

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

2
3 IN THE MATTER OF THE
4 VISITATION OF THE PERSONS OF:
5 J. C. B.; K. R. B.; L. B. B.; and L. A. B.,
6 MINORS.

No.: 76831

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Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR REHEARING

7 _____
8 PAULA BLOUNT,

9 Appellant,

10 vs.

11 JUSTIN CRAIG BLOUNT,

12 Respondent.

13 COMES NOW Appellant, Paula Blount, by and through her counsel, F.
14 Peter James, Esq., who hereby respectfully requests that the Court rehear the
15 present matter, rescind the Order of Affirmance filed September 16, 2019, reverse
16 the lower court, and remand the matter to the district court for further
17 proceedings.

18 Dated this 4th day of October, 2019 /s/ F. Peter James

19 _____
20 LAW OFFICES OF F. PETER JAMES
 F. Peter James, Esq.
 Nevada Bar No. 10091
 3821 W. Charleston Blvd., Suite 250
 Las Vegas, Nevada 89102
 702-256-0087
 Counsel for Appellant

1 **POINTS AND AUTHORITIES**

2 Appellant, Paula Blount (hereinafter “Paula”), respectfully requests a
3 rehearing of the Order of Affirmance issued on September 16, 2019 (hereinafter
4 the “Order”).

5 Petitions for rehearing are warranted where the Court has overlooked or
6 misapprehended a material matter of fact / law and a rehearing would promote
7 substantial justice. *See* NRAP 40(a)(2); *see also Calloway v. City of Reno*, 114
8 Nev. 1157, 1158, 971 P.2d 1250 (1998); *see also Matter of Estate of Herrmann*,
9 100 Nev. 149, 151, 679 P.2d 246, 247 (1984).

10 With all due respect to the Court, Paula asserts that the Court has
11 overlooked / misapprehended material fact and / or has misapprehended material
12 questions of law.

13 **Timeliness**

14 This Petition for Rehearing is timely. Petitions for rehearing must be filed
15 within eighteen (18) days of the decision being entered. *See* NRAP 40(a)(1). The
16 decision at issue was entered on September 16, 2019. Eighteen days from that
17 date is October 4, 2019.

18 Here, the Petition is being filed with the Court on October 4, 2019. As
19 such, the Petition is timely.

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1 **Argument**

2 With the utmost respect to the Court, Appellant asserts that the Court
3 misapprehended several issues of law, which cascaded.

4 The Court determined that the UCCJEA applies to grandparent visitation.
5 Nevada has no law on point. Other states conclusively state that the UCCJEA
6 does not apply to grandparent visitation.

7 Montana has law on point and conclusively holds “that the UCCJEA does
8 not govern jurisdictional matters relating to grandparent-grandchild proceedings
9 under Chapter 9 [the Montana grandparent visitation chapter].” *Stewart v. Evans*,
10 136 P.3d 524 (Montana 2006). Montana has adopted the UCCJEA. *See* Montana
11 Code Annotated Chapter 7. Nevada has adopted the UCCJEA. *See* NRS Chapter
12 125A.

13 In arriving to the conclusion that the UCCJEA does not govern over
14 grandparent-grandchild matters, the Montana Supreme Court did a thorough
15 analysis of the underlying policies of the UCCJEA, as well as the context in
16 which “visitation” is equivocated. *See Stewart*, 136 P.3d at 524.

17 The *Stewart* Court notes that “visitation with a child” is referenced in the
18 UCCJEA. *Id.*, 136 P.3d at 526. The *Stewart* Court specifically noted that the
19 references to “visitation in the UCCJEA were within the definition of “child
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1 custody determination.”¹ *Id.*, 136 P.3d at 526-27. The court goes on to note that
2 grandparents are not designated as parties under the UCCJEA unless the serve as
3 guardians or parents to the child. *Id.*, 136 P.3d at 527. Paula never asserts that
4 she acted as a parent or guardian of the minor children at issue. (*See generally*
5 JA).

6 The UCCJEA is directed toward the custody of or visitation with children
7 by parents or the persons acting as their parents; that is, the UCCJEA is
8 concerned with children and their caregivers. There is no indication that
9 the Act's interstate jurisdictional provisions were intended to be available
10 to grandparents seeking contact with their grandchildren who were being
11 parented by others.

12 *Stewart*, 136 P.3d at 527 (emphasis added). In fact, *Stewart* goes on to provide
13 that the grandparent’s visitation act addresses not the raising of a child, but
14 merely the requests of grandparents to spend time with grandchildren. *Id.*
15 Nevada’s grandparent visitation statute addresses exactly the same concerns. *See*
16 NRS 125C.050.

17 *Stewart* determined that the Montana grandparent visitation act governed
18 as to jurisdiction to award grandparent visitation as the UCCJEA did not apply
19 to grandparent visitation. 136 P.3d at 524.

20 With all due respect to the Court, the UCCJEA simply does not apply to

¹ Nevada has the same UCCJEA statutes as Montana.

1 grandparent visitation. The UCCJEA governs which state has jurisdiction over a
2 child in a child custody proceeding as to parents, guardians, and people acting as
3 parents or guardians. *See generally* NRS Chapter 125A. That the UCCJEA
4 mentions “visitation” of a child must be read in this context. *See International*
5 *Gaming Technology, Inc. v. Second Judicial District Court*, 124 Nev. 193, 200-
6 201, 179 P.3d 556, 560 (2008) (standard statutory construction is to read statutes
7 in an act as a whole so that any conflict is harmonized and so that no part is
8 rendered inoperative).

9 As such and for the reasons stated in the Opening and Reply Briefs, the
10 UCCJEA does not apply to grandparent visitation. The Court should reconsider
11 its decision that the UCCJEA does apply.

12 With that, the Court necessarily should reconsider the jurisdiction / venue
13 issue in NRS 125C.050. The Court determined that the provision in NRS
14 125C.050 that ““the district court in the county in which the child resides may
15 grant’ grandparent visitation” was an establishment of venue, not jurisdiction.
16 The Court should reconsider and determine that this was a jurisdictional
17 statement, not venue.

18 When enacting legislation, the legislature is presumed to be aware of other
19 similar statutes. *See e.g. Cable v. State ex rel. its Employers Ins. Co. of Nev.*, 122
20 Nev. 120, 125, 127 P.3d 528, 531 (2006). Nevada’s grandparent visitation statute

1 was enacted in 1979, and then updated in 1985, 1987, 1991, 1999, and finally in
2 2001. The Nevada legislature enacted the UCCJEA in 2003, and the Act has
3 been relatively unchanged since then. As the grandparent visitation statute
4 predates the UCCJEA, the legislature is presumed to know it existed. Yet, the
5 legislature made no changes to the grandparent visitation statute when it enacted
6 the UCCJEA, as noted by NRS 125C.050 being last updated in 2001 and the
7 UCCJEA being adopted in 2003.

8 As the UCCJEA does not apply to grandparent visitation, then NRS
9 125C.050 must be read to confer jurisdiction to award grandparent visitation, not
10 venue. This is a common-sense reading and it is in line with other Nevada law
11 as to children. A contrary reading would lead to an absurd result, which goes
12 against the tenants of statutory construction. *See Whealon v. Sterling*, 121 Nev.
13 662, 667, 119 P.3d 1241, 1245 (2005) (statutes are interpreted to avoid absurd or
14 unreasonable results).

15 Nevada's termination of parental rights ("TPR") act is similar to the
16 grandparent visitation statute as to where it may be filed. Termination of parental
17 rights is "tantamount to imposition of a civil death penalty." *See In re Parental*
18 *Rights as to Q.L.R.*, 118 Nev. 602, 605, 54 P.3d 56, 58 (2002). Still, the UCCJEA
19 does not apply to termination of rights, as Chapter 128 governs jurisdiction for
20 TPR. NRS 128.030 provides that a TPR action may at the election of the

1 petitioner, be filed in any number of places, one of which is the county in which
2 the child resides. This is harmonious with the UCCJEA as there is no interstate
3 dispute as to custody jurisdiction. The same is true of the grandparent rights
4 statute.

5 The Court's current determination that the UCCJEA applies to grandparent
6 visitation and that NRS 125C.050 provides only for venue is subject to absurd
7 readings.

8 Hypothetical: Mom has custody of the children in Nevada. Maine is the
9 UCCJEA home state and custody was determined in Maine. Dad still resides in
10 Maine, so Maine retains UCCJEA jurisdiction. Dad has limited visitation with
11 the children. Dad concedes that Grandparents should have visitation under any
12 grandparents visitation statute. Grandparents live next door to Mom, but Mom
13 will not permit Grandparents to have any visitation.

14 Under the Court's ruling, even though Mom and the Grandparents live next
15 door to each other in Nevada, Maine is where the Grandparents would need to
16 file their petition for grandparent visitation. This is an absurd result. All relevant
17 parties and the children are in Nevada. The Court's present ruling would force
18 the parties, witnesses, and potentially the children to litigate an issue across the
19 country in a state where no party at issue resides. Grandparent visitation is not
20 the kind of visitation discussed in the UCCJEA, which deals only with parents,

1 guardians, and people acting as parents or guardians. “Visitation” in the
2 UCCJEA is custodial visitation, not grandparent visitation. As stated herein, the
3 term “visitation” must be read in context and in harmony with the entire
4 UCCJEA, as well as the underlying purpose of the UCCJEA—to resolve
5 jurisdictional disputes between parents, guardians, and people acting as parents
6 or guardians. To read the statute otherwise would be to broaden the UCCJEA to
7 include persons who were specifically excluded from consideration, to wit:
8 grandparents. “The maxim ‘expressio Unius Est Exclusio Alterius’, the
9 expression of one thing is the exclusion of another, has been repeatedly
10 confirmed in this State.” *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237,
11 246 (1967).

12 As such, the Court should reconsider its determination that NRS 125C.050
13 does not confer jurisdiction and determine that it does confer jurisdiction, which
14 would be in harmony with the fact that the UCCJEA does not apply to
15 grandparent visitation.

16 With these reconsiderations, the Court should also reconsider the award of
17 attorney’s fees, as the same hinges on the affirmance as to the jurisdiction issue.

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1 **CONCLUSION**

2 Based on the foregoing, the Court should rehear this matter and reconsider
3 its rulings as to the UCCJEA applying to grandparent visitation, NRS 125C.050
4 conferring venue not jurisdiction, and the upholding of the attorney's fees award.
5 Paula is requesting this as to J.C.B. and K.R.B. Paula interprets NRS 125C.050
6 differently than the Court as to sibling visitation, but she is not requesting
7 rehearing as to that issue (as to L.B.B. and L.A.B.).

8 The issues raised herein are important issues that affect family relations.
9 Input from the Family Law Section might be helpful to the Court's determination
10 of this matter. In either event, the Court should consider publishing this opinion
11 as Nevada law is scant on this issue.

12 Dated this 4th day of October, 2019

13 /s/ *F. Peter James*

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1 **VERIFICATION**

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

5 [X] This Petition has been prepared in a proportionally spaced typeface
6 using Times New Roman in 14 point in MS Word 365.

7 2. I further certify that this Petition complies with the page- or type-volume
8 limitations of NRAP 40(b)(3) because it is either:

9 [X] Proportionately spaced, has a typeface of 14 points or more, and
10 contains 1927 words (4,667 is the maximum); or

11 [] Does not exceed 10 pages.

12 Dated this 4th day of October, 2019

13 /s/ *F. Peter James*

14

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