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1 **JURISDICTIONAL STATEMENT**

2 The Nevada Supreme Court has jurisdiction over this matter pursuant to
3 NRAP 3A(b)(1), NRAP 3A(b)(7), and NRS 2.090.

4 The Order appealed from was filed by opposing counsel on June 16,
5 2014. (JA-71). Said Order was noticed by mail on June 16, 2014. (JA-73-74).
6 The Notice of Appeal was filed on June 26, 2014.

7 The jurisdictional deadline to file the Notice of Appeal was July 15,
8 2014. As such, the Notice of Appeal was timely filed.

9 The Order filed June 16, 2014 was a final order as it disposed of all
10 issues as to all parties.

STATEMENT OF THE ISSUES

Whether the lower court abused its discretion in refusing to exercise its continuing exclusive jurisdiction over the parties. The motion was filed on April 22, 2014. Respondent had moved out of the jurisdiction without proper notice to Appellant on or after February 28, 2014. Therefore the Respondent had been absent from the jurisdiction for less than two months. At the time the motion was filed by Appellant, the child had resided in the jurisdiction for six months during the six months prior to the date of the motion and the court had jurisdiction over the custody issues. Further, no other court had jurisdiction under the UCCJA.

The lower court, however, chose not to exercise jurisdiction on the incorrect grounds that because no party resided within the state of Nevada it could not exercise jurisdiction.

NRS 125A.315 allows the Court to exercise jurisdiction if it would have jurisdiction to make an initial determination which it did under NRS 125A.305.

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2 Approximately nine months after the divorce, Husband moved the district
3 court to modify the visitation order. (JA-15). The Court held a hearing and
4 declined to exercise jurisdiction on the grounds that, because neither party, nor
5 the child, resided in Nevada, the Court could not, under any circumstance,
6 exercise jurisdiction. (JA-1-JA-14, JA-70-JA-71, JA-72-JA-73).

7 The Court curiously failed to exercise jurisdiction pursuant to NRS
8 125A.315 and 305 as Nevada was still considered the home state of the child
9 and there were no proceedings in any other state/jurisdiction.

10 This appeal followed.

11 **SUMMARY OF THE ARGUMENT**

12 The UCCJA, as codified in NRS 125A, allows the Court to exercise
13 jurisdiction over a child whose home state is Nevada and no other state has
14 jurisdiction over the child even if the child is no longer within the jurisdiction.
15 The Court incorrectly refused to exercise jurisdiction over the custody of the
16 minor child. Nor did the Court make the required inquiry into the factors for a
17 more convenient forum. Therefore the Court erred in declining jurisdiction
18 without conducting an inquiry into the factors regarding convenient forum and,
19 if it then declined to exercise jurisdiction, staying the matter pending a
20 proceeding filed in the UK.

1 **ARGUMENT**

2 The Court should find the district court erred in declining jurisdiction
3 over the motion for modification of its prior custody order without conducting
4 an inquiry into the factors for an inconvenient forum pursuant to NRS
5 125A.365 and, if it then declined jurisdiction, staying the matter pending
6 prompt filing in the UK of a proceeding modifying custody.

7 The Parental Kidnapping Prevention Act (“PKPA”) 28 U.S.C. 1738A(d),
8 which is codified in the Nevada Revised Statutes (“NRS”) Chapter 125A sets
9 out the provisions for which this Court has jurisdiction over the custody cases.
10 This particular federal statute, in conjunction with the Uniform Child Custody
11 Jurisdiction and Enforcement Act (“UCCJEA”) and the Nevada Revised
12 Statutes work together to determine the state in which a custody issue will be
13 decided. The PKPA Statutes provide that a state court may take jurisdiction so
14 long as that state takes jurisdiction under its state law and is the “home state” of
15 the child. See 28 U.S.C. 1738A(c).

16 NRS 125A.305 codifies when a Court has initial jurisdiction to make
17 custody orders as follows:

18 NRS 125A.305

19 1. Except as otherwise provided in NRS 125A.335, a court of this
20 State has jurisdiction to make an initial child custody
determination only if:

1 (a) This State is the home state of the child on the date of the
2 commencement of the proceeding or was the home state of the
3 child within 6 months before the commencement of the proceeding
and the child is absent from this State but a parent or person acting
as a parent continues to live in this State;

4 (b) A court of another state does not have jurisdiction pursuant to
5 paragraph (a) or a court of the home state of the child has declined
6 to exercise jurisdiction on the ground that this State is the more
appropriate forum pursuant to NRS 125A.365 or 125A.375 and:

7 (1) The child and the child's parents, or the child and at least one
8 parent or a person acting as a parent, have a significant connection
with this State other than mere physical presence; and

9 (2) Substantial evidence is available in this State concerning the
child's care, protection, training and personal relationships;

10 (c) All courts having jurisdiction pursuant to paragraph (a) or (b)
11 have declined to exercise jurisdiction on the ground that a court of
this State is the more appropriate forum to determine the custody
of the child pursuant to NRS 125A.365 or 125A.375; or

12 (d) No court of any other state would have jurisdiction pursuant to
13 the criteria specified in paragraph (a), (b) or (c).

14 2. Subsection 1 is the exclusive jurisdictional basis for making a
child custody determination by a court of this State.

15 3. Physical presence of, or personal jurisdiction over, a party or a
16 child is not necessary or sufficient to make a child custody
determination.

17 NRS 125A.085 defines the term "home state" as follows:

18 "Home state" means:

19 1. The state in which a child lived with a parent or a person acting
20 as a parent for at least six consecutive months, including any

1 temporary absence from the state, immediately before the
2 commencement of a child custody proceeding.

3 2. In the case of a child less than 6 months of age, the state in
4 which the child lived from birth, including any temporary absence
5 from the state, with a parent or a person acting as a parent.

6 NRS 125A.315 governs modification of existing orders as follows:

7 NRS 125A.315

8 1. Except as otherwise provided in NRS 125A.335, a court of this
9 state which has made a child custody determination consistent
10 with NRS 125A.305 or 125A.325 has exclusive, continuing
11 jurisdiction over the determination until:

12 (a) A court of this state determines that the child, the child's
13 parents and any person acting as a parent do not have a
14 significant connection with this state and that substantial
15 evidence is no longer available in this state concerning
16 the child's care, protection, training and personal
17 relationships; or

18 (b) A court of this state or a court of another state
19 determines that the child, the child's parents and any
20 person acting as a parent do not presently reside in this
state.

2. A court of this state which has made a child custody
determination and does not have exclusive, continuing
jurisdiction pursuant to this section may modify that
determination only if it has jurisdiction to make an initial
determination pursuant to NRS 125A.305.

1 **I. THE DISTRICT COURT ERRED IN REFUSING TO EXERCISE**
2 **JURISDICTION OVER THE CUSTODY OF THE MINOR CHILD**

3 **A. STANDARD OF REVIEW**

4 Questions of statutory interpretation are reviewed de novo. *Irving v.*
5 *Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006).

6 **B. ARGUMENT**

7 NRS 125A.315 states that if neither the parties, nor the minor child are
8 present in Nevada, Nevada no longer has continuing exclusive jurisdiction over
9 the custody of the minor child. **However**, Nevada is authorized to exercise
10 jurisdiction over a motion to modify if they would have initial jurisdiction
11 under NRS 125A.305. *Friedman v. the Eighth Judicial District Court of State*,
12 264 P.3d. 1161, 1166, 127 Nev Adv Op. 75 (2011). NRS 125A.305 grants the
13 Court jurisdiction if “A court of another state does not have jurisdiction
14 pursuant to paragraph (a) or a court of the home state of the minor child has
15 declined to exercise jurisdiction on the ground that the State is the more
16 appropriate forum pursuant to NRS 125A.365 or 125A.375 and the child, the
17 child’s parents, or the child and at least one parent or a person acting as a
18 parent, have a significant connection with this State other than mere physical
19 presence; and substantial evidence is available in this State concerning the
20 child’s care, protection, training and personal relationships; Or (d) No Court

1 of any other state would have jurisdiction pursuant to paragraph a, b or c. *See*,
2 *e.g.*, *Carter v. Carter*, 276 Neb. 840, 758 N.W.2d 1 (2008)

3 The facts presented at the hearing show that neither Nevada nor any other
4 jurisdiction could be considered the Home State of the minor child although
5 Nevada was the home state within 2 months of filing. (JA-63 lines 15-16).
6 The child and Respondent had significant connections with Nevada in that they
7 had resided there for several years. (JA-63 lines 9-22) The child was 6 years old
8 at the time of Appellant's motion and was in school in Nevada for at least one
9 year. The parties' order was in Nevada and agreed that Nevada was the
10 location of habitual residence of the minor child. (JA-). All the records relating
11 to contacts or refusal to contact were in Nevada. Respondent was in the
12 military and her State of Legal Residence was Nevada as her tour in England
13 was only set for 36 months. A military member can serve a 30 year career
14 outside of their State of Legal Residence yet have that State remain the SLR.
15 See generally Serviceman's Civil Relief Act.

16 The Court did not even conduct an inquiry into the 125A.305 factors.

17 Further, a temporary absence, such as a 36 month duty tour does not
18 interrupt the six month requirement for home state status. Respondent
19 presented no evidence she had formally changed her State of Legal Residence
20 with the military. *Brandt v. Brandt*, 2012 CO 3, ¶ 1, 268 P.3d 406, 408

1 **CONCLUSION**

2 The district court erred in denying Appellant's motion to modify the prior
3 order on the grounds that it no longer had continuing exclusive jurisdiction.
4 The Supreme Court must remand the matter for further proceedings consistent
5 with the UCCJEA under NRS 125A.305(1)(d) and the Court must conduct an
6 inquiry into the factors regarding initial determination jurisdiction and
7 convenient forum under NRS 125A.365.

8 DATED this ____ day of June, 2014

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1 **CERTIFICATE OF COMPLIANCE (Rule 28.2)**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any
4 improper purpose. I further certify that this brief complies with all applicable
5 Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which
6 requires every assertion in the brief regarding matters in the record to be
7 supported by a page reference to the page of the transcript or appendix where
8 the matter relied on is to be found. I understand that I may be subject to
9 sanctions in the event that the accompanying brief is not in conformity with the
10 requirements of the Nevada Rules of Appellate Procedure.

11 DATED this 9th day of June, 2015

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CERTIFICATE OF COMPLIANCE (Rule 32)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman in MS Word 2010; or

☐ This brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more and contains ____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 30 pages.

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