

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 MEHMET KAR,

4 Appellant,

5 v.

6 KATHLEEN KAR,

7 Respondent.
8

) Supreme Court Case No: 65985

) District Court Case No: D411849

) Electronically Filed
Jul 06 2015 09:42 a.m.

) Tracie K. Lindeman
Clerk of Supreme Court

9 **RESPONDENT'S ANSWERING BRIEF**
10 **TO APPELLANT'S OPENING BRIEF**

11 COMES NOW Respondent, Kathleen Kar, by and through her attorney of
12 record Jason P. Stoffel of Roberts Stoffel Family Law Group, does hereby give
13 notice of this answering brief.
14

15 Dates this 6th day of July 2015.
16
17

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The following persons/entities are disclosed:

- As to the Respondent, there are no other parent corporations or publicly held companies at issue. Respondent is not using a pseudonym.

Dates this 6th day of July 2015.

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The Order that the Appellant has appealed was timely filed and the Appellant's brief was timely filed with the multiple extensions given by this Court. As the Order filed on June 16, 2014 disposed of all issues between the Parties, this appeal seeks to have appellate review on the issues as a matter of the Appellant's right to seek that relief.

STATEMENT OF THE ISSUES

The issue here is whether the lower Court, Judge Sandra Pomrenze of the Eighth Judicial District Court, abused her discretion to maintain exclusive and continuing jurisdiction of the subject matter (child custody) and of the Parties (parents of the subject minor child, Alexander Kar, born April 1, 2008).

The issue on appeal is whether Nevada still has Subject Matter Jurisdiction in this matter to modify prior orders or enforce them. The simple answer is **no**.

It is undisputed and **not** on appeal that Respondent has Sole Legal and Sole Physical Custody of the minor child and all child visitations between the Appellant and the subject minor child is at the Respondent's discretion.

The Respondent is a member of the United States Air Force and was only *temporarily* in the State of Nevada for military service only. She received her military orders to continue military service and was then stationed overseas in England for her PCS (permanent change of station).

At the time of her active military deployment and change of duty station, she had (and still has) Sole Legal and Sole Physical Custody of the minor child and therefore notice of her relocation was not required. Additionally, Appellant resides in the Country of Turkey and has no visitation rights as all visitations are at the Respondent's discretion.

1 Although Nevada clearly had initial child custody jurisdiction as at the time
2 of the Parties' divorce (Divorce Decree was filed in Clark County, Nevada on
3 March 15, 2011) since Respondent and the minor child physically resided in Clark
4 County, no one lives in the United States in this matter since February 2014.
5

6 The Court lost jurisdiction once no Party resided in Nevada under the
7 UCCJEA. Moreover, Nevada is simply an inconvenient forum for all Parties and
8 Appellant should properly register the last custodial order and proceed with this
9 matter in England with a Hague Convention proceeding if necessary as England is a
10 signatory of that Act.
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13 Based on everything, the main issue is Subject Matter Jurisdiction in this
14 matter and after a review of the file, the Court can properly determine that the
15 District Court did not abuse the discretion making the finding that Nevada does not
16 have Subject Matter Jurisdiction in this matter and as such, properly denied the
17 Appellant's motion for relief when no Party lives in Nevada anymore.
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STATEMENT OF FACTS

Respondent already has a Court order from Nevada, the last state/jurisdiction that issued any order, for Sole Legal and Sole Physical Custody of the child and all visitations are to be at Respondent's discretion. Notice of her relocation is not required as she is the child's sole legal custodian.

The last time anyone was in Nevada was in February of 2014 which is when Nevada lost UCCJEA jurisdiction. Appellant filed his motion to modify custody orders after everyone was out of the jurisdiction on April 22, 2014 (JA-15).

The good news in this matter is the facts are undisputed and the Respondent agrees with the references to the Joint Appendix stated in their brief.

There is very little "he-said/she-said" in this matter as this case revolves around the legal interpretation of Subject Matter Jurisdiction in a Child Custody matter in a post-Decree action when no party or subject minor child resides in Nevada (or even the United States) at the time of filing a motion to review a prior custodial order. The finding was clear as to who lives where. (JA-71, lines 24-27). The Appellant can enforce any custody rights or visitation rights that he wants in the United Kingdom (JA-72, lines 1-2 and lines 10-11).

Appellant here is unable to challenge the child support order set in this matter that he was ordered to pay but refuses to pay. Any issues regarding child support is untimely and moot. It is unclear why Appellant's counsel is bringing up decided

1 issues that were not addressed at the hearing that serves the basis of this appeal.

2 Child support and arrears issues were decided at the hearing on June 11, 2013 and
3 that order, which wasn't appealed, was filed on July 12, 2013. (JA 48-52).
4

5 The issue of this matter is quite simple – the case was dismissed after there
6 were adverse rulings against Appellant. Appellant lives in Turkey and Respondent
7 and the minor child reside in England since before the District Court issued the
8 order declining jurisdiction. The Court properly ruled that Nevada is not a
9 convenient forum to litigate any issues given the fact that no Party lives in Nevada
10 and therefore loses jurisdiction under the UCCJEA. Respondent has been in
11 England since February of 2014 with the subject minor child and continues to be
12 there. (JA-32, lines 6-8). Military service has taken Respondent to England. (JA-
13 42). This is not a case of abduction, kidnapping, concealment, etc. The only
14 contact that Appellant has with the child is by way of electronic means (Skype) as
15 there is no formal visitation order. (JA 32, lines 13-17).
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19 Appellant has a forum to litigate issues and it is up to him to take advantage
20 of this forum. It is the country of England where Respondent and the child reside
21 and that is where child custody/visitation issues should be litigated. It is not an
22 inconvenient forum there as Appellant actually went to England in January 2015 for
23 a very brief visit with the minor child at issue. The visit lasted only a few minutes
24 on a military base there.
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1 Although Nevada did have child custody jurisdiction in this matter initially
2 and subsequent to the Decree being filed, when no Party resided in Nevada, the
3 State of Nevada lost child custody jurisdiction.
4

5 As circumstances of the Parties change, there still must be Subject Matter
6 Jurisdiction for a Court of competent jurisdiction to make modifications as it
7 appears in the child's best interest. Here, there was a procedural attack in this
8 matter as Nevada no longer has jurisdiction and therefore the District Court was
9 unable to make modifications to previously decided issues. Respondent was forced
10 to go to England as part of her military service and this was confirmed as an Exhibit
11 to the Respondent's Opposition and Countermotion. (JA-57 and JA-59).
12
13

14 The only thing that the Appellant can challenge is Subject Matter Jurisdiction
15 and in this case, his argument that Nevada should maintain this case when there is
16 no Party and the subject minor child that reside in Nevada anymore must fail.
17 Although there are no other proceedings in any other jurisdiction, by the Court's
18 order of declining jurisdiction, this Court has given the Appellant the option of
19 pursuing any and all custody issues where the child resides – England.
20
21

22 The District Court here cannot continue with this matter and modify its own
23 orders. Therefore, the Appellant has remedy and it is up to him to take advantage
24 of a Court in England with jurisdiction over the child, not a District Court in
25 Nevada that made order when jurisdiction was proper in Clark County, Nevada.
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SUMMARY OF THE ARGUMENT

District Court Judge Sandra Pomrenze made the correct legal interpretation of the UCCJEA, codified under NRS 125A, that Nevada no longer has Subject Matter Jurisdiction in this matter as no Party or the subject minor child resides in the State of Nevada and therefore the District that initially had exclusive, continuing jurisdiction no longer had jurisdiction to modify prior orders. If the Appellant wanted additional findings, he could have asked for them at the hearing when he had an opportunity to be heard on the issue through his counsel.

The Court simply cut to the chase at oral argument in this matter when the Court wanted a clear answer to this question: HOW DO I HAVE JURISDICTION (JA-3, lines 16-17). There was no temporary military assignment as it was clear that Respondent has had a permanent military reassignment (JA-3, lines 20-22).

It is undisputed that Nevada is not a convenient forum anymore with no Party living in Nevada with Respondent and the subject minor child residing in England and the Appellant residing in Turkey. There is nothing that would prevent the Appellant to start an enforcement action in England so it was not necessary for the Court to stay the proceedings pending an action being started in England. The Appellant did not ask for a stay in enforcement of the order declining jurisdiction so it would be inappropriate to consider this issue on appeal.

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1 Most cases that could be cited in this matter are actual disputes between
2 either Nevada and another state, or Nevada and another country. Here, the case is
3 much stronger against Nevada maintaining jurisdiction as no Party or the subject
4 minor child reside in Nevada.
5

6 The UCCJEA's objectives are to prevent jurisdictional conflicts and re-
7 litigation of child custody issues and to deter child abduction. Here, there are no
8 abduction issues here and Respondent had to move to England as part of her
9 military duties on a permanent assignment. There clearly is one Court in England
10 that should be hearing any child custody related issues and the District Court in this
11 matter determined that Nevada is not the appropriate forum.
12
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14 The Court is not required to stay any proceeding in favor of a separate Court.
15 If there was a statute on point that required that, it would have been identified in the
16 Appellant's brief. Moreover, Appellant's counsel did not request a stay in the
17 proceedings pending a separate action being filed in England.
18

19 The Appellant believes that Nevada basically must be forced to accept
20 jurisdiction until another jurisdiction accepts this case. That statement is not
21 supported by any law cited in Appellant's brief. The District Court made it clear
22 that there is no more UCCJEA jurisdiction when neither Party continues to reside in
23 Nevada and that that "I don't have a nexus to retain jurisdiction." (JA-10, lines 1-3).
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1 Here, it is unclear why the Appellant just doesn't file in England where the
2 child resides or why he is even filing this appeal.

3
4 **NRS 125A.305 Initial child custody jurisdiction.**

5 1. Except as otherwise provided in [NRS 125A.335](#),
6 a court of this State has jurisdiction to make an initial
7 child custody determination only if:

8 (a) This State is the home state of the child on the
9 date of the commencement of the proceeding or was the
10 home state of the child within 6 months before the
11 commencement of the proceeding and the child is absent
12 from this State but a parent or person acting as a parent
13 continues to live in this State;

14 (b) A court of another state does not have jurisdiction
15 pursuant to paragraph (a) or a court of the home state of
16 the child has declined to exercise jurisdiction on the
17 ground that this State is the more appropriate forum
18 pursuant to [NRS 125A.365](#) or [125A.375](#) and:

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

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

26 (c) All courts having jurisdiction pursuant to
27 paragraph (a) or (b) have declined to exercise jurisdiction
28 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

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

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

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

(Added to NRS by [2003, 994](#))

1 If Nevada either is the child's home state on the date when the child custody
2 proceedings commence, or was the child's home state within six months before the
3 proceedings commenced and the child is absent from Nevada but a parent continues
4 to live in Nevada, Nevada courts have jurisdictional priority to make initial child
5 custody determinations. NRS 125A.305(1)(a).
6

7
8 There is no question here that when the Parties divorced, there was divorce
9 jurisdiction and child custody jurisdiction as all Parties resided in Nevada.
10 However, this statute only applies to initial child custody jurisdiction determination.
11 The Court must then consider whether Nevada has exclusive, continuing
12 jurisdiction in order to modify orders.
13

14 **NRS 125A.315 Exclusive, continuing jurisdiction.**

15 1. Except as otherwise provided in [NRS 125A.335](#),
16 a court of this state which has made a child custody
17 determination consistent with [NRS](#)
[125A.305](#) or [125A.325](#) has exclusive, continuing
jurisdiction over the determination until:

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

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

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

(Added to NRS by [2003, 994](#))

NRS 125A.325 Jurisdiction to modify determination. Except as otherwise provided in [NRS 125A.335](#), a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination pursuant to paragraph (a) or (b) of subsection 1 of [NRS 125A.305](#) and:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction pursuant to [NRS 125A.315](#) or that a court of this state would be a more convenient forum pursuant to [NRS 125A.365](#); or

2. A court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state.

(Added to NRS by [2003, 995](#))

It is clear here that the District Court determined under NRS 125A.315(a) and (b), that Nevada does not have substantial evidence anymore in Nevada as to the protection, training, and personal relationships of the child. Moreover, the record is clear that the child and the child's parents do not reside in the State of Nevada. Maintaining child custody jurisdiction is therefore not appropriate.

Because no Party and no subject minor child live in Nevada, the Court correctly determined that it lost continuing jurisdiction. (JA-4, lines 17-24 and JA-5, lines 1-9).

NRS 125A.365 Inconvenient forum.

1. A court of this state which has jurisdiction pursuant to the provisions of this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a

1 court of another state is a more appropriate forum. The
2 issue of inconvenient forum may be raised upon motion
3 of a party, the court's own motion or request of another
4 court.

5 2. Before determining whether it is an inconvenient
6 forum, a court of this state shall consider whether it is
7 appropriate for a court of another state to exercise
8 jurisdiction. For this purpose, the court shall allow the
9 parties to submit information and shall consider all
10 relevant factors, including:

11 (a) Whether domestic violence has occurred and is
12 likely to continue in the future and which state could best
13 protect the parties and the child;

14 (b) The length of time the child has resided outside
15 this state;

16 (c) The distance between the court in this state and
17 the court in the state that would assume jurisdiction;

18 (d) The relative financial circumstances of the parties;

19 (e) Any agreement of the parties as to which state
20 should assume jurisdiction;

21 (f) The nature and location of the evidence required
22 to resolve the pending litigation, including testimony of
23 the child;

24 (g) The ability of the court of each state to decide the
25 issue expeditiously and the procedures necessary to
26 present the evidence; and

27 (h) The familiarity of the court of each state with the
28 facts and issues in the pending litigation.

3. If a court of this state determines that it is an
inconvenient forum and that a court of another state is a
more appropriate forum, it shall stay the proceedings
upon condition that a child custody proceeding be
promptly commenced in another designated state and may
impose any other condition the court considers just and
proper.

4. A court of this state may decline to exercise its
jurisdiction pursuant to the provisions of this chapter if a
child custody determination is incidental to an action for
divorce or another proceeding while still retaining
jurisdiction over the divorce or other proceeding.

(Added to NRS by [2003, 997](#))

1 Sound use of judicial discretion warranted the outcome – decline Subject
2 Matter Jurisdiction and decline considering any more issues on this case. Clearly,
3 Appellant should just file in England where he has a remedy there and that country
4 has a vested interest in the protection of children that reside in that country. The
5 Court clearly made that comment as part of the record that the Appellant should just
6 file in the UK if he wants to be a part of the child’s life as a practical matter. (JA-5,
7 lines 23-24 and JA-6, lines 1-8).

10 **NRS 125A.375 Jurisdiction declined by reason of**
11 **conduct.**

12 1. Except as otherwise provided in NRS
13 125A.335 or by other state law, if a court of this state has
14 jurisdiction pursuant to the provisions of this chapter
15 because a person seeking to invoke its jurisdiction has
16 engaged in unjustifiable conduct, the court shall decline to
17 exercise its jurisdiction unless:

18 (a) The parents and all persons acting as parents have
19 acquiesced in the exercise of jurisdiction;

20 (b) A court of the state otherwise having jurisdiction
21 pursuant to NRS 125A.305, 125A.315 and 125A.325 deter
22 mines that this state is a more appropriate forum pursuant
23 to NRS 125A.365; or

24 (c) No court of any other state would have
25 jurisdiction pursuant to the criteria specified in NRS
26 125A.305, 125A.315 and 125A.325.

27 2. If a court of this state declines to exercise its
28 jurisdiction pursuant to subsection 1, it may fashion an
appropriate remedy to ensure the safety of the child and
prevent a repetition of the unjustifiable conduct, including
staying the proceeding until a child custody proceeding is
commenced in a court having jurisdiction pursuant
to NRS 125A.305, 125A.315 and 125A.325.

3. If a court dismisses a petition or stays a
proceeding because it declines to exercise its jurisdiction
pursuant to subsection 1, it shall assess against the party

1 seeking to invoke its jurisdiction necessary and
2 reasonable expenses including costs, communication
3 expenses, attorney's fees, investigative fees, expenses for
4 witnesses, travel expenses and child care during the
5 course of the proceedings, unless the party from whom
6 fees are sought establishes that the assessment would be
7 clearly inappropriate. The court may not assess fees, costs
8 or expenses against this state unless authorized by law
9 other than the provisions of this chapter.

(Added to NRS by 2003, 997)

8 Nevada simply does not have jurisdiction under these statutes to continue to
9 make orders affecting the subject minor child. The Court was clear with the
10 Appellant that so long as the relocation of the last Party out of Nevada is
11 permanent, which it is in this case, "we're done. We don't have jurisdiction." (JA-
12 6, lines 19-20). The correct decision was reached and this Court should affirm the
13 District Court's decision that Nevada does not have child custody jurisdiction under
14 the UCCJEA. Nevada has no remedy for Appellant. (JA-9, lines 12-14). There is
15 nothing to stop the Appellant from filing something in the UK and that was the
16 clear point the District Court made at the hearing. (JA-9, line 19).

17 Moreover, England is a more convenient forum to litigate custodial issues
18 and given the fact that after the order was appealed in 2014, the Appellant visited
19 the child in January of 2015, this additional fact supports the matter to be litigated
20 in England. He has purposefully availed himself to an English Court by entering
21 England to see the child so he cannot now claim that England is an inconvenient
22 forum to litigate at this time.

1 The Hague Convention on the Civil Aspects of International Child Abduction
2 is an international treaty, the purpose of which is to promote the prompt return of
3 children who have been wrongfully removed from their state of habitual residence.
4
5 42 U.S.C. §§ 11601-11611 (1988).

6 Here, the Hague Convention does not apply as there was nothing that the
7 Respondent did that was wrong. No one lives in Nevada anymore and the
8 Appellant continues to reside in Turkey. There is nowhere for the subject minor
9 child to returned to as the child is happy and healthy living with Respondent in
10 England. She has sole legal and sole physical custody of the child and the
11 Appellant has no formal visitation rights. Her permanent relocation to England was
12 done as part of her military duties and therefore her relocation was in good faith.
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15 At any rate, the Appellant needs to do what he needs to with a separate filing
16 in England if he wants to be involved in the child's life. There is nothing more that
17 the Nevada Court should or can do for the Appellant. This Court should affirm the
18 District Court's decision confirming there is no more child custody jurisdiction in
19 this matter under the UCCJEA.
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1 **I. THE DISTRICT COURT CORRECTLY RULED THAT IT LACKED**
2 **EXCLUSIVE CONTINUING CHILD CUSTODY JURISDICTION**
3 **OVER THE SUBJECT MINOR CHILD BASED ON THE FACT THE**
4 **CHILD AND THE PARTIES DO NOT LIVE IN NEVADA ANYMORE**

5 **A. STANDARD OF REVIEW**

6 The Respondent does not dispute the standard of review as there is a question
7 in this matter as to statutory interpretation as to the UCCJEA and NRS 125A. It is
8 indeed a de novo review to determine legislative meaning and intent. *Irving v.*
9 *Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). Subject matter jurisdiction is
10 indeed a question of law and therefore is subject to de novo review. *See Gosserand*
11 *v. Gosserand*, 230 S.W. 3d 628, 631 (Mo. Ct. App. 2007).
12
13

14 **B. ARGUMENT**

15 The Appellant correctly states on page 6, lines 7-9 of his brief with the point
16 the Respondent is making here – Nevada no longer has continuing exclusive
17 jurisdiction of child custody determinations based on the facts like in this case (no
18 Party lives in Nevada, the child does not live in Nevada, and Nevada does not have
19 substantial evidence anymore in Nevada as to the protection, training, and personal
20 relationships of the child).
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23 The *Friedman* case is readily distinguishable in this matter. *See Friedman v.*
24 *the Eighth Judicial District Court of State*, 264 P.3d. 1161, 1166, 127 Nev. Adv.
25 Op. 75 (2011).
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1 In *Friedman*, there was a dispute when all Parties lived in Nevada and then
2 during the case, both parents and the children resided in California. The Supreme
3 Court of Nevada granted husband's writ and held under the UCCJEA, Nevada
4 could not proceed unless the Court in California determined that Nevada was the
5 more convenient forum. *See id.* The Appellant must get past the constitutional
6 mandates of Personal and Subject Matter Jurisdiction before the Court can consider
7 any modification issues. In this case, there is no interstate dispute (e.g. State X vs.
8 Nevada) as no one lives in Nevada anymore.

11 Oddly, the Appellant cited *Friedman* whereas Nevada's action was dismissed
12 in favor of the California litigation and weakens the position that in the current case
13 on appeal, that Nevada should maintain an action when no one lives here. Every
14 case is decided on a case-by-case basis but a case that does not help the Appellant's
15 position should not be cited as if it did help their case.

18 If no one is in Nevada, the Supreme Court of Nevada has no problem making
19 the call that where everyone lives, or in that case where the children reside, that
20 jurisdiction is where matters should be heard. It was California's decision, and not
21 Nevada's decision, to determine whether they would hear child custody issues on
22 the merits.

24 The Respondent has no reason to file anything in England and obviously
25 England would accept a filing there to modify/review a Nevada child custody order.

1 There is no reason that England would decline jurisdiction since no Party,
2 especially the Appellant, lives in the United States or even Nevada. She has what
3 she wants – sole legal and sole physical custody of the child and all visitation
4 between Appellant and the minor child is at her discretion.
5

6 It was clearly stated at the hearing that there is no temporary absence out of
7 the State of Nevada and it is not expected that the Respondent will ever return to
8 the State of Nevada. (JA-3, lines 20-22). She has no family in Nevada so even if
9 the Respondent is done with military service and does not want to remain in
10 England, she would have no reason to return to Nevada.
11
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13 Here, Respondent is a resident of the State of Florida. Although she does not
14 intend at this very moment to move to Florida when she is done with military
15 service or retires from military service, what she does know is she is not coming
16 back to Nevada to work at either Air Force base in Clark County (Creech and
17 Nellis). Florida is her home of record and legal state of residence. *Additionally,*
18 *Respondent continues to pay Florida state taxes since she began military service.*
19
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21 If the facts were different that there was a house she owned and had renters
22 or family in Nevada, it could be logically determined that her physical presence in
23 England is only temporary. The facts do not support that erroneous conclusion.
24

25 The Respondent is not required to change her State of Legal Residence with
26 the military just because she resides in England as part of military service.
27
28

1 However, since the analysis wasn't even required at the underlying hearing,
2 the Appellant here mistakenly believes that the State of Legal Residence is Nevada
3 for military purposes. It is not. It is Florida. The child has never lived in Florida.
4 The Respondent does not own any property in Nevada, is not a Nevada registered
5 voter, has no family in Nevada, and has no plans to come back to Nevada. The
6 Respondent has no ties to Nevada. She is registered to vote in England and has a
7 vehicle registered in England.
8

9
10 This is more the reason that the Court ruled the way that it did. This
11 information was contained in Respondent's Opposition and Countermotion on file
12 and part of the appellate file. (JA-42, lines 4-12).
13

14 The Supreme Court of Nevada may wish to make additional findings based
15 on the record presented as the facts are undisputed in this matter that the Appellant
16 can submit whatever paperwork he needs to either register the last custodial order in
17 England and litigate there or proceed with a Hague Convention action in England.
18 Either way, the door is wide open for the Appellant to secure, protect, or modify his
19 custodial rights. He is on the child's birth certificate so he can have his Substantive
20 Due Process Rights protected in England as the father of the minor child.
21

22
23 In *Ogawa v. Ogawa*, the Court further addressed the issue of Subject Matter
24 Jurisdiction related to a child custody dispute in Nevada. *Ogawa v. Ogawa*, 125
25 Nev. 660, 221 P.3d 699 (2009). That case dealt with an international dispute with
26
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1 one Party in Nevada and one Party and the children residing in Japan. There were
2 no orders in place in that case but issues as whether the children were in Japan
3 “temporary” or not. Japan was also not a member of the Hague convention and the
4 District Court properly ordered the children to return to Nevada where one of the
5 Parties resided. Nevada assumed jurisdiction under those unique facts.
6

7 *Ogawa* is significant as it can be readily distinguished relating to where
8 Parties live, whether that was an Initial Child Custody Jurisdiction determination,
9 Hague Convention issues and Home State jurisdiction.
10

11 Here, there already are orders in place and no Party or the subject minor child
12 reside in Nevada. England is indeed a member of the Hague convention, and more
13 importantly, the Respondent is in military service and cannot be forced to return to
14 Nevada with the subject minor child (where she would also have no place to live),
15 especially when the Appellant does not reside in Nevada.
16

17 It is now time for the Appellant to realize the longer he basically sits on his
18 rights based on England’s child custody laws, the more harm he is doing based on a
19 *laches* argument being away from the minor child. If he wants to maintain a healthy
20 relationship with the child, he should file the appropriate papers in England or
21 better yet, strongly consider leaving Turkey and move to England where the child is
22 now and where the child will be for the foreseeable future.
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1 **CONCLUSION**

2 The District Court correctly ruled that Nevada no longer has continuing,
3 exclusive jurisdiction in this matter to modify the existing child custody orders.
4

5 There is no reason that this Court needs to remand this matter back to the District
6 Court.

7
8 As such, the Supreme Court of Nevada must make the determination based
9 on the legal authority contained herein to affirm the District Court's decision to
10 decline Subject Matter Jurisdiction in this case and direct the Appellant to initiate
11 an action in England as that is the more appropriate forum and that is a Court of
12 competent jurisdiction at the present time, and in the foreseeable future as the
13 Respondent and the subject minor child have no plans to return to Nevada.
14

15 Dates this 6th day of July 2015.
16

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

2 I hereby certify that I have read this Answering brief, and to the best of my
3
4 knowledge, information, and belief, it is not frivolous or interposed for any
5 improper purpose. I further certify that this brief complies with all applicable
6 Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires
7 every assertion in the brief regarding matters in the record to be supported by a
8 page reference to the page of the transcript or appendix where the matter relied on
9 is to be found. I understand that I may be subject to sanctions in the event that the
10 accompanying brief is not in conformity with the requirements of the Nevada Rules
11 of Appellate Procedure.
12
13

14 Dates this 6th day of July 2015.

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CERTIFICATE OF COMPLIANCE (RULE 32)

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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 this brief exempted by NRAP 32(a)(7)(C), it is either:

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Dates this 6th day of July 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Roberts Stoffel Family Law Group, and on the 6th day of July, 2015, I placed a true and correct copy of the Respondent's Answering brief to Appellant's Opening Brief served via the Master Service List and served via the Court's electronic filing and service system (eFlex) in the United States Mail at Las Vegas, Nevada, with postage prepaid, and addressed as follows:

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