IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ARNOLD SIMON,

Appellant,

vs.

AMY MCCLURE

Respondent.

S.C. DOCKET NO.: 50740

D.C. No. D378132

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE CASE

Appellant, Arnold Simon, relies upon the Statement of the Case as set out in Appellant's *Opening Brief* ("AOB"). The Statement of the Case from Respondent, Amy McClure, is full of argument, mischaracterization of facts, and editorializing, beginning with the rhetorical question why our courts should intervene in "a dispute between California residents, regarding a California child support order."[1]

Of course, Arnold lives in New Jersey and when Arnold filed his motion, Amy lived in Las Vegas. As explained at length in the *Opening Brief*, through citations from the Official Comments to UIFSA that Amy neither can nor did challenge, the filing of a motion to modify the *Order* in Nevada made this the only jurisdiction that could hear any of the issues. In other words, the Statement of the Case from Amy is an exercise in attempted misdirection, using conclusory – and knowingly false – "facts."

Many more of Amy's "facts" are simply unsubstantiated and irrelevant, apparently meant to distract the Court from the merits of the jurisdictional inquiry. For example, near the end of the first page of the RAB, Amy implies that Arnold "coerced" Amy into moving to Nevada, but her cite to the record to support her claim is only to her own statement to that effect during the trial proceedings, and does not cite to Arnold's denial that any such thing occurred.[2]

Such "facts" as recited by Amy raise two points. First, a Respondent is only supposed to file a Statement of the Case upon some plausible reason for being "dissatisfied" with that of the Appellant.[3] She states no such reason, and a desire to recast the history by failing to acknowledge matters on which conflicting testimony was submitted could not be a (legitimate) reason for submission of such a competing Statement.

Second, and more to the point of the current appeal, any reasons ***why*** Amy moved to Nevada in 2005 are irrelevant to the fact that she and the child ***did*** move here nearly three years before the

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[1] Respondent's *Answering Brief* ("RAB") at 1.

[2] *See, e.g.*, II App. 19 (reciting how and why Amy moved back to Las Vegas in 2005).

[3] NRAP 28(b).

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proceedings below were begun. Amy sold her home in California before moving to Nevada. At the time of commencement of the proceedings below, Amy had lived in Nevada for years, her only home and vehicles were here, and the child attended school here.[4]

Amy's recitation in her proposed Statement of the Case is an unjustified exercise in "spin" by way of mislabeling and misdirection. For example, she refers to the one and only registration of the California *Order* as "Arnold's initial attempt to register."[5] There was no "first attempt"; the *Order* was registered on July 18, 2007.[6] Amy's alleged technicalities all go to her (alleged) problems with the form of notice she was given of that registration.

Perhaps most egregiously, Amy repeatedly insists that Arnold's *Filing of Foreign Order/Judgment* ("registration") was "defective," going as far as claiming the Court "determined" the registration to be defective.[7] ***Nothing*** in the record supports Amy's contention that the district court agreed with ***any*** of her arguments as to registration. As detailed below, there was no such determination, and the great bulk of the *Answering Brief* is in defense of a ruling that was never made, as to an issue for which Amy did not file a cross-appeal, and should not be arguing.

In sum, Amy's proposed Statement of the Case is worse than unnecessary – it appears to be a calculated effort, using "facts" that were never established, and "decisions" that were never made, to divert this Court from seeing and deciding the legal issue as to jurisdiction that is actually before it. The Court should utilize the Statement of the Case set out in the *Opening Brief.*

STATEMENT OF FACTS

Arnold relies upon the Statement of the Facts as set out in Appellant's *Opening Brief* ("AOB"), and asks the Court to do so, for the same reasons as set out above.

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[4] It is hard to conceive of any way in which her actions of moving to Nevada and making it her sole residence could have been any more clear. She lived here for over two years before moving to California – after Arnold served her with the *Motion* to modify the custody/support *Order*.

[5] RAB at 2.

[6] I App. 01.

[7] RAB at 2.

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Amy has not established any errors, omissions, or other legitimate reasons for being "dissatisfied" with the Statement of the Facts in the *Opening Brief*, but has simply sought to omit inconvenient instances of conflicting evidence, while putting a "spin" on the facts by ascribing motives and thoughts processes not found in the record, and supplying her evaluation of the positions as true.[8]

For the purpose of this appeal on the question of jurisdiction, the only relevant portion of Amy's proposed Statement of Facts is her admission that she moved here with the child in 2005, and that she did not physically move elsewhere until August 26, 2007 – a month after Arnold registered the *Order*, filed his *Motion* to modify it, and served both on her.

Amy's proposed Statement of Facts is both unnecessary and deficient; the Court should utilize the Statement of Facts set out in the *Opening Brief*.

ARGUMENT

I. AMY ATTEMPTS TO ARGUE A CROSS-APPEAL THAT SHE NEVER FILED

The first problem with *Respondent's Answering Brief* is that she seeks to defend an (alleged) ruling of the district court that was never made. Apparently realizing that she has no case in opposition to the jurisdictional case actually before this Court, Amy spends the vast bulk of her brief – from page six to page 22 – discussing "findings" that Judge Del Vecchio never made.

Specifically, Amy's first issue (at 6) is captioned "The District Court did not err in determining that Appellant did not properly register the Foreign Support Order Pursuant to the UIFSA Statutes found in NRS Chapter 130."

No such determination was ever made by the district court. In fact, when Mr. Wells tried to discuss matters relating to his assertion that there had been a technical defect in the form of notice of the registration of the order, the following colloquy took place:

> THE COURT: You don't have to go over all the stuff about the – what was missing technically in the registration of foreign judgment.

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[8] *See* RAB at 4-6, as to what Amy had allegedly "been led to believe," what allegedly occurred "at Arnold's request," what the parties "intended" as of 2005 and 2007, that court filings were completed "secretly," etc.

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MR. WELLS: Okay.

THE COURT: You don't even have to go into that.

MR. WELLS: If I might –

THE COURT: Argue as to why it should be dismissed.[9]

Despite this clear direction, Amy's counsel spent the next five minutes discussing his view of the alleged defects of the notice of registration anyway, before turning to the jurisdictional matter of residence that the district court wanted him to address.[10]

After hearing argument on that issue,[11] the judge ignored the matters about which he was not interested, and gave a ruling explicitly related to his view of modification jurisdiction:

> THE COURT: All right. Thank you. This one's a tough one, it's very close, but I'm going to rule in Mr. Wells' favor. I'm going to dismiss it. Obviously, Mr. Willick, you have every right to appeal it and if the Supreme Court tells me I abused my discretion, so be it. But the way I see it, is the initial award, California is the controlling order. There were attorneys present, parties were present, why in the world the Defendant ever agreed to pay 15k a month in child support I have no idea. I do know that California has an income analysis approach on child support and I don't know what she makes, I didn't get Affidavits of Financial Condition from either side, but nonetheless, there were counsel out there, that's where he's got to go to modify it.[12]

That the trial court judge had an incorrect understanding of modification jurisdiction under UIFSA is the subject addressed by the *Opening Brief*. The point ***here*** is that Judge Del Vecchio said nothing that could conceivably be construed as "finding" that the registration of the California order was in any way improper. In fact, he directed Amy's counsel to not even address the matter, and said nothing relating to registration in his ruling, which was clearly based solely on his misunderstanding of jurisdiction. The formal written *Order* added nothing.[13]

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[9] III App. 400.

[10] III App. 400-403.

[11] III App. 403-19.

[12] III App. 419.

[13] II App. 367-68.

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Amy had 30 days from the date she was served with the *Notice of Appeal* within which to file a cross-appeal if she wanted to claim that the lower court incorrectly rejected her position as to the notice of registration.[14] She failed to do so.

When no cross-appeal is filed, this Court has stated that it will not consider contentions that the trial court erred in failing to make an order or award.[15] The requirement to timely file such a cross-appeal is jurisdictional.[16]

Presumably, Amy knew that she could not legitimately argue in this appeal that the trial court rejected her position as to the registration notice. But in seeking to evade that restriction – and distract this Court from the jurisdictional issue actually before it – she committed the far worse transgression of misrepresenting the record.

This Court has, quite recently, commented that "Zealous advocacy is the cornerstone of good lawyering and the bedrock of a just legal system. However, zeal cannot give way to unprofessionalism, noncompliance with court rules, or, most importantly, to violations of the ethical duties of candor to the courts and to opposing counsel."[17] In this case, Amy has misrepresented that a ruling that was never made was made in her favor. Doing so was an unprofessional violation of the ethical duty of candor to this Court.[18]

In the following sections of this *Reply Brief*, we address the merits of Amy's arguments, in case the Court has any curiosity as to the matters raised. But any "issue" relating to the Notice of Registration of the California *Order* is not properly before this Court, and the first 22 pages of the *Answering Brief* can and should be disregarded by this Court in its disposition of this appeal.

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[14] NRAP 4(a)(2).

[15] *Sierra Creek Ranch, Inc. v. J.I. Case*, 97 Nev. 457, 634 P.2d 458 (1981).

[16] *Mahaffy v. Investor's Nat'l Sec. Co.*, 102 Nev. 462, 725 P.2d 1218 (1986); *see also Ross v. Giacomo*, 97 Nev. 550, 635 P.2d 298 (1981).

[17] *Thomas v. City of N. Las Vegas*, 122 Nev. 83, 96, 127 P.3d 1057, 1067 (2006).

[18] *See* RPC 3.3.

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II. THE STANDARD OF REVIEW

As Amy has not addressed the standard of review, she apparently concedes that this Court's review of the questions of statutory construction and jurisdiction is *de novo*.

III. UIFSA GOVERNS JURISDICTION TO MODIFY CHILD SUPPORT

While Amy does not explicitly say so, she apparently agrees that UIFSA governs questions of child support modifications in Nevada.[19] Notably, she ignores the entirety of the Official Comments to UIFSA explaining how the Act is to be construed and applied, presumably because they are conclusive on the jurisdictional issue presented in this appeal.

By silence, Amy apparently concedes that the 2007 amendments to UIFSA only clarified, and did not change, its provisions, so the statute had the same requirements before, and after, the Nevada Legislature tweaked the language in 2007. Her argument that the clarification does not apply to her[20] is addressed below.

IV. JURISDICTION WAS ESTABLISHED AT THE MOMENT OF FILING

Amy makes a half-hearted assault on this proposition,[21] entirely ignoring the face of the controlling statute, which states that a "petitioner . . . may commence a proceeding . . . by filing a petition . . . in a tribunal . . which . . . can obtain personal jurisdiction over a Respondent."[22] She also ignores the Official Comments to UIFSA, which could hardly be more clear in stating that "the time to measure . . . jurisdiction . . . is . . . the time of filing a proceeding to modify the child support order. . . ."[23]

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[19] *See* RAB at 11 (conceding the duty of a district court to address the merits of any motion addressing a registered out-of-State child support order).

[20] RAB at 18-19.

[21] RAB at 22-24.

[22] NRS 130.301.

[23] UIFSA, Official Comment to § 205.

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Amy then makes the bizarre assertion that the cases set out in our footnote 31[24] were not in our brief.[25] Finally, she tries to change the subject, returning to the irrelevant theme that if a foreign support order is not registered, there is no support order before the court to modify.[26]

Even though the matter is not properly before this Court, we address the "issue" of registration below. In this section, however, it should suffice to say that there is simply no contrary authority – the only time for testing the jurisdiction, and obligation, of a court to proceed with a child support modification proceeding is the moment of filing of the motion to modify.

V. NEVADA HAD JURISDICTION TO MODIFY CHILD SUPPORT

A. Under UIFSA, Amy Was a Nevada Resident

The only portion of the *Answering Brief* actually addressing the primary issue on appeal is set out from pages 24 to 27, and cites to no relevant authority. Under UIFSA, as detailed in the *Opening Brief*, the sole factual question as to "residence" is where the party being served is actually living at the moment a modification motion is filed.[27] Amy studiously ignores ***all*** the authority cited, instead going on for some length about the irrelevancy of where Amy ***intended*** to reside at some point in time after the motion was filed.[28]

Again seeking to change the topic, Amy turns to this Court's cases over the past hundred years stating that in order to seek a divorce in Nevada, a party must not just intend to reside in Nevada, but actually be physically present here.[29] Amy claims that there is "no logical difference"

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[24] *Goddard v. Heintzelman*, 875 A.2d 1119 (Pa. Super. 2005) (an "action" is initiated when a foreign support order is registered, or a motion to modify a prior support order is filed); *Welsher v. Rager*, 491 S.E.2d 661 (N.C. App. 1997) (same); *Child Support Enforcement Division of Alaska v. Brenckle*, 675 N.E.2d 390 (Mass. 1997) (same).

[25] RAB at 22, claiming that we cited "but one other case in support of [the] contention [that jurisdiction is established at the moment a motion to modify is filed]."

[26] RAB at 23-24.

[27] *See* AOB at 7-11.

[28] RAB at 24-25.

[29] RAB at 25-26.

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between residence for filing a divorce and "subject to the personal jurisdiction of the tribunal" under UIFSA.[30]

All such case law is irrelevant. None of the Nevada cases invoked by Amy involved whether a defendant, served in Nevada, could deny a court jurisdiction to rule by claiming an intention to live somewhere else. The one other case she cited was explicitly based on the anomalous status that a military member may have if involuntarily stationed temporarily in a State other than that of his residence or domicile.[31] It is irrelevant here since Amy was not "stationed" anywhere, but sold her California home in 2005 and moved to Nevada with her child, where she maintained her one and only home, cars, and life for years before being served with the support modification motion.

The proposition that a defendant could deprive a court of jurisdiction by declaring an intent to move somewhere else is contrary to all controlling statutes[32] and cases.[33] It is also logically preposterous. Requiring a would-be plaintiff to attain residence in order to invoke the jurisdiction of a court is one thing.

The jurisdiction of that same court over a defendant physically present in the territory of the court is something altogether different, and the distinction between offensive and defensive uses of "jurisdiction" is elemental, and elementary. UIFSA clearly gives the court jurisdiction over any person subject to the personal jurisdiction of a tribunal of this State,[34] and the Nevada case law and statutes cited above give our courts personal jurisdiction over anyone served here. Amy's argument to the contrary is specious.

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[30] RAB at 26.

[31] *Amezquita v. Archuleta*, 101 Cal. App. 4th 1415, 124 Cal. Rptr. 2d 887 (Ct. App. 2002) (finding that New Mexico retained exclusive child support modification jurisdiction over member who had been stationed in California).

[32] NRS 125B.014(2); NRS 125.020; 28 U.S.C. § 1738B(e)(2)(A) (Federal Full Faith and Credit for Child Support Orders Act) states that a State can only modify its own prior orders if it continues to be the state of residence of the child or of any individual contestant.

[33] *See Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988); *Tiedemann v. Tiedemann*, 36 Nev. 494, 507, 137 P. 824 (1913); *Burnham v. Superior Court*, 495 U.S. 604 (1990).

[34] NRS 130.611(1)(a).

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Finally, it should be noted that UIFSA includes a "definitions" section to assist court in determining jurisdictional and related issues, and defines "Home State" as:

> the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately preceding the time of filing a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence of any of those persons is counted as part of the 6-month or other period.[35]

Notably, this definition is substantively identical to the definition of "Home State" in the UCCJEA[36] – which was done deliberately by the National Commissioners who drafted it for the purpose of harmonizing the language, and interpretation, of the two acts whenever possible. As noted in the *Opening Brief*, that is why the UCCJEA cases on the same point are relevant.[37] And those far more numerous cases explaining "Home State" under the UCCJEA make clear that the focus is on where someone actually "resides" – lives from day to day – not in any "technical notions of residency or domicile, and rest in the present, not in any subjective inquiry of intent."[38]

Nevada, and ***only*** Nevada, has jurisdiction over the child support modification because at the time Arnold filed his motion to modify:

(1) none of the parties physically resided in the original issuing state;

(2) Arnold lived in New Jersey, and was therefore a non-resident of Nevada seeking modification; and

(3) Amy, the respondent, lived and was served in Nevada, and was therefore subject to the personal jurisdiction of the Nevada court.[39]

Amy states, correctly, that the UCCJEA and UIFSA have independent jurisdictional requirements.[40] She fails, however, to actually say what those jurisdictional requirements ***are***. They

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[35] NRS 130.10119.

[36] NRS 125A.085.

[37] *See Opening Brief* at 6, n.40.

[38] *Id.*

[39] NRS 130.611(a).

[40] RAB at 7.

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are the three enumerated points immediately above this paragraph, and there is absolutely zero legitimate dispute that all three are present in this case. Nevada has exclusive modification jurisdiction in the parties' child support dispute.

B. The District Court Could Not Decline Jurisdiction

This is another point that Amy ignores entirely, and therefore apparently concedes.

C. Public Policy Requires Reversal and Remand

This is another issue where Amy – rather than address the question – attempts to change the subject. Amy never discusses the unavoidable chaos of any legal system interpreted in such a way that a party could retroactively defeat the jurisdiction of the court by declaring the intent to leave after a motion was filed and served.

Instead, Amy pretends that she had some kind of never-articulated "fundamental right" to "strict compliance" with the ***notice*** of registration of a foreign child support order.[41] In this notice-pleading State,[42] the unsubstantiated claim of some kind of right to a particular kind of notice free from any kind of error, typo, or irregularity is – at best – pretty suspect. No such importance to the form of notice can be made out by the terms of UIFSA itself, ***or*** anything in the Official Comments, ***or*** in any Nevada case with which we are familiar. And, as explained below, the notice provided in this case was more than adequate.

For this section of the *Reply*, however, it should be sufficient to point out that Amy ducks the public policy question of what would result from allowing someone to deprive our courts of jurisdiction by fleeing the State after being served with a *Motion*. She does so because such a position is indefensible.

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[41] RAB at 6-18; *see* RAB at 11, discussing unspecified "valuable rights" that Amy claims she would be deprived of if the statute recited on the face of the notice of registration referred to NRS 125A rather than NRS 130.

[42] *See, e.g., Anastassatos v. Anastassatos*, 112 Nev. 317, 913 P.2d 652 (1996) (Nevada is a notice pleading state in which the primary issue is whether a party is given reasonable advance notice of an issue to be raised, and an opportunity to respond); *Langevin v. York*, 111 Nev. 1481, 907 P.2d 981 (1995) (Nevada is a notice pleading state, and any issue fairly noticed and ultimately tried can be appealed).

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D. Arnold's Initial Registration and Motion Filing Were Done Correctly

As noted above, questions relating to the details of the registration technicalities are not properly before this Court, because Amy filed no cross-appeal, and because our case law only requires that a defendant get reasonable advance notice of an issue, and opportunity to respond, both of which were provided.

Specifically, Amy received, along with the notice of registration of the California order, a simultaneous *Motion to Reduce Child Support.*[43] There is no way she could ***not*** have been on notice that child support was the issue before the district court. And she had two and a half months from the day she was served with the *Motion* – July 31st, 2007[44] – until the continued hearing was held on October 16, at which she was in personal attendance with counsel who had been on the case for months. By any definition that was an "opportunity to respond."

Yet Amy flatly asserts – without explanation – that "She was denied the opportunity to contest the validity or enforcement of the support order."[45] It is hard to see how. She received several months notice of a request to modify the child support order, was given a copy of the order sought to be modified, obtained a month-and-a-half continuance of the hearing upon request, and had the assistance of competent counsel.

Stripped to its substance, Amy makes two arguments – that the form of the face of the notice was so critical that any variance in terminology would be fatal to a court's jurisdiction,[46] and that the statute requiring notice through the "state information agency" (clarified before this case was heard below to state that a foreign order need only be filed in Family Court) somehow made her immune from having her child support reviewed by the Nevada courts.[47] Both assertions are nonsense.

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[43] I App. 15, 69, 72.

[44] I App. 127.

[45] RAB at 14.

[46] RAB 6-13.

[47] RAB 13-22.

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Nowhere does Amy actually identify what information she was deprived of, or why it might make any difference. This is because there ***was*** no difference. The first notice of registration sent to her along with a copy of the *Motion to Reduce Chid Support* read:

> PLEASE TAKE NOTICE that on the 18th day of July, 2007, a *"Filing of Foreign Order/Judgment"* and *"Affidavit in Support of Registration of Foreign Judgment,"* were filed in the Eighth Judicial District Court, Clark County, Nevada. Copies of which are attached as Exhibits "A" and "B."
>
> Pursuant to NRS §17.360 et seq., Petitioner's address is Amy McClure, 29 Contra Costa Place, Henderson, Nevada 89052; and the mailing address for the Respondent is Arnold H. Simon, 525 Seventh Ave, Suite 307, New York, New York 10018.[48]

The second (amended) notice, sent with another copy of the *Motion*, read:

> PLEASE TAKE NOTICE that on the 18th day of July, 2007, a *"Filing of Foreign Order/Judgment"* and *"Affidavit in Support of Registration of Foreign Judgment,"* were filed in the Eighth Judicial District Court, Clark County, Nevada. Copies of which are attached as Exhibits "A" and "B."
>
> Pursuant to NRS 125A.465, PLEASE TAKE NOTICE that:
>
> 1. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.
> 2. You have 20 days from the receipt of this filing to request a hearing to contest the validity of the registered determination.
> 3. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
>
> Pursuant to NRS §17.360 et seq., Petitioner's address is Amy McClure, 29 Contra Costa Place, Henderson, Nevada 89052; and the mailing address for the Respondent is Arnold H. Simon, 525 Seventh Ave, Suite 307, New York, New York 10018.

What Amy's filings below claimed was so critical about the notice was the advice that she had 20 days to request a hearing to contest the validity of the registered determination.[49] Even after she received the amended notice, she never requested such a hearing, of course, because she had no grounds to assert in any such hearing.

Specifically, registration can only be challenged at such a hearing on the basis of one of three substantive objections – that the original court did not have jurisdiction; that the order sought to be

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[48] I App. 69-70.

[49] I App. 117-125.

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registered is invalid because it has been set aside; or that the person objecting had no notice of the original proceedings leading to the original order.[50]

None of the above is true in this case. The original court had jurisdiction and both parties submitted to it on the face of the stipulated California *Judgment*. The order had never been set aside or modified. And Amy not only had "notice" of the original proceedings in California – she ***initiated*** those proceedings, and stipulated to the final terms reached.

Instead, Amy admitted that the original order was valid, and that she received notice of the registration of the order in Nevada, but stood on the technicality that some words were missing from the face of the registration notice form.[51] So out of an abundance of caution, we ***re***-served Amy with an amended notice of the registration.

Amy still did not request a hearing, of course, because she still had no basis to object to registration of the California order in Nevada – none of the three possible grounds for challenging it were even arguable. So Amy's position in this Court is that the absence in the first notice of advice of a hearing that she never requested or could possibly prevail at somehow made her immune from a child support modification.

There is no basis in Nevada law for any such absurd construction. Amy attempts to confute the notice technicalities into some kind of substantive jurisdiction requirement,[52] but the Nevada law of notice pleading does not permit any such interpretation.

It has long been the policy of the Family Courts to accept registrations of ***any*** custody or support orders. To this day, the Clark County Self-Help Center uses "packet 80" for registering ***any order*** that "concerns custody and/or child support issues," and there are no differentiating instructions between the two. To the best of our knowledge, all such registrations have been accepted by every department of the Family Court, even though those forms refer to now-non-

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[50] NRS 125A.475(4).

[51] I App. 117-125.

[52] RAB at 6-8.

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existent statutory provisions.[53] Those, like Arnold, who hire counsel are entitled to no fewer rights to seek a hearing on the merits of their case than those who file self-help center forms.

In any event, any technical infirmity in the July notice was corrected by the re-notice in September, which still gave Amy 36 days before the next hearing in October, and for the past 140 years, the Nevada case law on point has stated that any technical defects as to form – like a defective verification of an answer (or missing words from the face of a statutory notice) are curable at ***any time*** and relate back to the original filing.[54] Amy ignored all such controlling Nevada authority.

Amy's second point is equally hollow. The Nevada Legislature did not clarify the language of NRS 130.602 to state that filing an order with "the state information office" means to file it in Family Court until 2007. As discussed in the *Opening Brief*, the legislature amended the terminology of the statute to conform with practice during the years from 1997 to 2007, and this Court has held that all such technical corrective amendments are to be considered retroactively effective.[55] Amy ignores all that Nevada authority.

Instead, Amy chose to cite two cases in opposition – an Oklahoma case declining to give retroactive effect to the entire UIFSA legislative scheme to a date before the statute was enacted, and a Georgia case dealing with repealing acts.[56] Neither has any relevance to the question of whether the technical amendment that conformed the statute to uniform practice should be considered in effect here.

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[53] The prior NRS 125A.190 and 125A.200, eliminated in the switch from the UCCJA to the UCCJEA in 2003.

[54] *Heintzelman v. L'Amoroux*, 3 Nev. 377 (1867); *Gregerson v. Collins*, 80 Nev. 452, 396 P.2d 27 (1964); *see also Tehansky v. Wilson*, 83 Nev. 263, 428 P.2d 375 (1967) (quoting NRCP 11, the court held that a party ***must*** be permitted to cure a non-jurisdictional defect).

[55] *See* AOB at 14-15.

[56] RAB at 18-19.

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The statutory change was passed in May, 2007, and expressly made effective in October – prior to the hearing of this matter below. And this Court has always held that changes to statutes in effect prior to trial court proceedings govern those trial court proceedings.[57]

In *LVMPD*, this Court held that "just because a statute draws upon past facts does not mean that it operates 'retrospectively.'" Instead, the Court ruled that "[a] statute has retroactive effect when it 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.'" In determining whether a law's application would be impermissibly retrospective, "courts are guided by fundamental notions of 'fair notice, reasonable reliance, and settled expectations.'"

Here, the legislative change merely stated that the way we had registered the California child support order was the correct way to file such an order for modification. No new duties, etc., could reasonably be said to have been created or changed. And Amy certainly had no reasonable "settled expectation" that her child support order could never be modified on the basis that the registration statute referred to a non-existent procedure.

If courts really are to be guided by fundamental notions of "fair notice, reasonable reliance, and settled expectations," the technical amendment indicating that foreign child support orders should be filed with the Family Court should be treated as what it was – a entirely procedural, remedial clarification that conformed the face of the statute to uniform practice and common sense.

Amy argues, however, that the previous absence of any mechanism to file a foreign child support order with a non-existent "state information agency" means that foreign child support orders could just not be registered, and modified, in Nevada.[58] By her reasoning, ***every*** out-of-State child

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[57] *See, e.g., Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. ___, 179 P.3d 542, 553 (Adv. Opn. No. 14, Mar. 20, 2008); *see also Tien Fu Hsu v. County of Clark*, 123 Nev. ___, 173 P.3d 724 (Adv. Opn. No. 60, Dec. 27, 2007).

[58] RAB at 16-22.

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support order registered in Nevada between 1997 and 2007 has been invalid, which obviously is not so.[59]

Along the way, Amy makes a few throwaway arguments, such as that we have not adequately "proven" that no mechanism existed through which a filing could be made with a "state information agency."[60] No one in Nevada appears to know of any such mechanism, none has been used in Family Court for the decade prior to the technical legislative amendment, and Amy apparently could not come up with any such to present here. This Court has held that it is unfair to ask a party to prove a negative.[61] While we also cannot prove the non-existence of unicorns and leprechauns, we feel relatively secure asserting the non-existence of things that no one can seem to find.

Such arguments are attempted distractions, however, as are Amy's lengthy out-of-context quotations from foreign jurisdictions with altogether different court structures and procedures.[62] We have nevertheless attached a very brief appendix to this *Reply* showing how cases Amy cites either do not stand for the proposition she proposes, or support our position in this appeal directly.

The notice of registration of the combined custody and support order at issue in this case was done in conformity with the uniform practice in Nevada from 1997 to the present – a practice legislatively ratified by conforming amendment to the registration statute. Even if the "issue" of the process of registration, or the notice given of the registration, was properly before this Court (and it is not), nothing in the *Answering Brief* makes the order of dismissal appealed from any less erroneous.

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[59] Amy might try to argue here that such registrations would only be invalid if her lawyer happens to object. That would be similar to the argument of the attorney who tried to assert that he could terminate his own client's child support obligation by moving to terminate his parental rights, in *Matter of Parental Rights as to T.M.C.*, 118 Nev. 563, 52 P.3d 934 (2002). The district court expressed concern that granting the father's request would result in "millions" of fathers rushing into court, and the father's counsel responded that those fathers would be rushing to court to seek similar relief only if they had "astute attorneys." This Court recited the exchange without further commentary, as it needed none.

[60] RAB at 16-17 & n.4.

[61] *See, e.g., Andrews v. Harley-Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096 (1990).

[62] *See* RAB at 15, 20-21.

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VI. THE NEED FOR PUBLISHED AUTHORITY

Presumably for the same reason Amy says nothing about the public policies implicated in this decision, she is silent on this point, and should be held to have conceded it.

VII. CONCLUSION

Judge Del Vecchio made his order dismissing the child support modification motion on the sole basis of his misunderstanding of modification jurisdiction. He certainly never found that there was any error of any kind in the registration of the California support order, or the notice given of that registration. Amy's pretense that such an determination was made is disingenuous, and her failure to file a cross-appeal precludes her from even raising the question, making the first 22 pages of her brief legally meaningless.

At the moment Arnold's *Motion* was filed, the jurisdictional tests of UIFSA applied, and the only State that could hear the child support modification motion at that moment was – and is – Nevada. The support order was registered and Amy was served in Nevada. She was afforded all of the rights conferred by statute and both subject matter jurisdiction and personal jurisdiction were established. The lower court had no privilege to decline to exercise such jurisdiction.

No party can deprive a court of jurisdiction by claiming an intent to move out of State when served and then doing so, under this Court's prior holdings, and the terms of and Official Comments to the controlling statute.

The order declining jurisdiction should be reversed, and the modification motion remanded for consideration on its merits. Given the amount of apparent confusion of the rules that should be

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followed in such circumstances, this Court's resolution of this case should be by way of published opinion.

Respectfully submitted,

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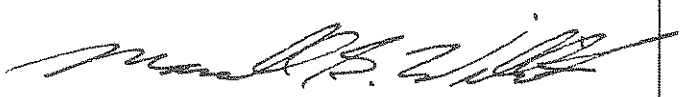

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APPENDIX: RESPONDENT'S ERRONEOUS CITATIONS TO CASE LAW[63]

A. *Lamb v. Lamb*, 707 N.W.2d 423, 434 (Neb. App. 2005)

A close reading of this case actually supports our appeal. We argued that the prior version of the registration statute – before October, 2007 – was ambiguous as there was no clear understanding of what was meant by the "State Information Agency." Since October 2007, the statute in Nevada was clarified identifying the appropriate tribunal to be the district court.[64] In this Nebraska case, the statute was clear as to where the registration was to take place, using the same language as our statute ***now*** uses, and the Court found that the statute was clear as to where a foreign order was to be filed, since it was possible to do so.

B. *In re Interst of V.L.C., A Child*, 225 S.W.3d 221, 226 (Tex. App.- El Paso 2006)

This case did not revolve around a registration of a child support order because ***no*** child support order was ever issued by the Mexican courts to enforce. Additionally, the court found that Mexico was not a state as defined by UIFSA. The case provides no support for Amy's positions.

C. *Mo. Dept. of Social Services, Division of CSO and Khaleb Lee Holder v. Hudson*, 158 S.W.3d 319 (Mo. App. Western Dist. 2005)

This case is only helpful to Amy if the Court finds she was did not live in Nevada at the time the California *Order* was registered. Which, of course, is not so.

It is settled case law that for a change in support, the Plaintiff must sue the Defendant where he/she can be found. In this Missouri case, the Plaintiff correctly sued the Defendant where he lived. The Court found that the Defendant could not counter-sue in his home state on ***custody*** as neither

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[63] Amy's cites are inconsistent with proper citation form. We do not make an issue of such errors, which tend to occur even if proofreading is done with care. For example, on page 26 of the RAB, Amy cites to *Aldabe v. Aldabe*, 84 Nev. 392, 441 P.2d 691 (1968) in a rather scrambled citation purporting to date the case to 2002. We do not pretend to be immune from such errors – the first page of the *Opening Brief* cited the *Order* dismissing the registration and child support reduction motion as having been filed May 7, 2007, when it was actually November 7.

[64] *See* NRS 130.102.

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the Plaintiff nor the child resided there. Since it is clear that Amy ***did*** reside in Nevada at the time the *Motion* was filed and served, Nevada had subject matter jurisdiction over the issue and personal jurisdiction over Amy. The case provides no support for Amy's arguments.

D. *In re of Chapman*, 973 S.W.2d 346, 347-348 (Tex. App. - Amarillo, 1998)

Amy attempts to use this case to show "failure to adhere to the strict procedural requirements of UIFSA invalidated the attempted registration of the foreign support order."[65] The case actually held that registration could not be confirmed where it was not accompanied by a sworn statement by either the divorced mother or the Attorney General, or by certified statement by custodian of Minnesota records, showing amount of any arrearage. The case had to do with collection of arrearages and thus, the missing affidavits were a substantial part of the registration. Regardless of its dicta, it does not affect the merits of our analysis.

E. *State on Behalf of McDonnell v. McCutcheon*, 337 N.W.2d 645, 651 (Minn. 1983)

This case only states that a party must register a previous order before bringing it before the court. The case states: "the order had not been registered and was thus not properly before the court for either enforcement or modification." In this case, Arnold ***did*** register the California *Order* and thus was properly before the court.

F. *State, Office of Recovery Services ex rel. State ex rel. Johnson v. Johnson* 2004 WL 1368177, 1 (Utah App. 2004)

In this unpublished opinion, a contempt order was vacated because it was predicated on a foreign judgment. As in Nevada, Utah gives respondent 20 days to file an objection to the registration, but in this case the Court refused to hear the respondent's objection. This is inapplicable to the case at bar, as the District Court gave Amy months within which to file any objection, and did hear any objection she raised.

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[65] RAB at 16-18.

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CERTIFICATION OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 11th day of February, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WILLICK LAW GROUP, and on the 15th day of January, 2009, I deposited in the United States Mails, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the forgoing, addressed as follows:

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