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Legal Writing Sample

Appellate Brief – Jurisdictional and Statutory Analysis

This writing sample is an appellate brief focused on jurisdictional issues, statutory interpretation, and procedural error. It reflects my ability to analyze multi-jurisdictional legal frameworks, construct detailed arguments, and support positions with extensive legal authority. The case resulted in a favorable outcome on appeal.

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IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

ALEXIS ALUISE and ANDREW ALUISE,

Appellants-Parents,

and

GLENDA SPANOS,

Appellee-Grandmother.

Case No.: 5D2024-3376
L.T.: 2022-DR-008269-FM

ON APPEAL FROM THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS-PARENTS

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PART ONE: STATEMENT OF JURISDICTION

The Fifth District Court of Appeal has jurisdiction under Article V, Section 4(b)(1) of the Florida Constitution, which grants the district courts jurisdiction to review final orders from lower courts. Jurisdiction is also proper under Florida Rules of Appellate Procedure 9.030(b)(1)(A), as this appeal seeks review of *Order Dismissing Supplemental Petition for Modification*. R-90-94 (and amended orders, R-138-143, R-144-145). In addition, the case arises directly from the trial court's erroneous interpretation and application of Fla. Stat. § 61.516, invoking de novo review of legal issues. *Price v. Price*, 951 So. 2d 55 (Fla. 5th DCA 2007). This Court's authority explicitly extends to resolving errors of statutory application, as presented herein.

PART TWO: STATEMENT OF THE CASE AND FACTS

This appeal concerns the *Final Order of Court* entered in the Court of Commons Please in Butler County, Pennsylvania, on January 13, 2022 (signed January 11, 2022). R-12-14. The Pennsylvania *Final Order of Court* was domesticated in Florida by the

Consent Final Judgment Domesticating Foreign Decree, entered January 17, 2023, in the Circuit Court, Fourth Judicial District, in and for Duval County, Florida, Case No. 16-2022-DR-008269-FM. R-16-22. Therein, among other findings of fact, the trial court noted that the Appellants-Mother and Father moved to Jacksonville, Florida, with the minor child on July 5, 2021, and the *Final Order of Court* was entered thereafter. R-16-17, ¶¶F-G.

The trial court further found that the Appellants-Mother and Father and the minor child had "resided in Duval County, Florida, for more than one (1) year and have established their domicile in Florida with the intent to remain in Florida." R-17, ¶J. The trial court also found that it "has subject matter jurisdiction over the minor child at issue regarding the Parenting Plan and Time Sharing[,]" R-17, ¶K, "has personal jurisdiction over the [Appellants-Mother and Father][, and] [p]ursuant to Fla. Stat. § 48.193, this Court has long arm jurisdiction over the [Appellee-Grandmother]." R-17, ¶L.

In this <u>*Consent*</u> *Final Judgment Domesticating Foreign Decree,* entered January 17, 2023, the trial court then ordered that it "has subject matter jurisdiction over the Parenting Plan, Time Sharing,

and child support issues before the Court[ ][and] [t]he Court retains jurisdiction, and upon application for the enforcement or the modification of this judgment, a party so required shall be and appear before the Court at the time specified by Motion and Notice of Hearing or in order of the Court." R-18, ¶¶2-3 (emphasis added).

Thereafter, on April 19, 2023, Appellants-Mother and Father filed their *Supplemental Petition for Modification.* R-32-38. On April 8, 2024, nearly one (1) year later, Appellee-Grandmother filed her *Motion to Dismiss for Lack of Subject Matter Jurisdiction.* R-77-79. On September 30, 2024, the trial court entered its *Order Dismissing Supplemental Petition for Modification.* R-90-94. On October 1, 2024, Appellants-Mother and Father filed their *Motion for Reconsideration and/or Rehearing.* R-95-102. On November 5, 2024, the trial court entered its *Order Denying [Appellants-Mother and Father's] Motion for Reconsideration and/or Rehearing.* R-103-104. On November 30, 2024, Appellants-Mother and Father, by and through the undersigned counsel of record, filed their *Notice of Appeal.* R-111-114.

On January 9, 2025, the trial court entered its *Second Amended Order Dismissing Supplemental Petition for Modification.* R-138-143, adopting the findings of fact and the conclusions of law as set forth in the September 30, 2024, *Order Dismissing Supplemental Petition for Modification,* R-90-94, adding the court reserving jurisdiction to enforce the *Final Order of Court* entered in Pennsylvania. R-12-14.

On January 13, 2025, the trial court entered its *Amended Order Dismissing Supplemental Petition for Modification* wherein the trial court considered this Court's *Order* of January 7, 2025, "relinquishing jurisdiction back to" the trial court to render a final order. R-144-145.

Following the Appellant's Status Report filed on January 17, 2025, this Honorable Court entered its *Order* of January 31, 2025.

PART THREE: STANDARD OF REVIEW

The standard of review for determining subject matter jurisdiction is ***de novo***, which will have this Court independently review the legal conclusions of the trial court without deference. *Mitchell v. Mitchell*, 328 So. 3d 1067 (Fla. 2021); *Thomas v. Thomas*,

724 So. 2d 1246 (Fla. 5th DCA 1999). Factual findings made by the trial court are reviewed under the abuse of discretion standard. *Jones v. Jones*,123 So. 3d 456 (Fla. 1st DCA 2013); *Smith v. Smith*, 456 So. 2d 789 (Fla. 2d DCA 1984).

PART FOUR: SUMMARY OF ARGUMENT

The trial court erred in dismissing the Appellant's Supplemental Petition for Modification for lack of subject matter jurisdiction. Florida is the child's home state under Fla. Stat. § 61.514(1)(a), as the child has resided in Florida continuously since July 2021. (R-92, R-139). See *Chatani v. Blaze*, 346 So. 3d 670 (Fla. 2d DCA 2022); *Lunsford v. Engle*, 289 So. 3d 6 (Fla. 1st DCA 2019). The trial court misclassified the Appellee-Grandmother as a "person acting as a parent" under Fla. Stat. § 61.503(13) because her limited visitation rights do not meet the statutory requirements for physical or legal custody. *Id.; Ferrell v. Ruege*, 397 So. 2d 723 (Fla. 1st DCA 1981); *Barnes v. Frazier*, 509 So. 2d 401 (Fla. 5th DCA 1987). Florida law explicitly distinguishes between visitation and custody, and the grandmother's role is confined to court-ordered visitation, which does not confer custodial status. Fla. Stat. § 61.503(13); *L.D. v. Fla. Dep't*

of Children & Families, 24 So. 3d 754 (Fla. 5th DCA 2009). Accordingly, the trial court did have jurisdiction to modify the *Final Order of Court* entered in Pennsylvania, R-12-14, pursuant to FLA. Stat. § 61.516(2).

The Pennsylvania court does not retain exclusive, continuing jurisdiction under Fla. Stat. § 61.515 because the child and both parents have severed all significant connections to Pennsylvania. *Litsch v. Litsch*, 372 So. 3d 315 (Fla. 2d DCA 2023); *Beehler v. Beehler*, 351 So. 3d 1257 (Fla. 5th DCA 2022). Florida, as the child's home state, is the proper forum to address the modification of the *Final Order of Court*. R-12-14. The trial court failed to conduct the required analysis under Fla. Stat. § 61.520 to determine whether Florida is a more convenient forum, despite the child's education, medical care, and social connections being firmly established in Florida, finding only that incidents alleged by Appellants-Parents supporting modification, although in Florida, "occurred in the vicinity of Tampa, Florida." R-141-142, ¶N.

The Full Faith and Credit Clause requires Florida to recognize the *Final Order of Court*. R-12-14, but does not preclude modification

under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Fla. Stat. § 61.501, *et seq*. The UCCJEA allows Florida courts to modify out-of-state custody orders when jurisdictional requirements are met, as they are here. *Hamill v. Bower*, 487 So. 2d 345 (Fla. 5th DCA 1986). The trial court's dismissal disregarded Florida's statutory authority to modify the Pennsylvania order and failed to prioritize the child's best interests, as required under Fla. Stat. § 61.13.

Additionally, Florida's Grandparent Visitation statute, Fla. Stat. § 752.011(9), provides that "[a]n order for grandparent visitation may be modified only upon a showing by the person petitioning for modification that a substantial change in circumstances has occurred and that modification of visitation is in the best interests of the child." The trial court dismissed the petition seeking modification based solely on the trial court's erroneous conclusion that a Florida court lacked jurisdiction to modify the *Final Order of Court*. R-12-14, notwithstanding the *Consent Final Judgment Domesticating Foreign Decree,* R-16-22 (emphasis added). The trial court's reliance on Fla. Stat. § 61.516, a statute governing custody disputes, not

grandparent visitation, was misplaced and improperly blocked the Appellants-Parents' statutory right to seek modification under Fla. Stat. § 752.011(9). The trial court's decision undermines the legislative framework that prioritizes the rights of parents and the best interests of a child.

The dismissal conflicts with the UCUCCJEA's jurisdictional framework, the Full Faith and Credit Clause, and Florida's statutory protections for parents while allowing, under limited circumstances, for grandparents to be awarded and to retain visitation provisions. The trial court did so even while finding and recognizing that:

> Pennsylvania's law regarding a grandparent's right to visitation with grandchildren is broader than and conflicts with Florida's grandparent rights, as Florida law prohibits as unconstitutional a court awarding grandparent visitation rights under the facts of this case. Had the [Appellee] grandmother petitioned this Florida court for visitation with her minor grandchild, said petition would have been dismissed as unconstitutional under Florida law. Furthermore. [sic] Therefore, a Florida court did not have authority to initially award the [Appellee] grandmother any rights to the minor child.

R-92-93 and R-141, ¶L.

Reversal is necessary to provide the State of Florida with jurisdiction to modify the *Final Order of Court*. R-12-14 and to allow the Appellants-Parents their statutory and constitutional right to present their case for modification on the merits.

PART FIVE: ARGUMENT AND CITATIONS OF AUTHORITY

A. THE TRIAL COURT ERRED IN DISMISSING THE MODIFICATION ACTION AFTER TAKING JURISDICTION FOR ALL PURPOSES.

The trial court took jurisdiction over the parties and the subject matter with the consent of all parties when it domesticated the Pennsylvania *Final Order of Court,* R-12-14, with the entry of the *Consent Final Judgment Domesticating Foreign Decree*. R-23-29. The trial court explicitly retained jurisdiction to enforce or modify the judgment. *Id.,* R-25 ¶3.[1] This retention of jurisdiction was consistent with Fla. Stat. § 61.514, which grants Florida courts the jurisdiction to make an initial child custody determination if

[1] "The Court retains jurisdiction, and upon application for the enforcement or modification of this judgment, a party so required shall be and appear before the Court at the time specified by Motion and Notice of Hearing or in an Order of the Court." R-25 ¶3.

Florida is the child's home state or if no other state has jurisdiction. *Durham v. Butler*, 89 So. 3d 1023(Fla. 5th DCA 2012); *Hindle v. Fuith*, 33 So. 3d 782 (Fla. 5th DCA 2010). The child has resided in Florida since July 2021, making Florida the home state under Fla. Stat. § 61.514(1)(a). *Litsch v. Litsch*, 372 So. 3d 315 (Fla. 2d DCA 2023); *Jackson v. Jackson*, 390 So. 2d 787 (Fla. 5th DCA 1980).

The trial court's dismissal of the Appellants' *Supplemental Petition for Modification* action contradicts its earlier assertion of jurisdiction and undermines the principle of judicial consistency. R-32-38. Once established with the consent of the Appellee-Grandmother, jurisdiction by the Florida trial court should not be dismissed without an overriding legal mandate, which is lacking here. To the contrary, the trial court's dismissal upon an erroneous finding that the trial court "lacks" subject matter jurisdiction disregards the statutory authority cited herein regarding jurisdiction and grandparent visitation and also the substantial connection between the child, the parents, and Florida

and the availability of evidence concerning the child's care, protection, and relationships in Florida.

B. FLORIDA STATUTES CHAPTER 61 DOES NOT APPLY TO GRANDPARENT VISITATION.

Florida Statutes Chapter 61, by its very title, governs the dissolution of marriage, support, and time-sharing. Fla. Stat. § 61.501 *et seq.* does not apply to grandparent visitation, not explicitly nor by even an expansive read of Fla. Stat. § 61.502 and Fla. Stat. § 61.503, which are limited to child custody matters (and, by inclusion within Chapter 61 "Dissolution of Marriage; Support; Time-Sharing" and Parts I, II, III and IV all limited to matters between parents and those acting in a parental capacity, do not apply to grandparent visitation). The Florida Legislature addresses every aspect of grandparent visitation within Fla. Stat. § 752.001 *et seq.*

Respectfully to this Court of Appeals and decisions by other Florida appellate courts, Fla. Stat. § 61.503(3)'s definition of "Child custody determination" that includes the term "visitation" only within the context of "a proceeding for divorce, separation, neglect, abuse,

dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence." Accordingly, an action for grandparent visitation does not permit the evisceration of Fla. Stat. § 752.011(9), governing modification of grandparent visitation orders, by application of Fla. Stat. § 61.501, *et seq*. See *Yohem v. Yohem*, 295 So. 2d 656 (Fla. 1st DCA 1974). Fla. Stat. § 61.501 *et seq.* does not explicitly extend to grandparents and does not address or apply to cases involving grandparent visitation rights where no custodial rights, responsibilities, or claims have been granted or asserted. The statutory language and purpose of Fla. Stat. § 61.501 *et seq.* make it clear that it is designed to resolve disputes involving custody or parental responsibility rather than matters of limited visitation rights granted to a nonparent, such as a grandparent.

The Appellee-Grandmother's visitation rights were established under Pennsylvania law, which is broader than Florida's grandparent visitation statutes. Florida courts have consistently held that grandparent visitation rights must meet strict constitutional standards, including a showing of harm to the child if visitation is

denied. See *Overstreet v. Overstreet*, 244 So. 3d 1182 (Fla. 1st DCA 2018); *Richardson v. Richardson*, 766 So. 2d 1036, 1037 (Fla. 2000).

In this case, the Pennsylvania court issued the *Final Order of Court* in 2022 granting the Appellee-Grandmother visitation rights. Still, it did not establish, grant, or affirm any custodial responsibilities or rights to her. R-12-14. The concept of non-custodial visitation is supported by *Hurst v. Hurst*, 971 So. 2d 970 (Fla. 2d DCA 2008), where the court clarified that visitation rights can be granted independent of custody provisions, emphasizing the separate legal standards applied to custody and visitation arrangements. Despite the trial court's reliance on Fla Stat. § 61.516 to evaluate jurisdiction, the statute is wholly inapplicable to this case, as it does not apply to non-custodial parties seeking visitation with a grandchild. Florida's statutory scheme distinguishes between custody disputes and visitation rights, treating them under different statutory sections entirely.

Further, Fla. Stat. § 61.514, which governs jurisdiction to make an initial child custody determination, provides the relevant framework for this case under the Uniform Child Custody

Jurisdiction and Enforcement Act (UCCJEA). Under this statute, Florida, as the child's home state since 2021, has jurisdiction to modify the Pennsylvania order once domesticated. The UCCJEA, as codified in Florida law under Fla. Stat. § 61.501, emphasizes the need for a child's home state to maintain jurisdiction over custody modifications, ensuring consistency and legal clarity in the handling of child custody matters. The Pennsylvania order did not create any custodial arrangement that would preserve Pennsylvania's exclusive jurisdiction under the UCCJEA framework. Instead, it only granted visitation rights to the grandmother, without any accompanying legal authority or custodial designation.

The trial court's reliance on Fla. Stat. § 61.516 thus represents a critical misstep in statutory application. By attempting to apply a custody-specific statute to a visitation matter, the court failed to consider the correct legal framework under which grandparent visitation rights should be assessed. Fla. Stat. § 752.071 explicitly addresses grandparent visitation orders and provides parents and courts with the authority to modify visitation when necessary to align with the child's best interests or accommodate changing

circumstances. Legislative intent is further expressed in the legislative findings of Chapter 752, which recognize the importance of maintaining familial bonds, as illustrated in *Galicia v. Jamaica*, 966 So. 2d 496 (Fla. 3d DCA 2007), which reaffirmed the right of grandparents to seek visitation only under specific conditions. These distinct provisions illustrate the legislative intent to handle such matters separately from the custody provisions under Chapter 61, including Fla. Stat. § 61.516.

The misapplication of Fla. Stat. § 61.516 is further underscored by its procedural and substantive intent. This statute is designed to regulate jurisdictional issues in custody modifications where competing parental custodial rights or claims exist. Here, no such claim is present, nor does the Appellee-Grandmother have a caregiving role or custodial arrangement requiring determination or adjudication under this statute. Instead, her limited visitation is governed by provisions relating specifically to grandparent visitation, which contemplate the narrow and specific nonparent nature of her role in the child's life. Fla. Fam. L. R. P. 12.760 provides that the appropriateness of a visitation order must consider the best interests

of the child, ensuring that the child's welfare is paramount in visitation determinations. Accordingly, the trial court's application of Fla. Stat. § 61.516 to determine jurisdiction is erroneous.

The clear statutory distinction between custody and visitation orders ensures that different areas of law are not conflated to produce erroneous results. The Pennsylvania *Final Order of Court,* R-12-14, granted only visitation and fell squarely within the scope of Florida's GPV (Grandparent Visitation) statutes, Fla. Stat. § 752.001 *et seq.,* and the UCCJEA, Fla. Stat. § 61.501 *et seq*. The trial court's failure to recognize and apply these distinctions deprived Florida of its proper jurisdiction to modify the Pennsylvania order and created unnecessary procedural barriers for the Appellants-Parents to assert their rights. The court's reliance on an inapplicable statute must be reversed to ensure judicial consistency with Florida's statutory framework, the constitutions of Florida and the U.S.A., and the child's best interests. Furthermore, policy considerations emphasize the judiciary's role in safeguarding the fundamental constitutional rights of parents, particularly when such parental rights of fit parents are eroded (perhaps unconstitutionally by grandparent visitation

statutes).

C. THE TRIAL COURT ERRED IN CLASSIFYING APPELLEE-GRANDMOTHER AS A "PERSON ACTING AS A PARENT" UNDER FLA. STAT. § 61.516.

The classification of Appellee-Grandmother as a "person acting as a parent" directly conflicts with the statutory definition in Fla. Stat. § 61.503(13) and (14), within Chapter 61, which is limited to "Dissolution of Marriage; Support; Time-Sharing," which state:

> (13) "Person acting as a parent" means a person, other than a parent, who:
> (a) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within 1 year immediately before the commencement of a child custody proceeding; and
> (b) Has been awarded a child-custody determination by a court or claims a right to a child-custody determination under the laws of this state.
> (14) "Physical custody" means the physical care and supervision of a child.

Because grandparent visitation is not within Chapter 61, neither criterion has been met in the present case, and the trial court's determination represents a significant departure from both the statutory language and established legal precedent.

The statutory requirement under Fla. Stat. § 61.503(13) is unequivocal in its emphasis on physical custody as a key factor in determining whether an individual is acting as a parent. Physical custody, by its very nature, requires consistent, day-to-day caregiving responsibilities and control over the child's residence. A person who maintains only temporary or limited visitation—particularly as conferred by a court order—does not, and cannot, acquire the status of a "person acting as a parent" under this statute. This interpretation is supported by the difference between grandparent "visitation" terms and "custody" which includes parental authority to make medical, education, and other child-rearing duties and responsibilities. Under Fla. Stat. §§ 61.13(2)(b) and 752.01, even a grandparent who has court-sanctioned visitation rights is precluded from being classified as a "person acting as a parent" without evidence of parental physical custody or parental legal custodial authority.

The record in this case demonstrates that the grandmother has, at no point, exercised physical custody of the minor child as that term is intended and is defined. If merely having a child in the

presence of an adult authorized to have the child present, then any caregiver whether a medical provider, a teacher, or a neighbor could fit within the terms of having "physical custody" and thereby qualify as having a "person acting as a parent." Such an absurd result cannot be countenanced. Instead, Appellee-Grandmother's role has been strictly limited to periods of court-ordered visitation as granted by the Pennsylvania *Final Order of Court*. R-12-14.

The distinction between visitation and physical custody is not merely semantic; it is fundamental to the statutory scheme underpinning Florida's child custody laws and is critical to preserving the distinction between caregivers who have primary parental responsibility over a child and those with ancillary contact rights. Legal precedent further affirms this distinction. In *Von Eiff v. Azicri*, 699 So. 2d 772 (Fla. 1997), the Florida Supreme Court underscored that grandparent visitation provisions do not vest a grandparent with the rights, responsibilities, or authority consistent with parental custodial rights. Similarly, in *Dennis v. Kline*, 120 So. 3d 11 (Fla. 4th DCA 2013), the court reiterated that visitation rights

do not confer the kind of "decision-making authority" typified by legal or physical custody.

Additionally, the Pennsylvania *Final Order of Court* at issue in this case granted the grandmother only a limited visitation schedule, explicitly falling short of granting her any form of legal or physical custody. R-12-14. Such an order cannot serve as a basis for granting her the designation of "person acting as a parent" under Fla. Stat. §§ 61.516 and 61.503(13). Florida courts have consistently declined to conflate visitation rights with custodial rights.

In *Bedingfield v. Bedingfield*, 417 So. 2d 1047 (Fla. 4th DCA 1982), the court explicitly held that temporary or occasional visitation cannot satisfy the criteria necessary to transfer custodial authority. The principle that physical custody must involve consistent care and control is reiterated throughout Florida case law, solidifying the trial court's error in this case. Furthermore, the plain language of the UCCJEA reinforces that jurisdictional determinations must prioritize the state with the closest connection to the child, which in this case is indisputably Florida due to the child's continuous residence in the state since 2021.

By misclassifying the grandmother as a "person acting as a parent," the trial court has erroneously elevated visitation to a status merely grandparent visitation does not have. Such an interpretation disregards the statutory framework that carefully delineates visitation rights for grandparents from the custodial responsibilities required under law. This misclassification constitutes not only a misapplication of Florida law but also a failure to ensure that custody decisions are firmly grounded in the statutory and jurisdictional mandates of the UCCJEA. The Appellants-Parents and the minor child, residents of Florida since 2021 with a clear home state designation under Fla. Stat. § 61.1308, are entitled to have their rights and interests adjudicated in accordance with Florida law, as the trial court determined is far more protective of the rights of parents and Pennsylvania grandparent visitation law is "unconstitutional, R-92-93 and R-141, ¶L, free from any undue interference predicated on an erroneous reading of the law.

In *Mattingly v. Hatfield*, 395 So. 3d 585 (Fla. 1st DCA 2024), the court affirmed that mere visitation, no matter how regular or structured, does not confer the type of day-to-day authority and

responsibility necessary to establish physical custody under this definition. The record in this case makes it evident that the Appellee-Grandmother was never awarded physical custody of the child—not even on a temporary basis. Her role has been limited to court-ordered visitation, which is distinct from physical custody within the meaning of Fla. Stat. § 61.503(13) and (14). As clarified in *Von Eiff v. Azicri*, 699 So. 2d 772, 781 (Fla. 3d DCA 1997), visitation rights for extended family members, such as grandparents, are designed to provide access to the child but do not confer any of the substantive custodial responsibilities or rights required to elevate them to the status of a custodian or "person acting as a parent." This principle underscores a necessary distinction between visitation rights and custodial authority, a distinction that caused the trial court to err.

Under Fla. Stat. § 61.13(2)(b), any decision involving actual custody is reserved for individuals legally designated as custodians, rather than for third parties with visitation privileges. These statutes collectively form the legal framework by which Florida courts evaluate custodial classifications, and that framework was significantly misapplied by the trial court's ruling. *See also Dennis v. Kline*, 120

So.3d 11, (Fla. 4th DCA 2013) (visitation serves an ancillary purpose that does not carry with it the control and authority characteristic of physical custody); *Perez v. Giledes*, (Fla. 5th DCA 1981) (physical custody requires more than auxiliary contact). Thus, the grandmother's periodic visitation, even if compliant with the Pennsylvania order, does not meet the statutory requirements for "person acting as a parent" as defined by Fla. Stat. § 61.503(13).

Moreover, policy considerations embedded in Florida custody laws strongly reinforce the statutory limitations placed on third parties seeking to claim a custodial designation. The rigorous requirements aim to preserve the primacy of parents' rights while simultaneously facilitating limited access for appropriate family members in a manner consistent with the child's best interests. Florida courts have explicitly acknowledged this balance. UCCJEA emphasizes the importance of correctly classifying orders to avoid jurisdictional conflicts. Misclassification of visitation orders as custody orders can lead to complications, as the UCCJEA applies specific jurisdictional standards to each type of order. This policy ensures that those who are not primary caregivers cannot improperly

interfere with jurisdictional determinations based on misleading classifications—a concern vividly present in this case due to the trial court's mischaracterization of the grandmother's role under the order granting merely *grandparent* visitation. Thus, the trial court's decision to classify the grandmother as a "person acting as a parent" was erroneous. The trial court's reliance on Fla. Stat. § 61.516 to dismiss the modification action thus is misplaced, as the statute applies to persons acting as parents, not to grandparents with limited visitation rights. *Ramey v. Thomas*, 483 So. 2d 747 (Fla. Dist. Ct. App. 1986).

D. FLORIDA HAS JURISDICTION UNDER FLA. STAT. § 61.514.

Florida is the child's home state under Fla. Stat. § 61.514(1)(a), as the child has resided in Florida for over three years, see *Jackson v. Jackson*, 390 So. 2d 787; *Cleveland v. Cleveland*, 692 So. 2d 304 (Fla. Dist. Ct. App. 1997). The statute grants Florida courts the jurisdiction to make an initial child custody determination if Florida is the home state or if no other state has jurisdiction, see *Barnes v. Barnes*, 124 So. 3d 994 (Fla. DCA 2013); *Skiles v. Gloeckner*, 645 So.

2d 109 (Fla. 5th DCA 1994). The Pennsylvania court no longer has exclusive, continuing jurisdiction, as the child and parents no longer reside in Pennsylvania, and substantial evidence concerning the child's care is now located in Florida.

E. THE DISMISSAL CONFLICTS WITH THE FULL FAITH AND CREDIT CLAUSE, FLORIDA'S GRANDPARENT VISITATION STATUTES, AND THE UCCJEA EVEN AS MISAPPLIED TO GRANDPARENT VISITATION.

The Full Faith and Credit Clause requires Florida courts to recognize and enforce valid judgments from other states, including the Pennsylvania *Final Order of Court*. R-12-14. However, the UCCJEA allows modification of out-of-state custody orders if the original state no longer has jurisdiction or if Florida is a more appropriate forum, see *Hamill v. Bower*, 487 So. 2d 345 (Fla. 5th DCA 1986); *Lawlor v. Rasmussen*, 745 So. 2d 561 (Fla. 1st DCA 1999). The trial courts dismissal conflicts with Florida's grandparent visitation statutes and these principles by failing to consider Florida's jurisdictional authority under the UCCJEA, even when misapplied to

a grandparent visitation modification action. *See* citations of authority and arguments herein above.

The Appellants-Parents and the Appellee-Grandmother domesticated the Pennsylvania grandparent visitation order by consent. R-16-22. Once domesticated, the Pennsylvania *Final Order of Court* stood as an enforceable decree under Florida law, and Florida courts acquired the authority to modify it if appropriate grounds were met. R-12-14.

UCCJEA. Fla. Stat. § 61.514(a) provides that jurisdiction lies in the child's home state, which in this case is indisputably Florida. Pennsylvania no longer retains exclusive continuing jurisdiction under Fla. Stat. § 61.515.

Instead of acknowledging the child's changed residence and Florida's status as the home state, the trial court improperly curtailed its jurisdiction by misapplying Fla. Stat. § 61.516, which pertains specifically to custody determinations between parents or individuals acting as parents—not third parties, as is Appellee-Grandmother, who have only been granted visitation rights. This

erroneous reliance wrongly limited Florida's ability to address the petition for modification.

Furthermore, this dismissal undermines the central principles of UCCJEA. The UCCJEA was adopted to eliminate jurisdictional disputes and ensure that custody and visitation matters are adjudicated in the state best positioned to evaluate the child's needs and interests. Here, Florida is unquestionably the most suitable forum for determining the child's current best interests. Relevant evidence, including the child's educational records, healthcare providers, and daily living circumstances, is situated in Florida, not Pennsylvania. Refusing to exercise jurisdiction disregards the child's connection to Florida and prioritizes a procedural technicality over the substantive rights of the parents and the well-being of the child involved.

The case law reinforces this interpretation. Domestication of out-of-state custody or visitation orders under the UCCJEA requires Florida courts to recognize and enforce them. *Downs v. Ledoux-Nottingham*, 219 So. 3d 244 (Fla. 5th DCA 2017). Enforcement following domestication does not preclude Florida courts from

assuming jurisdiction to modify such orders where circumstances warrant it and where Florida is the appropriate forum—which is the situation here. *Id.* The dismissal by the trial court fails to honor this guiding principle and erroneously disregards Florida's statutory jurisdictional and constitutional obligations.

Finally, this dismissal unnecessarily creates procedural obstacles to the enforcement and modification of a valid visitation order. The Full Faith and Credit Clause, coupled with the UCCJEA, is designed to protect interstate consistency while respecting the legislative framework of the enforcing state. The trial court's failure to give proper effect to the domesticated Pennsylvania order—and its refusal to exercise jurisdiction to modify it in light of the family's clear ties to Florida—undoubtedly contravenes these foundational legal principles.

The dismissal must be reversed to align with these principles and to preserve the rights of the Appellants-Parents who are seeking appropriate relief within the jurisdiction that properly applies to their circumstances.

F. LEGISLATIVE INTENT REQUIRES THE HARMONIZATION OF STATUTES.

The legislative intent of Florida's family law statutes underscores the need for harmonization, ensuring statutes uphold parental rights while addressing children's welfare. Courts are required to interpret overlapping statutes to avoid conflict and preserve legislative purposes. *Johnson v. State*, 78 So. 3d 1305 (Fla. 2012). Florida's statutory framework, including Fla. Stat. § 61.516 under the UCCJEA and Chapter 752 governing grandparent visitation, reflects distinct purposes: Fla. Stat. § 61.516 focuses on jurisdictional issues in custody disputes between parents and not between nonparents unless a "person acting as a parent" pursuant to a court order for more than grandparent visitation, while Chapter 752 addresses grandparent visitation within strict constitutional limits, requiring proof of harm to override parental objections.

Florida courts have consistently struck down portions of Chapter 752 as unconstitutional for infringing on parents' fundamental privacy rights absent a compelling state interest. In *Von Eiff v. Azicri*, 699 So. 2d 772 (Fla. 1997), the Florida Supreme Court

ruled Fla. Stat. § 752.01(1)(a) unconstitutional, emphasizing heightened privacy protections under the state constitution. Similar in *Ward v. Dibble* 683 So. 2d 666 (Fla. 5th DCA 1996); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000), *Lonon v. Ferrell*, 739 So. 2d 650 (Fla. 2d DCA 1999), and *Williams v. Spears*, 719 So. 2d 1236 (Fla. 1st DCA 1998) invalidated provisions of Chapter 752 that presumed visitation was in the child's best interests or improperly burdened parents to prove otherwise. Demonstrable harm to the child, not the "best interests" standard alone, is required to justify court-ordered grandparent visitation.

The trial court erred by applying Fla. Stat. § 61.516 to dismiss the Appellants' petition for modifying a Pennsylvania grandparent visitation order. The Pennsylvania order granted only visitation, not custody, placing the case squarely within Chapter 752's framework. Misapplying Fla. Stat. § 61.516 disregarded these rights and disrupted the legislative framework, creating procedural barriers and procedural inequities.

Key decisions, including *Quiceno v. Bedier*, 387 So. 3d 365 (Fla. DCA 2023), *S.G. v. C.S.G.*, 726 So. 2d 806 (Fla. DCA 1999), and

Richardson v. Richardson, 766 So. 2d 1036 (Fla. 2000), emphasize that parental rights are paramount. Courts cannot override these rights without proof of harm and must harmonize Fla. Stat. § 61.516 and Chapter 752 to maintain statutory consistency. Proper application ensures grandparent visitation orders reflect changing family dynamics, safeguard substantive parental rights, and remain aligned with the evolving best interests of the child.

The trial court's reliance on Fla. Stat. § 61.516 improperly conflated jurisdictional and substantive legal frameworks, denying the Appellants-Parents their statutory right to modify the Pennsylvania order. Legislative intent clearly distinguishes Chapter 752 as governing grandparent visitation rights, with Fla. Stat. § 61.516 limited to resolving jurisdictional disputes in custody cases between parents. To fulfill legislative intent and uphold procedural integrity, this Court must reverse the trial court's dismissal and remand the case for proper consideration under Chapter 752, allowing the Appellants to present why modification of the order is warranted and is in the child's best interests.

G. THE TRIAL COURT ERRED IN DENYING THE MOTION FOR RECONSIDERATION AND/OR REHEARING.

For all the reasons stated herein above, the trial court also erred in entering its *Order Denying [Appellants-Parents'] Motion for Reconsideration and/or Rehearing.* R-103-104 (superseded by the orders entered thereafter, R-138-143 and R-144-145).

PART SIX: CONCLUSION

For the reasons set forth herein, the Appellants-Parents respectfully request that this Honorable Court reverse the trial court, remand the case for further proceedings on the merits, and award Appellants-Parents such other and further relief as is warranted.

This 10th day of April 2025.

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above and foregoing *APPELLANTS-PARENTS' INTIAL BRIEF* was served upon Appellee-Grandmother by sending a PDF copy by email to counsel of record and through the Florida Courts e-filing portal:

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CERTIFICATE OF COMPLIANCE

I further certify that this brief satisfies all requirements of Florida Rule of Appellate Procedure 9.210(a)(2) regarding font, word count, and formatting. The brief uses Bookman Old Style 14-point font, complying with the typographical requirements set forth in the rule. Additionally, the brief does not exceed the word limit of 13,000 words for initial briefs, as established under the Florida Rules of Appellate Procedure.

I further certify that the formatting, citations, and style adhere to the standards required by the Florida appellate court system. All factual statements within this brief are supported by references to the record on appeal, and all legal arguments are supported by applicable statutes, case law, and binding precedent. This certificate is submitted as a good faith representation of compliance with all applicable rules and guidelines governing the preparation and submission of appellate briefs in the State of Florida.

This 10th day of April 2025.

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