IN THE SUPREME COURT OF THE STATE OF NEVADA

DLYNN LANDRETH,

Appellant,

vs. Case No. 49732

AMIT MALIK,

Respondent.

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BRIEF OF AMICUS CURIAE
FAMILY LAW SECTION OF NEVADA STATE BAR

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

STATE STATUTES

MISCELLANEOUS

AMICUS CURIAE BRIEF
OF
THE FAMILY LAW SECTION OF THE STATE BAR OF NEVADA

The Family Law Section of the State Bar of Nevada ("FLS") submits this *Amicus Curiae* brief in accordance with NRAP 29 and the *Order*[1] of the Court filed March 22, 2010.

I. STATEMENT OF IDENTITY, ETC., PER NRAP 29(d)(3)

The Court has invited input from the FLS regarding the issues raised on rehearing of this matter. FLS is a voluntary association of Nevada attorneys interested in the field of family law, forming a Section of the Bar with the purposes of furthering the knowledge of the members of the Section, the Bar and the Judiciary in all aspects of family law, administering CLE, distributing family law publications, and assisting the Board of Governors in the implementation of programs, policies, standardization and guidelines in the field.

The FLS has no stake in the merits of the underlying dispute, and takes no position regarding the merits of the parties' substantive claims. Rather, the FLS is concerned with the proper functioning of the family courts, and more generally, the just evolution of family law in Nevada.

II. INTRODUCTION AND SUMMARY

Under Article 6, Section 6 of the Nevada Constitution, the family court is a division of the district court. The constitutional provision does not in any way limit the scope of authority of the family court, nor does it distinguish the court as something separate from or lower in stature or power than the other division of the district court. As a district court

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[1] *Order Directing Answer to Petition for Rehearing and Inviting Participation By Amicus Curiae.* The Court's *Order* cites to both NRAP 29 and NRAP 40(b), but the forms of documents filed under those rules are different. Erring on the side of caution, and presuming that a Table of Authorities, etc., would be useful, Amicus has construed the *Order* as direction to file a regular Amicus Brief, as in other recent cases. If this construction is incorrect, we will resubmit as this Court directs.

judge, a judge sitting in family court possesses co-extensive and concurrent jurisdiction with all other district court judges.[2] A family court judge thus has power, authority, and jurisdiction identical to that of any other district court judge.

The majority opinion misconstrues the terminology of NRS 3.223, which grants the family court "original, exclusive jurisdiction" over certain proceedings enumerated in the statute, as a limitation of the subject matter jurisdiction of the family court, and by implication, a restraint on the scope of authority of a family court judge. The plain meaning of the statutory language does not confine the extent of jurisdiction or office of a family court judge, who under the Nevada Constitution is a district court judge. It merely indicates that the subjects listed in NRS 3.223 are assigned to be filed and heard in the family division.

The Nevada Constitution provides the Nevada Legislature with authority to assign ("prescribe") classes of cases to a specific division of the district court, but not to abridge the power and authority of district court judges. The majority's construction of NRS 3.223 – that the family court is one of limited jurisdiction – would have the statute violate the power and authority granted to district court judges sitting in the family division under Article 6 of the Nevada Constitution, and would thus render NRS 3.223 unconstitutional.

The phrase "jurisdiction of the family court" should be construed as being a matter of case assignment, rather than a limitation of subject matter jurisdiction, to avoid absurd results, and allow the efficient administration of justice. That result is consistent with legislative intent; any suggestions of a different result stemming from any prior decision should be disapproved.

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[2] Nev. Const., Article 6, Section 5.

III. THE FAMILY COURT IS A CO-EQUAL DIVISION OF THE DISTRICT COURT

A. The Legislative History Makes Clear that the Family Division of the District Court is of Equal Status With the Civil/Criminal Division

A decent summary of the multi-session history leading up to creation of the family court is contained in the "general history of the family court issue" found in the Legislative Counsel Bureau's 1991 Summary of Legislation at 7, recounting the remarks of Senator Dina Titus before the Senate Judiciary Committee meeting of April 19, 1991.

Senator Titus recounted how concerns as to constitutional separation-of-powers issues led to the death in committee of the original bill in 1985, and its re-introduction in 1987 in the form of a constitutional amendment to explicitly permit the legislative creation of a division of the district court.

After the proposal passed the legislature twice and a public vote, the National Council of Juvenile and Family Court Judges formed a task force to develop the design for the court, coinciding with the work of a group of legislators and judges.

At the ensuing hearing, comments were received from (then Juvenile Court Judge) Miriam Shearing, Bill Maupin (on behalf of DTLN), psychologists, judges, and several experienced family law practitioners, all of whom uniformly expressed that the problem to be overcome was the historical lack of status and importance given to family law matters, and the resulting delays and negative impacts on litigants and (especially) their children.

These were hallmarks of the entire legislative history. 1987 was a year of renewed interest in and focus upon family law topics – it is the year Nevada established child support guidelines, and legislators began speaking of the need for family law topics to be addressed by judges who "develop the expertise [and] have the time to study the case law and to understand the current state of the art in family issues . . . ."[3]

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[3] *See* Minutes of Senate Judiciary Committee of May 29, 1987, at 4 (1987 Legislative History of SJR 24 at Batestamp 2217).

Testimony in favor of creation of a family court came in from every quarter, public and private. Only the response from the judiciary was mixed, and a fair reading of the legislative history shows that the only negative comments relayed had to do with real or perceived "turf battles," either between the legislature and the judiciary, the northern and southern judges' groups, or among existing judicial positions.

Judge Thompson summarized the judicial concern about the legislature "trying to tell the judicial branch of government how to divide their work . . . that one judge hears certain kinds of case[s]" as a separation of powers problem that caused the judges to "get our backs up a little bit," but could be alleviated by a constitutional amendment explicitly permitting the legislature to create a family court.[4] Judge McGee of Reno "unequivocally endorse[d]" the proposed constitutional amendment intended to resolve the first of those turf battles, claiming that the proposed amendment "would solve the problems between the several venues of the district court."[5]

The perceived problem being addressed was not ***limiting*** the power of the proposed new court, but getting judicial officers to do the work specified at all, since a proposal on the table was rotating judges from one division to another. As Judge Thompson recounted the matter:

> In Clark County it is no secret that we have not had a lot of judges fighting for Judge [McGroarty's] job . . . I remember . . . one judge's meeting where we spent a lot of time trying to figure out who was going to go down [to Juvenile Court] . . . it is a whole different world, and those of us who spend most of our time with murder, rape and robbery aren't really interested in going down . . . and taking over the operation.[6]

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[4] *Id.* at Batestamp 2231-32 (testimony dated May 8, 1987); *see also* comments of Senator Wagner, relating that the 1985 effort was only halted because of "judicial opposition." *Id.* at Batestamp 2862.

[5] *Id.* at Batestamp 2230 (transcribed telephonic testimony dated May 27, 1987).

[6] *Id.* at Batestamp 2232.

When the measure returned in 1989, Judge McGee summarized what was being proposed – without contradiction – as "establishment of a family court as a division of the district court with equal station and dignity to the district court."[7] This concept was central to the proposal, and was reflected in the supportive testimony of the assorted agencies and entities appearing.[8]

Answering a question about the "jurisdiction" of the family court, the sponsor (Senator Wagner) responded that "the language in there . . . only allows for the setting up of one of the district judges who is equal to all of the other district judges to hear just those domestic matters, the same as we have a district judge . . . who hears the juvenile matters."[9]

Judge Thompson, again appearing for the District Judges' Association, reported that judicial opposition to the proposal was to a constitutional amendment that would give to the legislature "the power to control the internal case assignments" of the district court.[10] He further explained that the amendment was ***not*** "creating a new constitutional court," but simply dividing tasks within the district court, and in further colloquy added that judicial opposition would be muted so long as the judges hearing such cases specifically ran for those positions.[11]

The Legislative Counsel Bureau reported on the constitutionality of the proposed amendment, finding it legally sound because it is within the legislative "power to organize

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[7] *See* Minutes of Senate Judiciary Committee of January 24, 1989, at 2 (1989 Legislative History of SJR 24 at Batestamp 24).

[8] *See*, *e.g.*, written testimony of the Welfare Division in support of the constitutional amendment, *id.* at Batestamp 33-35.

[9] *Id.* at Batestamp 25-26.

[10] *Id.* at Batestamp 26.

[11] *Id.* at Batestamp 26-27.

courts [and] regulate their jurisdiction."[12] What was meant by the term "jurisdiction" is revealed by the cases and provisions listed in support: this Court's decision in *Worthington v. District Court*,[13] verifying that the legislature may prescribe a durational residency requirement before a court may hear a suit for divorce, and the constitutional articles permitting the legislature to fix the types of cases that would be heard by justices of the peace, and by the municipal courts.

When it came time to actually draft the legislation establishing the family courts in 1991, the intention had not changed, but remained the directing of certain classes of cases to a court with "original, exclusive jurisdiction" to hear them, staffed by district court judges who would receive additional specialized training so as to be able to properly handle such matters.[14]

Separate bills proceeded in each chamber. The Assembly bill called for election of judges to specific family court positions, but the Senate bill would have compelled the district court judges, wherever there was a family court, to "by mutual consent assign a judge or judges from among their number to serve as judges of the family division."[15]

The 1991 Senate Judiciary Committee minutes addressed the "jurisdiction" of the court,[16] but the word was used in the general sense of subject matters explicitly removed from

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[12] LCB Report on SJR 24, dated February 6, 1989, *id.* at Batestamp 595-96.

[13] *Worthington v. District Court*, 37 Nev. 212, 142 P. 230 (1914).

[14] *See* 1991 Legislative History of SB 395 at 1 (not Batestamped).

[15] *Id.* at Batestamp 1.

[16] *See, e.g.*, 1991 Senate Judiciary Committee Minutes at 3 (1991 Legislative History at Batestamp 8).

elsewhere and assigned to that court, not as any limitation on the powers of the judges of that court.[17] This distinction is critical, and is dealt within detail below.

The question raised in this appeal was anticipated, but not explicitly addressed by any changes to the proposed legislation:

> Senator Adler wondered if the legislature should allow the judicial system some flexibility to add cases to the family court system as it saw fit. Ms. Decaria agreed. Senator Titus said she agrees there should be flexibility, but would prefer not to leave it too open.[18]

During the legislative session, the Nevada Family Court Task Force released its "final report," detailing how the proposed new court should work, and why, and the legislature was given reports from New Jersey and other studies indicating how a family court would work best if equipped with "broad based jurisdiction."[19]

The New Jersey study used the term "jurisdiction" to refer to a case assignment concept in a "true family court," involving "collection of all family dispute cases into one court system,"[20] noting those States with the broadest jurisdiction, sometimes concurrent with other courts, and concluding that the New Jersey system was designed to include "all matters that involve any kind of familial relationships whether or not the parties are married or live together."[21] This was the intended product of the legislative action in Nevada.

By the end of the session, differences in the proposals had been narrowed to the total number of judges to be added, and whether they would be specifically elected to family court,

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[17] *See, e.g.*, discussion of whether guardianship cases should be assigned to the family court, *id.* at Batestamp 13.

[18] *Id.*

[19] *Id.* at Batestamp 18, 23.

[20] *Id.* at pages numbered 12-14 (Batestamp 1069, 29, and 1071).

[21] *Id.* at Batestamp 1071.

or rotate from court to court.[22] Of course, specific election was chosen at the end – some to the civil/criminal division, and some to the family division. All, however, are district court judges under Article 6, Section 6 of the Nevada Constitution.

In 1993, involuntary court-ordered admission to mental health facilities pursuant to NRS 433A.200 was added to the list of items over which the family courts had original exclusive jurisdiction under NRS 3.223, and compromise of minor's tort claims was removed.

The legislative history is devoid of any mention, at any time by anyone, from initial proposal to most recent amendment, of the term "limited jurisdiction." Because the constitutional and legislative history establishing the family court indicates it is to be a co-equal division of the district court, the dissent correctly notes that the family court legislation enacted in various other states – where those courts were explicitly created as inferior courts of limited jurisdiction – is of no relevance here.

B. Article 6, Section 6(2) of the Nevada Constitution and its Enabling Legislation

The Nevada Constitution does not allow for an autonomous family court separate and distinct from the district court. Rather, Article 6, Section 1 provides that "the judicial power" of Nevada is vested in a court system comprised of "a Supreme Court, district courts, and justices of the peace." Municipal courts may also be established by the legislature "for municipal purposes only."

If the family court had been intended to be separate from the district court and the power and authority of the judges sitting in family court to be anything other than that of district court judges, the Constitution would have had to be amended to so provide, just as

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[22] *Id.*, Minutes of Senate Finance Committee dated May 29, 1991, at 3 (Batestamp 74).

it separately provides for the judicial officers of the justice's courts (Article 6, Section 8) and municipal courts (Article 6, Section 9).

Instead, Article 6, Section 6(2)(b) provides for establishment of a family court as a ***division*** of the district court.[23] As the majority opinion notes, Article 6, Section 6 of the Nevada Constitution established the "broad enumerated powers" of the district courts' original and appellate jurisdiction.

Following the total district court workload evaluation set out in the legislative history, a number of the total district court seats were set aside for family court.[24] The Chief Judge was empowered to assign other district court judges to the family court if the workload required it, but if those judges served for more than 90 days, they were required to get the specialized instruction required of all family court judges,[25] in addition to the general instruction required of all district court judges irrespective of the division in which they sit.[26]

Taxes were assessed to finance the family court,[27] which was given "original and exclusive jurisdiction" over many specified subjects,[28] concurrent jurisdiction with the civil division of the district court for damages caused by domestic violence,[29] and concurrent jurisdiction with justices' courts for actions relating to orders of protection against domestic

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[23] NRS 3.006; NRS 3.004.

[24] NRS 3.012; NRS 3.018.

[25] NRS 3.0105; NRS 3.028.

[26] NRS 3.027.

[27] NRS 3.0107.

[28] NRS 3.223.

[29] NRS 3.223(2).

violence.[30] Use of alternate dispute resolution was legislatively encouraged,[31] and in 1999, use of a special information form was mandated so that the Chief Judge and clerk could implement the concepts of the "one family, one judge rule" that the studies recounted in the legislative history had favored.[32]

C. District Court Judges Serving in the Family Division Hold All Constitutional Powers Granted by Article 6, Section 6(2) of the Nevada Constitution

Under statutes predating the family court – and not modified when the family court was created – ***all*** district court judges in all districts containing more than one district court judge have "concurrent and coextensive jurisdiction within the district," and are empowered to make their own internal rules to "enable them to transact judicial business in a convenient and lawful manner."[33]

This concept is largely repeated, and expanded, in NRS 3.220, which states that district judges possess equal coextensive and concurrent jurisdiction and power, and that each "shall exercise and perform the powers, duties and functions of the court and of judges thereof."

The statutory language mirrors and follows Article 6, Section 5 of the Nevada Constitution, which mandates that all judges in judicial districts having more than one district judge have "co-extensive and concurrent jurisdiction."

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[30] NRS 3.223(3).

[31] NRS 3.225.

[32] NRS 3.227.

[33] NRS 3.020.

This Court is "obliged to construe statutory provisions so that they are compatible, provided that in doing so, we do not violate the legislature's intent."[34] The majority's reading of NRS 3.223 would violate this principle, by subordinating the expressly-stated "coextensive and concurrent jurisdiction and power" of all district court judges to an ***implied*** intention to provide family court with limited jurisdiction. The majority opinion would eviscerate application of NRS 3.220 as to family court judges, who would hardly have "equal coextensive and concurrent jurisdiction and power" with other district court judges if they were limited to review of matters listed in NRS 3.223.

NRS 3.220 further provides that district court judges "shall have power to hold court in any county of the state." Less than two years ago, based on that statute, this Court held[35] that "Nevada law provides that district judges are 'state officers'[36] who enjoy statewide jurisdiction."[37]

The majority opinion therefore suggests the peculiar spectacle of a Clark County family court judge gaining jurisdictional authority by stepping over the Nye County line, but losing it when he returns to his own courtroom. This would be an unreasonable result, and statutory interpretation should avoid meaningless or unreasonable results.[38]

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[34] *Bowyer v. Taack*, 107 Nev. 625, 817 P.2d 1176 (1991); *City Council of Reno v. Reno Newspapers*, 105 Nev. 886, 784 P.2d 974 (1989).

[35] In *Attorney General v. Montero*, 124 Nev. ___, 188 P.3d 47 (Adv. Opn. No. 55, July 24, 2008). This holding would also appear to be law that the original opinion overlooked, and therefore grounds for changing the opinion on rehearing.

[36] NRS 293.109(12).

[37] ("The district judges shall possess equal coextensive and concurrent jurisdiction and power. They each shall have power to hold court in any county of this State"); *see also* NRS 3.040(2) (recognizing that the Chief Justice of the Nevada Supreme Court may assign a district judge from one judicial district to another in certain circumstances).

[38] *Edgington v. Edgington*, 119 Nev. 577, 80 P.3d 1282 (2003).

A similar prohibited "implied negative" is necessary to conclude that ***any*** case that could be heard in the civil/criminal division could not just as well be heard in the family division. Nothing on the face of the statutory scheme so provides; implying such a limitation would eviscerate the statutory power the district court judges have been granted to "transact judicial business in a convenient and lawful manner"[39] by, for example, transferring certain cases, or classes of cases, between divisions wherever not specifically prohibited from doing so.

The majority's construction of NRS 3.223 is not permissible, if it is to be harmonious with the provisions of NRS 3.220, and if "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided."[40]

As the legislative history indicates was intended, the qualifications, terms, salaries, pensions, benefits, and other emollients of office are identical for district court judges irrespective of the division in which they sit.[41] Thus, a family court judge is a member of the district court, with identical power and authority, and having "original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts," as well as appellate jurisdiction over cases from justice or other inferior courts and the power to issue various writs. But the cases listed in NRS 3.223 are exclusively to be filed in the family division, and they are to be heard by district court judges sitting in that division.

The Constitutional grant of authority to the legislature in Article 6, Section 6(2)(b) to "prescribe the jurisdiction" of the family court – i.e., designate the classes of cases that are required to be heard in the family division – did not give the legislature any right to alter or

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[39] NRS 3.020.

[40] *See, e.g., Rodgers v. Rodgers*, 110 Nev. 1370, 887 P.2d 269 (1994).

[41] *See generally* NRS 3.030-3.220.

limit the power and authority of judicial officers granted by the Nevada Constitution. Any such legislative impingement on judicial authority would be unconstitutional as a matter of separation of powers.

> "Judicial Power" is the capability or potential capacity to exercise a *judicial function*. That is, "Judicial Power" is the *authority* to hear and determine justiciable controversies. . . . A mere naked power is useless and meaningless. The power must be *exercised* and it must *function* to be meaningful. A District Judge is a constitutionally established judicial officer (Const. Art. 6, Sections 1, 5 and 6), and the instrumentality by whom the Judicial Power is exercised and through whom District Courts function. . . . The *functions* of District Courts, referred to above, are expressly set forth in Article 6, Section 6 of the Constitution. . . .[42]

No statute restricts the ability of family court judges to hear any kinds of cases, or the ability of the Chief Judge to assign a judge elected to the family court to hear a case not within the exclusive jurisdiction of the family court.

As the legislative history makes clear, having the district court judges who were in family court hear other matters was apparently a given throughout the discussions. The perceived ***problem*** was in the other direction – how to get enough district court judges to pay adequate attention to family law issues, and get the expertise required for making those decisions. So the Chief Judge was given explicit authority to assign additional judges to family court as necessary, and those judges were required to be given additional training if they remained in family court for more than three months.

D. "Original and Exclusive Jurisdiction" is Not "Limited Jurisdiction"

NRS 3.223 grants the family court "original and exclusive jurisdiction" over specified proceedings. "Original" jurisdiction is defined as the jurisdiction of a court to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts.[43] "Exclusive" jurisdiction is the power a court exercises over an action or over a person to the

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[42] *Galloway v. Truesdell*, 83 Nev. 13, 20, 21, 422 P.2d 237 (1967).

[43] Black's Law Dictionary, Sixth Edition.

exclusion of all other courts. It is the forum in which an action must be commenced because no other forum has jurisdiction to hear and determine the action.[44]

By giving the family court original and exclusive jurisdiction over the proceedings enumerated in NRS 3.223, the legislature simply designated the family court as the place to file and litigate the matters itemized in the statute.

If granted authority by the Nevada Constitution, the legislature has the right to set up courts of ***limited*** jurisdiction. It has done so, and dictated the subject matters appropriately handled by such courts. Chapters 4 and 5 of NRS detail provisions governing the justices' courts, and municipal courts, respectively. The statute defining the jurisdiction of the justices' courts provides:

> . . . justices' courts have jurisdiction of the following civil actions and proceedings ***and no others*** except as provided by specific statute: . . . .[45]

So, clearly, the Legislature knows how to ensure that a court is empowered to address only a limited and circumscribed set of cases.

That is not what the Legislature did when it created family court as a division of the district court, which as Nevada's court of "general jurisdiction," hears all cases not otherwise designated as within the jurisdiction of some other court.[46] Nothing in the statutes drafted pursuant to the constitutional amendment authorizing family courts states – or even implies – that the "original and exclusive jurisdiction" of the family division of the district court was intended as a ***limitation*** to only those subjects.

Any attempt by the legislature to place limitations not authorized by the constitution would be unconstitutional. Reading NRS 3.223 as implying such a limitation would therefore render it unconstitutional. But no such implication is necessary, or appropriate.

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[44] *Id.*

[45] NRS 4.370 (emphasis added).

[46] Nevada Constitution, Article 6, Section 6(1) .

The existence and powers of ***all*** courts of this State are established by the Nevada Constitution, and regulated by statute – this Court by Chapter 2, the district courts by Chapter 3, etc. Therefore, the holding in the majority opinion that: "Because the family courts' existence and jurisdiction is conferred by statute, the family court is a court of limited jurisdiction, and its subject matter jurisdiction is confined to the matters enumerated in NRS 3.223" is a nonsequitur. Having jurisdiction conferred by statute does not make a court one of limited jurisdiction.

The misapprehension may come down to something as simple as the difference between legislation ***prescribing*** the jurisdiction of a court – which NRS 3.223 did – and ***proscribing*** the jurisdiction of a court, as the legislature did for the justice's courts[47] – but NRS 3.223 did not. Respectfully, the majority opinion appears to have misapprehended the statutory language, and overlooked the terms of the surrounding provisions.

As the majority opinion notes, when interpreting a statute, the Court must look to the statute's "plain meaning," and when the statute's meaning is clear and unambiguous, the Court must not construe the statute otherwise.[48] All that NRS 3.223 ***says*** is that specific types of cases must be heard in the family division. It says nothing about any other cases.

When a 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."[49] So NRS 3.223 should not be read as implying any limitation to the subject matter jurisdiction of the family court, because no such limiting language is in the statute. We agree

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[47] Under the constitutional authority granted by Article 6, Section 8 of the Nevada Constitution.

[48] *Citing MGM Mirage v. Nevada Ins. Guaranty Ass'n*, 125 Nev. ___, ___, 209 P.3d 766, 769 (2009).

[49] *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).

with majority's conclusion that the statute is unambiguous, but believe that the plain meaning of the statute has been misapprehended.[50]

This Court has held 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."[51] That is why the legislative history is important – the "spirit of the act" was to ensure that judges hearing family law cases had the interest and special training to be able to handle them efficiently, quickly, and fairly – ***not*** to ensure that those jurists could do nothing else. By construing the grant of exclusive jurisdiction over some subjects in NRS 3.223 as implying a reciprocal ***lack*** of jurisdiction over items ***not*** listed, the majority violated the Court's rules of statutory construction.

IV. COHABITANT CASES – AND SEVERAL OTHER KINDS OF CASES – BELONG IN FAMILY COURT

A. "Subject Matter Jurisdiction" Has Been Used by this Court to Refer to More than One Thing

Sometimes, this Court uses the term "subject matter jurisdiction" to refer to a subject as to which a court either does, or does not, have jurisdiction to hear depending entirely on something external to the case before it. If the external thing is lacking, then this Court concludes that there is "is a jurisdictional defect of the fundamental type. . . . where there is 'an entire absence of power to hear or determine the case.'"[52]

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[50] To whatever extent the Court believes that the statute ***is*** ambiguous, the reasoning in the dissenting opinion is the more cogent, as it harmonizes, rather than violates, the surrounding statutory provisions.

[51] *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986).

[52] Majority opinion, *citing State Indus. Ins. System v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) & *Shisler v. Sanfer Sports Cars, Inc.*, 83 Cal. Rptr. 3d 771, 775 (Ct. App. 2008) (*quoting Abelleira v. District Court of Appeal, Third District*, 109 P.2d 942, 947 (Cal. 1941)).

Swan,[53] cited by the majority opinion, uses "subject matter jurisdiction" in this sense, where judicial power to adjudicate child custody was dependent upon the parties' presence within the territorial jurisdiction of a State for a certain length of time, and if that external fact was absent, no such case could be entertained here.

But sometimes, this Court uses the expression "subject matter jurisdiction" to refer to a conclusion resting on something ***internal*** to the case, as in *Argentena*,[54] where this Court held that the "subject matter jurisdiction" of a court to entertain an attorney's fee adjudication is dependent upon the client's consent to the court's adjudication of the attorney's lien.

Using the expression "subject matter jurisdiction" that way makes the power of a court to hear a case dependent upon the expressions of the parties before it, as with personal jurisdiction, where a party either may, or may not, consent to the power of a court to hear a case. It tends to muddy the analysis of the power of courts to hear cases.

Unfortunately, that is the sense of "subject matter jurisdiction" taken by the majority opinion here, which would put an action between unmarried persons in one division of the district court, or the other, depending on whether the parties to the case did or did not falsely "hold themselves out" as married or (even more irrelevantly to the expertise of the court to hear the merits of the dispute) whether they had happened to produce a child.

Respectfully, the power of a court to hear a case should not turn on the out-of-court assertions of the parties in the case, or the happenstance of child-bearing. Instead, the FLS suggests that case assignments be made in a way serving the legislative purpose in creating the family division of the district court, as explained below.

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[53] *Swan v. Swan*, 106 Nev. 464, 796 P.2d 221 (1990).

[54] *Argentena Consol. Min. Co. v. Jolley Urga*, 125 Nev. ___, 216 P.3d 779 (Adv. Opn. No. 40, Sep. 24, 2009).

B. If NRS 3.223 Is a Restriction on the "Subject Matter Jurisdiction" of the Family Court, Then *Barelli* Was Wrongly Decided; If Not, *Barelli* Should Be Clarified

Both the majority and dissenting opinions cited and approved the Court's prior holding in *Barelli*,[55] which held that "both the family and the general divisions of the district court have the power to resolve issues that fall outside their jurisdiction when necessary for the resolution of those claims over which jurisdiction is properly exercised." But if NRS 3.223 is interpreted to limit the "subject matter jurisdiction" of the family court, then as a matter of intellectual honesty, *Barelli* has been overruled.

Specifically, if any family court decision addressing a matter not enumerated in the statutory list in NRS 3.223 is "not just voidable, but void," due to the "entire absence of power to hear or determine the case," then there can ***be*** no jurisdiction to "resolve issues that fall outside their jurisdiction" as *Barelli* states, because this Court would not have authority to override the legislative limitation. As the majority opinion noted, the parties to *Barelli* were unmarried persons litigating rescission or reformation of an oral contract; the outcome of their dispute simply had the ***potential*** to revive claims for alimony and community property.

Additionally, as a practical matter, *Barelli* does not provide a logical reason for determining property issues where, for example, unmarried persons have a child. Really, adjudication as to who owns the pots and pans is not reasonably "necessary for the resolution" of a child custody or child support claim, and it would not be intellectually honest to assert any such necessity.

Rather, *Barelli* used the term "jurisdiction" in the sense of case assignment, not "subject matter jurisdiction." And that is by far the more reasonable meaning, when the question is which division of the district court should hear a particular case. As indicated by the legislative history recounted above, it is also the sense in which the legislature

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[55] *Barelli v. Barelli*, 113 Nev. 873, 944 P.2d 246 (1997).

approached the task of attempting to "prescribe the family court's jurisdiction." In short, "jurisdiction" is shorthand for "administrative assignment."

Barelli adopts the concept of "incidental jurisdiction" found in many other court systems containing "multiple venues," one or more of which might potentially hear a given case. In the federal system, for example, bankruptcy cases fall within the general jurisdiction of the federal district courts, but are routinely referred to the bankruptcy courts specifically established for the purpose of hearing such matters.[56] Where a particular dispute is related to, but not squarely within, the bankruptcy court's purview, it is sometimes resolved there anyway under what those courts term "related-to jurisdiction."[57]

Essentially, that is the reasoning process of every court hearing a venue application under NRS 13.050(2). The matter is not one of the power of the courts to hear the case, but of the convenience to everyone involved of having the case heard in a particular court. The various subdivisions of the district court – probate, business court, etc., routinely reassign matters among themselves so that the court most appropriate or best trained to decide the subject matter of the dispute does so; before this case, such was the practice between the family and civil/criminal divisions, as well.[58]

It makes sense for the administration of the courts to be based on the administrative convenience of reasonable case assignments. The result is the same, but that reasoning is preferable to the strained finding of "inapplicability" of precedent set out in the majority

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[56] *See* 28 U.S.C. § 1334 & 157; *Halper v. Halper*, 164 F.3d 830, 836 (3d Cir. 1999).

[57] *See, e.g., Semcrude L.P. v. Semgroup L.P.*, ___ B.R. ___, 2010 WL 1437638 (No. 08-11525, Adversary Nos. 08-51457, 09-50038, 09-50105, 09-51003, Bkrtcy. D. Del., Apr. 9, 2010).

[58] Counsel has had several cases transferred from the civil/criminal division to family court, or vice-versa, as the various courts have decided that a different venue was more appropriate for the hearing of particular disputes.

opinion which is based, at root, on the fact that the couple in question in *Barelli* had once been married, but Landreth and Malek were never married.

The majority opinion in *Landreth* is an understandable, but unfortunate, outgrowth of the imprecise use of the term "jurisdiction" in *Barelli*. If this Court agrees that NRS 3.223 is a legislative case assignment provision, and nothing more, it should clarify *Barelli* by disapproving any implication that the earlier case found that the family court was a court of limited jurisdiction.

C. Interpreting NRS 3.223 As a Restriction on the "Subject Matter Jurisdiction" of the Family Court Leads to Absurd Results

As detailed above, it is not necessary to construe the "prescribed jurisdiction" of the family court as anything more than specific assignment of certain cases to a particular division of the district court. In addition to violating Article 6, Section 6 of the Nevada Constitution, construing the list of matters as to which the family court has original, exclusive jurisdiction as a limitation on the power of that court to hear other matters would lead to a host of undesirable, and apparently unintended, consequences.

The legislative landscape is constantly evolving. For example, in 2007, the Nevada Legislature added Chapter 125D, enacting the Uniform Child Abduction Prevention Act. The uniform act by its own terms is to be applied by a court authorized to "establish, enforce or modify a child custody determination."[59] In 2009, the Legislature added Chapter 122A, regulating domestic partnerships.

Neither chapter is in the NRS 3.223 laundry list of matters as to which the family court has original, exclusive jurisdiction. Nor is Chapter 123A, the Uniform Premarital Agreement Act, which sets forth the requirements for the creation and enforcement of premarital agreements, and has been part of the NRS since 1989 – before NRS 123.223 was

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[59] NRS 125D.070.

enacted. Litigation of all matters relating to these chapters obviously belongs in family court. The majority's construction of the statute as a limit on the subject matter of the family court imperils that common sense conclusion.

This Court could plumb those various chapters (at least the ones created after the family court was created) looking for implied enlargements of NRS 3.223. But it makes more sense to avoid the constitutional and other problems entirely by not artificially imposing a limit on the jurisdiction of the family court that is not expressly set out on the face of the constitutional and statutory schemes, and treat matters relating to the "jurisdiction of the family court" as matters of case assignment instead, as they were intended to be treated.

There are numerous similar matters. The family court judges – before the original *Landreth* opinion issued – routinely signed orders for adult name changes. Now, both divisions are in disarray as to which judges can sign which orders, causing much confusion and uncertainty.[60] The plain language of the majority opinion would appear to render void a very large number of orders issued by family court judges over much of the past two decades. When this Court has the choice of reading a statute in two different ways, one of which would do such harm and the other of which would not, the latter is the preferred construction.

Some litigants have even used the original *Landreth* opinion as the basis for arguments that family court judges cannot issue writs of execution, resolve collection cases for support arrears, or hold obligors in contempt for non-payment, because NRS Chapters 21 and 31 are not in the NRS 3.223 list. Several of those cases are now in litigation.

The family court also typically entertained a mental health facility's petition for authority to administer medication to a patient against his will. The court did so under a

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[60] On April 6, 2010, Chief Judge Ritchie filed an Administrative Order (No. 2010-06) reassigning all adult name change cases to Department 14 of the Civil Division, and on its face expressing the question of whether all such name changes signed by family court judges over the past 17 years have been rendered void. *See* Exhibit 1.

Barelli-like reading that such cases were "related to" the jurisdiction in NRS 3.223(1)(i) to rule on proceedings for involuntary court-ordered admission to a mental health facility.

But where commitment is not at issue, the family court's jurisdiction to adjudicate involuntary medication is more uncertain. A literal reading of the majority opinion would prohibit such cases from continuing to be heard in family court. Similarly, *habeas corpus* petitions to be adjudicated together with a civil commitment determination could be shoe-horned into the incidental jurisdiction of the family court under *Barelli*. But a literal reading of the majority opinion would indicate that there is no jurisdiction for the family court to proceed on a *habeas* petition arising at a time when civil commitment is not at issue.

In those and many other circumstances, it makes sense to read NRS 3.223 as a legislative case assignment statute only, and leave the district court judges to assign and transfer matters among themselves as explicitly authorized by NRS 3.020 in such a way as they see fit so as "to transact judicial business in a convenient and lawful manner."

The absurd results from reading NRS 3.223 as a subject matter jurisdiction limitation are even ***more*** pronounced in subject areas where this Court has "filled some of the gaps in the law" so as to enable attorneys to advise their clients, fulfill public policy in favor of settlement, and provide parties with consistent and fair resolution of their disputes.[61]

For example, starting with the sensible holding that the public policy of encouraging legal marriage would not be "well served by allowing one participant in a meretricious relationship to abscond with the bulk of the couple's acquisitions,"[62] this Court has issued a series of cases finding that property may be jointly acquired, and divided, even when it was accrued by parties who were not married at the time the property was acquired.

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[61] *See Rivero v. Rivero*, 125 Nev. ___, ___, 216 P.3d 213, 225 (Adv. Opn. No. 34, Aug. 27, 2009).

[62] *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984).

Through a process that has come to be known as "tacking," property accrued during a period of premarital cohabitation may be divided between the cohabiting parties after they later marry, and still later, divorce.[63]

Ditto for cohabiting parties when the time-line is reversed. Where parties marry, divorce, and then live together in a meretricious relationship, the property accrued by either of them during the cohabitation period may be equally divided when the relationship ends.[64]

The same applies when two parties think that they are married, but they are not by reason of a legal impediment making any attempted marriage between them void.[65]

And the same result occurs when there is no purported marriage at all, but the parties have either an express or implied agreement to accrue property together, which becomes community property by analogy.[66]

This Court has explained that it is not critical in such cases whether the parties lived together full time, or apparently for any particular time at all.[67] This mirrors holdings elsewhere, which have concluded that a part-time relationship between parties that planned to marry at a future date can be the basis for a palimony award.[68]

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[63] *Carr-Bricken v. First Interstate Bank*, 105 Nev. 570, 779 P.2d 967 (1989).

[64] *Hay v. Hay*, 100 Nev. 196, 199, 678 P.2d 672, 674 (1984).

[65] *Williams v. Williams,* 120 Nev. 559, 97 P.3d 1124 (2004).

[66] *Western States Constr. v. Michoff*, 108 Nev. 931, 840 P.2d 1220 (1992).

[67] *Gilman v. Gilman*, 114 Nev. 416, 427, 956 P.2d 761, 767 (1998) (explaining *Michoff* and noting that the basis of that decision was implied contract, pooling of assets, holding out as husband and wife, treating assets as community property, and building a business together, and finally concluding: "neither cohabitation nor a romantic relationship is the real basis for the *Michoff* holding").

[68] *See Sullivan v. Rooney*, 533 N.E.2d 1372 (Mass. 1989) (where parties had a relationship of approximately 14 years, during 7 of which they lived together, were engaged to be married at some "indefinite future date," female cohabitant, who gave up her career and

All of this law is "judge-made," insofar as none of it is found in any specific provision of the NRS. Courts throughout the country have reviewed cases in which assets were accrued before, during, or after cohabitation relationships that did or did not include marriage, whether that marriage was before or after the cohabitation.[69] As the Nevada Family Law Practice Manual notes, in appropriate circumstances, all assets acquired during a couple's relationship should be equally divided, because courts of equity would determine that "any possible alternative to that rule would be worse."[70]

The question raised by this case is what court is best suited to handle all the multiple scenarios in which such property division issues might be raised. As this Court noted in *Gilman*, such actions are based not on ***status***, but on enforcement of an ***agreement***, either express or implied. Where the question is whether conduct has demonstrated an implied

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maintained a home for herself and the male cohabitant, was entitled to an imposition of a constructive trust on the property, allotting her a one–half interest in the residence).

[69] In deciding *In re Rolf*, 16 P.3d 345 (Mont. 2000), the court discussed parties who had cohabited for almost three years, and then married, only to divorce less than two more years later. On appeal, the trial court's holdings were affirmed, including that it was proper to consider the premarital cohabitation of the parties in ruling on the fairness of the eventual property distribution, and that "it would be wholly inequitable for the Court to disregard the relationship of the parties as it existed from [the date they began cohabitation]." 16 P.3d at ¶¶ 33-37.

Similarly, in *Meyer v. Meyer*, 606 N.W.2d 184 (Wis. 2000), the court found that the wife's "very significant and substantial" contributions to the husband's "status and earning capacity," both ***before*** and during marriage, were properly considered in determining a proper award of alimony. The facts showed that the parties cohabited for seven years, while the future-husband completed college and much of medical school. They married in 1993, and the marriage fell apart in 1997, just as the husband completed residency and was beginning his medical career.

Utah law holds similarly. In *Layton v. Layton*, 777 P.2d 504, 505-506 (Utah App. 1989) the court stated "an equitable division of property accumulated by unmarried cohabitants has been sustained upon finding a partnership, contract for services, and/or a trust." (footnotes omitted).

[70] Nevada Family Law Practice Manual, 2008 Edition § 1.269.

contract for "partnership or joint venture," the action does not fit squarely into any of the statutory provisions recited in NRS 3.223.

Still, dissolution of a cohabitant relationship is far more similar to the breakdown of a marriage than it is to a contract dispute between strangers. As an Illinois court once put it, a property-accrual agreement between cohabitants is "not the kind of arm's length bargain envisioned by traditional contract principles, but an intimate arrangement of a fundamentally different kind."[71]

And the most appropriate court to hear such cases is the court most familiar with distributing assets between parties terminating such relationships – the family court, which was specifically created and staffed with personnel trained in dealing with subject matters including "actions between unmarried, childless parties who used to live together and who dispute the division of property allegedly acquired during their relationship."[72]

Family courts are quite accustomed to resolving disputes related to such implied or express agreements. Every case involving a premarital, post-nuptial, or separation agreement involves parties similarly addressing contractual property matters within the context of such an "intimate arrangement."

Judicially-created causes of action belong in the court assigned the tasks to which the analogy applies. Community property is dealt with in NRS Chapter 125, and the family courts have exclusive jurisdiction to hear cases under that chapter. Cases involving

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[71] *Hewitt v. Hewitt*, 394 N.E.2d 1204 (Ill. 1979).

[72] *Hay* was precisely such a case; the published opinion recites only that one of the parties made a ***claim*** of "holding out" after the fact of their divorce. Both *Hay* and *Michoff* addressed the proof required to establish property rights of cohabitants under theories of contract or other equitable remedies. The majority opinion, however, seems to confuse elements of proof tending to show an implied contract to co-own property as components of subject matter jurisdiction.

disposition of property accrued "by analogy" to community property likewise belong in family court.

In other contexts, whether the parties ever lived together is more important to the correct court for hearing a dispute. "Are or used to be living together" versus "never lived together" is used in the domestic violence arena. An application relating to "a person with whom he is or was actually residing" is heard in the family court, per NRS 33.018, whereas an Order Against Stalking and Harassment against a co-worker or stranger is heard in the justices' court.[73]

In conjunction with the legislatively-granted power to create rules for case assignments and reassignments, construction of NRS 3.223 as a legislative case-assignment prescription – as opposed to a subject matter jurisdiction limitation – permits the logical assignment of cases involving judicially-created causes of action to the division of the district court best suited to hear them.

That simple process would have the family court do what it was intended to do from 1987 forward – have such cases resolved by judges who "develop the expertise and have the time to study the case law and to understand the current state of the art in family issues." That result should be contrasted with the predictable effect of the majority opinion, which would lead to an extremely absurd result.

Specifically, the majority opinion, using the second meaning of "subject matter jurisdiction" discussed above, would hinge the power of the family court to resolve the case

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[73] *See also City of Las Vegas v. Municipal Court*, 110 Nev. 1021, 879 P.2d 739 (1994) (holding that municipal courts have jurisdiction to enforce TPOs, that the language of NRS 33.100 referencing "county jail" is not critical, and stating that this Court will "harmonize" statutory provisions where possible).

on the veracity of a party's ***claim*** that the parties were "holding out" as husband and wife, or "otherwise qualified as a familial unit."[74]

In most such cases, however, one party asserts facts such as "holding out," and the other denies it, so the fact would not be known until after trial. This creates the absurdity that the parties and court could find out only ***after trial*** whether the court hearing the case had jurisdiction to conduct the trial in the first place. If the existing opinion were to stand, where one party asserts such facts and the other denies it, there is no way to tell where such a case should be filed.

And the second possible basis set out by the majority opinion for finding jurisdiction in the family court to hear a cohabitant/community property by analogy case – that the couple "otherwise qualify as a familial unit" – would undoubtedly create much mischief if not eliminated. That terminology is unknown to the prior case law, and appears on its face to be contrary to the standard slowly being evolved in this subject area (that the matter is one of enforcement of agreements, not status recognition).

Further, even if "family unit" ***was*** a legitimate means of ascertaining court jurisdiction, the term is so fluid that is of very little value as a legal test, especially over time.[75] In modern America countless millions of households consist of unmarried cohabitants, both with and without children. Whether a child has been born, or one or both parties are falsely asserting that they are married, are poor reasons to send some cases one way, and others another. Case assignments should be deliberate, and based on which court

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[74] A term not defined by the majority.

[75] *Compare Robertson v. Western Baptist Hospital*, 267 S.W.2d 395 (Ky. Ct. App. 1954) (1954 conceptualization of family) *with Allen v. State Farm Mutual Automobile Ins. Co.*, 708 N.W.2d 131 (Mich. Ct. App. 2005) (2005 debate among court members for what constitutes a legitimate "family"); *see also* "Definition of Family – Theoretical Definitions," posted at http://family.jrank.org/pages/488/Family-Definition-Theoretical-Definitions.html, recounting eight conceptual approaches to determining what groupings are or are not families, as discussed by multiple studies and papers.

is best equipped to handle the subject matter of the dispute, not on the happenstance of unrelated facts, the lies of the parties, or the contents of their competing allegations.

None of these absurd results are necessary from the terms of the Nevada Constitution, or the statutes enacted to "prescribe the jurisdiction of the family court." This Court can and should avoid much mischief that would otherwise result, by finding that NRS 3.223 is a legislative case assignment statute and not any kind of limitation on the subject matter jurisdiction of the family courts.

V. CONCLUSION

The family court is a division of the district court and is fully vested with all power and authority of a district court under Article 6, Section 6 of the Nevada Constitution and the legislation implementing the constitutional directive. A family court judge possesses co-extensive and concurrent jurisdiction with all other district court judges under Article 6, Section 5 of the Constitution and NRS 3.220.

The legislative history leading up to the creation of the family division of the district court reveals that the intent of the legislature was not to restrict the powers of the judges serving in that court, but to ensure that family law cases were addressed by interested jurists in possession of specialized training and expertise.

Neither the constitutional amendment or the enabling legislation expressly limits the ability of the family court to hear any matters outside the list of those of which that court has "exclusive original jurisdiction," and reading the statutory provisions establishing that court harmoniously with the surrounding statutory provisions belies any implied limitation on the constitutional powers of judges of the family court.

This Court has used the terms "jurisdiction," and "subject matter jurisdiction" to mean different things, and should construe the term as applied to the "jurisdiction of the family court" as a matter of legislative case assignment, for several reasons.

The preferred reading would be harmonious with this Court's *Barelli* holding without requiring strained interpretations or workarounds. It would prevent a large variety of otherwise-inevitable absurd results, including the inability of the appropriate court to deal with numerous subjects obviously intended by the Legislature to be heard in family court, and having similarly-situated litigants sent to different courts based on criteria having nothing to do with which court is best suited to hear their cases. It would permit the judiciary, as society evolves, to continue assigning cases falling under statutory or judge-made causes of actions in the division of the district court best suited to resolve them.

The existing opinion should be withdrawn. In its place should be a resolution stating that cohabitant/community property by analogy cases can and should be filed in family court, as the court best suited to handle such cases, and reaffirming the equal status of all district court judges, and the power of the divisions of the district court to reassign cases between themselves so as to promote the efficient and orderly administration of justice.

Respectfully submitted this 21st day of April, 2010.

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CERTIFICATION OF COMPLIANCE

I hereby certify that I have read this Brief of Amicus Curiae, 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 21st day of April, 2010.

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of WILLICK LAW GROUP, and on the 21st day of April, 2010, I deposited in the United States Mails, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the Brief of Amicus Curiae, addressed to:

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on behalf of signatory counsel. There is regular communication between the place of mailing and the places so addressed.

Employee of the WILLICK LAW GROUP

EXHIBIT “1”

2010-06

DISTRICT COURT

CLARK COUNTY, NEVADA

IN THE ADMINISTRATIVE MATTER OF THE ASSIGNMENT OF PROCEEDINGS TO CHANGE THE NAMES OF PERSONS PURSUANT TO NRS 41.270 IN THE EIGHTH JUDICIAL DISTRICT COURT	ADMINISTRATIVE ORDER 2010-06

ADMINISTRATIVE ORDER REGARDING THE ASSIGNMENT OF PROCEEDINGS TO CHANGE THE NAMES OF PERSONS PURSUANT TO NRS 41.270 IN THE EIGHTH JUDICIAL DISTRICT COURT

WHEREAS, the family division of the Eighth Judicial District Court was established in January, 1993. Since that time, petitions for the change of names of adults, and petitions for change of names of minors have been assigned to the family division of the district court for management and adjudication. NRS 3.223 provides, in part, that the family court has original, exclusive jurisdiction, in any proceeding: (f) to change the name of a minor. Proceedings to Change Names of Persons is found at NRS 41.270.

WHEREAS, the Nevada Supreme Court issued a decision in *Landreth v. Malik*, 125 Nev. Adv. Op. 61 on December 24, 2009. In that decision, the Nevada Supreme Court concluded that NRS 3.223 prescribes the jurisdiction of the family court, and since that case involved a matter not enumerated in NRS 3.223, the family court lacked subject matter jurisdiction to enter judgment. NRS Chapter 41 is not listed as part of the jurisdiction of the

T. ARTHUR RITCHIE, JR.
DISTRICT JUDGE

FAMILY DIVISION, DEPT. H
LAS VEGAS, NEVADA 89155

family division of the district court, and the majority of the Nevada Supreme Court has concluded that the family court lacks subject matter jurisdiction over matters not enumerated in NRS 3.223. While the Nevada Supreme Court in *Landreth v. Malik,* did not hold that seventeen years of orders changing the names of adults are void, in the abundance of caution, and taking the statement in the majority opinion that, "The absence of subject matter jurisdiction renders the family court order void, not merely voidable" at face value, name changes for minors should remain in the family division, and name changes for adults should be reassigned to the civil/ criminal division. This administrative order for the management of these similar civil petitions follows the decisional law.

WHEREAS, the Eighth Judicial District Court Rule 1.30 (b)(5) provides that the chief judge make regular and special assignments of all judges, and hear or reassign emergency matters when a judge is absent or otherwise unavailable.

WHEREAS, the Eighth Judicial District Court Rule 1.30 (b)(18) provides that the chief judge assure that court duties are timely and orderly performed.

WHEREAS, the Eighth Judicial District Court Rule 1.30 (b)(18)(iv) provides, in part, that to facilitate the business of the court, the chief judge may delegate the duties prescribed in these rules to other judges.

WHEREAS, the assignment of the petition for change of names of persons who are not minors to a district judge who serves in the civil/ criminal division is necessary in light of the *Landreth v. Malik* decision.

Therefore,

IT IS HEREBY ORDERED that petitions for the Proceedings to Change Names of Persons pursuant to NRS 41.270, (non-minors), shall be assigned a civil case number, and assigned to a district judge in the civil/ criminal division of the district court.

The Honorable Donald Mosley, District Court, Department 14, shall be assigned the adult name change petitions pursuant to this administrative order for the Eighth Judicial District Court, and matters filed pursuant to NRS 41.270 will be managed by that department at the direction of the civil presiding judge.

IT IS FURTHER ORDERED that the effective date of this assignment is April 5, 2010, and shall continue until modified or rescinded by a subsequent Administrative Order.

DATED this 5th day of April, 2010.

CHIEF JUDGE