

**IN THE SUPREME COURT  
OF THE STATE OF MONTANA**

Case No. \_\_\_\_\_

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**CATHY McCLURE,**

**Petitioner,**

**v.**

**MONTANA 20<sup>TH</sup> JUDICIAL DISTRICT COURT  
IN AND FOR SANDERS COUNTY,**

**Respondent.**

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**COURT BELOW:**

**THE HONORABLE JOHN W. LARSON, PRESIDING JUDGE**

**District Court Case No. DR-45-2024-0000008**

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**PETITION FOR WRIT OF SUPERVISORY CONTROL**  
**[EXPEDITED PROCESSING &**  
**EMERGENCY STAY REQUESTED]**

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 14 of the Montana Rules of Appellate Procedure, I certify that the typeface of this Petition is the proportionately spaced Century Schoolbook font of 14 points, is double-spaced except for footnotes and for quoted and indented material, and the word count calculated by Microsoft Word is 3,872 words, including those items excluded from the word limit by this Court's rules.

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

  
Dr. Joshua Kirk McGill, Esq.

# **PETITION**

## **I. BACKGROUND & PROCEDURAL HISTORY**

Cathy McClure is the maternal grandmother to two minor children, known in these proceedings as H.J.L., born 2015; and F.E.L., born 2018 (the “Children”). LeClair and his wife (McClure’s daughter) Mary LeClair were in the midst of a divorce. *See* Tulsa County Case No. FD-2020-2732. After the unexpected and tragic death of Mary LeClair, McClure filed a Motion for Grandparental Visitation with the District Court of Tulsa County, Oklahoma (the “Oklahoma Court”) on June 14, 2022 (the “Oklahoma Proceedings”). The Children’s father Thaddeus LeClair and the Children were all residents of and domiciled in Oklahoma at that time that McClure filed the Oklahoma proceedings. About two months after the Oklahoma Proceedings were filed, LeClair moved with the Children to his parents’ home in Montana. On January 24, 2023, the Oklahoma Court appointed a Guardian Ad Litem (“GAL”). On September 18, 2023, and subsequent to the move to Montana, the Oklahoma Court arraigned LeClair on a charge of contempt of the Oklahoma Court. A trial date is pending. On October 30, 2023, the Oklahoma Court issued a

preliminary Visitation Order pursuant to the recommendations of the GAL and agreement of the Parties.

On February 16, 2024, while the contempt charges were pending a trial date, LeClair filed a “Motion for UCCJEA Conference and for Emergency Order Modifying Grandparent Visits; Request for Hearing” with the Twentieth Judicial District Court in and for Sanders County, Montana (the “Montana Court”) in Case No. TR-24-08 (the “Montana Proceedings”), invoking the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA” or the “Act”). Therein, LeClair demanded that the Montana Court issue an emergency order overruling the Oklahoma Court’s preliminary grandparent visitation Order. LeClair did not file any Motion with the Oklahoma Court. The Montana Court conferred with the Oklahoma Court and set a UCCJEA Conference between the Oklahoma Court and the Montana Court.

The Court held the UCCJEA conference on May 28, 2024. Oklahoma Special District Judge Kirsten Pace presided in Oklahoma with the Honorable John W. Larson sitting in Montana. McClure was present on video as was her counsel, Ann Keele and J. Kirk McGill (Dr. McGill is also counsel of record in the Montana Proceedings). LeClair was

present in person in Judge Larson's courtroom in Missoula, Montana, with his Montana counsel Jenna Lyons appearing in person. Oklahoma counsel for LeClair, Thomas Askew and Steven Hale, appeared on video. The Oklahoma Court's GAL, Kensey Wright, appeared via video. Therapist David B. Stube was present in the Montana courtroom.<sup>1</sup>

After hearing argument from counsel, the Oklahoma Court found from the Bench that it has exclusive continuing jurisdiction pursuant to the UCCJEA (Oklahoma: 43 O.S. § 551-202, Montana: MCA § 40-7-202) because it properly had initial child custody jurisdiction under the UCCJEA (43 O.S. § 551-201, MCA § 40-7-201) by virtue of the Children and LeClair being residents of and domiciled in Oklahoma at the time McClure filed the Oklahoma proceedings, and thereafter properly issued an initial child custody determination when it adopted the preliminary grandparent visitation plan agreed to by the Parties as an Order of the Court. The Oklahoma Court accordingly found that the Montana Court can only have temporary emergency jurisdiction pursuant to the

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<sup>1</sup> McClure later learned that the Children were also apparently present in Judge Larson's courtroom, though Judge Larson did not disclose this fact or seek permission from the GAL or the Oklahoma Court.



UCCJEA (43 O.S. § 551-204, MCA § 40-7-204) in the event that an emergency occurs in future that is so precipitate, that relief must be sought from the Montana Court. That said, the Oklahoma Court found that no emergency currently existed and that none of the present circumstances, including enforcement of the Oklahoma Court's Order regarding grandparent visitation, constitutes an emergency. Therefore, the Oklahoma Court found that the Montana Court has no jurisdiction at this time. Judge Larson agreed during the hearing that his court has temporary emergency jurisdiction only, and that no emergency presently existed. He accordingly stayed the Montana proceedings from the bench during the hearing for lack of subject matter jurisdiction.

LeClair's counsel then argued that the Oklahoma Court should divest itself of its jurisdiction. Counsel for McClure argued that LeClair must first prove that an exception to exclusive continuing jurisdiction applies, and—if one does—thereafter move the Oklahoma Court to find that Oklahoma is an inconvenient forum, such that jurisdiction should move to the Montana Court. The Oklahoma Court approved a plan presented by counsel for McClure to the Court at the hearing for determining whether the Oklahoma Court retains exclusive continuing

jurisdiction and, if not, whether the Court should divest itself of jurisdiction and turn over jurisdiction to the Montana Court. The approved plan requires LeClair to first file a Motion with the Oklahoma Court seeking to divest it of its exclusive continuing jurisdiction, and—if the Oklahoma Court grants the Motion—permits the parties to conduct limited discovery on the inconvenient forum factors set forth in the UCCJEA (43 O.S. § 551-207, MCA § 40-7-207). Thereafter LeClair may file a Motion with the Oklahoma Court seeking to have the Oklahoma Court declare Oklahoma an inconvenient forum under the UCCJEA, thus moving jurisdiction to Montana. The Oklahoma Court also ordered that the parties simultaneously brief the issue of whether the Oklahoma Court should retain jurisdiction regardless of any inconvenient forum issues pending the trial of LeClair for contempt. In the meantime, the Oklahoma Court ordered from the bench that that its existing grandparent Visitation Order remain in place, and all Parties cooperate in carrying out the same and the other orders of this Court.

The Oklahoma Court issued a Minute Order from the bench memorializing its decisions, pending entry of a formal order after

conferral between the parties. A copy of the Oklahoma Court's Minute Order is attached hereto as Exhibit 1.

The Montana Court issued a Minute Order confirming Judge Larson's agreement with the Oklahoma Court's reasoning and actions, and confirming his stay of the Montana proceedings, on May 29, 2024. A copy of that Order is attached hereto as Exhibit 2. Therein, Judge Larson stated: "If motions need to be made in the interim about non-emergent changes, it'll need to be done in Oklahoma . . . Judge Larson Stays everything from the bench regarding DR 24-08, except for an emergent issue."

However, on Sunday June 2, 2024, the Montana Court issue an order titled:

Emergency Order Lifting Stay of Montana Parental Custody Case, Order Setting Evidentiary Hearing and Order Directing Telephoinc [sic] or video visitation between the children and grandmother to be on Our Family Wizard recording app.

A copy of the Order is attached hereto as Exhibit 3 (hereafter the “Montana Order”).<sup>2</sup> Therein, the Montana Court unilaterally modified the Oklahoma Court’s visitation Order by requiring that all McClure’s future virtual visits be recorded on the Our Family Wizard recording app. The Montana Court also directed the parties to appear at an evidentiary hearing on June 14 to “to better determine jurisdictional issues and to avoid another apparently unsuccessful and unnecessarily stressful visit between the children, their maternal grandmother and the Oklahoma Guardian ad Litem” and further announced that the Court would hear from LeClair and Stube at the hearing (but not, apparently, from the Oklahoma Court’s GAL or McClure), and would also personally interview the children *in camera*—without permission of the GAL or the Oklahoma Court. This stunning—and unlawful—order of the Montana Court in

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<sup>2</sup> Judge Larson originally signed and dated his Order on Sunday June 2, and the Clerk emailed the Order to counsel on June 3. See Exhibit 3, pp. 4–6. Judge Larson later re-signed the same order but dated it June 3, and that is the document that appears on the Montana Court’s docket. See Exhibit 3, pp. 1–3. The Montana Court did not explain the reason for this discrepancy, so we refer to the Order as the Order of June 2 / 3.

defiance of the laws of Montana and Oklahoma necessitates McClure seeking extraordinary relief from this Court on an expedited basis.

## **II. STATEMENT OF THE LAW**

### **A. THE WRIT OF SUPERVISORY CONTROL**

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)–(c). Whether supervisory control is appropriate is a case-by-case decision. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754 (citations omitted).

### **B. TEMPORARY EMERGENCY JURISDICTION UNDER THE UCCJEA**

The UCCJEA's temporary emergency jurisdiction provision (43 O.S. § 551-204(A); (MCA § 40-7-204(1)) states:

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.

Thus, temporary emergency jurisdiction for the Montana Court only exists in the framework of this case where there is an imminent threat of mistreatment or abuse to the children or LeClair requiring a *temporary* emergency remedy from the Montana Court.

The Official Comment to Section 204 provides further clarification and states in pertinent part:

The provisions of this section are an elaboration of what was formerly Section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

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. . . a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 201-203 enters an order.

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Subsection (c) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act . . . Subsection (c) allows the temporary order to remain in effect only

so long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 201-203. That time period must be specified in the order . . . .

Further, Section 204(C) (43 O.S. § 551-204(C); MCA § 40-7-204(3)) states:

If there is a previous child custody determination that is entitled to be enforced under this act . . . any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction . . . .

(emphasis added)

Thus, because the Oklahoma Court has exclusive continuing jurisdiction, even if there is a bona fide emergency in Montana, any Order issued by the Montana Court is only valid while the Party that received the Order in Montana seeks relief in the Oklahoma Court. In other words, the Oklahoma Court's jurisdiction controls over the temporary jurisdiction of the Montana Court.

Finally, Section 204(D) (43 O.S. § 551-204(D); MCA § 40-7-204(4)) states in pertinent part:

. . . A court of this state which is exercising jurisdiction pursuant to . . . this act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section **shall immediately communicate with the court of**

**that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.**

(emphasis added). Thus, even where a court in another state (in this case, Montana) issues a proper emergency order, it must both include a timeframe for seeking relief in the home court (in this case, Oklahoma), and promptly confer with the home court about how to resolve the emergency. Where the court claiming temporary emergency jurisdiction fails to do so, its order is invalid. *See, e.g., In re J.J.*, 2007 OK CIV APP 72, ¶ 8, 167 P.3d 980, 982 (invalidating temporary emergency order by Oklahoma court that failed to include the period for the parties to seek relief from the home state court).

### **III. DISCUSSION & APPLICATION OF THE LAW**

#### **A. THE PETITION PRESENTS A PURE QUESTION OF LAW**

The question before the Court turns entirely on the legal question of the Montana Court's subject matter jurisdiction.



## **B. THE MONTANA COURT IS WITHOUT SUBJECT MATTER JURISDICTION**

- 1. The Oklahoma Court already found that it has exclusive and continuing jurisdiction, and the Montana Court agreed.**

The Oklahoma Court has exclusive continuing jurisdiction pursuant to the UCCJEA (43 O.S. § 551-202; MCA § 47-7-202) because it properly had initial child custody jurisdiction under the Act (43 O.S. § 551-201; MCA § 47-7-201) by virtue of the children then living in Oklahoma and within the Oklahoma Court's judicial district at the time McClure filed the Oklahoma Proceedings, and the Oklahoma Court thereafter properly issued an initial child custody determination when it adopted the preliminary grandparent visitation plan agreed to by the Parties as an Order of the Court. Therefore, the Oklahoma Court has exclusive and continuing jurisdiction at this time. Judge Larson agreed in his Minute Order of May 29. *See Exhibit 2.*

- 2. There is no emergency and, therefore, there is no temporary emergency jurisdiction for the Montana Court.**

The Montana Court's Order does not seek to remedy an immediate threat to the health and safety of the children or LeClair as required for temporary emergency jurisdiction under the Act. Rather, the Montana Order states the purpose of the Order is "to better determine

jurisdictional issues and to avoid another apparently unsuccessful and unnecessarily stressful visit between the children, their maternal grandmother and the Oklahoma Guardian ad Litem.” Seeking to “better determine jurisdictional issues” is not a remedy to an immediate threat to the health and safety of the children or LeClair. To avoid “another apparently unsuccessful and unnecessarily stressful visit between the children, their maternal grandmother and the Oklahoma Guardian ad Litem” is not a remedy to an immediate threat to the health and safety of the children or LeClair. Thus, nothing has changed since the May 28 hearing—there was no emergency then, there is no emergency now. Therefore, because there is no emergency, there can be no temporary emergency jurisdiction for the Montana Court.

**3. Independently, the Montana Court’s Order is not temporary and fails to state the time for seeking relief from this Court, which is facially fatal to its jurisdiction.**

Even if there were an emergency—which there is not—and even if the Montana Order sought to remedy that emergency—which it does not—the Montana Order is invalid because it fails to comply with the Act insofar as it is not temporary and does not specify the time period for the parties to seek relief from this Court. Accordingly, the Order is facially

invalid. *See, e.g., In re J.J.*, 2007 OK CIV APP 72, ¶ 8, 167 P.3d at 982 (invalidating temporary emergency order by Oklahoma court that failed to include the period for the parties to seek relief from the home state court).

**4. The Montana Court's Order is an attempt to subvert the Oklahoma Court's jurisdiction in direct violation of the UCCJEA.**

The Montana Order does not seek to remedy an immediate threat to the health and safety of the Children or LeClair. Rather, it sets an evidentiary hearing almost two weeks later to address jurisdiction and the visitation order. Neither jurisdiction nor visitation are properly before the Montana Court. Rather, both issues are currently before the Oklahoma Court, and the Oklahoma Court has continuing and exclusive jurisdiction to decide both issues. Therefore, the order by the Montana Court represents nothing less than a brazen attempt to unlawfully divest the Oklahoma Court of jurisdiction to the detriment of the dignity and authority of the Courts of the State of Oklahoma

**5. Therefore, the Montana Court's Order is an abuse of discretion.**

A court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. *City*

of *Missoula v. Girard*, 2013 MT 168, ¶ 10, 370 Mont. 443, 303 P.3d 1283 (citation omitted).

Here, the District Court simply *ignored* the law—the UCCJEA—and instead attempted to simply seize jurisdiction from the Oklahoma Court—apparently *sua sponte*<sup>3</sup>—in violation of Oklahoma and Montana law.

### **C. THE DISTRICT COURT’S MISTAKE OF LAW CREATES A GROSS INJUSTICE FOR McCLURE & THE OKLAHOMA COURTS**

The Montana Court’s Order places McClure in an untenable situation between conflicting Orders by and the conflicting claims of jurisdiction of the Montana Court and the Oklahoma Court. The Oklahoma Court properly claimed exclusive and continuing jurisdiction but set forth procedures for LeClair to ask it to give up that jurisdiction and, thereafter, consider whether jurisdiction should pass to the Montana Court. Judge Larson of the Montana Court agreed with the Oklahoma Court’s decision, as memorialized in his May 29 Minute Order.

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<sup>3</sup> A copy of the Montana Court’s docket, showing that the Montana Court issued its Order *sua sponte* without a request by LeClair, is attached hereto as Exhibit 4.

See Exhibit 3. Yet a mere four days later, on a Sunday and apparently *sua sponte*, the Montana Court decided to reverse its Minute Order and attempt to seize jurisdiction from the Oklahoma Court by issuing an emergency order under the UCCJEA's temporary emergency jurisdiction provision that is not temporary and does not mention—much less attempt to remedy—an immediate threat to the health and safety of the Children or LeClair.

Therefore, the Montana Court's June 2 / 3 Order modifying the Oklahoma Court's visitation Order and scheduling an evidentiary hearing on jurisdiction and modifying the visitation Order constitutes a gross injustice because it directly violates the jurisdictional requirements of the UCCJEA, shows a lack of respect and comity towards the Courts of the State of Oklahoma, and places McClure and her counsel in the position of answering to two masters—which is *precisely* what the jurisdictional provisions of the UCCJEA are designed to prevent. Therefore, the Montana Court's Order constitutes a gross injustice.

Finally, the Montana Court's actions in simply running over the jurisdiction and Orders of the Oklahoma Court—including, particularly, its stated intention of interviewing the Children *in camera* without the

presence of the Oklahoma Court, which currently has exclusive and continuing jurisdiction over the Children—is a gross injustice to the dignity and authority of the Oklahoma Courts that independently justifies this Court’s extraordinary relief. The Oklahoma Court confirmed in an Order on June 7, 2024, that the Montana Court did not confer with it before issuing the June 2 / 3 Order, and has not contacted the Oklahoma Court since issuing its Order despite the communication requirements of the Act. This disrespect by the Montana Court towards the Oklahoma Court endangers the comity between the Courts of Oklahoma and Montana.

**D. THE WRIT OF SUPERVISORY CONTROL IS THE ONLY RELIEF AVAILABLE TO MCCLURE AND THE OKLAHOMA COURTS TO RELIEVE THE GROSS INJUSTICE**

A principal reason for the existence of the Writ of Supervisory Control is to prevent a mistake of law from causing a gross injustice. M. R. App. P. 14(3)(a). The Montana Court committed a clear mistake of law by issuing an emergency order that does not comply with the temporary emergency jurisdiction requirements of the UCCJEA and committed a gross injustice by placing obligations on McClure inconsistent with the controlling Orders of the Oklahoma Court and ordering McClure to

appear at an evidentiary proceeding despite the Montana Court's lack of subject matter jurisdiction. While the Oklahoma Court can issue its own Orders—and McClure has filed an emergency Motion with the Oklahoma Court seeking just such relief—the Oklahoma Court has no direct authority over the Montana Court and cannot, therefore, protect its dignity and authority absent the intervention of this Court as the ultimate supervisor of the Montana Court. No appeal in Montana under regular order can prevent the *immediate* harm to McClure's rights, the dignity and authority of the Oklahoma Court, and the comity between the Courts of Montana and the Courts of Oklahoma caused by Judge Larson's Order. Accordingly, this Court's intervention on an extraordinary basis is the only relief available to McClure—and the Oklahoma Courts—to relieve the gross injustice caused by the Montana Court's extra-jurisdictional actions in violation of Montana and Oklahoma law.

#### IV. CONCLUSION

On May 28, Judge Larson of Montana and Judge Pace of Oklahoma held a hearing to begin to hash out the jurisdictional issues in these proceedings. Judge Pace proposed a briefing schedule before her court in

Oklahoma for resolving the jurisdictional issues. Judge Larson agreed with Judge Pace's proposal, and both judges memorialized their agreement in their respective Minute Orders. *See* Exhibits 1 and 2. Both judges also agreed that there was no emergency justifying Judge Larson from exercising temporary emergency jurisdiction under the UCCJEA. Again, both judges memorialized their agreement in their respective Minute Orders. *See* Exhibits 1 and 2. Yet less than a week later, and without any request by LeClair on the docket or communication with the Oklahoma Court, Judge Larson issued his June 2 / 3 Order claiming temporary emergency jurisdiction without making his Order temporary, or specifying the emergency threat to the health and safety of LeClair or the Children. Instead, Judge Larson's Order attempts to seize control of the proceedings from Judge Pace by ordering changes to Judge Pace's Visitation Order and scheduling an evidentiary hearing on June 14 to decide issues that the law place squarely within Judge Pace's exclusive and continuing jurisdiction.

WHEREFORE, Petitioner Cathy McClure respectfully petitions this Court to issue a Writ of Supervisory Control instructing the District Court to revoke its June 2 /3 Order and stay its proceedings—except for



a bona fide emergency under the UCCJEA's temporary emergency jurisdiction provisions—until the Oklahoma Court rules on the jurisdictional issues presently before it.

Respectfully submitted this 7<sup>th</sup> day of June 2024.

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

  
Dr. Joshua Kirk McGill, Esq.

## **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the forgoing upon the Parties to the District Court proceeding below by electronically filing a copy of the same in the District Court proceedings on the date set forth above. All Parties in the District Court proceedings have previously filed electronically in the District Court proceedings and, thereby, agreed to electronic service. I further certify that in addition to filing the forgoing electronically with the District Court, I mailed a copy of the same to the District Court at its address of record: 106 E. 4th Ave / Polson, MT 59860.

HALL, ESTILL, HARDWICK, GABLE,  
GOLDEN & NELSON, P.C.

  
Dr. Joshua Kirk McGill, Esq.

## **APPENDIX OF EXHIBITS**

Exhibit 1: Oklahoma Court's Order of May 28, 2024

Exhibit 2: Montana Court's Minute Order of May 29, 2024

Exhibit 3: Montana Court's Emergency Order of June 2 / 3, 2024

Exhibit 4: Montana Court's Docket as of June 7, 2024

## **CERTIFICATE OF SERVICE**

I, Joshua Kirk McGill, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-07-2024:

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Service Method: Conventional

Electronically Signed By: Joshua Kirk McGill  
Dated: 06-07-2024