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OCT 20 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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DEPUTY CLERK

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 OPENING BRIEF

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TABLE OF CONTENTS

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TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

. /ILLICK LAW GROUP
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DOCKETED CASES

FEDERAL STATUTES

STATE STATUTES

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MISCELLANEOUS

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STATEMENT OF THE ISSUES

Whether the lower court erred in granting a motion to dismiss a *Registration of Foreign Judgment*, and refusing to hear a *Motion to Reduce Child Support*, based solely on the Defendant's claim that she had moved out of state during the pendency of the litigation. More generally, whether the District Court had subject matter jurisdiction to reach the merits of the child support motion.

STATEMENT OF THE CASE

This is an appeal from the *Order* entered by the Hon. N. Anthony Del Vecchio dismissing Appellant's *Motion to Reduce Child Support*, which was filed on July 31, 2007. Respondent filed a *Motion to Dismiss* on September 6, 2007, alleging technical problems with the registration and (later) a lack of personal jurisdiction over her. Accepting the latter argument at a hearing held October 16, 2007, Judge Del Vecchio signed an *Order* dismissing the registration and child support reduction motion, which was filed May 7, 2007.

This appeal followed.

STATEMENT OF FACTS

Arnold is a New Jersey resident who travels extensively for business. During an estrangement from his wife, Arnold had a brief affair with a Nevada resident, Amy, resulting in her pregnancy. When the decision was made to bring the pregnancy to term, Arnold fulfilled his financial obligations toward the unborn child, and provided substantial support to Amy.[1]

While pregnant, Amy unilaterally decided to move to California, and on August 28, 2000, Kiley Janae Florence McClure, a daughter, was born there. After Kiley's birth, Arnold voluntarily continued to generously provide support for their daughter – $5,000 per month in child support, Amy's living expenses, and all of Kiley's insurance and unreimbursed medical expenses.[2]

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[1] I App. 17, 35.

[2] I App. 17, 35-36.

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Amy was keenly aware of Arnold's desire to avoid publicity and litigation. In 2001, despite Arnold's generosity, Amy filed suit against him in California seeking even more money, which obtained the intended result of getting Arnold to settle, quietly, in a stipulated *Judgment* in August, 2001. The terms necessary to placate Amy required Arnold to provide her with $15,000 per month, denominated "child support," in addition to other substantial "gifts."[3]

Arnold reunited with his wife, and they temporarily relocated to California with their sons, so that Arnold could oversee a new business acquisition. Arnold traveled from coast to coast to attend to his business concerns. The reconciliation was unsuccessful, however, and his wife filed for divorce in California in 2003. Arnold wrapped up his business dealings, and returned to his home in New Jersey, with his youngest son.[4]

Amy purchased real estate in California with financial assistance from Arnold, and then sold the home for substantial profit.[5] In 2005, Amy and Kiley moved back to Las Vegas.[6] Amy purchased a home in Anthem, again with Arnold's financial assistance, valued at about a million dollars. Their daughter was enrolled in private school, and involved in numerous extra-curricular activities. Arnold began sending Amy an additional $450 a week to help defray the child's school and activity costs.[7]

Amy was not satisfied. In 2007, she informed Arnold through her California counsel that she wanted ***more*** money – more than half a million dollars per year, all to be labeled "child support."[8] Amy noted that she lived in Nevada, and had done so for years,[9] but contended that she was

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[3] I App. 17-18.

[4] I App. 18.

[5] I App. 38.

[6] I App. 19, 32, 34, 39.

[7] I App. 19. This money was in addition to Arnold's paying for both Kiley's and Amy's insurance costs.

[8] I App. 20, 24, 33.

[9] I App. 32; Amy's assertions were dated March 13, 2007. I App. 51.

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"thinking" of relocating to California, and that as the cost of living in California was higher than in Nevada, she would need more than the $15,000 a month he was paying.

By this time, Arnold was tired of paying what he considered ever-increasing blackmail, and sought to reduce his monthly payments to sums actually relating to support of the child. As Amy was living in Las Vegas, Arnold registered the California *Judgment* in the Clark County Family Court, and filed a modification motion here.[10] Both were served on Amy by certified mail on July 31, and official Notice of the Registration was served on Amy on August 14, 2007.[11]

Arnold subpoenaed Kiley's school records, which were provided to the Court in his *Supplement*.[12] The records showed that Kiley had been registered in her Nevada school each year from 2005 to June, 2007, and that After Amy was served with the *Motion*, the child was withdrawn "prior to start date of 8/27/07 for the 2007-2008 school year."[13]

Amy did not timely respond to the *Motion*. On September 6, she filed a *Motion to Dismiss Registration of Foreign Judgment*, claiming that the *Judgment* had been registered in the "wrong court" and that the *Notice* was deficient because the wording of the prescribed statutory notice had been changed to add a few extra words.[14] Arnold corrected the alleged deficiency by serving an *Amended Notice of Registration* on September 10.[15] A hearing was held on September 11, at which Judge Del Vecchio continued the *Motion* hearing, and gave both sides an opportunity to file *Oppositions* – Amy to the motion to reduce child support, and Arnold to the motion to dismiss.

This office had registered and enforced out-of-State child support orders for many years, and we noted that interpreting the registration requirements of NRS 130 the way Amy insisted would make it virtually impossible to ever modify a foreign support order, so we began research into what

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[10] I App. 1, 15.

[11] I App. 1, 69-86; 127-128; 158.

[12] I App. 87-116.

[13] I App. 89.

[14] I App. 117-125.

[15] I App. 136-154; 158-159.

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had actually been done in Nevada since UIFSA[16] had been enacted here. The District Attorney's office was aware of the problematic phrasing in the prior statutes, which had been largely ignored by them, private counsel, and the courts, for years, until it was finally formally corrected by legislation enacted specifically to eliminate any such technical objection. Amy and the Court were advised as to the revised statute's language, which had just gone into effect.[17]

With the technical-deficiency argument gone, Amy switched arguments in her October 5, *Reply*, asserting that the court lacked jurisdiction over her. She claimed that she was not "really" a resident of Nevada, where she had lived for years, owned her only home, worked, and had the parties' child in school, because she was really a California resident, "temporarily living in Nevada." She further alleged that she had moved to California on August 26, 2007, and that the move deprived the court of any power to rule against her on the child support motion.[18]

At the October 16, 2007, hearing, Judge Del Vecchio instructed Amy to provide to the Court her driver's license(s).[19] Amy produced a valid Nevada Driver's License, due to expire in April, 2010, and a California Driver's License, obtained while Amy lived in California when the child was born, which had expired in April, 1995.[20] Amy claimed, however, that she had just applied for a new license in California.[21]

After brief argument by counsel, the District Court stated it was "going to rule in Mr. Wells' favor, and dismiss it." By way of explanation, the judge further stated that "California is the

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[16] Uniform Interstate Family Support Act, NRS ch. 130.

[17] I App. 160-61, 170-75.

[18] II App. 189-192.

[19] III App. 403.

[20] III App. 421.

[21] III App. 403.

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controlling order [] that is where he has to go to modify it."[22] The district court expressed an uncertainty as to the correct result, and invited this appeal.[23]

This Appeal followed.

ARGUMENT

I. THE STANDARD OF REVIEW

The decision appealed from is based on a question of statutory construction. Because the interpretation of a statute is a question of law, this Court need not defer to the trial court's reading of the statute, but instead considers the question *de novo*.[24] And, of course, the question of whether the district court has or lacks jurisdiction to reach a particular issue is a question of law.[25]

II. UIFSA GOVERNS JURISDICTION TO MODIFY CHILD SUPPORT

Nevada adopted the 1996 version of the Uniform Interstate Family Support Act on June 30, 1997.[26] The bill adopting UIFSA was part of a sweeping change of Nevada's welfare rules and regulations, part of the Congressional push to bring the entire nation into uniformity of procedure and results relating to interstate support enforcement cases.[27]

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[22] III App. 419.

[23] III App. 419.

[24] *Irving v. Irving*, 122 Nev. 494, 134 P.3d 718 (2006); *Carson City District Attorney v. Ryder*, 116 Nev. 502, 998 P.2d 1186 (2000); *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 877 P.2d 1032 (1994); *State, Dep't Taxation v. McKesson Corp.*, 111 Nev. 810, 896 P.2d 1145 (1995).

[25] *See, e.g., Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000) (resolving question of whether the court below had jurisdiction to award attorney's fees after filing of notice of appeal).

[26] *See* 1997 Nev. Stats. Ch. 489. The enactment, essentially required by Congress, replaced the prior "URESA" interstate child support enforcement mechanisms. It was so large that many sections – including the registration terminology focused on by Amy – was not closely reviewed, or specifically conformed to match the actual names of Nevada courts and agencies, as detailed below in Section I(D).

[27] *See* "Prefatory Note" to UIFSA, posted on the website of the National Conference of Commissioners on Uniform State Laws (NCCUSL), at http://www.law.upenn.edu/bll/ulc/uifsa/final2001.htm.

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In 2000, NCCUSL reviewed UIFSA in light of nation-wide interpretations of the language as enacted.[28] A new drafting committee conducted a single meeting, in March, 2001, which provided clarifying wording changes approved by NCCUSL at its Annual Meeting the following August. The Nevada Legislature did not revisit NRS Chapter 130 to enact those wording changes for another six years.

NCCUSL stressed that ***no*** amendments since the original enactment "make a fundamental change in the policies and procedures established in UIFSA 1996."[29] In other words, the amendments were meant only as a matter of ***clarification***, not a substantive change, to the provisions as enacted by the Nevada Legislature in 1997.

III. JURISDICTION WAS ESTABLISHED AT THE MOMENT OF FILING

In Nevada, jurisdiction is established at the moment that an "action" or "proceeding" (*e.g.*, a motion to alter child support) is filed.[30] This is noted in the relevant statutes, and is at least the typical – if not the uniform – rule around the country.[31] We are not aware of any conflicting provision, anywhere.

When NCCUSL met in 2001, one of the things it clarified is that UIFSA follows the same timing rules – the physical residence of the parties and child at ***the moment of filing of the motion to modify*** determines whether a modification motion should be heard in the original issuing state, or some other place. Specifically, the official Comment to Section 205, which NCCUSL termed "perhaps the most crucial provision in UIFSA," explains in detail why the "timing-of-jurisdiction"

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[28] *Id.*

[29] *Id.*

[30] *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320 (1988) (time for test of personal jurisdiction is that of the filing of the current proceeding before the court).

[31] *See, e.g.*, NRS 130.207, 130.301; *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).

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test is the same under UIFSA as it is in the Parental Kidnaping Prevention Act,[32] and is the reason that Nevada had jurisdiction over child support in this case:

> As long as one of the individual parties or the child continues to reside in the issuing State, . . . the issuing tribunal has continuing, exclusive jurisdiction over its child-support order — which in practical terms means that it may modify its order. . . .
>
> In 2001 a significant, albeit subtle amendment was made to Subsection (a)(1). ***The intent was not to make a substantive change, but rather to clarify the original intent of the Drafting Committee***. First, ***the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether all parties and child have left the State, is explicitly stated to be at the time of filing a proceeding to modify the child support order***. . . .[33]

NCCUSL went on at some length to assure reviewers that the amended language was ***not*** a change from the original 1996 language (as adopted in Nevada and elsewhere):

> At first glance this section appears to have been significantly rewritten; certainly minor adjustments have been made to the substantive rules established. But, with the exception of the addition of an entirely new Subsection (a)(2), the sole intent and effect of the 2001 amendments is to reorganize the statutory language for greater clarity.[34]

Similarly, throughout the Official Comments, NCCUSL repeats that the timing for determining jurisdiction was ***always*** intended to be at the moment of filing of a modification proceeding.[35]

IV. NEVADA HAD JURISDICTION TO MODIFY CHILD SUPPORT

A. Under UIFSA, Amy Was a Nevada Resident

Amy argued that the district court lacked jurisdiction based on one sentence of UIFSA, taken out of context and misapplied – that this State has jurisdiction to modify only when "the child, the

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[32] 28 U.S.C. § 1738A.

[33] UIFSA, Official Comment to § 205.

[34] *Id.*

[35] *See* Official Comment to §§ 201-202: "Even if a tribunal has personal jurisdiction over both parties, . . . it does not have subject matter jurisdiction to modify a support order of another State if one of the parties or the child reside in the issuing State at the time the modification proceeding is filed . . ."; Official Comment to § 611 (same).

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individual obligee and the obligor do not reside in the issuing state."[36] And at argument – in October – her attorney argued that Amy "is a resident of California."[37]

But Amy's *Reply* admitted that she did not leave Nevada for California until August 26, 2007.[38] It stated that Amy had moved to Nevada in 2005, but it labeled that move "temporary," and claimed that "it was always her intention to return to California."[39]

UIFSA, however, is not concerned with intentions. The jurisdictional provisions are solely focused on the actual physical location of the obligor, obligee, and child, at the moment the motion to modify is filed.[40] And as this Court has pointed out, it is impossible to create residency by intention alone – it requires actual, physical presence.[41] Nor is it relevant that Amy had once lived

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[36] II App. 189-190.

[37] III App. 402.

[38] II App. 190. At argument, Amy stated that she left a few weeks earlier, but that is belied by her prior admissions, the school records, and the deliveries of documents and packages made to her at her Las Vegas home. *See* III App. 409, 411, 414; I App. 89. Of course, even if she had departed the day after being served, it would not change the jurisdictional analysis.

[39] II App. 190.

[40] *See* 130.611(1)(a)(1), detailing the inquiry as whether the obligor, obligee, and child "do not reside in the issuing state." The uniform acts were explicitly harmonized to the maximum degree possible by NCCUSL, so the definitions and meanings are frequently identical. In the analogous UCCJEA, several courts have explained that the focus is on where parties physically "live," not with any technical notions of residency or domicile, and rest in the present, not in any subjective inquiry of intent. *See, e.g.*, *Powell v. Stover*, 165 S.W.3d 322, 326 (Tex. 2005) (noting that to "live" somewhere connotes physical presence, as in "to occupy a home," and the intention of the parties is just not controlling of any relevant inquiry); *In re Marriage of Schoeffel*, 644 N.E.2d 827, 829 (Ill. Ct. App. 1994) (same).

[41] *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (discussing jurisdiction for divorce; as to the children's habitual residence, this Court stated that "courts must look back in time, not forward. In other words, courts must look to the past experiences of the parties, and not to the parties' future intentions . . . subjective intentions that the parents harbor regarding where the child is to live are irrelevant); *Fleming v. Fleming*, 36 Nev. 135, 134 P. 445 (1913) (residence requires actual "corporeal" presence in addition to a good faith belief or intent to make a particular place a place of residence).

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in California years earlier.[42] A vague intention to someday move back to somewhere else means nothing.[43]

In this case, all parties left California by 2005. Arnold lives in New Jersey, and Amy and Kiley lived in Nevada when the modification proceeding was filed. Section 611 of UIFSA (adopted in Nevada as NRS 130.611) is the provision applicable when all parties have left the original issuing State, and the obligor lives in a State different from that of the obligee and subject child when the modification proceeding is filed.[44] As explained in the Official Comments:

> If modification of the order by the issuing tribunal is no longer appropriate, another tribunal may become vested with the continuing, exclusive jurisdiction necessary to modify the order. Primarily this occurs when neither the individual parties nor the child reside in the issuing State . . . .
>
> . . . the party petitioning for modification must be a nonresident of the responding State and must submit himself or herself to the forum State, which must have personal jurisdiction over the respondent, Section 611. The vast majority of the time this is the State in which the respondent resides. A colloquial short-hand summary of the principle is that ordinarily the movant for modification of a child support order "must play an away game."[45]

The place for that "away game" is Nevada, where Amy and Kiley had lived for years prior to the motion being filed, and which obtained exclusive modification jurisdiction over the child support award in this matter when Arnold filed his motion to modify here, in July, 2007.

At the moment of filing, "the child, the individual obligee and the obligor [did] not reside in the issuing state," and California had no jurisdiction to modify the earlier order. Judge Del

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[42] Residential intent has been defined as the intent to remain in Nevada permanently, ***or*** to make it home for at least an indefinite time. *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).

[43] As this Court pointed out in *Fleming v. Fleming*, 36 Nev. 135, 134 P. 445 (1913), while a person might have to "go into another state or another county, called by emergency," that is distinct from circumstances where no specific and certain return is planned. Where absence from a State is "wholly uncertain" in duration and continues "for some months . . . it is manifest that it was not his intention to return without delay as the statute requires." Here, of course, Amy lived in Nevada for ***years*** – until after she was served with our motion to reduce child support.

[44] *Id.*, at "Basic Principles of UIFSA," "Modifying a Support Order," "Modification Statutorily Restricted."

[45] *Id.*

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Vecchio's comment that California had originally issued the "controlling order"[46] was true, but that fact was irrelevant to the question of where that order could be modified.[47]

A party "is subject to the personal jurisdiction of a tribunal of this State" if that party is either a resident of Nevada at that time, or is served here.[48] As noted, both were true in this case. A resident of some other State can ***always*** sue a Nevada resident in Nevada. The Nevada Legislature has specified for over a hundred years that even a divorce may be granted by the district court of any county "in which the defendant resides or may be found."[49] And "personal service of summons on the defendant may be considered as equivalent to his appearance, so far as the giving of jurisdiction is concerned."[50]

Despite her claims to the contrary, there is no question that Amy was a Nevada resident, living (and apparently working) in Nevada, on July 18, 2007, when the California *Order* and *Motion to Modify* were filed here. Her only home was here; her vehicle was registered here, and her only valid driver's license was issued by Nevada. Her child had been in a Nevada school for years, and was enrolled for the coming year.

Amy was served with all the documents in accordance with NRCP 5(b)(2)(B) at her home in Las Vegas on July 31, 2007; an official *Notice* was then served on her on August 13. Then, due

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[46] III App. 419.

[47] The statutory framework of UIFSA is echoed in the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B(e)(2)(A), which 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.

[48] *See Cariaga v. District Court*, 104 Nev. 544, 762 P.2d 886 (1988) (long-arm statute is not applicable when Defendant is served ***in Nevada***); NRS 125B.014(2) ("In addition to any other method authorized by law for obtaining jurisdiction over a person inside or outside of this state, personal jurisdiction may be acquired within the territorial limits of this state by service of process in any manner prescribed by the Nevada Rules of Civil Procedure"); *Burnham v. Superior Court*, 495 U.S. 604 (1990) (affirming the constitutional validity of asserting personal jurisdiction based on personal service within a State).

[49] NRS 125.020. The statutory language has apparently remained unchanged since the time of the Territorial Assembly in 1861.

[50] *See Tiedemann v. Tiedemann*, 36 Nev. 494, 507, 137 P. 824 (1913). As explained in the Nevada Family Practice Manual, "The bases of jurisdiction are set out in the alternative. Case law has fleshed out some of the terms used in the statutes. The Defendant 'may be found' in the county where process can successfully be served upon him or her." Nevada Family Law Practice Manual, 2003 edition ["NFPM"], § 1.2.

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to her raising an issue of missing language in the *Notice*, she was served again by a hand delivered *Amended Notice* to her counsel on September 10.

Amy admitted to having received the documents in Las Vegas, at the residence where she was served, when the proceedings began. Her statement in open court some months later that she had ***planned*** to move out of Nevada when the *Motion* was received, and did so by the date of the hearing, is just not relevant to the analysis.

Other courts have faced similar circumstances – a party moving out of State after the registration of a foreign support order and filing of a motion to modify – and to our knowledge, every appellate court hearing such a case has directed that the case be heard on its merits.[51]

In short, every aspect of the jurisdictional test for having a child support modification motion heard in Nevada were met. UIFSA has ***always*** provided that a Nevada Court may modify a foreign support order if (1) none of the parties resides in the issuing state, (2) a non-resident of Nevada seeks modification, and (3) the respondent is subject to the personal jurisdiction of a Nevada tribunal.[52]

The 2001 amendments just clarified that the jurisdictional test is to be applied in accordance with the parties' residence at the moment the motion to modify was filed. The rule has not changed, but the intention is now crystal clear. Amy could not defeat the jurisdiction of the Nevada courts, or prevent the application of Nevada law, either by claiming that she intended to move to California, or even by actually doing so after she was served with the modification motion. The rules governing modification of child support orders do not allow any such gamesmanship.

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[51] *See, e.g., Trissler v. Trissler*, ___ So. 2d ___ (Fla. Dist. Ct. App. No. 5D07-3148, July 25, 2008). We are familiar with no contrary authority, from anywhere, and Amy has never presented any, nor asserted that any exists.

[52] NRS 130.611(a).

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B. The District Court Could Not Decline Jurisdiction

Under UIFSA, a court ***may not elect to decline*** jurisdiction to hear the merits of a modification motion once the jurisdictional basis for proceeding here has been established.[53] Judge Del Vecchio thus committed plain error in contravention of NRS 130.611 by dismissing Arnold's case, and declining jurisdiction in favor of California. At the moment Arnold's motion was filed, California no longer had jurisdiction over anyone in the case, and the Nevada court lacked the "privilege of declining jurisdiction."[54]

C. Public Policy Requires Reversal and Remand

While this case can and should be fully resolved under the law, it is appropriate to note the mess that would be created if parties were permitted to retroactively defeat the jurisdiction of the courts of this State by declaring their intent to leave the State after legal proceedings were begun here.

Amy presents a pretty good illustration of the danger of allowing parties to do so. If jurisdiction could be defeated just by declaring an intent to relocate in the months between the filing of a motion and its hearing date, such a person could successfully evade ***any*** amendment to a child support order indefinitely, no matter how egregious it was, just by skipping over state lines whenever a hearing was set.

This Court has declared that "diligent parties are entitled to be protected against interminable delay and uncertainty as to their legal rights."[55] In this case, Arnold has a right to a child support

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[53] Specifically, the Official Comments to § 611 (our NRS 130.611) explain:
Modification of child support under Subsections (a)(1) and (a)(2) is distinct from custody modification under the federal Parental Kidnaping Prevention Act, [28 U.S.C. § 1738A], which provides that the court of continuing, exclusive jurisdiction may "decline jurisdiction." Similar provisions are found in the UCCJA, Section 14. In those statutes the methodology for the declination of jurisdiction is not spelled out, but rather is left to the discretion of possibly competing courts for case-by-case determination. The privilege of declining jurisdiction, thereby creating the potential for a vacuum, is not authorized under UIFSA, see *Rosen v. Lantos*, 938 P.2d 729, 734 (N.M. App. 1997).

[54] NRS 130.611 & Official Comments.

[55] *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998), *citing Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973).

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modification hearing, under Nevada law, under the facts as they existed on July 18, 2007. As a matter of public policy, Amy should not be able to prevent a hearing from going forward just by declaring an intention to move.

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

We believe that Amy has abandoned her arguments premised on the technicalities of registration. Certainly, the district court found them meritless, and directed her counsel to skip over addressing the matter.[56] In case she attempts to resurrect them on appeal, this section explains why the argument was, and is, meritless.

Prior to October 1, 2007, NRS 125A.475 was the appropriate registration statute for any child custody order, ***including*** one which also includes a child support provision. Almost every child support order includes custody and visitation provisions. In fact, in Nevada it is mandatory – the statutes require a custody and support determination in every case involving children. NRS 125.450(1) provides that:

> No court may grant a divorce, separate maintenance or annulment pursuant to this chapter, if there are one or more minor children residing in this state who are the issue of the relationship, without first providing for the medical and other care, support, education and maintenance of those children as required by chapter 125B of NRS.

In this case, like most cases, the controlling *Order* includes custody, visitation, and child support provisions. Pursuant to NRS 130.611, once registered, a court order is valid for all purposes, and is as subject to modification as any ***other*** Nevada judgment. Arnold's registration of the California *Judgment* under the UCCJEA was sufficient for the lower court to hear his *Motion* for modification.

Amy contended, however, that the statute spoke of registering a foreign child support order with the "state information agency" (the District Attorney's office), even though that office ***has*** no

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[56] III App. 400. As the transcript shows, Amy's counsel ignored the direction, and talked about his view of the registration requirements anyway, for the next six pages. That issue was not the basis of the order appealed from.

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process or procedure for registration of such orders, but has always directed counsel to file them in Family Court.[57]

It would make no difference to the ***jurisdictional*** analysis, even ***if*** the original registration of the foreign support order had been somehow deficient. Even a technically defective filing of a registration establishes the jurisdiction of the court in which it is filed at the moment of filing.[58]

But the original registration – done in keeping with the uniform practice of the Family Courts for the past decade – was in fact adequate. Public policy would not permit any reading of the law in a way that frustrated its very purpose, by making it impossible to register and modify a foreign support order because our "state information agency" lacks a process for doing so.[59]

As of October 1, 2007 – prior to the hearing of the matter below – any conceivable ambiguity in result was resolved. The legislature revised the language in NRS 130 *et al.* to clarify that out-of-State child support orders are "registered" by filing them in the Family Court, exactly as has been done in child support cases throughout Nevada since 1997, and was done here.[60]

Specifically, the prior ambiguous language referring to "the State Information Agency" has been eliminated, and replaced with "the appropriate tribunal." Thus, the statute now makes clear that the correct procedure is to register (file) the prior, out-of-State *Order* with the Family Court, as that is the correct entity to hear any motion to modify the registered order.

NRS 130.603 now clearly states that a "support order ... issued in another state is registered ***when filed*** in the registering tribunal of this State." (Emphasis added.) The act of filing the *Judgment* with the District Court on July 18, 2007, satisfied this provision.

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[57] II App. 188.

[58] *See Summers v. Ryan*, 2007 WL 161037, 3 (Tenn. Ct. App. 2007) ("the alleged shortcomings of Ms. Summers' petition to register a foreign judgment under the UCCJEA or UIFSA do not deprive the Rhea County Family Court of subject matter jurisdiction, but rather [just] result in the foreign judgment being unregistered and unenforceable until the technical filing deficiencies are cured").

[59] *See Rodgers v. Rodgers*, 110 Nev. 1370, 887 P.2d 269 (1994) ("It is well settled in Nevada that . . . no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided"; when a statute's language is ambiguous, courts should attempt to follow the legislature's intent).

[60] Sections 43 through 52, amending NRS 130.601 through 130.613, are at I App. 170-175. The entirety of the bill can be found at http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=213. The bill was actually signed into law as of May, 2007, but the legislative amendment to UIFSA statutes technically did not go into effect until October 1.

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Nor can Amy make any hay out of the fact that the legislative correction to the wording of the registration statutes did not technically go into effect until October 1. As this Court pointed out in *Castillo v. State*,[61] a statute which is both procedural and remedial should apply retroactively whether or not the legislative history indicates a specific intent to do so.[62]

This is precisely the sort of statute that this Court indicated ***should*** always be considered retroactive in application. It is a strictly procedural language change made to conform the statute to long-standing existing practice for the purpose of facilitating the filing of legitimate claims, by clarifying and technically correcting an ambiguous statute.[63] The language change did not contravene any judicial construction of the statute.

In short, the registration was done correctly under the law as it had been in effect since 1997. The correctness of the procedures followed was certified by the statutory change making explicit that the way lawyers have been registering foreign support orders for a decade was the correct way of doing so. NRS 130.603 also states that ***once*** registered, a foreign child support order is "enforceable in the same manner and subject to the same procedures as an order issued by a tribunal of this State." Therefore, Arnold's modification motion should have been heard on its merits.[64]

V. THE NEED FOR PUBLISHED AUTHORITY

Members of this Court have encouraged counsel to bring the Court's attention to subjects in which the district courts are in conflict, or where a single legal error recurs with sufficient frequency that published authority would be of assistance. This case presents such an issue.

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[61] *Castillo v. State*, 110 Nev. 537, 874 P.2d 1252 (1994).

[62] *Citing Harrison v. Otis Elevator Co.*, 935 F.2d 714, 719 (5th Cir. 1991) (stating that procedural acts describe methods for enforcing, processing, administering or determining rights or liabilities, and holding that "it is well settled that legislation that is interpretive, procedural, or remedial must be applied retroactively, while substantive amendments are given only prospective application"); *Wash. Nat. Ins. v. Sherwood Assoc.*, 795 P.2d 665, 669 n.9 (Utah Ct. App. 1991) (a "remedial" statute in the context of a retroactivity determination means a statutory change in the judicial procedure available to pursue a claim, and a clarification of prior legislative intent).

[63] *Castillo*, 110 Nev. at 541, 874 P.2d at 1256, *citing In re F.D. Processing, Inc.*, 119 Wash. 2d 452, 832 P.2d 1303, 1307 (Wash. Ct. App. 1993).

[64] *See Anastassatos v. Anastassatos*, 112 Nev. 317, 913 P.2d 652 (1996).

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Just last year, this Court resolved a similar case that we brought up, by way of unpublished *Order*.[65] In an almost identical fact pattern, the out of State obligor had registered a California *Order* in the Nevada Family Court, and filed a motion to reduce his child support obligation. During the pendency of the Nevada proceedings, the Respondent grabbed the subject child and fled to California, and then argued that they "no longer live here."

This Court's *Order* cited the UIFSA provisions noted above,[66] and found that Nevada had jurisdiction to modify the California child support order despite the Respondent's move to California after the *Motion* was filed, and that the Family Court had no privilege of declining jurisdiction. While the Court made clear its position on the matter of a Respondent fleeing Nevada after a case is filed in an effort to defeat jurisdiction, the *Order*, being unpublished, cannot be cited as binding authority.[67]

In addition to *Smith*, and the case appealed here, we have in the last six months completed yet another case involving analogous facts, where a California child support order was domesticated here and a *Motion to Modify* was filed.[68] In *Criswell* – unlike *Smith* and this case – the Court accepted the citations to relevant authority, honored the registration, and modified the child support order. The other side, however, appealed, claiming that the absence of clear published authority gave them a shot at evading modification.[69] The case was resolved at an appellate settlement conference, but not before the parties had spent even more time and money arguing over the jurisdiction of the Family Court to make the requested modification.

Beyond the three cases on this subject this office has handled in the past year, we have been informed of the existence of several other cases, litigated by other firms. This seems logical, given

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[65] *Smith v. Day*, Case No. 46036, unpublished *Order of Reversal and Remand*, filed February 13, 2007, at I App 177-180.

[66] At the time of the *Order*, the 2007 legislative update of Nevada's UIFSA statute to conform to the 2001 NCCUSL technical amendments had not yet been formally enacted, but the Court noted that they were not substantive, but only clarifying. Of course, the Nevada law has now been amended to match the current version of the uniform act.

[67] SCR 123.

[68] *Criswell v. Criswell*, No. D-07-385805.

[69] Nevada Supreme Court No. 51632.

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the number of people who move to Nevada from elsewhere, bringing their children – and their child support orders – with them.

The point here is that a good deal of parties' money – and judicial time – is being wasted, apparently in a sizeable number of cases, on the basis of what is perceived as the lack of clear authority. And while the statutes are not truly ambiguous or hard to understand, some counsel (as in this case) continue to argue that the question of jurisdiction is "discretionary,"[70] and some judges continue to believe that the matter is "a close call."[71]

All of this litigation, at the trial and appellate levels, could be eliminated with a clear published opinion stating that the jurisdictional test is applied at the moment of filing of the modification motion, that UIFSA is only concerned with where parties ***actually*** live, and that the courts lack discretion to decline jurisdiction. We therefore ask the Court to publish an *Opinion* resolving this appeal.

VI. CONCLUSION

The Family Court's refusal to reach the merits of this reduction motion was made under a mis-reading of the applicable statute, and had the effect of denying Arnold his right to due process under UIFSA, the Nevada Revised Statutes, and the Nevada Constitution.

The Judge's stated rationale for refusing to hear the case – that the resident party intended to move out of state when served and then did so – is indefensible as a matter of law under long-established precedent of this Court, and the terms of and Official Comments to the controlling statute. The registration, in keeping with long-standing practice, was fully satisfactory under the prior statute, and certified as so by the technical amendment to that statute. And any technical error in registration would have been irrelevant to the matter of jurisdiction, in any event.

Nevada, and ***only*** Nevada, had jurisdiction to hear the *Motion* on the date it was filed, and Amy's post-service flight could not deprive the court of jurisdiction. The lower court also has no

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[70] III App. 402-406.

[71] III App. 419.

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privilege to decline to exercise such jurisdiction. 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 followed in such circumstances, this Court's resolution of this case should be by way of published opinion.

Respectfully submitted,

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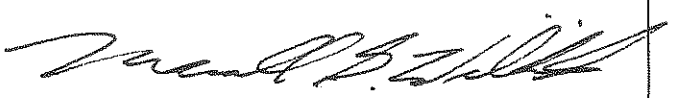

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CERTIFICATION OF COMPLIANCE

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 16th day of October, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on the 16th day of October, 2008, pursuant to EDCR 7.26(a), by hand delivery addressed as follows:

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