IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD SIMON,	)	
	)	
Appellant,	)	Case No. 50740
	)	District Case No. D378132
v.	)	
	)	
AMY MCCLURE,	)	
	)	
Respondent.	)	
	)	

RESPONDENT'S ANSWERING BRIEF

WELLS & RAWLINGS

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STATEMENT OF THE CASE

The threshold issue presented by this case is: what business does the State of Nevada have in devoting its judicial resources to resolve a dispute between California residents, regarding a California child support order, for a child who was born in California and who presently lives in California? There is no doubt that California is the proper forum for this case and there is not a single public policy reason that can be advanced by appellant as to why Nevada has a compelling interest in resolving this dispute. Moreover, appellant suffers no prejudice by litigating in California, where the parties have always been under the jurisdiction of the Superior Court of California, County of Los Angeles. The district court in Nevada properly denied appellant's obvious attempt at forum shopping.

Appellant, Arnold Simon, and Respondent, Amy McClure, were never married but have one minor child together, Kylie Simon, age eight years, born August 28, 2000. Pursuant to a stipulated judgment entered August 17, 2001, by the California court, Amy has primary physical custody of Kylie and receives child support from Kylie's father Arnold. Appellant's Appendix (AA) I, p. 3-12. At all times relevant, Arnold was married to his now ex-wife, Debra A. Simon, with whom he had been enmeshed in a contentious multi-million dollar divorce case in California. AA II, p. 196-197. For tactical reasons Arnold decided it would be better if Amy and their daughter relocated to Nevada until his divorce case settled in California. Arnold even helped Amy finance the purchase of a home in Las Vegas in 2005. AA II, p. 190, 196-199.

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In March, 2007, Amy's California attorneys notified Arnold's California attorneys that Amy would be seeking a modification of the California support order. AA II, p. 219-238. This apparently prompted Arnold to attempt an end run around the California court system by attempting to register the California judgment in Clark County Nevada on July 18, 2007. After this purported registration took place, Arnold filed a motion to reduce his child support on July 31, 2007. AA I, p. 15-68.

Arnold's initial attempt to register the foreign judgment in Nevada was defective as is discussed below. Equally importantly, even before Arnold attempted to register the foreign support order in Nevada, Amy had already expressed her intention to move back to California with Kylie, and in fact had signed a sworn declaration to that effect which was transmitted to Arnold's California attorneys in March 2007. AA II, p. 219-238. By the time that Arnold amended his registration notice in an attempt to conform to the statutory requirements, Amy and her daughter had permanently left the State of Nevada (AA I, p. 136-154; AA II, p. 190; AA III, p. 402-403, 406), an assertion that is not disputed by Arnold in his opening brief.

Following the filing of motions and briefs and a hearing in the Eighth Judicial District Court Family Division, Amy's motion to dismiss the registration was granted. Having made that determination, the district court quite correctly decided it had no jurisdiction to act on Arnold's motion to modify the foreign support order. AA II, p. 376-379.

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ISSUES PRESENTED FOR REVIEW

I. Did the district court err in determining that appellant did not properly register the foreign support order pursuant to the Uniform Interstate Family Support Act (UIFSA) statutes found in NRS Chapter 130?

II. Assuming, *arguendo,* that appellant did properly register the foreign support order at some point, did the district court err in determining that it still lacked jurisdiction?

OVERVIEW OF THE ACTION

Appellant argues that the district court erred in dismissing his registration of a foreign child support order and then declining to entertain his motion to modify it. To find that the district court erred, appellant must convince this court that jurisdictional requirements may be waived or ignored and that the express statutory language contained in NRS Chapter 130 does not really mean what it says. The appropriateness of the lower court's ruling is so manifest that merely highlighting what transpired below should suffice:

* On July 18, 2007, Arnold filed in the district court a notice of filing a foreign order/judgment pursuant to125A.465, 125A.475, and 125A.545. AA I, p. 1-12. This registration was defective because the statutes cited in the notice and language included in the registration relates only to enforcement of child custody orders, not child support orders;

* The appropriate statutes for the registration of a foreign child support order are found under UIFSA in Chapter 130 of the Nevada Revised Statutes;

* Both appellant's initial notice of registration and his subsequent amended notice failed to reference UIFSA, NRS Chapter 130, or even a child support order for that matter; (AA I, p. 1-2, 136-137).

* Pursuant to NRS 130.605(2)(b) the non-registering party must be informed "[t]hat a hearing to contest the validity or enforcement of the registered order [may] be requested within 20 days after the notice". Arnold's initial "notification of registration" omitted this required notice to Respondent that she had 20 days to challenge the registration; (AA I, p. 1-2).

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* NRS 130.602 requires that a support order can only be properly registered by transmitting it to the State Information Agency for the state of Nevada, along with other miscellaneous information depending on whether the support order is sought to be enforced or modified, a notice requirement that Arnold completely ignored; (AA I, p. 1-2, 136-137).

* Arnold's *Amended Notice of Registration of Foreign Judgment*, filed on September 10, 2007, would have been ineffective even if it had complied with NRS Chapter 130 as by this time respondent and her daughter had departed the state of Nevada (August 26, 2007) and returned to California where they continue to reside; (AA I, p. 136-154; AAII, p. 190; AA III, p. 402-403, 406).

* On the date the amended notice was filed there was no basis for a Nevada court to assume jurisdiction under NRS 130.611(1)(a) because neither Amy, Arnold, nor the minor child resided in Nevada; and, (Id).

* Even though the Nevada legislature amended certain provisions of NRS Chapter 130 on October 1, 2007, such amendments are irrelevant because the district court was bound to interpret the law as it existed at the time of the proceeding which predated such amendments.

STATEMENT OF THE FACTS

The parties met in 1999, while respondent, Amy McClure, lived in Las Vegas. AA II, p. 196-197. She and appellant, Arnold Simon, dated and eventually became engaged. Id. Shortly thereafter Amy became pregnant and learned for the first time that Arnold was not separated from his wife nor going through a divorce as she had been led to believe. Id. Amy moved back to California, where she had spent most of her adult life, and gave birth to a daughter, Kiley Simon, age 8, born August 28, 2000. Id.

On July 3, 2001, Amy filed a *Petition to Establish Parental Relationship* in the Los Angeles Superior Court. Id. Pursuant to this action, the parties entered into a *Stipulated Judgment* on August 17, 2001, wherein Arnold admitted paternity and agreed to pay child

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support. AA I, p. 3-12. Amy and Kiley remained in southern California for the next five years, then, in 2005, at Arnold's request, they moved to Las Vegas. AA II, p. 197.

Arnold's delayed divorce action in California with his wife, Debra A. Simon, had commenced after she learned of Amy and Kiley's existence, as well as Arnold's support obligation to Amy. Id. In an apparent attempt to keep his wife from learning more facts, Arnold asked Amy to move out of California. AA II, p. 197-198. This move was intended to only be on a temporary basis, until the divorce was completed, and was nothing more than an accommodation to Arnold. AA II, p. 198.

Amy, aware of the substantial standard of living enjoyed by Arnold's other children, Kiley's half-siblings, as well as Arnold's wealth, asked her California counsel to prepare an *Order to Show Cause for Modification of Child Support and for Attorney's Fees and Costs and Accountant's Fees and Costs* in March, 2007. AA II, p. 204-311. In the hope of settling this matter without court intervention, a copy of this motion was provided to Arnold's counsel rather than filing it with the California court immediately. As expressed in Amy's affidavit supporting this motion, and clearly evident from the actions undertaken by Amy, she intended to return to California as early as spring 2007, even though the physical move did not occur until August 26, 2007. AA II, p. 190, 219-238; AA III, p. 402-403, 406.

Despite Arnold's settlement overtures regarding the potential California support action, he was secretly endeavoring to register the August 17, 2001, *Stipulated Judgment* in Nevada before Amy's return to California, so that he might bring an action to modify and lower his child support obligation before a Nevada court. On July 18, 2007, Arnold filed his *Filing of Foreign Order/Judgment* with the clerk of the district court pursuant to NRS

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125A.465, 125A.475, and 125A.545. AA I, p. 1-12. Shortly thereafter, on July 31, 2007, Arnold filed his *Motion to Reduce Child Support*. AA I, p. 15-68.

In response Amy filed a *Motion to Dismiss Registration of Foreign Judgment*, in which she correctly pointed out that Arnold's attempt to domesticate the foreign judgment was never properly completed until September 10, 2007, at the earliest, and therefore the Nevada district court family division had no jurisdiction to entertain his motion. AA I, p. 117-125. After a hearing on October 16, 2007, the district court granted Amy's motion and vacated Arnold's motion to modify child support. AA II, p. 376-379.

ARGUMENT

I. 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.

The appellant never did file a proper registration of the California child support order. On July 18, 2007, appellant's *Filing of Foreign Order/Judgment* was filed with the district court. AA I, p. 1-12. This document states unambiguously that it is being filed pursuant to NRS 125A.465, 125A.475 and 125A.545. Nothing more is included about the nature of the order itself, any additional applicable statutes, or transmittal of the order to any other agencies or entities. Id. Later, on September 10, 2007, appellant filed an *Amended Notice of Registration of Foreign Judgment*. AA I, p. 136-154. This amended notice, once again, states that it was brought pursuant to NRS 125A.465. Nowhere on either document is the term "child support" even referenced. In fact, the only description of what foreign order or judgment is being registered is found on the *Amended Notice of Registration of Foreign*

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Judgment, which simply states "[f]ailure to contest the registration will result in confirmation of the child custody determination..." AA I, p. 1-17, 136-154.

The problem with these registration attempts is that custody and support have independent jurisdictional requirements that must be met. A court that has subject-matter jurisdiction to adjudicate custody does not, simply by virtue of having custody jurisdiction, automatically have subject-matter jurisdiction to modify another state's child support order. The Uniform Child Custody Jurisdiction And Enforcement Act (UCCJEA) as codified in NRS Chapter 125A is the law that determines which state is authorized to decide child custody issues. The UIFSA as codified in NRS Chapter 130 is the authority for determining whether and under what circumstances a Nevada court may modify a foreign, in this case California, support order.

Accordingly, registration of a child custody order pursuant to NRS 125A.465 does not and can not suffice for registration of a child support order pursuant to NRS Chapter 130. While the appellant's registration attempts might suffice for registering a child custody order, there has never been an attempt to register any child support order. See e.g, Lamb v. Lamb 14 Neb.App. 337, 348, 707 N.W.2d 423, 434 (2005) ("initially we observe that the NCCJA does not confer subject matter jurisdiction upon a Nebraska court to modify a child support order issued by another state."; In re Interest of V.L.C., A Child 225 S.W.3d 221, 226 (2006) (Ct of Appeals of Texas, El Paso) ("...separate and independent jurisdictional requirements...must be met under the UCCJEA and the UIFSA..."); *see also* Mo. Dept. Of Social Services, Division of CSO and Khaleb Lee Holder v. Hudson 158 S.W.3d 319 (2005) (Mo. Ct. Of Appeals, Western District) (Missouri court determines that Missouri has

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personal and subject-matter jurisdiction to order father to pay child support but does not have subject-matter jurisdiction to decide father's counter-petition for custody).

It is ineluctably clear that the registration of a child custody order pursuant to NRS Chapter 125A and a child support order pursuant to NRS Chapter 130 have entirely and completely different procedures and requirements which do not overlap and which must each be seperately complied with in order to register the applicable foreign order. Appellant concedes this in affirmatively stating that registration of a foreign child support order can only be properly completed through compliance with UIFSA, as codified in NRS Chapter 130. Appellant's Opening Brief at p. 5, ln 12. Appellant has only attempted to register the child custody order to date and has yet to even attempt to register his child support order.[1] AA I, p. 1-12, 136-154.

II. ASSUMING, *ARGUENDO*, THAT AT SOME POINT APPELLANT DID PROPERLY REGISTER THE FOREIGN SUPPORT ORDER THE DISTRICT COURT DID NOT ERR IN DETERMINING THAT IT LACKED JURISDICTION.

A. The Appellant's initial attempt to register the foreign support order was fundamentally flawed pursuant to the mandatory requirements of NRS 130.602 and 130.605(2).

1. Appellant failed to provide the "State Information Agency" with applicable information, making his attempted registration of the foreign judgment invalid.

In 1997 the Nevada legislature adopted the provisions of the Uniform Interstate Family Support Act (UIFSA) in chapter 130 of the Nevada Revised Statutes. UIFSA provides a comprehensive procedural framework for enforcement and modification of

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1 A child custody order and child support order are routinely contained in the same judgment as is the case here. AAI, p. 3-12.

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foreign support orders. The California judgement which was sought to be registered here in Nevada is a support order as defined by NRS 130.10187 as follows:

> "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, spouse or former spouse, which provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees. Interest, the withholding of income, attorney's fees and other relief.

Pursuant to NRS 130.609 there is a specific procedure to register a child support order of another state for modification, which is as follows:

> A party or support-enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this state in the same manner provided in NRS 130.01 to 130.604, inclusive, if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.

The mandatory requirements of NRS 130.602, at all times applicable hereto,[2] held that support orders can only be properly registered by transmitting them to the State Information Agency for the state of Nevada, along with other miscellaneous information depending on whether the support order is sought to be enforced or modified. See NRS 130.602. The key provision for valid registration of a support order is that the State Information Agency is charged with the obligation of filing with the appropriate court the foreign judgment together with copies of the other documents required. Other states have enacted this same procedure as well.

> N.J.S.A. 2A:4-30.103 provides the procedure for registration of orders from other states. "A party seeking to enforce a support order issued by a tribunal

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[2] The statute was later amended in October, 2007.

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> of another state may send the documents required for registering the order to a support enforcement agency of this State." Ibid.
>
> According to N.J.S.A. 2A:4-30.106(a), a support order "is registered when the order is filed in the registering tribunal of this State." Ibid. (emphasis added). N.J.S.A. 2A:4-30.105 requires certain documents and information be obtained before registration can be proper. On receipt of these documents, "the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information regardless of their form." Ibid.
>
> According to N.J.S.A. 2A:4-30.109, the non-registering party may request a hearing to contest the validity or enforcement of a registered order in New Jersey or seek to vacate the registration of the order. . .
>
> Of course, registration of a foreign judgment can be challenged based on lack of jurisdiction or on forum policy grounds as detailed in the Restatement of the Law of Foreign Relations, dealing with enforcement of foreign judgments, but N.J.S.A. 2A:4-30.110(a) details the defenses, including lack of jurisdiction of the issuing tribunal and fraud, as a defense under the law of the forum, which can be asserted at the registration hearing.

See e.g., Campbell v. Campbell 391 N.J.Super. 157, 163-164, 917 A.2d 302,306 (2007) (emphasis supplied).

The reason for this provision is obvious. The State of Nevada has an interest in protecting its residents in connection with payment and collection of child support.

In this case, respondent did not follow the mandatory procedural requirements set forth above but instead attempted to register the California judgment under the provisions of NRS 125A, which is the uniform child custody jurisdiction enforcement act. AA I, p. 1-12, 136-154. Registering a support order pursuant to these provisions is utterly ineffective and renders the purported registration invalid. A cursory review of the provisions of chapter 125A reveal that the procedural requirements are entirely different for registration of a foreign custody order.

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NRS 125A.475. Enforcement of registered determination.

> 1. A court of this state may grant any relief normally available pursuant to the law of this state to enforce a registered child custody determination made by a court of another state.
>
> 2. A court of this state shall recognize and enforce, but may not modify except in accordance with NRS 125A.305 to 125A.395, inclusive, a registered child custody determination of a court of another state.

Moreover, NRS 125A deals only with enforcement of custody orders, not support orders. The jurisdictional requirements for this Court to act pursuant to NRS 125A are also different from NRS 130. Under NRS 125A this Court has discretion to decline jurisdiction under certain circumstances (See NRS 125A.365). Under NRS 130 this Court must accept jurisdiction to modify or enforce a foreign support order if the jurisdictional requirements are met. See NRS 130.203 *et. seq*. Under this procedural framework if a foreign support order is properly registered, the district court has a duty to proceed with any petition, pleading or motion filed by either party. See NRS 130.305. Further, there is no provision for cooperation between the courts of two different jurisdictions as there is under the custody provisions of 125A.295.

All the foregoing procedural differences between a custody order and a support order are significant and confer valuable rights upon Amy. She is entitled to the protection of the procedures mandated for the registration of a foreign judgment by NRS 130. Those requirements were not met by the appellant in his initial attempt to file his foreign support order. AA I, p. 1-12, 136-154. This is precisely why other courts have ruled that a failure

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to follow the strict requirements for registration of a foreign support order under UIFSA result in a lack of jurisdiction.

Consider *In Interest of Chapman*, which held that the failure to adhere to the strict procedural requirements of UIFSA invalidated the attempted registration of the foreign support order.

> ...Chapman contends the trial court erred in registering the Minnesota judgment. Finding merit in appellant's fourth-point contention, we will reverse.
>
> ...
>
> In June 1996, Chapman filed a contest to this registration claiming in part that Just and the Attorney General had failed to comply with Texas Family Code section 159.602 (Vernon 1996). The 99th District Court held a hearing on August 29, 1997. During the hearing no evidence of any nature was received, and the court acknowledged that the foreign judgment was not accompanied by either a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. See Tex. Fam.Code Ann. § 159.602 (Vernon 1996).
>
> . . .
>
> However, after recognizing the deficiency, and without any explanation for the absence of a sworn or certified statement by the Attorney General regarding arrearages, the trial court signed an order confirming registration.
>
> By his fourth point of error, Chapman contends the trial court erred in confirming registration of the Minnesota judgment because it was not accompanied by a sworn statement by either Just or the Attorney General (the parties seeking registration), or a certified statement by the custodian of the Minnesota records, showing the amount of any arrearage. We agree.
>
> As a general rule, a judgment rendered by a court of a sister-state may not be enforced in Texas without either the filing of a common law action to enforce the foreign judgment, or by authenticating the foreign judgment in accordance with the requirements of an act of congress or an applicable Texas statute. Tex. Civ. Prac. & Rem.Code Ann. § 35.003(a) (Vernon 1997); Jack H. Brown & Co. v. Northwest Sign Co., 665 S.W.2d 219, 221 (Tex.App.-Dallas 1984, no writ); Rich v. Con-Stan Industries, 449 S.W.2d 323, 326 (Tex.Civ.App.-Tyler 1969, no writ). In addition to the Uniform Enforcement of Foreign Judgments Act, the Uniform Interstate Family Support Act, provides the procedure for registering a foreign support order in Texas.

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. . .

An examination of section 159.502 reveals that a party seeking administrative enforcement of a foreign support order "may send the documents required for registering the order to a support enforcement agency of this state." Tex. Fam.Code Ann. § 159.502 (Vernon 1996). (Emphasis added). Moreover, we have previously held that the primary purpose for filing a foreign judgment in Texas is enforcement, and an essential prerequisite to enforcement is compliance with the provisions of the applicable uniform act. Lawrence Systems v. Superior Feeders Inc., 880 S.W.2d 203, 208 (Tex.App.-Amarillo 1994, writ denied).

Because the procedural requirements contained in section 159.602 are mandatory, the failure by Just and/or the Attorney General to provide the required documentation is fatal to the order confirming registration and a reversal is required.

In Interest of Chapman 973 S.W.2d 346, 347-348 (Tex.App.-Amarillo,1998) (emphasis supplied); see also Lamb supra at 349-351 (holding that substantial compliance with the registration requirements is expected).

Just as in *Chapman*, the appellant failed to adhere to the mandatory requirements of NRS 130.602, a fatal discrepancy for his initial registration attempt.

2. Appellant failed to provide respondent with proper "notice of registration", making his initial registration attempt invalid.

To properly register a foreign support order under UIFSA mandatorily requires that the non-registering party, i.e., Amy, be served with a notice advising her that she has twenty days to contest the validity or enforcement of the registered order.

NRS 130.605. Notice of registration of order.

> 1. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party and a support-enforcement agency of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

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2. The notice must inform the nonregistering party:

> (a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;
>
> (b) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the notice;
>
> (c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
>
> (d) Of the amount of any alleged arrearages.
>
> . . .

This procedural requirement confers a valuable right on a non-registering party. It affords the non-registering party the opportunity to challenge the validity of the foreign support order and/or its enforcement here in the state of Nevada. As an example, since residency of at least one of the parties is required for the district court to have jurisdiction, if in fact there is no true residency at the time of registration, as is the case here, that fact can be brought to the court's attention before the court's time and resources are invoked to enforce or modify the support order. In this case, Amy was never served with the notice mandatorily required by NRS 130.605 at the time of the initial, July 18, 2007, registration attempt. AA I, p. 1-12. She was denied the opportunity to contest the validity or enforcement of the support order. This rendered that purported registration of the California support order invalid for any purpose, as confirmed by other courts.

> The foreign order may, however, be enforced if it is registered. See Scott v. Sylvester, 220 Va. 182, 185-87, 257 S.E.2d 774, 776-77 (1979). Minn.Stat. § 518C.25, subd. 1 (1982), provides that, once registered, a foreign support order "has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying

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> as a support order of this state and may be enforced and satisfied in like manner.". . . **Where the order had not been registered, it was not properly before the court for either enforcement or modification.**

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

> Specifically, the State alleges that the proper procedure for registering a foreign judgment was not followed. See Utah Code Ann. § 78-45f-603 to 610 (2002). The State filed a Notice of Registration of a Foreign Judgment on February 24, 2000. Utah Code Annotated section 78-45f-605 (2002) allows the subject of the foreign judgment twenty days to file an objection to registration. On March 15, 2000, Johnson filed what the State concedes to be an objection to the registration of the foreign judgment. The objection also contained a request for a hearing. Johnson was entitled, having timely filed an objection, to an opportunity to present any designated statutory defenses to the registering of the foreign judgment. See Utah Code Ann. § 78-45f-607 (2002). . .We agree that Johnson, having filed a timely objection to registration of the foreign judgment, was entitled to an opportunity to present his defense and that he was not afforded that opportunity. We disagree, however, that the order was not final. **The failure to follow proper procedure in registering the judgment does not result in the order being interlocutory; rather, it is manifest error requiring that the contempt order be vacated.**
>
> **The order of contempt, premised on the assumption that the judgment was properly registered, is vacated and the finding that the judgment was registered is summarily reversed.** This matter is remanded to the district court for the court to apply the correct procedure for registering a foreign judgment and for any subsequent proceedings necessary as a result of that determination.

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

These cases make clear that failure to provide proper notice bars any registration attempt, meaning that it is never properly before the district court for enforcement and/or modification purposes. See In Interest of Chapman supra at 347-348 (holding registration invalid absent strict compliance with statutory mandates).

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B. The asserted practice of ignoring the statutory requirements does not excuse non-compliance.

Appellant argues that his failure to comply with the statutory requirements for filing his registration should be overlooked as the method actually utilized is more practical. In support he points out that it is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act, and that no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided. Rodgers v. Rodgers 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994). He reasons it thus necessarily follows that as registration with the State Information Agency is an impossibility, such an obligation should be ignored. Besides obviously failing to address how this relieves his failure to provide the proper 20 day notice and cures jurisdictional defects, such argument also fails under existing precedent.

Appellant provided no corroborating evidence in his pleadings, at the hearing or in his brief that the requirements for proper registration under NRS 130.602, i.e., providing the information to the State Information Agency, are an impossibility as alleged.[3] Instead, he

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[3] "State Information Agency" is the generic term that was used in drafting the proposed UIFSA uniform code as each states' entity for enforcement of child support orders falls under a different, specific name. In the case of Nevada, the definitions found in NRS Chapter 130 give guidance as to this generic term's meaning by defining "Support-enforcement agency". See NRS 130.10183. Further, both the version of NRS 130.605 applicable at the time of the initial attempted registration, and as amended in 2007, call for the mandatory 20 day notice for contesting registration to be provided to both the non-registering party, Amy, and "a support-enforcement agency of this State." In Nevada this agency is the Nevada Department of Health and Human Services Division of Welfare and Support Services which operates the Child Support Enforcement Program. Notification to this agency only makes sense as the state has a compelling interest in requiring foreign support orders to be filed with this division so that it can monitor outstanding support obligations in order to ensure needy parents do not become a burden to the state welfare system due to the other parent's failure to adhere to the applicable support order.

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simply claims that as his counsel never did forward such information and knows of no such mechanism, it must thus be an impossibility.[4] This assertion alone does not suffice for excusing failure to comply with the clear and unambiguous statutory requirement.

> Substantial compliance with the registration requirements is expected. See, Twaddell v. Anderson, 136 N.C.App. 56, 523 S.E.2d 710 (1999); In re Interest of Chapman, 973 S.W.2d 346 (Tex.App.1998); Unif. Interstate Family Support Act § 602, comment, 9 U.L.A. 243 (2005). Failure to register an order as required under the act precludes a trial court from modifying the issuing state's child support order. See, Auclair v. Bolderson, 6 A.D.3d 892, 775 N.Y.S.2d 121 (2004) (petitioner failed to demonstrate that Florida judgment was registered in New York; this failure to prove registration prevented New York courts from obtaining subject matter jurisdiction under both UIFSA and Full Faith and Credit for Child Support Orders Act to modify child support order from another state); Rivera v. Ramsey County, 615 N.W.2d 854 (Minn.App.2000) (registration is prerequisite to modifying existing child support order issued in another state). See, also, Jolly v. Jolly, 130 S.W.3d 783 (Tenn.2004) (failure to register Kansas divorce decree in Tennessee precluded Tennessee court, under UIFSA, from enforcing child support provisions in decree).

Lamb v. Lamb supra at 349-351; see also In Interest of Chapman supra at 347-348.

Further, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. In ascertaining legislative intent, the plain language of the statute is first examined, and if the plain language of the statute is unambiguous and consistent with the statute's apparent purpose, the statute is given effect as it is written. If a statute has more

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[4] Appellant's counsel boldly states "[s]ince we have been following the procedures followed in this case for the past ten years without incident or criticism, we inquired with the district attorney's office just to make sure we were not missing anything. We're not." AA I, p. 159 (Appellant's Opposition to Plaintiff's Motion to Dismiss Registration of Foreign Judgment). However, appellant's arguments in support of this conclusion analyze UCCJEA registration and actions through the District Attorney's office, neither of which have any application to foreign support orders. AAI, p. 159-161. In fact, he even goes on to point out that the State Information Agency mentioned under UIFSA is the Welfare Department not the DA's office, just as alleged herein. AA I, p. 160. He concludes that the Welfare Department has no concern with such support orders nor is there a mechanism for registering these foreign orders. Both assertions are unproven and at variance with the express language of NRS 130.602. Id.

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than one reasonable interpretation, it is ambiguous. See generally Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park 392 Md. 301, 316-317, 896 A.2d 1036, 1045 (2006). In reality, in the case at hand, examination of NRS 130.602 should end the inquiry given the unambiguous and consistent nature of the statutory language. There can be but one interpretation of its notice requirement to the State Information Agency. See Ft. Nt. 3, supra. This is not a matter of rendering a portion of the statute nugatory by one reading versus another. Rather, as discussed in the very case cited by appellant, this court should interpret NRS 103.602 according to its plain language, as any other result would turn a clear legislative mandate into "mere surplusage." Rodgers supra at 1373. The statute's language is clear and unambiguous, "there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." State v. Jepsen 46 Nev. 193, 196, 209 P. 501, 502 (1922), cited in Charlie Brown Constr. Co. v. Boulder City 106 Nev. 497, 503, 797 P.2d 946, 949 (1990).

C. Amendments to the UIFSA uniform code not yet enacted by the state of Nevada at the time of the proceedings below should not effect the mandatory statutory language of NRS 130.602 and 130.605(2).

Appellant argues that the October 1, 2007, amendments to certain UIFSA provisions should be retroactively applied to his July, 2007, registration. This is directly contrary to settled precedent, however.

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> Statutes and statutory amendments are presumed to operate prospectively, which presumption is rebutted only where the intention of the legislature to give the statutes a retrospective effect is expressly declared or necessarily implied from the language of the statutes. Kluver v. Weatherford Hosp. Authority, 859 P.2d 1081, 1083 (Okla.1993). **We find no cause to give UIFSA a retrospective effect.**

Department of Human Services ex rel. Pavlovich v. Pavlovich 932 P.2d 1080, 1082 (Okl.,1996) (emphasis supplied).

> "A repealing Act will not be given retroactive operation so as to divest previously acquired rights. A statute is never to be given a retroactive operation unless such construction is absolutely demanded." (Citations and punctuation omitted.) J. Scott Rentals v. Bryant, 239 Ga. 585, 587, 238 S.E.2d 385 (1977).
>
> Generally statutes prescribe for the future and that is the construction to be given unless there is a clear contrary intention shown. On the other hand, where a statute governs only procedure of the courts, including the rules of evidence, it is to be given retroactive effect absent an expressed contrary intention.... Substantive law is that law
> which creates rights, duties, and obligations. Procedural law is that law which prescribes the methods of enforcement of rights, duties, and obligations.

Georgia Dept. of Human Resources v. Deason 238 Ga.App. 853, 856, 520 S.E.2d 712, 715 (1999).

More importantly, the October 1, 2007, amendments only cured one of the two fatal flaws with appellant's initial registration attempt. The requirement for filing with the State Information Agency was replaced with language requiring such orders instead be filed with "the appropriate tribunal". See NRS 130.602. These amendments did not effect the 20 day notice requirement appellant omitted. See NRS 130.605. Accordingly, even if retroactive application was appropriate, the initial registration would still have been insufficient.

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D. Arnold's September 10, 2007, *Amended Notice of Registration of Foreign Judgment*, even if proper for the purposes of establishing jurisdiction at that time, cannot relate back to the date of his initial defective notice.

Arnold cannot retroactively correct his defective registration simply by including notice of Amy's right to object to his registration after the fact and force her to waive these mandatory notice requirements. Such notice, along with notice to the State Information Agency, are called for by the express language of Chapter 130. Other courts have uniformly held in analogous situations, such as registration of a foreign decree of divorce, that registration does not take effect until the statutory requirements are strictly complied with despite earlier efforts to achieve what was believed to be proper registration.

> An essential prerequisite to application of the Uniform Act is compliance with its provisions. See id.; Jack H. Brown & Co. v. Northwest Sign Co., 665 S.W.2d 219, 221-22 (Tex.App.-Dallas 1984, no writ). The filing of a foreign judgment is effective under the Uniform Act only if the filing party follows the statutory requirements of authentication, filing, and notice. Lawrence Systems, 880 S.W.2d at 208; Jack H. Brown & Co., 665 S.W.2d at 221-22. The Uniform Act in effect in Texas in 1983 had specific requirements for authenticating foreign judgments, notifying judgment debtors, and paying a fee. See Uniform Enforcement of Foreign Judgments Act, 67th Leg., R.S., ch. 195, §§ 3 & 5, 1981 Tex. Gen. Laws 464, 464-65. Jimerson points to no proof that she complied with these requirements, and we have found none in the record before us. In her 1983 petition to register the New Mexico decree, Jimerson does not mention the provisions of the Uniform Act, but instead relies exclusively on the entirely separate filing provisions of URESA. The order confirming registration of the New Mexico decree in Texas specifically references URESA as the basis for the filing.
>
> At the time the New Mexico decree was registered, the duties of support enforceable under URESA did not include alimony. See Uniform Reciprocal Enforcement of Support Act, 67th Leg., R.S., ch. 356, § 21.03(6), 1981 Tex. Gen. Laws 945, 945. URESA was then primarily a means of enforcing child support obligations. Registration of the New Mexico decree under URESA could not be a registration of the decree's alimony provisions. See Parker v. Parker, 593 S.W.2d 857, 859 (Tex.Civ.App.-Houston [1st Dist.] 1980, no

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> writ). The alimony provisions of the New Mexico judgment, however, remained a foreign judgment subject to enforcement as such. Id.
>
> Without a showing that Jimerson complied with the requirements of the Uniform Act, as contrasted with complying with URESA, Jimerson's 1983 registration of the New Mexico decree under URESA was not the commencement of an enforcement action under the Uniform Act. See Lawrence Systems, 880 S.W.2d at 208. Furthermore, because the 1983 registration of the New Mexico decree did not register the alimony provisions, the trial court erred in concluding that the entire decree was a "filed foreign judgment." Jimerson makes no argument and cites no authority to suggest that the filing of her alimony claim under the same cause number as her earlier registration to collect child support somehow relates back to that earlier filing. Regardless, it is clear that her 1983 filing under URESA for child support would not be notice to Carter of a claim for alimony. We conclude, therefore, that Jimerson's registration of the decree in 1983 did not begin an action for the enforcement of alimony obligations such that this action was commenced within the ten-year limitations period set out in section 16.066(b).

Carter v. Jimerson 974 S.W.2d 415, 417 -418 (Tex.App.-Dallas,1998).

Further, cases from other jurisdictions uniformly support the proposition that jurisdiction is only assumed after proper registration under UIFSA.

> Where the order had not been registered, it was not properly before the court for either enforcement or modification.

State on Behalf of McDonnell supra at 651.

> Under UIFSA, after a support order issued by another state has been registered in California, a California court may modify that order when, among other instances, one of the parties resides in the issuing state and all of the parties file a written consent in the issuing state court authorizing California to assume continuing, exclusive jurisdiction.

Knabe v. Brister 154 Cal.App.4th 1316, 1319-1320, 65 Cal.Rptr.3d 493, 495 - 496 (2007).

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> It is clear that under § 42-746, the first predicate for a Nebraska court to have subject matter jurisdiction to modify another state's child support order is registration in Nebraska of such order-in this case, the Wyoming child support order.

Lamb supra at 349-351.

It is manifest that there is no ambiguity in the requirements for proper registration under NRS Chapter 130. If they can be ignored, then all of NRS 130.601 through NRS 130.604 is superfluous and unnecessary. Going one step further, this would mean that modification of the support order could have instead been done the same way as enforcement of a custody order under the UCCFEA, making the entire ART. 6 contained in the Act meaningless. Such a statutory construction is patently absurd.

E. Jurisdiction does not automatically vest with the district court for all purposes the moment any pleading is filed.

1. Jurisdiction is determined upon proper registration of a foreign child support order under UIFSA.

In support of Appellant's contention that jurisdiction attaches the moment an "action" or "proceeding" is filed he cites *Messner v. Eighth Judicial Dist. Court of State of Nev., In and For County of Clark*, 104 Nev. 759, 766 P.2d 1320 (1988). This opinion merely states that the jurisdiction acquired by consent in an uncontested divorce some thirty years prior *does not* carry over for the purposes of a motion to seek retirement benefits. Such a holding does nothing to support appellant's contention that jurisdiction attaches the moment his erroneous first attempt at registering his foreign judgment took place.

In appellant's brief he cites but one other case in support of this contention. In this unreported case, parents attempted to file foreign support and custody orders in two separate

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Tennessee courts. While the mother's was filed first, it suffered from technical defects, unlike husband's filed one day later. According to the court:

> [T]he 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 result in the foreign judgment being unregistered and unenforceable until the technical filing deficiencies are cured.

Summers v. Ryan 2007 WL 161037, 3 (Tenn.Ct.App.,2007).

There was no discussion of what effect the unregistered and unenforceable nature of her foreign order had upon personal jurisdiction, or lack thereof, until the deficiencies were cured.

Consistent with Amy's position, other jurisdictions have similarly held that where the order has not been registered, it was not properly before the court for either enforcement or modification. State on Behalf of McDonnell, supra at 651. Applying this rationale, these cases hold that any order resulting from such a deficiently registered foreign judgment is manifest error and must be vacated. State, Office of Recovery Services ex rel. State ex rel. Johnson, supra at 1. Instead, according to *Scanlon,* in a case such as that at hand, where Amy was residing in California at the time of the September registration, California has *always* maintained continuing, exclusive jurisdiction.

> Scanlon maintains that the trial court's ruling is improper because Washington lacked subject matter jurisdiction. We reverse because, at the time of the child support order and judgment, Georgia retained continuing, exclusive jurisdiction over child support.
>
> . . .
>
> Scanlon maintains that the Washington order is void because neither he nor Witrak registered the Georgia decree in Washington or consented to Washington's jurisdiction in writing. Witrak argues that Scanlon waived jurisdiction because he did not assert the argument by motion or in any

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> responsive pleadings and because he petitioned a Washington court for modification of child support...**[B]ecause the Uniform Interstate Family Support Act (UIFSA) applies and in the absence of compliance with its requirements, Georgia retains continuing, exclusive jurisdiction over this matter, we must reverse the court's denial of his CR 60(b)(5) motion.** UIFSA has been adopted in both Washington and Georgia. Under UIFSA, the state issuing a child support order retains continuing, exclusive jurisdiction
>
> . . .
>
> Because Scanlon is a resident of Georgia and written consent to change jurisdiction over child support was not filed with that state, Georgia retains continuing, exclusive jurisdiction over child support issues unless the Georgia child support order was registered in Washington under RCW 26.21.490.
>
> . . .
>
> Because Georgia retains continuing, exclusive jurisdiction, the order for support arrearage is void, and the trial court should have granted Scanlon's CR 60(b) motion.

Scanlon v. Witrak 110 Wash.App. 682, 684-688, 42 P.3d 447, 448-450 (2002) (emphasis supplied).

California remains the proper forum, just as it always has been.

2. Even if Arnold had properly registered the support order in July, 2007, the district court still lacked jurisdiction because Amy and her daughter were not Nevada residents.

Amy maintained in the district court that she had only temporarily relocated to Las Vegas because of Arnold's desire to sequester her during the pendency of his California divorce case. AA II, p.190-191, 196-198; AA III, p. 404. She also argued that she was not a resident of Nevada when the registration was initially attempted by Arnold, even though she had not physically departed the state until August 26, 2007, and had always intended to make California her permanent home and residence. Id.

This was corroborated by her sworn declaration given in March of 2007, which was prepared by her California counsel and transmitted to Arnold's California counsel well before

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Arnold tried to register the California order in Nevada. AA II, p. 219-238. In this declaration, dated March 13, 2007, Amy clearly and unequivocally announced her intention to move with their daughter Kylie back to California where Kylie was born and where they had resided until 2005. The declaration of Amy McClure avers as follows:

> (42) "I believe that it is in Kiley's best interest, as well as my own, to return to Southern California."
>
> (43) "I have lived in the Los Angeles area for most of my adult life. I have the support of numerous friends in the Souther California area. I previously had an established career as a real estate agent in Los Angeles. I want to get back into real estate and my contacts/network are in Los Angeles."

Id. at 229.

The district court obviously accepted Amy's testimony, corroborated by her declaration which she had signed months before Arnold even attempted to register the California support order in Nevada. It was therefore undisputed that her intention at all times relevant was to depart Nevada and return to California. After being advised that Amy wanted to renegotiate the California support order, Arnold quite obviously thought he would have a better chance of reducing his child support in the Nevada court system rather than in California.

The law of Nevada is clear relating to the requirements for residency. As early as 1913, the Nevada Supreme Court has uniformly held that residence is both physical presence plus intention. Residence is a matter of intention and has been generally so held. Whise v. Whise 36 Nev. 16, 131 P. 967 (1913). Numerous cases have reaffirmed the law of this state. *Williams v. Clark County District Attorney* 118 Nev. 473, 50 P.3d 536 (2002), goes on to state:

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> Legal domicile, also known as legal residence, requires both the fact of living at a place and the intention to remain there; if one leaves a domicile temporarily, one must have the intention to return. Similarly, if a person temporarily leaves a legal domicile or leaves for a particular purpose, and does not take up a permanent residence somewhere else, then that person's legal domicile has not changed. In other words, once a legal domicile is fixed, the fact of living elsewhere, the intention to remain in the other residence and the intention to abandon the former domicile must all exist before the legal domicile can change. Actual residence, in contrast, is the place of actual living, of physical presence-it does not require an intent to remain or return. A person may have an actual residence in one place and a legal residence in another, and a person may have several actual residences, but a person my have only one legal residence or domicile.

Similarly, Black's Law Dictionary defines "domicile" as follows:

> A person's legal home. That place where a man has his true, fixed , and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning.... A person may have more than one residence, as distinguished from his temporary place of abode....

Black's Law Dictionary 6th Ed., 5th Reprint, 1997.

Other than the six week minimum residency required for divorce, there is no logical difference in the residency requirements for obtaining a divorce in Nevada and the residency requirement for jurisdiction set forth in NRS 130.611. Of course, there are numerous Nevada cases which discuss the residency requirements for the purpose of obtaining a divorce which uniformly require both actual physical presence and intent.

> [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.

Aldabe v. Aldabe 84 Nev. 392, 396, 269, 270, 441 P.2d 691(2002).

Not only does Amy not live here in Nevada, but she has never had the intent to make Nevada her permanent home and residence. The court therefore lacked jurisdiction to modify

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the California support order in July 2007 even if the foreign support order had been properly registered.[5]

F. Even if, *arguendo,* Amy was a Nevada resident at some prior time, the district court nevertheless could not exercise personal jurisdiction over her for purposes of registering and modifying the California support order under NRS 130.611(1)(a) because she permanently returned to California on August 26, 2007, before service of the amended notice of registration.

Amy and Kiley permanently returned to California on August 26, 2007. AA II, p. 190; AA III, p. 402-403, 406. Since residency of at least one of the parties is required for the district court to have jurisdiction according to NRS 130.611(1)(a), such lack of jurisdiction can be raised in a timely objection to a proper registration under NRS 130.605. Here Amy simply pointed out that at the time of registration, September 10, 2007, there could be no doubt that Nevada lacked jurisdiction since neither of the parties or their daughter resided here. AA I, p. 136-154.

CONCLUSION

This court's decision in this matter will have starkly different ramifications for the parties. If the district court is affirmed, Arnold can easily bring a motion to modify his child support obligation in the Superior Court of California since Amy and their daughter reside there and that is the court which entered the child support order. Both Arnold and Amy have

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5 This conclusion is supported by other jurisdictions which have held that a person despite a physical presence in one state for a matter of years, domicile is the relevant factor for UIFSA purposes, which can remain elsewhere. See e.g., In re Marriage of Amezquita & Archuleta 101 Cal.App.4th 1415 (Cal.App.3.Dist.2002) (a person may "reside" in California while stationed there in the military, while their domicile remains in another state for the purposes of a UIFSA action).

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California counsel. Not only does the California court have jurisdiction, it is the proper forum for this litigation.

If instead this court reverses the district court, this forces Amy to retain Nevada counsel and to return to Nevada to litigate a California child support order, a consequence which is entirely unfair and burdensome to her. It is rather obvious that the only motivation for Arnold to try and litigate his child support obligation in the state of Nevada is his belief that Nevada courts award lower child support than California courts. What other possible explanation is there for Arnold to attempt to make this end run around the California court? This blatant forum shopping should not be endorsed by this court and Amy should not be subjected to litigating her right to child support in Nevada.

Respectfully submitted this 11 day of December, 2008.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Respondent's Answering Brief and, to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellant Procedure.

DATED this 11 day of December, 2008.

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CERTIFICATE OF MAILING

I hereby certify that service of the foregoing RESPONDENT'S ANSWERING BRIEF was made this 11 day of December, 2008, by depositing a true and correct copy of the same for mailing at Las Vegas, Nevada, addressed as follows:

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and that there is regular communication by mail between the place of mailing and the place so addressed.

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