IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|---|---|---|
| JUSTIN BLOUNT; AND STEPHANIE BLOUNT<br><br>Appellants,<br><br>v.<br><br>Paula Blount,<br><br>Respondent. | ) | Supreme Court No.: 82095<br><br>District Court Case No.: D605933 |



# APPELLANTS' OPENING BRIEF

KURT R. BONDS, ESQ.
Nevada Bar No. 6228
TREVOR R. WAITE, ESQ.
Nevada Bar No. 13779
DANIEL A. MANN, ESQ.
Nevada Bar No. 15594
ALVERSON, TAYLOR & SANDERS
6605 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149
(702) 384-7000

*Attorneys for Appellant*
*Justin Blount and Stephanie Blount*

## TABLE OF CONTENTS


DISCLOSURE ..... v.

JURISDICTION ..... v.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW ..... 1

STANDARD FOR REVIEW ..... 2

STATEMENT OF THE CASE ..... 3

STATEMENT OF THE FACTS ..... 4

SUMMARY OF ARGUMENT ..... 12

ARGUMENT ..... 14

A. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE IT IS NOT THE MOST RECENT CUSTODY ORDER FROM THE HUALAPAI TRIBAL COURT ... 14

B. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE THE APPELLANTS WERE NOT PROPERLY NOTICED TO APPEAR BEFORE THE HUALAPAI TRIBAL COURT..... 15

C. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE THE HUALAPAI TRIBE'S ORDERS ARE PROCEDURALLY DEFECTIVE AS THE TRIBE DID NOT HAVE UCCJEA JURISDICTION NOR JURISDICTION UNDER TRIBAL LAW TO ISSUE CUSTODY ORDERS..... 17

1. THE HUALAPAI TRIBE'S ORDERS ARE PROCEDURALLY DEFECTIVE AS THE TRIBE DID NOT HAVE UCCJEA JURISDICTION TO ISSUE CUSTODY ORDERS IN CASE 2019-CC-004..... 19

2. DUE TO THE CHANGE IN THE MINOR CHILDREN'S RESIDENCY STATUS, ARGUMENT BASED ON FACTS AND ARGUMENTS MADE IN THE APPEAL AND UNDERLYING GRANDPARENT VISITATION ACTION ARE OF NO FORCE OR EFFECT..... 27

CONCLUSION ..... 29

VERIFICATION ..... 31

CERTIFICATE OF MAILING ..... 33

## TABLE OF AUTHORITIES


| Cases | Page |
|---|---|
| *Castle v. Simmons,* 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004) ..... | 2 |
| *NOLM, LLC v. Cty. of Clark,* 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) ..... | 2 |
| *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) ..... | 2 |
| *Kar v. Kar*, 132 Nev. 636 (2016) ..... | 22 |
| *Friedman v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark,* 127 Nev. 842, 852, 264 P.3d 1161, 1168 (2011) ..... | 22 |
| *In re A.C.S.*, 157 S.W.3d 9, 15 (Tex. App. 2004) ..... | 22 |
| *Vaile v. Eighth Judicial Dist. Court ex rel. Cty. of Clark,* 118 Nev. 262, 275, 44 P.3d 506, 515 (2002) ..... | 23, 27 |
| *Mitchell v. Joseph*, 117 F.2d 253, 255 (7th Cir. 1941) ..... | 23-24 |
| *United States v. Jerry*, 487 F.2d 600, 607–08 (3d Cir. 1973) ..... | 24 |

## TABLE OF AUTHORITIES


| Statutes/Rules | Page |
|---|---|
| NRS 703.376 | i. |
| NRS Const. Art. 6, §4 | i. |
| Nev. R. App. P. 4(6) | 4 |
| NRS 125A.465(6)(b) | 14 |
| NRS 125A.255 | 15 |
| NRS 125A.465(6)(c) | 15 |
| NRS 125A.345 | 15, 17 |
| NRS 125A.465(6)(a) | 18 |
| NRS 125A.315(1)(a-b) | 18, 21 |
| NRS 125A.315(2) | 18 |
| NRS 125A.305 | 19-22, 31 |
| NRS 125A.305(1)(a) | 20 |
| NRS 125A.305(1)(b) | 20-21 |
| NRS 125A.325(2) | 22 |
| NRS 125A.085 | 22 |

## NRAP 26.1 DISCLOSURE

The undersigned counsel for record certifies that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed:

- Appellants Justin Blount and Stephanie Blount have no corporate affiliation.
- Law firms whose partner or associate have appeared for the party (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

Alverson, Taylor & Sanders
6605 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149

## JURISDICTION

This is an appeal from a District Court Order, dated December 10, 2020, which granted the registration of the foreign custody order from the Tribal Courts of the Hualapai Tribe. Appellants filed their Notices of Appeal with this Court on November 9th and 13th, 2020.

This Court has jurisdiction based on NRS 703.376. NRS 703.376 provides a basis for appeal from the order since this is a civil case in district court order from the state of Nevada and under NRS Const. Art. 6, § 4, The Supreme Court and court of appeals have appellate jurisdiction in all civil cases arising in district courts.

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellants in good faith reasonably believe the following to be the issues on appeal:

1. Did the District Court err when it gave full faith and credit to the registered foreign custody order, dated January 30, 2020, from the Hualapai Tribal Court because the Tribal court already had modified the custody order on May 13, 2020?

2. Did the District Court err when it gave full faith and credit to the registered foreign custody order because Justin and Stephanie Blount were not properly given notice of the proceedings on custody of Jeremiah and Kaydi Blount in the Hualapai Tribal Court?

3. Did the District Court err when it gave full faith and credit to the registered foreign custody order from the Hualapai Tribal Court because the Tribal court did not have UCCJEA jurisdiction nor Tribal jurisdiction since the Tribe vacated its temporary custody order, refused to intervene in an adoption proceeding in Nevada for the minor children, and the children's home state is Nevada?

## STANDARD FOR REVIEW

The Supreme Court reviews the district court's evidentiary decisions and custody determinations for an abuse of discretion. *Castle v. Simmons*, 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004) (noting we review custody determinations for an abuse of discretion). An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660–61 (2004) (holding that relying on factual findings that are "clearly erroneous or not supported by substantial evidence" can be an abuse of discretion (internal quotations omitted)); *Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (holding that a decision made "in clear disregard of the guiding legal principles [can be] an abuse of discretion").

Here, the standard has been met since District Court abused its discretion by ignoring the facts that established that the Custody has been modified, the Appellants did not receive notice to the January 30, 2020 custody proceeding, or the Hualapai Tribe not having jurisdiction, as well as disregarding the controlling law for when to confirm registrations of foreign custody orders.

## STATEMENT OF THE CASE

This action involves Justin, ("Father"), and Stephanie Blount's appeal of the District Court's order, dated December 10, 2020, that gave full faith and credit to the registered foreign custody order, ordered on January 30, 2020 from the Tribal Court of Hualapai Tribe, Peach Springs, State of Arizona. The motion to register the foreign custody order in Nevada District Court was filed on March 18, 2020. This action was from Paula Blount ("Grandmother") to obtain joint custody over the minor children, Jeremiah and Kaydi Blount. Justin Blount opposed the registration on April 20, 2020, alleging that the Tribe did not have jurisdiction and did not provide him notice for the January 30, 2020 proceeding on the custody of Jeremiah and Kaydi Blount. Stephanie Blount opposed in her own way by filing a "Motion to Invalidate" on August 10, 2020, which asserted the registered foreign custody order has already been modified by the Tribal Court of the Hualapai Tribe on May 13, 2020, to give the Grandmother and the maternal Grandparents joint custody of the children; that Stephanie Blount was an essential party to the custody proceeding of her adoptive children and was never given notice of the custody proceeding in the Hualapai Tribal Court; and that the Hualapai Tribe did not have jurisdiction to make the custody order.

On November 2, 2020, the District Court decided without a hearing that Justin Blount's opposition noted several defects about the tribal proceedings,

however, "those defects are not for this court to weigh in on and the father may consider appealing the Court's decision."

Justin Blount filed his notice of appeal on November 9, 2020 and Stephanie filed her notice of appeal on November 13, 2020. The premature notices of appeal are considered filed on the date of and after entry of the order, which was December 10, 2020. Nev. R. App. P. 4(6).

On November 10, 2020, a Motion to Stay Order Pending Appeal was filed by Justin Blount. That Motion was heard on January 12, 2021, and the District Court denied the motion.

## STATEMENT OF THE FACTS

This case has an intricate and somewhat confusing history as it necessarily deals with three (3) separate but intertwined cases being dealt with in the Tribal Court in Arizona and two (2) departments of the Eighth Judicial District Courts (and the resulting appeal to the Nevada Supreme Court in one of those cases). In an attempt to untangle the history of how we got here and bring the Court up to speed, Appellants will break from traditional narrative style writing and simply provide the Court with a single timeline of the history of the three cases to help the Court understand when certain events occurred and when certain Court and Tribal orders were issued. The history is as follows:

From February 2016 to July 2017 the Tribe helped mother, Gretchen, hide

the Minor Children from Justin Blount, ("Father"), despite Tribal Court orders granting Father's visitation. When the issue was brought up, the Tribal Court threatened to take additional rights away from Father. In July 2017, Father threatened to get the Federal authorities involved for the kidnapping of the Minor Children. In response, the Tribe issued Temporary Custody Orders with a visitation schedule. On December 27, 2017, Gretchen Whatoname passed away. Two days later, Grandmother knowing of Gretchen's Death handed kids over to Whatoname Family in an attempt to hide children on the Hualapai reservation. The next day, Justin and Stephanie Blount searched for the Minor Children with the aid of tribal police, Nevada police, and Arizona police while Petitioner, Whatoname family, and other relatives hid the Minor Children. On December 29, 2017, Tribal Court denied the Motion for Immediate Temporary Custody (to Whatoname) and Order to restore custody of children to Father. Tribe Case 2017-CC-013. That same day, the children were found on the reservation by police. Whatoname family refused to release children to Father. Finally on December 30, 2017, the Minor Children were turned over to their Father with aid of Arizona Police. On January 24, 2018, the Tribal Court Ordered to Vacate Temporary Custody Order and Child Support Order. *See* **Exhibit A** attached hereto and incorporated herein. Tribe Case 2016-DOM-001.

Several months later, on May 18, 2018, Grandmother files Petition for Grandparent Visitation in Nevada court. *See* **Exhibit B**, District Court Case D-18-571209-O, Dept B. On June 12, 2018, Grandmother filed a Motion for Temporary Orders (Grandparent Visitation) in Nevada District Court. *See* **Exhibit C**, District Case D-18-571209-O, Dept B. On August 15, 2018, Nevada District Court denied Grandparent visitation and awarding attorney fees. *See* **Exhibit D**, District Case D-18-571209-O, Dept B.

On August 24, 2018, Grandmother filed a Notice of Appeal as to the District Court's Order dismissing the grandparent visitation petition and award of attorney fees. *See* **Exhibit F**, District Case D-18-571209-O, Dept B.

On January 3, 2019, Stephanie Blount filed a petition to adopt the minor children. District Court Case D-19-582179-A, Dept B; Petitioners Justin and Stephanie Blount, Re: Adoption Kaydi and Jeremiah Blount. On January 7, 2019, a ICWA notice of adoption was served/received by Tribe. *See* **Exhibit G**. On January 11, 2019, Gretna and Wilfred Petitioned the Tribal court to intervene in the adoption and the Tribe refused to do so, indicating that it did not have the needed jurisdiction to intervene. *See* **Exhibit H**, Tribe Case 2019-CV-001.

On January 29, 2019, the adoption hearing took place. District Case D-19-582179-A. Court Continued Hearing for Adoption to permit Tribe to file formal objection to the matter as requested pursuant to ICWA. Whatoname family

objected. Judge informed them that they had no right to object as they had not been granted rights by a court. Judge Marquise informed all present that she would give Whatanome's a chance to file for rights. On February 20, 2019, the Hualapai Tribe filed a Motion to Intervene in the NV Adoption through Sonia Martinez, Esq., who was not licensed in Nevada. District Case D-19-582179-A. On February 25, 2019, the Father filed an Opposition to the Hualapai Tribe's Motion to Intervene (NV Adoption). District Case D-19-582179-A. On February 26, 2019, a Minute Order (NV Adoption) set the intervention motion and opposition for oral argument. *See* **Exhibit I**, District Case D-19-582179-A. Judge: Marquis; Courtroom 07; Setting hearing date for oral arguments. That same day, a Delinquency Petition was filed in Hualapai Juvenile Court. Case 2019-CC-004, Tribe v Jeremiah Blount and a 3rd Party Petition for Temporary Child Custody Due to Neglect. The court notes the Adoption case in NV and that it is open. Gretna Asks the Tribal court to take Jurisdiction and to act as the Tribal attorney and ICWA Coordinator Claimed they could take jurisdiction of Adoption due to ICWA. The next day, Tribe issues a Temporary Custody order to Whatoname grandparents. Case 2019-CC-004.

On March 25, 2019, Grandmother files a motion to stay appeal. District Case D-18-571209-O. In the Motion, Grandmother asks the Nevada Supreme Court to stay the Appeal due to the temporary custody order the Tribal Court issued on February 27, 2019.

It was not until April 11, 2019, that the Nevada Supreme Court issued an Order denying Grandmother's motion to stay the appeal.

On April 17, 2019, a Hearing was held in District Court in the Nevada adoption proceeding and the Court issues a Minute Order related thereto on May 3, 2019. District Case D-19-582179-A, Judge: Hughes. At the hearing, the Tribes ICWA coordinator requested to withdraw the Tribe's motion to intervene based on Father's Opposition. Idella Keluche, the Tribes ICWA coordinator, conceded on the record that Father's Opposition had merit and ICWA did not apply to the adoption proceedings. The Tribe nonetheless maintained a (verbal) objection to the adoption based on "legal proceedings" in occurring in the Tribal Court. The Court ordered the Tribe (through appropriately licensed counsel) to file a brief specifically setting out "what has occurred in the Tribal Court proceedings, what legal action has taken place, and why the Tribe believes it has jurisdiction to enter the custody Orders it had recently entered [regarding the February 27, 2019 Temporary Custody Order]." The hearing for Adoption was thereafter continued to allow the Tribe sufficient time to file the brief. *See* **Exhibit J**. A few days later on April 19, 2019, the Tribe filed a Notice of Withdraw of the Tribe's motion to intervene in the adoption and motion to Recognize Tribal Court Order from Tribal Case 2019-CC-004. District Case D-19-582179-A. Specifically, the Motion states, "Upon further reflection of practical and legal issues, the tribe withdraws its

motion to intervene and the motion to recognize the tribal court order. Any and all filings, including this motion, have been filed through the nation's designated ICWA representative under federal ICWA law only." *See* **Exhibit K.**

On May 8, 2019, the Tribe held a hearing at which Father's counsel (Trevor Waite, Esq., and David Sexton Esq.,) made a special appearance to dispute the Tribe's jurisdiction to issue Child Custody Orders. Case 2019-CC-004. On May 14, 2019, a Letter was sent to Tribal Court from Trevor Waite, Esq., indicating Father terminated Alverson Taylor & Sanders representation with all matters before the Tribe and indicated that Alverson Taylor & Sanders was no longer authorized to proceed with any representation of father in the Tribal Court or to accept service on Father's behalf with any matters before the Tribal Court. *See* **Exhibit L.** On May 28, 2019, a Hearing was held in Tribal Court for Grandparent Custody (re: Gretna and Wilfred Whatoname) and the resulting minute order still listed Father as being represented despite having notice Father was not represented as evidenced by the May 14, 2019 letter from Father's prior counsel (Exhibit L). *See* **Exhibit M,** Case 2019-CC-004.

On June 12, 2019, the District Court in the Nevada adoption proceeding issued a Minute Order related Tribe's failure to file the brief regarding jurisdiction as the Court ordered at the April 17, 2019 hearing. *See* **Exhibit N.** District Case D-19-582179-A. On July 3, 2019, the Adoption Hearing was held and a Decree of

Adoption ("Adoption Decree") was issued by the District Court. *See* **Exhibit O,** District Case D-19-582179-A.

On September 16, 2019, the Nevada Supreme Court issued an Order of Affirmance of District Court order denying Grandmother's petition for grandparent visitation. Then on December 9, 2019, Grandmother filed a petition for Grandparent Visitation with the Tribe under Case 2019-CC-004, wherein Grandmother asked the Tribe for joint custody disguised as visitation. *See* **Exhibit P.** A notice of hearing for the Grandparent Visitation in Hualapai Court was issued and emailed to Trevor Waite, Esq. Ridiculously, the Notice of Hearing was captioned as "Waite, Trevor [Plaintiff] vs. Blount, Justin and Whatoname, Gretchen [defendants]." *See* **Exhibit Q.** Also, the Notice indicated that it was emailed on December 30, 2019 but signed by the clerk of the court on the 26th of February, 2019. *Id.* Interestingly, the notice indicates it was only emailed to Trevor Waite, Esq., and not also to Father despite the Tribal Court having notice that Trevor Waite, Esq., was no longer counsel of record for Father and not authorized to accept service for Father in any matter before the Tribal Court. *Id. See also*, Exhibit L.

The Hearing in Tribal Court on Grandmother's Motion for Grandparent Visitation took place on January 30, 2020 and resulted in the granting the motion by default. While the Minute order shows no counsel of record for Father, the

Order issued from the Tribal Court again incorrectly indicates that Father was represented by Trevor Waite, Esq. *See* **Exhibit R**. There is no indication in the order or Minute Order that either the Court or Grandmother served Father with the Motion or Notice of the hearing. *Id.* Ironically, the Tribal Court notes "that there were errors in the Notice, specifically the caption is mistakenly captioned as 'Waite, Trevor v. Blount, Justin/Whatanome, Gretchen' and the date on the Notice is listed as February 26, 2019." *Id.* Tribe Case 2019-CC-004.

Then on March 9, 2020, a Motion to Amend Custody Order was filed in the Tribal Court to give Grandmother shared custody, NOT just visitation, of the Minor Children. *See* **Exhibit S**.

on March 18, 2020, Grandmother filed a motion to register the custody order from the Hualapai tribe ordered on January 30, 2020.

On April 6, 2020 is when Father reached out to Alverson Taylor & Sanders regarding Grandmother's attempt to register the foreign custody orders and Father's newly retained counsel accepts service of the Registration and Notice for Registration of Foreign Custody Order. *See* **Exhibit T**.

Then on May 13, 2020, the Tribal Court granted to Amend Custody Order by default and includes Grandmother in the amended petition with shared custody between maternal grandparents. *See* **Exhibit U**.

## SUMMARY OF ARGUMENT

First, the District Court erred when it gave full faith and credit to the registered foreign custody order, dated January 30, 2020, from the Hualapai Tribal Court, because the Tribal court already had modified the custody order on May 13, 2020. In Stephanie Blount's Motion to Invalidate, she asserted the argument and provided evidence that Case No. 2019-CC-004 in the Hualapai Tribal Court was modified on May 13, 2020, to include Grandmother and maternal grandparents to have joint custody over the minor children. Case No: 2019-CC-004 is the same case the foreign custody order dated January 30, 2020 that was registered in the State of Nevada on March 18, 2020. District Court abused its discretion by failure to apply the statute that requires the denial of confirmation of a registered foreign custody order if the person contesting the registration establishes the child custody sought to be registered has been modified by a court having jurisdiction.

Second, the District Court further erred when it gave full faith and credit to the registered foreign custody order because the Appellants, persons who are entitled to notice, were not properly given notice of the proceedings on custody of Jeremiah and Kaydi Blount in the Hualapai Tribal Court. The Appellants are the legal parents of the minor children. Furthermore, they had physical custody and their parental rights were never terminated at the time the January 30, 2020 custody hearing took place. District Court abused its discretion by failure to apply

the statue that requires entitled persons of notice need to be served notice of the hearing the foreign custody order came from in order for the custody order to be confirmed as a registered foreign custody order.

Alternatively, the District Court erred when it decided that the Tribal Courts of the Hualapai Tribe had jurisdiction to do a custody proceeding over the minor children. the Tribal Court vacated its temporary custody order between Justin Blount and birth mother of the minor children on January 24, 2018, resulting as if it never happened. When Stephanie Blount was adopting the children to be their legal mother, the tribe refused to intervene in the adoption proceeding. This act is evidence that the tribal court had made a determination that the children, and the parents did not have any significant connection with the reservation and evidence concerning the minor children's custody determination is not available in the Hualapai Tribe. The adoption proceeding is also evidence that Nevada has made a determination that the minor children and both parents do not reside in the Hualaipai reservation. This means the continued and exclusive jurisdiction over the minor children that was found by the Supreme Court of Nevada to the Hualapai tribe in case D-18-571209-O, is lost. With no exclusive, continuing jurisdiction and the minor children, Appellants, and Grandmother do not reside in the Hualapai Tribe's reservation for over six months and no ties to the reservation, the Hualapai Tribe does not have jurisdiction to make an initial determination. District Court

abused its discretion by ignoring the facts and determining the Hualapai Tribe had jurisdiction to enter custody orders.

## ARGUMENT

### A. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE IT IS NOT THE MOST RECENT CUSTODY ORDER FROM THE HUALAPAI TRIBAL COURT.

The District Court is required to deny the registered order if the person contesting the registration establishes the child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction. NRS 125A.465(6)(b).

In the Supplemental Exhibits to Parents Motion to Invalidate, Exhibit I shows orders, dated May 13, 2020, from the Hualapai Tribal Court modifying the custody order ordered on January 30, 2020.

The opposition from Justin Blount was filed before the modification took place, but Stephanie Blount's opposition that was labeled "motion to invalidate" was filed after the modification took place and provided the District Court the evidence that establishes the January 30, 2020 custody order has been modified by the Hualapai Tribal Court.

The District Court disregarded this evidence and NRS 125A.465(6)(b) by confirming the registration of the foreign custody order of the Hualapai Tribal Court Dated January 30, 2020. This is clearly an abuse of discretion since statute

only allows the court to "confirm unless the person contesting registration establishes that ... the child custody determination sought to be registered has been ... modified by a court having jurisdiction." NRS 125A.465(6)(b). Therefore, District erred when it gave full faith and credit to the registered foreign custody order, dated January 30, 2020, from the Hualapai Tribal Court because the Tribal court already had modified the custody order on May 13, 2020.

### B. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE THE APPELLANTS WERE NOT PROPERLY NOTICED TO APPEAR BEFORE THE HUALAPAI TRIBAL COURT.

The District Court is required to deny the registered order if the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of NRS 125A.255, in the proceedings before the court that issued the order for which registration is sought. NRS 125A.465(6)(c). A person entitled to a notice in a child custody proceeding is the parents if their parental rights have not been terminated and whoever has physical custody of the children. NRS 125A.345.

Pursuant to the Adoption Decree Stephanie Blount is the legal mother of the Minor Children. **See Exhibit O**. Indeed, pursuant to the Adoption Decree, "any other parent named on the children's birth certificates shall be removed, and Petitioners' names shall appear on the birth certificates as **the only parents** to the

children." *Id.* at p. 2, lines 19-21 (emphasis added). Further, "the minor children shall henceforth be regarded and treated as Petitioner's natural children and have **all the lawful rights** as his/her own child, including the rights of support, protection and inheritance." *Id.* at p. 3, lines 1-3 (emphasis added). The effective date of the Adoption Decree is July 3, 2019, yet the registered foreign custody orders that were confirmed by the lower court failed to make any mention of Stephanie Blount, the legal mother of the Minor Children, nor is there any indication that Stephanie Blount's legal parental rights were accounted for by the Tribal Court in issuing any orders. In fact, at the hearing in the adoption matter held on April 17, 2019 in the Nevada District Court the Tribe was represented by its ICWA coordinator Idella Keluche, who conceded on the record that it was withdrawing its filed objection to the adoption proceedings and that ICWA did not apply to the adoption proceedings. Exhibit J. However, the Court ordered the Tribe to file (through appropriately licensed counsel) a brief setting out specifically "what has occurred in the Tribal Court proceedings, what legal action has taken place, and why the Tribe believes it has jurisdiction to enter the custody Orders it had recently entered [regarding the February 27, 2019 Temporary Custody Order]" and the hearing for Adoption was continued to allow the Tribe sufficient time to file that brief. *Id.* That brief NEVER got filed. *See* Exhibit N. Instead, despite having issued an order wherein the Tribe declared it was without jurisdiction to act

with regard to the Minor Children (Exhibit H), the Tribe held a hearing on May 28, 2019 at which neither of the Minor Children's legal parents were present.[1] *See* Exhibit M. Stephanie has never relinquished her rights as to either Minor Child, nor has she faced any termination proceedings in any court of the United States or the Tribe.

Because Justin never received notice and there is nothing in the Tribal Court documents indicating Stephanie was named as a party to the custody case in the Tribal Court or that her rights were ever accounted for in any Tribal Court proceeding, registration of the Tribal Court custody orders is a direct violation of Stephanie's legal rights as well as NRS 125A.345. Therefore, The District Court erred when it gave full faith and credit to the registered foreign custody order because Justin and Stephanie Blount were not properly given notice of the proceedings on custody of Jeremiah and Kaydi Blount in the Hualapai Tribal Court.

### C. THE FOREIGN CUSTODY ORDER WAS WRONGFULLY REGISTERED BECAUSE THE HUALAPAI TRIBE'S ORDERS ARE PROCEDURALLY DEFECTIVE AS THE TRIBE DID NOT HAVE UCCJEA JURISDICTION TO ISSUE CUSTODY ORDERS IN CASE 2019-CC-004.

The District Court is required to deny the registered order if the person

[1] The Minor children's father was not properly noticed/served notice of the hearing and the children's mother at that time (i.e., before the adoption was granted to Stephanie Blount) was deceased.

contesting the registration establishes the issuing court did not have jurisdiction pursuant to NRS 125A.305 to 125A.395, inclusive. NRS 125A.465(6)(a). A court has continuing, exclusive jurisdiction until a court of this state determines that the child, the child's parents and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or a court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state. NRS 125A.315(1). A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction may modify that determination only if it has jurisdiction to make an initial determination. NRS 125A.315(2). A court 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).

NRS 125A.305.

1. **THE HUALAPAI TRIBE'S ORDERS ARE PROCEDURALLY DEFECTIVE AS THE TRIBE DID NOT HAVE UCCJEA JURISDICTION TO ISSUE CUSTODY ORDERS IN CASE 2019-CC-004.**

As will be shown below, the Tribe may have initially exercised jurisdiction over the Minor Children, however, the Tribe later relinquished that jurisdiction both explicitly and impliedly. As a result, the Tribe lacked jurisdiction over the

Minor Children to issue the custody orders that the lower court has confirmed. What is more, the issues dealt with in Tribal Case 2019-CC-004 have already been addressed by the Hualapai Tribe, the Hualapai Tribe's attorney, the Hualapai Tribe's ICWA Coordinator, and the Nevada District Courts.

Nevada adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and codified it under Chapter 125A of the Nevada Revised Statutes. Pursuant to NRS 125A.305, Nevada courts have jurisdiction to make an initial child custody determination only if (1) Nevada is the home state of the child(ren) on the date of the commencement of the proceeding, or (2) was the home state of the child(ren) for at least the six (6) months prior to 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. NRS 125A.305(1)(a). As a result, courts of other states do not have jurisdiction to make initial child custody determinations where Nevada is the home state of the child(ren) under NRS 125A.305(1)(a). NRS 125A.305(1)(b). Where Nevada is not the home state of the child(ren), other state courts will not have jurisdiction to make initial child custody determinations where a court of the home state of the child(ren) declines to exercise jurisdiction on the ground that Nevada is the more appropriate forum and the child(ren) and the parent(s), or the child(ren) and at least one parent - or a

person acting as a parent- have a significant connection with Nevada other than mere physical presence and:

1. Substantial evidence is available in this State concerning the child's care, protection, training and personal relationships;
2. 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
3. No court of any other state would have jurisdiction pursuant to the criteria specified in paragraph (a), (b) or (c).

NRS 125A.305(1)(b). A court that has issued child custody determinations pursuant to the NRS 125A.305 will have continuing and exclusive jurisdiction until

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

NRS 125A.315(1)(a-b). However, a court that has made an initial child custody determination can lose its exclusive, continuing jurisdiction over the child custody

matter once the child and the child's parents have moved away from that state. *Kar v. Kar*, 132 Nev. 636 (2016). *See also*, NRS 125A.325(2) ("A Nevada court that has not made an initial child custody determination may not modify a child custody determination made by a court of another state unless the Nevada court has jurisdiction to make initial child custody determination pursuant NRS 125A.305 (a) or (b) and a Nevada court or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state"). The UCCJEA defines "home state" 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. In the case of a child less than 6 months of age, the state in which the child lived from birth, including any temporary absence from the state, with a parent or a person acting as a parent.

NRS 125A.085.

A court that lacks subject matter jurisdiction under the UCCJEA does not acquire it by estoppel. *Friedman v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 842, 852, 264 P.3d 1161, 1168 (2011) (It matters not ... that the defendant specifically and voluntarily elected the tribunal. It is a well-established principle that no action of the parties can confer subject-matter jurisdiction upon a court where the court has no authority to act) (internal citations and quotations omitted); *see also, In re A.C.S.*, 157 S.W.3d 9, 15 (Tex. App. 2004) (subject matter

jurisdiction under the UCCJEA cannot be waived or conferred by agreement or estoppel or "judicial admission"). It is also well established law in Nevada that parties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist. *Vaile v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002). Nevada Courts have also long held that:

> Simply because a court might order one party to pay child support to another in the exercise of its personal jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject matters of child custody and visitation. Unless the court can properly exercise subject matter jurisdiction according to the terms of the Uniform Child Custody Jurisdiction [enforcement] Act (UCCJ[E]A), which Nevada has adopted, it is without authority to enter any order adjudicating the rights of the parties with respect to custody and visitation.

*Id.* When a court acts without subject matter jurisdiction in a custody matter, all such actions with respect to custody and visitation are void. *Id.* at 275–277. Additionally, courts around the country have agreed that "the general rule is that where a court, in the discharge of its judicial functions, vacates an order previously entered, the legal status is the same as if the order had never existed." *Mitchell v. Joseph*, 117 F.2d 253, 255 (7th Cir. 1941). Therefore, such vacated orders "having become a nullity[2], no rights, constitutional or otherwise, can be considered as

---

[2] To vacate means "To annul; to cancel or rescind; to render an act void; as, to vacate an entry of record, or a judgment" Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.;

accruing from [them]." *United States v. Jerry*, 487 F.2d 600, 607–08 (3d Cir. 1973).

Here, it is true that the Tribal Court initially heard the divorce case between Father and Gretchen Whatanome and made a temporary custody determination as to the Minor Children. However, the Tribal Court never issued final custody orders prior to Gretchen Whatoname passing away and explicitly "vacated" the temporary custody order it issued on June 26, 2017 as well as "all subsequent orders affirming and maintaining that order." *See*, Exhibit A at p. 2, lines 12-13. The Tribal Court also "vacated" the "child Support Order entered June 14, 2016 and all subsequent orders affirming and maintaining that order." *Id.* at lines 16-17. In fact, the only issue the Tribal Court retained jurisdiction over in those divorce proceedings was the distribution of debts and property. *Id.* at lines 1-10. In explicitly "vacating" the initial temporary custody order and "all subsequent orders affirming and maintaining that order" the Tribal Court made the custody orders a nullity and as if those custody orders were never issued, as if the temporary custody orders never existed at all. *Mitchell v. Joseph* and *United States v. Jerry supra*. As a result the Tribal Court did not legally issue any child custody

---

To vacate a court order or judgment means to cancel it or render it null and void. "vacate." West's Encyclopedia of American Law, edition 2. 2008. The Gale Group 22 Apr. 2020 https://legal-dictionary.thefreedictionary.com/vacate

determinations for purposes of establishing initial and therefore continuing and exclusive jurisdiction over the Minor Children.

What is more, at the time of the filing of the petitions in Tribal Case 2019-CC-004 the Hualapai Reservation did not serve as the home state of the minor children. The Minor children relocated to Nevada in December 2017 following the death of Gretchen Whatanome. The petitions in Tribal Case 2019-CC-004 were filed roughly 14 months after the Minor Children moved to Nevada. It is an undisputable fact that the Minor Children have lived continuously in Nevada from at least 6 months prior to either petition was filed with the Tribe and therefore Nevada has been, and continues to be the Minor Children's home state and was their home state when both petitions were filed in Tribal Case 2019-CC-004. There is also no evidence that Nevada courts have relinquished any jurisdiction over the Minor Children. In fact, the District Court exercised its jurisdiction over the Minor Children when it issued the Adoption Decree in 2019. Interestingly, as pointed out in the above facts timeline, the issue of whether or not the Tribe had jurisdiction over the Minor Children was addressed by the District Court. *See*, Exhibit J. Specifically, the District Court ordered the Tribe, on the record and in the presence of the Tribe's ICWA representative, to file a brief specifically setting out "what has occurred in the Tribal Court proceedings, what legal action has taken place, and **why the Tribe believes it has jurisdiction to enter the custody Orders it**

**had recently entered**" regarding the February 27, 2019 Temporary Custody Order. *Id.* (Emphasis added). In so ordering, the District Court gave the Tribal Court the opportunity to retain whatever jurisdiction the Tribal Court felt it had acquired over the Minor Children. The Tribe never filed any brief (or any other document for that matter) setting out the legal and factual basis for the Tribe claiming any jurisdiction over the Minor Children. Thus, if, *arguendo*, the Tribal Court did have any jurisdiction over the Minor Children at that time, the Tribe's failure to file the brief was an implied, if not explicit, relinquishment of that jurisdiction to the Nevada courts.[3] It is not altogether surprising that the Tribe did not file any brief setting out the factual and legal basis it may have had to any jurisdiction over the Minor Children because the Tribe did not actually have any jurisdiction over the Minor Children, and therefore the Tribe could not file any such brief.

If the Tribe, therefore, had no factual or legal basis upon which to base jurisdiction over the Minor Children on or about June 12, 2019 (Exhibit N) then the Tribe could not have had the requisite jurisdiction over the Minor Children to issue the Minute Order dated May 28, 2019 in Tribal Case 2019-CC-004. Additionally, the District Court having obtained UCCJEA jurisdiction over the

[3] Despite this *arguendo* argument, Father reiterates that the Tribe did not actually have any jurisdiction over the Minor Children to relinquish to Nevada courts.

Minor Children[4] and exercising that jurisdiction on July 3, 2019 (Exhibit O), and there being no evidence to show the District Court ever relinquished that continuing and exclusive jurisdiction to the Tribe, the Tribe lacked the requisite jurisdiction over the Minor Children to issue the Grandparent Custody and Visitation Order dated January 30, 2020.

Because the Tribe vacated all temporary custody orders it initially issued, the initial Tribal Court custody orders are a legal nullity and are as if they never existed. Because the Tribal Court thereafter never gained UCCJEA (initial or continuing) jurisdiction over the Minor Children, all orders based on the petitions filed in Tribal Case 2019-CC-004 are invalid and unenforceable. *Vaile*, 118 Nev. at 275-277. Therefore, District Court abused its discretion when it erred by giving full faith and credit to the registered foreign custody order from the Hualapai Tribal Court because the Tribal court did not have UCCJEA jurisdiction.

**2. DUE TO THE CHANGE IN THE MINOR CHILDREN'S RESIDENCY STATUS, ARGUMENT BASED ON FACTS AND ARGUMENTS MADE IN THE APPEAL AND UNDERLYING GRANDPARENT VISITATION ACTION ARE OF NO FORCE OR EFFECT.**

As an aside, District Court made their jurisdiction determination from the Nevada Supreme Court's decision in Case D-18-571209-O. in Case D-18-571209-

[4] As a result of the Minor Children residing in Nevada for over 6 months prior to any petition being filed in in Tribal Case 2019-CC-004 or in the District Court adoption case.

O the petition for grandparent visitation had been filed after the Minor Children had moved to Nevada, but before they had resided in Nevada for at least 6 months. As a result, Nevada did not have UCCJEA jurisdiction as Nevada was not the home state of the Minor Children. This fact was the basis for the District Court's order of dismissal and the Nevada Supreme Court's subsequent affirmation when Petitioner appealed the dismissal.

While it is true Father argued in Case D-18-571209-O that Nevada did not have jurisdiction that does not mean that Justin argued that Nevada could never acquire the required jurisdiction. In fact, as discussed at incredible length above, Nevada actually did acquire jurisdiction over the Minor Children.[5]

The simple and undeniable facts are Grandmother filed her Petition for Grandparent Visitation in Nevada under District Court Case D-18-571209-O on May 18, 2018, approximately 4-5 months after the Minor Children relocated to Nevada. On January 11, 2019 the Tribal Court entered an order dismissing case 2019-CV-001 due to a lack of jurisdiction. Grandmother filed her petition in Tribal Case 2019-CC-004 on December 9, 2019, almost 2 years after the children relocated to Nevada and almost 11 months AFTER she filed for Grandparent Visitation in Nevada under District Court Case D-18-571209-O. There is no

[5] In an effort to avoid duplicating the lengthy arguments already laid out on this matter above, Justin will simply make a brief argument on the subject and incorporate all other arguments previously set out by this reference as if set forth fully.

argument that within the applicable timeframe the Minor Children established residency in Nevada making Nevada their home state under the provisions of the UCCJEA. Regardless of when this domicile was established, it was not established PRIOR to Grandmother's filing for Grandparent Visitation in Nevada under District Court Case D-18-571209-O, therefore the arguments in that case were valid and the correct outcome resulted. With all this in mind the result is still the same. The custody orders issued by the Tribal Court in Tribal Case 2019-CC-004 were issued without the required jurisdiction and are therefore invalid and unenforceable. Such orders are NOT subject to registration in Nevada and are not owed any deference under any full faith and credit law. Therefore, District Court abused its discretion when it erred by giving full faith and credit to the registered foreign custody order from the Hualapai Tribal Court because the Tribal court did not have UCCJEA jurisdiction since the Tribe vacated its temporary custody order, refused to intervene in an adoption proceeding in Nevada for the minor children, and the children's home state is Nevada.

## CONCLUSION

In light of the foregoing, the District Court has abused its discretion in confirming the registration of the foreign custody order since the foreign custody order has been modified and no proper notice was given to either Appellant. Alternatively, the District Court has abused its discretion in confirming the

registration of the foreign custody order since the Tribal Courts of Hualapai Tribe did not have jurisdiction to order custody about the minor children. Either way, The Supreme Court should determine the District Court abused its discretion and reverse the District Court's decision to register the foreign custody order from the Tribal Courts of Hualapai Tribe, Peach Springs, State of Arizona dated January 30, 2020 and remand for determination of damages including attorneys' fees.

DATED this 7 day of May, 2021

ALVERSON, TAYLOR & SANDERS

KURT R. BONDS, ESQ.
Nevada Bar #6228
TREVOR R. WAITE, ESQ.
Nevada Bar #13779
DANIEL A. MANN, ESQ.
6605 Grand Montecito Pkwy, Ste 200
Las Vegas, NV 89149
(702) 384-7000
*Attorneys for Appellants*

## VERIFIED CERTIFICATE OF COMPLIANCE

STATE OF NEVADA )
)ss.:
COUNTY OF CLARK )

I, Daniel A. Mann, being duly sworn, do hereby depose and say:

1. I am an Associate of the law firm Alverson, Taylor and Sanders, and counsel of record for Appellant named in the foregoing Opening Brief.
2. I am licensed in the State of Nevada and competent to testify to the matters set forth in this Affidavit.
3. Pursuant to NRAP 28.2, I hereby certify that I have read Appellant's Opening Brief, and to the best of my knowledge, information and belief verify the facts stated herein are true, and to those matters that are information and belief, such matters I believe to be true.
4. I further certify that Appellant's Opening Brief is not frivolous or interposed for any improper purpose and complies with the applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by reference to the page of the appendix where the matter relied on is to be found.
5. Appellants' Opening Brief complies with the type-volume limitations of NRAP 32(a)(7)(A)(ii), in that it contains no more than 14,000 words.

Further, the Opening Brief complies with the formatting requirements of NRS 32(a)(4-6).

6. 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.

7. I make this verification on behalf of Appellant.

DATED this 7th day of May, 2021

Daniel A. Mann, Esq.

SUBSCRIBED and SWORN to before me this
7 day of May, 2021.

Tammy S. Clark
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
TAMMY S. CLARK
Appt. No. 14-13812-1
My Appt. Expires June 9, 2022

## AMENDED CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I electronically filed the forgoing APPELLANT'S OPENING BRIEF with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on June 9, 2021.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System:

## SERVICE LIST

**Trevor M. Creel, Esq.**
**Willick Law Group**
3591 E. Bonanza Rd., Ste. 200
Las Vegas, NV 89110-2101
Ph. (702) 438-4100
e-mail: trevor@willicklawgroup.com

Nicholas Nelson

An Employee of
ALVERSON, TAYLOR & SANDERS