

1 **ORDR**

2 **DISTRICT COURT**
3 **FAMILY DIVISION**
4 **CLARK COUNTY, NEVADA**

5 In the Matter of the Parental Rights
6 as to:

7 XXXXXXXXXXXXXXXX
8 XXXXXXXXXXXXXXXX

9 Minor children.

CASE NO. D-23-XXXXXX-R

DEPT. C

10 **AMENDED DECISION AND ORDER FINDING NEVADA AN**
11 **INCONVENIENT FORUM AND RELEASING JURISDICTION TO**
12 **THE STATE OF OREGON**

13 This matter came on for an evidentiary hearing on February 13,
14 2024, at 2:00 p.m. as part of the Court's continuing UCCJEA conference
15 with the Yamahill County Circuit Court in Oregon. The hearing was
16 conducted by the Honorable Gregory G. Gordon of the Eighth Judicial
17 District Court, Clark County, Nevada, and the Honorable Jennifer
18 Chapman of the Yamahill County Circuit Court, Oregon.

19 Petitioner, Candace Ruiz (hereafter "Candace" or "Mother")
20 appeared via videoconference with her counsel, Jack W. Fleeman, Esq. of
the Pecos Law Group, also appearing via videoconference. Respondent,

1 Michael MacDonald (hereafter “Michael” or “Father”) appeared via
2 videoconference with his counsel, Valarie Fujii, Esq., also appearing via
3 videoconference.

4 The Court allowed the parties to present evidence and testimony as
5 to Michael’s request that the Court decline jurisdiction pursuant to NRS
6 125A.365 on the basis that Nevada is an inconvenient forum and Oregon a
7 more appropriate forum, as well as the issue of Michael’s residency, which
8 was disputed by the parties.

9 The Court having received briefing from the parties on the
10 jurisdictional issues, and having reviewed the evidence and testimony
11 presented, after weighing the credibility of the witnesses, and hearing
12 argument from counsel for both parties, and good cause appearing:

13 THE COURT HEREBY FINDS AS FOLLOWS:

14 Subject matter jurisdiction over child custody matters is governed by
15 the UCCJEA. NRS 125A.305. The UCCJEA's objectives are to prevent
16 jurisdictional conflicts and re-litigation of child custody issues and to deter
17 child abduction. UCCJEA § 101 (1997), cmt., 9 U.L.A. 657 (1999)
18 (explaining the UCCJEA's purposes); *see also, e.g., Ruffier v. Ruffier*, 190
19 S.W.3d 884, 889 (Tex.App. 2006); *see generally* NRS Chapter 125A. The

1 UCCJEA addresses those objectives by limiting to one court—usually the
2 "home state" court—the authority to make custody determinations, even
3 though more than one jurisdiction might have personal jurisdiction over
4 the parties and a legitimate interest in the parent-child relationship at
5 issue. *See Hart v. Kozik*, 242 S.W.3d 102, 106-07 (Tex.App. 2007). The
6 UCCJEA thus elevates the "home state" to principal importance in custody
7 determinations. *See* NRS 125A.305.

8 Once Nevada enters a valid custody decree, it maintains exclusive,
9 continuing jurisdiction over the matter until “[a] court of this state or a
10 court of another state determines that the child [and] the child’s parents . .
11 . do not presently reside in this state.” NRS 125A.315(1)(b). *Kar v.*
12 *Kar*, 132 Nev. 636, 639, 378 P.3d 1204, 1205 (2016) (“Once it
13 determined that the child and the child’s parents no longer resided in
14 Nevada, the district court lost exclusive, continuing jurisdiction under NRS
15 125A.315(1).”).

16 Additionally, whether or not all parties have left the state, NRS
17 125A.365(1) provides that a court “may decline to exercise its jurisdiction
18 at any time if it determines that it is an inconvenient forum under the
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..

1 circumstances and that a court of another state is a more appropriate
2 forum.”

3 Here, it is undisputed that Nevada had jurisdiction under NRS
4 125A.305 to enter the initial custody decree dated October 27, 2016. It is
5 also undisputed that Michael continued to reside in Nevada as of January
6 of 2023 when Candace filed her petition to terminate parental rights. As
7 such, the Nevada court had exclusive, continuing jurisdiction over this
8 child custody proceeding when it commenced.¹

9 Candace and the minor children relocated to Oregon in December of
10 2020. Michael contends that he moved to Arizona in April of 2023 while
11 this termination of parental rights case was pending. Michael
12 subsequently registered the controlling Nevada custody order in Oregon
13 and moved to modify custody and re-establish his contact with the minor
14 children in that jurisdiction. Michael contends that when he commenced
15 his custody modification proceeding in Oregon, neither the children nor
16 either party was living in Nevada. Currently, simultaneous proceedings
17 are pending in Nevada and Oregon.

18 ¹ The UCCJEA defines a child custody proceeding as any proceeding in which
19 legal custody, physical custody, or visitation is at issue. See NRS 125A.055(1).
20 This includes a proceeding for termination of parental rights, which is the relief
sought in this matter. See NRS 125A.055(2).

1 The Oregon court treats the two cases as one “custody proceeding”
2 and has interpreted its parallel statute ORS 109.757(1) as requiring that
3 Nevada first decline jurisdiction here on the basis that Nevada is an
4 inconvenient forum and Oregon the more convenient forum before Oregon
5 can exercise its jurisdiction.

6 The parties have on two (2) separate occasions briefed the issue of
7 whether Nevada should decline jurisdiction as an inconvenient forum. The
8 Court conducted a brief evidentiary hearing on the issue as well as to
9 address the parties’ dispute about whether Michael has relocated from
10 Nevada to Arizona.

11 THE COURT NOW having heard the evidence and testimony
12 presented FINDS and CONCLUDES that irrespective of whether Michael
13 resides in Nevada or Arizona, Nevada is an inconvenient forum and that
14 Oregon is a more appropriate forum for this case.

15 In reaching this conclusion, the Court analyzed the statutory factors
16 set forth in NRS 125A.365, which provide as follows:

17 ***NRS 125A.365 Inconvenient forum.***

18 *1. A court of this state which has jurisdiction*
19 *pursuant to the provisions of this chapter to make a child*
20 *custody determination may decline to exercise its*
jurisdiction at any time if it determines that it is an
inconvenient forum under the circumstances and that a

1 court of another state is a more appropriate forum. The
2 issue of inconvenient forum may be raised upon motion of
a party, the court's own motion or request of another court.

3 2. Before determining whether it is an inconvenient
4 forum, a court of this state shall consider whether it is
5 appropriate for a court of another state to exercise
jurisdiction. For this purpose, the court shall allow the
parties to submit information and shall consider all
relevant factors, including:

6 (a) Whether domestic violence has occurred and is
likely to continue in the future and which state could best
protect the parties and the child;

7 (b) The length of time the child has resided outside
this state;

8 (c) The distance between the court in this state and
the court in the state that would assume jurisdiction;

9 (d) The relative financial circumstances of the
parties;

10 (e) Any agreement of the parties as to which state
should assume jurisdiction;

11 (f) The nature and location of the evidence required to
12 resolve the pending litigation, including testimony of the
child;

13 (g) The ability of the court of each state to decide the
issue expeditiously and the procedures necessary to present
the evidence; and

14 (h) The familiarity of the court of each state with the
facts and issues in the pending litigation.

15 3. If a court of this state determines that it is an
16 inconvenient forum and that a court of another state is a
17 more appropriate forum, it shall stay the proceedings upon
condition that a child custody proceeding be promptly
commenced in another designated state and may impose
any other condition the court considers just and proper.

18 4. A court of this state may decline to exercise its
19 jurisdiction pursuant to the provisions of this chapter if a
child custody determination is incidental to an action for
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1 *divorce or another proceeding while still retaining*
2 *jurisdiction over the divorce or other proceeding.*

3 The Court's analysis of the factors is as follows:

4 (a) *Whether domestic violence has occurred and is*
5 *likely to continue in the future and which state*
6 *could best protect the parties and the child;*

7 This case does involve a history of domestic violence, as well as the
8 violation of an order for protection, so that is a potential consideration.
9 The COURT FINDS and CONCLUDES that because Candace and the
10 children reside in Oregon, the State of Oregon is in a better position to
11 protect them from future violence through orders for protection and/or
12 behavioral orders issued in the jurisdiction where they reside. At a
13 distance, this Court is disadvantaged to ensure the children's safety from
14 domestic violence in the future. Oregon would be in a better position to
15 issue and enforce meaningful orders as the children and mother are
16 residents of that state. This factor supports Nevada declining jurisdiction.

17 (b) *The length of time the children have resided outside*
18 *this state;*

19 Candace and the children relocated to Oregon in December of 2020,
20 more than three (3) years ago. The children have spent nearly a third of
21 their lives living in Oregon. The children attend school in Oregon, their
22 medical providers are in Oregon, and Candace and the children have fully

1 integrated into that community. This factor supports Nevada declining
2 jurisdiction.

3 (c) *The distance between the court in this state and the*
4 *court in the state that would assume jurisdiction;*

5 The Court views this factor as neutral as Candace relocated with the
6 children to Oregon; and Michael has since filed a motion to modify custody
7 in Oregon and wants Nevada to relinquish jurisdiction. Both parties have
8 chosen the State of Oregon in some manner. Although Candace opposes
9 Nevada declining jurisdiction as an inconvenient forum, she cannot
10 reasonably dispute that logistically Oregon is a more convenient forum for
11 her than Nevada.

12 (d) *The relative financial circumstances of the parties;*

13 The Court views this factor as neutral. Neither party has argued they
14 will be financially disadvantaged by Nevada relinquishing jurisdiction to
15 Oregon.

16 (e) *Any agreement of the parties as to which state*
17 *should assume jurisdiction.*

18 The parties do not agree on this issue.

19 (f) *The nature and location of the evidence required to*
20 *resolve the pending litigation, including testimony of*
21 *the child;*

1 While Candace is fixated on the parental fault burden of this
2 termination of parental rights case, which she alleges is rooted in Michael's
3 past criminal conduct predating 2019, the COURT FINDS that of equal
4 importance is evidence concerning the children's best interests, also part of
5 the petitioner's burden in a termination proceeding. See NRS 128.105(1).
6 A best interest analysis requires evidence and proof that focuses on the
7 present, such as the children's schooling and academics (all occurring in
8 Oregon), the children's friends, activities, and lifestyle (in Oregon), the
9 children's emotional, developmental, and physical needs (in Oregon), as
10 well as the prospects of the children's and Michael's reunification, which if
11 possible, would take place in Oregon. Evidence including school records,
12 medical and mental health care records, counseling records, testimony
13 from the Mother and the children and other potential witnesses (including
14 teachers, counselors, neighbors, etc.) are all located in Oregon and not
15 Nevada. If future counseling, or reunification therapy is ordered, all such
16 appointments would take place in Oregon and the available evidence,
17 documents, and witnesses associated therewith likewise would be found in
18 Oregon.

1 Contrariwise, the evidence that Candace maintains is available in
2 Nevada consists of judgments of conviction issued out of a separate
3 criminal court in Nevada, of which Oregon can as easily take judicial notice
4 as this Court.

5 COURT FINDS and CONCLUDES this factor supports Nevada
6 declining jurisdiction and that Oregon is the more appropriate forum for
7 addressing these issues, and that more of the necessary and available
8 evidence concerning this proceeding, including but not limited to
9 testimony of the children, is situated in Oregon.

10 *(g) The ability of the court of each state to decide the*
11 *issue expeditiously and the procedures necessary to present*
the evidence; and

12 This factor is neutral. The Court is aware of no distinction
13 between Nevada and Oregon as it relates to the court's ability to hear the
14 matter expeditiously.

15 *(h) The familiarity of the court of each state with the*
16 *facts and issues in the pending litigation.*

17 COURT FINDS that the pending termination of parental rights case
18 in Nevada is a newly-filed case in which there have been limited
19 proceedings so far, mostly addressing the issue of jurisdiction. The Nevada
20 divorce action involving these parties has been dormant now for over three

1 (3) years. As such, Nevada is not familiar with the present status of the
2 children, such as their academic progress, where they attend school, their
3 medical needs, etc. Nevada has had no engagement in the substance or
4 circumstances of the children's welfare in several years. Many of the fault
5 factors, e.g. Michael's prior criminal convictions and past criminal
6 behavior, etc., stem from criminal cases separate from the divorce action
7 and about which this Court (specifically this newly-assigned judge) has
8 limited to no familiarity.

9 Therefore, while the Nevada court has a history with these parties,
10 that history is stale, and given the passage of time since the last
11 proceedings in Nevada, both Oregon and Nevada are essentially on equal
12 footing in having to familiarize themselves with the current status of the
13 children, their needs and welfare, and how to proceed in their best
14 interests.

15 THE COURT CONCLUDES this factor only slightly supports Nevada
16 maintaining jurisdiction.

17 On balance, the Court FINDS and CONCLUDES that Oregon is a
18 more appropriate forum and that Nevada is an inconvenient forum in
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1 which to proceed with further child custody proceedings, including
2 possible termination of parental rights. See NRS 125A.055(2).²

3 Based upon the foregoing, the Court hereby DECLINES jurisdiction
4 over this matter.

5 Insofar as there is presently a child custody proceeding pending in
6 Yamahill County Circuit Court, Oregon, Case No. 23DR05784, in which
7 both parties have already appeared and are ready to proceed, with a
8 hearing scheduled for later this month, this matter is hereby CLOSED.

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10 IT IS SO ORDERED.

Dated this 15th day of February, 2024

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12 604 B80 CEFA E242
Gregory G. Gordon
District Court Judge

13 Prepared by the Court

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18 ² Based upon the Court's decision that Nevada is an inconvenient forum
19 and Oregon a more appropriate forum, the issue as to whether Michael is a
20 resident of Nevada or Arizona is moot. Even if still a resident of Nevada,
this Court has the discretion to decline jurisdiction at any time. See NRS
125A.365.