Original

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ROBERT SCOTLUND VAILE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents.

SUPREME COURT CASE NO.: 51981

FILED

JUL 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

PETITION FOR A WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELATE PROCEDURE RULE 21

I. STATEMENT OF FACTS:

1. On May 2, 2008, Defendant Cisile Prosbol, f/k/a Cisile Vaile, by and through her attorneys of record, Marshal Willick, Esq. and Richard Crane, Esq. of Willick Law Group, filed an Ex-Parte Motion for Examination of Judgment Debtor. (See attached Exhibit 1).
2. In her Motion, Defendant alleged that her attorneys had researched NRS 21.270 and concluded that it only applied to venue and was too antiquated to apply in this case. (See page 2 footnote 3 of Exhibit 1)
3. No copy of the purported research of NRS 21.270 history was attached as an exhibit to the Ex-Parte Motion.

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08-17378

4. On May 10, 2008, the judge presiding over the case of Vaile v. Prosbol, Case No. 98D230385D, the Honorable Cheryl B. Moss, signed an Ex-Parte Order for Examination of Judgment Debtor and set the hearing for examination of judgment debtor for June 11, 2008.

5. NRS 21.270(1)(b) Provides that "no judgment debtor may be required to appear outside the county in which he resides".

6. Petitioner, Robert Scotlund Vaile is a resident of the State of California and resides in Sonoma County, California. Judge Moss' order of May 10, 2008, required Petitioner to appear in Clark County, Nevada on June 11, 2008. Petitioner resides outside of Clark County, Nevada.

7. On June 5, 2008, counsel for Petitioner, in an unbundled capacity, argued in her Opposition to Ex-Parte Motion for Order Allowing Examination of Judgment Debtor and Supplement to Motion for Reconsideration and to Amend Order that NRS 21.270(1)(b) was subject to plain meaning. Any claims that this section of NRS was outdated should be addressed with the legislator. (See attached Exhibit 2, pages 1 and 2).

8. On June 11, 2008, petitioner did not appear for the judgment debtor examination. Counsel for petitioner argued that he was not required to attend based upon the plain meaning of the statute. Judge Moss, who initially was unaware that the Examination of Judgment Debtor was on for hearing on June 11, 2008, opened her copy of the NRS and found that NRS 21.270(1)(b) was independent of section NRS 21.270(1)(a). She ruled from the Bench that she was "picking section (a)" because there was an "or" between (a) and (b). She concluded that the petitioner must appear for a

judgment debtor examination in Clark County even though he lived outside the County because he was being ordered to appear before a judge. (see NRS 21.270(1)(a) set forth below (emphasis added):

NRS 21.270 Examination of judgment debtor.

1. A judgment creditor, at any time after the judgment is entered, is entitled to an order from the judge of the court requiring the judgment debtor to **appear** and answer upon oath or affirmation concerning his property, before:

(a) The judge or a master appointed by him; or

(b) An attorney representing the judgment creditor,

➥ at a time and place specified in the order. **No judgment debtor may be required to appear outside the county in which he resides.**

2. If the judgment debtor is required to appear before any person other than a judge or master:

(a) His oath or affirmation must be administered by a notary public; and

(b) The proceedings must be transcribed by a court reporter or recorded electronically. The transcript or recording must be preserved for 2 years.

3. A judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

[1911 CPA § 365; RL § 5307; NCL § 8863]—(NRS A 1983, 17; 1989, 902)

9. Rather than issue the bench warrant for arrest that counsel for Cisile Prosbol demanded, Judge Moss set the matter for an Order To Show Cause for the Petitioner to show cause why he had failed to attend the judgment debtor examination. Said Order to Show Cause, the actual Judgment Debtor Exam and other matters is set for **July 11, 2008 at 8:00 a.m.** Judge Moss ruled that petitioner **MUST ATTEND, in person**, the hearing set for July 11, 2008. (see Minutes from Hearing Exhibit 3)

10. Per the Legislative Counsel Bureau, there is no legislative history related to NRS 21.270. There is nothing to suggest that it is a venue statute as alleged by counsel for Cisile Prosbol.

11. For the record, in Vaile v. Eighth Judicial District Court , 118 Nev. 262, 44 P.3d 506 (2002), the Court stated: "We conclude that the district court did not have personal

jurisdiction over either party, nor did it have subject matter jurisdiction over the marital status of the parties, when it entered the decree."

II. STATEMENT OF THE ISSUE:

Is a Debtor Who Resides Outside of Clark County, Required to Attend an Examination of Judgment Debtor Exam in Clark County Before the Judge?

Answer: NO.

The Legislative Counsel Bureau provided a copy of Senate Bill No. 23, showing the February 21, 1983 amendment to NRS 21.270. At that time the statute was amended to the following:

"Section 1. NRS 21.270 is hereby amended to read as follows: 21.270 A judgment creditor, at any time after the judgment is entered is entitled to an order from the judge of the court requiring the judgment debtor to appear and answer upon oath concerning his property, before the judge or a master appointed him at a time and place specified in the order, but no judgment debtor may be required to appear before a judge or master outside the county in which he resides."

A copy of the amendment and the e-mail from the Legislative Counsel Bureau explaining how to read the Amendment is attached as Exhibits 4 and 5 . One other amendment was made to the statute in 1989. A copy of that amendment, which has no bearing to the issue at hand, is attached as Exhibit 6, along with the corresponding e-mail, Exhibit 6.

It is clear from looking at the 1983 Committee on the Judiciary's work that there was never any intent to break up the statute into "either or" categories as found by Judge Moss. The inaccurate division of NRS 21.270 section 1 into "a" and "b" sections was a mistake by the publishers of the NRS. The word "appear" in section (1)(b) relates back to the word "appear" that appears in section 1 and applies to both sections (a) and (b). Sections (a) and (b) are one sentence. The second sentence of section (b) should have

been labeled by the publishers as section (c) thereby applying it to the whole of section (1). The second sentence of (b) states: "No judgment debtor may be required to appear outside the county in which he resides." The second sentence of section (b) is an entirely new subject that was mistakenly combined with section (b) by the statute's publisher.

Counsel for petitioner argued in her June 5, 2008 filing on behalf of Mr. Vaile that the plain meaning of the statute should prevail. It was plain to counsel and Mr. Vaile that he did not need to appear for the judgment debtor examination as he resided outside the county. Counsel for Mr. Vaile spent very little time addressing that issue in her pleading because it seemed abundantly clear. Judge Moss, however, had a different idea as to the plain meaning and because sections (a) and (b) were broken up, concluded that Petitioner had to appear from his judgment debtor examination before **HER** because there **was no prohibition** requiring an out of county judgment debtor to appear in Nevada ***before of a judge,*** **although there was one that prohibited one from appearing *before an attorney.***

What appeared to be a plain meaning interpretation to both counsel for petitioner and Judge Moss, is actually a statute that is arguably ambiguous and subject to more than one interpretation. When a statute is ambiguous, we review any history related to the statute. There is no legislative history on this statute, but there is a copy of the actual changes made in the 1983 amendment. Said amendment clearly shows that the legislature INTENDED that No judgment debtor may be required to appear outside the county in which he resides.

///

Mr. Vaile intends to appear at the June 11, 2008, hearing to answer questions as to whether or not he has willfully and knowingly failed to pay child support. He does not intend to participate in a judgment debtor examination because per NRS 21.270(1)(b) he is not obligated to do so. Counsel for petitioner believes that if Mr. Vaile refuses to participate in said examination, that Judge Moss will order Mr. Vaile remanded into custody until such time as he does participate in a judgment debtor examination. If Mr. Vaile submits to the judgment debtor examination because he is **present** in the County than counsel for petitioner believes that on Appeal, this Honorable Court will refuse to decide this very important issue regarding the interpretation of NRS 21.270 because it will be rendered moot.

In the petitioner's Federal Court case, 2:02-cv-00706-RLH-RJJ, counsel for Prosbol, Mr. Willick, also requested and was denied a Judgment Debtor Examination pursuant to NRS 21.270 based upon the fact that petitioner lives outside the county. (See Exhibit 7). Counsel for Ms. Prosbol decided to take another shot at petitioner with his request in this family court case.

Counsel for petitioner has also attached copies of US Magistrate George Foley JR.'s decision in 1st Technology LLC v. Rational Enterprises, Ltd., et al. 06-cv-01110-RLH-GWF. (Exhibit 8). In that case, US Magistrate Foley concluded that a foreign judgment debtor need not appear for a judgment debtor examination in Clark County. While counsel for petitioner understands and recognizes that said unpublished decision is not binding upon this Honorable Court or Judge Moss, it is instructive.

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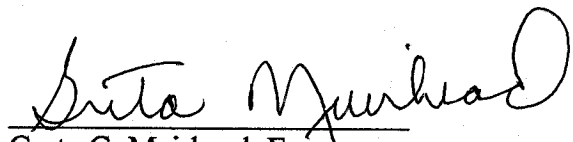
IV. CONCLUSION:

Based upon the above, petitioner respectfully requests that the Writ of Mandamus be Issued and that this Honorable Court issue an order directing the Honorable Cheryl B. Moss to vacate the Judgment Debtor Examination of Robert Scotlund Vaile presently set for July 11, 2008, at 8:00 a.m. and the Order to Show Cause related thereto.

Dated this 7th day of July, 2008.

Respectfully submitted:



Greta G. Muirhead, Esq.
Nevada Bar No. 3957
9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
702-434-6004
gmuirhead2@cox.net
Attorney for Petitioner
Robert Scotlund Vaile

EXPT
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for DEFENDANT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE, Plaintiff, vs. CISILIE A. PORSBOLL, fka CISILIE A. VAILE, Defendant.	CASE NO: 98-D-230385 DEPT. NO: I DATE OF HEARING: TIME OF HEARING:

EX PARTE MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR

Defendant, Cisilie Vaile Porsboll, fka Cisilie A. Vaile, by and through her attorneys of the WILLICK LAW GROUP, moves this Court for an *Order for Examination of Judgment Debtor*.

This application is made and based on all the files and pleadings herein, the Affidavit of Marshal S. Willick, Esq., and the Points and Authorities attached hereto.

POINTS AND AUTHORITIES

I. FACTS

This matter came on for hearing on June 4, 2003, and again on March 3, 2008. The Court on July 24, 2003, issued an *Order* awarding Cisilie's attorney's fees in the amount of $116,732.09 against Scotlund, reduced to judgment as of June 4, 2003.[1]

[1] *See*, Exhibit A, copy Order From June 4, 2003, hearing.

Exhibit 1

The hearing held March 3, 2008, amended the *Order* for the hearing held January 15, 2008, and was duly entered on March 24, 2008.[2] The Court ruled that Scotlund was in arrears for child support in the amount of $226,569.23 as of January 15, 2008, which was reduced to judgment and ordered collectable by all lawful means. The Court also awarded Cisilie the sum of $10,000 in and for attorney's fees, which was reduced to judgment and collectable by all legal means, as of March 3, 2008.

Plaintiff has made no attempt to satisfy any judgment against him. No subsequent order has been issued reversing any of these judgments, which are final and non-appealable. No stay has been issued preventing the collection of these judgments.

II. ARGUMENT

This Court is authorized to order an examination of Scotlund.

NRS 21.270

EXAMINATION OF JUDGMENT DEBTOR

1. A Judgment creditor, at any time after the judgment is entered is entitled to an order from the Judge of the court requiring the judgment debtor to appear and answer upon oath or affirmation concerning his property before:

(a) The judge or a master appointed by him; or
(b) An attorney representing the judgment creditor, at a time and place specified in the order. No judgment debtor may be required to appear outside the county in which he resides.[3]

2. If the judgment debtor is required to appear before any person other than a judge or master:

(a) His oath or affirmation must be administered by a notary public; and

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[2] *See*, Exhibit B, copy Order Amending the Order of January 15, 2008.

[3] This provision has existed in the statute since the early 1900's when travel between counties was difficult and inconvenient, and was apparently inserted to govern venue ***between*** counties, so that debtors would not have to travel at the convenience of creditors (there were many similar provisions in other statutes at the time). There is no indication of a legislative history or other contradictory indications of purpose. It does not apply to the matter of jurisdiction, as opposed to venue – applying it to a judgment debtor who seeks to avoid payment by running from state to state – as Scotlund has done – would allow debtors an easy way to avoid the power of the Court, contradicting the very purpose of the statute. The state's long arm statute was amended in 1993 to allow the courts of this state to exercise jurisdiction over a party to a civil action "on any basis not inconsistent with the constitution of this state or the Constitution of the United States." NRS 14.065(1). UIFSA also explicitly permits the exercise of jurisdiction for judgments and ancillary matters such as collection efforts (including examinations of judgment debtors), NRS 130.201; 130.316(1), and permits the Court to exercise jurisdiction by arrest of the obligor. NRS 130.025. Scotlund's current residence in California is irrelevant to the poser of the Court to enforce the support order.

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

(b) The proceedings must be transcribed by a reporter or recorded electronically.

The transcript or recording must be preserved for two years.

3. A judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

Scotlund has always known that he was obligated to pay these judgments, but has simply refused to do so. He has had ample time in which to make some effort or arrangement to satisfy the judgments, but instead has continued his efforts to increase the litigation cost to Cisilie, while evading all court-ordered obligations.

Cisilie has lived in Norway since the recovery of the children in 2003. Cisilie has no idea what assets – if any – Scotlund may possess with which to satisfy these judgments. Scotlund has refused to *ever* provide the Court with an Affidavit of Financial Condition, and has not complied with a single order of this Court to pay any sums to Cisilie. This action is required in order to assist Cisilie to recover what is owed to her.

Taking into account the statutory interest applied to the judgment, Scotlund now owes $174,512.28 on the attorney fee award as of May 1, 2008.[4] The arrearages in child support continue to grow on a daily basis as well.

III. CONCLUSION

WHEREFORE, Cisilie asks this Court for an *Order* granting an examination of judgment debtor, Robert Scotlund Vaile.

DATED this 2nd day of May 2008.

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorneys for Defendant

[4] *See* Exhibit C, Arrearage Calculation Summary, dated 04/29/2008.

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
as Vegas, NV 89110-2101
(702) 438-4100

AFFIDAVIT IN SUPPORT OF EXAMINATION OF JUDGMENT DEBTOR

STATE OF NEVADA)
)
COUNTY OF CLARK)

Affiant being first duly sworn upon oath deposes and states as follows:

1. Affiant is one of the attorneys for the Defendant in the above-captioned action. Affiant has knowledge of the facts recited herein.
2. A balance of $174,512.28 plus interest remains outstanding as of May 1, 2008, on the 2003 judgment for attorney's fees.
3. A balance of $226,569.23 plus interest and penalties remains outstanding as of January 15, 2008, as and for child support.
4. Affiant has no information as to the assets the judgment debtor has to satisfy the judgment.
5. Accordingly, an examination of the judgment debtor concerning employment, bank accounts, investment property, and personal property is necessary in order to allow judgment to be satisfied in full pursuant to NRS 21.270.
6. Further your Affiant sayeth naught.

DATED this 2nd day of May 2008.

MARSHAL S. WILLICK, ESQ.

SIGNED and SWORN to before me
this 2nd day of May 2008.

NOTARY PUBLIC in and for said
County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LAURA GODWIN
Appl. No. 99-58560-1
My Appt. Expires Sept. 1, 2011

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WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

EXHIBIT "A"

ORDR
LAW OFFICE OF MARSHAL S. WILLICK, P.C.
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3551 E. Bonanza Road, Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100
Attorney for Defendant

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CLERK

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant.

CASE NO: D230385
DEPT. NO: I

DATE OF HEARING: 6/4/03
TIME OF HEARING: 1:30 p.m.

ORDER FROM JUNE 4, 2003, HEARING

This matter came on for hearing before the Hon. Cheryl B. Moss, Nevada District Court Judge, Family Division, at the above date and time, on Defendant's *Motion For Attorney Fees and Costs Pursuant to 42 U.S.C. 11601, et seq. and 42 U.S.C. 11607(b)(3), and Certain Ancillary Relief.* Defendant, Cisilie A. Vaile, was not present, but was represented by her attorneys, the LAW OFFICE OF MARSHAL S. WILLICK, P.C. Plaintiff, R. Scotlund Vaile, was permitted to appear telephonically in proper person. The Court having reviewed the papers and pleadings on file and having entertained oral argument, enters the following findings and orders.

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THE COURT HEREBY FINDS THAT:

1. Service of Cisilie's *Motion* on Mr. Angulo as Scotlund's counsel of record was proper.

2. The Hague Convention is a international treaty and takes precedence over any state laws.

3. There can be only one Hague Court, pursuant to the Hague Convention, and the Nevada trial court is the Hague Court in this instance.

4. The venue argument brought forward by Scotlund is inapplicable, as the Nevada Court has jurisdiction over this matter pursuant to international law.

5. I.C.A.R.A. (a federal statute) enables the Hague Convention in the United States, and it mandates the trial court to issue fees unless certain findings are made. As the Hague Court, this Court has jurisdiction to order fees in this matter.

6. The Nevada Supreme Court reversed the earlier order in the trial court, which effectively reversed the decisions made by the trial court, including any implied denial of fees; thus, there is no res judicata argument.

7. Scotlund's argument of "unclean hands" is irrelevant to the matter before the Court.

8. There will be no double dipping or double collections. Measures will be taken to keep the amounts clearly identified and separate.

9. In the Nevada Federal District Court tort action, safeguards can be met to prevent any double collections.

10. The fees awarded in the Texas orders related only to the Texas proceedings. Because Texas was not the Hague Court, it had no jurisdiction to order fees from Nevada in the Texas proceedings.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198

11. This Court recognizes its ability, as the Hague court, to include the Texas award amounts in its order, but prefers to keep the amounts separate.

12. Under normal appellate rules and procedures, there is no stay of the Texas orders; the Texas judgment remains enforceable until and unless some court with jurisdiction to do so states otherwise.

13. Cisilie's request to issue an order to the State Department relates to the matters pending in Federal District Court, and therefore should be issued by that court. Further, this case is technically closed, and the Court does not think it appropriate to issue active orders that could lead to further proceedings, unless required.

IT IS HEREBY ORDERED:

1. Cisilie's request to have an order issued by this Court permitting the State Department to release information is denied; Cisilie shall apply to the Federal District Court for issuance of the requested order.

2. Cisilie's request to have the Texas awards rolled into the Nevada order is denied.

3. Scotlund is to pay Cisilie's attorney's fees, as and for sums expended by Nevada counsel on her behalf in this matter, in the amount of $116,732.09. This award is reduced to judgment as of June 4, 2003, will bear interest at the legal rate, and is enforceable by all lawful means.

4. Cisilie shall give notice to the Federal District Court of the Order issued from this Court on fees, and file in this Court some documentary evidence of having done so.

5. Mr. Willick shall prepare the order from this hearing; pursuant to his request, Mr. Vaile shall be given the opportunity to sign off on this order.

LAW OFFICE OF
MARSHAL S. WILLICK P.C.
3551 East Bonanza Road
Suite 101
Las Vegas NV 89110-2101

6. The Court seeing no remaining matters requiring intervention of the Nevada State courts in this matter, this case is closed.

DATED this 22 day of July, 2003.

CHERYL B. MOSS
DISTRICT COURT JUDGE

Submitted by:
LAW OFFICE OF MARSHAL S. WILLICK, P.C.

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
ROBERT CERCEO, ESQ.
Nevada Bar No. 005247
3551 E. Bonanza Rd., Suite 101
Las Vegas, Nevada 89110
(702) 438-4100
Attorneys for Defendant

P:\WPWallet\FF4123.WPD

Approved as to form and content:

R. SCOTLUND VAILE
IN PROPER PERSON
P.O. Box 6699
Boise, Idaho 83707
(208) 363-0333

EXHIBIT "B"

REOT
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. PORSBOLL, FNA CISILIE A. VAILE,

Defendant.

CASE NO: 98D230385D
DEPT. NO: I

DATE OF HEARING: 03/03/2008
TIME OF HEARING: 09:30 A.M.

ORDER
AMENDING THE ORDER OF JANUARY 15, 2008

This matter having come before the Court on Plaintiff's *Motion to Set Aside Order of January 15, 2008, and to Reconsider and Rehear the Matter, and Motion to Reopen Discovery, and Motion To Stay Enforcement Of The January 15, 2008 Order*, and Defendant's *Opposition and Countermotion For Fees and Sanctions Under EDCR 7.60*, Defendant and Plaintiff having been duly noticed, and the Court having read the papers and pleadings on file herein by counsel and being fully advised, and for good cause shown:

FINDS AND CONCLUDES:

1. The Court had personal jurisdiction and subject matter jurisdiction over the original child support order, and has jurisdiction to state the child support due as a sum certain amount as required by state law.

2. The parties were divorced as of August, 1998.

3. Statutory and case law regulating child custody and visitation do not have an impact on the issue before the court. As to the original child support provisions Scotlund had caused to be drafted and filed in the original divorce, the mixing of custody and visitation with child support is against public policy, and the court does not have jurisdiction over custody or visitation.

4. The *Decree of Divorce* required Scotlund to pay child support on a monthly basis to Cisilie; Scotlund himself determined the sum due to be $1,300 per month, and apparently paid that sum, per his determination, for an extended period of time after the parties divorced prior to the child abduction.[1]

5. Scotlund's child support obligation ***should*** have been set at 25% of his gross income, pursuant to 125B.070 as it read at the time of the parties' divorce in 1998; the fact that Scotlund submitted himself to the jurisdiction of the Court for purposes of being obligated to pay child support does not bind the Court, or the State of Nevada, to accept his erroneous methodology of calculating that child support.

6. Scotlund has never provided the Court with an Affidavit of Financial Condition.

7. No order altering the $1,300 per month child support obligation has ever been entered by any court of competent jurisdiction.

8. Since entry of the original *Decree*, Nevada law has been clarified to require court orders to express child support due as a dollar sum certain due each month.

9. Neither of the parties are living in Nevada. Cisilie and the children are residents of Norway, and Scotlund now lives in California.

10. The Nevada Supreme Court found that the District Court of this State has jurisdiction to order and collect child support; the Court continues to maintain jurisdiction to enforce its support order under UIFSA.

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[1] Scotlund paid this amount for approximately two years before he kidnapped the children from their home in Norway.

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3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

11. Under UIFSA, if both parties are outside the State of Nevada, each party would be required to seek a modification by way of registering the Nevada support order where the other party lived, and seeking a modification there. This has not, apparently, ever been done, although the record indicates that Norway is independently attempting to seek support for the children, who are located there. Nevada does not have jurisdiction at this time to entertain a motion to modify the existing support order, but the Court has inherent authority both to enforce its orders, and to clarify its prior orders, as required by statute.

12. On February 27, 2006, the matter came before the United States District Court, District of Nevada, and on March 13, 2006, that Court issued its *Findings of Fact and Conclusions of Law and Decision*, and *Judgment*, in the course of that litigation calculating the sum due to Cisilie in arrears in child support payments, including interest and penalties as of February, 2006, of $138,500.

13. That calculation is not binding on this Court, which ***could*** recalculate support based on the 1998 presumptive maximum of $1,000 per month. The Court also ***could*** find that the parties had agreed to exceed the cap based on the uncontroverted statement that Scotlund was earning in excess of a six figure income at that time, and acted in partial performance of that agreement for a period of years by his offering, and her accepting, of the $1,300 per month payments. The Court chooses the latter and, since all calculations performed by the federal court, and previously by this Court, were based on that number, the prior calculations remain correct.

14. Scotlund has refused to provide support for his children for a period of several years.

15. Under NRS 201.020(2)(a), a person who knowingly fails to provide for support of his child is guilty of a category C felony and is to be punished as provided in NRS 193.130 if his arrearages for nonpayment of the child support total $10,000 or more and have accrued over any period since the date that a court first ordered the defendant to provide for such support.

WILLICK LAW GROUP
591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

16. Under any conceivable calculation methodology, Scotlund's child support arrearages have exceeded the criminal prosecution threshold many times over.

17. The sums found as a matter of fact to be due and unpaid in the *Judgment* issued by the United States District Court have continued to increase, and to accrue interest and penalties and have grown to an overall arrearage of $226,569.23 as of January 15, 2008.

18. While the Court finds Scotlund's filings in this action for this hearing unpersuasive, they have not been so utterly frivolous or clearly intended solely to harass that a *Goad* order would be appropriate at this juncture.

Based upon the above findings this Court,

IT IS HEREBY ORDERED:

1. Scotlund is in arrears in child support, inclusive of interest and penalties, of $226,569.23 as of January 15, 2008, the entirety of which is reduced to judgment and ordered collectable by all lawful means.

2. Child support shall continue to be due in the sum certain dollar amount of $1,300 per month, until the emancipation of the children or further order of a court of competent jurisdiction modifying this child support order.

3. Scotlund's arrears are in excess of the threshold set out in NRS 201.020(2), and he is subject to criminal prosecution accordingly.

4. The Court's *Order* of January 15, 2008, is set aside, the orders and finding of this order are substituted therefor.[2]

5. *Motion to Dismiss* is DENIED.

6. *Motion to Reopen Discovery* is DENIED.

7. *Motion for Insufficiency of Process, and/or Insufficiency of Service of Process* is DENIED.

[2] The prior *Order* is attached as Exhibit A.

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

8. *Motion to Stay Case* is DENIED.

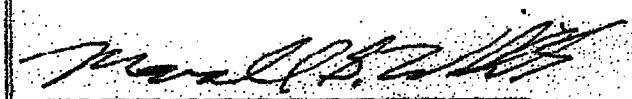
9. *Motion for Prohibition on Subsequent Filings and To Declare This Case Closed* is not granted at this time, although this *Order* does constitute the final order in these proceedings, and this case can be and is re-closed accordingly.

10. Cisilie was awarded the sum of $5,100 in and for attorney's fees for the hearing held January 15, 2008. That order has been set aside, however; under NRS 18.010, NRS 125B.140(c)(2), and EDCR 7.60, and because a child support arrearage has been found to exist, Cisilie is awarded and Scotlund is ordered to pay forthwith the sum of $10,000 in and for attorney's fees and costs, which sum is reduced to judgment as of March 3, 2008, and is collectable by all lawful means.

DATED this 17 day of March, 2008.

CHERYL B. MOSS
DISTRICT COURT JUDGE

Submitted by:
WILLICK LAW GROUP



MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorneys for Defendant
(702) 438-4100

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WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
as Vegas, NV 89110-2101
(702) 438-4100

EXHIBIT A

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CLERK OF COURT

ORDR
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. PORSBOL, fna CISILIE A. VAILE,

Defendant.

CASE NO: 98D230385D
DEPT. NO: I

DATE OF HEARING: 01/15/08
TIME OF HEARING: 9:00 a.m.

ORDER

This matter came before the Hon. Cheryl B. Moss, at the date and time above, on Defendant's *Motion to Reduce Arrears in Child Support to Judgment, to Establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs*. Plaintiff, Robert Scotlund Vaile, was not present. Defendant, Cisilie A. Porsbol, was not present, but was represented by her attorneys, the WILLICK LAW GROUP.

FINDINGS:

1. There was no Opposition filed.
2. Mr. Vaile has not moved for a reduction in child support in any jurisdiction.
3. This Court has continuing jurisdiction over the subject matter of this case.
4. Mr. Vaile established the current $1,300 of child support due each month.

5. The Federal District Court for the District of Nevada found that Mr. Vaile was in arrears in child support as of February, 2006, in the amount of $138,500.

6. Mr. Vaile has continued to incur arrearages, interest, and penalties on this amount equalling a total due as of the date of hearing of $226,661.23.

7. Mr. Vaile's refusal to pay child support to his children has forced the Defendant to return to Court to have the amount reduced to judgment.

ORDERS:

1. Mr. Vaile is to pay $1,300 per month in child support for his two minor children.

2. Arrearages in the amount of $226,569.23 are immediately reduced to judgment and collectible by all lawful means.

3. Mr. Vaile is to pay Cisilie's reasonable attorney fees for having to bring this action to the Court. As such, the amount of 5100.00 is immediately reduced to judgment and is collectible by all lawful means.

CHERYL B. MOSS
DISTRICT COURT JUDGE

Submitted by:

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Attorneys for Defendant

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CLERK OF THE COURT

JAN 15 9 26 AM '08

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

EXHIBIT "C"

Arrearage Calculation Summary
Vaile attorney's fees

 Report Date: 04/29/2008

Summary of Amounts Due

Total Principal Due 05/01/2008: $126732.09
Total Interest Due 05/01/2008: $47744.70
Total Penalty Due 05/01/2008: $0.00
Amount Due if paid on 05/01/2008: $174476.79
Amount Due if paid on 05/02/2008: $174512.28
Daily Amount accruing as of 05/02/2008: $35.49

Accumulated Arrearage and Interest Table

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
06/04/2003	116732.09	06/04/2003	0.00	116732.09	0.00
07/01/2003	0.00	07/01/2003	0.00	116732.09	539.68
08/01/2003	0.00	08/01/2003	0.00	116732.09	1134.53
09/01/2003	0.00	09/01/2003	0.00	116732.09	1729.39
10/01/2003	0.00	10/01/2003	0.00	116732.09	2305.05
11/01/2003	0.00	11/01/2003	0.00	116732.09	2899.91
12/01/2003	0.00	12/01/2003	0.00	116732.09	3475.57
01/01/2004	0.00	01/01/2004	0.00	116732.09	4070.43
02/01/2004	0.00	02/01/2004	0.00	116732.09	4663.66
03/01/2004	0.00	03/01/2004	0.00	116732.09	5218.61
04/01/2004	0.00	04/01/2004	0.00	116732.09	5811.84
05/01/2004	0.00	05/01/2004	0.00	116732.09	6385.93
06/01/2004	0.00	06/01/2004	0.00	116732.09	6979.16
07/01/2004	0.00	07/01/2004	0.00	116732.09	7553.25
08/01/2004	0.00	08/01/2004	0.00	116732.09	8171.20
09/01/2004	0.00	09/01/2004	0.00	116732.09	8789.15
10/01/2004	0.00	10/01/2004	0.00	116732.09	9387.16
11/01/2004	0.00	11/01/2004	0.00	116732.09	10005.11
12/01/2004	0.00	12/01/2004	0.00	116732.09	10603.12
01/01/2005	0.00	01/01/2005	0.00	116732.09	11221.06
02/01/2005	0.00	02/01/2005	0.00	116732.09	11939.85
03/01/2005	0.00	03/01/2005	0.00	116732.09	12589.07
04/01/2005	0.00	04/01/2005	0.00	116732.09	13307.85
05/01/2005	0.00	05/01/2005	0.00	116732.09	14003.45
06/01/2005	0.00	06/01/2005	0.00	116732.09	14722.23
07/01/2005	0.00	07/01/2005	0.00	116732.09	15417.82
08/01/2005	0.00	08/01/2005	0.00	116732.09	16235.75
09/01/2005	0.00	09/01/2005	0.00	116732.09	17053.67
10/01/2005	0.00	10/01/2005	0.00	116732.09	17845.21
11/01/2005	0.00	11/01/2005	0.00	116732.09	18663.14
12/01/2005	0.00	12/01/2005	0.00	116732.09	19454.67
01/01/2006	0.00	01/01/2006	0.00	116732.09	20272.60
02/01/2006	0.00	02/01/2006	0.00	116732.09	21189.67
03/01/2006	0.00	03/01/2006	0.00	116732.09	22017.98

10.25% from Jul 2006 to Jun 2008

Report created by:
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Licensed to:
Willick Law Group
3591 East Bonanza Road, Suite #200
Las Vegas, Nevada 89110
www.willicklawgroup.com

* End Of Report *

GRETA G. MUIRHEAD, ESQ.
Nevada Bar Number 3957
9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
(702) 434-6004
Attorney for Plaintiff
Unbundled

FILED
Jun 5 5 14 PM '08
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILE A. PORSBOLL, f/n/a CISILE A. VAILE

Defendant.

CASE NO. 98D230385D
DEPT NO: I

DATE OF HEARING: 6/11/08
TIME OF HEARING: 9:00 A.M.

OPPOSITION TO EX-PARTE MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR AND SUPPLEMENT TO MOTION FOR RECONSIDERATION AND TO AMEND ORDER

COMES NOW, the Plaintiff, ROBERT SCOTLUND VAILE (hereinafter referred to as "Scotlund"), by and through his attorney, GRETA G. MUIRHEAD, ESQ. appearing in an *unbundled capacity* for the June 11, 2008 hearing ONLY and herein asserts the following:

1. NRS 21.270(1)(b) specifically provides that "No judgment debtor may be required to appear outside the county in which he resides." Scotlund resides in Sonoma County, California. He does not reside in Clark County. Opposing counsel asserts in footnote 2 of his Ex-Parte Motion that this Court should ignore the plain

Exhibit 2

meaning of the statute, act as the legislative body and unilaterally change the law. If opposing counsel believes that this section of the statute is outdated, than he may contact his legislator and argue before the next legislative session that this portion needs to be repealed. Until such time as the statute is repealed or amended, it stands. Scotlund lives outside the County of Clark, is not obligated to appear for a judgment debtor examination in Clark County.

2. The April 11, 2002 Supreme Court of Nevada opinion of Vaile v. Eighth Judicial District is confusing (see attached exhibit "1"). The second sentence in Section II of the opinion on page 4 states the following: "We conclude that the district court did not have personal jurisdiction over either party, nor did it have subject matter jurisdiction over the marital status of the parties when it entered the decree." Only on a further reading of the opinion and *making inferences* thereon may the reader reach the *possible conclusion* that because the Court did not make a finding that the child support provision in the parties' agreement was not found to be void and unenforceable, the child support provision survives.

The Supreme Court further muddied the waters by arguing that, "Simply because a court might order one party to pay child support to another in the exercise of its personal jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject matters of child custody and visitation." Id. at 11. By using the word "might" and referring to the matter in third person "one party to pay child support to another", the Court once again forces the reader to guess what it meant. Had the Court simply said that it was ordering Scotlund to pay child support to Cisile or had the Court simply said that the Court has the jurisdiction to order child support in this case, but not

establish custody and visitation, then much of this confusion could have been avoided at the onset. While counsel for plaintiff is unwilling to assert at this juncture that she believes that this Honorable Court lacks jurisdiction to order and enforce a child support obligation, it is perfectly understandable why Scotlund believes that based upon a plain reading of the Supreme Court decision, no personal jurisdiction exists for any purpose and why Scotlund would want clarification from the Supreme Court on its decision. Scotlund's good faith belief on this confusing issue is not sanctionable and does not make him a vexatious litigant.

Scotlund's purported misconduct in obtaining the initial Decree of Divorce and removing the children from Norway has already been sanctioned. Opposing counsel may only get so much "mileage" out of that argument.

3. The title of a pleading is frequently significant and will sometimes affect the Court's and the parties' interpretation of same. The order from the March 3, 2008 hearing would more appropriately be titled: "Order re: Hearing of March 3, 2008" or "Order Setting Aside January 15, 2008 Order". There is no question that the Court did set aside the order from the January 15, 2008 hearing. The fact that the Court made similar findings on the same issues does not obviate the fact that Scotlund did prevail on is Motion to Set Aside.

4. With regard to Finding 3, page 2 lines 5 and 6 wherein this Honorable Court found that "the mixing of custody and visitation with child support is against public policy..." Counsel for Plaintiff is perplexed by this Court's conclusion. Custody or more specifically, Who has custody? is the number one factor in determining which party shall pay child support. Wright v. Osborn is based upon a 50/50 time-share

between the parties and their respective incomes. In addition, NRS 125B.080(9)(j) provides that

" 9. The court shall consider the following factors when adjusting the amount of support of a child upon specific findings of fact:

(j) The amount of time the child spends with each parent." This section of Nevada's statute mixes visitation and custody with child support. More visitation with a child by the non-custodial parent could result in a reduction in child support from the statutory guidelines set out in NRS 125B.070, likewise a non-custodial parent who neglects to utilize his visitation could face an upwards deviation of his support.

If this Honorable Court holds firm on its proposition that we never mix custody and visitation with child support and that same is against public policy then this Court has effectively substituted its judgment for the legislature and eradicated NRS 125B.080(9)(j). Counsel for Plaintiff respectfully submits that same is *not* the role of this Honorable Court.

5. Much discussion has been bandied about that the formula created by Scotlund and agreed to by Cislie is very complicated. In fact, said formula merely requires the parties to total up their respective yearly incomes, multiply that figure by 25% (if one party has both children), and then taking into account their proportionate contribution of the combined yearly income, multiplying that fraction by 25%. (see attached Exhibit "2"relevant portions of agreement). Counsel for Plaintiff is by no means a math star, but nonetheless understands the formula and could make the necessary yearly calculations if Scotlund and Cislie provided their respective yearly incomes. NRS 125B.080(I) specifically allows the Court to deviate from the requisite 25% formula based upon the "relative income of both parties". Given that the Nevada

Statute allows the parties' incomes to be taken into consideration, Counsel for Plaintiff remains perplexed as to why this Honorable Court would not enforce this child support agreement and would instead, elect to make a retroactive **modification of child support** that is prohibited by Day v. Day. On August 10,1998 at the time of the divorce, there was a child support order in place. That order provided that support would be established based upon the formula set forth in the parties' agreement. Any change to that original 1998 order is a child support modification. Said change took place on March 3, 2008, nearly ten years after the original order was put into place.

A perspective change in the order would be understandable, however the Court's decision to arbitrarily decide that the change should be effective back to the time of the Decree of Divorce is troublesome because such a retroactive change violates Day v. Day. In addition Scotlund decided to make a career change and attend law school limited to part time employment that Scotlund had the second and third years of school when he drove intoxicated students home as part of Washington and Lee's Sober Driver Program. Scotlund's recollecton is that he earned on average, $75.00 to $150.00 every two weeks for providing this service. Moreover, Scotlund worked during the summer of his second year as a law clerk in Dallas, Texas earning $2,500.00 a week for six weeks of work. Had Scotlund known that this Court was not going to enforce the signed agreement regarding how child support was going to be calculated and which was merged into the divorce decree after Cisile had the independent legal advice of Dave Stephens, Esq. and that he was going to be assessed a child support amount based upon an illusory salary in excess of $100,000.00 per year, then it is less likely that

Scotlund would have elected to leave his job as an information security consultant and retrain.,

If this Court finds that the provision of the Divorce Decree regarding child support to be unenforceable, then there is no valid order for child support. In the instant case, the Nevada Supreme Court found the provisions relating to custody and visitation to be unenforceable. Since they were unenforceable, the Court determined that there was no valid order for custody and visitation in the 1998 divorce decree.

If there is no enforceable order for child support, then there is no order. NRS 125B.030 provides that the parent with physical custody may go back no more than four years from the time of the bringing of the action to establish a support obligation.

Cisile brought this action to establish a support obligation on November 9, 2007. Cisile may not go back any further than November 9, 2003. NRS 125B.030 is set out below:

> **NRS 125B.030 Recovery by parent with physical custody from other parent.** Where the parents of a child do not reside together, the physical custodian of the child may recover from the parent without physical custody a reasonable portion of the cost of care, support, education and maintenance provided by the physical custodian. In the absence of a court order for the support of a child, the parent who has physical custody may recover not more than 4 years' support furnished before the bringing of the action to establish an obligation for the support of the child.

6. With regard to Finding Number 4, Counsel for Plaintiff does not object to this finding, rather Counsel just wishes to point out that this finding created by opposing counsel, states that Scotlund paid $1,300.00 for an "extended period of time". In his Ex-Parte Motion for Examination of Judgment Debtor and a host of other pleadings, Counsel for Cisile argues that Scotlund has never voluntarily paid any child support. This statement is contrary to the finding created by opposing counsel. Similarly, along those lines, it is difficult to ascertain, without the filing of a Schedule of Arrears dating

back to the time of the 1998 divorce, what payments have been credited to Scotlund by opposing counsel and what payments have not.

With respect to Finding Number 5, there is nothing on the record to suggest that Scotlund's calculation was "erroneous". It was an agreement between the parties entered into without duress and after consulting with their attorneys, as found by Judge Steel. The fact that this Honorable Court may not like this agreement does not justify it stepping back in time and throwing it out. The Court may throw it out prospectively, but should not be retroactively changing it. Cisile sat on her rights for nearly ten years before deciding to remind the court that a sum certain needed to suddenly be set. NRS 125B.070 was amended in 2001. Cisile had no reason to wait until the end of 2007, to assert this argument.

7. With regard to Finding Number 7, until March 3, 2008, there was no order anywhere that set child support at a $1,300.00 per month obligation. This finding muddies the waters and is unnecessary.

8. With regard to Finding Number 10, nowhere in its order of April 11, 2002 did the Nevada Supreme Court **affirmatively** state that the District Court of Nevada had jurisdiction to order and collect child support in **this particular case**. This portion of the finding is inaccurate and should be removed.

9. With regard to Finding Number 12, the Exhibit entitled "Arrearage Calculation Summary Vaile" with a report date of 11/9/07 is incomplete. It starts with an opening balance of $138,500.00 as of February 1, 2006. Counsel for Plaintiff respectfully requests that opposing counsel provide a schedule of arrears that dates back to the arrears period that he is requesting—from the time of the August 10, 1998

Decree of Divorce forward, showing all payments purportedly due and all payments made. Until such time as that is provided, Counsel for plaintiff asserts that it is improper for this Court to blindly accept opposing counsel's numbers, particularly in light of the fact that opposing counsel alleges that Scotlund has never voluntarily paid any child support, but then also alleges that Scotlund paid $1,300.00 for two years to wit: 1998 to 2000. This had to have been done "voluntarily" as there was no wage assignment in place between 1998 and 2000.

10. Finding Number 13, is misguided because it retroactively sets child support. If this Court elects to stay the course of a retroactive child support award, then it should also make a finding that Scotlund was not obligated to pay child support for the minor children when they were in his custody from May 2000 to April 2002. Child support is intended for the primary physical custodian to help defray some of the expenses caring for a child. From May 2000 to April 2002 , Scotlund was the primary physical custodian of his children and incurred all of the expenses for their care. While Scotlund is not asking Cisile to pay child support to him during that time period, as it would be ill advised to reward a purported wrongdoer, it is a windfall for Cisile to be awarded child support for that time period that the children were not with her. If this Honorable Court is going to step back and time and assess child support, then it should, rightly take out the portion of time that the children were not with Cisile.

11. Finding Number 14 is vague because it states that Scotlund has refused to provide support for his children for "a period of several years". Clearly Scotlund has failed to provide support if there is a child support arrearage. A motion for an order to show cause has not been filed in this case nor has an Order to Show

Cause Hearing been held. This Honorable Court is not in a position to presently determine if Scotlund has willfully **refused** to provide support or if some other hindrance has prevented him from paying support. Since no Show Cause hearing has been held, Scotlund is not in contempt as suggested by opposing counsel. If counsel for Cisile wants to needlessly continue to hammer home his point that Scotlund is a deadbeat than at a very minimum, he should set forth the time periods in the order that Scotlund has not paid.

12. Finding Number 15 should not be part of the order from the March 3, 2008 hearing. Orders from a hearing are meant to be a memorialzation of the events that transpired and the rulings issued by the Court on that particular day. There was no discussion at the March 3, 2008 hearing regarding a finding that Scotlund was in violation of NRS 201.020(2)(a). While opposing counsel is certainly free to implore either the Criminal Division of the District Attorney's Office or the U.S. Attorney's Office to attempt to pursue Scotlund for willful non-payment of support, this Court's job is to deal with the civil end, make an appropriate finding regarding the amount of arrears at issue and leave it at that. It is inappropriate for this **manufactured finding** to remain in this order.

13.With regard to Finding Number 16, no where in Cisile's November 2007 motion did she ask this Court to make a finding that Scotlund's child support arrears exceeded the criminal prosecution threshold. It is not part of the first page of the motion, nor is it contained within the prayer for relief. Certainly, this Court did not order opposing counsel to prepare a specific finding related to Scotlund's purported criminal behavior nor was it a topic of discussion allowing debate during the March 3, 2008

hearing. Scotlund by and through is counsel, respectfully requests that this finding be removed.

14.With regard to Order Number 2: "Child support shall continue to be due in the sum certain dollar amount of $1300.00...." Counsel for plaintiff objects to the words "continue to". There was no order prior to March 3, 2008 that set an obligation at $1300.00 per month. Thus, the order should read, "Child support shall be due...."

15.Order number 3 making a finding re: criminal prosecution is something that was outside of the purview of this court on March 3, 2008. In UIFSA court, hearings are specifically set, after proper notice to the respondent, for the Child Support Hearing Master to determine that a non-custodial parent owes in excess of $1,000.00 or two months in child support and therefore be eligible for a driver's license suspension. For this Court to make a determination that respondent is subject to criminal prosecution without this argument and this requested relief being properly noticed is error.

16.Order number 10 awarding attorney's fees is without a companion Finding. Attorney's fees were awarded at the March 3, 2008, hearing because the Court found that Cisile was the prevailing party pursuant to NRS 18.010. The Court, in its oral pronouncement, did not award attorney's fees based upon the alleged arrears. This order is inaccurate and should be changed. Furthermore, while Cisile did prevail on the majority of her issues, Scotlund did prevail on the issue of setting aside the January 15, 2008, order; therefore Scotlund could, likewise be considered a prevailing party.

Counsel for Plaintiff requests that opposing counsel provide an itemized statement to support his contention that $10,000.00 in attorney's fees have been incurred and are reasonable. In cases related to a fee shifting statute in Federal Court, the Court

employs the lodestar method which basis an attorney fee award by multiplying the reasonable number of attorney hours times a reasonable hourly rate. In this case, opposing counsel, Mr. Willick, is a very seasoned, scholarly and experienced attorney who bills at the rate of $550.00 per hour. $550.00 per hour is believed to be among the highest if not highest hourly rate for any Las Vegas family law practitioner. His associate, Mr. Crane, has been a Nevada licensed attorney since October 2005. Mr. Crane's hourly rate is $350.00 per hour. The average hourly rate for a seasoned family law practitioner in Las Vegas ranges from $300 per hour to $375.00 per hour. While Mr. Crane is no doubt bright and articulate, after less than three years in practice, one would be hard pressed to consider him seasoned. As such, his hourly rate is rather high for an associate with less than three years under his belt. In addition, opposing counsel's paralegals bill at the rate of $110.00 per hour.

At the March 3, 2008, hearing Mr. Willick, Mr. Crane and Mr. Willick's paralegal attended. Presumably Mr. Willick's entourage has attended previous hearings in this case as well. If Cisile Prosbol is content with incurring attorney's fees at the hourly rate of $1,10.00 that is fine as she is free to contract with whatever lawyer she so chooses. However, to assess Scotlund Vaile attorney's fees at the rate of $1,10.00 per hour because for some unknown reason Mr. Willick finds it necessary to have expensive note takers sit next to him at the table is unreasonable. After more than twenty-five years in practice, one would assume that Mr. Willick, would be able to make arguments, listen to the court proceedings, locate documents in his meticulous files and take notes. Counsel for plaintiff means no disrespect to Mr. Willick or his employees, she simply asserts that the hours billed on this file and the hourly amounts

charged are unreasonable. This Honorable Court should adopt the lodestar formula in assessing attorneys' fees. As a court of equity, this court must utilize reasonableness and common sense.

Along those lines, counsel for plaintiff also considers the recent pleadings in this case to be needlessly offensive. Footnote comments that make snide remarks concerning a "half awake law student" and what opposing counsel hopes Scotlund's law professors don't know, provide no useful information to the court and merely increase the length of the pleadings and of course, the amount of time opposing counsel has spent on them trying to come up with zingers. Counsel for plaintiff respectfully requests that opposing counsel be encouraged to refrain from extraneous comments that serve only to demonstrate the personal hatred that opposing counsel clearly feels for Scotlund Vaile.

Respectfully Submitted,

GRETA G. MUIRHEAD, ESQ.
Nevada Bar Number 3957
9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
(702) 434-6004

98D230385

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** June 11, 2008

98D230385 In the Matter of the Joint Petition for Divorce of:
R S Vaile and Cisilie A Vaile, Petitioners.

June 11, 2008 **9:00 AM** **All Pending Motions**

HEARD BY: Moss, Cheryl B **COURTROOM:** Courtroom 13

PARTIES:

Cisilie Vaile, Petitioner, not present
Kaia Vaile, Subject Minor, not present
Kamilla Vaile, Subject Minor, not present
R Vaile, Petitioner, not present

Richard Crane, Attorney, present

GRETA MUIRHEAD, Attorney, present

COURT CLERK: Valerie Riggs

JOURNAL ENTRIES

- EX PARTE MOTION FOR ORDER ALLOWING EXAMINATION OF JUDGMENT DEBTOR...ROBERT VAILE'S MOTION FOR RECONSIDERATION, AMEND ORDER, NEW HEARING, OBJECTIONS, STATY ENFORCEMENT OF 3-3-08 ORDER...DEFT'S OPPOSITION AND COUNTERMOTION FOR RECONSIDERATION AND TO AMEND ORDER POSTING OF BOND AND ATTY FEES

Atty Greta Muirhead, Bar#3957, appeared in an Unbundled capacity for Plaintiff.

Arguments by Counsel concerning Plaintiff's Ex Parte Motion to Recuse.

COURT ORDERED, based on the Virginia proceedings where this Court is listed in the Interrogatories as a potential witness and the fact that Plaintiff's unbundled Counsel is this Court's only Judicial opponent in this year's election, this Court has no objective or subjective bias, therefore, there is no basis to recuse, Plaintiff's Motion is DENIED.

Further arguments by Counsel concerning jurisdiction and child support.

COURT FINDS:

Exhibit 3

1. Colorable personal jurisdiction pursuant to 130.201.

2. Plaintiff's submission to personal jurisdiction with this Court to create and establish an initial custody order.

3. Both of Plaintiff's pleadings had child support formulas.

4. The 9th Circuit Court Appeals Decision is recognized.

COURT ORDERED the following:

1. Any Proper Person appearances by Plaintiff SHALL be in person, there SHALL be no more telephonic appearances pursuant to Barry vs Lindner.

2. Plaintiff is DIRECTED and REQUIRED to file an Affidavit of Financial Condition forthwith pursuant to EDCR 5.32.

3. Plaintiff's CHILD SUPPORT shall remain at $1,300.00 per month based on the Child Support attachment to the 1998 Decree of Divorce. Court finds it is an enforceable provision and Plaintiff has two (2) years past performance. That neither Party filed or exchanged copies of their tax returns 30 days prior to July 1 of each year. Page 13-16 of the Child Support Provision STANDS, as nobody challenged it. The District Attorney to enforce $1,300.00 per month.

4. A GOAD Order is GRANTED IN PART to Plaintiff, if he files any Motion, it is to be pre-approved through chambers first, filed, then ROC and served to Defendant, with no bond required.

5. The CHILD SUPPORT ARREARS Judgment STANDS, but can be modified pursuant to NRCP 6a.

6. Plaintiff DOES OWE the CHILD SUPPORT for the two (2) years that he had the children pursuant to the Nevada Supreme Court ruling.

7. Counsels requests for Attorney's Fees are DEFERRED to the next hearing. Both Counsel to submit their Billing Statements.

8. Plaintiff to brief Loadstar.

9. Court will notify the District Attorney's Office to appear at the next hearing to testify as to penalties and interest on CHILD SUPPORT ARREARS.

10. An ORDER TO SHOW CAUSE is ISSUED to Plaintiff for failure to follow the Court Order for the Examination of Judgment Debtor. Atty Muirhead will accept service for Plaintiff. Plaintiff is REQUIRED to APPEAR IN PERSON.

11. Defendant's request for a BENCH WARRANT is DEFERRED.

12. Paragraph 15 of the 3-20-08 Order STANDS, as it is just a recitation of the Statute.

13. Plaintiff's willful knowing and non-payment of CHILD SUPPORT is DEFERRED.

14. Court will acknowledge credit for any CHILD SUPPORT payment that Plaintiff has made, with proof of payments.

15. Return hearing date SET.

16. Plaintiff's Motion and Deft's Opposition and Countermotion scheduled for 7-3-08 is CONTINUED to 7-11-08 at 8:00 a.m.

Atty Willick shall prepare the Order from today's hearing, Atty Muirhead to sign as to form and content.

7-11-08 8:00 AM RETURN: CHILD SUPPORT PENALTIES/INTEREST

7-11-08 8:00 AM ROBERT VAILE'S MOTION FOR SANCTIONS

7-11-08 8:0 0AM CISILE VAILE'S OPPOSITION AND COUNTERMOTION FOR A BOND, FEES, SANCTIONS

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: June 11, 2008 9:00 AM Motion
Reason: Canceled as the result of a hearing delete
Moss, Cheryl B
Courtroom 13

Canceled: July 03, 2008 9:30 AM Motion
Reason: Canceled as the result of a hearing delete
Moss, Cheryl B
Courtroom 13

Canceled: July 03, 2008 9:30 AM Motion

Canceled: July 03, 2008 9:30 AM Opposition & Countermotion

Canceled: July 11, 2008 8:30 AM Motion

July 11, 2008 8:00 AM Motion
Moss, Cheryl B
Courtroom 13

Canceled: July 11, 2008 8:31 AM Opposition & Countermotion

July 11, 2008 8:00 AM Opposition & Countermotion
Moss, Cheryl B
Courtroom 13

Canceled: July 11, 2008 8:30 AM Return Hearing

July 11, 2008 8:00 AM Return Hearing
Moss, Cheryl B
Courtroom 13

Sec. 3. *1. The death, disability or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 2 of this act does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees and personal representatives.*

2. An affidavit, executed by the attorney in fact or agent, stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

3. This section does not alter or affect any provision for revocation or termination contained in the power of attorney.

Senate Bill No. 23—Committee on Judiciary

CHAPTER 13

AN ACT relating to judgment debtors; providing for an examination of a judgment debtor before issuance of a writ of execution; and providing other matters properly relating thereto.

[Approved February 21, 1983]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 21.270 is hereby amended to read as follows:

21.270 [When an execution against property of the judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides, or, if he does not reside in this state, to the sheriff of the county where the judgment roll is filed, is returned unsatisfied, in whole or in part, the] *A* judgment creditor, at any time after [such return is made, shall be] *the judgment is entered is* entitled to an order from the judge of the court requiring [such] *the* judgment debtor to appear and answer upon oath concerning his property, before [such] *the* judge or a master appointed by him at a time and place specified in the order [;] , but no judgment debtor [shall] *may* be required to [attend] *appear* before a judge or master [out of] *outside* the county in which he resides . [when proceedings are taken under the provisions of this chapter.]

Exhibit 4

gretamuirhead

From: "Mayabb, Danielle" <dmayabb@lcb.state.nv.us>
To: <gmuirhead2@cox.net>
Sent: Tuesday, June 17, 2008 5:02 PM
Attach: DOC.PDF
Subject: AG Opinion and other stuff...

Greta –

I'm not finding the AG Opinion you were talking about. Do you happen to have the number of the opinion? I'll keep looking.

In regards to NRS 125B.095, it was put in statute by Assembly Bill 604 in 1993. We have compiled a legislative history on that measure here:

http://www.leg.state.nv.us/lcb/research/library/1993/AB604,1993.pdf

In regards to NRS 21.270, it was put in statute in by the Civil Practice Act of 1911. There is no legislative history on this. It has been amended a couple of times, but it looks like the part regarding "county of residence" has always been a part of it. Here is the page from the 1983 Statutes of Nevada. The bracketed language is what is being deleted from the 1911 law. The italics indicate what is being added.

<<DOC.PDF>>

Let me know what else I can help you with.

Cheers,

Danielle Mayabb
Library Technician
Research Library
(775) 684-6859

Exhibit 5

7/3/08

Assembly Bill No. 735—Assemblyman Callister (by request)

CHAPTER 419

AN ACT relating to the enforcement of judgments; authorizing the examination of a judgment debtor outside of court; and providing other matters properly relating thereto.

[Approved June 21, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 18.160 is hereby amended to read as follows:

18.160 1. A judgment creditor may claim costs for one or more of the following items:

(a) Statutory fees for preparing or issuing an abstract of judgment.

(b) Statutory fees for recording, receiving or filing an abstract of judgment.

(c) Statutory fees for issuing a writ of execution, or any writ for the enforcement of any order or judgment.

(d) Statutory fees for issuing an order of sale.

(e) Statutory fees of sheriffs or constables in connection with serving, executing or levying any writ or making any return, or for keeping or caring for property held by virtue of such *a* writ.

(f) Costs or disbursements incurred in connection with any proceeding supplementary to execution which have been approved as to necessity, propriety and amount by the judge *ordering or* conducting the [same in his order upon such] proceeding.

2. A judgment creditor shall serve upon the adverse party either personally or by mail, and file at any time or times not more than 6 months after the items have been incurred and [prior to] *before* the time the judgment is fully satisfied, a memorandum of the items of his costs and necessary disbursements, verified by him or his attorney, stating that to the best of his knowledge and belief the items are correct, and that they have been necessarily or reasonably incurred in the action or proceeding.

3. Any party dissatisfied with the costs claimed may, within 5 days after the service of a copy of the bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the judge thereof at chambers.

Sec. 2. NRS 21.270 is hereby amended to read as follows:

21.270 *1.* A judgment creditor, at any time after the judgment is entered , is entitled to an order from the judge of the court requiring the judgment debtor to appear and answer upon oath *or affirmation* concerning his property, before [the] *:*

(a) The judge or a master appointed by him *; or*

(b) An attorney representing the judgment creditor,

at a time and place specified in the order. [, but no] *No* judgment debtor may be required to appear [before a judge or master] outside the county in which he resides.

2. If the judgment debtor is required to appear before any person other than a judge or master:

(a) His oath or affirmation must be administered by a notary public; and

(b) The proceedings must be transcribed by a court reporter or recorded electronically. The transcript or recording must be preserved for 2 years.

3. A judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

Sec. 3. NRS 21.310 is hereby amended to read as follows:

21.310 Witnesses may be required to appear and testify before the judge or master [upon] *conducting* any proceeding under this chapter in the same manner as upon the trial of an issue.

Assembly Bill No. 855—Committee on Judiciary

CHAPTER 420

AN ACT relating to municipal courts; clarifying that an appeal to district court from a municipal court is for a new trial; and providing other matters properly relating thereto.

[Approved June 21, 1989]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 5 of NRS is hereby amended by adding thereto a new section to read as follows:

The practice and proceedings in the municipal court must conform, as nearly as practicable, to the practice and proceedings of justices' courts in similar cases, except that an appeal perfected transfers the action to the district court for trial anew. The municipal court must be treated and considered as a justice's court whenever the proceedings thereof are called into question.

Sec. 2. NRS 5.090 is hereby amended to read as follows:

5.090 1. When an appeal of a civil or criminal case from a municipal court to a district court has been perfected and the district court has rendered a judgment on [such] appeal, the district court shall, within 10 days from the date of such judgment, give written notice to the municipal court of the district court's disposition of the appealed action.

2. When a conviction for a violation of a municipal ordinance is sustained and the fine imposed is sustained in whole or part, *or a greater fine is imposed,* the district court shall direct that the defendant pay the amount of the fine sustained *or imposed* by the district court to the city treasurer of the city [wherein] *in which* the municipal court from which the appeal was taken is located.

Sec. 3. The legislature hereby finds and declares that this act constitutes a clarification of existing law.

Sec. 4. This act becomes effective upon passage and approval.

---

next page? Did they amend any other part of that statute? When I look at what they wanted to amend it to and what it actually reads, with "a b" and a semicolon, it seems different. How does that happen?

---- Original Message ----
From: Mayabb, Danielle
To: gmuirhead2@cox.net
Sent: Tuesday, June 17, 2008 5:02 PM
Subject: AG Opinion and other stuff...

Greta –

I'm not finding the AG Opinion you were talking about. Do you happen to have the number of the opinion? I'll keep looking.

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<<DOC.PDF>>

Let me know what else I can help you with.

Cheers,

Danielle Mayabb
Library Technician
Research Library
(775) 684-6859

Subject: Activity in Case 2:02-cv-00706-RLH-RJJ Cisilie Vaile Porsboll, et al., vs. Robert Scotlund Vaile, et al., Order on Motion for Judgment Debtor Exam
From: cmecf@nvd.uscourts.gov
Date: Tue, 20 May 2008 15:54:47 -0700
To: cmecfhelpdesk@nvd.uscourts.gov
X-Account-Key: account1
X-UIDL: 0000495940658403
X-Mozilla-Status: 0001
X-Mozilla-Status2: 00000000
Return-Path: <cmecf@nvd.uscourts.gov>
X-Spam-Status: No, score=-1.3 required=5 tests=HTML_MESSAGE, HTML_MIME_NO_HTML_TAG,MIME_HTML_ONLY,RCVD_IN_DNSWL_MED,SPF_PASS
Received: from icmecflsm2.gtwy.uscourts.gov (icmecflsm2.gtwy.uscourts.gov [208.27.203.70]) by mailhost.cotse.com (8.14.1/8.14.2) with ESMTP id m4KMtUnl010528 for <nvddct@infosec.privacyport.com>; Tue, 20 May 2008 18:55:31 -0400 (EDT) (envelope-from cmecf@nvd.uscourts.gov)
X-SBRS: None
X-REMOTE-IP: 156.131.15.246
X-IronPort-AV: E=Sophos;i="4.27,517,1204520400"; d="scan'208";a="75820173"
Received: from nvdlei.nvd.circ9.dcn ([156.131.15.246]) by icmecflsm2.gtwy.uscourts.gov with ESMTP; 20 May 2008 18:55:24 -0400
Received: from nvdlei.nvd.circ9.dcn (localhost.localdomain [127.0.0.1]) by nvdlei.nvd.circ9.dcn (8.12.11.20060308/8.12.11) with ESMTP id m4KMtJP3012180; Tue, 20 May 2008 15:55:20 -0700
Received: (from root@localhost) by nvdlei.nvd.circ9.dcn (8.12.11.20060308/8.12.11/Submit) id m4KMslSm011712; Tue, 20 May 2008 15:54:47 -0700
MIME-Version: 1.0
Message-ID: <3843791@nvd.uscourts.gov>
Content-Type: text/html
X-Cotse-Filters: Default delivery

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 5/20/2008 at 3:54 PM PDT and filed on 5/20/2008
Case Name: Cisilie Vaile Porsboll, et al., vs. Robert Scotlund Vaile, et al.,
Case Number: 2:02-cv-706
Filer:
WARNING: CASE CLOSED on 03/13/2006

Exhibit 7

Document Number: 328

Docket Text:
ORDER denying [327] Motion for Judgment Debtor Exam as the Debtor is outside of the jurisdiction of the Court pursuant to NRS 21.270 and FRCP 69. Signed by Magistrate Judge Robert J. Johnston on 5/20/2008. (Copies have been distributed pursuant to the NEF - MXS)

2:02-cv-706 Notice has been electronically mailed to:

Henry H Rawlings, Jr bmilford@rocgd.com

James R Rosenberger jrosenberger@perlawyers.com

Marshal S Willick marshal@willicklawgroup.com

Robert Scotlund Vaile nvddct@infosec.privacyport.com

2:02-cv-706 Notice has been delivered by other means to:

Glenn Sager
12490 Robins Rd
Westerville, OH 43082

Heather Vaile
10340 Cedar Lake Drive
Aubrey, TX 76227

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1101333072 [Date=5/20/2008] [FileNumber=3843789-0
] [95479ff66c1dddd2564a90b95536ad1a88ed9687feac2a02d622ea7c7a58c428889
6b854ab8426ba6920e0113f1853a5f1ff5500bf42645022c189edf05760be]]

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1ST TECHNOLOGY, LLC,

Plaintiff,

vs.

RATIONAL ENTERPRISES LTDA, et al.,

Defendants.

Case No. 2:06-cv-01110-RLH-GWF

ORDER

This matter is before the Court on Specially Appearing Defendants Bodog Entertainment Group S.A. and Erroneously Named Specially Appearing Defendants Bodog.net and Bodog.com's Renewed and Amended Motion to Vacate Order for Examination of Judgment Debtor (#89), filed on October 31, 2007; Plaintiff 1st Technology LLC's Opposition to Judgment-Debtors' Renewed and Amended Motion to Vacate Order for Examination of Judgment Debtor (#90), filed November 1, 2007; and Specially Appearing Defendants Bodog Entertainment Group S.A. and Erroneously Named Specially Appearing Defendants Bodog.net and Bodog.com's Reply Re Its Renewed and Amended Motion to Vacate Order for Examination of Judgment Debtor (#91), filed November 6, 2007.

Also before the Court is Plaintiff 1st Technology LLC's Motion for Order to Show Cause to Hold Defendants Bodog Entertainment Group, S.A., Bodog.net, and Bodog.com and Their Designated Representative Calvin Ayre in Contempt for Failure to Appear for Judgment Debtor Examination (#94), filed November 8, 2007; Specially Appearing Defendants Bodog Entertainment Group S.A. and Erroneously Named Specially Appearing Defendants Bodog.net and Bodog.com's Opposition to

Exhibit 8

Plaintiff's Motion for Contempt (#104), filed November 19, 2007; and Plaintiff 1st Technology LLC's Reply in Support of Its Motion for Order to Show Cause to Hold Defendants Bodog Entertainment Group, S.A., Bodog.net, and Bodog.com and Their Designated Representative Calvin Ayre in Contempt for Failure to Appear for Judgment Debtor Examination (#107), filed November 21, 2007. The Court conducted a hearing in this matter on November 28, 2007.

BACKGROUND

Plaintiff 1st Technology LLC filed its Complaint for Patent Infringement (#1) against Defendants on September 7, 2006. In its Complaint, Plaintiff alleged that Defendants Bodog Entertainment Group S.A., Bodog.net and Bodog.com (hereinafter collectively referred to as the "Bodog Defendants") are foreign companies with offices in San Jose, Costa Rica. Plaintiff served the complaint on the Bodog Defendants in Costa Rica. After the Defendants failed to timely respond to the Complaint, Plaintiff moved for entry of their default and the Clerk entered the Bodog Defendants' default on February 26, 2007. The Court granted Plaintiff's application and entered a default judgment against the Bodog Defendants on June 13, 2007.

On August 31, 2007, the Bodog Defendants filed a motion to set aside the default judgment. *See Motion* (#36). That same day, Plaintiff filed an Ex-Parte Application for Order Allowing Examination of Judgment Debtor (#39). In its application Plaintiff requested that the Court order Calvin Ayre, owner and CEO of Defendants Bodog Entertainment Group S.A., Bodog.net and Bodog.com, to appear and answer questions under oath regarding the judgment debtors' property. On September 4, 2007, the Court entered the Order for Examination of the Judgment Debtor (#41), which required the Bodog Defendants "through their owner and CEO Calvin Ayre," to appear at Plaintiff's counsel's office on October 4, 2007 for the judgment debtor examination. On September 7, 2007, the Bodog Defendants filed an emergency motion to vacate the order for examination of judgment debtor or in the alternative to stay the judgment debtor examination pending the resolution of Defendants' motion to set aside the default judgment. *See Emergency Motion* (#43). On September 12, 2007, the District Judge stayed the judgment debtor examination of Calvin Ayre in Las Vegas, Nevada pending decision on Defendants' motion to set aside the default judgment. *See Order (#48).*

On October 11, 2007, the District Judge heard argument on Defendants' motion to set aside the

default judgment and denied Defendants' motion. The District Judge also lifted the stay regarding the judgment debtor examination. In so ruling, the Court stated:

> There is also a motion to vacate the order of the examination which I think is Document No. 43. I'm not sure that I understand what the status of that motion is, if it had been ruled on, but to the extent that the stay stayed that motion, the defendants may pursue any motion to vacate the order of examination but I believe the order of examination had been entered and any stay that this Court implemented, this Court is hereby lifting. So, you may proceed with those.

Plaintiff's Motion for Order to Show Cause (#94), Exhibit "5", Hearing Transcript, p. 26.

The Court minutes (#83) simply reflect that the stay of the judgment debtor examination was lifted.

Following the hearing on October 11, 2007, Plaintiff filed and served on Defendants a Notice Resetting Judgment Debtor Examination (#84) which rescheduled the judgment debtor examination of "Judgment debtor's CEO and owner Calvin Ayre" for November 2, 2007. Defendants waited until October 31, 2007, only two days before the renoticed examination date, to file their Amended Motion to Vacate Order for Examination of Judgment Debtor (#89). Plaintiff swiftly filed an Opposition (#90) to Defendants' renewed motion on November 1, 2007. The Court scheduled a hearing on Defendants' Amended Motion (#84) for November 9, 2007. On November 8, 2007, Plaintiff filed its Motion for Order to Show Cause to Hold Defendants Bodog Entertainment Group S.A., Bodog.net and Bodog.com and their Designated Representative Calvin Ayre in Contempt for Failure to Appear for Judgment Debtor Examination (#94). The Court therefore continued the hearing in this matter to November 27, 2007 so that Defendants could respond to the Plaintiff's Motion for Order to Show Cause (#84).

DISCUSSION

Fed.R.Civ.Pro. 69(a) provides that the procedure on execution, in proceedings supplementary to and in aid of execution, shall be in accordance with the practice and procedure of the state in which the district court is held. Rule 69(a) also provides that in aid of the judgment or execution, the judgment creditor may obtain discovery from any person, including the judgment debtor, in the manner provided by the Federal Rules of Civil Procedure.

Nevada Revised Statute (NRS) 21.270.1(b) provides that a judgment creditor, at any time after the judgment is entered, is entitled to an order from the judge of the court requiring the judgment debtor

to appear and answer upon oath or affirmation concerning his property before an attorney representing the judgment creditor, "at a time and place specified in the order." The statute further provides that "[n]o judgment debtor may be required to appear outside the county in which he resides." NRS 21.270.3 provides that "[a] judgment debtor who is regularly served with an order issued pursuant to this section, and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order." Under the Federal Rules of Civil Procedure, a judgment creditor may also notice the deposition of a judgment debtor corporation pursuant to Rule 30(b)(6) or notice the deposition of a specific corporate officer or managing agent pursuant to Rule 30(b)(1) to obtain information regarding the judgment debtor's assets. *See Credit Lyonnais, S.A. v. SGC International, Inc.*, 160 F.3d 428 (8th Cir. 1998).

The Court must deny Plaintiff's Motion for An Order to Show Cause (#84) to hold Defendants and Calvin Ayre in contempt for failing to appear for the judgment debtor examination on November 2, 2007. The Order for Examination of the Judgment Debtor (#41) entered by the Court on September 4, 2007 required Defendants' alleged CEO and owner Calvin Ayre to appear for the judgment debtor examination on October 4, 2007. On September 12, 2007, however, the Court stayed the judgment debtor examination until it decided Defendants' motion to set aside the default judgment. That stay remained in effect until October 11, 2007 when the Court denied Defendants' motion to set aside the default judgment. By the time the Court lifted the stay, however, the October 4, 2007 date set for the judgment debtor examination had already passed. The Court finds nothing in NRS 21.270 which would allow the judgment creditor to unilaterally renotice the time and place for the judgment debtor examination without a Court order authorizing the same. Therefore, once the District Judge lifted the stay, the Plaintiff was required to obtain a new order pursuant to NRS 21.270 to require the Defendants and/or Mr. Ayre to appear for a judgment debtor examination on November 2, 2007. Because no order was issued, Defendants cannot be held in contempt under NRS 21.270.3 for not appearing for a judgment debtor examination on November 2, 2007. The Court also notes that in lifting the stay, the District Judge stated that he was uncertain as to the status of Defendants' initial motion to vacate the judgment debtor examination filed on September 7, 2007. He indicated that by lifting the stay, Defendants could also proceed on their motion to vacate the judgment debtor examination. It would

therefore have behooved both parties to call the Magistrate Judge's attention to Defendant's motion to vacate the judgment debtor examination and request a decision on that motion in light of the District Judge's statements regarding the status of that motion.

Defendants argue that neither they nor Mr. Ayre can be required to appear in Clark County, Nevada for a judgment debtor examination because they do not reside in Clark County, Nevada, or, for that matter, in the United States. Defendants Bodog Entertainment Group S.A., Bodog.net and Bodog.com are Costa Rican entities and were served in Costa Rica. No evidence has been provided to the Court that Defendants have any offices in Nevada or the United States. Calvin Ayre is apparently a Canadian citizen. Neither party has provided the Court with information regarding where Mr. Ayre resides, but there is no information to suggest that he resides in Clark County, Nevada. Plaintiff argues that under NRS 21.270, the burden should be on Defendants and/or Mr. Ayre to demonstrate that they are not residents of Clark County, Nevada. Plaintiff has not provided any authority in support of this reading of the statute and the Court declines to so construe it.

Contrary to Plaintiff's suggestion, the failure to require Defendants to produce Calvin Ayre for a judgment debtor examination in Las Vegas, Nevada pursuant NRS 21.270 would not leave Plaintiff without the ability to obtain discovery in aid of execution on its judgment. There clearly are discovery tools under the Federal Rules of Civil Procedure that Plaintiff can employ to attempt to obtain information to execute on its judgment. Plaintiff appears to have reasonable grounds to believe that Mr. Ayre has relevant knowledge or information regarding the Bodog Defendants and their assets. Plaintiff may also be able to sufficiently demonstrate that Mr. Ayre controls the Defendants such that he should be viewed as their managing agent and required to appear for a deposition noticed under Rule 30(b)(1).

NRS 21.270, however, does not authorize the Court to require a foreign judgment debtor, or its foreign owner, officer, director, or managing agent to appear in Nevada for a judgment debtor examination if they do not reside in the state. Such an order appears contrary to the plain language of NRS 21.270.1(b) that "[no] judgment debtor may be required to appear outside the county where he resides." Nor does the statute by its terms clearly authorize the Court to order a judgment debtor corporation to produce a specific person as its representative at the judgment debtor examination. Plaintiff may, of course, notice th deposition of Defendants and/or their specific owners, officers, or

managing agents in accordance with Fed.R.Civ.Pro. 30 and seek an order from the Court regarding the time and place for the deposition, including requesting an order requiring Defendants' officers or managing agents to appear in the United States for their depositions. In the absence of evidence that Defendants reside in Clark County, Nevada, however, the Court will not require Defendants or their alleged owner and CEO Calvin Ayre to appear in Clark County, Nevada for a judgment debtor examination pursuant to NRS 21.270. Accordingly,

IT IS HEREBY ORDERED that Defendants' Renewed and Amended Motion to Vacate Order for Examination of Judgment Debtor (#89) is **granted.** Nothing in this order, however, precludes the Plaintiff from pursuing discovery from Defendants and/or Mr. Ayre in accordance with the Federal Rules of Civil Procedure or from moving the Court for an appropriate order regarding the time and place for taking the depositions of Defendants pursuant to Fed.R.Civ.Pro. 30(b)(6) or requiring Calvin Ayre to appear for a deposition based on a showing that he is Defendants' owner, officer, director, or managing agent.

IT IS FURTHER ORDERED that Plaintiff's Motion for Order to Show Cause to Hold Defendants Bodog Entertainment Group S.A., Bodog.net and Bodog.com and Their Designated Representative Calvin Ayre in Contempt for Failure to Appear for Judgment Debtor Examination (#94) is **denied.**

DATED this 28th day of November, 2007.

George Foley Jr.

GEORGE FOLEY, JR.
United States Magistrate Judge

Original

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ROBERT SCOTLUND VAILE, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION, Respondents.	SUPREME COURT CASE NO. :

DECLARATION OF GRETA MUIRHEAD, ESQ. IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELATE PROCEDURE RULE 21

Greta Muirhead, Esq. under penalty of perjury under the laws of the State of Nevada, declares as follows:

1. I am an attorney duly licensed and authorized to practice law in the State of Nevada. My bar number is 3957 and I have been so licensed since October 1990.
2. I am making this Declaration in support of the Petition for a Writ of Mandamus Pursuant to NRAP Rule 21.
3. I am familiar with the contents of the petition and those matters that I do not have personal knowledge of, I state on information and belief.
4. My client, to my knowledge resides out of state in Kenwood, California. It is my understanding that Kenwood, California is located in Sonoma County, California.

5. Mr. Vaile, the petitioner does not reside in Clark County, Nevada.

6. On June 5, 2008, I filed an Opposition to Ex-Parte Examination of Judgment Debtor.

7. On June 11, 2008, Judge Moss heard my client's Opposition. She concluded that the petitioner had to appear for a judgment debtor examination in Clark County because she was "picking section (a)" of NRS 21.270(1). She viewed sections (a) and (b) as mutually exclusive. I do not have a copy of the transcript of the hearing available to me.

8. Opposing counsel was anxious for a swift return and the judgment debtor examination was reset to July 11, 2008. Judge Moss, per her comments in Court on June 11, 2008, intends to hear argument on the various matters before the court: attorney's fees; how the child support penalty pursuant to NRS 125B.095 is to be calculated; child support arrears; and an Order to Show Cause: re: contempt for failure to appear for judgment debtor examination on June 11, 2008 and failure to pay child support and then send Petitioner and Ms. Prosbol's counsel into another room of the courthouse for the judgment debtor exam.

9. It was and remains my legal position that the petitioner is not obligated pursuant to NRS 21.270(1)(b) to appear in Clark County for a judgment debtor examination.

10. Judge Moss believed otherwise and if Mr. Vaile, the petitioner does not partake in the Judgment Debtor Examination, I think it quite likely that Judge Moss will remand him to custody until such time as he does.

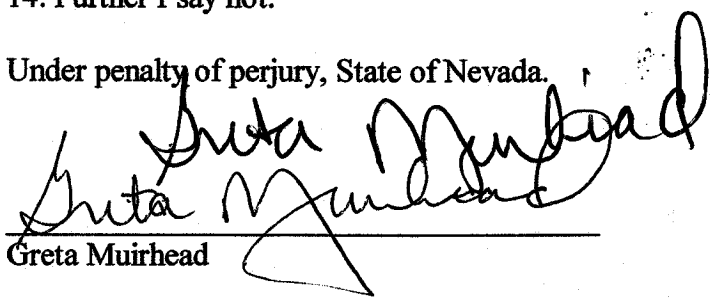
11. I have attached to the Petition, true and accurate copies of the e-mails that I received from the library technician at the research library of the Legislative Counsel Bureau. Also attached is the 1983 amendment.

12. Based upon this amendment, it is clear that NRS 21.270 was intended to prohibit a judgment debtor exam in Clark County wherein the debtor resided outside of the county.

13. I am respectfully requesting that Judge Moss be directed by this Honorable Court to vacate said examination and the Order to Show Cause related to it.

14. Further I say not.

Under penalty of perjury, State of Nevada.



Greta Muirhead

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ROBERT SCOTLUND VAILE, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION, Respondents.	SUPREME COURT CASE NO. :

RECEIPT OF COPY

Receipt of a copy of Robert Scotlund Vaile's Petition for a Writ of Mandamus, Emergency Motion to Expedite Supreme Court Review of Petition for Writ of Mandamus and supporting declarations is hereby acknowledged this 7th day of July, 2008.

N. Smalling for
HON. CHERYL B. MOSS

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ROBERT SCOTLUND VAILE, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION, Respondents.	SUPREME COURT CASE NO. :

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@ 1:38

Marshal S. Willick, Esq.
3591 E. Bonanza Rd., Ste. 200
Las Vegas, Nevada 89110
Attorney for Defendant, Cisile Prosbol

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

ROBERT SCOTLUND VAILE,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION,
Respondents,
and
CISILIE A. PORSBOLL, F/K/A CISILIE A. VAILE,
Real Party in Interest.

Supreme Court No. 51981
District Court Case No. D230385

RECEIPT FOR DOCUMENTS

TO: Greta G. Muirhead
Willick Law Group and Marshal S. Willick
Charles J. Short , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

07/08/08	Received Filing Fee. $250.00 from Greta G. Muirhead--check no. 1854.
07/08/08	Filed Petition for Writ of Mandamus.
07/08/08	Filed Motion. Emergency Motion to Expedite Supreme Court Review of Petition for a Writ of Mandamus.

DATE: July 09, 2008

Tracie Lindeman, Clerk of Court

By: _____
Deputy Clerk