IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF WELFARE AND SUPPORTIVE SERVICES, CHILD SUPPORT ENFORCEMENT PROGRAM, AND KIERSTEN GALLAGHER, (SOCIAL SERVICES MGR II),

Appellants,

vs.

CISILIE A. PORSBOLL, F/K/A CISLIE A. VAILE,

Respondent.

Electronically Filed
Mar 18 2019 10:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 77070
Dist. Court Case No. 98D230385

APPELLANTS' OPENING BRIEF

AARON D. FORD
Nevada Attorney General
GREGORY L. ZUNINO
Nevada State Bar. No. 4805
Deputy Solicitor General
LINDA C. ANDERSON
Nevada State Bar No. 4090
Chief Deputy Attorney General

100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1237
GZunino@ag.nv.gov
LAnderson@ag.nv.gov

Attorneys for Appellants

NRAP 26.1 DISCLOSURE STATEMENT

The State of Nevada, Department of Health and Human Services, Division of Welfare and Supportive Services, Child Support Enforcement Program, and Kiersten Gallagher (Social Services Manager II) are a "governmental party" and therefore are not required to file a disclosure statement under NRAP 26.

DATED this 18th day of March, 2019.

AARON D. FORD
Attorney General

By: */s/ Gregory L. Zunino*
GREGORY L. ZUNINO
Deputy Solicitor General
Nevada State Bar. No. 4805

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Rules

Constitutional Provisions

Appellants, STATE OF NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES, DIVISION OF WELFARE AND SUPPORTIVE SERVICES, CHILD SUPPORT ENFORCEMENT PROGRAM AND KIERSTEN GALLAGHER (SOCIAL SERVICES MGR II) (Nevada CSEP), by and through their attorneys, AARON D. FORD, Attorney General, GREGORY L. ZUNINO, Deputy Solicitor General, and LINDA C. ANDERSON, Chief Deputy Attorney General, file this Opening Brief.

I. JURISDICTIONAL STATEMENT

Nevada CSEP appeals an Order of Mandamus issued by the Family Division of the Eighth Judicial District Court of the State of Nevada, in and for Clark County (Family Court). This Court has appellate jurisdiction to review the Family Court's Order of Mandamus, dated September 5, 2018, pursuant to Nevada Rules of Appellate Procedure (NRAP) 3A(b)(1).

Since the procedural history of this case is unusual, including the process by which Nevada CSEP became involved as a litigant, Appellants include the following brief summary.

In a twenty-year-old sealed divorce case to which Nevada CSEP was not a party, Respondent Cisilie A. Porsboll, formerly known as Cisilie A. Vaile (Porsboll), filed a "Motion for Writ of Mandamus" (motion). The motion requested that the

Family Court order Nevada CSEP to collect child support from Porsboll's former husband, Robert Scotlund Vaile (Vaile). AA 1–7.[1]

Porsboll was apparently frustrated by a conflict between competing child support orders in Nevada and Kansas, and instead of naming Nevada CSEP as a party to a petition for a writ of mandamus, Porsboll simply added Nevada CSEP as a "real party in interest" to the caption of her motion. AA 1. Although Porsboll did not serve the motion upon Nevada CSEP in the manner required by NRS 41.031 and NRCP 4(d), the Family Court claimed the authority to exercise personal jurisdiction over Nevada CSEP despite the agency's objection. AA 12–14, 17–19, and 91–92. The Family Court likewise sought to exercise subject matter jurisdiction over Porsboll's supposed grievance against Nevada CSEP. AA 109–111.

On September 5, 2018, after a hearing, the Family Court issued an Order of Mandamus directing Nevada CSEP to take all necessary steps to have the "void Kansas order for permanent injunction overturned or dismissed" and "to nullify any child support order that is contrary to the Nevada order." AA 110.

Nevada CSEP filed a Notice of Appeal with the Family Court on September 21, 2018. AA 163–164. This appeal is timely under NRAP 4(a)(1) because Nevada CSEP appealed within thirty days of the Notice of Entry of the Order of Mandamus.

[1] Throughout this opening brief, Nevada CSEP cites to the Appellants' Appendix, which Nevada CSEP has submitted with this brief. All citations to the Appellants' Appendix are identified as "AA."

II. ROUTING STATEMENT

This appeal should be retained by the Supreme Court because it involves a dispute between branches of government, namely a dispute between the judicial and executive branches of government as it concerns the subject matter jurisdiction of the Family Court. *See* NRAP 17(a)(7).

III. STATEMENT OF THE ISSUES

At issue in this case is the Family Court's jurisdiction to issue a writ of mandamus in a divorce case, its power to discard applicable filing and personal service requirements, and its authority under the mandamus standard to order Nevada CSEP to act as a debt collector for a private litigant with a disputed claim that is currently the subject of conflicting child support orders in Kansas and Nevada.

As a preliminary matter, the Family Court did not have subject matter jurisdiction over Porsboll's request for a writ of mandamus because the request was improper as to form, and was filed as a motion in a divorce action to which Nevada CSEP was not a party and could not be made a party.

Additionally, the Family Court did not have personal jurisdiction over Nevada CSEP because Porsboll did not serve upon Nevada CSEP a petition for writ of mandamus in the manner required by NRS 41.031 and NRCP 4(d).

Finally, the Family Court did not adhere to the legal standard that governs the review of petitions for mandamus because it made no finding that Nevada CSEP

refused to perform a statutory duty, or performed a discretionary function in a manner that was arbitrary and capricious.

IV. STATEMENT OF THE FACTS

This case involves a long-running child support dispute between custodial parent Porsboll and non-custodial parent Vaile. Porsboll and Vaile have litigated their dispute in multiple jurisdictions, including Nevada, California, Kansas, and several foreign countries. The litigation resulted in three prior opinions by this Court: *Vaile v. Eighth Judicial Dist. Court (Vaile I)*, 118 Nev. 262, 44 P.3d 506 (2002), *Vaile v. Porsboll (Vaile II)*, 128 Nev. 27, 268 P.3d 1272 (2012), and *Vaile v. Porsboll (Vaile III)*, 133 Nev. Adv. Op. 30, 396 P.3d 791 (2017).

Nevada CSEP was not a party to any of the many cases that resulted from the 1998 separation between Porsboll and Vaile. Nor was Nevada CSEP properly joined as a party to their Nevada divorce action. Porsboll only recently added Nevada CSEP to the case caption as a "real party in interest" when, on March 12, 2018, she filed her motion for a writ of mandamus. AA 1–7. Since Nevada CSEP is not a party to Porsboll's divorce case, its knowledge of the facts derives primarily from its review of court records and cases. To put this case in context, Nevada CSEP offers the following summary of the related court cases and administrative proceedings.

A. *Vaile I* Affirms the Enforceability of the Nevada Order for Child Support.

Vaile, a U.S. citizen, and Porsboll, a native of Norway, were married in Utah in 1990. *See Vaile I*, 118 Nev. at 266, 44 P.3d at 509. The marriage produced two daughters born in 1991 and 1995. *Id.* The marriage deteriorated in 1998 while the parties resided in England, and Vaile presented Porsboll with a separation agreement detailing child custody and support, visitation rights, and a stipulation to be divorced in Nevada where Vaile's mother and stepfather were living. *Id.* at 266, 44 P.3d at 509. In July 1998, Vaile filed for divorce in Nevada, asserting that he was a resident of Nevada and had been physically present in Nevada for more than six weeks. *Id.* at 267, 44 P.3d at 510. Although none of this was true, *id.*, Porsboll filed a *pro se* answer whereby she submitted to the jurisdiction of the Nevada court, *id.* at 271, 44 P.3d at 512. The ensuing divorce decree incorporated the terms of the parties' separation agreement, including the requirement that Vaile pay Porsboll monthly child support calculated on the basis of tax returns and income statements to determine their combined income. *See Vaile II*, 128 Nev. 27, 28, 268 P.3d 1272, 1273.

In *Vaile I*, this Court held that the child custody and visitation orders were issued without jurisdiction and were void because neither party nor the children ever resided in Nevada. *See Vaile I*, 118 Nev. at 282, 44 P.3d at 519. But because Vaile had voluntarily submitted to Nevada's jurisdiction by filing the complaint for divorce in Nevada, and because Porsboll had falsely acknowledged Vaile's residence in Nevada

in her answer to the divorce complaint, this Court concluded that the divorce itself, and the child support provision within it, remained enforceable. *Id.* at 268–275, 44 P.3d at 510–16.

B. Norwegian Authorities Order Child Support.

In 2003, the Norwegian agency called "Folketrygdkontoret for utenlandssaker" (English translation – "National Office for Social Insurance Affairs") issued a "Child Support Order." *See Vaile v. Porsboll*, 2015 WL 2454279 (Cal. Ct. App.). When Vaile failed to provide the agency with any financial information, the agency calculated child support based on the average income for an engineer working in the United States. Norway twice modified the child support amount. *Id.*

C. *Vaile II* Reaffirms Enforceability of the Nevada Order but Rejects Modifications to It.

In 2007, Porsboll filed a motion requesting a fixed amount of monthly child support based on the Nevada child support statutes, rather than on the formula set forth in the 1998 divorce decree, and a judgment for the accrued child support debt. *Vaile II*, 128 Nev. 27, 29, 268 P.3d 1272, 1273. The district court judge granted the requested relief in October of 2008, and issued a judgment for the accrued debt based upon a support obligation of $1,300.00 per month plus penalties. *Id.*

This Court reversed the judge's order and remanded the matter, holding that: 1) the district court lacked subject matter jurisdiction to modify the child support obligation pursuant to the Uniform Interstate Family Support Act (UIFSA); and, 2) the

amount of child support ordered by the lower court, having been set at a fixed amount, constituted a modification of the original support obligation. *Id.* at 33–34, 268 P.3d at 1276–77. However, this Court noted that because it appeared that no other jurisdiction had entered an order regarding child support, the order from Nevada controlled. *Id.* at 31, 268 P.3d at 1275. In a footnote, this Court acknowledged the possible existence of a child support order in Norway, and so remanded the matter to the district court to "determine whether such an order exists and assess its bearing, if any, on the district court's enforcement of the Nevada support order." *Id.* at 31 n.4, 268 P.3d at 1275 n.4.

D. *Vaile III* Affirms that the Nevada Order Controls Over the Order in Norway.

On remand from *Vaile II*, the district court judge determined that Norway entered a child support order; however, the district court judge also concluded that the Nevada support order controlled because Norway lacked jurisdiction to modify the Nevada order. *Vaile III*, 133 Nev. Adv. Op. 30, ___, 396 P.3d 791, 794 (2017). On appeal, the Nevada Court of Appeals issued an order, in pertinent part, concluding that Nevada's child support order controlled over Norway's order. *See Vaile v. Vaile*, Docket Nos. 61415 & 62797 (Order Affirming in Part, Dismissing in Part, Reversing in Part, and Remanding, Dec. 29, 2015). On rehearing, the Court of Appeals clarified its previous order but still affirmed its conclusions that Norway lacked jurisdiction to modify the Nevada decree, such that the Nevada decree was the controlling child support order. *See Vaile v. Vaile*, Docket Nos. 61415 & 62797 (Order Granting

Rehearing in Part, Denying Rehearing in Part, and Affirming, Apr. 14, 2016). On appeal, this Court concluded that pursuant to NRS 130.207, the Nevada child support order controls. *Id.*

E. The California Courts Find that California Lacks Jurisdiction to Modify the 1998 Nevada Order and Lacks Personal Jurisdiction Over Porsboll.

On December 6, 2005, in order to locate Vaile, Porsboll opened a Child Support Enforcement Program case in Nevada. When Vaile was subsequently located in Sonoma County, California, he was notified by the California Department of Child Support Services and his employer that a salary withholding was to commence. *See Vaile v. Porsboll*, 2015 WL 2454279 (Cal. Ct. App.). In response, Vaile sued his employer, Porsboll, and Porsboll's attorneys for abuse of process and conversion. *Id.* The California court dismissed the action for lack of personal jurisdiction. *Id.*

In February 2010, Vaile asked a California district court to declare all of the Nevada orders void for lack of personal and subject matter jurisdiction, or alternatively, to register and modify the 1998 Nevada order only. *Id.* The California court issued an order vacating Vaile's attempted registration of the 1998 Nevada order. *Id.* It held that Nevada did not have continuing exclusive jurisdiction to modify its 1998 support order, so the post-1998 Nevada support orders were noncompliant with UIFSA and the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA). *Id.* The court

also refused to modify the 1998 Nevada order, concluding that California had no jurisdiction to do so. *Id.*

In May 2012, Vaile filed a "notice of motion" in the California district court requesting registration of the Norwegian support orders and a determination that they were "controlling" under UIFSA. *Id.* Porsboll was served by mail in Norway. *Id.* On November 1, 2012, the California court entered an order finding that the Norwegian orders were controlling. *Id.* Given the payments Vaile had made, the California court calculated Vaile's remaining support arrearage at $3,919 (considerably less than he owed under the Nevada decree). *Id.*

On June 10, 2013, Porsboll, through her current private counsel, filed a request in California to have the California court orders set aside, arguing that the California court had no jurisdiction over her. *Id.* On May 22, 2015, the California court of appeals overturned the California trial court's order of November 1, 2012, and held that California did not have personal jurisdiction over Porsboll, a requirement for a controlling order determination. *Id.* The California court of appeals ordered Vaile to file a copy of its opinion in Kansas where he had relocated. *Id.* The court of appeals ordered Porsboll's counsel to file a copy of the opinion with the Nevada courts and with the agencies in Norway that had issued the child support orders there. *Id.*

F. The Kansas Court Enjoins the Enforcement of the Nevada Order.

In 2012, Vaile relocated from California to Kansas. *Id.* In January 2013, Vaile filed a motion in a Kansas trial court seeking a determination of controlling order in favor of the 2012 California trial court order—which found the Norway order controlling—and a permanent injunction against the enforcement of the Nevada child support order. *See Vaile v. Porsboll,* Twenty-First Judicial District Court for Riley County, Kansas, Case No: 2012-DM-000775 (2013); AA 132.[2] The Kansas court confirmed the registration of the 2012 California child support order as a valid sister-state judgment. *Id.;* AA 133. The court also found that Vaile had fulfilled his child support obligation under the Norway order—which it found was the controlling order. *Id.*; AA 134. Finally, the Kansas court issued a permanent injunction barring Kansas officials from enforcing any child support order other than the 2012 California order. *Id.*; AA 135.

In 2014, the Kansas court ordered that certain funds be returned to Vaile because they were seized from Vaile's bank account in accordance with the Nevada child support order. *Id.*; AA 138. It did this despite the California court of appeals order vacating the orders of the lower California courts for lack of jurisdiction. The Kansas

[2] According to the Kansas order, Porsboll was properly served, but did not participate. *Id.*; AA 128-29.

court maintained—consistent with its prior confirmation of the 2012 California child support order—that orders issued by the Nevada courts were unenforceable. *Id.*; AA 139.

In 2015, in response to a request for clarification from Vaile, the Kansas trial court affirmed the validity of the Norwegian order and upheld the permanent injunction barring Nevada from enforcing its order in Kansas. Id; AA 149. Vaile requested the Kansas trial court to clarify whether the order of the California court of appeals altered the Kansas court's decision to give precedence to the order in Norway. Vaile's apparent objective was to affirm the validity of the order in Norway, thus definitively barring Nevada from enforcing its order in Kansas. *See Vaile v. Porsboll*, Twenty-First Judicial District Court for Riley County, Kansas, Case No. 2012-DM-000775 (2015); AA 145-49.

G. The Nevada Family Court Orders Nevada CSEP to Enforce the 1998 Nevada Child Support Order—Thus Requiring It to Litigate in Kansas, in Direct Contravention to the Rulings of the Kansas Courts.

Since Vaile was located out of state, the Nevada child support case was transferred in 2012 from the Office of the Clark County District Attorney to the State of Nevada, Division of Welfare and Supportive Services, Child Support Enforcement Program, Nevada Intergovernmental Initiating Office (NIIO).

In 2014, Nevada CSEP sent a letter to Porsboll's attorney advising him that it was closing the child support case because Kansas determined that Vaile had paid his

Norway child support obligation in full, and Nevada had no ability to enforce the Nevada child support order in Kansas due to the injunction issued in Kansas. AA 142–43.

In a letter dated November 30, 2017, Nevada CSEP again advised Porsboll's counsel that it was closing the child support case due to the injunction issued in Kansas. AA 151. But on March 12, 2018, in an effort to challenge the Kansas court rulings, Porsboll filed a "Motion for Writ of Mandamus" in the Nevada Family Court. AA 1–7. Although Nevada CSEP was not a party to the twenty-year-old sealed divorce case in which Porsboll filed her motion, she altered the case caption to name Nevada CSEP as a "real party in interest." AA 1. Porsboll sought a writ of mandamus requiring Nevada CSEP, by and through the Office of the Attorney General, to overturn the Kansas order and begin immediate collection of child support arrears based on the 1998 Nevada divorce decree. AA 1–7.

Nevada CSEP did not initially respond to the motion because it was not a party to the proceeding and had not been served under NRS 41.031 or NRCP 4(d). AA 17–19. The Family Court initially granted Porsboll's motion for mandamus relief, but later set its ruling aside so that the matter could be heard on the merits. AA 12–14 and 91–92. Even though Nevada CSEP was never made a party to the action, the Family Court held that personal service of the motion upon Nevada CSEP was not required. AA 92. Ultimately, the Family Court issued an Order for Hearing Held

July 24, 2018, filed on August 6, 2018, and an Order of Mandamus filed September 5, 2018, which are the subject of this appeal. AA 105–111. Pursuant to these orders, the Family Court ordered Nevada CSEP to do whatever was necessary to void the Kansas rulings in favor of the 1998 Nevada child support order. AA 12–14, 109–111. As construed by Porsboll and her attorney, these orders require Nevada CSEP to litigate in Kansas on behalf of Porsboll. AA 179–190.

V. SUMMARY OF THE ARGUMENT

The Family Court had no subject matter jurisdiction to grant a writ of mandamus in response to a motion for mandamus relief. Having been filed directly with the Family Court in a twenty-year-old sealed divorce case, Porsboll's request for mandamus relief was neither filed in the proper form required by NRS 34.170, nor was it filed as an original pleading with the Clerk of the Eighth Judicial District Court (Clerk) as required by EDCR 2.05. Had it been so filed, the matter would have been properly assigned to a trial court of general jurisdiction in accordance with EDCR 1.62. Nevada CSEP was not a party to the divorce case and could not have been made a party simply be adding the agency to the case caption as a "real party in interest." These procedural defects are jurisdictional in nature because strict adherence to filing requirements is required before a court may acquire jurisdiction to review the actions of an executive branch agency. *See Washoe County v. Otto*, 128 Nev. 424, 431–32, 282 P.3d 719, 724–25 (2012).

Furthermore, in acting upon Porsboll's impromptu request for mandamus relief, the Family Court exceeded its subject matter jurisdiction as explicitly limited in scope by article 6, § 6(2) of the Nevada Constitution and NRS 3.223. The matter was never properly assigned by the clerk of the district court to a judge having general jurisdiction. Instead, the Family Court unilaterally assumed jurisdiction, thus expanding its jurisdictional reach beyond legal boundaries. Although this Court held, in *Landreth v. Malick*, 127 Nev. 175, 251 P.3d 163 (2011), that family law judges have general jurisdiction along with their counterparts who hear civil and criminal cases, the facts in *Landreth* are readily distinguishable from the facts of this case.

Additionally, the Family Court did not have personal jurisdiction over Nevada CSEP because Porsboll did not serve upon Nevada CSEP a petition for writ of mandamus in the manner required by law. Because an action for mandamus relief is an original action requiring an application to a court of general jurisdiction, *see* NRS 34.170, the petitioner must serve process upon the respondent in the manner required by NRCP 4(d). And when, as here, the respondent is the state of Nevada, the petitioner must also comply with the service requirements of NRS 41.031(2). As a result of Porsboll's failure to comply with these mandatory service requirements, the Family Court did not acquire personal jurisdiction over Nevada CSEP, and thus its Order of Mandamus is void. *See In re Estate of Black*, __Nev.__, 367 P.3d 416,

417–18 (2016) (holding that court's failure to comply with statutory notice requirement deprived it of personal jurisdiction in probate matter).

Finally, the Family Court failed to adhere to the applicable legal standards for evaluating a petition for mandamus. The Order of Mandamus misapprehends the role and responsibility of Nevada CSEP with respect to the enforcement of court-ordered child support under the Uniform Interstate Family Support Act (UIFSA). As drafted, the Order of Mandamus requires Nevada CSEP to take all necessary steps to reconcile the Kansas and Nevada child support orders so that the Nevada order is controlling. As construed by Porsboll and her attorney, the Order of Mandamus requires Nevada CSEP to litigate in Kansas on behalf of Porsboll. AA 179–190. Because Nevada CSEP has no statutory duty to litigate on behalf of any child support recipient, it cannot be compelled to litigate in Kansas pursuant to Nevada's mandamus statutes.

VI. ARGUMENT

A. The Standard of Review

As it relates to the jurisdictional issues in this case, the standard of review is *de novo* because questions about the Family Court's jurisdiction, both personal and subject matter, are questions of law and must be reviewed without deference to the Family Court's conclusions. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009); *Viega GmbH v. Eighth Judicial District Court*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014).

With respect to its decision to grant mandamus relief to Porsboll, the Family Court was obligated to show deference to Nevada CSEP. Given the facts and circumstances of this case, the Family Court was required to show deference to Nevada CSEP because mandamus may not be invoked by a trial court to control discretionary action unless that discretion is manifestly abused or is exercised arbitrarily and capriciously. *Round Hill General Improvement District v. Newman*, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981). Likewise, mandamus may not be used to compel the agency to act in a specified manner when it has no clear and present legal duty to do so. *Id*. at 604.

But the Family Court afforded no deference to Nevada CSEP when it ordered the agency to take enforcement action well beyond the scope of the agency's duties as outlined in NRS 130.307. The scope of NRS 130.307 is a question of statutory construction. And while this Court reviews questions of statutory construction *de novo*, *see Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011), it should also review the applicable facts and law in this case with appropriate deference to Nevada CSEP as required by the mandamus standard. In other words, this Court should apply the standard that the Family Court neglected to apply when it issued its Order of Mandamus.

B. The Family Court Did Not Have Subject Matter Jurisdiction over Porsboll's Request for a Writ of Mandamus Because it was Improper as to Form, and was Filed in a Divorce Action to Which Nevada CSEP was Not a Party and Could Not be Made a Party.

A writ of mandamus is available under NRS 34.160 to compel the "performance of an act which the law especially enjoins as a duty resulting from an office." But a writ may only issue "upon an affidavit, on the *application* of the party beneficially interested." NRS 34.170 (emphasis added). No statutory authority exists to allow Porsboll to consolidate a petition with a motion filed in the same case, or to allow the Family Court to grant a writ based on a motion.

In short, a writ of mandamus may not be granted in response to a motion in a divorce case because mandamus is an original action against a named public official seeking to compel that public official to perform a function or act that is required by law. NRS 34.160. As a public agency, Nevada CSEP has no legal interest in private marital disputes. It may not be joined as a third-party plaintiff or defendant to a divorce case, *see* NRCP 14, or otherwise made a party to the case by way of a modification to the case caption. *State v. Mack*, 26 Nev. 430, 69 P. 862 (1902) ("It has been settled … that a proceeding in mandamus, under our practice act regulating the same, is a civil remedy, with the qualities and attributes of a civil action.").

For a writ of mandamus to issue, Porsboll must be the petitioner and Nevada CSEP must be the respondent in a case that is properly filed with a district court and

assigned by its clerk to a division of the court having general jurisdiction over civil matters. *See e.g.,* EDCR 2.05. When properly filed, a petition for mandamus falls within the original jurisdiction of Nevada's district courts, Nev. Cont. art. 6, § 6(1), but it is available as a remedy only when the petitioner has no plain, speedy, or adequate remedy at law, NRS 34.170.

Porsboll's failure to adhere to applicable filing requirements deprived the Family Court of subject matter jurisdiction over her request for mandamus relief. Since she neither prepared a petition in proper form, nor filed it as an original action with the clerk of the district court, each as required by NRS 34.170 and EDCR 2.05, respectively, she did not invoke the district court's subject matter jurisdiction over mandamus actions. For example, in *Washoe County v. Otto,* this Court held that a litigant's failure to adhere to the filing requirements of the Nevada Administrative Procedures Act (APA), as codified at NRS Chapter 233B, deprived the district court of subject matter jurisdiction over a petition for judicial review. 128 Nev. 424, 431–32, 282 P.3d 719, 724–25 (2012). The Court reasoned that the judiciary has "no inherent appellate jurisdiction over official acts of administrative agencies except where the legislature has made some statutory provision for judicial review." *Id.*, 128 Nev. at 431, 282 P.3d at 724. Accordingly, the judiciary may not assume jurisdiction over a case unless it has been presented for review in the manner required by the APA. *Id.*

Insofar as it concerns the jurisdiction of the district courts, a request for mandamus relief is analogous to a petition for judicial review under the APA because both types of action involve judicial scrutiny of the acts of an executive branch agency. In fact, mandamus is a substitute for judicial review when there exists no explicit statutory process for adjudicating the facts of a dispute before an agency or the agency's administrative law judge or hearing officer. *See State Department of Health and Human Services v. Samantha Inc.*, __Nev.__, 407 P.3d 327, 329 (2017). In *Samantha Inc.*, for example, this Court noted that "[e]quitable remedies, such as declarative and injunctive relief, or a petition for mandamus, may be available in the discretion of the court and only when legal remedies, such as statutory review, are not available or are inadequate." *Id.* (internal citations and quotations omitted).

Similar to an action for judicial review under the APA, an action for mandamus, as authorized by statute, implicates the separation of powers doctrine because of the necessary interplay between the powers of the judiciary and the discretionary functions of the executive branch of government. In *Del Papa v. Steffen*, this Court recognized that the separation of powers doctrine denies the judiciary the power to usurp the functions of another branch of government. 112 Nev. 369, 377, 915 P.2d 245, 250 (1996). And the mandamus standard of review, rooted as it is the separation of powers doctrine, underscores the need for strict adherence to filing and service requirements so that mandamus cases are properly framed and characterized as original proceedings

involving the interplay between the functions of different branches of government. Consequently, the Court should extend its reasoning in *Otto*, supra, to apply to actions for mandamus relief. By the reasoning in *Otto*, the Family Court lacked subject matter jurisdiction to entertain a request for mandamus relief because it was improperly made by way of a motion in a divorce action.

Moreover, Nevada CSEP does not directly represent the beneficiaries of child support orders issued in Nevada. NRS 130.307(6); *see also Blessing v. Freestone*, 520 U.S. 329, 345–48 117 S. Ct. 1353, 1361–63 (1997) (holding that Title IV-D of the Social Security Act did not confer upon a child support recipient an individual right to compel collection action by a state agency). Accordingly, the Family Court may not compel Nevada CSEP, through mandamus proceedings, to litigate child support issues on behalf of either of the parties to a divorce action. In the context of an action for mandamus relief, the role of district court is to determine whether a government agency or public official failed to perform a ministerial duty, or performed a discretionary function in an arbitrary or capricious manner. *Round Hill General Improvement District*, 97 Nev. at 603, 637 P.2d at 536. As a limited-jurisdiction division of the district court, the Family Court plays no role in determinations about whether an executive branch agency fulfilled a statutory duty or performed its discretionary function in an arbitrary and capricious manner. Nev. Const. art. 6, § 6(2); NRS 3.223; cf. Nev. Const. art. 6, § 6(1). The holding in *Landreth*, supra, is inapposite.

In *Landreth*, the Court concluded "that a family court judge maintains all the constitutional powers of a district court judge." 127 Nev. at 190, 251 P.3d 163, 172–73. But the case did not address a situation in which a family court judge had unilaterally bypassed filing requirements and division assignment processes. NRS 3.223 excludes the possibility that mandamus cases may be assigned to the Family Court, and since the Family Court ignored this explicit limitation upon case assignments, it acted in excess of its subject matter jurisdiction notwithstanding the inherent powers of a family court judge.

C. The Family Court Did Not Have Personal Jurisdiction over Nevada CSEP Because Porsboll did Not Serve Upon Nevada CSEP a Petition for Writ of Mandamus in the Manner Required by NRS 41.031 and NRCP 4(d).

Filed in a twenty-year-old sealed divorce proceeding, Porsboll's motion was not properly served upon Nevada CSEP and simply added the agency to the caption as a "real party in interest" to the case. Nevada CSEP was never properly named as a party to a case pending before a court of general jurisdiction, and it cannot properly be characterized as a "real party in interest" to a divorce case before the Family Court.

And because service of process was deficient in this case, the Family Court lacked personal jurisdiction over Nevada CSEP. Over the objection of Nevada CSEP, the Family Court held that Porsboll's motion was not required to be presented as an original action, thereby eliminating any need for adherence to personal service requirements. AA 92. In asserting personal jurisdiction over Nevada CSEP, the Family

Court ignored that a petition for a writ of mandamus is an original action against Nevada CSEP requiring service of process in the manner prescribed by NRS 41.031 and NRCP 4(d).

NRS 34.150 to 34.310 govern the filing and judicial review of petitions for mandamus. With only a few exceptions, mandamus actions are subject to the Nevada Rules of Civil Procedure. NRS 34.300. Furthermore, with respect to service, NRS 34.280 provides that a writ of mandamus "shall be served in the same manner as a summons in a civil action, unless the court orders otherwise." In *State v. Gracey*, 11 Nev. 223 (1876), the Court noted that the writ of mandamus and associated return "are usually regarded as constituting the pleadings in proceedings by mandamus—the writ standing in the place of the declaration or complaint, and the return taking the place of the plea or answer in an ordinary action at law." Accordingly, a writ petition, standing in the place of a complaint, must be filed as an original action against the state of Nevada. As with a complaint, a writ must be personally served upon Nevada CSEP in the manner provided by NRS 41.031 and NRCP 4(d).

Porsboll's certificate of service certifies only that she completed service by mail. AA 9. She has not personally served the Attorney General at the Attorney General's Office in Carson City, as required by NRS 41.031, nor has she personally served a person serving in the office of the administrative head of Nevada CSEP. Without personal service of process, and notwithstanding its lack of subject matter

jurisdiction over mandamus actions, the Family Court cannot assert personal jurisdiction over Nevada CSEP. If the Family Court's ruling were allowed to stand, then any private party could simply add the state of Nevada as a "real party in interest" to the caption of an existing case, thereby avoiding the service requirements of NRS 41.031 and NRCP 4(d). Since Porsboll did not serve a writ as required by law, the Order of Mandamus is void. *See In re Estate of Black*, 367 P.3d at 417–18.

D. The Family Court Did Not Adhere to the Legal Standard that Governs the Review of Petitions for Mandamus Because it Made no Finding That Nevada CSEP Refused to Perform a Statutory Duty, or Performed a Discretionary Function in a Manner that was Arbitrary and Capricious.

The Order of Mandamus misapprehends the role and responsibility of Nevada CSEP with respect to the enforcement of court-ordered child support under the UIFSA. As construed by Porsboll, the Order of Mandamus actually requires Nevada CSEP to litigate in Kansas on behalf of Porsboll. AA 179–90. While Porsboll's interpretation is admittedly unreasonable, the Order of Mandamus nonetheless disregards the mandamus standard of review because it directs Nevada CSEP to take action that exceeds the scope of its statutory duties. Codified at NRS Chapter 130, UIFSA is a uniform act adopted in all 50 states, thus creating a single-order system in which only one state's child support order is effective at any given time.

In this case, however, there is a conflict between child support orders in Nevada and Kansas. Assisting Kansas authorities as appropriate, Nevada CSEP has a

responsibility under NRS 130.307(2) to facilitate a child support enforcement action in Kansas—namely an action commenced under Kansas law by Kansas authorities—when Vaile is located in Kansas. Conversely, when he is located in Nevada, Nevada CSEP has a responsibility to facilitate an action in Nevada under Nevada law. But it has no legal authority or duty to reconcile a conflict between conflicting child support orders in Nevada and Kansas.

By statute, Nevada CSEP does not represent either party to a child support order, NRS 130.307(6), and thus it has no legal stake in the outcome of a dispute over which state's order controls the amount of the support obligation in question. The responsibility of Nevada CSEP is merely to obtain verified information and evidence for a Nevada court or an out-of-state court, as applicable, based upon the physical location of the child support obligor. NRS 130.307(3)(b). The Order of Mandamus improperly directs Nevada CSEP take unspecified legal action on Porsboll's behalf in order to have the Kansas court's permanent injunction vacated.

"A writ of mandamus will not issue to compel a public officer to perform an act that the officer has no legal duty or authority to perform." *Nevada Mining Association v. Erdoes*, 117 Nev, 531, 536, 26 P.3d 753, 756 (2001). "Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously." *Round Hill General Improvement District*, 97 Nev. at 603-04, 637 P.2d at 536. Nevada CSEP has performed its statutory duties and has no legal

duty or authority to overturn a Kansas court order, much less commence an enforcement action in Kansas in violation of that order.

In the proceedings before the Family Court, Porsboll argued that Nevada CSEP failed to carry out its duties under NRS 130.307. NRS 130.307(1) and (2) establish the following duties for Nevada CSEP:

> 1. A support-enforcement agency of this State, upon request, shall provide services to a petitioner in a proceeding under this chapter.
> 2. A support-enforcement agency of this State that is providing services to the petitioner shall:
>
> (a) Take all steps necessary to enable an appropriate tribunal of this State, another state or a foreign country to obtain jurisdiction over the respondent;
>
> (b) Request an appropriate tribunal to set a date, time and place for a hearing[.] . . .

Nevada CSEP has performed these statutory duties. Both California and Kansas obtained jurisdiction over Vaile and held hearings. After the California decision was overturned, the Kansas court held a second hearing and continued its permanent injunction against collection of amounts owed under the Nevada order. Nevada CSEP cannot collect child support in Kansas in contravention of that decision. Nevada CSEP was not a party to the Kansas proceedings and does not have standing to challenge the Kansas order because it does not represent Porsboll. NRS 130.307(6) states: "This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support agency or the attorney for the agency and the natural person assisted by the agency." This provision makes it clear that NRS 130.307

imposes no duty upon Nevada CSEP to represent Porsboll in Kansas or elsewhere. The agency has fulfilled its responsibility under NRS 130.307 by referring the matter to child support enforcement authorities in Kansas. AA 251–53.

VII. CONCLUSION

Based on the foregoing, Nevada CSEP respectfully requests that the Nevada Supreme Court reverse the Family Court's decision to order mandamus relief with instructions to vacate its Order of Mandamus.

Respectfully submitted this 18th day of March, 2019.

AARON D. FORD
Attorney General

By: /s/ *Gregory L. Zunino*
GREGORY L. ZUNINO
Nevada State Bar No. 4805
Chief Deputy Attorney General
Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP, the type face 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 Microsoft Word 2010 in font size 14 and font style Times New Roman.

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 proportionately spaced, has a typeface of 14 points or more and contains 6947 words.

3. Finally, 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 NRAP 28e(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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 18th day of March, 2019.

AARON D. FORD
Attorney General

By: /s/ *Gregory L. Zunino*
GREGORY L. ZUNINO
Nevada State Bar No. 4805
Deputy Solicitor General
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 18, 2019.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Marshal S. Willick, Esq.
3591 E. Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Robert Scotlund Vaile
8121 Lincoln Street
Wamego, Kansas 66457

Dated this 18th day of March, 2019.

/s/ *Sandra Geyer*
State of Nevada
Office of the Attorney General