IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

AHED SAID SENJAB, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE T. ARTHUR RITCHIE, DISTRICT COURT JUDGE, Respondents, and MOHAMAD ALHULAIBI, Real Party in Interest.	S.C. No.: D.C. Case No.: D-20-606093-D

PETITIONER'S APPENDIX

Attorney for Petitioner:
Marshal S. Willick, Esq.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondent:
David Markman, Esq.
Nevada Bar No. 12440
Markman Law
4484 S. Pecos Rd, Ste. 130
Las Vegas, Nevada 89121
(702) 843-5899
Email: David@MarkmanLawfirm.com

VOLUME IV

APPENDIX INDEX

14.	Exhibit in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Jurisdictional Requirements	4/24/2020	AA000046 - AA000049
15.	Defendant's Reply in Support of His Motion to Dismiss for Lack of Jurisdictional Requirements	5/13/2020	AA000050 - AA000076
16.	Supplemental Exhibits in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Jurisdictional Requirements	5/18/2020	AA000077 - AA000086
17.	Court Minutes	5/20/2020	AA000087 - AA000088
18.	2nd Supplemental Exhibits in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Jurisdictional Requirements	5/20/2020	AA000089 - AA000117
19.	Confidential Exhibit of Plaintiff's Memorandum of Law in Opposition of Defendant's Motion to Dismiss	6/8/2020	AA000118 - AA000124
20.	Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss	6/8/2020	AA000125 - AA000145
21.	Exhibit in Support of Plaintiff's Memorandum of Law in Opposition of Defendant's Motion to Dismiss	6/8/2020	AA000146 - AA000211
22.	Defendant's Supplemental Briefing in Support of His Motion to Dismiss	6/8/2020	AA000212 - AA000218
23.	Confidential Exhibit in Support of Plaintiff's Memorandum of Law in Opposition of Defendant's Motion to Dismiss	6/11/2020	AA000219 - AA000225
24.	Court Minutes	6/16/2020	AA000226 - AA000227
25.	Findings of Fact, Conclusions of Law, Decision and Order	6/17/2020	AA000228 - AA000235

Volume II			
26.	Notice of Entry of Order	6/17/2020	AA000236 - AA000246
27.	Request Transcript of Proceedings	6/18/2020	AA000247 - AA000248
28.	Estimated Cost of Expedited Transcript	6/18/2020	AA000249
29.	Order Waiving Cost of Transcript of Proceedings	6/18/2020	AA000250 - AA000252
30.	Errata to Estimate of Transcript	6/18/2020	AA000253
31.	Court Minutes	6/22/2020	AA000254
32.	Mohamad Alhulaibi's Ex parte Petition/Motion for an Order Requiring Production of the Minor Child; For 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	6/29/2020	AA000255 - AA000288
33.	Notice of Hearing	6/30/2020	AA000289
34.	Notice of Association as Co-Counsel	7/1/2020	AA000290 - AA000292

35.	Plaintiff's Opposition to "Mohamad Alhulaibi's Ex parte Petition/Motion for an Order Requiring Production of the Minor Child; For 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/Peititon 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 Perpetrator of Domestic Violence; Stay of Order for Dismissal of Case; and for Attorney Fees and Costs.	7/1/2020	AA000293 - AA000321
36.	General Financial Disclosure Form	7/2/2020	AA000322 - AA000329
37.	Defendant's Opposition to Plaintiff's Countermotion	7/15/2020	AA000330 - AA000366
38.	Notice of Appeal	7/16/2020	AA000367 - AA000369
39.	Appellant's Case Appeal Statement	7/17/2020	AA000370 - AA000374
40.	Supplement of Appellate Counsel Concerning the Pending Cross-motions, NRS 125D Application, and Stay Request on Appeal	7/17/2020	AA000375 - AA000389
41.	Transcript re: All Pending Motions, Tuesday, June 16, 2020	7/21/2020	AA000390 - AA000414

79.	Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Temporary Custody, Visitation and Child Support and Plaintiff's Opposition to Defendant's Countermotion for Primary Physical Custody	1/5/2022	AA000826 - AA000832
80.	Notice of Entry of Decision and Order of Supreme Court - Dismissed	1/7/2022	AA000833 - AA000835
81.	Court Minutes	1/11/2022	AA000836 - AA000837
82.	Request Transcript of Proceedings	1/13/2022	AA000838 - AA000842
83.	Order Waiving Cost of Transcript of Proceedings	1/13/2022	AA000843 - AA000845
84.	Notice of Entry of Order (No Attachment)	1/13/2022	AA000846
85.	Nevada Supreme Court Clerk's Certificate and Remittitur; Judgment - Dismissed (No Attachment)	2/1/2022	AA000847 - AA000848
86.	Plaintiff's Supplement to Plaintiff's Opposition to "Defendant's Motion to Dismiss Child Support Claims"	3/2/2022	AA000849 - AA000865
87.	Transcript re: All Pending Motions; Tuesday, January 11, 2022	3/4/2022	AA000866 - AA000925
88.	Court Minutes	3/7/2022	AA000926 - AA000927
89.	Order Setting Evidentiary Hearing	3/10/2022	AA000928 - AA000933
90.	Request Transcript of Proceedings	3/11/2022	AA000934 - AA000938
91.	Order Waiving Cost of Transcript of Proceedings	3/12/2022	AA000939 - AA000940
92.	Notice of Entry of Order	3/12/2022	AA000941

93.	Transcript of Status Check Hearing	3/31/2022	AA000942 - AA000964
94.	Certification of Transcripts/Notification of Completion	3/31/2022	AA000965 - AA000966
95.	Order from the January 11, 2022, Hearing	4/1/2022	AA000967 - AA000982
96.	Notice of Entry of Order from the January 11, 2022, Hearing	4/1/2022	AA000983 - AA0001001

60

60

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

AHED SAID SENJAB,	S.C. No.:	81515
	D.C. Case No.:	D-20-606093-D

Appellant,

vs.

MOHAMAD ALHULAIBI,

Respondent.

APPELLANT'S FAST TRACK STATEMENT

Attorneys for Appellant:
Marshal S. Willick, Esq.
Nevada Bar No. 2515
Richard L. Crane, Esq.
Nevada Bar No. 9536
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondent:
David Markman, Esq.
Nevada Bar No. 12440
MARKMAN LAW
4484 S. Pecos Rd, Ste. 130
Las Vegas, Nevada 89121
(702) 843-5899
Email:David@MarkmanLawfirm.com

1. Name of party filing this fast track statement:

Appellant, Ahed Said Senjab.

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

Marshal S. Willick, Esq.
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100

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

Eighth Judicial District Court, Family Division,

Clark County

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

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

Honorable T. Arthur Ritchie, Jr.

5. Length of trial or evidentiary hearing:

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

6. Written Order or Judgment appealed from:

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

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

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

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

N/A

9. Date notice of appeal was filed:

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

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

NRAP 4(a).

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

NRAP 3A(b)(1).

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

None.

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

Not aware of any such proceedings.

14. **Procedural history:**

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

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

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

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

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

This Fast Track Statement follows.

15. **Statement of Facts:**

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

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

---

[1] I AA 229.

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

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

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

---

[2] I AA 92-111.

[3] I AA 112-124.

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

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

16. **Issues on Appeal:**

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

---

[4] I AA 113.

[5] I AA 2.

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

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

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

18. **Legal Argument:**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

STATE STATUTES

MISCELLANEOUS

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

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

[6] II AA 405-406.

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

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

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

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

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

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

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

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

---

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

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

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

I. JURISDICTION GENERALLY

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

---

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

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

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

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

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

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

II. THERE IS NO FEDERAL PRE-EMPTION

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

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

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

. . . .

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

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

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

---

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

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

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

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

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

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

III. CHILD CUSTODY JURISDICTION IS IN NEVADA (UCCJEA)

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

---

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

[15] I AA 226, 228-235.

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

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

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

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

---

[18] NRS 125A.305.

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

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

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

A child's "home state" is the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months, including any temporary absence from the state, immediately before commencement of a child custody proceeding, ***if*** a parent remained in that prior state.[22] Where, as here, the child and ***both*** parents have left a prior jurisdiction and moved to this

---

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

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

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

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

---

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

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

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

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

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

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

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

---

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

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

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

---

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

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

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

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

---

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

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

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

IV. CHILD SUPPORT JURISDICTION IS IN NEVADA (UIFSA)

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

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

---

[30] NRS ch. 130.

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

[32] NRS 130.201.

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

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

V. NEVADA HAS DIVORCE JURISDICTION

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

---

[33] *Vaile*, *supra*.

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

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

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

---

suit was brought.

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

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

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

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

---

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

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

---

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

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

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

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

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

---

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

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

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

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

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

---

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

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

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

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

---

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

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

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

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

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

[45] II AA 410-411.

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

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

---

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

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

VI. CONCLUSIONS

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

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

Dated this 21st day of September 21, 2020.

Respectfully submitted,
WILLICK LAW GROUP

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

Marshal S. Willick, Esq.
Attorneys for Appellant

VERIFICATION

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

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

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

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

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

DATED this 21st day of September, 2020.

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

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com

CERTIFICATE OF SERVICE

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

David Markman, Esq.
MARKMAN LAW
4484 S. Pecos Road, Ste. 130
Las Vegas, Nevada 89121
Attorneys for Respondent

/s/ Justin K. Johnson

An Employee of WILLICK LAW GROUP

P:\wp19\SENJAB,A\DRAFTS\00458139.WPD/jj

61

61

IN THE SUPREME COURT OF THE STATE OF NEVADA

AHED SAID SENJAB Appellant, vs. MOHAMAD ALHULAIBI Respondent.	Supreme Court No.: 81515 District Court No.: D-20-606093-D **RESPONDENT MOHAMAD ALHULAIBI'S FAST TRACK RESPONSE**

1. Name of party filing this fast track response:

Respondent, Mohamad Alhulaibi

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

David Markman, Esq.
MARKMAN LAW
4484 S. Pecos Rd. #130
Las Vegas, NV 89121
702-843-5899

4. **Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal:**

None

5. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement:

On August 4th **t**he District Court denied Mohamad's motion and Ahed's Countermotion as the underlying case was dismissed and the matters were not

collateral to the appeal. The Court also changed the custodial schedule in the Extended Order of Protection giving Mohamad additional custodial time.

6. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):

Mohamad and Plaintiff are both citizens of Syria.[1] Mohamad and Plaintiff have one son together, Ryan Mohamad Alhulaibi ("Minor Child"), born on February 16, 2019 in Saudi Arabia.[2] The Minor is not a citizen of the United States.[3] Mohamad moved to Nevada to study at UNLV.[4] Mohamad has always planned to return to either Saudi Arabia or Syria after completing his education.[5] Ahed applied for a Visa to enter the United States on July 15, 2018, due to the presidential proclamation, Ahed was not granted VISA clearance until the end of 2019.[6]

Mohamad was in the United States on an F1 Visa (student visa).[7] Plaintiff was in the United States on an F2 Visa (student visa dependent).[8] Minor child was also

[1] AA000014
[2] Id.
[3] Id.
[4] Id.
[5] Id.
[6] AA000051
[7] AA000014
[8] Id.

on an F2 Visa.[9] Based on Plaintiff's current visa status a divorce would end Plaintiff's ability to remain in the United States.[10]

Mohammad returned to Saudi Arabia after the conclusion of the UNLV fall semester on or about December 17th or 18th, 2019.[11] Since Ahed's VISA was finally approved, Mohamad purchased roundtrip tickets for the entire family to go to Nevada so they could be together for his final semester.[12] The roundtrip tickets for Mohammad, Ahed, and Ryan had them land in Las Vegas on January 13, 2020, with everyone to return to Saudi Arabia on or about June 18, 2020.[13] Ahed moved out of the apartment on or about February 12, 2020.[14]

Mohamad has the Minor three (3) days a week.[15] Ahed initiated a child protective service case against Mohamad, the investigator found the allegations unsubstantiated.[16] On February 9, 2020, Ahed called the Las Vegas Metropolitan Police Department ("LVMPD") on Mohamad.[17] When LVMPD showed up to the apartment Ahed alleged Mohamad had verbally abused her.[18] On February 9th, Ahed

---

[9] Id.
[10] Id.
[11] Id.
[12] Id.
[13] IAA000060-63
[14] AA00015
[15] IAA000240. The TPO Court has since modified the schedule granting Mohamad additional physical time.
[16] IAA000072
[17] IAA000074-76
[18] Id.

also informed LVMPD her brother-in-law was coming from Maryland State to pick her up. Id. At which point LVMPD admonished Plaintiff that she cannot take the Minor from Nevada. Id.

The next day on February 10, 2020, Mohamad called LVMPD so they could escort him while he retrieved items from their apartment.[19] While Mohamad was getting his items, Plaintiff alleged to LVMPD that Mohamad was both physically and verbally abusive, even though she never brought up physical abuse on February 9th. Id. Mohamad vehemently denies that he was ever physically or verbally abusive but admits they had a verbal altercation on February 9th, 2020.[20] The only purported sign of physical abuse found by LVMPD was bruising on Ahed's legs.[21] Upon information and belief, Ahed has hyporthyroidism, iron deficiency anemia, and varicose veins, which makes her more susceptible to bruising.[22]

Mohamad retained his counsel through the Nevada Bar's Lawyer Referral Service Modest Means Program, which means that he qualified for reduced fee legal services based on his financial situation and that he is not to be charged more than seventy-five dollars per hour for legal services.[23] Mohamad believes that Ahed has

[19] IAA000048-49
[20] IAA000052
[21] AA000049
[22] AA000052
[23] AA000052

roughly one hundred thousand dollars ($100,000.00) in assets consisting of gold and property in Saudi Arabia and Syria.[24]

Mohamad believes Ahed is using the divorce in an attempt to gain legal status in the United States for her and her family.[25]

7. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

a. Whether immigration law preempts non-immigrant aliens from lawfully establishing the subjective intent or domicile to remain in Nevada thereby precluding divorce subject matter jurisdiction?

b. Whether a minor that lived in Nevada with nonimmigrant alien parents for significantly less than six months can make Nevada his home state?

8. Legal argument, including authorities:

This is about Federal Immigration law preempting a nonimmigrant alien from establishing domicile in the United States. The intent required to establish domicile can be legally precluded. Prior to Park v. Barr 946 F.3d 1096, 1098 (9th Cir. 2020), the United States Supreme Court iterated in Toll v. Moreno, 458 U.S. 1 (1982) and reiterated in Mississippi Choctaw Indian Band v. Holyfield, 490 U.S. 30 (1989), the intent of certain individuals – in these two cases, certain nonimmigrant tourists, minors, and Indian parents subject to the Indian Child Welfare Act of 1978, 92 Stat.

[24] AA000015
[25] Id.

3069, 25 U.S.C. § 1901-1963 – can be legally precluded. The preclusion against establishing domiciliary intent for certain nonimmigrant and unlawful aliens was adopted by the Ninth Circuit in Carlson v. Reed, 249 F.3d 876 (9th Cir. 2001), Gaudin v. Remis, 379 F.3d 631, 637–38 (9th Cir. 2004), and our sister state of California in Regents of Univ. of Calif. v. Superior Court, 225 Cal. App. 3d 972 (1990).

This is about affording Mohamad the liberty to leave Nevada with the Minor who less than two and a half months before the divorce action commenced had never been in the United States.[26] This is about not making a father choose between being able to provide for his child and not seeing his child. Either party to this appeal could be removed from the United States and would have no ability to come back to modify their divorce order. A parent's immigration status and its derivative effects can be used as a factor in determining custody.[27] Ahed's immigration status and violation of said status could cause her to be detained by Immigration and Customs Enforcement at any time which would likely subject the Minor to being put into a detention center until they were repatriated or granted residency.

[26] Case T-20-203688-T has an order that the Minor Child may not be removed from Nevada. Mohamad currently has 3 unsupervised days with the Minor and if he leaves the U.S. he may not be able to return as his VISA expired two months after his graduation from UNLV.

[27] Rico v. Rodriguez, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005).

The effects of Park and the District Court's decision are not as far reaching as Ahed and NIWAP would have this Court believe. Ahed can still file for divorce and child custody in a court that has subject matter jurisdiction. Mohamad can still be personally sued in Nevada.[28] Domicile is not necessary to be sued in Nevada Courts. Id. Nor does preempting a party from filing divorce or child custody mean that a person would not receive protection in Nevada if they were abused.[29] Prosecution in

[28] Viega GmbH v. Eighth Jud. Dist. Ct., 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014)

[29] The amicus raises issues not properly before the Court. The issues raised were never addressed prior to Ahed's supplement and even then, were cursory and never discussed Section 204(a)(I)(8)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(I)(8)(ii) instead it argued "Ahed now has a path to citizenship, independent of MOHAMAD's Visa. Although the specifics of AHED's right path to citizenship is confidential and privileged under federal law…" AA000131. Ahed also disclosed a confidential record/Exhibit, which was not provided to Mohamed or his counsel regarding Ahed's purported pathway to citizenship. Mohamad's Counsel objected to the Exhibit. See Transcript referenced as AA000390-414. Appendix appears to jump from AA000389 to 415. Pg. 8: 16 – Pg 9: 2 of June 16, 2020 transcript.

Further, the amicus alludes to the need to protect Ahed pursuant to Section 204(a)(I)(8)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(I)(8)(ii) but it is inapplicable as Mohamad is not a permanent lawful resident. Further, "Many cases for relief under the Convention arise from a backdrop of domestic strife. Spousal abuse, however, is only relevant… if it seriously endangers the child." Souratgar v. Lee, 720 F.3d 96, 103–04 (2d Cir. 2013); *citing* Charalambous v. Charalambous, 627 F.3d 462, 468 (1st Cir.2010) (per curiam). The inquiry is whether repatriation would place the child at a grave risk of physical or psychological harm. Id. **"[S]poradic or isolated incidents of physical discipline directed at the child, or some limited incidents aimed at persons other than the child, even if witnessed by the child, have not been found to constitute a grave risk.'"** Ermini v. Vittori, 758 F.3d 153, 164–65 (2d Cir. 2014).

Nevada criminal courts do not require a party to be domiciled in the state.[30] Settling the forum for adjudication of a dispute over a child's custody, of course, does not dispose of the merits of the controversy over custody.[31] A party can still bring up allegations of abuse as it relates to child custody in the proper forum. Nor do Nevada Courts require domicile for emergency jurisdiction of child custody matters.[32]

An absurd result would follow if a person was forced to defend a divorce and child custody by temporarily living in the United States, especially when the party seeking divorce separated and left the family apartment after living in the United States for less than a month and has significant assets in Saudi. All parties came to Nevada knowing they would only be able to legally remain in the United States if Mohamad was attending UNLV. Ahed a VISA dependent of Mohamad, who was denied entry into the country for over a year, knew she could not legally remain in the country without Mohamad attending UNLV. By filing for divorce Ahed is no

---

There are no allegations that Mohamad ever raised a finger to the Minor. The only allegation of abuse against the Minor stems from Ahed claiming that Mohamad abused her and that is somehow abuse against the Minor. Ahed's claims of abuse are unsubstantiated and Mohamad vehemently denies the allegations. Mohamad has maintained from the outset that Ahed is attempting to use these proceedings to gain legal status in the US for her and her family. AA000015.

[30] Shannon v. State, 105 Nev. 782, 792, 783 P.2d 942, 948 (1989); Despite all the vile allegations, no charges have been brought by the authorities against Mohamad.

[31] Monasky v. Taglieri, 140 S.Ct. 719, 729 (2020).

[32] NRS 125A.335(2) In relevant part states: If there is no previous child custody determination that is entitled to be enforced pursuant to the provisions of this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction pursuant to NRS 125A.305, 125A.315 and 125A.325

longer a dependent as defined by the F-2 VISA and has no legal rights to remain in the United States.[33] This case is about the proper forum and Nevada is not it. Ahed can avail herself of the courts in Saudi Arabia to effectuate her divorce.

DOMICILE AND SUBJECT MATTER JURISDICTION[34]

Nevada Rule of Civil Procedure 12(b)(1) allows a defendant to move for dismissal on the grounds that the court lacks jurisdiction over the subject matter of plaintiff's claims. Nev. R. Civ. Pr. 12(b)(1); Wright v. Incline Vill. Gen Improvement Dist., 597 F. Supp. 2d. 1191 (D. Nev. 2009), citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed. 2d 501 (1986). Once a 12(b)(1) defense is asserted the burden is on plaintiff to establish that the court has subject matter jurisdiction over the action. Assoc. of Medical Colleges v. United States, 217 F.3d 770, 778-779 (9th Cir. 2000).

Ahed has not met her burden. "A person residing in a given state is not necessarily domiciled there...."[35] Nevada law requires not only that a person reside in Nevada for six weeks but that it is accompanied by a bona fide intention to make

[33] https://studyinthestates.dhs.gov/students/bringing-dependents-to-the-united-states

[34] Domicile regarding military members is not applicable as there is a specific federal statute governing their domicile. Nor was it briefed during the Motion to Dismiss.

[35] Gaudin v. Remis, 379 F.3d 631, 636 (9th Cir. 2004); *citing* Kanter v. Warner–Lambert Co., 265 F.3d 853, 857 (9th Cir.2001) (citing Lew v. Moss, 797 F.2d 747, 749 (9th Cir.1986))

Nevada their home and to remain in Nevada permanently or at least for an indefinite time. Aldabe v. Aldabe, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968); Williams v. North Carolina, 325 U.S. 226, 241(1945); citing Lamb v. Lamb, 57 Nev. 421, 65 P.2d 872 (1937). "In Aldabe v. Aldabe, this court cited Fleming and a host of other Nevada cases for the proposition that '[r]esidence is synonymous with domicile and it is consonant with the many decisions of our court that the *fact* of presence together with *intention* comprise bona fide residence for divorce jurisdiction.'" Vaile v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 118 Nev. 262, 269–70, 44 P.3d 506, 511 (2002) "It is held that no jurisdiction for divorce can be acquired through accrual of the cause of action within the county unless both parties were then actually domiciled therein." State ex rel. Hoffman v. Second Judicial Dist. Court, 68 Nev. 333, 335, 232 P.2d 397, 398 (1951). This Court has made it clear that it will prohibit district courts from invoking subject matter jurisdiction when it would upset nationwide public policy.[36]

Ahed cannot form the subjective intent to remain in the United States or Nevada per Park as will be discussed *infra*, but Ahed appears never to have had the subjective intent to remain in Nevada, because when she called LVMPD on February 9, 2020, she informed them her brother in law was on the way to pick her up from

[36] *See* Friedman v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark, 127 Nev. 842, 854, 264 P.3d 1161, 1169 (2011).

Maryland. It appears Ahed only changed her mind about going to Maryland when the officer let her know that she could not leave Nevada with the Minor.

NONIMMIGRANT ALIEN DOMICILIARY INTENT

Domicile is primarily a creature of state law, but federal immigration laws impose outer limits on a state's freedom to define it.[37] Park is not the first case to preclude nonimmigrant aliens from forming the legal capacity to establish domicile in the United States. Nor is Park the first case to preclude domicile involving child custody matters.[38] There are numerous cases prior to Park in the 9th Circuit and in the United States Supreme Court that have previously held nonimmigrant aliens cannot form the subjective intent to be domiciled in the United States. Park simply applies the United States Supreme Court and 9th Circuit Court's precedent to a divorce matter.

Mohamad came to the United States on an F-1 nonimmigrant Visa to pursue his graduate degree at UNLV. A nonimmigrant student is defined as "an alien having a residence in a foreign country which he has no intention of abandoning… and who seeks to enter the United States temporarily and solely for the purpose of pursuing… a course of study…"[39] "Congress has precluded the covered alien from establishing

---

[37] Park v. Barr, 946 F.3d 1096, 1098 (9th Cir. 2020); see Toll v. Moreno, 458 U.S. 1, 10-11, 102 S. Ct. 2977 (1982).
[38] *See* Gaudin v. Remis, 379 F.3d 631 (9th Cir. 2004)
[39] Elkins v. Moreno 435 U.S. 647, 665 (1978).

domicile in the United States."[40] Nonimmigrants cannot establish domicile as "Congress expressly conditioned admission… on an intent not to abandon a foreign residence".[41] In fact, the United States Supreme Court opined "that Congress intended that, in the absence of an adjustment of status… nonimmigrants in restricted classes who sought to establish domicile would be deported." Elkins v. Moreno 435 U.S. at 666.

It is undisputed that Ahed and Mohamad came to the United States on nonimmigrant Visas, thereby precluding either party from establishing domiciliary intent to remain in the United States. As neither party can lawfully form the necessary subjective intent to remain in Nevada the parties should be prohibited from divorcing in Nevada. Especially as Ahed has violated her Visa conditions since she is no longer a dependent as defined by congress and interpreted by the Department of Homeland Security of Mohamad and her presence in the country is illegal.

This is further illustrated by the holding in Gaudin v. Remis, Gaudin's children were retained in Hawaii despite Canada being their Habitual Residence. Gaudin, 379 F.3d at 634. Thereafter, Gaudin moved to Hawaii from Canada and sold all of her real property in Canada and moved all of her belongings from Canada to Hawaii. Gaudin, 379 F.3d at 634.

---

[40] Gaudin v. Remis, 379 F.3d 631, 637–38 (9th Cir. 2004); *citing* Toll v. Moreno, 458 U.S. 1, 14 & n. 20, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982).
[41] *See* Elkins v. Moreno 435 U.S. at 665

The Court stated if Gaudin moved to Hawaii "for the sole purpose of regaining custody of the children to return to Canada," than her petition would not be moot. Gaudin, 379 F.3d at 637. "Notwithstanding the objective evidence of Gaudin's move to Hawaii and the uncertainty concerning her subjective intent to relocate permanently there, […] Gaudin is precluded by law from relocating permanently to the United States." Gaudin, 379 F.3d at 638. Gaudin a Canadian citizen invoked the Immigration and Nationality Act ("INA") § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B), to enter the United States, that provision has the same language as the F1 Visa in that it required her not to abandon her residence in a foreign country. Id. Accordingly, the Court held, "Gaudin is barred by law from possessing the requisite intent to establish domicile in Hawaii." Id; *See also* Graham v. INS, 998 F.2d 194, 196 (3d Cir. 1993) ("If petitioner complied with the terms of his temporary worker visa, then he could not have had the intent necessary to establish a domicile in this country. On the other hand, if he did plan to make the United States his domicile, then he violated the conditions of his visa and his intent was not lawful. Under either scenario, petitioner could not establish 'lawful domicile' in the United States while in this country on a nonimmigrant, temporary worker visa.").

Similar to Gaudin, Mohamad and Ahed are barred by law from possessing the requisite intent to domicile in Nevada. Mohamad's Visa restricts him from having such intent. Mohamad, currently only remains in the United States so he can be close

to his son and for the sole purpose of effectuating the return of his to Saudi Arabia. Mohamad has always complied with the terms of his Visa by not abandoning his residence abroad, but Gaudin shows even if Mohamad were to have disposed of all of his property in Saudi Arabia he still could not legally obtain domicile in the United States or Nevada.

Park while not the first Court to decide domicile in the nonimmigrant context has made it abundantly clear that a nonimmigrant cannot lawfully form the subjective intent necessary to remain in the United States in the divorce context. Park interpreted California Marriage law which is substantially similar to the Nevada requirements for Divorce in that it requires "(1) physical presence ... with (2) an intention to remain there indefinitely."[42]

In Park, Woul Park and her husband were married in Korea and after overstaying their VISA in the United States ultimately divorced at the Korean Consulate in California, the lower court determined the divorce was not valid as they held the parties were domiciled in California.[43] The 9th Circuit ultimately reversed holding a nonimmigrant, was precluded from establishing lawful domicile in California by operation of federal law and thereafter upholding a later marriage of

[42] Park v. Barr, 946 F.3d 1096, 1098 (9th Cir. 2020); *citing* In re Marriage of Tucker, 226 Cal. App. 3d 1249, 1258–59, 277 Cal.Rptr. 403 (1991)
[43] Park v. Barr, 946 F.3d at 1097.

Park and allowing her to become a U.S. Citizen.[44] The Court held that Congress has not permitted nonimmigrants to lawfully form a subjective intent to remain in the United States, as such an intent would conflict with Congress's definition of the nonimmigrant classification. Id. at 1100.

Further, Park held a nonimmigrant precluded from establishing residency could not gain residency by violating visa conditions because then her very presence in the country would be illegal. Park v. Barr, 946 F.3d at 1099; *citing* Carlson v. Reed, 249 F.3d 876, 880-81 (9th Cir. 2001). "Congress must have meant aliens to be barred from these classes if their real purpose in coming to the United States was to immigrate permanently."[45]

Mohamad is in no way arguing that the parties should not get divorced only that this is an improper forum. The Park court interpreted federal law for the 9th Circuit in a way that prevents nonimmigrant aliens from forming the lawful intent to domicile in the US, as domicile is a prerequisite to divorce in Nevada, this Court should ultimately uphold the decision dismissing the divorce action. Further, Park citing Elkins interpretation of the Immigration and Nationality Act makes it clear that if the real purpose of the nonimmigrant alien is to come to the United States so they can immigrate permanently they will be barred and deported. Mohamad has

[44] Id. at 1098.
[45] Park v. Barr, 946 F.3d 1096, 1099 (9th Cir. 2020); *Citing* Elkins, 435 U.S. at 665, 98 S.Ct. 1338.

maintained from the outset that the reason Ahed filed the restraining order and the reason she included her family in the description of his purported threats was solely for the purpose of helping her and her family immigrate from Saudi Arabia.

Ahed Cites to Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 13, 124 S. Ct. 2301, 2309, 159 L. Ed. 2d 98 (2004) for the proposition that the United States Supreme Court has deferred all family law issues to the states but the Court in that case made it clear that a substantial federal question that exists apart from family law i.e. immigration is appropriate for federal courts to address and the 9th circuit did exactly that in Park.

1. In Re Marriage of Dick

In Park, the Ninth Circuit Court eviscerated the California Court of Appeals rationale in reaching its holding in In re Marriage of Dick, 15 Cal. App. 4th at 154, 18 Cal.Rptr.2d 743, the Ninth Circuit declined to read Dick as applicable because it would conflict with federal law's interpretation of domicile. The Park Court ultimately read the holding of In Re Dick narrowly to accommodate the "preeminent role of the Federal Government with respect to the regulation of aliens within our borders." Park v. Barr, 946 F.3d at 1100; *citing* Toll, 458 U.S. at 10, 102 S.Ct. The Park Court noted the In Re Dick Court 'interpreted the word "residence" rather than "domicile"' while also pointing out that the In Re Dick court confoundingly interpreted California's civil code instead of its family law code to reach its

erroneous conclusion. The Park court ultimately held "Park was precluded from establishing domiciliary intent by virtue of her status as an out-of-status nonimmigrant[.]"

Nevada requires a party to be a domiciliary of the state in order to be able to maintain a divorce action. It is clear through a long of history of cases in the United States Supreme Court and the 9th Circuit that neither Ahed nor Mohamad can be domiciled in Nevada and therefore a divorce action cannot be maintained in the state. The fact that Ahed is no longer complying with the requirements of her Visa does not change the fact that she cannot establish domiciliary intent pursuant to Park and the rest of the cases in the United States Supreme Court and the 9th Circuit. Therefore this Honorable Court should uphold the District Court's ruling that it did not have subject matter jurisdiction to hear the divorce.

UCCJEA[46]

[46] Mohamad is aware that the Hague convention is not available in this matter but as in Ogawa the Court can issue return orders in substantial compliance with Hague case law authority and can look to case law interpreting the Hague to determine how to deal with an international custody dispute (Even when a country is not a party to the Hague convention, the court can properly order the return of a minor child.) *See* Ogawa v. Ogawa, 125 Nev. 660, 670–71, 221 P.3d 699, 706 (2009). Further, the Hague Convention was the foundation for the UCCJEA. In re Marriage of O.T. & Abdou El Alaoui Lamdaghri, No. E058911, 2018 WL 6242412, at *19 (Cal. Ct. App. Nov. 29, 2018), reh'g denied (Dec. 20, 2018)

Settling the forum for adjudication of a dispute over a child's custody, of course, does not dispose of the merits of the controversy over custody.[47] "[A] parent cannot create a new habitual residence by wrongfully removing and sequestering a child."[48] The lower Court discussed Custody and that Nevada could not be the Home State of the Minor as the parties had only recently moved from another country. In the May 20, 2020, hearing prior to supplemental briefing the court was very clear: "you cannot move here from another country, live here for six weeks and establish custody jurisdiction in Nevada this way."[49] The facts regarding the Minor's arrival in Nevada are uncontested.[50] The lower Court while not addressing child custody in its order was clear at both hearings, Nevada is not the child's home state "...your client was here for two months. The child is – home state is not Nevada." June 16, 2020 hearing.[51]

Home state is defined in Nevada as:

> **NRS 125A.085 "Home state" defined.** "Home state" means:
>
> 1. 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.

---

[47] Monasky v. Taglieri, 140 S.Ct. 719, 729 (2020).
[48] Miller v. Miller, 240 F.3d 392, 400 (4th Cir. 2001)
[49] AA000516, Ln 8-10.
[50] Transcript is referenced as AA000390-414. Appendix appears to jump from AA000389 to 415. Pg. 4-5 of June 16, 2020 transcript.
[51] See fn 50. Pg. 15.

A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying NRS 125A.005 to NRS 125A.395, inclusive. Kar v. Kar, 132 Nev. 636, 639 (2016); *citing* NRS 125A.225(1). NRS 125A.305(1)(c) permits a court to exercise jurisdiction when other states that would have jurisdiction under paragraphs (a) or (b) have declined to do so "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." This does not apply here because no state other than Nevada had the opportunity to decline jurisdiction. Id. at 642.

"Temporary absences do not interrupt the six-month pre-complaint residency period necessary to establish home state jurisdiction". Ogawa v. Ogawa, 125 Nev. 660, 662, 221 P.3d 699, 700 (2009). '"[A]nother aspect of the home state analysis, necessarily requires consideration of the parents' intentions, as well as other factors relating to the circumstances of the child's or family's departure from the state where they had been residing." In re Aiden L., 16 Cal. App. 5th 508, 518, 224 Cal. Rptr. 3d 400, 408 (2017).

Even when an entire family was temporarily absent from the state it did not deprive the Home State from having jurisdiction.[52] In Sarpel, the entire family left Florida for Turkey for 5 months and 29 days, the father was the only person to return

[52] Sarpel v. Eflanli, 65 So. 3d 1080, 1081 (Fla. Dist. Ct. App. 2011)

before 6 months expired, the father did not file a petition for two months after returning, the Court still held that the move to Turkey "was not intended to be a permanent move, characterizing the children's stay in Turkey…as a temporary absence." Id.

It is uncontested that Ahed and the Minor came to Nevada on January 13, 2020 so that Mohamad could conclude his studies at UNLV. It is uncontested that the parties VISA conditions by their very nature made their time in the United States temporary. It is uncontested that Ahed moved out of the shared Apartment on February 12, 2020, and that the Complaint was filed on March 24, 2020. Mohamad has reiterated throughout the proceedings that living in the United States was temporary. The Minor lived in Nevada for two months and eleven days prior to the commencement of the divorce action. It is uncontested that the parties had round trip tickets that had them scheduled to land in Saudi Arabia on or about June 18, 2020. There is no doubt Saudi Arabia remains the Minor's Home State.

Importantly, "a parent cannot create a new habitual residence by wrongfully removing and sequestering a child."[53] The UCCJEA was created to eliminate exploitable loop-holes and forum shopping.[54] Ahed is attempting to create a new

[53] Chambers v. Russell, No. 1:20CV498, 2020 WL 5044036, at *4 (M.D.N.C. Aug. 26, 2020) *citing* Miller v. Miller, 240 F.3d 392, 400 (4th Cir. 2001).

[54] In re Guardianship of K.B., 172 N.H. 646, 649–50 (2019).

loophole despite the fact she created the conditions for Mohamad not having returned to live in Saudi Arabia.

The argument that Ahed is advancing on page 28 would mean if a family came temporarily for business and they rented a house for thirty days they could subject themselves to having Nevada decide their child custody despite the fact they never gave up their permanent residence. Since under Ahed's reasoning all family members were present and currently "living" in Nevada. Further, under Ahed's line of reasoning the time frame could actually be even shorter and would create numerous exploitable loopholes, especially because under Ahed's rationale the parties don't have to give up their residence or domicile in their home state. This line of reasoning would upset nationwide public policy and create the very forum shopping the UCCJEA was created to prevent.

CHILD SUPPORT JURISDICTION

"We shall not entertain issues raised for the first time on appeal."[55] Ahed never raised the issue regarding child support jurisdiction in any briefing before the District Court. Mohamad does not agree to have child support order entered against him.

[55] See Cooke v. American Sav. & Loan Assn., 97 Nev. 294 (Adv.Op. 101), 630 P.2d 253 (1981); International Industries, Inc. v. United Mortgage Co., 96 Nev. 150, 153-54, 606 P.2d 163, 165 (1980); Central Bank v. Baldwin, 94 Nev. 581, 583 P.2d 1087 (1978); Penrose v. O'Hara, 92 Nev. 685, 557 P.2d 276 (1976); Young Electric Sign Co. v. Erwin Electric Co., 86 Nev. 822, 828, 477 P.2d 864, 868 (1970); Clark County v. State, 65 Nev. 490, 506, 199 P.2d 137, 144 (1948).

Mohamad is not currently working. "The district court never reached the merits of this request and resolving this issue will require factual determinations, that issue must be addressed by the district court in the first instance." Randall v. Caldwell, No. 73533, 2018 WL 3351975, at *3 (Nev. App. June 22, 2018); *See* Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172-73 (2012) (noting that trial courts are better suited to make factual determinations in the first instance). If this Honorable Court issues a return order as discussed *infra*, it will not need to reach this ultimate decision as the Minor and Mohamad will leave Nevada. "[B]ecause Pennsylvania is the child's home state, the Pennsylvania child support order controlled. **NRS 130**.207(2) (providing that if two states have continuing, exclusive jurisdiction because at least one of the parties resides in each of the states, the order from the state in which the child resides controls). Thus, the district court did not err in relinquishing jurisdiction over child support to the Pennsylvania court."[56] Here, the Home state of the child is Saudi Arabia and Nevada should relinquish jurisdiction over child support to Saudi Arabia.

[56] Henderson v. Henderson, 131 Nev. 1290 (2015)

SAUDI ARABIA CAN BE CONSIDERED A STATE[57]

The UCCJEA "mandates that any foreign nation must be treated as if it were a state within the United States for purposes of jurisdiction and inter-court cooperative mechanisms. The UCCJEA is not a reciprocal act. There is no requirement that the foreign country enact a UCCJEA equivalent."[58] The UCCJEA is intended to eliminate competition between courts in matters of child custody, with **jurisdictional priority conferred to a child's home state**.[59] The UCCJEA does not provide exceptions for foreign countries that have no diplomatic jurisdiction with the United States to be deemed anything but a State, nor should a Court read that exception into the Statute.[60] **That a foreign jurisdiction's law is different or strikes us as outdated is not an indication that it violates fundamental principles of human rights, and, therefore, that is not the test under the UCCJEA.[61]**

---

[57] This issue was not briefed during the motion to dismiss or supplemental briefing. It was briefed and ultimately undecided as it was filed in the underlying case after it was dismissed. In the interest of expediting this matter, it will be fully addressed.
[58] S.B. v. W.A., 38 Misc. 3d 780, 809, 959 N.Y.S.2d 802 (Sup. Ct. 2012), aff'd sub nom. Badawi v. Wael Mounir Alesawy, 135 A.D.3d 792, 24 N.Y.S.3d 683.
[59] Id.
[60] People In Interest of A.B-A., 2019 COA 125, ¶ 45, 451 P.3d 1278, 1287.

[61] Matter of Yaman, 167 N.H. 82, 105 A.3d 600, 611 (2014); *See* Coulibaly v. Stevance, 85 N.E.3d 911, 917 (Ind. Ct. App. 2017) *See* D. Marianne Blair, *International Application of the UCCJEA: Scrutinizing the Escape Clause*, 38 Fam. L. Q. 547, 565 (2004)("…that the provision not become the basis for magnifying every difference between the U.S. legal system and that of a foreign nation to virtually stymie effective application of the UCCJEA in international cases.")

Courts interpreting the UCCJEA's Escape clause (commonly known as the human rights exception) routinely look to Article 20 of the Hague convention for assistance in interpreting the clause. People In Interest of A.B-A., 2019 COA 125, ¶ 29, 451 P.3d 1278, 1285. The Article 20 defense is to be "restrictively interpreted and applied." Id. *citing* U.S. State Dep't, Hague International Child Abduction Convention: Text and Legal Analysis, Pub. Notice*, 51 Fed. Reg. 10,494, 10,510 (Mar. 26, 1986).* The defense is to be invoked only on 'the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process." Id. It "is not to be used ... as a vehicle for litigating custody on the merits or for passing judgment on the political system of the country from which the child was removed." Id.

The Article 20 defense has yet to be used by a federal court to deny a petition for repatriation. Souratgar v. Lee, 720 F.3d 96, 108–09 (2d Cir. 2013). *Citing* Fed. Jud. Ctr., *The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges* 85 (2012). "In urging the Article 20 exception in this case, Lee insists broadly that Syariah Courts are incompatible with the principles "relating to the protection of human rights and fundamental freedoms" of this country. **While this general assertion might find sympathy among some in this country as a political statement, we decline to make this categorical ruling as a legal matter."** Id. **(***emphasis added***).**

In Coulibaly, the court had to make a decision regarding Mali as a Home State the court followed the intent of the UCCJEA and opined "it clear that our scrutiny is limited to Mali's child custody law and not on other aspects of its legal system, including the law (or absence of law) concerning [Female Gentile Mutilation]."[62] Coulibaly also discussed parental preference stating "custodial preferences are not foreign to American jurisprudence. Indeed, gender-based custody preferences were the norm in the United States in the not-so-distant past."[63]

"Jurisdictional issue is limited to determining whether another forum is available with jurisdiction which will determine the child custody issue in accord with minimum due process and award custody on the basis of the best interests of the child. Collateral matters relating to the culture, mores, customs, religion, or social practices in that other forum are not only irrelevant to the question of jurisdiction but also such cultural comparisons have no place in the ultimate custody award."[64]

The UCCJEA was created to eliminate forum shopping. Saudi Arabia is the proper jurisdiction and is available to decide the custody matters in accord with the minimum due process and make the award based on the best interest of the child.

---

[62] Coulibaly v. Stevance, 85 N.E.3d 911, 920–21 (Ind. Ct. App. 2017).
[63] Id.
[64] State ex rel. Rashid v. Drumm, 824 S.W.2d 497, 505 (Mo. Ct. App. 1992).

While Ahed attempts to make a categorical statement that countries with Sharia Courts cannot be considered a Minor's home state. No Court has actually reached that decision. In fact as discussed above most courts have found the complete opposite. Ahed cites to Ali v. Ali, for the proposition that the "the law of the Sharia court was arbitrary and capricious" but fails to discuss that New Jersey was the home state of the minor not Gaza, the party attempting to enforce the Sharia Court order failed to provide a copy of the Gaza decree, and that there was a lack of notice to the other party.[65] Additionally, the sentence cited while sounding very drastic was talking about the specific Sharia court and not Sharia Courts in general.

After the Ali v. Ali, decision the New Jersey Supreme Court decided Ivaldi. In Ivaldi the New Jersey Supreme Court held "We trust, however, that the Moroccan court will consider the child's best interests in fashioning a custody order. In that regard, the Hague Convention on Jurisdiction seeks to assure that the best interests of the child is the primary consideration in all international disputes involving children…We trust further that the Moroccan court will consider the parties' separation agreement, including its provision calling for the application of New Jersey law. Our goal is to further the purposes of the Act and of the Hague Convention on Jurisdiction by avoiding jurisdictional competition while

[65] Ali v. Ali, 279 N.J. Super. 154, 167, 652 A.2d 253, 259 (Ch. Div. 1994).

simultaneously discouraging parents from unilaterally removing their children to obtain a more favorable forum."[66] The Court went on to discuss why it ultimately declined to assume jurisdiction "If the Family Part dismisses this action, the dismissal will not preclude a New Jersey court from subsequently reviewing the enforceability of the Moroccan custody decree. For example, if the Moroccan court denies the father procedural due process or refuses to consider Lina's best interests, the Family Part may then refuse to enforce the Moroccan decree. Id.

Here, there is nothing in the record that would show that Saudi Arabia would not provide due process to all parties involved or make a decision based on the best interest of the child.[67] Instead Ahed makes categorical statements that no Minor should ever be returned to his Home State if he is from a non-Hague country.

RETURN ORDER

A child wrongfully removed from her country of "habitual residence" ordinarily must be returned to that country.[68] The Convention ordinarily requires the

[66] Ivaldi v. Ivaldi, 147 N.J. 190, 206–07, 685 A.2d 1319, 1327–28 (1996).
[67] While not properly before the court at this time (see fn 57), please see AA000442-449 as it was included in the record and Ahed made numerous arguments about Saudi Arabia not being able to be a Home State, even though it was not briefed during the motion to dismiss but briefed in subsequent motions, for which a notice of appeal will be filed today.
[68] Monasky v. Taglieri, 140 S. Ct. 719 (2020).

prompt return of a child wrongfully removed or **retained** away from the country in which she habitually resides(*emphasis added*).[69]

The UCCJEA does not require a full evidentiary hearing; rather it aims for the speedy resolution of jurisdictional challenges.[70] "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.'"**[71]

Here, the District Court based on the undisputed record of when the parties arrived, and the parties Visa Conditions has already indicated at both the hearing held on the Motion to Dismiss and supplemental briefing hearing that the Court would find Nevada was **not** the Minor's Home State. There is nothing in the appeal that would likely lead the District Court to apprise the facts differently on remand.

Thus, this Honorable Court should issue a return order or a substantially similar order so that Mohamad can return to Saudi Arabia with the minor child. The

---

[69] 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.)

[70] Chaker v. Adcock, 464 P.3d 412 (Nev. App. 2020); *citing* In re Yaman(*sic*), 105 A.3d 600, 613-14 (N.H. 2014).

[71] 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).

Supreme Court of the United States has indicated that the Hague Convention "is based on the principle that the best interests of the child are well served when decisions regarding custody rights are made in the country of habitual residence."[7273] When a Court does not order the prompt return of a child, the child loses precious months in which the child could have been readjusting to life in her country of habitual residence.[74]

The Minor has already lost precious months since this action was instituted in which he could be readjusting to life in his Home State especially during the ongoing pandemic. The Minor is almost two years old now and is barely entering his formidable toddler years in which he will really begin learning to speak. Delaying his return to his Home State will only serve to prevent the process of readjustment that is so critical. Especially, since he is currently being shuffled between a shelter and an apartment.

---

[72] Mohamad is aware the Hague convention is not available here but as in Ogawa this Court can issue a return orders by interpreting Hague case law to determine how to deal with an international custody dispute *See* Ogawa v. Ogawa, 125 Nev. 660, 670–71, 221 P.3d 699, 706 (2009).

[73] Cook v. Arimitsu, No. A19-1235, 2020 WL 1983223, at *3 (Minn. Ct. App. Apr. 27, 2020); *citing* Abbott v. Abbott, 560 U.S. 1, 20, 130 S. Ct. 1983, 1995 (2010); *see also* Monasky, 140 S. Ct. at 723 (recognizing that the "core premise" of the Hague Convention is that the children's best interests are generally "best served when custody decisions are made in the child's country of habitual residence").

[74] *See* Chafin 568 U.S. at 178.

This Court has previously "decline[d] to adopt a bright-line rule prohibiting out-of-country visitation by a parent whose country has not adopted the Hague Convention or executed an extradition treaty with the United States" and that was when the minor's Home State was actually Nevada.[75] Based on this Court's precedent, the Minor should not be barred from returning to his non-Hague Home State of Saudi Arabia. This Honorable Court should issue a return order as was done by the United States Supreme Court in Monasky and the various Federal Circuit Courts that have since interpreted Monasky since it was decided earlier this year so the minor can be promptly returned to his Home State.

CONCLUSION

This Court should uphold the lower Court's Decision as it properly interpreted Park and the litany of other cases deciding domicile and lawful subjective intent as it relates to non-immigrant aliens and hold that nonimmigrant aliens cannot legally form the intent necessary to be domiciled in the United States and therefore cannot be divorced in Nevada.

After which, this Honorable Court should issue an order pursuant to the United States Supreme Court's decision in Monasky and issue a return order for the

[75] Davis v. Ewalefo, 131 Nev. 445, 454, 352 P.3d 1139, 1145 (2015); *see also* Long v. Ardestani, 241 Wis.2d 498, 624 N.W.2d 405, 417 (Wis.Ct.App.2001) (finding no cases that "even hint" at a rule that provides, "as a matter of law that a parent ... may not take a child to a country that is not a signatory to the Hague Convention if the other parent objects").

Minor to his Home State of Saudi Arabia, as remanding to the District Court would consume time when swift resolution is the UCCJEA's objective, and there is no indication the District Court would appraise the facts differently on remand.

DATED this 12th day of November, 2020.

Respectfully submitted by:

MARKMAN LAW

/S/ DAVID MARKMAN

David Markman, Esq.
Nevada Bar No. 12440
4484 S. Pecos Rd # 130
Las Vegas, Nevada 89121
(702)843-5899
Attorneys for Respondent

VERIFICATION

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

This fast track response has been prepared in a proportionally spaced typeface using Microsoft Word in font size 14 and type style Time New Roman

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) and/or this Court's October 28, 2020 Order because it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 7,637 words.

///

///

///

///

///

///

//

//

/

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 12th day of November, 2020

Respectfully submitted by:

MARKMAN LAW

/S/ DAVID MARKMAN

David Markman, Esq.
Nevada Bar No. 12440
MARKMAN LAW
4484 S. Pecos Rd # 130
Las Vegas, Nevada 89121
(702)843-5899
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of MARKMAN LAW, and that on this 12th day of November, 2020, a document entitled **RESPONDENT MOHAMAD ALHULAIBI'S FAST TRACK RESPONSE** 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:

APRIL GREEN, ESQ.
Nevada Bar 8340C
BARBARA BUCKLEY
Nevada Bar No. 3918
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, NV 89104
asgreen@lacsn.org

MARSHALL S. WILLICK
Nevada Bar No. 2515
Richard L. Crane, Esq
Nevada Bar No. 9536
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas Nevada 89110
email@willicklawgroup.com

/s/ David Markman
An Employee of Markman Law

62

62

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

AHED SAID SENJAB,

Appellant,

vs.

MOHAMAD ALHULAIBI,

Respondent.

S.C. No.: 81515

D.C. Case No.: D-20-606003-D

APPELLANT'S REPLY TO FAST TRACK RESPONSE

Attorneys for Appellant:
Marshal S. Willick, Esq.
Nevada Bar No. 2515
Richard L. Crane, Esq.
Nevada Bar No. 9536
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email: email@willicklawgroup.com

Attorneys for Respondent:
David Markman, Esq.
Nevada Bar No. 12440
MARKMAN LAW
4484 S. Pecos Rd, Ste. 130
Las Vegas, Nevada 89121
(702) 843-5899
Email:David@MarkmanLawfirm.com

1. Name of party filing this reply to fast track response:

Appellant, Ahed Said Senjab.

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

Marshal S. Willick, Esq.
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100

3. **Statement of Facts:**

The facts as set forth in the Response are largely irrelevant to this appeal, and some of them are disputed points that were resolved by orders issuing, and extending, the Protective Order. The relevant facts are set out in the Fast Track Statement.

4. Reply to Fast Track Response

The Fast Track Response ("Response") is primarily an exercise in evasion, deflection, and attempted confusion. His framing of the issues (Paragraph 7) ignores the actual issues in this case: (1) whether a resident can file for divorce irrespective of domicile; and (2) whether a Nevada court can exercise custody and support jurisdiction.

Instead of addressing the issues actually before the Court, the Response raises the straw-man non-issue of whether Nevada became the minor's "Home State" in less than six months.

There was no ruling below on that question and that is not an issue on appeal. Rather, as indicated in our Fast Track Statement ("Statement") on the issue of custody jurisdiction, when a child, mother, and father, are all living in Nevada at the time of initiation of custody litigation, Nevada is the only

jurisdiction that can, or should, render orders relating to the custody and support of that child.[1]

The majority of the citations provided in the Response are irrelevant and do not support Mohamad's position on appeal. Most of them continue the pattern of his arguments below, conflating cases under the UCCJEA with Hague Convention cases. As detailed in the Statement, this is not a Hague Convention case and no such arguments have ever been made, or ruled upon. The Response even quietly acknowledges (at 27-28) that the prerequisite for any Hague Convention case is a finding that a child has been wrongfully

[1] Mohamad makes chillingly clear the position he would espouse in a Saudi court and which he expects this Court to permit him to make here – his original response stated (at 11) that Ahed "abandoned" him by seeking refuge in a domestic violence shelter and is therefore "no longer [his] dependent" and not entitled to any protection or assistance from any court for herself or her child. He altered the language after seeing the original version of this Reply. This insight into Mohamad's view of Ahed and their child is troubling and further highlights the importance of vulnerable women and children like Ahed and her son being able to seek the protection of Nevada's courts.

removed or retained from a country of habitual residence – neither of which has been argued ***or*** found in this case.

Further, as noted in the Statement, Saudi Arabia is not a party to the Hague Convention, making a Hague Convention analysis entirely irrelevant.[2] Despite that fact, the bulk of the Response is made up of irrelevant points, quotations, arguments, and citations from Hague Convention cases, pretending that this is a Hague case.[3]

Much of Mohamad's discussion of federal immigration statutes is inaccurate or simply false.[4] He continues to conflate the statutory language

---

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

[3] All discussion throughout the Response of "forum selection," "habitual residence," and other Hague Convention terminology are irrelevant to the issues before this Court.

[4] For example, when he changed the verbiage noted in fn. 1 above, he inserted the false assertion (at 8-9) that "By filing for divorce Ahed is no longer a dependent as defined by the F-2 VISA and has no legal rights to remain in the United States." The cited webpage (https://studyinthestates.dhs.gov/students/bringing-dependents-to-the-united

relating to F-1 Visa holders (like Mohamad) and F-2 Visa holders (like Ahed), and maintains the contradictory arguments (at 10-11) that Ahed's actual intent is not relevant by law, and (at 12-13) disputing her intentions despite her own sworn filing as to that intent.

Without citation to authority of any kind, Mohamad asserts (at 9) that instead of seeking a protective order, child custody and support orders, and a divorce decree in Nevada, Ahed "can avail herself of the court in Saudi Arabia." The whole point of this appeal is that an abused spouse and child located in Nevada are entitled to the protection of our laws and our courts

---

-states) says nothing of the sort. It states that an F-2 visa holder is "in legal immigration status as long as you (the F-1 visa holder) maintain status." No such argument or ruling was made below. Rather, as detailed in the Statement, the reasoning was the incorrect assertion that an F-2 visa holder such as Ahed could not form the predicate intention to reside in Nevada. Mohamad now falsely asserts that Ahed is no longer an F-2 visa holder, but one does not cease being a dependent simply by filing for divorce.

while present in our jurisdiction; Mohamad nowhere presents any salient reason for denying that protection.

In fact, Mohamad readily admits (at 7-8) that he could be criminally prosecuted, or sued for tort damages in Nevada,[5] but without citation to any authority or any cogent reasoning, nevertheless asserts (at 12) that he is immune from a divorce suit in Nevada.[6]

As detailed in the Statement, Nevada law regarding the residency required to file a lawsuit are identical for divorce and any *other* cause of

---

[5] The civil cases cited by Mohamad for that proposition are long-arm cases not actually on point, but the assertion that Nevada can exercise jurisdiction over him is correct – this Court has long held that a minimum contacts analysis is only relevant if NRS 14.065 long-arm jurisdiction is at issue, and is not relevant when a defendant is served ***in Nevada***, since that service by itself gives the court jurisdiction over a defendant. *Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988).

[6] His actual wording is that "the parties should be prohibited from divorcing in Nevada."

action;[7] no explanation is proffered by Mohamad for the bizarre and legally inconsistent notion that of all the civil and criminal claims that might be brought in a Nevada court, a non-immigrant is immune only to a suit for divorce.

Mohamad's contradictory assertions (at 16-17) regarding the sister-state authority of *In re Marriage of Dick*[8] mischaracterize that holding. His incoherent assertion that the 9th Circuit ruling in *Park v. Barr*[9] "eviscerated" *Dick* but also did not disturb that holding do not advance his position. Mohamad's criticism of *Dick* lacks citation to any authority – the federal court in *Park* explicitly did ***not*** overrule *Dick*.

---

[7] *See* NRS 10.155.

[8] *In re Marriage of Dick*, 15 Cal. App. 4th 144, 18 Cal. Rptr.2d 743 (1993).

[9] *Park v. Barr*, 946 F.3d 1096, 1100 (9th Cir. 2020).

Immediately below Mohamad's muddled discussion of *Dick*, he falsely claims (at 17), again without authority, that "Nevada requires a party to be a domiciliary" to file for divorce. That assertion ignores the plain language of the Nevada statute as well as the century of case law detailed in the Statement which focus on *residence*, as distinguished from domicile.[10]

Mohamad's discussion of the UCCJEA from pages 17-21 ignores the law detailed in the Statement that when mother, father, and child all leave a prior residence and live in Nevada, their prior residence is irrelevant and only Nevada has jurisdiction to enter child custody orders. The prior residence is precluded from being considered a home state.[11] Mohamad tellingly fails to

---

[10] Statement at pages 34-43.

[11] *See* discussion in Statement at 27-28 & fn. 23.

discuss any of that authority, and the one case he does cite on the issue is not on point.[12] He concedes (at 20) that the parties moved to Nevada.[13]

In a further effort to distract from the actual issues in this case, Mohamad embarks (at 23-27) on an irrelevant, academic discussion of Hague Convention return defenses and whether Saudi Arabia's laws violate fundamental principles of human rights or is "merely different." Again, this is not a Hague Convention case, and Mohamad conflates a home state analysis (which is itself not relevant here, as explained above) and a habitual residence Hague determination.

---

[12] *Sarpel v. Eflani*, 65. So.3d 1080, 1084 (Fla. Dist. Ct. App. 2011), *aff'd* 86 So. 3d 1114 (Fla. 2012), involved a post-divorce attack on the trial court's initial custody decision years earlier. All parties were in Florida when the divorce was granted, and the court's ultimate decision rested on a seven-week period years earlier, which the trial court had found was at the time a temporary absence.

[13] After he saw the original version of this Reply, he deleted the sentence at page 15 of his original Response admitting that it was uncontested that the parties moved here.

Mohamad attempts to evade the issue of child support jurisdiction (at 21-22) on the basis that since the complaint was dismissed, no child support order was ever entered, and sniffing that he does not "consent" to paying any child support. That is a non-sequitur; the whole point of this appeal is that under UIFSA and the UCCJEA the district court was ***required*** to make child support and child custody orders.

Mohamad argues (at 22) that Nevada should "relinquish" child support jurisdiction to Saudi Arabia, ignoring the fact that under UIFSA a court ***may not*** decline to entertain a child support motion.[14]

---

[14] *See* Official Comments to § 611 (our NRS 130.611); *Rosen v. Lantos*, 938 P.2d 729, 734 (N.M. App. 1997); see discussion in Marshal Willick, *The Basics of Family Law Jurisdiction*, 22 Nev. Fam. L. Rep., Fall, 2009, at 19 & fn. 61.

For the reasons discussed above, his request (at 27-30) for "prompt return" of the child to a non-Hague country where no one involved is living is a non-sequitur.

For all these reasons, and those set out in the Statement, the district court's order of dismissal should be reversed and remanded, preferably in the form of a written opinion for the guidance of district court judges who might be similarly misled.

DATED this 16th day of November, 2020.

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

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com

VERIFICATION

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

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

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

   Proportionately spaced, has a typeface of 14 points or more, and contains 1968 words.

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

statement is true and complete to the best of my knowledge, information, and belief.

DATED this 16th day of November, 2020.

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

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WILLICK LAW GROUP and that on this 17th day of November, 2020, a document entitled *Appellant's Reply to Fast Track Response* 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:

David Markman, Esq.
MARKMAN LAW
4484 S. Pecos Road, Ste. 130
Las Vegas, Nevada 89121
Attorneys for Respondent

//s// Justin K. Johnson

An Employee of WILLICK LAW GROUP

P:\wp19\SENJAB,A\DRAFTS\00464040.WPD/jj

63

63

137 Nev., Advance Opinion 64

IN THE SUPREME COURT OF THE STATE OF NEVADA

AHED SAID SENJAB,
Appellant,
vs.
MOHAMAD ABULHAKIM ALHULAIBI,
Respondent.

No. 81515

FILED

OCT 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Appeal from a district court order dismissing a complaint for divorce. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Reversed and remanded.

Willick Law Group and Marshal S. Willick, Las Vegas,
for Appellant.

Markman Law and David A. Markman, Las Vegas,
for Respondent.

Legal Aid Center of Southern Nevada, Inc., and Barbara E. Buckley and April S. Green, Las Vegas,
for Amicus Curiae National Immigrant Women's Advocacy Project, Inc.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

NRS 125.020(2) provides in part that "no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the

commencement of the action." Although residence and domicile are distinct concepts elsewhere in the law, for divorce jurisdiction, we have long considered residence "synonymous with domicile." *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 269-70, 44 P.3d 506, 511 (2002) (quoting *Aldabe v. Aldabe*, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968)). In this appeal, we revisit that rule and conclude that divorce jurisdiction requires mere residence.

FACTS

Appellant Ahed Said Senjab and respondent Mohamad Abulhakim Alhulaibi are Syrian citizens. They married in Saudi Arabia and have one minor child. In 2018, Alhulaibi obtained an F-1 (student) visa and moved to Las Vegas to attend the University of Nevada, Las Vegas. Senjab and the child later obtained F-2 (dependent) visas and, in January 2020, moved to Las Vegas to live with Alhulaibi.

In March 2020, Senjab filed a complaint for divorce. She also sought spousal support, custody of the child, and child support. Alhulaibi moved to dismiss Senjab's complaint for lack of subject-matter jurisdiction. He argued that Senjab, as a nonimmigrant, cannot establish intent to remain in Nevada (i.e., domicile), so the district court lacked subject-matter jurisdiction under NRS 125.020, Nevada's divorce-jurisdiction statute. He cited caselaw in which we explained that residence is synonymous with domicile under NRS 125.020, so subject-matter jurisdiction under NRS 125.020 requires not only physical presence in Nevada (i.e., residence), but also intent to remain here. He also cited a recent United States Court of Appeals for the Ninth Circuit decision and other caselaw holding that some visas preclude domicile as a matter of law by requiring that the visa holder not intend to abandon his or her foreign residence. Senjab replied that the caselaw does not apply to her F-2 visa, and the district court had subject-

matter jurisdiction under NRS 125.020 because she had resided in Nevada for the stated period of not less than six weeks.

The district court heard Alhulaibi's motion and granted it. Citing our long-standing rule that residence is synonymous with domicile under NRS 125.020, it found that both parties had been physically present in Nevada for at least six weeks before Senjab filed her complaint but neither party had established domicile here. Citing a recent Ninth Circuit decision, it concluded that Alhulaibi's F-1 visa and Senjab's F-2 visa precluded them from establishing domicile as a matter of law, so it dismissed Senjab's complaint for lack of subject-matter jurisdiction.

Senjab now appeals, inviting us to reconsider our rule that residence and domicile are synonymous under NRS 125.020. She argues that "reside[nce]" under NRS 125.020 plainly means mere residence—not domicile.[1] We agree, so we reverse and remand to the district court.

DISCUSSION

We review subject-matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). We likewise review statutory-interpretation issues de novo and will interpret a statute by its plain meaning unless some exception applies. *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020). Neither party to this appeal argues that any exception applies. We will not supply an argument on a party's behalf but review only the issues the parties present. *Pelkola v. Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d 807, 809 (2021). Senjab

[1]National Immigrant Women's Advocacy Project, Inc., argues in its amicus brief that an F-2 visa does not preclude domicile, but we do not reach that issue or the broader question of domicile because neither is necessary to resolve this appeal. Senjab also raises custody and support issues that we decline to consider because, as she admits, the district court did not reach them.

simply argues that we should interpret NRS 125.020 by its plain meaning, and Alhulaibi cites our long-standing rule that residence and domicile are synonymous under NRS 125.020.

NRS 125.020(1) provides several bases for subject-matter jurisdiction of a divorce complaint, including either party's "residen[ce]" in the county in which the plaintiff files the complaint. NRS 125.020(2) further provides that,

> [u]nless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action.

Although residence and domicile are generally distinct concepts elsewhere in the law, *see, e.g.*, *Black's Law Dictionary* (11th ed. 2019) (defining residence as "[t]he place where one actually lives, as distinguished from a domicile," and domicile as "[t]he place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere"), we have long considered residence "synonymous with domicile" for divorce jurisdiction, *Vaile*, 118 Nev. at 269-70, 44 P.3d at 511 (quoting *Aldabe*, 84 Nev. at 396, 441 P.2d at 694).

"[W]e recognize the important role that stare decisis plays in our jurisprudence and reiterate that '[l]egal precedents of this Court should be respected until they are shown to be unsound in principle.'" *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 653, 173 P.3d 734, 743 (2007) (second alteration in original) (quoting *Grotts v. Zahner*, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999) (Rose, C.J., dissenting)). Our review of NRS

125.020 reveals that the rule we reiterated most recently in *Vaile* is unsound, and we take this opportunity to retreat from it for several reasons.

First, residence and domicile are distinct concepts not only elsewhere in the law but also in NRS 125.020 itself. NRS 125.020(2) plainly and separately addresses "domicile[ ]" in its first clause and "residen[ce]" in its second clause. Given such a construction, we cannot interpret residence and domicile to be synonymous in NRS 125.020. *See Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 95, 460 P.3d 440, 442 (2020) (explaining that, under the surplusage canon, no word or provision of a statute "should be ignored [or] given an interpretation that causes it to duplicate another provision or to have no consequence" (internal quotation marks omitted)).

Second, the very Ninth Circuit decision that Alhulaibi and the district court cited expressly and persuasively distinguished residence and domicile as we do here. In *Park v. Barr*, the Ninth Circuit explained that the California Court of Appeals decision on which the lower court relied "conflated 'residence' with 'domicile'" by describing them as "synonymous." 946 F.3d 1096, 1100 (9th Cir. 2020) (quoting *In re Marriage of Dick*, 18 Cal. Rptr. 2d 743, 746 (Ct. App. 1993)).[2]

And, finally, the Legislature has supplied an applicable definition of residence. NRS 10.155 provides that,

> [u]nless otherwise provided by specific statute, the legal residence of a person with reference to the person's right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where

[2]Like this court, California courts long ago read an additional, extra-textual domicile requirement into a divorce-jurisdiction statute that required only residence. *E.g.*, *Ungemach v. Ungemach*, 142 P.2d 99, 102 (Cal. Ct. App. 1943) ("The residence referred to in the [divorce-jurisdiction] statute is equivalent to domicile.").

> the person has been physically present within the State or county, as the case may be, during all of the period for which residence is claimed by the person.

No relevant statute provides an alternative definition, so NRS 10.155 applies. Under that definition, residence under NRS 125.020 plainly requires only "physical[ ] presen[ce]"—not an extra-textual intent to remain. NRS 10.155; *see also ASAP Storage*, 123 Nev. at 653, 173 P.3d at 744 ("Statutes should be given their plain meaning whenever possible; otherwise, as we have explained, the constitutional separation-of-powers doctrine is implicated." (footnote omitted)).

Here, the district court found that Senjab and Alhulaibi had been physically present in Nevada for at least six weeks before Senjab filed her complaint. Under a plain-meaning interpretation of "reside[nce]," that finding satisfies NRS 125.020(1)(e), which provides that a plaintiff may obtain divorce in "the district court of any county . . . [i]f plaintiff resided 6 weeks in the State before suit was brought." It also satisfies NRS 125.020(2), which likewise requires residence "for a period of not less than 6 weeks preceding the commencement of the action." With that finding and the plain-meaning interpretation of "residen[ce]" that we now acknowledge, the district court did not lack subject-matter jurisdiction under NRS 125.020.

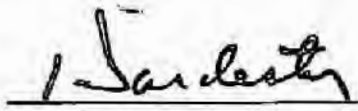
CONCLUSION

Under NRS 125.020, "residen[ce]" means mere residence—not domicile—and NRS 10.155 defines residence as "physical[ ] presen[ce]." Because the district court found that Senjab had been physically present in Nevada for at least six weeks before she filed her divorce complaint, we conclude that it had subject-matter jurisdiction under NRS 125.020.

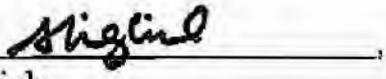
Accordingly, we reverse and remand to the district court for further proceedings consistent with this opinion.

_____, J.
Parraguirre

We concur:

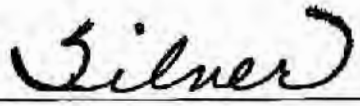


_____, C.J.
Hardesty



_____, J.
Stiglich

_____, J.
Cadish



_____, J.
Silver

_____, J.
Pickering

_____, J.
Herndon

64

64

NOTC
APRIL S. GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA E. BUCKLEY, ESQ.
Nevada Bar No.: 3918
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 East Charleston Blvd.
Las Vegas, NV 89104
(702) 386-1415 Direct/Fax
(702) 386-1070 Ext. 1415
asgreen@lacsn.org
Attorneys for Plaintiff/Applicant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

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

NOTICE TO COURTS OF NEVADA SUPREME COURT DECISION

PLEASE TAKE NOTICE that Plaintiff, AHED SAID SENJAB, has attached decision of the Supreme Court of Nevada (Supreme Court No. 81515) Supreme Court Opinion, 137 Nev., Advance Opinion 64 filed on October 21, 2021.

Dated this 22nd day of October, 2021.

LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____
APRIL S. GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA E. BUCKLEY, ESQ.
Nevada Bar No.: 3918
725 East Charleston Blvd.
Las Vegas, NV 89104
(702) 386-1415 Direct/Fax
(702) 386-1070 Ext. 1415
asgreen@lacsn.org
Attorneys for Plaintiff/Applicant

65

65

CCR
APRIL GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA BUCKLEY, ESQ.
Nevada Bar No.: 3918
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
(702) 386-1070, Ext. 1415
Direct/Fax (702) 386-1415
asgreen@lacsn.org
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

AHED SENJAB, Plaintiff, vs. MOHAMAD ALHULAIBI, Defendant.	Case No.: D-20-606093-D Dept. No.: H DATE OF HEARING: Nov. 2, 2021 TIME OF HEARING: 9:00 a.m.

PLAINTIFF'S CASE MANAGEMENT CONFERENCE REPORT

Defendant, AHED SENJAB, submits this brief pursuant to EDCR 5.401.

I.

STATEMENT OF JURISDICTION

This matter is an action for divorce with request to establish custody, visitation and child support. Plaintiff is an actual, bona fide resident of Clark County, Nevada, and Nevada has been the habitual state of residence of the minor children at issue since January, 2020. After decision in Supreme Court of the State of Nevada, Case No. 81515, the court has subject matter jurisdiction under NRS 125.020 to decide this case.

II.

BRIEF DESCRIPTION OF ACTION

Plaintiff, AHED SAID SENJAB ("AHED," Applicant or Plaintiff), and Defendant, MOHAMAD ALHULAIBI ("MOHAMAD," Adverse Party or Defendant) lived in Saudi Arabia. The parties were married on February 17, 2018 in the Country of Saudi Arabia although AHED is from Syria. The parties have one (1) minor child, RYAN MOHAMAD ALHULAIBI ("RYAN"),

born February 16, 2019. The parties seek to divorce one another and AHED requests the Court determine all child related issues, alimony and personal property issues.

III.

PROPOSED TIME SHARE

The Plaintiff requests sole legal and sole physical custody of the minor child with visitation to the Father each Friday at 5:00 p.m. until Sunday at 5:00 p.m. The Plaintiff requests the child remain with her at all other times.

IV.

UNRESOLVED ISSUES

MOHAMAD moved to Las Vegas, Nevada in August 2018 on a student visa. He attended graduate school at the University of Nevada, Las Vegas, upon information and belief he also worked as a graduate assistant. AHED and the parties' minor child moved to Las Vegas, Nevada in January 2020 via F2 Visas as dependents of MOHAMAD. Ahed is currently unemployed.

The parties separated on or around February 9, 2020 due to domestic violence against AHED perpetrated by MOHAMED. A police report was filed on February 10, 2020 wherein AHED alleged severe domestic violence. She also applied for a protection order which alleged domestic violence including but not limited to verbal, physical and economic abuse. She indicates that MOHAMED treated her like a slave, among other things. AHED's protection order application was granted and extended for one (1) year. AHED left the parties' apartment on or about February 12, 2020 because of all the foregoing reasons. AHED currently resides with the minor child in a domestic violence shelter.

Before they separated, AHED covered the majority of child rearing responsibilities. She was the homemaker and had primary responsibility to care for their child RYAN. On occasion, when MOHAMED temporarily assumed responsibility of watching the child, he would sometimes leave the two (2) year old child unsupervised. Since they separated, RYAN has spent the majority of his time with his mother, AHED.

Because of the historical domestic violence in the relationship, the parties have not been able to resolve custody.

V.

NEEDED INFORMATION, DOCUMENTS & WITNESSES

Plaintiff will file a General Financial Disclosure Form on or before November 2, 2021. The parties have not exchanged NRCP 16.2 disclosures nor identified any witnesses to date. No discovery has been exchanged.

Plaintiff requests alimony in the amount of $2,000.00 each month for a period of five (5) years and requested the following personal property:

Plaintiff should be awarded sole interest, title and possession of the her clothing, prayer rugs, the $1,000.00 Defendant took from Plaintiff as well as all of Plaintiff's personal property presently in Defendant's possession.

VI.

LITIGATION BUDGET

Plaintiff has qualified and been accepted for placement as a direct client of Legal Aid Center of Southern Nevada, Inc., and is entitled to pursue or defend this action without costs as defined in NRS 12.015. There is not a litigation budget currently. However, Plaintiff reserves the right to pursue litigation costs from Defendant in the future.

VI.

PROPOSED TRIAL DATES

If this case does not settle, Plaintiff requests a trial date in 90 days.

DATED this 28th day of October, 2021.

Respectfully submitted by:
LEGAL AID CENTER OF SOUTHERN NEVADA

APRIL GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA BUCKLEY, ESQ.
Nevada Bar No.: 3918
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
(702) 386-1070, Ext. 1415
Direct/Fax (702) 386-1415
asgreen@lacsn.org
Attorney for Plaintiff

66

66

CCR
DAVID MARKMAN, ESQ.
Nevada Bar No. 12440
MARKMAN LAW
4484 S. Pecos Rd Ste. 130
Las Vegas, Nevada 89121
Phone: (702) 843-5899
Fax: (702) 843-6010
Attorneys for Mohamad Alhulabi

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

AHED SAID SENJAB Plaintiff, vs. MOHAMAD ALHULAIBI Defendants.	CASE NO.: D-20-606093-D DEPT. NO.: H

MOHAMAD ALHULAIBI'S CASE MANAGEMENT CONFERENCE REPORT

Mohamad Alhulaibi Submits this Case Management Report pursuant to EDCR 5.401.

I.
STATEMENT OF JURISDICTION

This matter is an action for Divorce. Mohamad still has appeals that are presently before the Nevada Supreme Court to address child custody and the return of the minor child to his home state. The divorce case was filed less than six months after the minor child arrived in the United States from his home country of Saudi Arabia. The Nevada Supreme Court appeals are Case no. 82114 and 82121. The recent Nevada Supreme Court decision did not address custody in the 81515 case.

II.

BRIEF DESCRIPTION OF ACTION

The parties moved here from Saudi Arabia in January of 2020. Ahed Senjab filed for

divorce in March of 2020. The parties have one minor child Ryan Alhulaibi. This is a divorce matter, in which appeals remain that address custody. The parties seek to divorce one another. Mohamad only wants the Court to decide the divorce as addressed by the Nevada Supreme Court. Mohamad believes that the Minor's home state of Saudi Arabia should decide the child custody and child support matters.

III.

PROPOSED TIME SHARE

Mohamad believes that the Court should only make temporary orders during the pendency of the divorce as the Nevada Supreme Court still has the child custody issues on appeal and at this time is not conceding that this Court has jurisdiction to make permanent orders regarding child custody as the matter remains on appeal. Further, Mohamad believes that he should have primary physical custody of the minor until Plaintiff has the means and ability to leave the shelter as Ryan has been bullied and hit by other kids while living in the shelter. Mohamad believes it is in the Minor's best interest to live in the apartment with him during the pendency of the action. For the temporary timeshare Mohamad requests Tuesday at 6:00pm until Sunday at 5:00pm.

IV.

UNRESOLVED ISSUES

The case was recently remanded from the Nevada Supreme Court. The Nevada Supreme Court remanded this matter to have the divorce decided. All issues regarding the divorce need to be decided. Mohamad has appeals remaining that directly address child custody and the return of the minor child to Saudi Arabia. Mohamad has had the Minor child from Thursday at 6:00pm until Sunday at 5:00pm since august of 2020. Charges related to domestic violence were brought against Mohamad and ultimately dismissed by the Court. Mohamad continues to vehemently deny all

allegations of domestic violence.

V.

NEEDED INFORMATION, DOCUMENTS & WITNESSES

Mohamad filed his financial disclosure form contemporaneously with the Case Conference report. The parties have not exchanged any documents or witnesses.

Mohamad denies that any alimony should issue as the marriage was for approximately two years. In which his highest grossing year 2019, he made approximately $15,000.00 in income and $3,400 for a grant for his education and in 2018 he made $6,000.00.

VI.

LITIGATION BUDGET

Mohamad qualified for the reduced legal fee program through the Nevada State Bar. Meaning that Mohamad could not be charged more than $75.00 per hour. Even at that reduced rate Mohamad's attorney has written off significant legal fees due to the protracted nature of the litigation and appellate process. Mohamad's attorney plans on continuing to assist Mohamad at a reduced rate and writing off time based on Mohamad's financial situation.

VII.

PROPOSED TRIAL DATES

Mohamad would request that the trial take place in February 2022.

Dated this 1st day of November, 2021.

MARKMAN LAW

By: /s/ DAVID MARKMAN
DAVID MARKMAN, ESQ.
Nevada Bar No. 12440
4484 S. Pecos Rd. #130
Las Vegas, Nevada 89121
(702) 843-5899

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MARKMAN LAW, and that on this 1st day of November 2021, I caused the foregoing document entitled MOHAMAD ALHULAIBI'S CASE MANAGEMENT CONFERENCE REPORT, to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

[ ] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

[ ] pursuant to EDCR 7.26, to be sent via **facsimile,** by duly executed consent for service by electronic means;

[ ] sent out for hand-delivery via Receipt of Copy.

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

APRIL GREEN, ESQ.
Nevada Bar 8340C
BARBARA BUCKLEY
Nevada Bar No. 3918
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas, NV 89104
asgreen@lacsn.org

/s/ David Markman
David Markman, Esq.

67

67

D-20-606093-D Ahed Said Senjab, Plaintiff
vs.
Mohamad Abulhakim Alhulaibi, Defendant.

November 02, 2021 09:00 AM Case Management Conference

HEARD BY: Ritchie, T. Arthur, Jr. COURTROOM: RJC Courtroom 03G

COURT CLERK: Green, Helen

PARTIES PRESENT:

Ahed Said Senjab, Plaintiff, Present

April S. Green, Attorney, Present

Marshal Shawn Willick, Attorney, Present

Mohamad Abulhakim Alhulaibi, Defendant, Present

David Markman, Attorney, Present

Ryan Mohamad Alhulaibi, Subject Minor, Not Present

JOURNAL ENTRIES

CASE MANAGEMENT CONFERENCE

All counsel and both parties appeared by Bluejeans technology.
Dalyia Ahmed, Arabic Court interpreter, interpreted for the Plaintiff by Bluejeans technology.

The Court reviewed the case and noted that it set the matter for hearing as soon as it received the decision from the Nevada Supreme Court and that the decision stated that this Court has jurisdiction to proceed on the merits with the divorce. The Court set the matter on an expedited bases because it had been pending for some period of time. If the remitter has not yet been filed the Court expects to receive that at any time now.

The Court further noted that the parties had been sharing the child pursuant to the Order filed in T203688, which was filed on 8/4/20, and that the custodial exchanges are by a supervised program at Donna's House Central. The Court noted that it had received two letters from Donna's House.

Attorney Green stated that she had filed a motion for primary physical custody to mom based on the domestic violence in this case and counsel requested a trial date and indicated that she believed that mediation would not be fruitful.

Attorney Markman stated that child custody was still up on appeal and those appeals remain pending and argued that any custody should remain temporary pending the outcome of those appeals.

Attorney Willick stated that counsel had a conference call about a week ago and agreed that there was more than one way of looking at this situation and that any child custody decisions in this Court could be appealed.

Discussion by the Court regarding custody subject matter jurisdiction.

The Court stated FINDINGS
.

Attorney Green stated that she would be withdrawing the motion that was set for 11/16/21 in the T case.

COURT ORDERED:

The decision from the Nevada Supreme Court should prompt the Defendant to file a responsive pleading and the Court expects that to be filed within 20 days.

The two letters from Donna's House Central dated 10/19/21 and 10/31/21, which are the programs' reports regarding exchanges, shall be left side filed under seal with the Court.

Temporarily, the parties have JOINT LEGAL CUSTODY and JOINT PHYSICAL CUSTODY.

Plaintiff is seeking to modify custody Orders in the D case and the Defendant shall be given an opportunity to file an appropriate Answer and any appropriate motion regarding this issue. Attorney Green may notice a motion for child custody and set it for hearing in the normal course and attorney Markman shall respond in the ordinary course and the Court shall hear the matter.

A temporary Order shall be entered in the D case so that the temporary Orders are the Orders that the parties are following and made part of the D case and that Order shall be consistent with the Order that the Court rendered on the record today and consistent with the Order that the Court has already made in the T case regarding the current custodial Order. Attorney Green shall prepare the Order for the D case and attorney Markman shall review and sign off as to form and content.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Dec 07, 2021 11:00AM Motion
RJC Courtroom 03G Ritchie, T. Arthur, Jr.

68

68

MOT
APRIL S. GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA E. BUCKLEY, ESQ.
Nevada Bar No: 3918
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.
725 E. Charleston Blvd.
Las Vegas NV 89104
(702) 386-1415 Direct/Fax
(702) 386-1070 ext. 1415
asgreen@lacsn.org
Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISON
CLARK COUNTY, NEVADA

AHED SAID SENJAB, Plaintiff, vs. MOHAMAD ABULHAKIM ALHUIBI, Defendant.	Case No.: D-20-606093-D Dept. No.: H Date of Hearing: Time of Hearing: Oral Argument Request: Yes

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF THE RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUEST FOR RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

PLAINTIFF'S MOTION FOR TEMPORARY CUSTODY, VISITATION AND CHILD SUPPORT

COMES NOW Plaintiff, AHED SAID SENJAB, by and through counsel, APRIL S. GREEN, ESQ., of LEGAL AID CENTER OF SOUTHERN NEVADA, INC. and hereby files this Motion for Temporary Custody, Visitation, and Child Support. This Motion is made pursuant to NRS 125C.0035, NRS 125B.070, NRS

125B.080, the Memorandum of Points and Authorities in Support of the Motion, the Affidavit of AHED SAID SENJAB and any oral arguments allowed at the time of the hearing.

DATED this 1st day of November, 2021.

Respectfully Submitted,
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

APRIL S. GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA E. BUCKLEY, ESQ.
Nevada Bar No.: 3918
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
(702) 386-1070, Ext. 1415
asgreen@lacsn.org
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.
STATEMENT OF FACTS

Plaintiff, AHED SAID SENJAB ("AHED," Applicant or Plaintiff), and Defendant, MOHAMAD ALHULAIBI ("MOHAMAD," Adverse Party or Defendant) lived in Saudi Arabia. The parties were married on February 17, 2018 in the Country of Saudi Arabia although AHED is from Syria. The parties have one (1) minor child, RYAN MOHAMAD ALHULAIBI ("RYAN"), born February 16, 2019.

MOHAMAD moved to Las Vegas, Nevada in August 2018 on a student visa. He attended graduate school at the University of Nevada, Las Vegas, upon information and belief, and worked as a graduate assistant. AHED and the parties' minor child moved to Las Vegas, Nevada in January 2020 via F2 Visas as dependents of MOHAMAD. Ahed is currently unemployed.

The parties separated on or around February 9, 2020 due to domestic violence against AHED perpetrated by MOHAMED. A police report was filed on February 10, 2020 wherein AHED alleged severe domestic violence. She also applied for a protection order due to alleged domestic violence including but not limited to verbal, physical and economic abuse. She indicates that MOHAMED treated her like a slave, among other things. AHED's protection order application was granted and extended for one (1) year. AHED left the parties' apartment on or about February 12, 2020 because of all the foregoing reasons. AHED currently resides with the minor child in a domestic violence shelter.

Before they separated, AHED covered the majority of child rearing responsibilities. She was the homemaker and had primary responsibility to care for their child RYAN. On occasion, when MOHAMED temporarily assumed responsibility of watching the child, he would sometimes leave the two (2) year old child unsupervised. Since they separated, RYAN has spent the majority of his time

with his mother, AHED.

II.
PROCEDURAL HISTORY

Applicant filed for and was granted a Temporary Protection Order (TPO) on February 14, 2020 in Case No. T-20-203688-T, which was extended for one (1) year. As part of the TPO, she was granted temporary custody of the child subject to Defendant's visitation. The protection order expired on February 14, 2021 despite Applicant's effort to extend it.

Plaintiff filed a "Complaint for Divorce" on March 24, 2020. In her Complaint, AHED requested physical custody of the parties' minor child and related relief. Thereafter, Defendant, MOHAMAD, filed a Motion to Dismiss. Hon. Judge Richie in Dept. H granted the Defendant's motion to dismiss the divorce case on jurisdictional grounds.

By and through Willick Law Group, AHED appealed Judge Ritchie's decision. The Supreme Court of Nevada indicated that "Because the district court found that Senjab had been physically present in Nevada for at least six weeks before she filed her divorce complaint, we conclude that it had subject-matter jurisdiction under NRS 125.020. Accordingly, we reverse and remand to the district court for further proceedings consistent with this opinion. (Opinion dated October 21, 2021 annexed hereto as Exhibit "1").

Before the appeal was decided, on September 9, 2021, Plaintiff filed a "Motion to Extend Child Related Orders Until the Appeal is Decided". Defendant filed an opposition and Dept. H held a hearing and Plaintiff's request was denied. These motions are now moot given the Nevada Supreme Court issued its opinion on the appeal.

With jurisdiction settled, the Plaintiff now brings her motion for temporary custody, visitation and child support Orders.

///

III.
LEGAL ARGUMENT

A. Because of MOHAMED's Abuse of AHED, AHED Should be Granted Primary Physical Custody of the Minor Child.

The best interest of the child presumption flips from joint to sole or primary physical custody when one parent commits domestic violence against the other. Nev. Rev. Stat. Ann. § 125C.0035(5); *Hayes v. Gallacher*, 115 Nev. 1, 7 (1999).

On March 30, 2020, the Court issued a one (1) year TPO extension against MOHAMED based on a finding of domestic violence. According to AHED, MOHAMED subjected her to physical abuse on top of the verbal attacks. He would throw boxes and other objects at her. Sometimes he would hit her, even in the face when she was wearing glasses. One time MOHAMED attempted to choke AHED. MOHAMED's verbal and physical attacks often occurred in the presence of the child. Because of the pattern of domestic violence against AHED, pursuant to NRS 125C.0035(5), the child's primary physical custody should be awarded to AHED. Moreover, not only was a protection order issued against Mohamad, he was also prosecuted with criminal charges for his actions and, upon information and belief, he pled *nolo contendere* to domestic battery 1st and completed conditions. AHED, of course, was the victim-witness in Mohamad's criminal case, so AHED has more than demonstrated that MOHAMAD committed domestic violence against her.

Moreover, in or about November, 2020, AHED filed a motion to modify MOHAMAD's contact with RYAN because more than fifteen times, the child was returned to her with scratches and bruises which meant, according to AHED, that the child was either intentionally hurt during his father's visitation time with the child or neglected such that the child was unsupervised and able to harm himself. Subsequently, MOHAMAD, made allegations that the child was also returned to him from his mother bruised and battered. The matter ultimately went to trial in TPO Court but no findings of abuse were made against either parent. Thereafter, on

March 30, 2021, the parties stipulated to maintain child related orders (which included a parental time share, flagging of child's passport and prohibition to removal of child from Nevada or the USA). They followed those orders pending decision on the appeal.

Presently, there are no Court orders in place for custody and visitation although the parties are following the previous orders from TPO Court at the behest of their attorneys. However, AHED believes that MOHAMAD's time with the child should be reduced for all the foregoing reasons. Joint physical custody is not in the child's best interest wherein domestic violence against a parent of a child has been perpetrated by the other parent as is the case herein.

B. The "Best Interest Factors" as a Whole Support that AHED Should be Granted Temporary Primary Physical Custody of the Minor Child.

Pursuant to NRS 125C.0035, when determining physical custody of a child, the sole consideration of the court is the best interest of the minor child.

In determining the best interest of the child, the court shall consider and set forth is specific findings concerning among other things;

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody;
(b) Any nomination of a guardian for the child by a parent;
(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent;
(d) The level of conflict between the parents;
(e) The ability of the parents to cooperate to meet the needs of the child;
(f) The mental and physical health of the parents;
(g) The physical, developmental and emotional needs of the child;
(h) The nature of the relationship of the child with each parent;
(i) The ability of the child to maintain a relationship with any sibling;
(j) Any history of parental abuse or neglect of the child or a sibling of the child

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child; and

(l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

The Wishes of the Child

RYAN is three (3) years old and not of sufficient age and capacity to form an intelligent preference as to physical custody.

Nomination of a Guardian

This factor is not relevant in this case.

Which Parent is More Likely to Allow Frequent Associations with the Other Parent

AHED and MOHAMED have both shared Ryan with one another under the terms of the existing custody arrangements although AHED does not believe the schedule is in the child's best interest.

Level of Conflict Between the Parties

There has been a high level of conflict between MOHAMMED and AHED because of the long history of domestic violence by MOHAMAD against AHED which led to criminal charges against MOHAMAD and a protection order being issued in favor of AHED.

The Ability of the Parties to Cooperate to Meet the Needs of the Child

According to AHED, MOHAMAD continued to treat her as an inferior during the period of separation at visitation exchanges. His mocking and verbal abuse of AHED, in addition to the historical domestic violence against her suggest it will be difficult for MOHAMAD to cooperate with AHED and meet the needs of the child. AHED indicates that his behavior during the separation indicates he cannot co-parent; rather he wants to exercise power and control of her and treat her in this country the same as he would have in Saudi Arabia. That is, as an unequal person,

inferior to him.

The Physical and Mental Health of the Parents

This factor does not apply in this case.

The Physical, Developmental, and Emotional Needs of the Child

RYAN does not have any known physical, developmental, or emotional disorders. Yet, like any child, he needs to primarily live in a peaceful, healthy environment when he receives attention and nurturing. Historically, AHED is the parent who has provided for those needs.

The Nature of the Relationship with the Child and Each Parent

AHED was primarily responsible for RYAN's care since his birth. He should continue to spend the majority of his time with AHED. There were visitation exchanges during the parties' separation wherein the minor child refused to go with his father and was inconsolable if forced to separate from his mother. The child's own reaction to his father was witnessed by the parties as well as by "Donna's House" staff persons and strongly suggest the child is much more comfortable with his mother than his father.

The Ability of the Child to Maintain a Relationship with Any Sibling

This factor does not apply in this case.

History of Abuse and Neglect

MOHAMAD did not financially support RYAN during the parties' separation which could be considered neglect. AHED believes that MOHAMAD has significant financial means, but has failed and refused to pay child support to AHED voluntarily when he knew or should have known she needed financial support in caring for the child.

Acts of Domestic Violence

The previous section contains an in-depth disclosures regarding domestic violence in this case. This factor favors primary physical child custody to AHED because of MOHAMED's verbal and physical violence against AHED, including in

the presence of the child.

Acts of Abduction

This factor does not apply in this case.

For the above-mentioned reasons, AHED respectfully requests that she be awarded primary physical custody of RYAN MOHAMAD ALHULAIBI.

C. MOHAMED Visitation Should be Modified to Fridays 5:00pm until Sunday at 5:00 p.m. each week.

AHED feels that it would be in their son's best interest for MOHAMED to maintain his weekend visitation schedule, but it should start on Friday, not Thursday.

D. MOHAMED Should be Ordered to pay Child Support Based upon 16% of his Living Expenses since his Income Has Not Been Disclosed.

AHED has the primary responsibility to provide for the necessities for their child. MOHAMED would have the Court believe he is a pauper, yet he is able to pay rent, attorney fees and provide for his lifestyle without money. Therefore, the Court should order him to pay child support based upon 16% of his monthly expenses beginning February 9, 2020, the date the parties separated.

Moreover, AHED requests that MOHAMED obtain health insurance for RYAN through his work if such benefits are offered.

IV.
CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff, AHED SAID SENJAB, respectfully requests that this Court issue an Order as follows:

1. That AHED be awarded temporary primary physical custody of the parties' minor child, RYAN MOHAMAD ALHULAIBI.
2. That AHED be awarded the requested custodial timeshare with RYAN MOHAMAD ALHULAIBI.

3. That MOHAMED pay temporary child support in the amount of 18% of his gross monthly expenses and share in their child's healthcare costs; and

4. For such other relief as the Court deems just and equitable.

Dated this 1st day of November, 2021.

Respectfully Submitted,
LEGAL AID CENTER OF SOUTHERN NEVADA, INC.

By: _____

APRIL S. GREEN, ESQ.
Nevada Bar No.: 8340C
BARBARA E. BUCKLEY, ESQ.
Nevada Bar No.: 3918
725 E. Charleston Blvd.
Las Vegas, Nevada 89104
(702) 386-1070, Ext. 1415
asgreen@lacsn.org
Attorneys for Plaintiff

DECLARATION OF AHED SAID SENJAB

I, Ahed Said Senjab, do solemnly swear under penalty of perjury, pursuant to NRS 53.045 that these assertions are true:

1. That I am the Plaintiff in the above-entitled action and have personal knowledge and I am competent to testify concerning the facts herein.
2. That I have read the above and foregoing PLAINTIFF'S MOTION FOR TEMPORARY CUSTODY, VISITATION AND CHILD SUPPORT and hereby testifies that the facts and statements contained thereon are true and correct to the best of my knowledge and belief also in support of her Countermotion for abduction prevention measures.
3. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

I declare under penalty of perjury by virtue of the laws of the State of Nevada (NRS § 53.045[1] and 28 § U.S.C. 1746[2]), that the foregoing is true and correct. I have authorized my electronic signature pursuant to Administrative Order 20-10[3] attached as Exhibit 1.

Executed this 1st day of November, 2021.

By: _____ Ahed Senjab

---

[1] **Use of unsworn declaration in lieu of affidavit or other sworn declaration; exception.** Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the following form:

1. If executed in this State: "I declare under penalty of perjury that the foregoing is true and correct."
Executed on.....
(date) (signature)

2. Except as otherwise provided in NRS 53.250 to 53.390, inclusive, if executed outside this State: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."
Executed on.....
(date) (signature)

[2] Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the un sworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: **(1)** If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)". **(2)** If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

[3] **V. Original Signature Requirements.** With the exception of documents requiring the signature of a notary, all requirements for original signatures are suspended. All documents filed with the court may be electronically signed as provided in Nevada Electronic Filing and Conversion Rules, Rules 11(a). All documents requiring the signature of another person may be electronically signed without original signatures; however, the party submitting the document must obtain email verification of the other person's agreement to sign electronically and submit the email with the signed documents.

EXHIBIT 1

137 Nev., Advance Opinion 64

IN THE SUPREME COURT OF THE STATE OF NEVADA

AHED SAID SENJAB,
Appellant,
vs.
MOHAMAD ABULHAKIM ALHULAIBI,
Respondent.

No. 81515

FILED

OCT 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Appeal from a district court order dismissing a complaint for divorce. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

Reversed and remanded.

Willick Law Group and Marshal S. Willick, Las Vegas,
for Appellant.

Markman Law and David A. Markman, Las Vegas,
for Respondent.

Legal Aid Center of Southern Nevada, Inc., and Barbara E. Buckley and April S. Green, Las Vegas,
for Amicus Curiae National Immigrant Women's Advocacy Project, Inc.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, PARRAGUIRRE, J.:

NRS 125.020(2) provides in part that "no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the

commencement of the action." Although residence and domicile are distinct concepts elsewhere in the law, for divorce jurisdiction, we have long considered residence "synonymous with domicile." *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 269-70, 44 P.3d 506, 511 (2002) (quoting *Aldabe v. Aldabe*, 84 Nev. 392, 396, 441 P.2d 691, 694 (1968)). In this appeal, we revisit that rule and conclude that divorce jurisdiction requires mere residence.

FACTS

Appellant Ahed Said Senjab and respondent Mohamad Abulhakim Alhulaibi are Syrian citizens. They married in Saudi Arabia and have one minor child. In 2018, Alhulaibi obtained an F-1 (student) visa and moved to Las Vegas to attend the University of Nevada, Las Vegas. Senjab and the child later obtained F-2 (dependent) visas and, in January 2020, moved to Las Vegas to live with Alhulaibi.

In March 2020, Senjab filed a complaint for divorce. She also sought spousal support, custody of the child, and child support. Alhulaibi moved to dismiss Senjab's complaint for lack of subject-matter jurisdiction. He argued that Senjab, as a nonimmigrant, cannot establish intent to remain in Nevada (i.e., domicile), so the district court lacked subject-matter jurisdiction under NRS 125.020, Nevada's divorce-jurisdiction statute. He cited caselaw in which we explained that residence is synonymous with domicile under NRS 125.020, so subject-matter jurisdiction under NRS 125.020 requires not only physical presence in Nevada (i.e., residence), but also intent to remain here. He also cited a recent United States Court of Appeals for the Ninth Circuit decision and other caselaw holding that some visas preclude domicile as a matter of law by requiring that the visa holder not intend to abandon his or her foreign residence. Senjab replied that the caselaw does not apply to her F-2 visa, and the district court had subject-

matter jurisdiction under NRS 125.020 because she had resided in Nevada for the stated period of not less than six weeks.

The district court heard Alhulaibi's motion and granted it. Citing our long-standing rule that residence is synonymous with domicile under NRS 125.020, it found that both parties had been physically present in Nevada for at least six weeks before Senjab filed her complaint but neither party had established domicile here. Citing a recent Ninth Circuit decision, it concluded that Alhulaibi's F-1 visa and Senjab's F-2 visa precluded them from establishing domicile as a matter of law, so it dismissed Senjab's complaint for lack of subject-matter jurisdiction.

Senjab now appeals, inviting us to reconsider our rule that residence and domicile are synonymous under NRS 125.020. She argues that "reside[nce]" under NRS 125.020 plainly means mere residence—not domicile.[1] We agree, so we reverse and remand to the district court.

DISCUSSION

We review subject-matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). We likewise review statutory-interpretation issues de novo and will interpret a statute by its plain meaning unless some exception applies. *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020). Neither party to this appeal argues that any exception applies. We will not supply an argument on a party's behalf but review only the issues the parties present. *Pelkola v. Pelkola*, 137 Nev., Adv. Op. 24, 487 P.3d 807, 809 (2021). Senjab

[1]National Immigrant Women's Advocacy Project, Inc., argues in its amicus brief that an F-2 visa does not preclude domicile, but we do not reach that issue or the broader question of domicile because neither is necessary to resolve this appeal. Senjab also raises custody and support issues that we decline to consider because, as she admits, the district court did not reach them.

simply argues that we should interpret NRS 125.020 by its plain meaning, and Alhulaibi cites our long-standing rule that residence and domicile are synonymous under NRS 125.020.

NRS 125.020(1) provides several bases for subject-matter jurisdiction of a divorce complaint, including either party's "residen[ce]" in the county in which the plaintiff files the complaint. NRS 125.020(2) further provides that,

> [u]nless the cause of action accrued within the county while the plaintiff and defendant were actually domiciled therein, no court has jurisdiction to grant a divorce unless either the plaintiff or defendant has been resident of the State for a period of not less than 6 weeks preceding the commencement of the action.

Although residence and domicile are generally distinct concepts elsewhere in the law, *see, e.g.*, *Black's Law Dictionary* (11th ed. 2019) (defining residence as "[t]he place where one actually lives, as distinguished from a domicile," and domicile as "[t]he place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere"), we have long considered residence "synonymous with domicile" for divorce jurisdiction, *Vaile*, 118 Nev. at 269-70, 44 P.3d at 511 (quoting *Aldabe*, 84 Nev. at 396, 441 P.2d at 694).

"[W]e recognize the important role that stare decisis plays in our jurisprudence and reiterate that '[l]egal precedents of this Court should be respected until they are shown to be unsound in principle.'" *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 653, 173 P.3d 734, 743 (2007) (second alteration in original) (quoting *Grotts v. Zahner*, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999) (Rose, C.J., dissenting)). Our review of NRS

125.020 reveals that the rule we reiterated most recently in *Vaile* is unsound, and we take this opportunity to retreat from it for several reasons.

First, residence and domicile are distinct concepts not only elsewhere in the law but also in NRS 125.020 itself. NRS 125.020(2) plainly and separately addresses "domicile[ ]" in its first clause and "residen[ce]" in its second clause. Given such a construction, we cannot interpret residence and domicile to be synonymous in NRS 125.020. *See Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 95, 460 P.3d 440, 442 (2020) (explaining that, under the surplusage canon, no word or provision of a statute "should be ignored [or] given an interpretation that causes it to duplicate another provision or to have no consequence" (internal quotation marks omitted)).

Second, the very Ninth Circuit decision that Alhulaibi and the district court cited expressly and persuasively distinguished residence and domicile as we do here. In *Park v. Barr*, the Ninth Circuit explained that the California Court of Appeals decision on which the lower court relied "conflated 'residence' with 'domicile'" by describing them as "synonymous." 946 F.3d 1096, 1100 (9th Cir. 2020) (quoting *In re Marriage of Dick*, 18 Cal. Rptr. 2d 743, 746 (Ct. App. 1993)).[2]

And, finally, the Legislature has supplied an applicable definition of residence. NRS 10.155 provides that,

> [u]nless otherwise provided by specific statute, the legal residence of a person with reference to the person's right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where

[2]Like this court, California courts long ago read an additional, extra-textual domicile requirement into a divorce-jurisdiction statute that required only residence. *E.g.*, *Ungemach v. Ungemach*, 142 P.2d 99, 102 (Cal. Ct. App. 1943) ("The residence referred to in the [divorce-jurisdiction] statute is equivalent to domicile.").

> the person has been physically present within the State or county, as the case may be, during all of the period for which residence is claimed by the person.

No relevant statute provides an alternative definition, so NRS 10.155 applies. Under that definition, residence under NRS 125.020 plainly requires only "physical[ ] presen[ce]"—not an extra-textual intent to remain. NRS 10.155; *see also ASAP Storage*, 123 Nev. at 653, 173 P.3d at 744 ("Statutes should be given their plain meaning whenever possible; otherwise, as we have explained, the constitutional separation-of-powers doctrine is implicated." (footnote omitted)).

Here, the district court found that Senjab and Alhulaibi had been physically present in Nevada for at least six weeks before Senjab filed her complaint. Under a plain-meaning interpretation of "reside[nce]," that finding satisfies NRS 125.020(1)(e), which provides that a plaintiff may obtain divorce in "the district court of any county . . . [i]f plaintiff resided 6 weeks in the State before suit was brought." It also satisfies NRS 125.020(2), which likewise requires residence "for a period of not less than 6 weeks preceding the commencement of the action." With that finding and the plain-meaning interpretation of "residen[ce]" that we now acknowledge, the district court did not lack subject-matter jurisdiction under NRS 125.020.

CONCLUSION

Under NRS 125.020, "residen[ce]" means mere residence—not domicile—and NRS 10.155 defines residence as "physical[ ] presen[ce]." Because the district court found that Senjab had been physically present in Nevada for at least six weeks before she filed her divorce complaint, we conclude that it had subject-matter jurisdiction under NRS 125.020.

Accordingly, we reverse and remand to the district court for further proceedings consistent with this opinion.

_____, J.
Parraguirre

We concur:

_____, C.J.
Hardesty

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Silver

_____, J.
Pickering

_____, J.
Herndon

CHAPTER 33 - INJUNCTIONS; PROTECTION ORDERS

NRS 33.018 Acts which constitute domestic violence; exceptions.

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

(a) A battery.

(b) An assault.

(c) Coercion pursuant to NRS 207.190.

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:

(1) Stalking.

(2) Arson.

(3) Trespassing.

(4) Larceny.

(5) Destruction of private property.

(6) Carrying a concealed weapon without a permit.

(7) Injuring or killing an animal.

(8) Burglary.

(9) An invasion of the home.

(f) A false imprisonment.

(g) Pandering.

2. The provisions of this section do not apply to:

(a) Siblings, except those siblings who are in a custodial or guardianship relationship with each other; or

(b) Cousins, except those cousins who are in a custodial or guardianship relationship with each other.

3. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

(Added to NRS by 1985, 2283; A 1995, 902; 1997, 1808; 2007, 82, 1275; 2017, 3179; 2019, 1805)

Rule 5.519. Domestic violence protection orders (TPO and EOP).

(a) Generally.

(1) The statutory evidentiary standard of "to the satisfaction of the court" shall be construed as equivalent to a reasonable cause or probable cause standard by a court considering an application for issuance of a temporary protection order (TPO) or extended order of protection (EOP).

(2) An application requesting a protection order must be based upon an affidavit setting forth specific facts within the affiant's personal knowledge establishing good cause for the order.

(3) The court may take steps to verify the written information provided by the applicant, including whether a Child Protective Services case involving any party is or has been opened, and whether any party has been or is a party to any other proceeding involving domestic violence.

(4) The court may direct representatives of Child Protective Services or other agencies to attend a protection order hearing by subpoena or court order.

(5) The court may permit any person deemed appropriate to be present during a protective order proceeding in the interests of justice notwithstanding the demand by a party that the proceeding be private.

(6) The applicant may be ordered to pay all costs and fees incurred by the adverse party if by clear and convincing evidence it is proven that the applicant knowingly filed a false or intentionally misleading affidavit.

(b) Temporary orders. Any TPO issued pursuant to NRS 33.020(5) must be set for hearing within 7 days of issuance.

(c) Extended orders.

(1) An adverse party must be served with the TPO and application for the extension of a TPO at least 1 day prior to the scheduled hearing.

(2) If the application for an EOP contains a request for financial relief, the applicant must submit financial information on such a form as the court deems necessary.

(3) No EOP may be renewed beyond the statutory maximum period nor may a new EOP be granted based upon the filing of a new application that does not contain a new and distinct factual basis for the issuance of a protective order.

(4) Orders on related matters made in conjunction with extension of a TPO remain in effect for the life of the EOP unless modified by the hearing master or a district court judge hearing the TPO case or another family division case relating to the same parties.

(d) Proceedings in relation with other family division matters.

(1) If both a TPO case and another family division case relating to the same parties have been filed, the hearing master must bring all TPO cases to the attention of the district court judge before taking any action. Unless the district court judge orders otherwise:

(A) If a motion is filed in the other family division case before the TPO was granted and an extension hearing is set in the TPO court, the extension hearing will be set before the district court judge.

(B) If a motion is filed in the other family division case after the TPO was granted and an extension or dissolution hearing is set in the TPO court, the extension hearing will proceed and the hearing master may make such interim orders on extension of the TPO and any related issues at the extension hearing.

(2) Unless otherwise ordered by the district court judge, once a motion in another family division case relating to the same parties has been filed, all subsequent protection order filings and related issues will be heard by the district court judge both before and after final determination of the other family division case, so long as that other case remains open, and will be heard in the TPO court once the other case is closed.

(e) Objections to recommendations of hearing master.

(1) Interim orders, modifications or dissolutions, and recommendations pursuant to decision by a hearing master remain in full force and effect unless altered by order of the assigned district court judge irrespective of the filing of any post-decision motion or objection.

(2) A party may object to a hearing master's recommendation, in whole or in part, by filing a written objection within 14 days after the decision in the matter; if the objecting party was not present at the hearing, the objection period begins upon service of the order on that party.

(3) A copy of the objection must be served on the other party. If the other party's address is confidential, service may be made on the protection order office for service on the other party.

(f) A district court judge may accept, reject, or modify any recommendation of a hearing master.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

AHED SAID SENJAB
Plaintiff/Petitioner

v.

MOHAMED ALHULAIBI
Defendant/Respondent

Case No. D-20-606093-D
Dept. H

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☐ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒ **$0** ☐ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: APRIL S. GREEN, ESQ. Date 11/2/2021

Signature of Party or Preparer _____

69

69

Electronically Filed
11/2/2021 3:50 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

Ahed Said Senjab, Plaintiff vs. Mohamad Abulhakim Alhulaibi, Defendant.	Case No.: D-20-606093-D Department H

NOTICE OF HEARING

Please be advised that the Plaintiff's Motion for Temporary Custody, Visitation, and Child Support in the above-entitled matter is set for hearing as follows:

Date: December 07, 2021

Time: 11:00 AM

Location: RJC Courtroom 03G
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Cecilia Dixon
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Cecilia Dixon
Deputy Clerk of the Court

70

70

IN THE SUPREME COURT OF THE STATE OF NEVADA

AHED SAID SENJAB,
Appellant,
vs.
MOHAMAD ABULHAKIM ALHULAIBI,
Respondent.

Supreme Court No. 81515
District Court Case No. D606093

FILED
NOV 16 2021
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded."

Judgment, as quoted above, entered this 21st day of October, 2021.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this November 15, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Andrew Lococo
Deputy Clerk

D-20-606093-D
CCJR
NV Supreme Court Clerks Certificate/Judgn
4973711

IN THE SUPREME COURT OF THE STATE OF NEVADA

AHED SAID SENJAB,
Appellant,
vs.
MOHAMAD ABULHAKIM ALHULAIBI,
Respondent.

Supreme Court No. 81515
District Court Case No. D606093

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: November 15, 2021

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc (without enclosures):
Willick Law Group \ Marshal S. Willick
Markman Law \ David A. Markman
Legal Aid Center of Southern Nevada, Inc. \ April S. Green, Barbara E. Buckley
Hon. T. Arthur Ritchie, Jr., District Judge

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on NOV 16 2021.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
NOV 16 2021
CLERK OF THE COURT