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**SUPERIOR COURT OF ARIZONA  
COUNTY OF MARICOPA**

RICHARD RIESS,  
Petitioner,

v.

DESIREE TOMLIN RIESS,  
Respondent.

Case No.: FC2011-093719

**PETITIONER'S REPLY TO RESPONSE TO  
MOTION TO DISMISS**

Petitioner, pro se, respectfully submits his Reply to Respondent's Response to his Motion to Dismiss the instant matter for lack of subject matter jurisdiction.

In her response Respondent raises one argument in opposition to the Motion to Dismiss. Namely, that Arizona has jurisdiction under A.R.S. § 25-1031(A)(1) to make an initial custody determination if "the child is absent from this state, but a parent or person acting as a parent continues to live in this state."

Respondent seems to be arguing that because one or both parents lived in Arizona at the time proceedings commenced Arizona has jurisdiction. However, § 25-1031(A)(1) actually provides:

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.

Petitioner contends that the statute grants jurisdiction when Arizona was the child's home state within the six months immediately preceding commencement of the proceedings and at least one parent continues to live in Arizona. That does not apply to the current situation. Arizona was not Gabriel's (the Child's) home state at any time within the six months immediately preceding commencement of this proceeding. In *Welch-Doden v. Roberts*, 42 P.3d 1166 (2002) the court held "the plain language of § 25-1031(A) provides no possibility of having competing claims of jurisdiction when there is a home state". Id @ 1174. The court further held that home state jurisdiction was pre-eminent and precluded a state that does not have home state jurisdiction from considering even the best interest of the child. Id @ 1177.

Moreover, child custody jurisdiction is determined by the home state of the child, not the parents. The fact that Respondent has been residing in Arizona for more than six months is not material. Nor is it relevant where Petitioner was detained while he was in custody. The only issue relevant to the immediate question of jurisdiction is where Gabriel resided for at least six months at the time Respondent commenced this proceeding. And that is California.

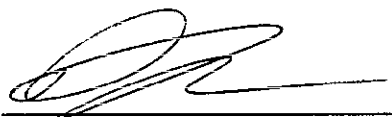
Respondent also contends that Arizona has emergency jurisdiction under A.R.S. § 25-1034(A) because Gabriel was abandoned by Petitioner in 2007. Based on Respondent's own statements in her response it is evident that Gabriel was not "abandoned" by Petitioner. Upon his arrest Petitioner made the necessary arrangements with his friend Liz Munoz to care for Gabriel until Petitioner's release. Miss Munoz had been caring for Gabriel on a part time basis since he was about 17 months old. While Petitioner was in custody Miss Munoz provided Gabriel a safe, stable, caring environment where he was happy and healthy. There was no reason to believe Gabriel was in danger of being harmed at any time

while he was with Miss Munoz. Respondent does not dispute that. Moreover, Gabriel was only in Arizona due to the misconduct of Respondent showing up at his home in Los Angeles, without notice and taking him against his will to Arizona so that she could commence these proceedings. Therefore, Petitioner argues that § 25-1034(A) does not apply to the current situation because there was no threat of harm or danger to Gabriel.

With respect to the remaining declarations and allegations raised by Respondent in her response Petitioner contends they are not relevant to the question of jurisdiction and shall reserve his rebuttals for the appropriate venue.

Petitioner believes it is unquestionable that California has home state jurisdiction in matters pertaining to the custody of Gabriel and respectfully requests the Court dismiss the instant matter for lack of subject matter jurisdiction, and vacate all prior orders in this matter.

Respectfully submitted this 17 day of October, 2011.

  
Richard Riess

## Certificate of Service


Original mailed to:

1. Clerk  
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One copy mailed to:

2. David Goldfarb (attorney for Respondent)  
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Dated: 10/17/11

  
Richard Riess