www.scsccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.  
shtml](https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml) to find the appropriate link.**

State and local Court Rules prohibit recording of court proceedings without  
a Court order. This prohibition applies while on Microsoft Teams.

Prevailing party shall prepare the order by e-file, unless stated otherwise below

The court does not provide official court reporters for civil/probate law and motion  
hearings. See court website for policy and forms for court reporters at hearing

**TROUBLESHOOTING TENTATIVE RULINGS**

If do not see this week's tentative rulings, they have either not yet been posted or  
your web browser cache (temporary internet files) is accessing a prior week's rulings.  
"REFRESH" or "QUIT" your browser and reopen it, or adjust your internet settings to  
see only the current version of the web page. *Your browser will otherwise access old*  
information from old cookies even after the current week's rulings have been posted.

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	22PR193026	<i>The Edward E. Campbell Revocable Living Trust dated June 4, 1981</i>	Click or scroll to line 1 for tentative ruling.
<a href="#">LINE 2</a>			
<a href="#">LINE 3</a>			
<a href="#">LINE 4</a>			
<a href="#">LINE 5</a>			
<a href="#">LINE 6</a>			

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 2, Honorable Drew C. Takaichi, Presiding**  
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113  
Telephone 408.882-2120

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

**PROBATE LAW AND MOTION TENTATIVE RULINGS**

<a href="#">LINE 7</a>			
<a href="#">LINE 8</a>			
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			
<a href="#">LINE 18</a>			
<a href="#">LINE 19</a>			
<a href="#">LINE 20</a>			
<a href="#">LINE 21</a>			
<a href="#">LINE 22</a>			
<a href="#">LINE 23</a>			
<a href="#">LINE 24</a>			
<a href="#">LINE 25</a>			
<a href="#">LINE 26</a>			
<a href="#">LINE 27</a>			
<a href="#">LINE 28</a>			
<a href="#">LINE 29</a>			
<a href="#">LINE 30</a>			

## Calendar line 1

**Case Name:** *The Edward E. Campbell Revocable Living Trust dated June 4, 1981*

**Case No.:** 22PR193026 (lead case, consolidated with 23PR194084 and 22PR193593)

**Hearing date, time, and department:** June 13, 2024 at 10:00 a.m. in Department 2

## INTRODUCTION

In docket 22PR193026, on August 24, 2022, Michael Campbell (“Michael”),<sup>1</sup> trustee of the Edward E. Campbell Revocable Living Trust dated June 4, 1981 (“the trust”) filed a petition for instructions re: sale of property. The petition sought instructions allowing him to sell certain trust property, including multiple parcels of real property. On September 15, 2022, he filed a petition for instructions for an order for trustee to marshal inventory and take possession of assets of the trust in the same docket. In that petition, Michael asserted that his brother, trust beneficiary Edward Campbell, Jr. (“Beau”) was refusing to turn over the keys to certain trust property. The petition sought orders that Michael is the owner of the property as trustee of the trust, that Beau must return all property to his possession, and that Beau be found liable for certain damages and penalties.

In docket 22PR193593, on November 7, 2022, Beau filed a petition for trust accounting and to surcharge the trustee.

On June 16, 2022, Beau filed a petition for instructions in the Madera County Superior Court in docket MPR014814. That case was transferred to this court and assigned docket 23PR194084. Beau alleged in the petition that he occupied trust residential real property located in Raymond, California. He also indicated that he lived in trust commercial real property in Madera, California, but that Michael took possession of the property without evicting him. The petition seeks an order instructing Michael to follow a proposed action Michael initially put forward that would allow trust beneficiaries who failed to pay rent for the trust properties they authorized to have their unpaid rent deducted from their portions of the trust estate upon distribution.

On February 27, 2023, Beau filed a motion to transfer Madera County case *Campbell v. Campbell*, docket MCV087243, an unlawful detainer action, to this court and to coordinate it with docket 23PR194084. The unlawful detainer action sought Beau’s removal from the Raymond, California trust residential property he currently occupies. Beau also moved to consolidate docket 22PR193026 with the two dockets mentioned above.

On March 27, 2023, trust beneficiary Rodney Campbell (“Rodney”) filed a motion to consolidate dockets 22PR193026, 22PR193593, and 23PR194084 for all purposes and seeking an order that the parties must file all further petitions concerning the trust in docket 22PR193026.

The court granted the motion to consolidate and denied the motion to transfer and coordinate. Docket 22PR193026 was designated the lead case.

---

<sup>1</sup> Because several of the individuals involved in this case share the same last name, the court will refer to them by their first names. No disrespect is intended.

On May 23 and 24, 2023, Beau filed two demurrers and a motion to strike titled, (1) Demurrer to Michael Campbell's Corrected Petition for Instructions for an Order for Trustee to Marshall, Inventory, and Take Possession of Assets of the Trust; (2) Demurrer to Michael Campbell's Petition for Instructions Re: Sale of Trust Property; (3) Motion to Strike Parts of Michael Campbell's Corrected Petition for Instructions for an Order for Trustee to Marshall, Inventory, and Take Possession of Assets of the Trust. Michael did not file any opposition to the motions. On September 14, 2023, the court continued the motions to allow the parties to meet and confer as no meet and confer efforts occurred prior to the filing of the motions. The motions again came on for hearing on November 20, 2023. The court issued its written order overruling both demurrers and denying the motion to strike on November 28, 2023.

On December 20, 2023, Beau filed an additional demurrer and motion to strike. Again, Michael did not oppose the motions and Beau represented that his counsel received no response from Michael's counsel to Beau's meet and confer efforts. The court sustained the demurrer to the Ex Parte Petition for Instructions for an Order for Trustee to Marshall, Inventory and Take Possession of Assets of the Trust, filed with the court on September 15, 2022 and granted 10 days' leave to amend.

Michael did not file an amended pleading within the time allowed. Beau filed an ex parte application to dismiss the Ex Parte Petition for Instructions for an Order for Trustee to Marshall, Inventory and Take Possession of Assets of the Trust as no amended pleading had been filed. On March 22, 2024, the court granted that ex parte application and dismissed Michael's Ex Parte Petition for Instructions for an Order for Trustee to Marshall, Inventory and Take Possession of Assets of the Trust.

Currently before the court is Michael's motion for reconsideration of the court's order dismissing the Ex Parte Petition for Instructions for an Order for Trustee to Marshall, Inventory and Take Possession of Assets of the Trust. Beau has opposed the motion for reconsideration.

## **DISCUSSION**

### **I. Timeliness**

In general, a motion for reconsideration is authorized under Code of Civil Procedure section 1008.<sup>2</sup> Section 1008 provides, "When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order." (§ 1008, subd. (a).)

Here, the challenged order was filed on March 22, 2024. A notice of entry of order was served on March 28, 2024. Michael filed his motion on April 12, 2024. Michael argues that he did not receive the notice of entry of order until April 7, 2024. But, he provides no evidence of this and, in any event, service is generally complete upon mailing, not receipt of the document served. (§ 1013, subd. (a).)

---

<sup>2</sup> All further undesignated statutory references are to the Code of Civil Procedure.

Further, as Beau points out, in *APRI Ins. Co. S.A. v. Superior Court* (1999) 76 Cal.App.4th 176, 181, the Court of Appeal explained that there is a “critical distinction between an order of dismissal, which is a judgment, and other orders. ‘A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment. [Citations.]’ [Citation.]”<sup>3</sup>

Thus, it appears that the motion is untimely. However, in an abundance of caution, the court will go on to consider the merits of the motion.

## **II. Legal Standard**

“Section 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.]” (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) “The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial. [Citation.]” (*Id.* at pp. 212-213.)

Thus, a motion to reconsider was properly granted where supported by newly-produced documents which had been requested but not produced at the time of the earlier hearing. (*Hollister v. Benzl* (1999) 71 Cal.App.4th 582, 585.) “New circumstances” were shown by evidence the court failed to consider a timely-filed memorandum of points and authorities in its prior ruling. (*Johnston v. Corrigan* (2005) 127 Cal.App.4th 553, 556.)

## **III. Merits of the Motion**

Michael contends that reconsideration is appropriate because he did not receive notice of Beau’s ex parte application as Beau’s counsel served it via email and it went to Michael’s counsel’s spam folder. Michael further argues that he did not agree to accept service of ex parte applications via email. He asserts that he decided not to file an amended petition because part of the relief he had requested in the Ex Parte Petition for Instructions for an Order for Trustee to Marshall, Inventory and Take Possession of Assets of the Trust was an order removing Beau from a trust real property but the unlawful detainer action related to that property was decided

---

<sup>3</sup> “ ‘[T]his basic distinction does not always hold true: Some determinations, though characterized as “orders,” are in effect final judgments for purposes of appeal and res judicata. [Citation.] And some orders are not intermediate but are made after final judgment: e.g., orders granting or denying new trial, vacating judgment, and orders in connection with enforcement of judgments. [Citations.]’ [Citation.] The distinction between orders and judgments is further blurred by the fact that certain orders, i.e., orders of dismissal, are considered the judgment (Code Civ. Proc., § 581d) and by the fact that sometimes the parties mislabel the judgment, referring to it instead as an order. The fundamental distinction remains, however, that a judgment, no matter how designated, is the final determination of the rights of the parties in an action. Thus, an ‘order’ which is the final determination in the action is the judgment.” (*Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.)

in his favor and Beau was already ejected from the property. Thus, Michael contends that the petition was moot and that is why he chose not to file an amended petition.

However, to the extent the petition is moot now, it was moot when the hearing on the demurrer occurred and when the court entered its order sustaining the demurrer and granting leave to amend. Beau presents the declaration of his counsel indicating that the Madera County Sheriff executed a writ of possession on December 6, 2023. Thus, when the court entered its order sustaining the demurrer, Michael was on notice that, if he chose not to file an amended pleading, the petition could be dismissed. The notice of entry of order was served on February 19, 2024. Michael does not contend that the notice of entry of order was improperly served or that he did not receive it.

Further, because Michael concedes that the petition is moot, there is no reason why the petition should not be dismissed. It is clear that Michael challenges the order granting the ex parte application to dismiss the petition because the order allowed Beau to file a memorandum of costs. But, Michael filed nothing challenging the memorandum of costs, which was filed on April 10, 2024. As Beau points out, Michael could have filed a motion to tax costs, but he has not done so.

Even if the motion were timely, the court is not convinced that its ruling on the ex parte application was erroneous.<sup>4</sup>

## **CONCLUSION**

The motion for reconsideration is DENIED as untimely and without merit.

---

<sup>4</sup> The court recognizes that “[a]n order denying a motion for reconsideration is interpreted as a determination that the application does not meet the requirements of section 1008. If the requirements have been met to the satisfaction of the court but the court is not persuaded the earlier ruling was erroneous, the proper course is to grant reconsideration and to reaffirm the earlier ruling.” (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 202.)

**Calendar line 2**

**Calendar line 3**

**- oo0oo -**



**Calendar line 4**

**- 00000 -**

**Calendar line 5**

**Calendar line 6**

**Calendar line 7**

**Calendar line 8**

**Calendar line 9**

**- oo0oo -**

**Calendar line 10**

**Calendar line 11**



**Calendar line 12**

**- oo0oo -**

Calendar line 13

- oo0oo -

**Calendar line 14**

**- oo0oo -**

**Calendar line 15**

**- oo0oo -**

**Calendar line 16**

**- oo0oo --**

**Calendar line 17**

**- oo0oo -**

**Calendar line 18**

**- oo0oo -**

**Calendar line 19**

**- oo0oo -**



**Calendar line 20**

**- oo0oo -**

**Calendar line 21**

**- oo0oo -**

**Calendar line 22**

**- oo0oo -**

**Calendar line 23**

**- oo0oo -**

**Calendar line 24**

**- oo0oo -**

**Calendar line 25**

**- oo0oo -**

**Calendar line 26**

- oo0oo -

**Calendar line 27**

**- oo0oo -**



**Calendar line 28**

**- oo0oo -**

**Calendar line 29**

**- oo0oo -**

**Calendar line 30**

- oo0oo -