IN THE SUPREME COURT OF THE STATE OF NEVADA

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AHED SAID SENJAB,

Appellant,

vs.

MOHAMAD ALHULAIBI,

Respondent.

S.C. No.: 81515

D.C. Case No.: D-20-606093-D

APPELLANT'S FAST TRACK STATEMENT

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1. Name of party filing this fast track statement:

Appellant, Ahed Said Senjab.

2. Name , Law firm, address, and telephone number of attorney submitting this fast track statement:

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3. Judicial district, county, and district court docket number of lower court proceedings:

Eighth Judicial District Court, Family Division,

Clark County

District Court Case Number: D-20-606093-D

4. Name of Judge issuing judgment or order appealed from:

Honorable T. Arthur Ritchie, Jr.

5. Length of trial or evidentiary hearing:

No trial or evidentiary hearing was held. There was a one hour and fifty-two minute Motion Hearing held on June 16, 2020.

6. Written Order or Judgment appealed from:

Findings of Fact, Conclusions of Law, Decision and Order filed on June 17, 2020.

7. Date that written notice of the appealed written judgment or order's entry was served:

The Notice of Entry of Order was entered and served on June 17, 2020.

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4).

N/A

9. Date notice of appeal was filed:

The Notice of Appeal was filed on July 16, 2020, 29 days after the Notice of Entry was filed.

10. Specify the statute, rule governing the time limit for filing the notice of appeal:

NRAP 4(a).

11. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1).

12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal:

None.

13. **Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:**

Not aware of any such proceedings.

14. **Procedural history:**

A *Complaint for Divorce* was filed by Ahed Said Senjab on March 23, 2020, in Clark County, Nevada. The case was assigned to Department H, the Hon. T. Arthur Ritchie presiding. Mohamad Alhulaibi filed a *Motion to Dismiss for Lack of Jurisdictional Requirements* on April 14, 2020, in lieu of an *Answer*.

Ahed filed an *Opposition* on April 24, and Mohamed filed his *Reply* on May 13. After a continuance, and various exhibits and supplements were filed, the continued hearing was held on June 16. The Court made its decision and filed its *Findings if Fact, Conclusions of Law and Judgment* and *Notice of Entry* on June 17.

On June 29, Mohamad filed a motion seeking to pick up the parties' child and take him to Saudi Arabia. The Willick Law Group appeared as Co-Counsel and Appellate Counsel on July 1, and Ahed filed her *Opposition* and a countermotion seeking abduction prevention measures the same day.

Ahed filed her Notice of Appeal on July 16, 2020. Through her appellate attorneys, Ahed filed a Supplement concerning the pending cross-motions and a stay on appeal on July 17, which Mohamed opposed and sought to strike.

At a hearing on August 4, the Court denied Mohamed's petition and made some temporary orders while the appeal is pending, noting that the Extended Order of Protection granted to Ahed against Mohamed remained in effect until February, 2021.

This Fast Track Statement follows.

15. **Statement of Facts:**

The parties were married on February 17, 2018, in Saudi Arabia. Mohamad moved to Las Vegas, Nevada in August 2018 on an F1 student Visa, attending school and working as a graduate assistant.[1]

Upon receiving F-2 Visas as dependents under Mohamed's F-1 Visa, Ahed and the parties' minor child Ryan moved to Las Vegas on January 13, 2020.

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[1] I AA 229.

The parties separated on or around February 10, 2020, due to what Ahed described as severe domestic violence in the relationship including verbal, physical, and economic abuse, including threats to kidnap the child and to kill Ahed's family members.[2] Ahed filed a police report on that date alleging domestic battery. Mohamed denies any abuse occurred.

Following the incident on February 10, Ahed and Ryan went to Safe Nest, a local domestic violence shelter.

On February 14, 2020, Ahed filed an application for and was granted a Temporary Protection Order (TPO) in Case No. T-20-203688-T; later, an Extended Order of Protection (EOP) was granted for one year, expiring February 14, 2021.[3] The EOP states in part:

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[2] I AA 92-111.

[3] I AA 112-124.

> The Court, having jurisdiction under and meeting the requirements of Chapter 125A of the Nevada Revised Statutes (UCCJEA), grants to the Applicant temporary custody of the following minor child of the parties: Ryan Ahulaibi, DOB 2-161-19.[4]

Ahed filed for divorce from Mohamed on March 24, 2020, and sought independent immigration relief for herself and Ryan.[5] Mohamed apparently graduated from UNLV in May of 2020, although his education may continue. Ahed is not currently employed.

16. **Issues on Appeal:**

a. Whether the district court has jurisdiction to hear a divorce action filed by a person resident in Nevada for more than 6 weeks regardless of domicile.

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[4] I AA 113.

[5] I AA 2.

b. Whether, regardless of divorce jurisdiction, Nevada can exercise child custody jurisdiction over a child physically present in Nevada with both parents.

c. Whether, regardless of divorce jurisdiction, Nevada can exercise child support jurisdiction over a child physically present in Nevada with both parents.

17. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: Yes X No ____.

18. **Legal Argument:**

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MISCELLANEOUS

The district court judge explained at the relevant hearing that the sole basis for his dismissal of the divorce action in its entirety was his conclusion that federal immigration law, as a matter of pre-emption, had made it impossible for persons in Nevada holding an F-1 visa to sue, or be sued, for divorce.[6]

The ruling was based entirely on a mis-reading of a single federal case, *Park v. Barr*, 946 F.3d 1096 (9th Cir. 2020). Unlike this case, *Park* involved a B-2 tourist visa holder; the lower court had affirmed an agency determination denying Ms. Park's petition for naturalization, finding that California would not recognize her divorce under Korean law because she resided in California at the time of that divorce, making her subsequent remarriage to a United

[6] II AA 405-406.

States citizen invalid. The Ninth Circuit reversed, finding Ms. Park's divorce, and remarriage, both valid.

In fact, *Park* made ***no*** finding of pre-emption, and the family court judge's reliance on that case as a basis for finding pre-emption was misplaced. The word "pre-emption" is not even used in the opinion. Rather, the federal court found that "[t]he law of the state in which the marriage was celebrated governs the validity of a marriage in the immigration context." Because California had adopted the "Uniform Divorce Recognition Act" in 1948, domicile in California would have invalidated the nonimmigrant's divorce and re-marriage.[7]

[7] Nevada has never adopted that 1948 act, and the California law that vexed the federal court does not exist here.

The court determined that "under the circumstances here" it would "read narrowly" the controlling California case law that permits a nonimmigrant visa holder to divorce in California irrespective of immigration status or domicile; that case law holds that "nonimmigrant status does not preclude a finding of residence under California law for purposes of obtaining a dissolution of marriage").[8]

In fact, the Ninth Circuit made a point of noting that *Dick* "interpreted the word 'residence' rather than 'domicile,'" and distinguished it on that basis, criticizing the court below for "conflating" the two concepts, and noting that

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[8] *In re Marriage of Dick*, 15 Cal. App. 4th 144, 154, 18 Cal. Rptr.2d 743 (1993) (a nonimmigrant on a renewable visa "may have the dual intention of remaining in this country indefinitely by whatever means including renewal of a visa and of returning to his or her home country if so compelled").

domicile consists of both the act of residence and the intention to permanently remain.[9]

The Ninth Circuit concluded that the immigrant was not a "domiciliary" of California, and therefore could divorce under Korean law in its embassy

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[9] Residence and domicile are distinct concepts, sometimes listed as alternative bases for court jurisdiction. *See*, *e.g.*, 10 U.S.C. § 1408(c)(4), listing residence ***or*** domicile ***or*** consent as bases for division of military retirement benefits in a divorce action. The words have had different meanings in different places, and those meanings have evolved over time. In some places "residence" is a physical question of location at the time of filing, while "domicile" is that permanent home "to which one returns." *See Smith v. Smith*, 288 P.2d 497, 45 Cal. 2d 235 (Cal. 1955); George H. Fischer, Annotation, *Residence or Domicile, for Purposes of Divorce Action, of One in Armed Forces*, 21 A.L.R. 2d 1183 (1952). For a general discussion of that evolution, *see* Marshal Willick, *Divorcing the Military: How to Attack; How to Defend*, posted at http://www.willicklawgroup.com/military_retirement_benefits, at 24-29.

despite living in the United States, and then re-marry and apply for naturalization.

In this case, the district court's misreading of *Park* led to all of the errors examined below.

I. JURISDICTION GENERALLY

Jurisdiction is a bundle of sticks, and each incident of divorce must be considered separately; it is quite possible for a court to have jurisdiction over one or more incidents of divorce without jurisdiction over others, and they are governed by separate statutes.[10]

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[10] *See*, *e.g.*, *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (jurisdiction over child support and marital status but not child custody); *Friedman v. Dist. Ct.*, 127 Nev. 842, 264 P.3d 11 (2011) (no child custody jurisdiction); Marshal Willick, *The Basics of Family Law Jurisdiction*, 22 Nev.

Marital status jurisdiction is generally a matter of traditional state law; subject matter jurisdiction over a marriage is present as long as the court has personal jurisdiction over ***either*** of the parties to the marriage, and every State is required under the Full Faith and Credit clause of the United States Constitution to recognize decrees entered by another State if that other State had personal jurisdiction over one party and afforded notice in accordance with procedural due process.[11]

Child custody jurisdiction is governed by the Uniform Child Custody Jurisdiction and Enforcement Act, enacted in Nevada as NRS chapter 125A.

Fam. L. Rep., Fall, 2009, at 11, updated as CLE for Legal Aid Center of Southern Nevada 2012, posted at http://willicklawgroup.com/published-works/.

[11] *Williams v. North Carolina*, 317 U.S. 287 (1942); *see also Sherrer v. Sherrer*, 334 U.S. 343 (1947); *Coe v. Coe*, 334 U.S. 378 (1947).

Child support jurisdiction is governed by the Uniform Interstate Family Support Act, enacted in Nevada as NRS chapter 130.

II. THERE IS NO FEDERAL PRE-EMPTION

Pre-emption of state domestic relations law is rare, and not favored. As the United States Supreme Court held in *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004):

> One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." See *In re Burrus*, 136 U. S. 586, 593-594 (1890). See also *Mansell v. Mansell*, 490 U.S. 581, 587 (1989) ("[D]omestic relations are preeminently matters of state law"); *Moore v. Sims*, 442 U. S. 415, 435 (1979) ("Family relations are a traditional area of state concern"). So strong is our deference to state law in this area that we

have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992).

. . . .

Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432-434 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts.

Put otherwise, federal pre-emption is only to be found when it is "positively required by direct enactment" of Congress:

Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area. Thus we have held that we will not find preemption absent evidence that it is "positively required by direct enactment."[12]

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[12] *Mansell v. Mansell*, 490 U.S. 581, 587, 109 S. Ct. 2023, 2028 (1989), *quoting Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581, 99 S. Ct. 802, 808, 59

> On the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . Before a state law governing domestic relations will be overridden, it "must do 'major damage' to 'clear and substantial' federal interests."[13]

This is not such a situation – nowhere has Congress said that a foreign national cannot sue – or be sued – for divorce while physically present in the United States, and permitting such a divorce damages no federal interest. Divorce is strictly a state function in which the federal government has no authority. The federal courts have maintained this position as far back as the mid-1800s.[14]

L. Ed. 2d 1 (1979) (*quoting Wetmore v. Markoe*, 196 U.S. 68, 77, 25 S. Ct. 172, 176, 49 L. Ed. 390 (1904)).

[13] *Rose v. Rose*, 481 U.S. 619, 625, 107 S. Ct. 2029, 95 L. Ed.2d 599 (1987).

[14] "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony, either as

III. CHILD CUSTODY JURISDICTION IS IN NEVADA (UCCJEA)

During the proceedings below, without explanation, the district court stated that Nevada is "not the Home State" of the minor child; the Court did not address child custody jurisdiction in any way in its decision.[15] At earlier hearings, the district court incorrectly stated that Nevada did not have custody jurisdiction when both parties and the child moved here,[16] which error was exacerbated by the false assertion by Mohamed's counsel that Saudi Arabia was the "Home State" of the child.[17]

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an original proceeding in chancery or as an incident to divorce a vinculo, or to one from bed and board." *Barber v. Barber*, 62 US 582 (1859).

[15] I AA 226, 228-235.

[16] III AA 516; see also II AA 394.

[17] III AA 514. The several reasons Saudi Arabia is not and cannot be the child's "home state" are discussed below.

Subject matter jurisdiction over child custody is governed by the UCCJEA,[18] and is a completely distinct analysis from divorce jurisdiction.[19] It is not discretionary, and there are no "gray areas." Every state (except Massachusetts) has adopted the UCCJEA as its controlling authority on the issue of child custody jurisdiction.

The objectives of the UCCJEA are to prevent jurisdictional conflicts and re-litigation of child custody issues, and to deter child abduction.[20] The

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[18] NRS 125A.305.

[19] The test is considerably different from the personal jurisdiction test for divorce – the statute states on its face that "physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." NRS 125A.305(3). *See also The Basics of Family Law Jurisdiction*, *supra*.

[20] UCCJEA § 101 (1997), cmt., 9 U.L.A. 657 (1999); *see also, e.g., Ruffier v. Ruffier*, 190 S.W.3d 884, 889 (Tex. App. 2006).

UCCJEA addresses those objectives by limiting to ***one*** court the authority to make custody determinations, even though more than one court may have personal jurisdiction over the parties and a legitimate interest in the parent-child relationship.[21]

A child's "home state" is 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 commencement of a child custody proceeding, ***if*** a parent remained in that prior state.[22] Where, as here, the child and ***both*** parents have left a prior jurisdiction and moved to this

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[21] *See Ogawa v. Ogawa*, 125 Nev. 660, 221 P.3d 699 (2009), citing to *Hart v. Kozik*, 242 S.W.3d 102, 106-07 (Tex. App. 2007).

[22] NRS 125A.085(1); *Freidman*, *supra*.

state when proceedings were first filed, only ***this*** state has jurisdiction to proceed, and the prior state has no authority to do so.[23]

The applicable test is for "residence" under Nevada custody law (meaning actual physical *location*), not "domicile."[24] The official comments to the UCCJEA make it clear that the statutory language is intended to deal with where the people involved ***actually live***, not with any sense of a technical domicile.[25]

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[23] The definition of "home state" (UCCJEA § 201) explicitly applies to a former home of the child ***only*** if "the child is absent from [that] State **but a parent or person acting as a parent continues to live in [that] State**. *See* NRS 125A.305.

[24] *Davis v. Ewalefo*, 131 Nev. 445, 352 P.3d 1139 (2015) ("Ewalefo's and E.D.'s residency made Nevada E.D.'s "home state" as defined in NRS 125A.085 when Davis filed this action").

[25] *See* Official Comments to Section 202. Even in the stricter discussions of modification jurisdiction after a state has issued a custody order,

No other "state" has jurisdiction for multiple reasons, including that (1) everyone has left the prior state; (2) there is no Home State that could exercise CEJ under UCCJEA definitions; and (3) since all parties had been in Nevada for months at the time the proceedings were brought here, this state has a significant connection with the parties and child and the only relevant evidence is here. Additionally, as discussed below, neither Syria nor Saudi Arabia is eligible to be considered a "state" for UCCJEA purposes, so there ***is*** no "other state" to consider, even if one of the parents *was* still living there.

"The phrase 'do not presently reside' **is not used in the sense of a technical domicile**. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.

In short, Nevada, and ***only*** Nevada, can legitimately assert child custody jurisdiction, and the courts of this state have the duty to protect the children within its borders irrespective of any dispute over the power of its courts to grant a divorce to foreign nationals lawfully residing here.

Since all parties and the child were residing in Nevada when a custody action was first filed, the following discussion should not be necessary, save for Mohamed's insistence that custody be resolved in Saudi Arabia. As found by a large number of states, neither Saudi Arabia nor Syria can be considered a "state" under the UCCJEA because their law does not offer both parties due process and their family law has been found to "violate fundamental principles of human rights," barring them from being considered places of "simultaneous proceedings" under the UCCJEA.[26]

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[26] *See* NRS 125A.225(3); *see also*, *e.g.*, *Ali v. Ali*, 279 N.J. Super. 154,

Throughout the proceedings below, Mohamed conflated the concept of "Home State" under the UCCJEA with "Habitual Residence" under the Hague Convention on the Civil Aspects of International Child Abduction, but all such references were irrelevant for several reasons.

First, neither of those countries is a signatory to the Hague Convention, both are on the State Department's list of non-compliant countries,[27] and the

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652 A.2d 253 (1994) ("the law of the Sharia court was arbitrary and capricious and could not be sanctioned by the court, which used the best interest of the child as the overriding concern"; "the law of the Sharia court with regard to custody determinations offended the public policy of New Jersey"). Many more citations were provided below, and if this Court wishes fuller briefing on this point, it can move the case out of Fast Track to allow it.

[27] https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention/convention-countries.html. Neither Syria nor Saudi Arabia are signatories to the Hague Abduction Convention, nor are there any bilateral agreements in force between Syria or Saudi Arabia and

Convention expressly does not apply.[28] No children removed to either country has any realistic chance of ever being recovered.[29] Second, no Hague Petition was ever filed or considered, and no valid Hague issue is before this Court.

Under the applicable statute, there is no question that Nevada has child custody jurisdiction, and it was error for the district court to dismiss the custody claims along with the divorce action.

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the United States that would permit recovery of such children once removed. https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/International-Parental-Child-Abduction-Country-Information/SaudiArabia.html.

[28] *See Ogawa v. Ogawa*, 125 Nev. 660, 221 P.3d 699 (2009).

[29] *See*, *e.g.*, *Davis v. Ewalefo*, 131 Nev. 445, 352 P.3d 1139 (2015) (where a credible threat exists that a parent would abduct or refuse to return a child, the Hague Convention status of other countries is relevant; noting that some courts have adopted "a bright-line rule prohibiting out-of-country visitation" to such places).

IV. CHILD SUPPORT JURISDICTION IS IN NEVADA (UIFSA)

Subject matter jurisdiction over child support is governed by the UIFSA,[30] and also is a completely distinct analysis from divorce jurisdiction; the jurisdictional rules for support initiation are "deliberately expansive," and titled "Extended Personal Jurisdiction."[31]

There are multiple bases for exercise of child support jurisdiction over an obligor, operating independently and in the alternative,[32] several of which apply here, including: Personal service of summons or other notice of the child support proceeding within this State; Having resided with the child in this State; The child resides in this State by acts or directives of the defendant; and

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[30] NRS ch. 130.

[31] *See* NRS ch. 130, Article 2 (Jurisdiction). *See also The Basics of Family Law Jurisdiction*, *supra*.

[32] NRS 130.201.

Any other basis "consistent with the Constitution of this State and the Constitution of the United States for exercise of personal jurisdiction."

Simply litigating the question of child support here subjects a party to the jurisdiction of this state.[33] Under the applicable statute, there is no question that Nevada has child support jurisdiction over Mohamed, and it was error for the district court to dismiss the support claims along with the divorce action.

V. NEVADA HAS DIVORCE JURISDICTION

NRS 125.020(1) provides five bases for finding jurisdiction to grant a divorce, and ***all*** are applicable here.[34] The statute on its face and case law

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[33] *Vaile*, *supra*.

[34] (a) In which the cause therefor accrued; (b) In which the defendant resides or may be found; (c) In which the plaintiff resides; (d) In which the parties last cohabited; and (e) If plaintiff resided 6 weeks in the State before

going back a century makes it clear that Nevada law is concerned with ***residence***, not domicile, as a basis for divorce jurisdiction.[35]

While the district court stated that "residence is synonymous with domicile,"[36] under current law that is simply not so – as detailed above, both the UCCJEA and the UIFSA are concerned with physical ***presence*** – i.e.,

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suit was brought.

[35] *See*, *e.g.*, *State v. District Court*, 68 Nev. 333, 232 P.2d 397 (1951) (finding that physical presence in the county for 6 weeks was required even when the cause of action accrued here).

[36] I AA 231. The district court followed that conclusion with the correct statement that "physical presence, together with intent, constitutes bona fide residence for divorce jurisdiction," citing *Aldabe v. Aldabe*, 84 Nev. 392, 441 P.2d 691 (1968). But the district court found that the federal courts had pre-empted and overruled Nevada authority, prohibiting it from finding a resident to sue for divorce here, or a resident alien from being sued for divorce here.

"residence," and not "any sense of a technical domicile." The same holds true under Nevada law as to divorce jurisdiction.

As detailed above, the federal court ruling as to interpretations of immigration law are not controlling. Even those scholars concerned with potential interstate full faith and credit issues relating to divorce decrees based on residence (as opposed to domicile) have recognized that every state has the right to grant a divorce based on the residence of a person within its territorial borders.[37]

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[37] *See* Roddy M. Ligon, Jr., *Is Domicile a Jurisdictional Prerequisite to a Valid Divorce Decree?*, U.S. A.F. JAG BULL., Jan. 1961. In this case, since Mohamed is present in this state and has had the opportunity to litigate any questions of jurisdiction, he is foreclosed from challenging the jurisdiction of our courts in any other forum, ever. *Sherrer v. Sherrer*, 334 U.S. 343, 345 (1948).

For many decades, this state has permitted military members to file as divorce plaintiffs despite having domicile elsewhere, and despite federal law stating that neither members nor their spouses gain or lose domicile or residence by virtue of being stationed here.[38] Many other states do the same, and have for many decades, with decisions from their appellate courts repeatedly upholding the jurisdiction of their courts to grant those divorces.[39]

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[38] The Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. §§ 501-597b(1), was amended by the "Military Spouses Residency Relief Act" in 2010 to essentially extend to spouses of military personnel the protections previously afforded just to military members:

> A spouse of a military member accompanying a servicemember who is on military orders who relocates from one State to another neither loses nor gains a domicile or State of residence by that relocation for purposes of federal or State voting rights or taxation.

[39] *See*, *e.g.*, *Wallace v. Wallace*, 320 P.2d 1020 (N.M. 1958) (it is "within

Because all such military members are definitionally non-residents as a matter of federal law governing military members, the district court's ruling, if not reversed, would invalidate all divorces filed by, or against, military members in Nevada.

Residential intent is defined as the intent to remain in Nevada permanently, or to make it "home" for at least "an indefinite time;"[40] it is undisputed that Ahed has that intent, irrespective of any considerations of

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the power of the legislature to establish reasonable bases of jurisdiction other than domicile. . . . Assuming that appellant is correct in his contention that the parties were not domiciled in New Mexico at the time instant action was filed, does it follow that the court was without jurisdiction? We think not."); *Wheat v. Wheat*, 318 S.W.2d 793, 797 (Ark. 1958) (upholding state law based on residency rather than domicile); *Craig v. Craig*, 56 P.2d 464 (Kan. 1936) (upholding divorce based on residence rather than domicile).

[40] *Lamb v. Lamb*, 57 Nev. 421, 430, 65 P.2d 872, 875 (1937); *see also Latterner v. Latterner*, 51 Nev. 285, 290, 274 P. 194, 195 (1929).

"domicile." The "intention" in our statute is the common-sense intent to physically remain for an undetermined time, not an imposed legal fiction of domiciliary intention under immigration law to regulate migration.

This Court noted in *Lewis v. Lewis*[41] that it had construed the divorce laws such that "actual corporeal presence was necessary to the establishment of such a residence as would give a court jurisdiction to grant a divorce," and that the Nevada Legislature had re-enacted the law using the same language after the Court had so held, and therefore had "legislatively adopted" the Court's construction.[42]

That returns us to the test set out by the United States Supreme Court in *Williams v. North Carolina*, *supra*, that a divorce may be granted whenever a

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[41] *Lewis v. Lewis*, 50 Nev. 419, 425, 264 P. 981, 982 (1928).

[42] Since *Lewis* the legislature has "re-enacted" the same statute another three times.

state, under its own law, has personal jurisdiction over either party to a divorce and provides notice in accordance with procedural due process.

Since Ahed filed a Complaint for Divorce in Nevada, she subjected herself, personally, to the jurisdiction of the court.[43] Since the district court has personal jurisdiction over Ahed, it has subject matter jurisdiction over the marriage. And our statute explicitly speaks to where a "defendant may be found" as a basis for divorce against that defendant.[44]

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[43] *See Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002). Ahed was in Nevada for more than six weeks before filing for divorce, and expressed the intention to "live in Clark County for the foreseeable future." I AA 30.

[44] Among the most firmly established principles of personal jurisdiction in American law is that the courts of a state have jurisdiction over anyone physically present in the state. *Burnham v. Superior Court of Cal.*, 495 U.S. 602, 110 S. Ct. 2105 (1990).

The district court judge was "shocked" by the public policy ramifications of his decision, since "it could prevent non-immigrants from accessing state courts who have lived in the jurisdiction for a long time."[45] The district court went on:

> And this particular decision and the people that are dealing with the fallout of it . . . suggest that millions of Californians who are non-immigrants or undocumented may not have state courts for divorce, which sounds insane to me especially from the Ninth Circuit Court of Appeals.

The public policy ramifications of the district court's opinion are even worse than it mused. The relevant Nevada statute defining residence, NRS 10.155, speaks of the basis "to maintain or defend *any* suit in law or equity." If the district court's holding stands, Mohamed could live here for years, break

[45] II AA 410-411.

contracts, commit torts, and no one would be able to sue him in a Nevada court. A reading of visa status as providing immunity from being sued for divorce (or anything else) is absurd, and cases, like statutes, should always be "construed so as to avoid absurd results."[46]

In short, the public policy and other considerations relating to divorce jurisdiction resemble those for child custody jurisdiction, and indicate that no federal decision, or federal statute, should be construed as providing immunity from legal process for divorce (or anything else) in the absence of crystal clear federal statutory language "positively requiring" that result "by direct enactment."

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[46] *See Welfare Div. v. Washoe Co. Welfare Dep't*, 88 Nev. 635, 503 P.2d 457 (1972).

This Court should explicitly hold, as the California courts have held, that nonimmigrant status does not preclude a finding of residence under Nevada law for purposes of obtaining a dissolution of marriage.

VI. CONCLUSIONS

For over 100 years, Nevada courts have granted divorces to foreign nationals, military members, corporate employees and others who have resided in Nevada for the requisite time period to gain "residence" for divorce purposes without establishing Nevada as their permanent domicile. The district court decision would bar all such persons from access to the Nevada family courts, on the basis of federal immigration policy which is (and should be declared) inapplicable to the question of divorce jurisdiction.

Additionally, regardless of the outcome of that issue, Nevada has a fundamental interest and obligation to provide for the care and support of all children within its borders regardless of the immigration status of those children's parents, ***especially*** in cases involving domestic violence and child abuse. The district court decision would leave the parents of all such children without access to the Nevada courts for protection or support.

Dated this 21st day of September 21, 2020.

Respectfully submitted,
WILLICK LAW GROUP

//s//Marshal S. Willick, Esq.

Marshal S. Willick, Esq.
Attorneys for Appellant

VERIFICATION

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

   This fast track statement has been prepared in a proportionally spaced typeface using WordPerfect 6X in font size 14 and type Style Times New Roman.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is:

   Proportionately spaced, has a typeface of 14 points or more, and contains 5,397 words.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and that the Supreme court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 21st day of September, 2020.

//s//Marshal S. Willick, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILLICK LAW GROUP and that on this 21st day of September, 2020, a document entitled *Appellant's Fast Track Statement* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

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/s/ Justin K. Johnson

An Employee of WILLICK LAW GROUP

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