

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 18-0536

IN RE THE MARRIAGE OF:

RAYMOND KREE KIRKMAN,

Petitioner/Appellant,

and

NADIYA KIRKMAN,

Respondent/Appellee.

APPELLEE'S BRIEF

On appeal from the District Court of the
Twentieth Judicial District of the State of Montana,
In and for the County of Sanders,
Before the Honorable James A. Manley
Cause No. DR-18-27

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I. STATEMENT OF THE ISSUE

The following issue (restated) is dispositive of this appeal:

1. Did the district court err when it entered an order protecting the parties' minor children from the Appellant, Raymond Kree Kirkman ("Kree"), pursuant to the temporary emergency jurisdiction provision of the Uniform Child Custody Jurisdiction Enforcement Act ("UCCJEA") when the order remains in effect until the summer of 2019 or until the original custody determination is modified by whichever court (Montana or Florida) is deemed to have continuing jurisdiction and modification actions were pending in both courts at the time the order was entered?

II. STATEMENT OF THE CASE

The Petitioner and Appellee, Nadiya Kirkman ("Nadiya"), responds to *Appellant's Brief* in this appeal from the Montana Twentieth Judicial District Court, Sanders County ("Montana Court"). On October 19, 2015, the Twentieth Judicial Circuit Court, Charlotte County Florida ("Florida Court") entered a final judgment in the parties' dissolution proceeding which incorporated the parties' July 17, 2015 *Relocation/Long Distance Parenting Plan* ("the Florida Parenting Plan"). See Appellee's Appendix "A." In January of 2016, Nadiya and the parties' children moved to Sanders County, Montana—the county in which the children were born and had spent the majority of their lives. D.C. Doc 28, ¶ 51.

On January 18, 2018, Kree filed a *Supplemental Petition to Modify Parenting Plan, or, Alternatively, Clarify Parenting Plan* in the Florida Court (“*Petition to Modify Parenting Plan*”). D.C. Doc. 28, Ex. “B.” In his *Petition to Modify Parenting Plan*, Kree requested that the Florida Parenting Plan be modified so that the children reside primarily with him in Florida, or in the alternative, that he be granted additional parenting time with the children. *Id.* On March 15, 2018 Nadiya filed a *Motion to Decline Continuing Jurisdiction and/or Transfer Matter due to Forum Non-Convenience and to Dismiss Request for Clarification and Order* in the Florida Court. *Id.* at Ex. “C.” In that filing, Nadiya requested that the Florida Court relinquish jurisdiction so that the Montana Court could assume jurisdiction under the inconvenient forum provision of the UCCJEA for purposes of modifying the Florida Parenting Plan. *Id.*

On June 6, 2018 Nadiya obtained a *Temporary Order of Protection* against Kree from the Sanders County Justice Court. D.C. Doc. 3; Hrg. Trans. 85:10-86:5 (July 24, 2018). The *Temporary Order of Protection* listed Nadiya, her husband Christopher Stough (“Christopher”), her stepdaughter (“Gabby”), and the parties’ minor children as protected parties. *Id.* On June 29, 2018 Kree filed a *Petition for Registration of Child Custody Order* in the Montana Court—Kree requested that the temporary order of protection action be removed from the justice court to be joined with the pending custody proceeding in the district court action. D.C. Doc. 3,

Respondent's Request for Removal from Justice Court to Sanders County District Court. The temporary order of protection was removed to the district court on July 3, 2018. D.C. Doc. 3.

On July 9, 2018 Nadiya filed her *Response to Petition for Registration of Foreign Custody Proceeding; and Counter-Petition for Montana to Assume Jurisdiction Over the Parenting of the Parties' Minor Children.* D.C. Doc. 5. In that pleading, Nadiya requested that the Montana Court modify the Florida Parenting Plan upon the Florida Court finding that Montana was a more convenient forum for the parties' custody proceeding. *Id.*

The Montana Court held evidentiary hearings on *Nadiya's Petition for Temporary Order of Protection* on July 24, 2018 and August 14, 2018. D.C. Doc. 18; D.C. Doc. 31. On August 21, 2018 the Montana Court issued a *Permanent Order of Protection* which protects Nadiya, Christopher, and Gabby permanently, and protects the parties' minor children temporarily until the issue of modification is properly determined by a court with jurisdiction, or until the children's 2019 summer vacation from school. D.C. Doc. 37. Kree filed his *Notice of Appeal* on September 13, 2018.

III. STATEMENT OF FACTS

Kree and Nadiya met in 2000 through an international dating agency. D.C. Doc. 37, pg. 3, lines 9-11. When the parties met, Nadiya was 21 years old and Kree

was 45 years old. *Id.* The parties married on October 16, 2001 and have two children together, 12-year-old twins, a daughter, M. N. K., and a son, K. K. K. D.C. Doc. 37, pg. 4, lines 8-10.

Kree abused Nadiya throughout the parties' marriage and continued to perpetrate acts of emotional and physical abuse after the parties separated. D.C. Doc. 28; D.C. Doc. 37, pg. 5, line 18. When Kree and Nadiya met, Nadiya was living in the Ukraine and Kree was living in the United States. D.C. Doc. 37, pg. 3, lines 9-11. Kree made several trips to visit Nadiya and eventually convinced Nadiya to move to the United States on a fiancé visa. D.C. Doc. 28, ¶ 5. After Nadiya was in the U.S., Kree forced Nadiya to sign a Prenuptial Agreement that he prepared. D.C. Doc. 37, pg. 3, lines 12-15; D.C. Doc. 28, ¶ 2. This agreement was later overturned by the Florida Court after the court determined that Nadiya could not have understood the agreement. D.C. Doc. 28, ¶ 2.

After Nadiya's citizenship paperwork was submitted, Kree told Nadiya that they would be moving to Montana. *Id.* at ¶ 3. Kree told Nadiya that he would make all of the decisions and that she was to obey him at all times. *Id.* Kree forbid Nadiya from attending school or obtaining her driver's license. D.C. Doc. 37, pg. 3, lines 12-15. Kree and Nadiya then moved to an isolated and remote area in the woods of Montana (in Sanders County) where Kree controlled every aspect of Nadiya's life. *Id.* at pg. 3, lines 17-25.

Kree kept Nadiya busy by forcing her to oil antique furniture, clean, and do other menial tasks as he demanded. D.C. Doc. 28, ¶ 5. Kree told Nadiya that she was his slave and that he was king. *Id.* Kree insisted that Nadiya work all of the time—if he saw her resting, he would threaten to throw her out on the streets. *Id.* Kree told Nadiya that she would get nothing if she left him and that she would be deported. D.C. Doc. 37, pg. 3, lines 21-25. Kree introduced Nadiya to various individuals as his “slave” or “sex slave.” *Id.* at pg. 3, lines 19-21.

In 2005, Nadiya became pregnant with the parties’ twin children. See e.g. D.C. Doc. 37, pg. 4, lines 8-9. Kree adheres to a form of religion which teaches its congregation that the husband is the king who is to be served by all other members of the family. D.C. Doc. 37, pg. 3, lines 17-19; D.C. Doc. 28, ¶ 11. This religion also idealizes a strict vegetarian diet. D.C. Doc. 28, ¶ 1. During Nadiya’s pregnancy, Kree forbid her from eating any of her traditional foods even after she became protein deficient, ill, and risked miscarrying the parties’ children. *Id.*

In 2006, the parties’ children, K. K. K. and M. N. K., were born. D.C. Doc. 37, pg. 4, lines 8-10. Kree was negligent and careless with the children. D.C. Doc. 28, ¶ 12. When the children were four years old, Kree made the children ride in the back of the pickup truck down a dirt road with the back open. *Id.* at ¶ 13. Nadiya, who was hysterical, asked Kree not to force the children to ride in the back of the pickup alone but Kree just laughed at her. *Id.* On another occasion, Kree put K. K.

K. in his car seat but failed to buckle the car seat into the truck. *Id.* at ¶ 14. When Kree opened the truck later, K. K. K. fell in his car seat head first with the seat on top of him onto the concrete. *Id.* If Nadiya tried to direct Kree regarding the care of the children, he would tell her “no woman is going to tell me what to do.” *Id.* at ¶ 12.

Throughout the parties’ relationship, Kree repeatedly talked about building a “castle” and stated that he wanted to be the “king.” *Id.* at ¶ 15. While he was trying to build his “castle” in the woods in Sanders County, he started to fight with the community, the county, and local churches about his beliefs. *Id.* Kree would have arguments with others about women’s rights and race—he is a proud, self-proclaimed racist and sexist. *Id.* Kree often mentioned hiring someone to help “get rid of people” who were causing trouble for him in his efforts to build the “castle.” *Id.*

Over the years, Kree attempted to impart his racist ideology onto the parties’ children by telling them that white people are more intelligent and meant to rule black people and that black people are built to work in fields. D.C. Doc. 37, pg. 4, lines 1-5. Kree would call the children’s step-sister, who is bi-racial, “the nigger,” in the presence of the parties’ children. *Id.*

In November of 2009, Kree decided that the parties and their children would move to Florida. D.C. Doc. 28, ¶ 19. Nadiya had no idea what to expect regarding

this move as she was not part of the decision making and Kree would not provide her with any information. *Id.* While in Florida, Kree eventually allowed Nadiya to get her driver's license because he did not want to be burdened with transporting the children to school. *Id.* Nadiya asked Kree multiple times if she could go to school to learn English for the children's benefit but Kree refused. *Id.* Nadiya ultimately taught herself to speak English by watching television. D.C. Doc. 37, pg. 4, lines 6-7.

“Kree has a long history of violence, threats of violence, intimidation, and various kinds of abuse.” D.C. Doc. 37, pg. 2, lines 3-4. In addition to abusing Nadiya, Kree abused his first wife, Sandra Miller (“Sandra”), and the children he shares with Sandra. Hrg. Trans. I., 106:1-25; 107:1-13 (July 28, 2018). Kree and Sandra were married from 1978-1986 and had three children together. *Id.* at 105:17-22. During that marriage, Kree told Sandra that if he wanted her dead, she would be dead, and that he would hire a hitman to kill her. *Id.* at 106:11-22. After Sandra filed for divorce, Kree went to the house where Sandra was living with their three children and bulldozed the home down with all of her belongings inside. *Id.* at 106:1-5.¹ Kree also killed his prior wife's pet—placing her cat in a bag and throwing it in the river—and told Nadiya that he laughed while watching her look for the animal. D.C. Doc.

¹ Kree's actions were so extreme that Sandra's story was featured in People Magazine on November 4, 1985. See D.C. Doc. 28, Ex A.

37, pg. 3, lines 1-8. Kree shared information about his history of abusing his past partners with Nadiya for purposes of intimidating her. *Id.* at pg. 2, lines 21-23.

In June of 2015—when the parties’ marriage was ending—Kree attacked Nadiya in the parties’ home while she was collecting some of her belongings. D.C. Doc. 28, ¶ 22. During this incident, Kree grabbed Nadiya by the throat and pushed her up against a wall. D.C. Doc. 28, ¶ 22; D.C. Doc. 37, pg. 3, lines 4-5; Hrg. Trans. I., 93:10-18. This occurred in the presence of Gabby and M. N. K., and while K. K. K. was in the same house but out of eyesight. Hrg. Trans. I., 93:19-25. On June 20, 2015, Kree was arrested and charged with an act of domestic violence arising from this incident. D.C. Doc. 28, ¶ 23.

In July of 2015 the parties entered into a Marital Property Settlement Agreement and the Florida Parenting Plan which provides for the children to reside primarily with Nadiya in Montana and allows for Kree to parent the children for three long weekends each semester, six weeks during the summer, and some holidays. See Appellee’s Appendix “A.” At the time that the Florida Parenting Plan was entered Nadiya was without means to fight litigation and agreed not to oppose dismissal of Kree’s criminal charge in exchange for Kree permitting her and the children to relocate to Montana. D.C. Doc. 37, pg. 5, lines 4-7.

In 2016, after the parties’ divorce was finalized, Nadiya married Christopher. D.C. Doc. 28, ¶ 27. Nadiya, Christopher, K. K. K., M. N. K., and Gabby

(Christopher's daughter, age 14 at the time of the Sanders County proceeding) reside together in the home that the parties resided during their marriage in Sanders County, Montana. *Id.*

"Kree continued his threatening and intimidating behavior [towards Nadiya] after separation." D.C. Doc. 37, pg 5, line 18. On one occasion, prior to an exchange, Nadiya and Christopher woke up to Kree inside their home uninvited. D.C. Doc. 37, pg. 5, lines 20-21; Hrg. Trans. I., 82:6-8. On another occasion, Kree arrived early to pick up the children when Nadiya and Christopher were not at home and attempted to gain access to Nadiya's house. *Id.* at 123:6-10. Gabby (who was home alone with her grandfather) stepped outside and asked Kree to leave and come back at the scheduled time but Kree refused. *Id.* at 95:13-22.

Kree also continued to physically abuse Nadiya and the parties' children. During one exchange of the children, Kree was "advancing [towards Nadiya], yelling and threatening her," which resulted in law enforcement being called. D.C. Doc. 37, pg. 6, lines 1-2. On one occasion during his parenting time following the parties' separation, Kree physically abused the parties' son, K. K. K., by grabbing him by the throat and forcing him to stay outside in the car, at night and during cold weather, to 'teach him a lesson.' *Id.* at pg. 3, lines 5-7. Leading up to Nadiya requesting emergency protection from Kree, Kree threatened Nadiya that he would take the children so she would never see them again, and he refused to provide

Nadiya with a complete itinerary for his planned 2018 international summer travel as required by the Florida Parenting Plan. D.C. Doc. 37, pg. 6, lines 3-14; See Appellant's Appendix "A."

IV. STANDARD OF REVIEW

Whether a district court's action conforms to statutory requirements is a question of law, which is reviewed *de novo*. *Jacobsen v. Thomas*, 2006 MT 212, ¶ 13, 333 Mont. 323, 142 P.3d 859.

V. SUMMARY OF ARGUMENT

Throughout the parties' marriage and continuing after separation, Kree abused, threatened, and intimidated Nadiya and the parties' minor children. In June of 2018, following a string of abusive incidents perpetrated by Kree, Nadiya sought protection from the Montana Court for herself, the parties' children, Christopher, and Gabby. Following a contested hearing which spanned the course of two days and included more than eight hours of testimony, the Montana Court found that Nadiya, Christopher, Gabby, and the parties' children are "in reasonable apprehension of bodily injury, within the meaning of [Montana Code Annotated §] 40-15-102, and [that] [Nadiya, Christopher, and Gabby] are subjected to or threatened with mistreatment or abuse within the meaning of [Montana Code Annotated §] 40-7-204." D.C. Doc. 37, pg. 6, lines 18-21. The Montana Court then correctly applied Montana Code Annotated § 40-15-204 (2017) to permanently

protect Nadiya, Christopher and Gabby, and properly applied Montana Code Annotated § 40-7-204 (2017) to temporarily protect the parties' minor children until the issues of jurisdiction and subsequent modification of the parenting plan are resolved.

VI. ARGUMENT

In 1997 the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) approved the UCCJEA and recommended its enactment by all states. *Stoneman v. Drollinger*, 2003 MT 25, ¶ 14, 314 Mont. 139, 64 P.3d 997. In drafting the UCCJEA, the NCCUSL “explicitly recognized that past abuse or a continuing threat of violence might compel a battered spouse or parent of an abused child to relocate to another state.” *Stoneman*, ¶ 22. Accordingly, the UCCJEA reflects the understanding that domestic violence is often a causal factor of interstate custody disputes and contains explicit provisions that courts can utilize to protect victims of domestic violence. Deborah M. Goelman, *Shelter from the Storm: Using Jurisdictional Statutes to Protect Victims of Domestic Violence After the Violence Against Women Act of 2000*, 13 Colum J. Gender & L. 101, 131 (2004). To date, the UCCJEA has been adopted in 49 states, including Montana and Florida.

Montana adopted the UCCJEA in 1999 (codified under Title 40, Chapter 7, Mont. Code Ann.). *Stoneman*, ¶ 14. The UCCJEA provides that Montana courts can only exercise jurisdiction over parenting and custody issues if Montana is the

“home state” of the child whose parenting and custody is at issue. *In re Marriage of Sampley*, 2015 MT 121, ¶ 23, 379 Mont. 131, 347 P.3d 1281; Mont. Code Ann. §§ 40-7-101 and -201; *Stephens v. Fourth Judicial Dist. Court*, 2006 MT 21, ¶ 13, 331 Mont. 40, 128 P.3d 1026. A state court that is not the home state of the minor child is permitted to exercise jurisdiction over custody proceedings if the home state determines that it no longer has a significant connection to the child; the home state declines jurisdiction because it finds another state to be a more convenient forum; or temporary emergency jurisdiction is necessary to protect the child. *In re Marriage of Lloyd*, 2011 MT 133, ¶ 13, 361 Mont. 22, 255 P.3d 166.

The drafters of the temporary emergency jurisdiction provision of the UCCJEA, as codified in Montana Code Annotated § 40-7-204, explicitly acknowledged that “issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence.” Mont. Code Ann. § 40-7-204 [Commissioner’s Notes]. Accordingly, Montana Code Annotated § 40-7-204 “recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction” when minor children are involved. *Id.*

The relevant provisions of the UCCJEA, codified in Montana Code Annotated § 40-7-204, read:

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or **it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.**

...

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under 40-7-201 through 40-7-203, **any order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under 40-7-201 through 40-7-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or until the period expires.**

[Emphasis added].

As provided for in the statute, if a final custody determination has been made by a court with jurisdiction, the temporary emergency determination must lapse at the end of the specified period set forth in the order or when an order is obtained from the court with jurisdiction under Mont. Code Ann. § 40-7-202 or § 40-7-203. Mont. Code Ann. § 40-7-204 [Commissioner's Notes]:

A. The Montana Court properly applied Montana Code Annotated § 40-7-204 when issuing the Permanent Order of Protection which includes protective provisions temporarily modifying the Florida Parenting Plan.

On June 6, 2018 Nadiya filed her *Petition for Temporary Order of Protection* through which she requested that the Sanders County Justice Court protect her,

Christopher, Gabby, and the parties' minor children from further abuse by Kree. D.C. Doc. 3. Nadiya filed her *Petition for Temporary Order of Protection* following a series of abusive, threatening, and intimidating acts perpetrated by Kree after the parties' separation, including Kree: entering Nadiya's house while she was sleeping without Nadiya's knowledge or permission (D.C. Doc. 37, pg 5, lines 20-21); entering Nadiya's property uninvited, taking photographs without permission and refusing to leave after being asked to do so (*Id.* at pg. 5, lines 21-23); threatening Nadiya that he would take the children and she would never see them again (D.C. Doc. 28, ¶ 62); and refusing to provide Nadiya with a complete itinerary for his planned 2018 summer travel with the children to various countries as required by the Florida Parenting Plan (D.C. Doc. 37, pg. 6, lines 3-14).

Leading up to the filing of the *Petition for Temporary Order of Protection*, Kree had threatened Nadiya with further physical harm by "advancing [towards her], yelling and threatening her" during an exchange of the parties' children which resulted in law enforcement being called. D.C. Doc. 37, pg. 6, lines 1-2. Kree had also physically abused the parties' son, K. K. K., when he grabbed him by the throat and forced him to sleep outside in the car during cold weather. *Id.* at pg. 3, lines 5-7.

On June 29, 2018, Kree filed his *Petition for Registration of Foreign Child Custody Order* and removed the order of protection action from the Sanders County

Justice Court to the Sanders County District Court where his Petition was filed. D.C. Doc. 1. On July 12, 2018, Nadiya filed her *Counter-Petition for Montana to Assume Jurisdiction Over the Parenting of the Parties' Minor Children* for purposes of having the parties' parenting plan (that was entered in Florida) modified in Montana where the children had resided since 2016. D.C. Doc 5. Nadiya's *Petition for Temporary Order of Protection* came before the District Court for hearing on July 24, 2018 and August 14, 2018.

During the hearing on Nadiya's *Petition for Temporary Order of Protection*, which spanned the course of two days, the Montana Court interviewed the parties' minor children in-chambers and heard over eight hours of testimony from the parties and their witnesses. Following the hearing, the Montana Court found that "the children are afraid of their father and do not feel safe on trips with him."² D.C. Doc. 37, pg. 6, line 15. The Montana Court further found that Nadiya, Christopher, Gabby and the parties' children are "in reasonable apprehension of bodily injury, within the meaning of [Montana Code Annotated §] 40-15-102, and [that] [Nadiya and Christopher, Gabby] and the children are subjected to or threatened with

² Kree has taken the children to numerous countries during his summer parenting time. Doc. 36, ¶ 11. While traveling, Kree spends a lot of time on his phone and does not adequately supervise the children. *Id.* The district court found that when Kree traveled with the children to New York City, the children became separated from Kree on five occasions during which the children had to call Nadiya for help. *Id.* The children once lost track of Kree while traveling and later found him asleep on a public bench in a park. *Id.*

mistreatment or abuse within the meaning of [Montana Code Annotated §] 40-7-204” if the court did not act. D.C. Doc. 37, pg. 6, lines 18-21.

Accordingly, on August 21, 2018 the district court issued its *Permanent Order of Protection*, from which Kree has appealed to this Court. D.C. Doc 37. The *Permanent Order of Protection* protects Nadiya, Christopher and Gabby permanently, and temporarily modifies the Florida Parenting Plan by limiting Kree’s travel with the children, for purposes of protecting the children, until Kree’s summer 2019 visitation with the children. *Id.* at pg. 8, lines 1-10. The relevant provision of the *Permanent Order of Protection*, found on pages 7 and 8, reads:

2. Kree may exercise his school-year visitation with the children in Montana, Idaho or Washington, under the following restrictions:
 - a. Kree shall surrender the children’s passports to his Montana attorneys, who shall send them to Nadiya’s attorneys, to be kept by Nadiya pending further order of a Court of competent jurisdiction. Kree shall not take the children to any foreign country.
 - b. Kree may exercise his school-year [sic] visitation with the children in Montana, Idaho or Washington, under the following restrictions:
 - i. All visitations shall be preceded by 60 days notice, by email, regarding date and time of pickup and delivery, and specific itinerary;
 - ii. Pickup and delivery shall be by Kree at the office of the Sanders County Coalition for Families in Thompson Falls, Montana. Kree shall be responsible for any costs associated with this.

It is anticipated this Order will be modified or affected by the custody and visitation modification proceedings, once jurisdiction therefore is determined, before Kree’s summer, 2019 visitation. If not, he may return to this Court regarding that.

[Emphasis Added].

At the time the *Permanent Order of Protection* was issued, the following actions were pending before the Sanders County District Court and the Florida Court:

- Florida Court:

(1) Kree's *Supplemental Petition to Modify Parenting Plan, or Alternatively, Clarify Parenting Plan* (Petition to Modify") in which Kree requests that the Florida Parenting Plan be modified so that the children reside primarily with him filed in Florida on January 18, 2018 (See D.C. Doc. 28, Ex. "B");

(2) Nadiya's *Motion to Decline Exclusive, Continuing Jurisdiction and/or Transfer Matter Due to Forum Non Conveniens and to Dismiss Request for Clarification and Order* in which Nadiya requests that the Florida Court dismiss Kree's *Petition to Modify* and transfer the parenting case to Montana under the inconvenient forum provision of the UCCJEA filed in Florida on March 15, 2018 (See D.C. Doc. 28, Ex. "C").

- Montana Court:

Nadiya's *Counter-Petition for Montana to Assume Jurisdiction over Parenting of the Parties' Minor Children* in which Nadiya requested that the Sanders County District Court assume jurisdiction for purposes of modifying the Florida Parenting Plan filed in Montana on July 9, 2018. D.C. Doc. 5.

The order entered by the Montana Court is temporary in its application to the parties' children in accordance with Montana Code Annotated § 40-7-204. Kree cites to three nonbinding decisions from out-of-state courts in support of his position that the Montana court committed legal error in issuing the *Permanent Order of Protection*; however, each of those cases is easily distinguished from the case that is before this Court.

First, Kree cites to *In re Brode*, 566 S.E.2d 858 (N.C. App. 2002). In that case, the Court of Appeals of North Carolina examined an order issued by a lower level court under the UCCJEA in a dependency and neglect case. *Id.* The minor child at issue had been kidnapped by his noncustodial mother who relocated with him from Texas to North Carolina in 1999 after an order providing for the child's care had been entered by the Texas court. *Id.* 566 S.E.2d. at 859. One year later, Caswell County (North Carolina) Department of Social Services filed a petition which alleged that the minor child was a neglected and dependent juvenile. *Id.* The minor child was ultimately placed in the care of social services and father appealed. *Id.* 566

S.E.2d. at 859. On appeal, the Court of Appeals of North Carolina vacated the order entered by the trial court upon finding that the trial court had only temporary emergency jurisdiction under the UCCJEA, and that the order entered was “void of any language to indicate that it is temporary in nature.” *Id.* 566 S.E.2d. at 862.

Unlike the order at issue in *In re Bode*, the language contained in the *Permanent Order of Protection* issued by the Montana Court in this matter, and the circumstances surrounding the issuing of that order, clearly indicate that the order is temporary as it relates to the parties’ minor children. With regard to the duration of the order as it pertains to the minor children, the order reads: “It is anticipated this Order will be modified or affected by the custody and visitation modification proceedings, once jurisdiction therefore is determined, before Kree’s summer, 2019 visitation. If not, he may return to this Court regarding that.” D.C. Doc. 37, pg. 8, lines 8-10.

At the time the order was entered by the district court, both parties had already filed requests to modify the Florida Parenting Plan (Kree in the Florida Court and Nadiya in the Montana Court). Additionally, the issue of which court would ultimately hear the modification proceedings was pending in the Florida Court who had been tasked with deciding whether Montana is a more convenient forum for the parties’ custody proceeding under the UCCJEA. Based on the timing of the entry of the *Permanent Order of Protection*, and the plain language contained in that order,

it is clear that the Montana Court was operating under the assumption that the issue of jurisdiction would be resolved, and the Florida Parenting Plan would be modified by the court with jurisdiction, before the summer of 2019. Unlike the order in *In re Brode*, the order issued by the district court contains an anticipated expiration date.

Similarly, Kree relies on *In re A.A.*, 354 P.2d 1205 (Kan. App. 2015) and *In re Gino C.*, 244 Cal.App. 4th 959 (2014) in support of his position that the Montana Court committed legal error by issuing the *Permanent Order of Protection* which temporarily modified the Florida Parenting Plan. Again, these cases, both of which discuss a court's temporary authority under the UCCJEA are easily distinguished from the case at hand. Both cases discuss a lower court issuing a permanent order regarding parenting when only temporary relief was available under the UCCJEA. However, as discussed above, the modifications made by the Montana Court under Montana Code Annotated § 40-7-204 in this case are only temporary as it relates to the children. The clear language of the Montana Court's order establishes that the Order "will be modified or affected by the custody and visitation modification proceedings, once jurisdiction therefore is determined, before Kree's summer, 2019 visitation." *Permanent Order of Protection*, pgs. 7-8. The Montana Court did not issue a permanent order regarding the parties' children; therefore, the Montana Court did not commit legal error in issuing the *Permanent Order of Protection*.

VII. CONCLUSION

This Court has urged the district courts of Montana to give priority to the safety of victims of domestic violence when considering jurisdictional issues under the UCCJEA. *Stoneman*, ¶ 26. The Montana Court properly applied Montana Code Annotated § 40-7-204 to temporarily protect the minor children until the issues of jurisdiction and subsequent modification are resolved and properly applied Montana Code Annotated § 40-15-204 to permanently protect the children's step-sibling, stepfather, and mother, all of whom are threatened with, and subject to, abuse perpetrated by Kree. Accordingly, the Montana Court did not commit legal error in issuing the *Permanent Order of Protection* in this matter.

DATED this 21st day of March, 2019.

RIES LAW GROUP, P.C.




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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Rule 16 and 22 of the Montana Rules of Appellate Procedure that this Appellee's Brief is printed with a proportionately spaced roman text, typeface of 14 points, is double spaced, with a word count of 5198 and 22 pages.

DATED this 21st day of March, 2019.

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CERTIFICATE OF SERVICE

I, Brandi Rose Ries, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-21-2019:

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