

David Olesen  
2616 Hackworth St  
Ashland, KY 41101  
Respondent Pro Per

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE THE MATTER OF:

Case No.: FC2019-098271

MAUREEN MULVANEY,

Petitioner,

**RESPONDENT'S MOTION TO DISMISS**

and

DAVID C. OLESEN,

Respondent

**(ASSIGNED TO THE HON. LISA WAHLIN)**

and

ILYN OCANG OLESEN,

Respondent

**COMES NOW** Respondent, DAVID C. OLESEN, and hereby moves to dismiss  
Petitioner's **PETITION TO MODIFY AGREEMENT AND FINAL ORDER RE  
VISITATION ENTERED MAY 17, 2021** (the "Petition to Modify Third Party Visitation") for  
lack of subject matter jurisdiction pursuant to A.R.S. § 25-1031 et seq. and Rule 29(a)(1),  
Arizona Rules of Family Law Procedure. In support of this Motion, Respondent supplies the  
following memorandum.

**MEMORANDUM IN SUPPORT OF  
RESPONDENT'S MOTION TO DISMISS**

**FACTUAL BACKGROUND**

This case involves two minor children, M.G.O., age 11; and M.L.O., age 9. Respondent,  
David Olesen, is the natural and legal father of both children. Respondent, Ilyn Olesen, is the

1 adoptive and legal mother of both children. Petitioner, Maureen Mulvaney, is the natural  
2 grandmother (via the children's deceased mother) of both children.

3 In May 2021, Respondent David Olesen and Petitioner executed a Rule 69 Agreement to  
4 establish third party visitation pursuant to A.R.S. § 25-409(c). In or around January 2023,  
5 Respondent David Olesen and Respondent Ilyn Olesen decided to relocate to Kentucky to  
6 improve the quality of life for their family. However, on February 3<sup>rd</sup> 2023, Respondent Ilyn  
7 Olesen traveled to the Philippines with both children. She has not returned.

8 On February 17, 2023, Petitioner filed an **AMENDED PETITION FOR CONTEMPT**  
9 **RE: GRANDPARENT VISITATION**. The next day, Respondent David Olesen began his  
10 planned relocation to Kentucky.

11 On April 11, 2024—more than a year after the children and both legal parents relocated  
12 outside of the state of Arizona—Petitioner filed her Petition to Modify Third Party Visitation.  
13 Plainly, Arizona lacks subject matter jurisdiction to proceed and this petition must be dismissed.

#### 14 **LEGAL STANDARD**

15 Subject matter jurisdiction is “the power to hear and determine cases of the general class  
16 to which the particular proceedings belong[.]” *In re Marriage of Dorman*, 198 Ariz. 298, P.3d  
17 329 (App. 2000) (quoting *Estes v. Superior Court*, 137 Ariz. 515, 672 P.2d 180 (1983)). Subject  
18 matter jurisdiction is conferred exclusively by the Arizona Constitution or statute; it is never  
19 conferred by consent. *State v. Maldonado*, 223 Ariz. 309, 223 P.3d 653 (2010). Subject matter  
20 jurisdiction is mandatory and without it, a complaint or action must be dismissed. Any orders  
21 entered without subject matter jurisdiction are void. *Martin v. Martin*, 182 Ariz. 11, 893 P.2d 11  
22 (App. 1994); See also *Cockerham v. Zikratch*, 127 Ariz. 230, 619 P.2d 739 (1980).

23 For child custody proceedings, subject matter jurisdiction is conferred by article two of  
24 the UCCJEA. The UCCJEA was enacted to avoid "jurisdictional competition and conflict,"

1 *Welch-Doden*, 202 Ariz. 201, ¶ 32, 42 P.3d 1166, and to create consistency in interstate child  
2 custody jurisdiction proceedings, *Melgar v. Campo*, 215 Ariz. 605, ¶ 7, 161 P.3d 1269 (App.  
3 2007). To give effect to this purpose, a child's home state has jurisdictional priority.

4 Because this Court adopted the parties' agreement and entered the previous order, it  
5 retained exclusive continuing jurisdiction pursuant to A.R.S. § 25-1032 until either of the  
6 following was true:

- 7 1. A court of this state determines that neither the child, nor the child and one parent,  
8 nor the child and a person acting as a parent have a significant connection with this  
9 state and that substantial evidence is no longer available in this state concerning the  
10 child's care, protection, training and personal relationships.
- 11 2. A court of this state or a court of another state determines that the child, the child's  
12 parents and any person acting as a parent do not presently reside in this state.

13 It is undisputed that neither the children, the children's parents, nor any person acting as a  
14 parent presently reside in Arizona. This has been true and known to Petitioner since February  
15 2023. Petitioner's previous pleadings confirm their knowledge that the children and both legal  
16 parents relocated from Arizona in February 2023. Petitioner's Petition to Modify also confirmed  
17 Petitioner's knowledge that exclusive continuing jurisdiction lapsed months ago when Petitioner  
18 erroneously alleged that "Arizona maintains jurisdiction to modify the Visitation Orders pursuant  
19 to A.R.S. § 25-1032(B) and 1031(A)(4)."

20 A.R.S. § 25-1032(B) states that a "court of this state that has made a child custody  
21 determination and does not have exclusive, continuing jurisdiction under this section may  
22 modify that determination only if it has jurisdiction to make an initial determination under  
23 section 25-1031." Following its reference to A.R.S. § 25-1031, this statute controls when courts  
24 can make initial custody determinations or modifications excepted by A.R.S. § 25-1032(B) and  
provides as follows:

1. This state is the home state of the child on the date of the commencement of the  
proceeding, or was the home state of the child within six months before the

commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

2. A court of another state does not have jurisdiction under paragraph 1 or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 25-1037 or 25-1038 and both of the following are true:

(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.

(b) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships.

3. All courts having jurisdiction under paragraph 1 or 2 have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 25-1037 or 25-1038.

4. A court of any other state would not have jurisdiction under the criteria specified in paragraph 1, 2 or 3.

Petitioner argued jurisdiction only under No. 4, thereby conceding that none of the other conditions applied. By citing to No. 4, Petitioner argued that no state has home state jurisdiction, but this is incorrect. The children relocated to the Philippines in February 2023 and since have lived there continuously. Thus, pursuant to 25-1031(A)(1), the Philippines became the children's home state for UCCJEA purposes in or around August 2023. Arizona treats a "foreign country as if it were a state of the United States for the purpose of applying ... article 2 of [the UCCJEA]." A.R.S. § 25-1005(A). Accordingly, 25-1031(a)(4) does not apply and no other jurisdictional basis exists for Arizona to modify the current orders.

### **CONCLUSION**

The operative facts are undisputed. The children and both legal parents stopped residing in Arizona more than a year ago in February 2023. The children have resided in the Philippines continuously for more than six (6) months, establishing the Philippines as the children's home state for UCCJEA purposes. By Petitioner's admission, this Court's exclusive continuing

1 jurisdiction lapsed when the children and the parents relocated. The Philippines is the children's  
2 home state pursuant to A.R.S. § 25-1005 and since a home state exists, there is no basis under  
3 A.R.S. § 25-1031 for Arizona courts to reassert jurisdiction.

4 For the foregoing reasons, Respondent respectfully moves this Court to dismiss  
5 Petitioner's petition.

6 **DATED** this 22<sup>nd</sup> day of April, 2024.

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8 David C Olesen

9 David Olesen  
10 Respondent Pro Per  
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