IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 76831

IN THE MATTER OF THE VISITATION OF THE PERSONS OF: J.C.B; K.R.B; L.B.B; and L.A.B, MINORS.

PAULA BLOUNT,

Appellant,

vs.

JUSTIN CRAIG BLOUNT,

Respondent.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CASE NO. D-18-571209-O

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The following persons / entities are disclosed:

- F. Peter James, Esq.;
- Law Offices of F. Peter James, Esq., PLLC.

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

Dated this 7th day of January, 2019

/s/ *F. Peter James*

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JURISDICTIONAL STATEMENT

The Nevada Supreme Court has jurisdiction over this matter pursuant to NRAP 3A(b)(1), NRAP 3A(b)(8), and NRS 2.090.

The Order appealed from (Findings of Fact, Conclusions of Law, and Order from July 25, 2018 Hearing) was filed by opposing counsel on August 16, 2018. (2 J.A. at 308). Said Order was noticed by mail on August 17, 2018. (2 J.A. at 312). The Order for attorney's fees was filed on August 23, 2018. (2 J.A. at 316). The Notice of Appeal was filed on August 24, 2018. (2 J.A. at 320).

The jurisdictional deadline to file the Notice of Appeal was September 20, 2018. As such, the Notice of Appeal was timely filed.

The Order filed August 16, 2018 was a final order as it disposed of all issues as to all parties. The Order filed August 23, 2018 was for attorney's fees and is independently appealable, but is included in this appeal as it was entered before the timely Notice of Appeal was filed.

STATEMENT OF THE ISSUES

The district court dismissed the Grandparent Visitation Petition for an apparent lack of jurisdiction. Did the district court err in dismissing the action?

The district court awarded Respondent attorney's fees and costs. Did the district court err in awarding attorney's fees and costs?

STATEMENT OF THE CASE

This is an appeal from the dismissal of a Grandparent Visitation action and a subsequent award of attorney's fees. Eighth Judicial District Court, Clark County; Hon. Linda Marquis, District Judge, Family Division.

STATEMENT OF THE FACTS

On May 18, 2018, Appellant (hereinafter "Grandmother") filed a Petition for Grandparent Visitation. (1 JA 1). At issue are four children of two different mothers—Gretchen Whatoname-Blount (deceased) is the mother of J.C.B. and K.R.B., and Stephanie Blount (Respondent's wife) is the mother of L.B.B. and L.A.B. (1 JA 8). Respondent opposed the Petition (1 JA 28) and moved the district court to dismiss the Petition. (1 JA 34). Grandmother responded to the district court's concerns of jurisdiction and ICWA, as well as to joinder. (1 JA 88).

The district court dismissed the appeal stating that there was no UCCJEA jurisdiction (2 JA 314), the Hualapai Tribe has jurisdiction (2 JA 314), there is no subject matter jurisdiction (2 JA 314); visitation in the context of parental visitation and third-party visitation are the same (2 JA 314), Petitioner has alleged nothing that would allow visitation with L.L.B. and L.A.B. (2 JA 314); and the natural mother of L.L.B. and L.A.B. was not named in the action (2 JA 314).

This appeal followed.

SUMMARY OF THE ARGUMENT

The district court erred in dismissing the action. The Grandparent Visitation statute specifically gives jurisdiction to the court in the county in which the children reside to award grandparent visitation. The district court erred in stating that the UCCJEA applies to grandparent visitation, when the clear objective of the UCCJEA is to resolve interstate dispute between parents—not to address jurisdiction for grandparent visitation. The district court also erred in stating that the Hualapai Tribe in Arizona has jurisdiction. ICWA does not apply to grandparent visitation actions.

The district court also erred in confusing custodial visitation (and thus the UCCJEA) with grandparent visitation (thus NRS 125C.050). The two are not akin to each other—and the policies of the UCCJEA and of NRS 125C.050 establish the differences.

The district court erred in stating that Grandmother had no right to visit the younger children, notwithstanding the lack of jurisdiction. The clear language of NRS 125C.050 provides to the contrary.

The district court also erred in not permitting Grandmother to join Respondent's wife, who was initially inadvertently not added as a party. The omission was harmless.

Moreover, the district court erred in awarding attorney's fees to Respondent. No fees should have been awarded as the action should not have been dismissed. Still, the award was made in error as there was no prevailing party under NRS 18.010 (as visitation is at issue, not a money judgment) and under EDCR 7.60 as Respondent never requested fees under this theory of relief.

ARGUMENT

The Court should find that the district court erred in dismissing the Grandparent Visitation Petition for lack of jurisdiction. NRS 125C.050 specifically confers jurisdiction to Nevada in the underlying case. Further, all of the reasons in support of the dismissal of the Petition are legally erroneous. Additionally, the Court should reverse the award of attorney's fees.

I. THE DISTRICT COURT ERRED IN DISMISSING THE GRANDPARENT VISITATION PETITION

A. STANDARD OF REVIEW

Questions of statutory interpretation are reviewed de novo. *Irving v. Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). Questions of law are reviewed de novo. *See Waldman v. Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008). A question of law is present when the issue surrounds a trial court's conclusions of law. *See Bopp v. Lino*, 110 Nev. 1246, 885 P.2d 559

(1994). Subject matter jurisdiction under the UCCJEA involves questions of law, which receive de novo review. *See Friedman v. Eighth Judicial District Court*, 127 Nev. 842, 847, 264 P.3d 1161, 1165 (2011). Interpretation of the Nevada Rules of Civil Procedure are reviewed de novo. *See Lund v. Eighth Judicial District Court*, 127 Nev. 358, 362, 255 P.3d 280, 283 (2011)

B. ARGUMENT

The district court erred in dismissing the Petition. As is relevant, the district court found the following:

- There was no UCCJEA jurisdiction[1] (2 JA 314);
- The Hualapai Tribe has jurisdiction (2 JA 314);
- There is no subject matter jurisdiction (2 JA 314);
- Visitation in the context of parental visitation and third-party visitation are the same (2 JA 314);
- Petitioner has alleged nothing that would allow visitation with L.L.B. and L.A.B. (2 JA 314); and
- The natural mother of L.L.B. and L.A.B. was not named in the action

[1] The district court did not specifically state that the UCCJEA applied and that there was no UCCJEA jurisdiction, but the same is perfectly clear in context. For example, the district court said there children had not been in Nevada for the required six months. (2 JA 314). The six-month rule is a UCCJEA rule. *See* NRS 125A.305(1)(a).

(2 JA 314).

Each of these will be discussed in turn.

The UCCJEA Does Not Apply to Grandparent Visitation

The UCCJEA exists to resolve the jurisdictional issue as to what state has jurisdiction over child custody when the parents live in different states. *See* NRS Chapter 125A; *see generally* 1 JA 103-233, but specifically at 106-111 and 182-186. The entire purpose of the UCCJEA is to determine the state that has jurisdiction to hear a custody dispute between two parents or people requesting custodial rights.

Here, Respondent is the only living parent of J.C.B. and K.R.B. Thus, there are no longer two parents who can have a dispute between two different states. With no conflict between states, the UCCJEA does not apply. Respondent lived in Nevada with the children months prior to the Petition being filed. (*Compare* 2 JA 314:7-13; 1 JA 39:6 *with* 1 JA 1).

The district court erred in finding that the UCCJEA did apply. Still, even if the UCCJEA did apply, which is does not, Nevada still has jurisdiction.

NRS 125A.305 defines the rule for initial child custody determination jurisdiction, in order of priority. The statue provides for four different methods of determining jurisdiction, the first being the highest priority and preferred

method of determination, the last being the lowest priority and limited in its scope.

NRS 125A.305 states:

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

(a) This State is the home state of the child on the date of the commencement of the proceeding or was the home state of the 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;

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

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

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

(c) All courts having jurisdiction pursuant to paragraph (a) or (b) 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

(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.

Here, there is no home state of the children, Nevada has initial jurisdiction under the significant contact method, no other state has the ability to decline jurisdiction, and no other state but Nevada can establish initial jurisdiction.

1. "Home State" Method of Determination.

The "home state" is defined as:

> The state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before the commencement of a child custody proceeding.

NRS 125A.085. However, the purported home state must also maintain at least one parent residing in the said state. *See* NRS 125A.305(1)(a). This is the difference between merely meeting the definition of home state and having home state jurisdiction. Thus, a child's "home state" status has priority over the other three methods of obtaining jurisdiction by any state if a parent or person acting as a parent continues to live in the state. *Id*.

Here, no state has home state jurisdiction. All of the children and all of the parents ceased residing in the State of Arizona in or about January 2018. (1 JA 39:6). So, Arizona does not have initial child custody jurisdiction by the home state method. Nevada does not have home state jurisdiction as the children have not resided in Nevada for at least six months prior to the filing of this action, though the UCCJEA does not apply to Grandparent Visitation actions. There are no other states which could have home state jurisdiction.

So, no state has home state jurisdiction over the children.

2. "Significant Connection" Method of Determination.

Nevada has jurisdiction under the significant connection method. *See* NRS 125A.305(1)(b).

Where the parents move with their children to a new state, the new state may take jurisdiction to make the initial determination. *See Friedman v. Eighth Judicial District Court*, 127 Nev. 842, 849-50, 264 P.3d 1161, 1167 (2011). In such instances, the "home state" method of determination gives way to a determination based upon the second method: that the children and at least one parent have a "significant connection with this state" and "substantial evidence is available in this state concerning the child's care, protection, training and personal relationships." NRS 125A.305(b); *see also Friedman*, 127 Nev. at 849-50, 264 P.3d at 1167-68.

At the time the present action was filed, Nevada (and no other state) possessed strong and significant connections to both living parents and the children. Both living parents moved from Arizona to Nevada in January 2018. (1 JA 39:6). The parents moved to Nevada with the intent to stay here. (*Id*.). It is a reasonable inference that the living parents intended not to return to Arizona when they moved to Nevada.

As such, only Nevada can establish initial UCCJEA jurisdiction under the significant connection method.

3. "All Other Courts have Declined Jurisdiction" Method of Determination.

The third method of determination of jurisdiction requires that before any state may take jurisdiction, assuming no state has "home state" status and another state has superior claim to jurisdiction, is that all other states must affirmatively decline jurisdiction under the first two methods.

Here, no other state at issue has even been asked to assert initial UCCJEA jurisdiction. It would be unreasonable to require a party to ask the State of Arizona to take jurisdiction as the living parents moved from Arizona in January 2018 with the intent not to return there. (1 JA 39:6).

So, no other state has been asked to assert jurisdiction. As such, no other state could have declined jurisdiction. As stated herein, Arizona could not exercise either home state or significant connection jurisdiction.

4. "Catch-all" Method of Determination.

The fourth and final method of determination relies upon the case where "no court of any other state would have jurisdiction" under any of the preceding methods. As stated, no state has home state jurisdiction. Only Nevada can have significant contact jurisdiction. Arizona has not been asked to assert initial jurisdiction, and rightfully so.

As such, only Nevada qualifies under the catch-all method.

* * * *

For the foregoing reasons, Nevada has UCCJEA jurisdiction over the children. This argument is entirely moot, however, as UCCJEA jurisdiction applies to custody, not grandparent visitation. NRS 125C.050 specifically provides that the district court has jurisdiction to over Grandparent Visitation actions when the children reside in Clark County, Nevada, which is the case here.

* * * * * *

As such, the UCCJEA does not apply to Grandparent Visitation actions. Even if it did, Nevada is, in the present case, the only state with UCCJEA

jurisdiction. Either way, Nevada has jurisdiction over the Grandparent Visitation action. The district court erred in dismissing the same.

ICWA Does Not Apply to Grandparent Visitation

The Indian Child Welfare Act ("ICWA"), 25 USC 1901, *et seq.*, does not apply to Grandparent Visitation actions.

> The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 USC § 1902; *see also Matter of Baby Girl Doe*, 865 P.2d 1090 (Mont. 1993).

Indian tribes have limited jurisdiction over child custody matters.

(a) Exclusive jurisdiction

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

25 USC § 1911.

Here, the children at issue do not reside and are not domiciled within a reservation—they reside in Clark County, Nevada with Respondent. (1 JA

39:6). As such, the tribe will not have exclusive jurisdiction. Further, child custody proceedings are defined as foster care placement proceedings, termination of parental rights, preadoptive placement, and adoptive placement. *See* 25 USC § 1903(1). None of these are at issue here as this is a grandparent visitation action. Further, even when an Indian grandparent requests *custodial* rights of a child against the wishes of a non-Indian parent, ICWA does not apply. *See e.g. Application of Berltelson*, 617 P.2d 121, 125-26 (Mont. 1980). *A fortiori*, ICWA does not apply to mere grandparent visitation actions as the policies of ICWA are not infringed upon by a request for grandparent visitation.

Assuming the tribe has jurisdiction over grandparent visitation (which it does not), the issue would become a choice between Nevada and the tribe as to who is to hear this matter. For the purpose of applying NRS 125A.005 to 125A.395 (UCCJEA General Provisions through Jurisdiction), Nevada treats Indian tribes like any other state of the United States. *See* NRS 125A.215(2).[2] As stated, Nevada is the only state / tribe that could still have UCCJEA jurisdiction—though the UCCJEA does not apply to grandparent visitation.

As such, the district court has jurisdiction to adjudicate this action.

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[2] This wholly negates the district court's finding that the Tribe has jurisdiction over the children (2 JA 314:4-6, 23-26)—whether for custodial purposes or any other purpose.

Therefore, it was legal error for the district court to dismiss the Grandparent Visitation action for lack of jurisdiction.

The Court Has Jurisdiction

NRS 125C.050 (the "Grandparent Visitation statute") provides in relevant part as follows:

> 1. Except as otherwise provided in this section, if a parent of an unmarried minor child:
>
> (a) Is deceased;
>
> (b) Is divorced or separated from the parent who has custody of the child;
>
> (c) Has never been legally married to the other parent of the child, but cohabitated with the other parent and is deceased or is separated from the other parent; or
>
> (d) Has relinquished his or her parental rights or his or her parental rights have been terminated,
>
> the district court **in the county in which the child resides** may grant to the great-grandparents and grandparents of the child and to other children of either parent of the child a reasonable right to visit the child during the child's minority.

(emphasis added).

So, the district court in the county in which the child resides has jurisdiction to entertain an action under NRS 125C.050.

Here, the children have resided in Nevada since at least January 2018. (2 JA 314:7-13; 1 JA 39:6). As the Petition was filed in May 2018 (1 JA 1), the

children lived in Nevada prior to the filing of the Petition. Thus, Nevada has jurisdiction over the present Grandparent Visitation action.

Notably, NRS 125C.050 does not mention the UCCJEA or any other limitation on its jurisdiction when the child lives in Nevada.

Accordingly, the Court should reverse the lower court and reinstate the Grandparent Visitation action.

Visitation for Grandparents and Visitation for Parents is Entirely Different in the Context of the UCCJEA

Visitation under the UCCJEA and grandparent visitation are legally significantly different. As stated herein the purpose of the UCCJEA is to resolve jurisdiction issues between parents and those acting like parents (guardians, etc.) when they live in different states. Thus, when the UCCJEA discusses visitation, it is between parents and those acting like parents.

Statutes are to be read in the context of the act and the subject matter as a whole. *See Barney v. Mt. Rose Heating and Air Conditioning*, 124 Nev. 821, 826-27, 192 P.3d 730, 734 (2008). The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute, and this intent will prevail over the literal sense of the words. *See McKay v. Board of Sup'rs of Carson City*, 102 Nev. 644, 650-51, 730 P.2d 438, 443 (1986). "The meaning of the words used may be determined by examining the context and

the spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and policy may be involved as an interpretive aid." *Id.* (internal citations omitted).

Here, the UCCJEA applies only to custodians, guardians, and the like. *See e.g.* NRS 125A.305(1) (discussing jurisdiction when a parent or a person acting as a parent lives in this state); *see also* NRS 125A.135 (defining "person acting as a parent"). The UCCJEA does not address grandparents only seeking visitation. *See generally* NRS Chapter 125A.

Nevada's Grandparent Visitation Statute (NRS 125C.050) specifically confers jurisdiction over grandparent visitation when the child merely resides in Nevada—without mention of the UCCJEA.

Thus, when the UCCJEA discusses visitation, it is custodial (or similar) visitation—the kind of visitation that parents receive. This does not include grandparent visitation. To do so would be to violate the purpose and intent of the UCCJEA.

Nevada Law Specifically Allows for Grandmother to Have Visitation with L.L.B and L.A.B.

The district court found that Grandmother had no basis to have visitation with the two younger children of a different (and living) mother of L.L.B. and L.A.B. (2 JA 314).

NRS 125C.050(1) provides in relevant part:

> the district court in the county in which the child resides may grant to the great-grandparents and grandparents of the child **and to other children of either parent of the child** a reasonable right to visit the child during the child's minority.

(emphasis added). This provision provides Grandmother with the right to have visitation with L.L.B. and L.A.B. even when, under the main portion of the statute, no right of visitation would otherwise exist. The provision results in children not being split up when visiting a grandparent.

As the Grandparent Visitation Statute specifically confers a right of visitation to the two younger children of a different mother (L.L.B. and L.A.B.). The district court erred in determining that Grandmother did not have a right to visit with said children.

The Natural Mother Was Not Named in the Petition, But That is a Minor Error that is Not Cause to Dismiss the Action

Grandmother, through counsel, inadvertently failed to bring the natural mother of the two younger children into the action. (*See* 1 JA 1). NRCP 19 provides in relevant part as follows:

> **(a) Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition

> of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

Grandmother requested leave of the district court to add Respondent's wife (and mother of the two younger children). (1 JA 98). Grandmother included an Amended Petition which she asked leave to file. (1 JA 234-38).

Failure to join Respondent's wife is not fatal to the Petition. "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." NRCP 21 (in relevant part).

Grandmother argued that not joining Respondent's wife was harmless error as there was no prejudice—Respondent and his wife were present at the initial hearing and were both concurrently aware of the matter. (1 JA 98).

Upon remand, the Court should order that Grandmother be able to file the proposed Amended Petition, thus bringing in Respondent's wife into the action.

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II. THE DISTRICT COURT ERRED IN AWARDING ATTORNEY'S FEES

A. STANDARD OF REVIEW

Attorney's fees are reviewed for an abuse of discretion. *See In re Estate and Living Trust of Miller*, 125 Nev. 550, 552, 216 P.3d 239, 241 (2009).

B. ARGUMENT

The district court erred in awarding attorney's fees to Respondent. The district court awarded fees on the basis of a prevailing party under NRS 18.010 and under frivolous filings under EDCR 7.60. (2 JA 318:14-15).

Here, the action should never have been dismissed, so there should be no cause to award Respondent any attorney's fees.

Notwithstanding that the action should not have been dismissed, the district court still erred in awarding attorney's fees to Respondent. Respondent only requested attorney's fees under NRS 18.010. (1 JA 51-52). So, this is the only vehicle to award Respondent attorney's fees.

The district court, however, awarded attorney's fees under EDCR 7.60. (2 JA 13-15). As Respondent did not request fees under this rule, the district court erred in awarding fees under the rule. To do so is a violation of due process of law. *See* U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8, cl. 5. "The fundamental requisite of due process is the opportunity to be heard."

Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779 783 (1914), cited in *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998). The key elements of due process are notice and a hearing appropriate to the case. *See Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586 (1971) (emphasis added), cited in *Kochendorfer v. Board of County Comm'rs of Douglas County*, 93 Nev. 419, 425, 566 P.2d 1131, 1135 (1977).

Here, Grandmother had no notice of fees being awarded under anything other than NRS 18.010. Thus, awarding fees under EDCR 7.60 is a violation of due process of law.

As to the award under NRS 18.010, the district court specifically stated that an award under this statute was given as Respondent was the prevailing party. (2 JA 318:13-14). To awarded attorney's fees as a prevailing party under NRS 18.010, a money judgment must be in controversy. *See Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005); *see also LVMPD v. Anderson*, 134 Nev. Adv. No 97, ___ P.3d ___ (CTA 2018).

In the present matter, there was no money judgment at issue—visitation with children was at issue. With no money judgment, there can be no award of fees to a prevailing party.

Thus, the district court erred as a matter of law in its award of fees to Respondent. Accordingly, the Court should reverse the award of attorney's fees

to Respondent.

* * *

The Court should reverse the district court and remand this matter for further proceedings.

CONCLUSION

The district court erred in dismissing the action, in declining to allow Grandmother to join Respondent's wife, and in awarding attorney's fees to Respondent. The Court should reverse the district court.

Dated this 7th day of January, 2019

/s/ *F. Peter James*

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ROUTING STATEMENT

Pursuant to NRAP 3E(d)(1)(H), Appellant submits the following routing statement:

- This appeal is not presumptively retained by the Supreme Court pursuant to NRAP 17(a);
- This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(5) as it is a family law matter not involving termination of parental rights or NRS Chapter 432B proceedings; and
- Appellant asserts that the matters should be retained by the Supreme Court. The matter presents issues of first impression in Nevada.

Dated this 7th day of January, 2019

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CERTIFICATE OF COMPLIANCE (Rule 28.2)

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a page reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7th day of January, 2019

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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:

   [X] This brief has been prepared in a proportionally spaced typeface using 14 point Times New Roman in MS Word 2013; 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:

   [X] Proportionately spaced, has a typeface of 14 points or more and contains 4,657 words (limit is 14,000 words); or

   [ ] Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; or

   [X] Does not exceed 30 pages.

Dated this 7th day of January, 2019

/s/ *F. Peter James*

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CERTIFICATE OF SERVICE

The following are listed on the Master Service List and are served via the Court's electronic filing and service system (eFlex):

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