IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

JUSTIN CRAIG BLOUNT; AND STEPHANIE BLOUNT, Appellants, vs. PAULA BLOUNT, Respondent.	S.C. NO. 82095 D.C. NO: D-20-605933-F

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. In the course of these proceedings leading up to this appeal, Respondent, Paula Blount, has been represented by the following attorneys:

a. Marshal S. Willick, Esq., of the WILLICK LAW GROUP.

b. Trevor M. Creel, Esq., of the WILLICK LAW GROUP.

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There are no corporations, entities, or publicly-held companies involved in this matter which must be disclosed pursuant to NRAP 26.1(a).

DATED this __7th__ day of September, 2021.

Respectfully Submitted By:
WILLICK LAW GROUP

/s/ Trevor M. Creel

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ROUTING STATEMENT[1]

This case is presumptively assigned to the Court of Appeals per NRAP 17(b)(10) as it involves family law matters other than the termination of parental rights or NRS Chapter 432B proceedings.

JURISDICTIONAL STATEMENT

While we concur that this Court has jurisdiction to consider this appeal, the basis for jurisdiction stated at page i of *Appellant's Opening Brief* ("AOB") asserts that the appeal is brought under NRS 703.376, which provides a 60-day window for appeals of Public Utility Commission orders, and is entirely irrelevant to this case.

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[1] Appellants neglected to provide a routing statement in violation of NRAP 28(5). One entry in the Register of Actions on the Supreme Court website refers to this case as a Fast Track Child Custody case, but no specific order to that effect has apparently been entered and Appellant filed a regular brief so we have responded in kind.

STATEMENT OF THE ISSUE[2]

Did the district court err in giving full faith and credit to the *Minute Order* filed May 28, 2019, and the *Grandparent Custody and Visitation Order* filed January 30, 2020, entered in the Tribal Courts of the Hualapai Tribe, Peach Springs, State of Arizona, Case No. 2019-CC-004?

STATEMENT OF CASE

Appeal from *Order* filed December 10, 2020, in which the district court determined that the orders from the Tribal Courts of Hualapai Tribe, Peach Springs, State of Arizona shall be given full faith and credit; Hon. Rena G. Hughes, District Court Judge, Department J, presiding.

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[2] Some of the "issues" listed in the *Opening Brief* either were not decided by the lower court at all or assume false "facts"; where necessary, they are addressed below.

Justin's *Statement of the Case* contains a deliberate misrepresentation of the record. He quotes (AOB at 3-4) the family court decision on appeal as including the line: "those defects are not for this court to weigh in on and the father may consider appealing the Court's decision." Immediately thereafter, Justin claims that he "filed his notice of appeal on November 9, 2020."

While both the quote and the filing date are accurate, the family court was speaking of purported procedural defects in the orders of the Tribal Court in Arizona, and inviting Justin to appeal that decision ***in Arizona*** if he chose to do so. He never did, instead electing to engage in a collateral attack on the Tribal Court order by way of his appeal to this Court.[3]

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[3] In a recent article, Justice Stiglich warns counsel not to "quote the record in misleading ways." Hon. Lidia Stiglich, *Appealing Appeals: Persuasive Appellate Case-Building and Best Practices*, Nev. Lawyer, June 2021, at 9 ("*Appealing Appeals*"). This Court has previously put counsel on notice that doing so is "not proficient advocacy," but attempted fraud on the Court and a violation of ethical rules warranting professional discipline. *Sierra Glass & Mirror v. Viking Industries*, 107 Nev. 119, 808 P.2d 512 (1991). Justin's brief is problematic.

RESPONDENT'S NEED TO FILE A SEPARATE APPENDIX

Under NRAP 30, Appellants were required to attempt to reach agreement concerning a possible joint appendix. Appellants did not make any attempt at agreement or produce a proposed Appendix before filing the *Opening Brief*. We found a number of documents missing from Appellants' appendix. It is improperly set up as a series of lettered "exhibits," and it was not provided in proper order, making reference to the actual record difficult and in some cases impossible.[4]

As such, it was necessary for Respondent to file a separate Appendix that contained the entire record as described in NRAP 10.[5]

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[4] As pointed out in Justice Stiglich's article, counsel should "err on the side of over-inclusion." *Appealing Appeals* at 8-9. This should encompass at least all of the court orders leading to the result on appeal.

[5] The multiple deficiencies in Appellants' *Brief* and appendix made the preparation of this *Answering Brief* more difficult and expensive than it should have been under the rules of this Court, and warrant imposition of sanctions against Appellants. *See Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005); NRAP 30(g)(2).

STATEMENT OF FACTS[6]

The parties' historical relationship was and is very contentious and there has been considerable conflict over the years; that history is relevant to understanding the convoluted record.

Appellant, Justin Blount is the biological father to the minor children Jeremiah and Kaydi.[7] Justin is the son of Respondent, Paula Blount, who is the children's paternal grandmother. Gretchen Whatoname was the minor children's biological mother; Gretchen passed away on December 27, 2017.[8] Gretchen's parents, Gretna and Wilfred Whatoname, are the maternal grandparents of the children.

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[6] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. As Appellant's factual rendition is inaccurate and incomplete, we request the Court refer to this Statement of Facts instead.

[7] I RA 174.

[8] Id.

Jeremiah Blount was born January 19, 2010, and Kaydi Blount was born February 19, 2013.[9] Jeremiah and Kaydi are registered members of the Hualapai Tribe, which is a federally recognized Indian Tribe located on the Hualapai Indian Reservation in Northwestern Arizona.[10] At all times relevant here, Paula has remained an Arizona resident.

Gretchen and Justin's relationship was tumultuous.[11] Justin was arrested for domestic violence against Gretchen following the birth of their second child.[12] Because his domestic violence occurred on a reservation, it constituted a federal offense and he was sentenced to prison for four months.[13] Upon his release from prison, Justin was

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[9] I RA 173. The *Opening Brief* improperly refers to "exhibits" where it provides any reference to asserted facts at all. Appellants' partial record omits relevant orders and other proceedings below.

[10] I RA 173.

[11] Id.

[12] Id.

[13] Id.

ordered to a half way house for six months and subsequently obtained a small apartment in Flagstaff.[14] While still married to Gretchen, Justin engaged in an affair with his current spouse that resulted in the birth of his third child in March, 2016.[15]

Paula regularly cared for the minor children from the time of their births, and was effectively their primary caregiver for many years prior to their removal from her care in late 2017.[16] She was essentially the children's sole custodian following Justin's arrest in 2013 and subsequent incarceration, when Gretchen left the children with Paula exclusively.[17]

During these years, the children developed a significant bond with Paula and saw her as more of a maternal figure than a grandmother.[18] For some reason, this reality

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[14] I RA 174.

[15] Id.

[16] Id.

[17] Id.

[18] I RA 174.

always bothered Justin and his open hostility was exacerbated upon his marriage to his current wife.[19]

Several months prior to Gretchen's death on December 27, 2017, she initiated divorce proceedings against Justin in the Hualapai Tribal Court.[20] At a hearing held in the Tribal Court on June 26, 2017, which was attended by Justin, Gretchen, and their counsel, the Tribal Court entered a decree and order of dissolution of marriage between Justin and Gretchen.[21] In addition, the Court issued orders awarding Gretchen temporary primary physical custody of the children pending final determination.[22]

Immediately after Gretchen's death, Gretna and Wilfred Whatoname, the maternal grandparents of Jeremiah and Kaydi, petitioned the Tribal Court for an order

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[19] Id.

[20] Id.

[21] I RA 175.

[22] Id.

awarding them temporary custody of the children.[23] Justin opposed the maternal grandparents' request and the Court issued a summary determination on December 29, 2017, in which it denied their request and determined that because Gretchen was deceased, custody of the children must be transferred to Justin.[24]

Justin took custody of the children on December 29, 2017, and immediately relocated from Peach Springs, Arizona, to Las Vegas, Nevada.[25] To obtain a more formal order relating to his legal and physical custody, Justin submitted an *Ex Parte Motion for Dismissal and Orders* with the Tribal Court on January 11, 2018, in which he requested, in light of Gretchen's death, that he receive legal and physical custody of the children.[26] As the submission was *ex parte*, a default order was entered by the

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[23] I RA 175.

[24] Id.

[25] Id.

[26] I RA 175. *Also see* Exhibit A, APP 3, to *Appendix of Exhibits for Appellant's Opening Brief* filed May 13, 2021.

Tribal Court in ordering that "Legal and physical custody of Jeremiah Blount, d.o.b. 01/19/2010, and Kaydi Blount, d.o.b, 02/19/2013, is restored to Respondent Justin Blount, the minors' biological father."[27]

Since Justin had relocated to Las Vegas, Paula filed a *Petition for Grandparent Visitation* with the Clark County, Nevada, district court on May 18, 2018.[28] Justin opposed that *Petition* and moved the Court to dismiss Paula's *Petition* on the basis that the Nevada court lacked subject matter jurisdiction because the Hualapai Tribal Court was the ***only*** Court allowed to issue orders relating to the care and custody of the minor children as it retained ***continuing, exclusive jurisdiction***.[29]

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[27] Id. This 2018 *Order*, issued by the Tribal Court at Justin's request, contradicts Justin's false assertion (AOB at 24-25) that because the Tribal Court "vacated" its temporary child custody orders issued in 2017 it somehow lost continuing, exclusive jurisdiction.

[28] I RA 175.

[29] I RA 175.

The parties appeared before the Nevada family court, Hon. Linda Marquis presiding, on July 25, 2018, at which time Judge Marquis found, of relevance to these proceedings:

> THE COURT HEREBY FINDS that the Hualapai Tribe has exercised jurisdiction over the two older children [Jeremiah and Kaydi] in two separate proceedings. As such, the Hualapai Tribe has continuing, exclusive jurisdiction over the children.[30]

Paula filed a *Notice of Appeal* and *Case Appeal Statement* on August 24, 2018.[31] Following briefing, the Nevada Supreme Court issued an *Order of Affirmance* on September 16, 2019, denying Paula's appeal.[32]

While the appeal was pending, and without notice to Paula, Justin and his wife (Stephanie Blount) filed a *Petition for Adoption* on January 3, 2019.[33] Shortly after the

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[30] I RA 175-176.

[31] I RA 176. *Also see* filings submitted in Case No. 76831.

[32] Id.

[33] I RA 176.

Hualapai Tribe was notified of Justin and Stephanie's *Petition for Adoption*, it filed a *Motion to Intervene* in the Nevada adoption on the basis that the Tribal Court was the only court with jurisdiction to issue orders relating to the care and custody of the minor children (effectively echoing what Justin had argued both at the district court and Supreme Court months earlier).[34]

During the pendency of those proceedings, Gretna and Wilfred Whatoname, the maternal grandparents of Jeremiah and Kaydi, filed a *Petition* in the Tribal Court on February 26, 2019, to obtain temporary custody of the children in light of Justin and Stephanie's neglect of the children.[35]

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[34] Id.

[35] I RA 176. Justin and Stephanie's neglect and abuse of the children continued and worsened. While in Justin's "care," both children have been treated so terribly that Jeremiah has been institutionalized and Kaydi is suffering tremendous emotional and psychological strain requiring, at minimum, counseling and medical attention. *See* 5 RA 935-936. It is possible that his damage to the children is irreversible.

On February 27, 2019, The Hualapai Tribal Court – still the only Court with jurisdiction to issue orders relating to the custody of the children – issued an order granting Gretna and Wilfred temporary custody of the children.[36] The Tribal Court subsequently issued a *Minute Order* on May 28, 2019, again granting them custody of the children with the requirement that Justin return the children to their maternal grandparents immediately.[37]

Notwithstanding that reality, the Tribal Court's objection to any adoption occurring in Nevada in light of the Indian Child Welfare Act ("ICWA"), and the fact that child custody proceedings were *ongoing* in the Hualapai Tribal Court (the only court with exclusive, continuing jurisdiction), Justin and Stephanie pressed forward

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[36] I RA 176.

[37] Id.

with their inappropriate *Petition for Adoption*. As a result, an adoption hearing was held and a purported default *Decree of Adoption* was filed on July 3, 2019.[38]

No indication has ever been provided by Justin that the *Petition* for or *Decree of Adoption* was ever actually served on all interested parties, including the maternal grandparents who technically had custody of the children by way of a lawful order issued before the adoption by the only court capable of making custody orders.[39]

On December 9, 2019, Paula filed a *Petition* in the Hualapai Tribal Court seeking grandparent visitation.[40] The *Notice of Hearing* relating to Paula's *Petition* was provided to all interested parties.[41] At the resulting hearing on January 30, 2020,

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[38] I RA 176-177.

[39] I RA 177.

[40] I RA 177.

[41] I RA 177. Justin's counsel claims that he provided "notice" to the Tribal Court that he "was no longer Justin's counsel of record in those proceedings" by submitting a "letter" to the Tribal Court. AOB at 9. He never filed a motion for or Notice of Withdrawal or supplied any documentation indicating that he formally withdrew from that matter. *See* I RA 35. We are unaware of any authority (and Justin does not cite

the Tribal Court issued a *Grandparent Custody and Visitation Order*,[42] finding and ordering:

> This Court has exercised jurisdiction over these children, who are enrolled members of the Hualapai Tribe, since the original petition for custody was filed by the children's mother on February 26, 201[7]. . . This Court has since continued to exercise jurisdiction over these children.[43]
>
> On December 9, 2019, the Petitioner filed a Petition for Grandparents Visitation Rights pursuant to Chapter 20 of the Hualapai Law & Order Code The matter was set for a Motion Hearing, and Notice was e-mailed to the Respondent's counsel of record on December 30, 2019, at 1549 hrs. The Clerk reports that there has been no returned e-mail as undeliverable. The Court does note, however, that there are errors in the Notice, specifically the caption is mistakenly captioned as "Waite, Trevor v. Blount, Justin/Whatoname, Gretchen" and the date on the Notice is listed as February 26, 2019. It does however, give notice of a Motion Hearing on today's date at 0900 hrs, and Mr. Waite could have contacted the Court to seek clarification.[44]

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any) that sending such a letter has any legal effect at all; it certainly would not in any court in Nevada. *See*, *e.g.*, EDCR 7.40 (Appearances; substitution; withdrawal or change of attorney).

[42] I RA 177; and I RA 7-10.

[43] I RA 7, lines 23-25.

[44] I RA 8, lines 1-7.

As a result of those findings, the Tribal Court awarded Paula joint legal and physical custody of the minor children pursuant to a specific schedule that – to date – Justin has failed to even acknowledge, nevertheless follow.[45] To pursue enforcement of the clear and unambiguous custody orders issued by the Tribal Court, Paula filed her *Registration of Foreign Custody Orders* on March 18, 2020.[46]

Justin, through counsel, accepted service of Paula's *Registration* on ***April 6, 2020***.[47] Justin filed an *Opposition* to Paula's *Registration* on ***April 30,*** but failed to submit a request for a hearing in violation of NRS 125A.465(6).[48] Paula filed her *Reply* to Justin's *Opposition* on July 9.[49]

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[45] I RA 177.

[46] I RA 2-30.

[47] I RA 31-32.

[48] I RA 33-169.

[49] I RA 170-236.

On July 17 (102 days after acceptance of service), Justin filed an *Errata to Father's Opposition to Registration of Foreign Custody Order* indicating that he "inadvertently" excluded the words "HEARING REQUESTED" at the time of filing his *Opposition*.[50]

In violation of EDCR 7.40(a), on August 10, 2020, Stephanie and Justin (despite the fact that he was represented by counsel) filed a document in proper person entitled *Motion to Invalidate*.[51] It was purportedly served by mail on August 13, although the *Proof of Service* was filed on August 20, and it was not actually received until August 17.[52]

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[50] I RA 237-240.

[51] II RA 241-300.

[52] II RA 361-386.

Paula filed an *Opposition and Countermotion* on September 1,[53] and the parties appeared before the family court on October 20.[54] After hearing argument from the parties, the district court took the matter under advisement.[55] The family court issued a written decision on November 2, 2020,[56] by *Minute Order*, correctly noting that the Hualapai Tribal Court had never relinquished UCCJEA jurisdiction to Nevada, that the Hualapai Tribal Court still has continuing exclusive jurisdiction, and that the orders from the Hualapai Tribal Court must be given full faith and credit.[57]

In continuing efforts to block Paula's ability to communicate with her grandchildren, Justin filed a *Notice of Appeal* and a *Motion to Stay* within 10 days of

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[53] II RA 387-404.

[54] IV RA 725-727.

[55] Id.

[56] IV RA 728-731.

[57] IV RA 728-731. Justin falsely asserts (AOB at 3) that on November 2, 2020 the district court issued its *Minute Order* "without a hearing." As he knows, there was substantial argument made by the parties on October 20, 2020, which formed the basis for the Court's *Minute Order* on November 2.

the family court's determination.[58] Since then, despite the absence of any stay, Justin has steadfastly refused to abide by the family court's orders and Paula's court-ordered visitation has been repeatedly denied as detailed in Paula's *Motion for an Order to Show Cause, etc.*, filed March 19, 2021.[59]

As noted, Justin filed his *Notice of Appeal* on November 9, 2020. Notwithstanding the fact that she is not a party to and has never been joined in the action, Justin's wife, Stephanie Blount, filed her own purported *Notice of Appeal* on November 13, 2020. It appears those *Appeals* were consolidated by this Court and Justin and Stephanie are being treated as the Appellants in this matter.[60]

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[58] IV RA 732-734; and IV RA 735-740.

[59] V RA 890-910. Justin's *Motion to Stay* was denied by the district court on January 12, 2021. *See* IV RA 854-858.

[60] Part of this Court's disposition should strike Stephanie from this appeal for lack of standing. *See*, *e.g.*, *Valley Bank v. Ginsburg*, 110 Nev. 440, 874 P. 2d 729 (1994) (setting out requirements to being a "party" to an action).

This Court issued a *Notice to File Case Appeal Statement* on November 17, 2020, requiring Justin to file his Case Appeal Statement within ten days. When he failed to do so, this Court issued an *Order* directing that Justin and Stephanie file their Case Appeal Statements within seven days. Neither did so.

On December 28, in light of the fact that neither Appellant had submitted a Case Appeal Statement, this Court issued an *Order Conditionally Imposing Sanctions and Directing Counsel to File Case Appeal Statements* within 14 days.

The Appellants finally submitted their *Case Appeal Statement* on January 4, 2021, after which this Court ordered that Appellants file their Opening Brief within 120 days. After submitting a deficient *Opening Brief*, on May 7, 2021, the Appellants re-filed on June 9, 2021.

This *Answering Brief* follows.

ARGUMENT

I. STANDARD OF REVIEW

Appellant incorrectly identifies (AOB at 2) the standard of review on this question of full faith and credit as "abuse of discretion." We will gladly accept review under that offered standard, although, actually, alleged errors of law are reviewed *de novo*,[61] as are questions of constitutional or statutory construction.[62]

Under either standard, the family court made no error and the district court's *Minute Order* issued on November 2, 2020, repeated in the *Order* filed December 10, should be affirmed.

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[61] *Moseley v. Dist. Ct.*, 124 Nev. 654, 188 P.3d 1136 (2008); *Settelmeyer & Sons v. Smith & Harmer*, 124 Nev. 1206, 197 P.3d 1051 (2008).

[62] *See Irving v. Irving*, 122 Nev. 494, 134 P.3d 718 (2006); *Carson City District Attorney v. Ryder*, 116 Nev. 502, 998 P.2d 1186 (2000).

II. SUMMARY OF ARGUMENT

The district court did not err when it gave full faith and credit to the *Minute Order* filed May 28, 2019, and the *Grandparent Custody and Visitation Order* filed January 30, 2020, entered in the Tribal Courts of the Hualapai Tribe, Peach Springs, State of Arizona, Case No. 2019-CC-004, which were registered with the Nevada district court on March 18, 2020.

NRS 125A.465 provides, in relevant part, that a child custody determination issued by a court of another state[63] may be registered in the State of Nevada. The person seeking registration of a child custody determination from another state is required to provide notice of that registration upon "any parent or person acting as a

[63] Per NRS 125A.215(2), "A court of this state shall treat a tribe as if it were a state of the United States."

parent who has been awarded custody or visitation in the child custody determination sought to be registered."[64]

A hearing to contest the validity of a registered determination "must be requested within 20 days after service of notice." In the event a timely (within 20 days of service) request for a hearing is not made, "***the registration is confirmed as a matter of law***."[65]

Here, Justin first filed an *Opposition* to Paula's *Registration* ***24*** days after service, and first requested a hearing ***102*** days after service. Both were untimely. He never appealed the underlying order in the place in which it was entered (Arizona), although he was noticed of the hearing and resulting order there, and advised by the Nevada family court judge to appeal it in Arizona if he thought he had grounds to do

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[64] See NRS 125A.465(1)(c) and 125A.465(4).

[65] See NRS 125A.465(7). [Emphasis added].

so. Those facts alone dictate the result of this appeal as a matter of statute; the registration must be confirmed by Nevada as a matter of full faith and credit.

Even if Justin or Stephanie had made a timely objection and request for hearing contesting the validity of the registration, the record reflects that the Hualapai Tribal Court maintained continuing, exclusive jurisdiction to render orders relating to the care and custody of the minor children under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). No evidence was ever supplied anywhere that it ever relinquished jurisdiction and it is intellectually dishonest for Justin (or Stephanie) to suggest otherwise.

That intellectual dishonesty is highlighted by the representations made by Justin in this Court in Case No. 76831, where he asserted that the Nevada courts lacked subject matter jurisdiction to do *anything* relating to these children because the Tribal Court was the ***only*** court capable of making determinations regarding their care and

custody. Indeed, Justin correctly acknowledged for years after the children left Arizona that the Tribal Court maintained continuing, exclusive jurisdiction.

Justin and Stephanie's reference to a purported *Decree of Adoption* that was surreptitiously requested by them, never noticed, and entered ***after*** one of the registered orders was entered in the Tribal Court granting the maternal grandparents custody of the minor children is a red herring with no bearing on the district court's registration of orders from the Hualapai Tribal Court, for several reasons. Those reasons include that an adoption has no effect on continuing exclusive jurisdiction under the UCCJEA because adoptions are excluded from the UCCJEA.[66]

There is neither a legal or factual basis for Justin and Stephanie's appeal and the district court's *Order* filed December 10, 2020, should be affirmed.

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[66] NRS 125A.205 "Proceedings governed by other law. The provisions of this chapter do not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child."

III. JUSTIN FAILED TO TIMELY CONTEST THE REGISTRATION OF THE TRIBAL COURT ORDERS

NRS 125A.465 provides, in relevant part:

> 1. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to a court of this state which is competent to hear custody matters:
>
> (a) A letter or other document requesting registration;
>
> (b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
>
> (c) Except as otherwise provided in NRS 125A.385, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
>
> 2. On receipt of the documents required by subsection 1, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

3. The registering court shall provide the persons named pursuant to paragraph (c) of subsection 1 with an opportunity to contest the registration in accordance with this section.

4. The person seeking registration of a child custody determination pursuant to subsection 1 shall serve notice, by registered or certified mail, return receipt requested, upon each parent or person who has been awarded custody or visitation identified pursuant to paragraph (c) of subsection 1.

5. The notice required by subsection 4 must state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

6. ***A person seeking to contest the validity of a registered order must request a hearing within 20 days after service of the notice.*** At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction pursuant to NRS 125A.305 to 125A.395, inclusive;

(b) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so pursuant to NRS 125A.305 to 125A.395, inclusive; or

(c) 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.

7. ***If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.***

8. ***Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration***.

[Emphasis added].

The law is clear that a person seeking to contest the registration of a foreign custody order ***must*** request a hearing within 20 days after service of the notice.[67] If the

[67] Generally, when a statute's language is plain and its meaning clear, the court will apply that plain language. *International Game Tech. v. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006); *also see Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 717 (2007).

person seeking to contest fails to do so within the time frame allotted, the registered orders are confirmed by operation of law.

Justin, through counsel, accepted service of Paula's *Registration* on April 6, 2020. Justin filed an *Opposition* to Paula's *Registration* on April 30, 2020 – 24 days after service of the *Notice of Registration*. He did not request a hearing seeking to contest the registration until July 17, 2020 – more than three months after he was served. Accordingly, the Registration had to be affirmed as a matter of law, and was.

To the extent Justin claims that *Stephanie*, who has never been joined as a party to this case, was entitled to notice of the registration, the relevant statute makes clear that the only people to whom notice is required are "any parent or person acting as a parent who has been awarded custody or visitation ***in the child custody determination***

sought to be registered."[68] Stephanie was not awarded custody or visitation pursuant to any Tribal Court order; she has never been a party to any case in the Tribal Court.

IV. THE TRIBAL COURT ORDERS WERE NOT "WRONGFULLY REGISTERED"

Ariz. Rev. Stat. 25-1032 is identical to NRS 125.315 and states, in relevant part:

> A. Except as otherwise provided in section 25-1034, a court of this state that has made a child custody determination consistent with section 25-1031 or 25-1033 has exclusive, continuing jurisdiction over the determination until either of the following is true:
>
> 1. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent 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.
>
> 2. 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.

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[68] See NRS 125A.465(1)(c).

NRS 125A.325 further provides:

> Except as otherwise provided in NRS 125A.335, a court of this state ***may not*** modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination pursuant to paragraph (a) or (b) of subsection 1 of NRS 125A.305 ***and***:
>
> 1. The court of the other state determines it no longer has exclusive, continuing jurisdiction pursuant to NRS 125A.315 or that a court of this state would be a more convenient forum pursuant to NRS 125A.365; or
>
> 2. A court of this state 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.

[Emphasis added].

The UCCJEA forms the exclusive basis for determining jurisdiction of interstate child custody disputes. Continuing, exclusive jurisdiction from the initial issuing court ***only*** ceases when "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."[69] Usually, such a finding follows either a stipulation or evidentiary proceedings.

No court anywhere has ever found that the child, the child's parents and any person acting as a parent do not presently reside in the issuing state (Arizona). No such findings have ever been made by the Tribal Court. The undisputed record indicates the exact opposite: the Tribal Court has clearly indicated that it has ***not*** relinquished jurisdiction over these children. That Tribal Court issued orders granting custody to the maternal grandparents long ***before*** the purported *Decree of Adoption* was processed by the Nevada district court, and it has continued exercising its continuing, exclusive jurisdiction to issue orders relating to the subject minors.[70]

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[69] NRS 125A.315(b).

[70] Both the maternal grandparents and paternal grandmother (persons acting as parents to the subject minors) continue to reside in Arizona and subjected themselves to the jurisdiction of the Hualapai Tribal Court.

In any event, the entire premise of Justin's brief – that somehow his surreptitious adoption proceeding "broke" the Tribal Court's UCCJEA continuing exclusive jurisdiction – is false. Adoption proceedings are ***not*** UCCJEA proceedings.[71]

In sum, absolutely no information, let alone evidence, has ever been supplied by Justin to indicate that the Tribal Court somehow lost or relinquished its exclusive, continuing jurisdiction.[72] Those Tribal Court Orders were presumptively valid,[73] were

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[71] NRS 125A.205. The history of why this is so is a bit tangential to this appeal, and pretty technical; for the convenience of the Court, we have attached as an Appendix the *Commentary on Adoption Jurisdiction Under the UCCJEA* written by Linda Elrod, of the Uniform Law Commission Joint Editorial Board of Uniform Family Law, with the assistance of Bob Spector, the Reporter for the UCCJEA. As detailed in that Report, the purported adoption obtained by Justin is probably invalid as having been obtained in violation of the federal Parental Kidnap Prevention Act ("PKPA"), 28 U.S.C. § 1738A, since the adoption was processed while a custody action was pending in another state (Arizona); *see In re Ramirez v. Barnet*, 384 P.3d 828 (Ariz. Ct. App. 2016), discussed *infra*. But the validity of Justin's purported adoption is not squarely before this Court in this appeal.

[72] His argument that the Tribal Court "impliedly" relinquished its jurisdiction is unabashedly frivolous; we are aware of no authority by which such a relinquishment can be "implied," and Justin has cited none.

[73] NRS 47.250(10).

never shown or found to be otherwise, and were not "wrongfully registered" by the district court.

Even though Justin failed to timely contest the Tribal Court orders as required by statute, the district court still afforded him the opportunity to challenge them and ultimately found, consistent with this Court's decision in Case No. 76831, that the Tribal Court never relinquished jurisdiction over child custody and still maintained exclusive continuing jurisdiction.

V. JUSTIN WAS PROPERLY NOTICED OF THE TRIBAL COURT PROCEEDINGS AND PAULA'S REGISTRATION

Justin makes a half-hearted attempt to claim that he was not "properly noticed" of the Tribal Court proceedings. His claim is simply untrue, as he was still represented by counsel at the time the registered orders were issued by the Tribal Court.

Justin's counsel has since claimed that he provided "notice" to the Tribal Court that he was no longer Justin's counsel of record in those proceedings by submitting a "letter" to the Tribal Court. However, no one ever filed a Notice of Withdrawal or Motion to Withdraw in the Tribal Court indicating that counsel wished to no longer represent Justin. Indeed, the documentation that he supplied to the district court demonstrates the exact opposite.[74] Specifically, in an e-mail to Justin dated May 9, 2019, David Sexton, Esq., of Alverson Taylor & Sanders (counsel for Justin) stated:

> I am writing this email to inform you of the outcome of the hearing that Trevor and I attended on your behalf in the Hualapai Tribal Court on May 8, 2019. As we discussed on the phone, we attended the hearing and made a special appearance solely contesting the jurisdiction of the Hualapai Tribal Court regarding the 3rd Party Petition for Custody filed there by the maternal grandparents. We made our special appearance and presented our arguments related to the issue of jurisdiction. The Court rejected our arguments and made a finding that they do have jurisdiction

[74] See 1 RA 124-127; and 144.

in this matter. Although we have not received a written order signed by the judge, the judge made the following orders from the bench:

- Jeremiah and Kaydi must be turned over to their grandparents by Friday, May 10, 2019
- A full hearing related to the 3rd Party Petition for Custody was set for May 28, 2019 at 2:00 PM
- Justin must be at the hearing scheduled for May 28, 2019

We wanted to be sure and make you aware of the orders that the judge entered. You should also be aware that the judge held Trevor in contempt of court and ordered him to pay a $100 fine. If you have any questions about the outcome of the hearing or any of the orders that the judge made, feel free to contact us.[75]

It is telling that this communication from Justin's counsel, sent May 9, 2019, specifically acknowledged the Tribal Court's finding that it ***retained*** jurisdiction when

[75] 1 RA 126. Justin failed to heed his counsel's advice and he has never afforded any of the children's grandparents access to the children since Gretchen's death.

reviewing the argument made by Justin in this case that the Tribal Court relinquished its child custody jurisdiction "both explicitly and impliedly."[76]

Justin's bad faith in these proceedings has cost Paula tens of thousands in attorney's fees and, more importantly, deprived her of rightful access to her grandchildren for the better part of four years. Enough is enough; this Court has an obligation to expeditiously deny Justin's appeal, affirm the district court's ruling, and afford Paula the ability to pursue enforcement of the lawfully entered Tribal Court orders.

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[76] See AOB at 19.

VI. THE INITIAL ORDER GRANTING THE MATERNAL GRANDPARENTS CUSTODY OF THE MINOR CHILDREN WAS ENTERED PRIOR TO ANY DECREE OF ADOPTION

The UCCJEA specifies that its provisions apply to all proceedings in which legal custody, physical custody, or visitation is an issue. The UCCJEA Section 102(4) (NRS 125A.055 and Ariz. Rev. Stat. 25-002(4)) defines a child custody proceeding as:

> a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The terms does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement.

Accordingly, the UCCJEA on its face applies to termination of parental rights cases, or any termination of a person's custodial rights, which specifically relate to the care and custody of a minor child.

As referenced above, the Arizona Court of Appeals examined a situation like this one in *In re Ramirez v. Barnet*,[77] involving a child born on October 27, 2014. The father filed a paternity action coupled with a motion for temporary orders on October 30. The Arizona court issued a temporary order on November 4 and set the matter for hearing. The mother moved to dismiss the Arizona action because she had arranged for the child's adoption in New York state, and had initiated adoption proceedings. The father, who did get notice of the adoption proceedings, did not object in New York and the New York court granted the adoption on February 3, 2015.

The mother subsequently argued that the New York adoption was entitled to full faith and credit under the PKPA. The Arizona Court of Appeals held that because Arizona was the home state at the time the father filed his paternity and custody action, the PKPA barred any other state from exercising jurisdiction when Arizona was

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[77] *In re Ramirez v. Barnet*, 384 P.3d 828 (Ariz. Ct. App. 2016).

exercising jurisdiction consistently with the PKPA, and that the New York adoption decree was not entitled to full faith and credit.[78]

The same rule applies to a Tribal Court. NRS 125A.215(3) provides:

> A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of the provisions of this chapter must be recognized and enforced pursuant to NRS 125A.405 to 125A.585.[79]

NRS 127.123 provides that Justin's purported adoption is invalid as having been obtained without providing adequate notice:

> Notice of the filing of a petition for the adoption of a child must be provided to the legal custodian or guardian of the child if that custodian or guardian is a person other than the natural parent of the child.

Even though Nevada and Arizona have not included adoptions within the definition of "child custody determinations" under the UCCJEA, the separate statutes

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[78] We have cited to the Arizona statutes and Arizona case law because that is where the Hualapai Tribe and its Tribal Court is located.

[79] Identical language can be found in Ariz. Rev. Stat. 25-1004(C).

governing adoptions require a party seeking such to honor "custody determinations" made consistent with the PKPA and UCCJEA. Justin failed to do so.

Adoption proceedings are replete with court-made determinations implicating the care and custody of minor children. Accordingly, adoption proceedings fall within the "any proceeding for a custody determination" provision of the Parental Kidnaping Prevention Act, even if adoptions are not themselves considered UCCJEA proceedings.

NRS 127.017 requires, on its face, that the courts of this state give deference to the Tribal Court's custody orders before granting an adoption:

> Each court in this state which exercises jurisdiction pursuant to this chapter [adoption statute] in a case involving an Indian child ***shall give full faith and credit to the judicial proceedings of an Indian tribe*** to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

[Emphasis added].

As detailed above, Gretna and Wilfred Whatoname, the maternal grandparents of Jeremiah and Kaydi, filed a *Petition* in the Tribal Court to obtain custody of the children on February 26, 2019. On February 27, the Hualapai Tribal Court, the only Court with jurisdiction to issue orders relating to the custody of the children, granted Gretna and Wilfred custody of the children. The Tribal Court subsequently issued a *Minute Order* on May 28, 2019, again certifying Gretna and Wilfred's custody of the children with the requirement that Justin return the children to their maternal grandparents.

Despite the Tribal Court's custody orders, and the Tribal Court's objection to any adoption occurring in Nevada in light of both the ICWA and the fact that child custody proceedings were ongoing in the Hualapai Tribal Court (the only court with continuing, exclusive jurisdiction), Justin and Stephanie pressed forward with an improvident *Petition for Adoption*, primarily on account of the fact that the Hualapai

Tribe did not have adequate resources to obtain Nevada-licensed counsel to object to such a suit.[80]

As a result, an adoption hearing was held and a purported *Decree of Adoption* was filed with the district court on July 3, 2019 – many months ***after*** Gretna and Wilfred had obtained sole custody of the subject minors pursuant to a lawful court order of the Tribal Court entitled to full faith and credit, which has been registered in Nevada without timely objection.

No indication was ever provided by Justin that either his *Petition* or *Decree of Adoption* was ever actually served on "all interested parties," including the maternal grandparents who had custody of those children by way of an order issued by the ***only***

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[80] Justin consistently argued that because identified counsel for the Tribe was "not licensed in Nevada" (AOB at 7), the district court was not authorized to consider it, or the maternal grandparents' objections. It appears the district court agreed when it directed the Tribe "through appropriately licensed counsel" (AOB at 8) to submit a brief regarding their objection to adoption proceedings. The Tribe had no resources with which to do so.

Court capable of making custody orders (of which Justin was fully aware as detailed above).

Until and unless the Hualapai Tribal Court relinquishes jurisdiction, or a court makes a determination on the record that the children, and "any parent or person acting as a parent who has been awarded custody or visitation" no longer live in Arizona, no other court in the United States has jurisdiction to issue orders (other than a temporary order regarding an emergency) relating to these children; it really is that simple. Justin's suggestion otherwise, especially considering his actions in the Nevada courts, is at best disingenuous.

CONCLUSION

Justin was properly served with the Registration of the *Minute Order* filed May 28, 2019, and the *Grandparent Custody and Visitation Order* filed January 30, 2020,

entered in the Tribal Courts of the Hualapai Tribe, Peach Springs, State of Arizona. He failed to file an objection within 20 days, and did not request a hearing for several more months. The registrations were confirmed as a matter of law.

Even if Justin or Stephanie had made a timely objection and request for hearing, the result would be the same, because the Hualapai Tribal Court maintained and exercised continuing, exclusive jurisdiction to render orders relating to the care and custody of the minor children under the UCCJEA, and never relinquished it.

The surreptitious adoption of the children by Stephanie is irrelevant for UCCJEA purposes, and in any event was entered ***after*** entry of a custody order in favor of the maternal grandparents in Arizona. She is not a valid party to this appeal, and her appeal should be dismissed.

In sum, there is neither a legal or factual basis for either Justin or Stephanie's appeals and the district court's *Order* filed December 10, 2020, should be affirmed.

Dated this __7th__ day of September, 2021.

Respectfully Submitted By:
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_____

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CERTIFICATE OF COMPLIANCE

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

   [**X**] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office 2021, Standard Edition in font size 14, and the type style of Times New Roman; or

   [ ] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 8,606 words; or

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

[ ] Does not exceed _____ pages.

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 28(e)(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 __7th__ day of September, 2021.

Respectfully Submitted By:
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d)(1), I certify that I am an employee of the WILLICK LAW GROUP and that on this 7th day of September, 2021, documents entitled *Respondent's Answering Brief* 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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