

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

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**In The  
Supreme Court of the United States**

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JERRY W. WELLS,

*Petitioner,*

v.

ROBBIN NELSON, ROBERT A. SHARP JR.,  
HEATHER ANNE GREENE SHARP,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The Kentucky Supreme Court**

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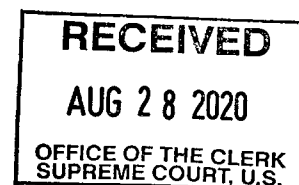
**PETITION FOR WRIT OF CERTIORARI**

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August 24, 2020

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## QUESTIONS PRESENTED FOR REVIEW

In *Nelson v. Sharp* the Kentucky Supreme Court denied a rehearing after upholding the Kentucky Court of Appeals ruling on jurisdiction, denial of writ of prohibition/mandamus, passed on the merits to allow correction to the record whereby de facto status and custody were previously awarded to petitioner with his spouse, passed on the merits to admit the lower court original transcript in support of petitioner's status, and failed to address the use of a forward related order by the Kentucky Court of Appeals. Petitioner now files for this writ of certiorari to address the use of the UCCJEA to deny the jurisdiction of a sister state during the pendency of an adoption, an issue which is split among the circuits, and which is in contravention of Federal Law, the UCCJEA act itself, and the UCCJEA codified state statutes, and to address actions of the judiciary using non-existent orders which invalidate rulings and which appear inconsistent with the requirements under the Code of Conduct for United States Judges.

Thus, the questions presented in this petition, which would resolve the national jurisdictional split on the issue of the application of the UCCJEA during adoptions and correct the abuse of discretion and intrusion of the judiciary to constitutionally protected rights, as well as address the appearance of judicial misconduct are:

1. Can an original decree state, having lost personal and subject matter jurisdiction for

**QUESTIONS PRESENTED FOR REVIEW**  
– Continued

purpose of an adoption pursuant to its own state statute, KRS 199.470(1), and in contravention of the PKPA, Title 28 U.S.C.A. § 1738A, the Supremacy Clause of the US Constitution, Article VI, Clause 2, the 14th Amendment, the UCCJEA act itself, respective state statutes, and the adoption code of the respective states, use the UCCJEA to deny and usurp the jurisdiction of a sister court who has correctly and statutorily exerted personal and subject matter jurisdiction over an adoption consistent with the mandates under the US Constitution, Article IV, Section 1, under the PKPA, Title 28 U.S.C.A. § 1738A (f)(g)(h), the Supremacy Clause of the US Constitution, Article VI, Clause 2, the 14th amendment, the state's codified UCCJEA, and the state's adoption code, and subsequently relitigate a matter previously adjudicated during the adoption, allowing a party to file for a change in custody, sans grounds, during the pendency of an adoption and engage in an abuse of discretion with questionable conduct suggestive of ex-parte communications and preferential treatment denying petitioner's status, previously conferred by the court, and denying petitioner's fundamental rights and due process to participate in a change of custody proceeding?

2. Should this Court reverse and vacate all orders issued from the original decree state beginning with the Sua Sponte order of June 8,

**QUESTIONS PRESENTED FOR REVIEW**  
– Continued

2016 and all subsequent orders and intervening decisions based on lack of jurisdiction, the violation of federal and state statutes and interference with the fundamental rights and due process to the parents both natural and de facto, and misconduct by the judiciary, simultaneously setting aside the order of dismissal of the adoption in the sister state to preserve the proper administration of justice?

## **PARTIES TO THE PROCEEDING**

Petitioner is Jerry W. Wells, the spouse of Robbin K. Nelson, step-father to Robert A. Sharp Jr., step-grandfather to AKS and RAS III, and received, with his wife, based on the court's findings in the original action in Kentucky de facto status and sole, permanent custodian of the minor children AKS and RAS III. Wells was a petitioner with his wife and co-petitioner Robert Sharp and presumptive adoptive father in the adoption action in Tennessee and sought to intervene as a petitioner in the change in custody action filed in Kentucky during the pendency of the adoption after he was excluded from participation in a UCCJEA hearing which was occurring between both states.

Respondent Robbin K. Nelson, spouse to Jerry W. Wells, natural mother to Robert A. Sharp Jr., paternal grandmother, de facto custodian, and presumptive adoptive mother to AKS and RAS III. Nelson was a petitioner in the original action in Kentucky as well as the adoption action in Tennessee.

Respondent Robert A. Sharp Jr., son of Robbin Nelson, step-son of Jerry W. Wells, natural birth father to AKS and RAS III, and ex-husband to Heather Sharp. R. Sharp was a respondent in the original action in Kentucky where he transferred sole permanent custody to Nelson and Wells by Agreed Order and a co-petitioner in the adoption action in Tennessee. R. Sharp also participated in the change in custody action filed by his ex-wife in Kentucky during the pendency of the adoption.

**PARTIES TO THE PROCEEDING – Continued**

Heather Anne Greene Sharp, ex-wife to Robert A. Sharp Jr. and natural birth mother to AKS and RAS III. H. Sharp was a respondent in the original action in Kentucky where she transferred sole permanent custody to Nelson and Wells by Agreed Order, and a respondent in the adoption action in Tennessee. She filed to hold Nelson in contempt in Kentucky during the pendency of the adoption regarding a visitation issue already adjudicated in the adoption and also filed a change in custody in Kentucky during the pendency of the adoption sans grounds and based on a petition containing numerous misrepresentations.

**RULE 29.6 STATEMENT**

Pursuant to Rule 29.6, the petitioner is an individual, thus there are no disclosures to be made by him.

**DIRECTLY RELATED PROCEEDINGS**

*Nelson v. Sharp*, No. 14-CI-00479 (judgment entered May 15, 2014) whereby birth parents transferred sole permanent custody of the minor children to Nelson and Wells via an Agreed Order, affirmed by the Court. Judgement entered (November 3, 2015) allowing Nelson and Wells who had provided notice to the court regarding relocation to Tennessee (on May 25, 2015), to remain in Tennessee. Sua Sponte order entered (June 8, 2016) during the pendency of an adoption hearing in Tennessee. Sua Sponte order entered (March 21, 2017)

**DIRECTLY RELATED PROCEEDINGS**  
– Continued

removing the children from the custody of Nelson and Wells and granting birth mother temporary custody. Judgement holding Nelson in contempt of court (March 20, 2017) with four subsequent sua sponte Orders on contempt with bench warrants, Order denying Wells Intervention (October 9, 2018) and final order of custody February 2020.

*Nelson, Wells, with co-petitioner Sharp v. Sharp*, No. 15A118 (adoption action filed Nov 25, 2015) in Tennessee, judgement asserting continuing exclusive jurisdiction (May 17, 2016), judgement suspending birth mother's visitation (May 17, 2016), judgment reinstating birth mother's visitation with changes per birth mother's request (June 3, 2016), judgement staying adoption petition (September 6, 2016), judgement dismissing the adoption entered May 30, 2019.

*Wells v. Holderfield*, No. 2018-CA-001467-OA (judgment entered Oct. 31, 2019).

*Wells v. Holderfield*, No. 2019-SC-000093-MR (judgment entered Mar. 26, 2020).

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**PETITION FOR WRIT OF CERTIORARI**

Jerry W. Wells respectfully petitions for a writ of certiorari to review the judgment of the Kentucky Supreme Court in the Sixth Circuit.

**OPINIONS BELOW**

The Kentucky Supreme Court final opinion denying rehearing and sua sponte correcting style of case, of March 26, 2020 App. 45, is a non-published opinion. The Kentucky Supreme Court memorandum opinion of the court affirming, of March 26, 2020 App. 1 is a non-published opinion. The Kentucky Court of Appeals order denying motion for reconsideration and extraordinary writ of January 9, 2019, App. 1-37 is a non-published opinion. The Kentucky Supreme Court order denying correction of the record, submission of trial transcript, and amended brief of August 26, 2019 App. 1-37 is a non-published opinion. The Kentucky Court of Appeal order denying motion for intermediate relief, of October 8, 2018, App. 1-37 is a non-published opinion. The lower court's order denying Jerry Well's motion to intervene, of October 9, 2018, App. 1-37 is a non-published opinion. The lower court's sua sponte order awarding temporary custody to birth mother March 21, 2017, App. 1-37. Sua Sponte Order June 8, 2016, App. 1-37. Tennessee Order Appointing Guardian Ad Litem and Suspending Visitation May 17, 2016, App. 1-37 (sealed adoption record). Order on Relocation Of State on November 3, 2015, App. 1-37. Findings of Fact

and Conclusions of Law and Judgment of De Facto and Permanent Custody, (sealed) May 15, 2014, App. 1-37. Agreement of De Facto Custodian Child Custody and Child Support May 1, 2014, (sealed) App. 1-37.

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**STATEMENT OF JURISDICTION**

The Kentucky Supreme Court in the Sixth Circuit issued its decision on August 26, 2019, App. 1-37, and denied rehearing on March 26, 2020, App. 113-14. This Court has jurisdiction under 28 U.S.C. § 1257(a).

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**CONSTITUTIONAL AND  
STATUTORY PROVISIONS INVOLVED**

The Constitutional and Statutory Provisions Involved are reproduced in the Appendix.

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**STATEMENT OF THE CASE**

**A. Introduction**

The Full Faith and Credit Clause found in the US Constitution, Article IV, Section 1 addresses the duties that states within the United States have to respect “public acts records, and judicial proceedings of every other state.” It does not provide for any preemption by state laws.

The accompanying federal statute referred to as the Parental Kidnapping and Prevention Act (PKPA) found in Title 28 U.S.C.A. § 1738A requires every state to give full faith and credit to the custody determinations of another state, and to not modify those determinations except as provided in subsections (f), (g), and (h) of this section. This constitutional provision explicitly allows another state to modify the custody determination of another state in certain circumstances, defines “home state,” for purposes of jurisdiction, preempts the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) in regard to adoption jurisdiction, precludes the relitigation of a controversy already decided elsewhere, and makes no provision for simultaneous proceedings.

The Supremacy Clause found in the US Constitution, Article VI, Clause 2, establishes that the federal constitution and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government’s exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government.

The 14th Amendment of the U.S. Constitution guarantees a “fundamental right” to parents. This due process clause, which extends to individuals where state statutes grant and treat de facto status equal to a parent, prohibits governmental interference by a court’s intrusion to these fundamental rights, and can only be interfered with only in limited circumstances. This Amendment does not provide for interference by



a court when the intrusion constitutes an abuse of the court's discretion to impact a fundamental right, including violation of federal laws, acting in contravention of its own statutes or in the absence of jurisdiction, issuing sua sponte orders during the pendency of an adoption proceeding in a sister state, providing information to a Judge in the sister state which is not factual, writing orders and allowing orders to be written by certain counsel on behalf of the judge containing multiple material misrepresentations, and acting with an overt appearance of anger, bias and lack of detached neutrality.

The Uniform Child Custody Jurisdiction and Enforcement Act, (UCCJEA) is an act which was put in place to deter interstate parental kidnapping and promote uniform jurisdiction and enforcement provision in interstate child-custody and visitation. The act does not apply to adoptions, and while some states, such as Utah and Oklahoma, have determined the UCCJEA does not cover termination of parents' rights due to adoption proceedings because the UCCJEA explicitly excludes adoption proceedings, other states, in contravention of the act itself as well as its codified version of the UCCJEA within its state statutes, apply the UCCJEA to adoptions citing adoption as a change in custody. As a result, the circuits are split on this issue.

The Code of Conduct for United States Judges applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special

masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code. This Code mandates judges must uphold the law and requires supervisory judges to address issues of activities in contravention of the Code.

In *Nelson v. Sharp 2019-SC-00093*, the Kentucky Supreme Court denied petitioner’s petition for rehearing following the issuance of an order upholding the appellate court and lower court’s ruling regarding jurisdiction where the UCCJEA was applied in contravention of its own state statutes and during the pendency of an adoption action in a sister state, passed on the merits to allow the admittance of the lower court trial transcript in support of petitioner’s status where he qualifies as “single-unit” with his spouse and the lower court granted him, along with his wife, defacto status and sole, permanent custody, passed on the merits to allow a correction to the record based on the court’s findings, essentially denying petitioner due process of a fundamental right to intervene in a change of custody action for children who had been in his custody since they were infants and in the process of adopting, and refused to address the use of a forward related order<sup>1</sup> written by the appellate court.

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<sup>1</sup> Forward related order is defined by petitioner as an order written by the Kentucky Appellate Court Judge Joy Kramer on October 8, 2018 denying petitioner’s Writ of Mandamus in which a reference is made to the October 9, 2018 order written by the lower court Judge Catherine Rice Holderfield and entered by the

The error of the lower court began when a sua sponte order was entered on June 8, 2016 in the original decree state pursuant to the UCCJEA to regain jurisdiction during the pendency of an adoption proceeding in a sister state creating a jurisdictional conflict. This sua sponte order, which is a due process violation on its face, is erroneous as it conflicts with federal law as well as its own state statutes, and is an infringement of a fundamental right of the parties involved in the adoption. This issue of application of the UCCJEA during an adoption in contravention of federal law and state statutes has created a split among the circuits, thus is of such national importance that it warrants review to ensure uniformity in the administration of justice during adoption proceedings among the circuits throughout the entire United States. Furthermore, the departure from the accepted and usual course of judicial proceedings, which appears to include ex-parte communications, preferential treatment, and use of non-existent orders by the judiciary, and refusal by a supervisory court to even acknowledge this issue, calls for an exercise of this Court's supervisory power.

## **B. Factual And Procedural Background**

The minor children AKS and RAS III were born in Tennessee during the marriage to natural parents, Robert and Heather Sharp in 2010 and 2012

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Warren Circuit District Court on October 9, 2018. Judge Kramer's order, at the time it was written, is essentially based on a non-existent order, giving the appearance of ex-parte communications between the courts.

respectively. The parents experienced difficulty in raising the children; therefore, they with clear evidence, based on the knowing and voluntary ceding of superior custodial rights, which is their constitutional right, *Troxel v. Granville*, placed the minor children at ages 4 and 6 weeks respectively into the physical custody of petitioner Jerry Wells and his wife Robbin Nelson, (Agreement of De Facto Custodian Child Custody and Child Support Order pg. 2, para. 2, "The parties agree that both R.A.S. III and A.K.S. have resided with Robbin Nelson since they were weeks old and that Robbin Nelson has primarily provided for these minor children's financial and nurturing care."). App. 40. Petitioner and his wife literally stood in place of the parents assuming primary caretaking and sole financial support of the children spending time at their homes in Tennessee and Kentucky; residences purchased prior to the births of the children.

Based on continued issues with the parents, who now resided full time in Kentucky, and their inability to care for the children, Petitioner and his wife sought to legalize their relationship with the minor children; thus, the parties, which was their right (*Troxel v. Granville*, Art IV sec 1, 14th Amendment) entered into an Agreed Order,<sup>2</sup> (Agreement of De Facto Custodian Child Custody and Child Support Order filed in Kentucky on May 1, 2014). App. 40. A hearing was held with Petitioner and his wife in attendance while the

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<sup>2</sup> Counsel mistakenly advised that only a single individual could apply for De Facto custody; thus petitioner's name was not included on the petition.

parents, despite being notified of the hearing, did not attend. The Court took testimony made findings of fact as reflected in the certified trial transcript page 13, lines 7-9, “Okay. And so, I am going to grant the de facto custody and status to you and your husband and also permanent custody at this time.” App. 66. The court entered Findings of Fact and Conclusions of Law And Judgement of De Facto and Permanent Custody on May 14, 2014. App. 35. Despite the findings of the court regarding petitioner’s standing, his name was mistakenly excluded from the final order; however, this issue pursuant to *J.G. v. J.C.*, 285 S.W.3d 766, 768 (Ky. App. 2009) as discussed in the recent 2019 Kentucky Supreme Court case of *Krieger v. Marvin*, Page 6 defines a married couple as a “single unit” for purposes of de facto status. Accordingly, petitioner unequivocally has standing based on ceding of superior custodial rights by the parents, his actions as a parent, case law which determines a “single unit” based on his marriage, findings in the court record, and statutory qualifications as provided under KRS 403.270(1)(a).

Birth mother, on or around November of 2014, filed a motion to change custody making the material misrepresentation in the pleading that de facto custody had been obtained based on “fraud” and “changed circumstances,”<sup>3</sup> and simultaneously filed for visitation.

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<sup>3</sup> Birth mom, Heather Sharp testified on May 19, 2017 “there was no fraud, she agreed to it, thought it was a good idea but just changed her mind.” In her deposition of March 19, 2017 Heather Sharp admitted “there were no changed circumstance.” In short, birth mom lacked any basis to move the court for a change in custody and her petition was vexatious and constitutes harassment.

Hearings to address these motions were conducted on January 30, 2015 and February 5, 2015 resulting in an order for visitation to birth parents.

On May 25, 2015, petitioner and his wife relocated the children to the Tennessee residence permanently to meet their medical and educational needs. While not required, notice was provided to the court and the birth mother objected to the relocation. A hearing was held on or around June 2015 overruling the mother's objection. The court entered an Order on Relocation Of State on November 3, 2015 ending all litigation in Kentucky. App. 33.

After the children had resided in Tennessee for greater than six months, the de facto guardians sought to register the Kentucky custody order. The de facto guardians were advised by Tennessee Counsel they had an option to adopt based on the ceding of parental rights, and the permanent custody transfer per the Agreed Order. App. 40. Kentucky, pursuant to the PKPA, subsections (f) (g) and (h) and KRS 199.470(1) lost subject matter jurisdiction to hear an adoption since the parties had resided, with the court's permission, outside the state for over six months and were in a new "home state." PKPA. Wishing to legitimize the family unit in existence for over 5 years, petitioner Jerry Wells, and his wife filed a petition for Guardianship, Termination of Parental Rights and Adoption on November 25, 2015 in Tennessee. The natural father

consented to the adoption,<sup>4</sup> based on T.C.A. 36-1-117(g), and filed as a co-petitioner with the de facto custodians, which is consistent with the 14th Amendment. Birth mother refused to discuss the issue but was provided notice consistent with the PKPA requirements. Birth mom did not contest jurisdiction of the Tennessee Court.

Tennessee's ability to modify the original decree state's custody order falls within subsections (f), (g) and (h) of the PKPA at 28 U.S. Code § 1738A. There was no requirement for a UCCJEA hearing between the states as the PKPA supersedes the UCCJEA. The Tennessee Court, correctly and legally, pursuant to TCA § 36-1-116(f)(1), exercised exclusive jurisdiction of all matters pertaining to the children. The filing of the Petition constituted the commencement of a custody proceeding for purpose of the UCCJEA codified in TCA § 36-6-201 as Tennessee was now the "home state" pursuant to TCA 36-6-16(a) since the date the Petition was filed and the "home state" consistent with the PKPA definition. Once Tennessee exercised jurisdiction, Kentucky lost all jurisdiction under the PKPA and the exclusive, continuing jurisdiction under the UCCJEA as the UCCJEA act and the codified UCCJEA within the Kentucky statutes unambiguously excludes adoptions (UCCJEA § 103). The Tennessee Court found that the birth mother had clearly and unequivocally abandoned the children. The birth

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<sup>4</sup> The natural parents separated in or around October 2013 and eventually divorced which was finalized in or around July of 2015.

mother appealed and the Tennessee Appeals Court upheld the lower court's finding with only the best interest hearing remaining before finalization of the adoption.<sup>5</sup>

**C. Visitation Issue Adjudicated in Tennessee with Simultaneous Contempt of Court Filed in Kentucky.**

During the pendency of the adoption, the birth mother overdosed the minor children with medication during visitation. After being advised by a school teacher and school LCSW who believed the children were in danger in mom's custody de facto custodian sought a protective order on behalf of the children from the night court commissioner in Tennessee. The night court commissioner refused to issue an order of protection because the custody order was not certified; however, directed the de facto custodian to protect the children withholding visitation or have them taken into foster placement, and to have counsel address this issue during the adoption action. Simultaneously, the birth mom, during the pendency of the Adoption, filed a motion to have the de facto custodian held in contempt of court in the Kentucky Court because of missed visitation. The Tennessee Court, on May 17, 2016 entered an Order Appointing Guardian Ad Litem And Suspending Visitation. App. 29. This matter was adjudicated in Tennessee resulting with birth mom resuming visitation; however, with modifications of the previous Kentucky order per her request.

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<sup>5</sup> This was an open adoption where the parents would still be able to exercise visitation with the children.



#### **D. Jurisdictional Conflict Created**

During the pendency of the adoption, after Tennessee had exerted jurisdiction, the Kentucky court issued a Sua Sponte order on June 8, 2016. The comments within this order are not based on any evidence rather are opinions “the proposed adoptive parent has failed to comply with this Court’s orders,” (App. 27) “may be evading service,” (App. 27). Even more egregious is when the court writes “obtained de facto custody under somewhat questionable but reportedly agreed circumstances,” (App. 27). This statement directly contradicts the Agreed Order made April 30, 2014 between the parents and de facto custodian (App. 40) as well as the evidence, findings, and rule of law from the court’s own order of May 14, 2014 (App. 35). The Supreme Court has held that a court’s power to raise a motion sua sponte turns on whether it is exercising an “inherent power . . . necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases,” (*Link v. Wabash*). As this action implicates the constitutional rights as afforded under the 14th Amendment of the litigants in this case, the Kentucky court is without power to raise a motion sua sponte. Additionally, these comments suggest prejudice to a particular party and is the beginning of continued judicial abuse and misconduct where the judge fails to “respect and comply with the law” as required under the Model Code of Judicial Conduct Canon 2A (1990). Evidence throughout the case suggests the judge is working in tandem with

birth mom's Counsel Casey Hixson in Kentucky,<sup>6</sup> to disrupt the adoption, including having the de facto custodian served for show cause contempt motion in the middle of a deposition for the adoption at the office of Tennessee counsel for birth mom on July 21, 2016.

The de facto custodian made a special appearance in Kentucky after being served and contested the jurisdiction of the Kentucky court. The Kentucky court ruled the service was invalid but proceeded, in contravention of special appearance to serve the de facto custodian to return to court in Kentucky to face these allegations of contempt. These actions are in contravention of Title 28 U.S.C.A. § 1738A which precludes the relitigation of a controversy already decided elsewhere, makes no provision for simultaneous proceedings, and is without merit due to lack of jurisdiction of the Kentucky Court.

To complicate this case further, birth mother through counsel, during the pendency of the adoption case filed for a change in custody once again citing "changed circumstances." The de facto custodians contested the jurisdiction of the Kentucky court resulting in a UCCJEA conference between the two judges

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<sup>6</sup> A whistleblower lawsuit (*Carr v. Holderfield* 18-CI-1518) alleging official misconduct, including abuse of authority, ex-parte communications and preferential treatment with certain attorneys, was filed by the former Family Court Clerk Leslie Carr against the lower family court judge, Catherine Rice Holderfield. The actions by Judge Holderfield in *Nelson v. Sharp* 14-CI-00479 appear to substantiate the official misconduct alleged in *Carr v. Holderfield*.

which began with a conference call and parties in attendance in various locations. Unable to view documents, the parties were instructed to appear in Kentucky to complete the UCCJEA hearing. Petitioner was asked to leave the courtroom in Kentucky despite being a party to the case in Tennessee. From that point on December 27, 2016 Petitioner has been excluded as a participant in the hearings in violation of the 14th Amendment.

**E. Kentucky Resumes Jurisdiction under the UCCJEA.**

The UCCJEA hearing was continued at which point the judges held a phone conference excluding all the parties in violation of their due process rights under the 14th Amendment. A motion was filed to correct this error thus the judges held a second hearing which was recorded on video. The litigants were prohibited from being in attendance at this hearing in violation of their due process rights under the 14th Amendment. Had the litigants been allowed to attend they could have corrected the multiple misrepresentations made by the Kentucky court based on evidence from prior hearings. Based on erroneous information and allowing Kentucky to invoke exclusive continuing jurisdiction under the UCCJEA, Tennessee stayed the adoption to allow the custody hearing in Kentucky which began on December 27, 2016. This action is in contravention of both state statutes as the UCCJEA does not apply to adoptions, as well as the PKPA, Full Faith and Credit Clause and 14th Amendment.

On December 27, 2016, the de facto custodian was injured in an accident on the way to court fracturing her leg, ankle and detaching all the ligaments and tendons from the exterior side of the left ankle. The de facto custodian delayed medical treatment appearing in court because of the past issues related to contempt of court. During testimony the de facto custodian told the court she thought she had “broken her ankle” yet she was required to testify and gave approximately 5 hours of testimony in excruciating pain. The case was continued and the de facto custodian eventually ended up with surgery that had to be rescheduled multiple times due to various complications, some of which could be attributed to a delay in medical care. Eventually, the de facto custodian had surgery on March 13, 2017, experienced complications postoperatively and was unable to appear for court on March 20, 2017. As a result of de facto custodian failure to appear the Kentucky Court held the de facto custodian in contempt of court, and ruled a doctor’s statement as hearsay issuing a bench warrant, one of many, for her arrest for failure to appear.

The court then entered a second sua sponte order on March 21, 2017, absent a hearing, findings of fact, and rule of law, and in contravention of the Code of Judicial Conduct, granting temporary custody to the birth mother. This was followed with additional orders of March 22, 2017, March 23, 2017, and March 24, 2017 where the court made clarifications to the March 21, 2017 order regarding toys and clothes of the children. Interestingly, the maternal grandmother, Barbara

Stewart who lives in Georgia and had never participated in any court hearings was present in the courtroom on March 20, 2017. It was later discovered a postdated fax (App. 64) was received on March 16, 2017 at 20:03 at the children's private school in Tennessee from a public school in Kentucky requesting the children's school records. The maternal grandmother, during a deposition taken on September 26, 2017, acknowledged "I was asked to come," (deposition page 9, line 16) by "my daughter," (deposition page 9, line 18). When asked why, Ms. Stewart responded "Because that was the day that she thought she might obtain custody," (deposition page 9, line 24-25). Given the fact there was no pending order before the court, a fax requesting the kids' school records was received five (5) days in advance of the hearing, and the birth mother made a call to have her mother come to assist with an anticipated change in custody, it appears there was improper communication of some type giving the birth mother advanced knowledge that a future ruling would be made in her favor by the Kentucky court.

This ruling of change in custody was immediately appealed by the de facto custodian. The Kentucky Court of Appeals remanded in part ordering the lower court to hold a hearing which it did on May 19, 2017. In the order, the Kentucky judge wrote multiple misrepresentations, including stating "there was no one to take care of the children, she was afraid they would go into foster care in Tennessee, and petitioner had no status." These statements were blatantly false and the comment regarding petitioner's standing was in

contravention of the court's finding from May 15, 2014, the actions of petitioner acting as parent, and in contravention of the Agreed Order (App. 40), thus a violation of the 14th Amendment.

The custody case continued with multiple hearings and rulings being entered in contravention of the evidence presented in the case, and generally in favor of the birth mother. Orders were written by the birth mother's attorney, Casey Hixson, which contradict findings and include multiple misrepresentations in an effort to manipulate the outcome of the custody case. This manipulation included the court's continued denial of recognition of petitioner's standing as such recognition would substantially impact the birth mother's ability to retain custody.

#### **F. Petitioner's Motion to Intervene**

Petitioner, during the week of September 17, 2018, learned he qualified as a de facto custodian based on him serving in the same capacity as his wife and based on the Kentucky Court of Appeals clarification of "single unit" (*J.G. v. J.C.*) as referenced in *Krieger v. Marvin*, as de facto custodian under KRS 403.270. Petitioner, acting *pro se*, sought to intervene before the custody hearing which was scheduled for October 12, 2018. During a hearing on September 28, 2020 the Court denied his request stating it is "too late" and would "cause a delay in the proceedings," essentially shutting Petitioner down from further argument and violating his due process rights as a de facto custodian.

In an effort to preserve his rights and the parent-child relationship he had established with the minor children, petitioner filed a Motion for Emergency Intermediate Relief pursuant to CR 76.36(4) Filed Simultaneously With Original proceeding for writ of prohibition/mandamus pursuant to CR 76.36(1) without a written order from the lower court.

The order resulting from the September 28, 2018 hearing was not written by the lower court until October 9, 2018. (App. 18) Interestingly, the Kentucky Court of Appeals rendered a denial on October 8, 2018 (App. 20) referencing the non-existent, forward related order from the lower court. This action gives the appearance of ex-parte communications between the courts.

Petitioner, in his Petition for Writ of Prohibition/Mandamus submitted on October 8, 2018, challenged the lack of jurisdiction of the original decree court. That subject matter jurisdiction cannot be waived, and that it may be challenged at any time, even initially on appeal, is an elementary principle of law. *Duncan v. O'Nan, Ky.*, 451 S.W.2d 626 (1970). The Kentucky Court of Appeals upheld the denial of the emergency petition ruling that Kentucky had jurisdiction based on the UCCJEA and precedent of *Williams v. Bittle*. The Kentucky Court of Appeals also stated petitioner was without standing and entered the order (App. 13). Petitioner, appealed as a matter of right to the Kentucky Supreme Court. Petitioner also submitted motions to the Kentucky Supreme Court to correct the lower court records and submit a copy of the initial

trial transcript in support of his motion. The Court passed on the merits (App. 11) and upheld the Court of Appeals decision based on *Williams v. Bittle*. The Kentucky Supreme Court, in contravention of the Code of Judicial Conduct did not address the use of the forward related order by the appellate court judge. Petitioner filed for rehearing; however, the Kentucky Supreme Court denied the rehearing on March 26, 2020. (App. 45)

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### REASONS FOR GRANTING THE PETITION

**THIS COURT SHOULD GRANT REVIEW TO ADDRESS THE CIRCUIT SPLIT CONCERNING THE APPLICATION OF THE UCCJEA ACT DURING AN ADOPTION, THE ASSOCIATED VIOLATIONS OF FEDERAL LAW DURING SUCH INCLUSION, TO CORRECT THE ABUSE OF DISCRETION BY COURTS TO IMPACT A FUNDAMENTAL RIGHT AND TO ADDRESS THE APPEARANCE OF JUDICIAL MISCONDUCT**

**I. THERE IS A SQUARE, ENTRENCHED, AND OPENLY ACKNOWLEDGED CIRCUIT SPLIT ON THE QUESTIONS PRESENTED**

Prior to the passage of the UCCJA, the PKPA and the UCCJEA, no uniform set of laws regarding interstate recognition of child-custody orders existed. As a result, it was difficult for one state to recognize the child-custody determination in another state, specifically when child-custody determinations entered by a



new state conflicted with the previous child-custody determinations. As a result the very stability in the rearing of a child was undermined.

With the revision of the UCCJA by the UCCJEA, interstate jurisdiction controversies were reduced, specifically with the application of the PKPA which comes into play during a modification of sister state order as the PKPA supersedes the UCCJEA. The U.S. Supreme Court has noted that a central purpose of the PKPA is to extend the requirements of the full faith and credit clause to custody determinations. In short, the PKPA was intended primarily as a full faith and credit statute, (*In re Adoption of Baby E.Z.*, 266 P.3d 702, 712 (Utah 2011)).

The U.S. Constitution's full faith and credit clause, Article IV section 1, as well as the parallel federal statute, 28 U.S.C. 1738, is understood to oblige states to recognize and enforce a sister state's final judgment and prevent the relitigation of a case. Interestingly the applicability of the full faith and credit clause as it applies to adoption decrees has been largely ignored. Accordingly, it is proper for the U.S. Supreme Court to provide guidance as some circuits are split on this matter of application of the UCCJEA during an adoption as the UCCJEA act itself expressly and unambiguously excludes adoptions.

Some states such as Oklahoma have determined the UCCJEA does not cover termination of parental rights due to adoption proceedings, reasoning that the UCCJEA explicitly excludes adoption proceedings. The

Utah Supreme Court, in holding that the PKPA applied to adoption proceedings reasoned:

The PKPA defines “custody determination” broadly, as “a judgment decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, initial orders and modifications.” And the PKPA defines “physical custody” as “actual possession and control of the child.” Reading the phrase “any proceedings for custody determination” together with the definitions of “custody determination” and “physical custody” we conclude that the phrase “any proceeding for a custody determinate” includes all proceedings that establish who will have “actual possession and control of a child.” In light of this conclusion, adoption proceedings fall within the “any proceeding for a custody determination” provision of the PKPA, (*In re Adoption of Baby E.Z.*, 266 P.3d 702, 712 (Utah 2011)).

Other states such as Tennessee and Kentucky, despite adoptions being excluded in the UCCJEA act itself as well as the codified version of both state statutes, holds the UCCJEA applies. In this case *Nelson v. Sharp*, the Kentucky Courts have based their determination on *Williams v. Bittel*, 299 S.W.3d 284 (Ky.App.2009). Arguing over a child in Williams were the boyfriend of the deceased mother (“Bittel”) and the decedent’s sister and brother-in-law (“the Williamses”). The child was born in Kentucky, and a Kentucky court awarded Bittel and the Williamses joint custody of the

child. The Williamses were designated the primary residential custodians with liberal visitation given to Bittel. Eventually, the Williamses moved to Georgia where they adopted the child. Before the adoption, the custody orders in Kentucky were still in effect. The UCCJEA in effect in Kentucky also exempted adoptions from its provisions.

The Kentucky court in *Williams v. Bittel* determined that Kentucky retained the exclusive, continuing jurisdiction over the custody orders as long as Bittel resided in Kentucky and maintained a significant relationship with the child. *Williams v. Bittel*, 299 S.W.3d at 288. Therefore, the Kentucky court recognized that despite the language of the UCCJEA excluding adoptions from its provisions, Kentucky still retained exclusive, continuing jurisdiction over custody cases that originated in its jurisdiction. The court observed that jurisdiction “includes the discretionary power to decline to exercise jurisdiction and defer to a more convenient forum.” *Id.* The Kentucky court also noted:

The Williamses successfully circumvented the spirit of the law. Their actions create the precise problems that the UCCJEA and the PKPA attempted to avoid: viz., interstate custody disputes and competition.

The Kentucky court further recognized that the problem of stepparent adoption and pending custody actions in different states needs to be corrected and stated, “This loophole cannot be closed by our Court, only by legislative action.” *Id.*

Given this “loophole” and this statement by an Appellate Court, it is proper for the US Supreme Court to provide the requested guidance, otherwise, this issue of jurisdictional conflict during adoptions will continue.

**II. THE KENTUCKY SUPREME COURT’S DECISION IS ERRONEOUS. THE KENTUCKY SUPREME COURT’S DECISION CONTRAVENES THE CONSTITUTIONAL FUNDAMENTAL RIGHTS OF THE PARTIES AND FAILS TO RECOGNIZE THE LOSS OF SUBJECT MATTER JURISDICTION**

The case at bar differs from *Williams v. Bittle*; specifically, the natural parents had relinquished their superior parental rights when they placed the minor children to live with Petitioner and his wife when the children were only weeks old. This is their “fundamental right.” There was an Agreed Order to transfer sole permanent custody of the children to Petitioner and his wife, which is a constitutionally protected right under the 14th Amendment. There was no provision within the Agreed Order for the children to ever be returned to the custody of their parents even if the birth mom changed her mind. In fact, the family unit between the children and the Petitioner and his wife was the only family the children had ever known for a period of over 5 years. The family unit provided stability, and full support of the children, financially, emotionally, in every way. An emotional attachment between the de facto custodians and the children was in place.

The de facto custodians, who are given equal standing under the Kentucky statutes (KRS 403.270(1)(b)), had a constitutional right to legitimize their relationship under the 1st and 14th Amendments. One of the natural parents consented to the adoption and notice was given to the other natural parent regarding their due process rights. It was therefore an intrusion of the judiciary to interfere with this adoption under the guise of the UCCJEA act and the codified version of the UCCJEA under state law, when adoptions are excluded, and to attempt to relitigate a visitation issue already adjudicated in the sister state during the pendency of the adoption.

Under the due process clause and full faith and credit clause these parties are entitled to proceed with a petition for adoption. The judiciary recognizes the mobility of families and the application of the PKPA, thus while the PKPA typically replicates the UCCJEA giving jurisdictional preference to the home state, the PKPA allows modifications within certain parameters and thus supersedes the UCCJEA. 28 U.S.C.A. § 1738A (PKPA). The PKPA states "A court may modify a custody or visitation order from another state only if (1) it has jurisdiction to do so, and 2) the court of the initial state no longer has jurisdiction or has declined to exercise it." 28 U.S.C.A. § 1738A. Tennessee clearly had jurisdiction to preside over an adoption. Kentucky lost subject matter jurisdiction due to the state residency requirement (KRS 199.470(1)) and thus could not preside over the adoption. Tennessee was the only state with both personal and subject matter jurisdiction and

the only jurisdiction in which the de facto family could petition for an adoption. They should not be required or expected to have to relocate back to Kentucky to comply with the residence requirement under KRS 199.470(1) to adopt the children.

The Kentucky court allowed the de facto custodians to relocate with the children finalizing all litigation in Kentucky. Once the children were out of the state for more than six months, the subject matter jurisdiction of the original home state to proceed over an adoption pursuant to KRS 199.470(1) no longer existed. The only state having subject matter jurisdiction for the purposes of adoptions was Tennessee. When Tennessee exercised exclusive continuing jurisdiction as permitted under the subsections of the PKPA which superseded the UCCJEA, and in accordance with their codified UCCJEA state statutes, and adoption code, Kentucky lost all jurisdiction including personal and subject matter jurisdiction. Without jurisdiction Kentucky had no jurisdiction to rehear any issues, but specifically the visitation issue which had already adjudicated in Tennessee and which is prohibited under the constitution. Judgments from courts that do not have subject-matter jurisdiction are void, (*Weller v. Weller*, 960 P.2d 493, 496 (Wyo. 1998)). Accordingly, all orders issued from Kentucky beginning with the Sua Sponte Order of June 8, 2016 and thereafter are void.

### III. THE KENTUCKY SUPREME COURT'S DECISION IS ERRONEOUS. THE ACTIONS OF THE KENTUCKY COURT CONTRADICT FAIR PLAY AND SUBSTANTIAL JUSTICE

Generally, to comply with the Due Process Clause of the 14th Amendment of the U.S. Constitution, a court needs to comply with “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp & Placement*, 326 U.S. 310, 316 (1945). Judges must follow the law under the Code of Conduct.

In the case at bar, the court failed to follow the law. The UCCJEA excludes adoptions. To apply the UCCJEA to an adoption is a judge making law as opposed to following legislative intent, especially when the language is unambiguous. There is evidence to suggest deviation from the adherence of the law, bias and the existence of ex-parte communications or other nefarious relationship between birth mom’s counsel Casey Hixson and the lower court judge as evidenced by the Response to the Kentucky Supreme Court on June 17, 2019. (App. 47) The sua sponte order of June 8, 2016 (App. 27) which contains opinions that contradict previous findings of the court, the fax (App. 64) received at the children’s private Tennessee school in advance of the March 21, 2017 sua sponte temporary custody order (App. 25) which was conducted without a hearing, findings of fact or rule of law, coupled with the sudden appearance of a maternal grandmother in the courtroom because her daughter told her she was getting custody could not possibly be coincidental. Additional irregularities have occurred throughout this

case making it impossible to list all within the parameters of this petition.

The use of a forward related order (App. 20) by the Kentucky Court of Appeals prior to the issuance of the order by the lower court (App. 18) degrades the integrity of the judiciary in contravention of the Code of Conduct. These acts simply cannot stand; therefore, it is incumbent upon this Court to exercise Judicial Oversight to address these areas of concern as the highest court in the Commonwealth of Kentucky has chosen to ignore or turn a blind eye to this type of conduct.

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## CONCLUSION

This case presents the appropriate opportunity for the Court to provide guidance to multiple circuits across the entire United States, regarding the correct process to ascertain correct jurisdiction for an adoption proceeding based on federal law and the application of the UCCJEA to an adoption when it is specifically and statutorily excluded.

This case also allows this Court, by exercise of its supervisory power, to correct the appearance of a biased judiciary which has engaged in numerous instances of misconduct, at all levels of the original decree state judiciary.

The petition for a writ of certiorari should be granted to reverse and vacate all orders issued from the original decree state beginning with the Sua



Sponte order of June 8, 2016 and all subsequent orders and intervening decisions simultaneously setting aside the order of dismissal of the adoption in the sister state to preserve the proper administration of justice.

Respectfully submitted,

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