

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOHAMAD ALHULAIBI

Appellant,

vs.

AHED SAID SENJAB

Respondent.

Supreme Court No.: 82114;

82121

Electronically Filed

Feb 22 2021 11:55 p.m.

District Court No.: D-20-606093-D

Elizabeth A. Brown

Clerk of Supreme Court

T-20-203688-T

**APPELLANT MOHAMAD
ALHULAIBI'S RESPONSE TO
ORDER TO SHOW CAUSE**

COMES NOW, Appellant, Mohamad Alhulaibi, in response to the January 21, 2021 Nevada Supreme Court's Order to Show Cause as to the Court's Jurisdiction as follows:

I. CASE BACKGROUND AND PROCEDURAL HISTORY

On March 24, 2020, Respondent Ahed Senjab filed a complaint for Divorce. Thereafter, on April 14, 2020 Appellant, Mohamad Alhulaibi filed a Motion to Dismiss based on lack of Subject Matter Jurisdiction.

On May 20, 2020, a hearing was held on the Motion to Dismiss, after hearing arguments, the District Court continued the hearing and requested supplemental briefing. The Parties filed supplemental briefing on June 8, 2020. In Mohamad's supplemental briefing he requested that the District Court dismiss the Divorce Complaint and issue a return order of the minor child to Saudi Arabia (which Mohamad maintains is the Minor Child's habitual residence/home state). The

continued hearing on the Motion to Dismiss was held on June 16, 2020. At the hearing the Honorable T. Arthur Ritchie granted Mohamad's Motion to Dismiss. On June 17th, 2020, the District Court entered an Order granting Mohamad's Motion to Dismiss but did not address Mohamad's request for a return order of the minor child to his habitual residence.

After the June 17th Court Order, Ahed deprived Mohamad from seeing the Minor Child thereby forcing Mohamad to file the Petition for an Order Requiring Production of the Minor Child, For the Issuance of a Warrant for the Pick-Up of the Minor Child; For an Order Preventing Abduction of the Minor Child Pursuant to NRS 125D; For a Return Order for the Minor Child to His Home Country of Saudi Arabia. Mohamad filed the Petition for the Return Order on June 29, 2020. Thereafter, Ahed filed an Opposition and Countermotion on July 1, 2020 before ultimately filing her notice of appeal on July 16, 2020.

In addition to the Divorce case involving the parties a Protection Order against Domestic Violence was issued against Mohamad on February 14, 2020 and an Extended Protection Order was entered on March 30, 2020, that included a custodial schedule for the Minor Child. In addition to Mohamad filing the Petition for Return Order in D-20-606093-D, on July 2, 2020, Mohamad filed in T-20-203688-T a Motion to Dissolve the Extended Protection Order in which he also requested relief

that would expedite a return order of the Minor Child to his Habitual Residence/Home State.

On July 9, 2020 the Motion to Dissolve the Protection Order was heard by Commissioner Norheim, the Motion to Dissolve was denied with the custodial matters and possible contempt deferred to be heard by the Honorable T. Arthur Ritchie.

On August 4, 2020, the Honorable T. Arthur Ritchie heard the Petition for Production of the Minor Child and for the Return Order of the Minor Child to his Home State filed in D-20-606093-D along with the custodial matters remaining from the Motion to Dissolve filed in T-20-203688-T. At the hearing the Petition for the Return Order was denied. The Court did modify the custodial schedule to give Mohamad additional time with the minor child and to revise the Court order to include joint physical custody of the Minor. The Court also issued an order preventing the Minor Child from leaving the State of Nevada. The Order related to the Petition filed in D-20-606093-D was ultimately filed on October 13, 2020 in T-20-203688-T. Please see attached as Exhibit 1 a copy of the order, that showed the order file stamped in the “T” case.

On January 25, 2021, Respondent Ahed filed a Motion to Extend the Protection Order. The Motion was heard on February 12, 2021 concurrently with an evidentiary hearing regarding alleged abuse of the minor child in which both parties

are accusing the other of abuse of the Minor Child. The Commissioner denied Ahed's Motion allowing the Protection Order to expire by its own terms on February 14, 2021. The Commissioner has left in place the custody orders and the order preventing the Minor Child from leaving the State of Nevada as the evidentiary hearing was continued to March 26, 2021.

II. The District Court Could Have Assumed Jurisdiction over the Motion/Petition to Produce the Minor Child and Order the Minor Child's Return to his Home Country

This Court has held “when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits.” Mack–Manley v. Manley, 122 Nev. 849, 855, 138 P.3d at 529–30.

Here, the District Court in its Order found that the issues were not collateral to the appeal but the return order is likely collateral as it would not effect the merits of the appeal as the appeal was limited to whether or not the District Court had subject matter jurisdiction to hear the divorce case and did not involve any orders regarding the return of the minor child to his home state. A return order does not render an appeal moot; there is a live dispute between the parties over where their child will be raised, and there is a possibility of effectual relief for the prevailing parent. Chafin, 568 U.S. at 180. “[i]f losing parents were effectively guaranteed a

stay, it seems likely that more would appeal, a scenario that would undermine the goal of prompt return and the best interests of children who should in fact be returned.” Chafin, 568 U.S. 165, 179, 133 S.Ct. 1017, 1027. In order to further the goal of the prompt return of the Minor Child the District Court likely could have heard the Petition as it would not have affected the appeal. A lot of issues that were not brought in any briefing related to the Motion to Dismiss and should have been addressed by the parties in this appeal were previously raised in Case No. 81515 first by Ahed and then in response by Mohamad.

III. This Honorable Court Has Jurisdiction Over Appellant Mohamad’s Appeal

Mohamad’s appeal was only for the Order entered on or about October 14, 2020, related to the Petition for Production of the Minor and for a Return Order that was filed in the Divorce Case. The order regarding the petition filed in the Divorce Case was filed in T-20-203688-T thereby causing the appeal to be docketed as two separate appeals.

NRAP 3A(b) provides that “[a]n appeal may be taken from the following judgments and orders of a district court in a civil action,” including “[a]n order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction.” See NRAP 3A(b)(3). An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is

brought, or by a judge thereof, and when made by a judge it may be enforced as an order of the court. The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

“[T]he moving party must show that there is a likelihood of success on the merits and that the nonmoving party's conduct, should it continue, would cause irreparable harm for which there is no adequate remedy at law.” Dep't of Conservation & Nat. Res., Div. of Water Res. v. Foley, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005).

Here, Mohamad's Petition was for an order that the Minor Child be produced and Ordered to be returned to his Home State of Saudi Arabi as Ahed was depriving Mohamad from seeing the Minor Child. Mohamad cannot file a petition with the Hague Convention as Saudi Arabia is not a party to the Hague Convention. A petition for the return of a minor child under Nevada State law operates similar to an injunction as it requests an order be issued that requires a person to perform certain acts i.e produce the minor child and return him to his Home State. In the petition, it addressed numerous factors including the rationale that showed how Mohamad would be irreparably prejudiced if Ahed was able to abscond with the Minor Child. Thereafter, in response to a supplement filed by Ahed requesting a stay of the District Court's Order Dismissing the Divorce Case, Mohamad had to address

the stay which included arguments related to irreparable harm and the likelihood Ahed would lose her appeal on the merits.

A petition for a return order in a Nevada court similar to a Hague Petition is not a custody case but a petition that custody be decided in the proper forum. The Hague Convention is clear that a court considering a Hague petition should not consider matters relevant to the merits of the underlying custody dispute such as the best interests of the child, as these considerations are reserved for the courts of the child's habitual residence. Asvesta v. Petroutsas, 580 F.3d 1000, 1015 (9th Cir. 2009).

In Robles I, *ex parte* emergency relief was granted to prevent irreparable harm where: (1) the respondent already had abducted the child from the familial home in Mexico and smuggled the child into the United States; (2) the respondent faced the risk of apprehension in the United States; and (3) there was the possibility if the child was not removed from the respondent's custody that the respondent would further secret the child and herself. Robles I, 2004 WL 1895125, at *3. In Robles, the Court consolidated the hearing for a preliminary injunction motion with a hearing on the merits of the case pursuant to FRCP 65(a)(2).

Here, at the time of the filing of the Petition Ahed had secreted the Minor Child away in violation of the custodial orders in the T case, was violating her VISA conditions so she could remain in the United States, was potentially causing

Mohamad issues with immigration by violating the terms of her VISA, all while Mohamad had no way to communicate or know the whereabouts of the minor child, with the very real possibility that Ahed who had no ties to Las Vegas prior to coming with Mohamad in January 2020 would leave the state and further secret the minor child and herself away. Therefore, the petition requested injunctive relief to prevent such actions from happening while also seeking the Minor Child be returned to Saudi Arabia.

IV. In The Alternative If This Honorable Court Does Not Have Jurisdiction To Hear The Appeal On The Merits Mohamad Would Request That The Appeal Be Converted To A Writ Of Mandamus Or A Writ Of Habeas Corpus.

If this Honorable Court does not believe this matter should proceed as an appeal, Mohamad would request that this Court allow Mohamad to convert the appeal into a Writ so that the jurisdictional challenge can proceed in an expedited fashion. The UCCJEA does not require a full evidentiary hearing; rather it aims for the speedy resolution of jurisdictional challenges. Chaker v. Adcock, 464 P.3d 412 (Nev. App. 2020); *citing* In re Yaman(sic), 105 A.3d 600, 613-14 (N.H. 2014). “Following the example set in Monasky, we do not remand for the district court to reconsider because to do so would ‘**consume time when swift resolution is the Convention's objective,**’ and there is no indication that ‘**the District Court would appraise the facts differently on remand.**’ Smith v. Smith, No. 19-11310, 2020 WL 5742023, at *4 (5th Cir. Sept. 25, 2020) *citing* Monasky, 140 S. Ct. at 731; *see also*

Farr v. Kendrick, No. 19-16297, 2020 WL 4877531, at *2 (9th Cir. Aug. 20, 2020).

The Convention ordinarily requires the prompt return of a child wrongfully removed or retained away from the country in which she habitually resides. Monasky v. Taglieri, 140 S. Ct. 719, 723 (2020); *citing* Art. 12, Treaty Doc., at 9 (cross-referencing Art. 3, *id.*, at 7); *see also* Chafin v. Chafin, 568 U.S. 165, 180, 133 S. Ct. 1017, 1028, 185 L. Ed. 2d 1 (2013) (The Hague Convention mandates the prompt return of children to their countries of habitual residence.). Courts have treated a Hague Petition (petition for a return order) as a petition for writ of habeas corpus and ordered the respondent to show cause as to why the child should not be returned. See, e.g., Zajackowski v. Zajackowska, 932 F.Supp. 128 (D.Md.1996); Miller v. Miller, 240 F.3d 392, 397–98 (4th Cir. 2001)

In this case, the Petition for a UCCJEA return order while not a Hague Petition should follow substantially the same procedure in that the prompt return of a Minor child to his home state should be the stated goal. Therefore, similar to the Monasky and Smith Courts this Honorable Court should not remand any potential elements back to the District Court. The Order on the Motion to Dismiss was filed on June 17, 2020 and at this time the Minor Child remains in the United States in the state of Nevada. Therefore, to further the goal of a speedy resolution as to a jurisdictional challenge and thereby allow the decision to be made promptly regarding the Minor Child and the potential return to his Home state, this Honorable Court if it is not

inclined to allow this appeal to proceed forward should convert this matter to a Writ which will assist with the aforementioned stated goals.

V. CONCLUSION

This Honorable Court should allow the appeal to proceed as it requested injunctive relief. If this Honorable Court is not inclined to allow this to proceed as an appeal in the alternative this Court should allow this matter to proceed as a Writ as the prompt return of the minor child is the goal of the Hague convention and should be the goal of a return order issued by the Nevada State Courts.

DATED this 22nd day of February, 2021.

Respectfully submitted by:

MARKMAN LAW

/s/ DAVID MARKMAN

David Markman, Esq.
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4484 S. Pecos Rd # 130
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Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of MARKMAN LAW, and that on this 22nd day of February, 2021, a document entitled **APPELLANT MOHAMAD ALHULAIBI'S RESPONSE TO ORDER TO SHOW CAUSE** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

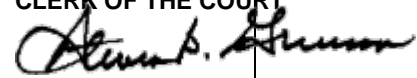
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/s/ David Markman
An Employee of Markman Law

EXHIBIT 1

EXHIBIT 1



NEO
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**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

AHED SAID SENJAB,)
) Case No.: D-20-606093-D
Applicant,) T-20-203688-T
) Dept. No.: H
vs.)
)
MOHAMAD ALHULAIBI,)
)
Adverse Party.)

NOTICE OF ENTRY OF ORDER DENYING RELIEF

TO: MOHAMAD ALHULAIBI, Adverse Party; and

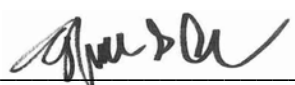
TO: DAVID MARKMAN, ESQ., Attorney for Adverse Party.

PLEASE TAKE NOTICE that an **ORDER DENYING RELIEF** was entered in the
above-entitled action on the 13th day of October, 2020 a copy of which is attached hereto.

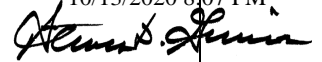
DATED this 14th day of October, 2020.

**LEGAL AID CENTER OF SOUTHERN NEVADA,
INC.**

By: _____



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CLERK OF THE COURT

ORDR

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**DISTRICT COURT
FAMILY COURT
CLARK COUNTY, NEVADA**

AHED SAID SENJAB,)	
)	
Plaintiff,)	CASE NO.: D-20-606093-D
)	T-20-203688-T
)	DEPT. NO.: H
vs.)	
)	
MOHAMAD ALHULAIBI,)	DATE OF HEARING: August 4, 2020
)	TIME OF HEARING: 11:00 a.m.
Defendant.)	
)	

ORDER DENYING RELIEF

This matter coming before the Court on Mohamad Alhulaibi's Ex Parte Petition/Motion for an Order Requiring Production of the Minor Child; for the Issuance of a Warrant for the Pick-Up of the Minor Child; for an Order Preventing Abduction of the Minor Child Pursuant to NRS 125D; for a Return order for the Minor Child to his Home Country of Saudi Arabia, and upon Plaintiff's Opposition to Mohamad Alhulaibi's Ex Parte Petition/Motion for an Order Requiring Production of the Minor Child; for the Issuance of a Warrant for the Pick-Up of the Minor Child; for an Order Preventing Abduction of the Minor Child Pursuant to NRS 125D; for a Return order for the Minor Child to his Home Country of Saudi Arabia and Plaintiff's Countermotion/Petition for Abduction Prevention Measures, for Orders Prohibiting Removal of Child from Las Vegas, for Court Safeguard of Child's Passport, for Limited Visitation by a

1 Perpetrator of Domestic Violence, Stay of Order for Dismissal of Case; and for Attorney's Fees
2 and Costs; and subsequent Replies, Countermotions and Exhibits Plaintiff, AHED SAID
3 SENJAB, appearing telephonically with Court Interpreter (Arabic) Dalyia Ahmed, and
4 represented by LEGAL AID CENTER OF SOUTHERN NEVADA, INC., by APRIL GREEN,
5 ESQ., and Associate Counsel, MARSHAL WILLICK, ESQ., of the Willick Law Group, and
6 Defendant, MOHAMAD ALHULAIBI, appearing telephonically and represented by DAVID
7 MARKMAN, ESQ., the Court having heard the arguments from Counsel and having reviewed
8 the papers and pleadings, and good cause appearing, the Court finds as follows:

9 The **MATTER IS A COMPANION CASE** with T-20-203688-T, heard simultaneously.

10 The **COURT NOTED** this hearing stems from the disposition regarding the granting of
11 the Motion to Dismiss. Further, Plaintiff filed a timely Notice of Appeal.

12 The **COURT STATED** the case was dismissed and the matter is on appeal and the
13 Defendant's Motion and Plaintiff's Countermotion seek relief not collateral to the appeal.
14 Further, filing these Motions in a case that was dismissed is not appropriate and the relief
15 requested is DENIED for lack of jurisdiction.

16 The **COURT FURTHER STATED** that if the result of the appeal results in the reverse
17 of the dismissal of the case, then these issues can be heard. Until that happens, this Court is not
18 the appropriate place to file these Motions. The appeal will proceed.

19 The **COURT FURTHER STATED** that the request for a STAY is denied without
20 prejudice since there is an extended protection order in place and there is an expectation that it
21 could be renewed if the appeal is still going when the Extended Order of Protection expires.

22
23 **NOW, THEREFORE, IT IS ORDERED** that the subject motions, filed in a case that
24 was dismissed, is not appropriate and the relief requested is DENIED for lack of jurisdiction.

25 **IT IS FURTHER ORDERED** that the request for a STAY is denied without prejudice
26 since there is an extended order of protection in place.
27
28

1 **IT IS FURTHER ORDERED** that Attorney Willick and Attorney Green shall prepare
2 the Order and Attorney Markman will approve as to form and content. For further information,
3 see Minute Order in Case No. T-20-203688-T.

4 DATED this ____ day of _____, 2020.

Dated this 13th day of October, 2020



DISTRICT COURT JUDGE

kp
DCA D33 EFDA 1592
T. Arthur Ritchie
District Court Judge

5
6
7 Respectfully submitted,
8 **LEGAL AID CENTER OF**
9 **SOUTHERN NEVADA, INC.**



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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ahd Sinjab, Applicant

CASE NO: T-20-203688-T

7 vs

DEPT. NO. Department H

8 Mohamad Alhulaibi, Adverse
9 Party

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/13/2020

15 April Green, Esq.

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