IN THE SUPREME COURT OF THE STATE OF NEVADA

SHINICHI OGAWA,

Appellant,

vs. Case No. 48571

YOKO OGAWA,

Respondent.

_____/

BRIEF OF AMICUS CURIAE
FAMILY LAW SECTION OF NEVADA STATE BAR

Family Law Section - State Bar of Nevada
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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 entered April 13, 2007.

I. STATEMENT OF FACTS

The Court has invited input from the FLS regarding the issues it has identified on appeal, as stated within the April 13, 2007 *Order*:

> 1. Does the Hague Convention apply to the underlying child custody issues, when Japan is not a signatory to the convention?
>
> 2. Did the district court properly conclude that, under the Hague Convention, Nevada is the children's "habitual residence?"
>
> 3. Did the district court have subject matter jurisdiction to entertain issues regarding custody of the children?
>
> 4. Can the district court grant a default divorce decree against a party who has filed an answer and participated in the proceedings?

The FLS does not wish to interfere with the factual analysis function of the Court, nor test the transcript references stated by the parties in their briefs. And we have not scoured the Appendix. However, we do focus on a few undisputed facts which we believe drive the jurisdictional issues before the Court. We place these facts in a bullet point format to avoid any appearance of favoring one party's statement of facts over that of the other:

> 1. Date of marriage is December 10, 1997, in Japan, presumably a valid marriage in that State, and therefore presumed to be valid in Nevada.[2]
>
> 2. There are three children the issue of this marriage, each born in Japan: Yemeko, born June 17, 1998; Jin, born September 9, 1999; and, Miku, born September 30, 2002.

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[1] *Order Regarding Fast Track Statement, Directing Full Briefing, Directing Appellant to Show Cause Why Sanctions Should Not Be Imposed, and Inviting Amicus Curiae Participation.*

[2] *See generally* NRS Chapter 122.

3. Although the parties[3] and children did move between Japan and Nevada several times with one or both parents, the last matrimonial domicile was apparently in Japan from May of 2002 to January, 2003.

4. The parties disagree as to the characterization of their intent over the following 18 months. They appear to agree that as of January, 2003, Mother and the children returned to Nevada, but both parties shared an intent that the children would return to Japan at a future date, because both parties recite that in May, 2003, Mother first decided that "it would be better for her and the children to remain, live and work in the United States."[4] There is no indication by either side of any discussion between them as to the intent of either party from that time until June, 2004, when the children (and all other relatives, except Mother) returned to Japan. At the time, the parties were still married, and no action had been filed in any court, anywhere.

5. The parties both state that the departure of the children to Japan was agreed, but Mother characterizes the trip as "a summer vacation," and that she did not "give permission" for the children's move to Japan, while Father characterizes it as the children "returning home" to Japan, with his expectation that Mother would follow.[5] The children have remained in Japan, with Father, since June, 2004.

6. Mother filed her *Complaint* on February 3, 2005, approximately eight months after the children moved to Japan. Mother's UCCJEA Declaration indicates the children have lived in Japan since June 2004.[6]

7. Although there is some discussion in the record about other actions being brought by the parties in different jurisdictions, it does not appear that either party actually undertook any actions outside of the district court matter. Specifically, there is nothing in the record that Mother filed an action with the Attorney General's Office, nor does the record reflect that Mother filed an action with any Court under the International Parental Kidnaping Crime Act ("IPKCA").[7] Likewise, the record does not reflect that either Father or Mother actually initiated an action for child custody in Japan.

8. After much motion practice, Father filed his *Answer* in the district court on or about May 16, 2006.[8]

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[3] For ease of review, "Father" is Appellant Shinichi Ogawa, and "Mother" is Respondent Yoko Ogawa. The three children are collectively referred to as the "minor children."

[4] *Appellant's Opening Brief* ("AOB") at 7; *Respondent's Answering Brief* ("RAB") at 9.

[5] AOB at 7; RAB at 10.

[6] NRS Chapter 125A.

[7] 18 U.S.C. § 1204.

[8] This Court has identified as an issue the question of whether the District Court can grant a default divorce decree against a party who has filed an answer and participated in the proceedings. Because the FLS views this last inquiry as a matter of general civil procedure, not dealing with the underlying substantive family law matters addressed in this appeal, we have determined it would not be appropriate for the FLS to weigh in on such an issue. Therefore, we decline to address it.

9. The divorce trial took place in or about September, 2006. At this trial, no evidence was permitted from, or offered by, Father because of prior discovery sanctions.

10. The *Amended Default Decree of Divorce* (from which this appeal is taken) was entered on or about January 25, 2007. This Decree awarded Mother sole legal and physical custody of the minor children, in addition to child support, spousal support, property and fees, etc.

Although much more happened during this case, and both parties have presumably provided this Court with a record detailing all of the specific facts of this case, we leave those details to the filings of the parties.[9]

II. GOVERNING LAW AND ANALYSIS

A. The Hague Convention Is Inapplicable to this Case

We view the issue of applicability of the Hague Convention to be determinative. Because of this, we wrap the analysis of the first two questions of the Court (as stated above) into this one section. Applicability of the Hague Convention, a "light switch" question, determines the answers to both inquiries.[10]

A short discussion of what the Hague Convention "is" and "is not" appears to be order. Formally known as *The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct., 1980*, the Hague Convention came into force in the United States through its implementing legislation, the International Child Abduction Remedies Act ("ICARA").[11] The Hague Convention is a treaty between the United States and the other signatory countries. Its two objectives are: 1) "to secure prompt return of children wrongfully removed [] or retained"; and, 2) "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected

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[9] The record provided to the FLS may or may not be the complete set of materials filed with this Court. Rather than risk delaying these proceedings to be sure on this point, we have largely confined our analysis of the issues raised in this appeal to the facts as set out in the three briefs filed, and the materials cited or quoted in them.

[10] The FLS appreciates the extensive briefings of the parties into the "what if" questions of the treaty, but either the Hague Convention applies or it does not as a threshold issue, and once deemed inapplicable, no further analysis of it is required or appropriate.

[11] 42 U.S.C. §§ 11601-11610.

in the other Contracting States."[12] State and Federal Courts have concurrent jurisdiction to make Hague Convention determinations.[13] The United States has been a signatory state to the Hague Convention since July 1, 1988.[14] Japan is ***not*** a signatory state.

It is axiomatic that the Hague Convention only applies to "Contracting States" – those countries who have signed the international treaty.[15] To bring a Hague Convention claim against a parent residing in a non-signatory state is a non-sequitur, as stated clearly in the training materials of the American Central Authority:[16]

> To be actionable under the Hague Convention, child abduction and retention cases must be international, and the involved countries must be signatories to the Convention. For example, the Hague Convention would not apply in a case where a child is habitually resident in Atlanta, Georgia and is wrongfully removed to Phoenix, Arizona because the child remained in the same country. Similarly the Hague Convention would not apply in a case where the child is removed to Japan because Japan is not a signatory to the Hague Convention. . . .[17]

It also follows under the same reasoning that any finding of "habitual residence" of the minor children under the Hague Convention cannot be made when a Hague Convention claim is made when one parent resides in a non-signatory state, as that definition can only be used between Contacting States to the treaty.

It cannot be overstated that the Hague Convention ***does not*** give rise to custody proceedings.[18] Custody determinations are a creature of state law, not federal or international law.

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[12] T.I.A.S. 11670 at 4.

[13] 42 U.S.C. § 11603.

[14] T.I.A.S. 11670.

[15] *See* authorities stated in AOB from page 15, line 17, through page 18, line 28.

[16] LITIGATING INTERNATIONAL CHILD ABDUCTION CASES UNDER THE HAGUE CONVENTION (National Center for Missing & Exploited Children, 2007) at 11, posted at http://www.missingkids.com/en_US/training_manual/NCMEC_Training_Manual.pdf.

[17] *Id.* at 11 [citations omitted].

[18] Mother's assertion that the Convention "is an enforcement vehicle once appropriate jurisdiction is found and the best interests of the child is determined" (RAB at 23) is incorrect, but that is irrelevant to this analysis.

The essential purpose of the Hague Convention is to return children to their countries of habitual residence, where custody proceedings can then be held. Put into general phraseology of Nevada Domestic Relations Law, the Hague Convention treaty determines – between signatory countries – which court has subject matter jurisdiction to make custody determinations, and the children are sent to that jurisdiction for those proceedings. Nothing more.

Notably absent from either party's brief is recognition that all Hague Convention proceedings are to be held in the country to which allegedly abducted children are ***brought***.[19] The ***only*** action taken in the applicant's country is the drafting of an application for a petition of return, which is then either filed directly with the Central Authority of the State to which the child has been brought, or forwarded to the Central Authority of the left behind parent's state, to be forwarded to the Central Authority of the country in which the child is found. In other words, under the facts of this case, no "Hague Convention proceedings" could be brought in the Nevada courts even if both the United States and Japan were signatory countries.

The core questions to be addressed by a court where a Hague Convention application is made are: 1) Where was the child's habitual residence?; 2) Did the parent who had the child in the other Contracting State have a right of custody under the laws of the state of habitual residence?; and, 3) If so, did the removing parent violate those rights? If the child has been removed, or retained, from his or her state of habitual residence, in violation of a right of custody of the left-behind parent, the child is to be returned to the other country forthwith.[20]

What the Hague Convention "is not" is a set of rules to determine custody. The Hague Convention does not supplant the UCCJEA, as set forth under NRS Chapter 125A,[21] and does not control custody determinations. If a controversy regarding child custody involves a non-signatory

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[19] Mother has this point backward, stating that if Japan was signatory to the Convention, the Nevada court could make a habitual residence determination. *See* RAB at 24.

[20] *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002).

[21] 42 U.S.C. § 11601(b)(4); *see Bless v. Bless*, 723 A.2d 67, 71 (N.J. Super. 1998).

country, then the aggrieved parent's sole recourse is to file for relief in the courts of the country in which the child is located, if it has jurisdiction, or as a fall back, the local court – in this case, the family court in Nevada.

Therefore, in addressing the first two questions raised by this Court: 1) the Hague Convention does not apply to the underlying child custody issues in this case because Japan is not a signatory to the Hague Convention; and, 2) the district court could not properly conclude that, under the Hague Convention, Nevada was the children's "habitual residence," as the Hague Convention does not apply to disputes involving non-signatory nation states, such as Japan, and any such determination would have to be made in the country to which the children were removed, even if Japan ***had been*** a signatory country. All such language, and findings, in the proceedings in this case are meaningless.

B. Whether The District Court Had Subject Matter Jurisdiction to Make an Initial Child Custody Determination

Within their briefs, both parties state their arguments under the UCCJEA. However, neither seriously analyzes the applicability of the UCCJEA to foreign countries. Nor does either party discuss the legal impact of Father's *Answer* to the *Complaint* filed by Mother in the district court.

Although the district court may have used Hague Convention terminology in the *Amended Decree*, the mere use of such terminology is not fatal if the district court had subject matter jurisdiction to make an initial child custody decision under any of the alternative bases set out in the UCCJEA.[22] The issue of subject matter jurisdiction may be raised at any time, including on appeal.[23]

1. Nevada Is Apparently Not the "Home State"

There are four potential bases for such jurisdiction, primary among which is whether Nevada ***is*** the home state on the date proceedings are commenced, or ***was*** so within the preceding six months,

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[22] We note at the outset that there is no mention of any proceedings being initiated in Japan by either parent; if there had been such, this analysis would necessarily be different.

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

with at least one party remaining in Nevada since the child left the State.[24] Under the UCCJEA, determining the "home state" of the minor children is critical, because a court of that place has the right to determine child custody,[25] unless it declines to do so.[26] The official comments make it clear that if there is a home state, no other state should make an initial custody determination.[27]

A "home state" is the place where the minor children have lived with a parent at least six consecutive months (including any temporary absences) immediately preceding the initiation of legal proceedings.

A place eligible to be the "home state" is a state within the United States, the District of Columbia, or extensions of our country.[28] The UCCJEA also has an international application, as it includes foreign countries as if they were states within the United States, unless the child custody laws of that country violate fundamental principles of human rights.[29] Japan is not recognized as such a place, and Japan therefore can, and should be, included within the scope of Nevada's UCCJEA. Both Nevada and Japan are therefore eligible to be the "home state."

Here, proceedings were commenced on February 3, 2005. While Mother had remained in Nevada since the children left, they had been gone for more than six months prior to that date.

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[24] NRS 125A.085.

[25] NRS 125A.305(1)(a).

[26] NRS 125A.365. Under this test, a court in Nevada which has jurisdiction to make a child custody determination may decline to do so if it determines that it is an inconvenient forum. Notably, this authority functions only "one way" – the Nevada court can only assess ***itself*** as an inconvenient forum, not find that any ***other*** jurisdiction is or would be an inconvenient forum.

[27] "The PKPA [Parental Kidnaping Prevention Act, 28 U.S.C. § 1738A] prioritizes 'home state' jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a 'significant connection state' when there is a 'home State.' Initial custody determinations based on 'significant connections' are not entitled to PKPA enforcement unless there is no home State. . . . The UCCJEA prioritizes home state jurisdiction in Section 201."

[28] NRS 125A.155.

[29] NRS 125A.225.

Mother makes two separate claims as to why Nevada should consider itself the "home state" anyway, but both are problematic.

First, she claims that the period that she claims to have believed they were in Japan for "summer vacation" was a "temporary absence" within the meaning of the UCCJEA, and so does not count as part of the six month period.[30]

The authorities cited by mother for that proposition, however, are not on point. She cites *Krymko v. Krymko*[31] for the proposition that a period of abduction can be included in the time a child is considered "present" in a state for purposes of establishing that the child lived there for six months. This may or may not be true, but would seem to have no application to determining the period from the child's departure until the date the left-behind parent commenced proceedings.

In actuality, Mother seems to have applied the law of "temporary absences" backwards. The factual statements supplied by both parties indicate that when the children ***left Japan*** in January, 2003, the parties had the shared intent that the children would return to Japan at a future date, and that Mother did not change her mind on this point until several months later.

This would indicate that if any time period could be considered a "temporary absence" not creating a change in home state, it would be the children's presence in Nevada from January, 2003, to June, 2004, not ***any*** period that the children were in Japan. And that would make Japan the children's home state, from at least the time the entire family lived together there starting in May, 2002.

For similar reasons, the district court's findings, as quoted (RAB at 16) do not really make sense under a UCCJEA analysis. If the time period within which one parent has the children in another state – wrongfully or not – "tolled" the time within which proceedings were required to be initiated under the UCCJEA, that statutory time period would be rendered meaningless. Every parent in every interstate case could simply assert that the children were in the other jurisdiction over

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[30] RAB at 28.

[31] 822 N.Y.S. 2d 571 (App. Divorce. 2006).

the filing parent's objection, and the UCCJEA's central concept of "home state" would be effectively gutted.

Of greater concern is Mother's second argument – that she was lulled into not filing by false assurances by Father that he was going to send the children back to Nevada.[32] Indeed, as Mother points out, there is authority indicating that such deception is "reprehensible conduct" such that a court could rule itself to be an "inconvenient forum" despite the presence of the children in the state for the requisite time.[33]

But Mother's argument on this point has three flaws. First, as noted above, the finding of deception and resulting disqualification of a jurisdiction as an "inconvenient forum" can only be made by the courts of the state where the children are actually located – in this case, Japan. A Nevada court cannot determine that another jurisdiction is an inconvenient forum, by reason of a party's conduct or for any ***other*** reason. And if Father did engage in deception, it would not make Nevada the home state – only permit Japan to decline finding that ***it*** was the home state.

Second, astoundingly, both sides have failed to be sufficiently specific in their factual recitals to say whether the assertion makes any difference. Specifically, Mother claims that Father told Mother that he would not return the children in August, 2004,[34] but does not specify whether this was more than six months, or less than six months, before she commenced child custody proceedings.[35] Father does not seem to clearly address the issue.

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[32] RAB at 18, 29-34.

[33] *See, e.g., Gruber v. Gruber*, 784 A.2d 583 (Md. Ct. Spec. App. 2001). In the Hague cases as well, courts have found that a "settled purpose" to relocate cannot be found when the intention of one of the parties to remain in a foreign country is concealed from the other spouse, or when the presence of the other spouse or children in a foreign country is the result of involuntary coercion or abuse. *Ponath v. Ponath*, 829 F. Supp. 363, 367 (D. Utah 1993); *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045, 1055 (E.D. Wash. 2001).

[34] RAB at 11, 32-33.

[35] At one point, counsel for Mother apparently gave three dates – July, August, and October – for the relevant conversation. RAB at 14.

If it was more than six months, it might not make any difference what other conversations the parties might have allegedly had,[36] even if the argument was made in a court which could make a relevant determination, because a court could determine that she was on notice and had an obligation to commence proceedings within the six month period allowed by the UCCJEA.

Third, there is a factual question as to whether any such "deceptive conduct" ever occurred, or even was found to have occurred. We have not noted a citation to the record showing the district court making specific findings that Father delayed Mother's filing by way of affirmative acts of deception (falsely promising to return the children to Nevada).

It seems that at the March 8, 2005, hearing (which gave rise to the March 29, 2005, *Order* in which the district court concluded that it had jurisdiction), Mother's counsel admitted that Father had not yet even been served with the *Motion*, and thus had no notice of the hearing or ability to respond. The district court nevertheless took Mother's representations that there was "no consent" for the children to remain in Japan with Father as a fact, and based its finding of jurisdiction upon that representation.

When Father finally appeared in the case, through the filing of a *Motion for Reconsideration* of the March 29 *Order*, the Court was made aware of Father's competing version of these facts, but reiterated its prior finding in its May 9, 2006, decision:

> Defendant's Mother took the three children to Japan for summer vacation and did not return them, the [Father] did not obtain written permission to relocate the children to Japan, and therefore the Court finds that the [Father] has wrongfully removed the children to Japan without permission of the [Mother], therefore the time period which the [Father] has wrongfully withheld the children from August 30, 2004, until the time [Mother] filed her Motion for Custody for the Children on February 3, 2005, is tolled by [Father's] wrongful retention of the children in a Foreign Jurisdiction.

Still, there was apparently no finding based on any evidence of any specific "deceptive acts" by Father.

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[36] As discussed in the following paragraphs, it is unclear whether the parties agree that Father ever made any such representations, as he apparently did not appear in the Nevada trial proceedings, and his counsel alleges that the trial court "did not permit any questioning from [Father's] counsel to [elicit] testimony regarding jurisdiction over the children." AOB at 8. It is therefore not clear whether this point, if put in issue in a Japanese court, would lead to a finding that Father had engaged in any kind of deceptive conduct.

It is worth stressing the difference between potential deceptive conduct on Father's part, on the one hand, and Mother's complaint (interspersed at RAB 11-35) that she did not give "consent," or "written consent" that the children would live in Japan, on the other. Until sometime in 2005, no court had ever purported to enter any orders at all regarding custody or placement of the children at issue here; the parties had joint custody of them at least through that time, and as of June, 2004, neither required any kind of consent, written or otherwise, to transport them to any location, or keep them there.[37] As a matter of law and logic, they ***could*** not be "abducted" by either parent.[38]

In any event, the parties appear to agree that the actual departure of the children in June, 2004, was with the consent of Mother, their only dispute being whether that departure was contemplated by one of them or the other as being temporary or permanent. There appears to be no impact on any relevant legal analysis whether or not either of the parties gave "permission," or not, prior to a permanent relocation of the children. Therefore, Mother's claim that she did not give permission for the children to move in June, 2004, does not appear to be relevant at all, nevertheless a foundation for a finding of subject matter jurisdiction.

It is somewhat disturbing that a trial court could forbid participation at some level by way of discovery sanction, and then use the non-participating party's silence as the basis for a finding of subject matter jurisdiction.[39] That process seems prone to both error and abuse as to a matter that the district court is required to determine upon clear and convincing evidence,[40] and at the very least a *prima facie* case that subject matter jurisdiction exists should be required before such a finding is made.

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[37] *See* NRS 125.465: "If a court has not made a determination regarding the custody of a child and the parents of the child are married to each other, each parent has joint legal custody of the child until otherwise ordered by a court of competent jurisdiction."

[38] *Cf.* RAB at 32, 36 (claiming that Father's transportation of the children to Japan – with Mother's consent – constituted both a civil and criminal offense).

[39] *See* RAB at 25.

[40] *See, e.g., McKim v. District Court*, 33 Nev. 44, 110 P. 4 (1910) (holding that residency, also required for subject matter jurisdiction, must be established by clear and convincing evidence); *Vaile, supra* (same).

In short, there does not appear to be a valid basis for asserting that Nevada was the home state of the children on the date that proceedings were commenced, and the jurisdiction of the court to make an initial award of child custody would have to rest on some other ground.

2. Jurisdiction If Nevada Is Not the "Home State"

As noted above, the home state of a child is given priority in making an initial custody proceeding, but it is still possible for a state that is ***not*** the home state to make such an order. The remaining bases are in declining order of priority.

The second rung is "significant connection" jurisdiction.[41] A Nevada court may make an initial custody determination ***if*** a court of another state does ***not*** have home state jurisdiction, ***or*** that home state court has declined to exercise jurisdiction based on ***its*** finding that Nevada would be the more appropriate forum. An exercise of jurisdiction on this basis also requires that the child and at least one parent have a "significant connection" to Nevada other than "mere physical presence," and that there is "substantial evidence" here concerning the child's care, protection, training and personal relationships.

While the latter two findings appear likely, they have not apparently been explicitly addressed, but the problem with this basis is the obvious one – neither side has suggested that the courts of Japan have even been asked to address the matter, nevertheless have made a determination to decline to exercise jurisdiction, on any basis. Notably, more than one state may have jurisdiction on the basis of significant connection jurisdiction; if two compete, only the state in which the proceeding was first filed may exercise jurisdiction on this basis.

The third rung is when all courts having home state or significant connection jurisdiction have declined to exercise jurisdiction on the basis that this state is the more appropriate forum.[42]

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[41] NRS 125A.305(1)(b).

[42] NRS 125A.305(1)(c).

Again, from the record provided, there seems to be no evidence that such a finding in Japan has even been requested.

Finally, there is "vacuum" jurisdiction, to be exercised when no court of any other state would have jurisdiction pursuant to the criteria in the above three analyses.[43] This does not seem applicable either, since on the basis of the facts set out, Japan could choose to exercise jurisdiction over custody of the children involved here as their home state, or by significant connection.

The UCCJEA states that the above four bases are the ***exclusive*** jurisdictional basis for making a child custody determination by a court of this State.[44] As it appears that none of them were satisfied, in addressing the third question raised by this Court, it does not appear that the district court had subject matter jurisdiction to entertain issues regarding custody of the children. Gaining such jurisdiction would apparently require a proceeding in Japan to obtain the orders discussed in detail above.

C. The Parties' Filings and Jurisdiction Relating to Other Orders

Both parties agree that, after much motion practice, Father did file an *Answer and Counterclaim* in the district court on or about May 16, 2006.[45] Not only did he not deny the district court's jurisdiction over him or any (or all) issues, as he might have done,[46] but Father actually sought to invoke the jurisdiction of the court over all issues presented in the case.

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[43] NRS 125A.305(1)(d).

[44] NRS 125A.305(2).

[45] The filing is rife with errors and contradictions. It states (at Paragraph 3) that there is one minor child of the marriage, and then names three. It names (at Paragraph 5) Father, but apparently refers to Mother, as to who should supply health insurance. It includes (at Paragraph 8) the assertion that the children are habitual residents of Nevada, although Father's various other filings deny it.

[46] Such an assertion may be raised by way of a *Motion*, or in an *Answer* denying personal jurisdiction, since Nevada abrogated the special appearance doctrine years ago in *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000).

Of course, as this Court has noted, "[p]arties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist. . . . Simply because a court might order one party to pay child support to another in the exercise of its personal jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject matters of child custody and visitation."[47] Therefore, Father's filing does not alter the jurisdictional analysis set out above as to the UCCJEA and child custody jurisdiction.

It does, however, raise some questions as to the district court's jurisdiction as to matters other than child custody. As noted in the factual recitation, the district court also made orders relating to child support, medical coverage, spousal support, and the division of property located in Nevada and elsewhere. While this Court has not explicitly asked for comments as to those matters, we think it is necessary to address the district court's jurisdiction related to the other family law orders.

Since all parties agree that Mother was a Nevada resident at all relevant times, Father's *Answer* resulted in both parents submitting to the personal jurisdiction of the district court. This, presumably, gave the district court jurisdiction over all issues of property division, wherever situated.[48]

Child support and spousal support are a bit more problematic, as it does not appear that any analysis was done according to the requirements of the Uniform Interstate Family Support Act ("UIFSA"), set out as NRS chapter 130. Obviously, this Court's determination of the issues relating to child custody will determine how support should be addressed in any remand, and presumably would govern the district court's existing orders regarding fees, penalties, discovery and contempt sanctions, etc., which stemmed from the existing custody orders.

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[47] *See Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (district court had no subject matter jurisdiction to make orders relating to custody of the parties' children); *Finley v. Finley*, 65 Nev. 113, 120, 189 P.2d 334, 337 (1948).

[48] *Simpson v. O'Donnell*, 98 Nev. 518, 654 P.2d 1009 (1982).

III. CONCLUSION

For the reasons set forth above, the FLS submits that the district court's orders relating to child custody should be reversed as having been entered without subject matter jurisdiction. In the absence of a ruling by the courts of Japan that it declines to exercise jurisdiction for whatever reason, the district court cannot apparently obtain jurisdiction to enter any such orders. Matters relating to the assorted other rulings made below, to the degree they stemmed from the custody orders, or were imposed as sanctions because of the asserted violation of those custody orders, should be remanded for reconsideration.

Respectfully submitted this ___ day of December, 2007.

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