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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
Attorney for Real Party In Interest

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 MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents,

and

CISILIE A. PORSBOLL, F/K/A CISILIE A. VAILE,

Real Party in Interest

CASE NO: 51981

FILED
JUL 18 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ANSWER TO "PETITION FOR A WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELATE [*SIC*] PROCEDURE RULE 21"

I. INTRODUCTION

Petitioner states the issue before the Court as "Is a Debtor Who Resides Outside of Clark County, Required to Attend an Examination of Judgement Debtor Exam in Clark County Before the Judge?" Our research indicates that no case law on point exists in this State, and that this is an issue of first impression to the Supreme Court, warranting a *de novo* review and a much needed published

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opinion as a matter of public policy. We also believe that the weightier considerations of public policy militate toward allowing the examination of judgment debtor to go forward here, where Mr. Vaile has caused damages to accrue by his voluntary acts and filings.

II. STATEMENT OF FACTS

We presume that this Court is aware of the history of litigation Mr. Vaile, at least through issuance of this Court's *Opinion* on April 11, 2002, which led directly to recovery of the kidnapped children,[1] and subsequent entry of a six-figure attorney's fee award against Mr. Vaile in the Family Court.[2]

There was considerable litigation thereafter, as the Texas courts dismissed Mr. Vaile's filings and assessed tens of thousands of dollars in fees and costs against him, and a tort action in the United States District Court resulting in an approximate million-dollar tort award for the damage he inflicted on his children and former spouse.[3] Since then, several smaller awards of fees have been awarded in the various motions that Mr. Vaile continues to file in Family Court.

Mr. Vaile has never paid any portion of any judgment or order entered against him; it took the District Attorney until 2006 to ***start*** collecting a fraction of the massive child support arrears remaining unpaid since 2000. In the meantime, except for a three-year period when Mr. Vaile elected to attend law school in Virginia, he has maintained a six-figure income and lavish lifestyle while moving all around the country.

On April 30, 2008, an *Ex Parte Motion for Examination of Judgment Debtor was filed* with the United States District Court for the District of Nevada. This examination was specifically to identify assets possessed by petitioner to satisfy the $1,000,000 or so in judgments against Mr. Vaile ordered by that Court. This request was denied without prejudice on May 9, 2008.

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[1] *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002).

[2] *See* Exhibit A.

[3] *See* Exhibit B.

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

While that request remained pending, on May 2, 2008, we filed an *Ex Parte Motion for Examination of Judgment Debtor* in the Nevada Family Court. This examination was specifically to identify assets possessed by petitioner to satisfy the $100,000+ in attorney fees awarded to Ms. Porsbol in this litigation, but would have also been helpful in identifying the assets required to satisfy the massive federal tort judgment against Mr. Vaile, as well.

Mr. Vaile never filed any kind of opposition to the request for examination of judgment debtor. On May 10, 2008, Department I of the Eighth Judicial District Court issued an *Order for Examination of Judgment Debtor* based on the unopposed motion, to be taken June 11, 2008.

On May 19, 2008, Ms. Porsbol filed a new *Ex Parte Motion for Examination of Judgment Debtor* with the United States District Court for the District of Nevada. This request was denied based upon the Federal Court's reading of State law (NRS 21.270) on May 20, 2008.[4]

On June 11, 2008, Mr. Vaile failed to appear at the appointed time and place for his examination. Judge Moss issued an *Order to Show Cause* why he failed to appear at a properly noticed deposition. The *Order to Show Cause* was scheduled to be heard at 8:00 a.m. on July 11, 2008.

On July 9, 2008, this Court issued its *Order* staying the examination of judgment debtor, and calling for the filing of this *Answer*.

III. ARGUMENT

A. Absence of Legislative History or Controlling Case Law

Based on the limited time allowed for this *Answer* to be filed, our research was limited to a computer research sweep. We determined that there is neither any kind of legislative history from the passage of the statute in 1911, or any Nevada case law on point that clarifies whether a judgment

[4] The explanation that we believed the statutory language – "no judgment debtor may be required to appear outside the county in which he resides" – is a ***venue*** provision was included in both the federal and State filings. It goes without saying that the State courts are to interpret State statutes, with the federal courts conforming to the State's interpretation, so we proceeded in the State court. *See Holloway v. Barrett*, 87 Nev 385, 487 P.2d 501 (1971) ("The latter question is not a federal one, but one of interpretation of a state statute, on which the decisions of the state courts are controlling"); *Christensen v. Lisowski*, 122 Nev. ___, 149 P.3d 40 (Adv. Opn. No. 111, Dec. 28, 2006) (opinion on certification from the United States Bankruptcy Court for this Court's guiding interpretation of scope of Nevada statute).

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

debtor can be compelled to attend an examination in Clark County when that party does not reside in the State of Nevada

We still believe that the original reason for the provision as it was written in 1911 was due to the hardship of forcing debtors to travel from one county in Nevada to another county at a time when the roads and transportation were limited, rough, and occasionally impassable. The statute does not on its face contemplate parties in more than one State.

Since much of the original statutes of Nevada were borrowed from California, we looked to their statute on the same matter. It is clear that California and Nevada considered the same issues at that time and have preserved similar statutes to the present.

Since the Court has access to the wording of NRS 21.270, we do not duplicate it here, but do provide the statute from which it was copied as it appears today in California, for comparison:

> 708.160. (a) Except as otherwise provided in this section, the proper court for examination of a person under this article is the court in which the money judgment is entered.
>
> (b) A person sought to be examined may not be required to attend an examination before a court located outside the county in which the person resides or has a place of business unless the distance from the person's place of residence or place of business to the place of examination is less than 150 miles.
>
> (c) If a person sought to be examined does not reside or have a place of business in the county where the judgment is entered, the superior court in the county where the person resides or has a place of business is a proper court for examination of the person.
>
> (d) If the judgment creditor seeks an examination of a person before a court other than the court in which the judgment is entered, the judgment creditor shall file an application that shall include all of the following:
>
> (1) An abstract of judgment in the form prescribed by Section 674.
>
> (2) An affidavit in support of the application stating the place of residence or place of business of the person sought to be examined.
>
> (3) Any necessary affidavit or showing for the examination as required by Section 708.110 or 708.120.
>
> (4) The filing fee for a motion as provided in subdivision (a) of Section 70617 of the Government Code.[5]

In short, California has much the same provision as Nevada, although the face of the language there has evolved to include conducting the examination within 150 miles of either the debtor's residence or his place of business.

[5] *See* California Code of Civil Procedure Section 708.160.

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

We also did a search throughout the United States, and discovered that most states have the same or similar provisions included in their counterpart statutes to NRS 21.270.[6] Some of these jurisdictions, including California, ***do*** have case law construing such provisions in interstate cases, and interpret the language in favor of conducting the examination in the court where the judgments were awarded.

B. Standard of Review; the Statute is Necessarily Ambiguous By Absence of Reference to Interstate Cases

The little case law we have found on this topic indicates that, as we submitted to the court below, statutes governing examinations of judgment debtors are construed as venue statutes containing no explicit reference to the possibility of interstate application. In each of those cases, the courts involved have found it necessary to construe the statutes in a context other than that in which they were apparently intended to apply.

Interpretation of a statute is a question of law, so the proper standard of review is *de novo*.[7] In light of the case authority, there can be no reasonable doubt but that the statute's language is susceptible to two or more reasonable interpretations, making it ambiguous by definition.[8] When a statute is ambiguous, this Court looks to the Legislature's intent in interpreting the statute, and that intent may be deduced by reason and public policy.[9]

C. Foreign Corporations and Individuals Must Appear In The Court Ordering the Judgment

Based upon California having a very similar rule on taking depositions of judgment debtors, we looked first to that jurisdiction. In a case dating back to 1898, the Circuit Court of San Diego

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[6] Our research was limited by time constraints. A more thorough research on the topic is possible with time and money with which to conduct it.

[7] *Irving v. Irving*, 122 Nev. ___, 134 P.3d 718 (Adv. Opn. No. 44, May 25, 2006), *citing California Commercial v. Amedeo Vegas I*, 119 Nev. 143, 145, 67 P.3d 328, 330 (2003).

[8] *Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist.*, 122 Nev. ___, 131 P.3d 5 (Adv. Opn. No. 30, Mar. 30, 2006).

[9] *Id.* (*quoting State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004)).

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

found that a Mexican corporation ***could*** be compelled to appear in the court in California, as the rule did not apply to foreign entities.[10] Specifically, the court said:

> The concluding clause of section 714, supra, that 'no judgement debtor must be required to attend before a judge or referee out of the county in which he resides,' does not, I think, apply to a foreign corporation. Under the circumstances appearing in the case, I think the service of the order in question upon Mr. Fuller should be held sufficient; and the present motion to vacate the order of March 16, 1896, is denied.[11]

In other words, when the judgment debtor did not reside anywhere in California, the California court ***could*** compel the corporation to attend the examination in the place of the litigation even though the debtor did not reside in the county.

Flashing forward to 2004, the U.S. District Court for the Central District of California considered a similar situation for an individual incarcerated in California but who claimed Spain as his residence. The debtor contended that he could not be forced to attend an examination in California – even though he was present in California by way of incarceration – as he was a resident of Spain. The court found:

> Assuming arguendo Spain is defendant's "residence" for purpose of a judgment debtor examination, that assumption does not benefit defendant since C.C.P. Section 708.160(b) does not apply to a foreign based defendant. *Bates v. International Co. of Mexico*, 84 F. 518, 526 (C.C.S.D. Cal. 1898). Therefore, a judgment debtor examination under California law is proper in this Court. C.C.P. Section 708.160(a).[12]

It is clear that the California courts consider an out-of-State party to be subject to attend an examination of judgment debtor if the party is "foreign" to the jurisdiction, whether that party is a corporate entity or an individual. The question then becomes what constitutes "foreign" to a specific court.

In the only two cases we can find in California on this point, the corporation and the individual claimed residency in another country, but the rule appears to be the same whenever the party is located outside the territorial jurisdiction of the Court – i.e., out of State.

The dictionary definition of "foreign" is:

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[10] A corporation is a legal entity that can be sued the same as any individual.

[11] *See Bates v. International Co. Of Mexico*, 84 F. 518, 526 (C.C.S.D. Cal.1898).

[12] *See U.S. v. Feldman*, 324 F. Supp. 2d 1112 (C.D. Cal. 2004).

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

1. Of or relating to another country.
2. Of or relating to another jurisdiction ("the Arizona court gave full faith and credit to the foreign judgment from Mississippi").[13]

It is from that root that the definition of "foreign corporation" arises:

A corporation that was created or organized under the laws of another state, government, or country ("in Arizona, a California corporation is said to be a foreign corporation").[14]

From what we found in the scant case law, any party not resident somewhere in California is "foreign" and the venue statute therefore does not apply to limit a judgment examination in the county in which the action is pending.

Without further specific California case law to review, the legal definitions must stand as commonly used in the field of law, so we turn to typical Nevada usage, which indicates that "foreign" as used in Nevada family law and other matters means "out-of-State."[15] The term "foreign" and "out-of-State" are synonymous in Nevada statutory law dealing with interstate matters.[16] Accordingly, it would appear that the normal Nevada usage is compatible with the California case law cited above, and indicates that the same result (an out-of-State party may be hailed to be examined as a judgment debtor in the county of the action) would be appropriate under our statute, which has the same root as the California statute.

To find a court that has specifically decided such an issue and analyzed it more head-on, what little we found supports the same conclusion. Like California and Nevada, the relevant statute in

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[13] *See Black's Law Dictionary* 264 (Bryan A. Garner ed., pocket ed., West 1996).

[14] *Id.* at 143.

[15] *See, e.g., Locklin v. Duka*, 112 Nev. 1489, 929 P.2d 930 (1996) (California guardianship order was a "foreign guardianship"); *Trubenbach v. Amstadter*, 109 Nev. 297, 849 P.2d 288 (1993) (California order domesticated here is a "foreign judgment" starting the running of a new statute of limitations period); *C.H.A. Venture v. G.C. Wallace Consulting*, 106 Nev. 381, 794 P.2d 707 (1990) (discussing service on "foreign" (out of State) corporations).

[16] 17.350. Filing and status of foreign judgments.
An exemplified copy of any foreign judgment may be filed with the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

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

Mississippi requires an examination of a judgment debtor where he "can be found."[17] The Mississippi court nevertheless found that a foreign corporation – one from Georgia – could be compelled to attend an examination in the county where the suit for tort damages was brought and decided – where the action was pending. We think the court's logic was compelling.

The court decided that since the tort took place in Mississippi and the legal action was being conducted in Hinds County, Mississippi, the party seeking to be examined had placed himself in the County of the action for that purpose, and so the tortfeasor ***could*** be compelled to appear in Hinds County instead of requiring the examining party to go to Georgia to conduct the examination. Specifically, the court found:

> In the end, we are concerned with a venue statute. Absent express provision to the contrary, we think it only feasible to construe that statute consistent with the venue already established for the trial of the action. That venue, of course, is Hinds county.
>
> Venue for the trial of this action was established originally by Griffin's filing her suit in Hinds County. Objections to venue are waivable if not timely asserted. See Belk v. State Department of Public Welfare, 473 So. 2d 447, 451 (Miss.1985); Wofford v. Cities Service Oil Co., 236 So. 2d 743 (Miss. 1970). Where not asserted in a defendant's answer or a Rule 12 motion, objections to venue are deemed waived. Rule 12(h)(1), Miss.R.Civ.P. If H & W has waived its rights to answer sufficient that default and final judgment thereon should be affirmed, it would seem to offend neither notions of judicial logic nor substantial justice for us to hold that any objection to venue has been waived.[18]

In other words, where an out of State party has caused the economic harm in the State where the action is held, and not promptly (at the beginning of the action) invoked all potential procedural defenses as to jurisdiction and venue, those defenses are deemed waived and the examination of judgment debtor may proceed where the action is litigated.

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[17] The relevant Mississippi statute is Section 13-1-263(2) provides: "If the judgment debtor is a non-resident, the petition for his examination shall be filed, and the examination conducted, in a court of competent jurisdiction where he may be found."

[18] *See H & W Transfer and Cartage Service, Inc. v. Griffin*, 511 So.2d 895 (Miss. 1987).

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

D. The Reason for the Rule, and Public policy, Indicate that the California and Mississippi Courts Are Correct

A question that bears asking is why all the examination of judgment debtor statutes around the country have the kind of "place where he resides" language in the first place, so the policy underlying the language can examined.

It is not clear from any legislative history we reviewed why this provision appears in most state statutes or civil procedure rules. However, we note that Title 15 of the U.S. Code on debt collection practices includes a venue selection section that reads:

> Any debt collector who brings any legal action on a debt against any consumer shall:
> (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
> ***(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity:***
> ***(A) in which such consumer signed the contract sued upon....***[19]

As nearly as we are able to divine, the common root of the various venue selection statutes for examinations of judgment debtors share an underlying concern that debtors not be made to answer for debts at places where their appearance might itself be oppressive and where the place of examination has nothing to do with the creation of the debt at issue. Those considerations do not exist where a party creates the suit, or tort, or facts underlying the judgment, in the place of the action, which is why courts have found out-of-State parties required to attend examinations of judgment debtor in the place of the action on such facts.

Certainly, there is room for contravening considerations to be weighed in this issue of law, as the interests of the forum in enforcing its judgment, the debtor in not being made to unnecessarily travel, and the injured party to seek redress without incurring additional expense, all must be considered. As this Court has noted, however, where factors conflict, this Court is to determine which are "weightier," and direct the resolution to serve those ends.[20] As discussed below, we

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[19] 15 U.S.C. § 1692i (Pub. L. 90-321, Title VIII, § 811, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880).

[20] *See, e.g., Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998) (directing the lower court, where "factors conflict, as they may here," to use "its discretion to apply considerations of policy and logic to relevant evidence" to determine which of conflicting presumptions would prevail); *Matter of Guardianship of N.S.*, 122 Nev. ___, 130 P.3d 657 (Adv. Opn. No. 27, March 16, 2006) (discussing the weighing of mandatory factors set forth in NRS 125C.150); *Gepford v. Gepford*, 116 Nev. 1033, 13 P.3d 47 (2000) (discussing proper weighing of countervailing factors in a relocation case).

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

submit that this is an instance where the correct balance seems clear as a matter of law, logic, and equity.

E. Mr. Vaile Should Appear In Clark County For Examination

This Court, like the *Griffin* court, has stated that objections to jurisdiction and venue are waived if not timely asserted.[21] Here, Mr. Vaile has not done so in the ten years since he filed the fraudulent divorce action in our courts; as this Court observed in its 2002 *Opinion*, the only reason our courts have any concern with Mr. Vaile is that he chose to file in this jurisdiction, invoking the jurisdiction of our courts.

That is the same reason our courts have jurisdiction to enforce a child support award against him, even while our courts never had jurisdiction over matters of child custody.[22] As to examination of Mr. Vaile for the unsatisfied judgments his actions caused to be imposed here, the same analysis as in *Bates*, *Feldman*, and *Griffin* should apply and the same result should be reached.

There is no known provision in Nevada law for a party to specifically invoke the jurisdiction and protections of our courts by way of repeated appearances therein and affirmative requests for relief – as Mr. Vaile continues to do – while simultaneously claiming immunity from examination for judgments his own actions have caused to be assessed against him here. We submit that any

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[21] *See Hansen v. District Court*, 116 Nev. 650, 6 P.3d 982 (2000):

> A defendant need no longer appear specially to attack the court's jurisdiction over him. He is no longer required at the door of the ... courthouse to intone that ancient abracadabra of the law, de bene esse, in order by its magic power to enable himself to remain outside even while he steps within. He may now enter openly in full confidence that he will not thereby be giving up any keys to the courthouse door which he possessed before he came in. This, of course, is not to say that such keys must not be used promptly.
>
> . . . .
>
> Now, before a defendant files a responsive pleading such as an answer, that defendant may move to dismiss for lack of personal jurisdiction, insufficiency of process, and/or insufficiency of service of process, and such a defense is not "waived by being joined with one or more other defenses." Alternatively, a defendant may raise its defenses, including those relating to jurisdiction and service, in a responsive pleading. **Objections to personal jurisdiction, process, or service of process are waived, however, if not made in a timely motion or not included in a responsive pleading such as an answer**.

(Emphasis added.)

[22] The Uniform Interstate Family Support Act is expansive, explicitly granting jurisdiction to the courts of Nevada over an obligor such as Scotlund who "submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document . . . ." NRS 130.201(2).

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

construction of the statute that would lead to that result would be counterproductive and illogical, and that the better construction, like that in California and Mississippi, is that where a foreign party has created a debt in this jurisdiction, he may be examined here as to the assets available to satisfy the resulting judgments.

F. Stay on *Order to Show Cause* Should Be Lifted

The question of whether an out-of-State defendant can be examined here as to satisfaction of judgments he caused to be entered against him here is one of first impression, and one as to which this Court should make a *de novo* ruling as a matter of law. However, even if this Court should determine for whatever reason that Mr. Vaile cannot be examined in Clark County as to the debts he caused to come into existence here, the *Order to Show Cause* should be allowed to proceed.

The *Order* issued by this Court on July 9, 2008, stayed only the *Examination of Judgment Debtor*. The *Order to Show Cause* – though arguably linked to the examination – was not specifically stayed. Out of an abundance of caution, Judge Moss has not proceeded on that matter, either.

Mr. Vaile remains an ongoing litigant in this case and the Eighth Judicial District Court. He has affirmative requests for relief currently pending before the district court. He received a facially valid order to appear for an *Examination of Judgment Debtor*. At that point, Mr. Vaile ***could*** have filed an opposition, an objection, or even a writ. However, he took it upon himself to just not show up, wasting the time and money of everyone else involved. This action alone is contemptuous and the District Court should be allowed to proceed with a hearing to show cause on the matter, if nothing else so as to maintain decorum and order as to the parties and case before the court.[23]

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[23] *See In re Chartz*, 29 Nev. 110, 85 P. 352 (1907) ("The power of courts to punish for contempt and to maintain decency and dignity in their proceedings is inherent, and is as old as courts are old"); *Reed v. Reed*, 88 Nev. 329, 497 P.2d 896 (1972) (court has inherent power to enforce its orders and judgments).

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

IV. CONCLUSION

As a matter of public policy, this Court has an opportunity to establish case law in support of examination of debtors that wreak financial havoc in this State and then flee elsewhere while thumbing their noses at all involved. Mr. Vaile has not voluntarily paid a single dime toward any judgment imposed against him, or support of his children, since he kidnaped them in 2000; the damage he caused exceeds a million dollars. We now have the opportunity to identify his assets and begin collection in favor of his victims – his children and former spouse that he has abandoned for the past eight years, as well as to try to extract from him the hundreds of thousands of dollars in attorney's fees assessed against him that he has likewise ignored.

Mr. Vaile has availed himself of the protections and services of the courts of this State for over ten years. The case is only here because ***he*** chose to file in the courts of this county. He appeared here as recently as July 11, to pursue his own motions before the Family Court in the ongoing child support matter. It is disingenuous for him to now claim that he can't be compelled to attend an examination as a judgment debtor in the same location where ***he*** has been the plaintiff for over a decade. It is clear that he is attempting to avoid any payment ***ever***, and no statute should be construed to provide legal cover for such a deadbeat.

Looking over the border – ironically to the state where Mr. Vaile currently resides – the California courts have made it clear that they would compel him to return there if the venues were reversed.

We ask the Court to publish an opinion that compels Mr. Vaile – and every other judgment debtor that flees the state after initiating an action here – to return to this State for proper examination when the outcome of the litigation he causes includes an award of judgment against the party who initiated the suit. We also ask the Court to allow the hearing on the *Order to Show Cause*

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

to proceed to allow the District Court the opportunity to hold Mr. Vaile accountable for his contemptuous attitude toward the Court's orders, as expeditiously as possible.

Dated this 13th day of July, 2008.

Respectfully submitted:

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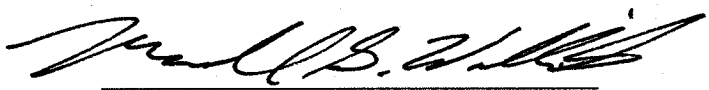

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89110
(702) 438-4100
Attorneys for Real Party In Interest

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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

FILED

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Shirley B. Bongiovi
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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EXHIBIT A

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 89110-2198

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

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Approved as to form and content:

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

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

CISILIE VAILE PORSBOLL, fna CISILIE A. VAILE, individually and as Guardian of KAIA LOUISE VAILE and DAMILLA JANE VAILE, minor children,

Plaintiff(s),

vs.

ROBERT SCOTLUND VAILE,

Defendant(s).

2:02-cv-0706-RLH-RJJ

FINDINGS OF FACT and CONCLUSIONS OF LAW and DECISION

This matter came on for trial, as duly scheduled and noticed, before the Honorable Roger L. Hunt, U.S. District Judge, on February 27, 2006. Plaintiffs were represented by and through their attorneys, the Willick Law Group. Defendant Robert Scotlund Vaile did not appear. He had filed a "Notice of Cessation of Defense" (#303, filed February 21, 2006), noting that he would not oppose an eventual judgment entered against him in this matter, and did not appear at the Calendar Call on February 22, 2006, as ordered by the Court.

Having reviewed all the pleadings, exhibits, written affidavits, and being fully advised of the facts and the law, the Court makes the following Findings of Fact and Conclusions of Law and Decision, and renders the Judgment filed separately herein:

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. . . .

EXHIBIT B

FINDINGS OF FACT

1. The findings of fact contained within the *Opinion* issued by the Nevada Supreme Court on April 11, 2002,[1] are entitled to recognition by this Court; this Court exercises its discretion to take judicial notice of the factual findings contained within that Opinion, which are adopted and relied upon herein to the degree not otherwise specifically addressed in these Findings of Fact.

2. Plaintiff Cisilie Porsboll, formerly known as Cisilie Vaile, is a citizen and resident of Norway. Defendant R. Scotlund Vaile is a citizen of the United States who currently claims residence in the State of Virginia, where he has indicated he is enrolled in law school. Plaintiffs Kaia and Kamilla Vaile are the minor children of Cisilie and Scotlund, and are residents of Norway, having dual citizenship.

3. As of August 1998, when the parties were divorced, Cisilie had physical custody of both children, in Norway.

4. Defendant Scotlund intentionally committed a fraud upon the Eighth Judicial District Court in and for the County of Clark, State of Nevada in his initial "Complaint for Divorce," in *Vaile v. Vaile*, Case No. D230385. He made further and other false assertions of fact in his later *Motion* filed in that case, under which he fraudulently induced Judge Steel of that court to issue a change in custody. That Order was never domesticated in Norway, and was ultimately set aside by the Nevada courts.

5. Defendant Scotlund violated federal law in seeking and obtaining "replacement" passports for the children that were subsequently utilized as part of their abduction or kidnap from Norway.

6. Defendant Scotlund conspired with his friend, Anne Fonde DeBorgraaf, his brother-in-law, Scott Bishop, and his parents, Buck and Janitye Vaile, to abduct the children from

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[1] *See Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002).

their mother's custody. Scotlund executed his plan in May 2000, kidnaping or abducting both children in Norway and smuggling them across international borders and State lines using the fraudulently-obtained passports, under color of authority of the fraudulently-obtained Nevada State Family Court Order.

7. Ultimately, the children were brought by Scotlund to Texas, where they remained until they were recovered and returned to Cisilie in April 2002.

8. On April 11, 2002, the Nevada Supreme Court issued its *Opinion* in *Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002), in which the court found that Scotlund was never a resident of the State of Nevada, and had falsely so claimed in both his original divorce paperwork and his later motion seeking custody of the children. The court also found that the children never lived in Nevada, and that the lower court never had subject matter or personal jurisdiction to enter any kind of order relating to child custody. The court found that the children are habitual residents of Norway, that Scotlund wrongfully removed them from Norway, and that Scotlund took custody of the children under an invalid order. The Nevada Supreme Court issued a writ of mandamus compelling the district court to vacate those portions of its decree relating to custody and visitation and to order the children's return to Norway. The *Order* filed April 12, 2000 (from the hearing of March 29, 2000) was set aside in its entirety as invalid in all respects.[2]

9. On April 16, 2002, the Nevada district court issued its order pursuant to the Writ of Mandamus, stating in part that "all provisions of the *Decree of Divorce* filed August 21, 1998, bearing on custody and visitation of the children at issue, or incorporating the custody and visitation terms of the parties' 'agreement' dated July 9, 1998, are hereby

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[2] Judge Steel has filed an affidavit in this action, indicating that she never would have issued that *Order* if she had been told the truth, and that she was tricked by the multiple false statements in Scotlund's written and oral presentation into entering the invalid *Order*.

void and unenforceable, and have been vacated. All aspects of the *Orders* entered April 12, 2000, and October 25, 2000, are invalid and void in their entirety."

10. The April 16 Nevada *Order* was domesticated in Texas on April 17, 2002, and given full faith and credit by the Texas Court; Cisilie was given custody of the children and permission to return to Norway with them. Scotlund was assessed $45,419 (attorney's fees of $20,359 and costs of $25,060), which were to incur interest at 10% per year compounded annually, in compensation for the damages he caused Cisilie to incur in Texas in recovering the children. Scotlund has never complied with any part of that court order to make payment.

11. Scotlund filed further Petitions in the appellate courts of Texas, which were finally denied on May 9, 2002. On June 13, a "Rule 11 Agreement" was filed, in which Scotlund stipulated to the costs Cisilie had incurred in responding to his Petitions in Texas. The Texas trial court denied his motion for a new trial on June 18, 2002, and assessed Scotlund $23,797.90 in additional fees, in accordance with the Rule 11 Agreement, to incur interest at 10% per year compounded annually. To date, Scotlund has never complied with any part of the court order to make those payments, either.

12. On December 3, 2002, Scotlund filed a *Petition for Writ of Certiorari* in the United States Supreme Court, attacking the Nevada Supreme Court *Opinion*.

13. On March 10, 2003, the United States Supreme Court denied Scotlund's *Writ.*

14. On May 15, 2003, the Texas Court of Appeals dismissed Scotlund's appeal as untimely.

15. In July, 2003, the Nevada Family Court issued an *Order* requiring that Scotlund pay $116,732.09 to Cisilie in compensation for the costs and fees incurred in Nevada for the recovery of the children. Scotlund has never complied with any part of that court order.

16. The Nevada *Decree of Divorce* required Scotlund to pay child support on a monthly basis to Cisilie, under a complex formula. Scotlund never supplied the income and other information necessary for such calculations, but he consistently earned income in excess

of $100,000 per year.

17. Scotlund unilaterally determined that the formula in the *Decree* required him to pay 11,000 Norwegian Kroners in child support, a sum equivalent to approximately $1,300 (U.S.) per month. He paid that amount to Cisilie from August 1998, through March 2000, but has not paid any support for the children since that time.

18. No valid United States court order has ever altered the obligation imposed by the Nevada *Decree of Divorce*, and the Nevada Supreme Court *Opinion* verified that, as a matter of State law, when a person such as Scotlund has submitted himself to the jurisdiction of a court, such a support obligation can and does stay in effect even if the court entering it did not have jurisdiction to make an award of custody of the subject children.

19. Assuming that Scotlund correctly calculated the amount of child support due under the Nevada order back in 1998, and disregarding the cost of living adjustment called for in that order, and Scotlund's various increases in salary over the years, a minimum sum of $138,500 in arrears in child support principal, interest, and penalties has accrued under the Nevada child support order from the time Scotlund stopped paying child support in March 2000, through February 2006.

20. After the recovery of the children, Norway independently issued temporary custody, support, and visitation orders (effective as of April 2002). Scotlund has acknowledged receipt of those orders, but has not paid any support for the children in accordance with those orders, either. Even without taking into account the cost of living adjustment in the Norwegian orders, the minimum amount of arrears that accrued thereunder between April 2002, and February 2006, converted into U.S. dollars, is approximately $48,000.

21. Beginning with the kidnaping or abduction of the children, and continuing for the two years required to recover the children, and thereafter, Cisilie experienced severe emotional and psychological trauma, including physical symptoms requiring medical attention. She missed many weeks of work as a result of both the resulting symptoms, and as

a matter of time necessary to deal with the American legal proceedings, incurring further financial loss.

22. Beginning with the kidnaping or abduction of the children, and continuing for the two years required to recover them, and thereafter, the children experienced emotional and psychological trauma as a result of Scotlund's removal of them from their home, family, and country, including nightmares and severe anxiety attacks. The children have been in counseling and therapy, and have exhibited ongoing symptoms of psychological trauma, including physical manifestations of stress. The expert psychological opinion is that the damage was significant and can reasonably be expected to require continuing therapeutic intervention indefinitely into the future.

23. The actual damages caused by Scotlund's actions have been extraordinary. Cisilie incurred $116,732.09 in costs, fees, and expenses in the Nevada State court proceedings to recover the children, another $95,819.47[3] in the Texas proceedings, another $20,395[4] in the proceedings in the United States Supreme Court, and a sum equal to some $15,512 in the courts of Norway. Scotlund has never paid any part of any judgment of any court that has found him liable.

24. The litigation expenses incurred by Cisilie in bringing the current action in this Court purportedly include $26,939 in costs, and more than $312,000 worth of attorney and staff time. Travel and other costs have totaled an additional approximate $10,000.

25. Scotlund's conduct and actions were intended to and did cause the infliction of emotional distress upon all three Plaintiffs, and were the actual and proximate cause of that damage.

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[3] $69,398.90 reduced to judgment by the Texas courts, and simple interest at 10%, in accordance with those orders from entry, through February 27, 2006.

[4] $16,548 in fees, and $3,847 in costs.

26. Scotlund had a duty to Plaintiffs, including but not limited to not abducting the children, and not giving false testimony to and abusing the process of the courts. Scotlund breached all those duties.

27. Scotlund's conduct and actions negligently caused the infliction of emotional distress upon all three Plaintiffs, and were the actual and the proximate cause of that damage.

28. Scotlund intentionally confined the children without actual or implied consent by the children or Cisilie, and without legitimate authority, constituting the false imprisonment of the children.

29. Scotlund's planning and execution of the kidnap, and subsequent false imprisonment of the children, intentionally interfered with the custodial rights of Cisilie.

30. Scotlund had a duty not to violate the law, abuse process, abduct the children, conceal the children, and withhold the children from Cisilie's custody. Scotlund's violations of those duties were the actual and the proximate cause of Plaintiffs' damages.

31. Scotlund has committed, or aided and abetted the commission of, acts with the same or similar pattern, intents, results, accomplices, victim, or methods of commission, and/or which are otherwise interrelated by distinguishing characteristics and are not isolated incidents, and which would constitute crimes related to a pattern of racketeering activity including at least two racketeering acts. These acts include Scotlund's kidnap of the children, and Scotlund's obtaining passports for the children with falsified documentation.

32. Scotlund's conduct constituted willful and malicious injury to Cisilie and the children, which conduct is encompassed by within the range set out in 11 U.S.C. § 523(6).

33. Scotlund failed to comply with the *Order Regarding Trial* filed February 13, 2006, since he (1) failed to timely file trial briefs, suggested voir dire questions and proposed jury instructions, as prescribed by the Pretrial Order; (2) failed to appear for Calendar Call without first having been excused by the Court; and (3) failed to timely comply with

orders scheduling deadlines for trial preparation.

34. Scotlund filed a "Notice of Cessation of Defense" on February 21, 2006, and explained that he would not oppose a default, although that document further claims that an appeal is an eventuality.

35. Scotlund was required to attended Calendar Call in this action on February 22, 2006, and produce documents pertaining to trial preparations for this Court's review prior to trial. The mandatory nature of his attendance at Calendar Call was telephonically verified with Scotlund. Scotlund nevertheless failed to appear at Calendar Call.

36. Scotlund's actions, failures to act, and communications have amply demonstrated contempt of this Court and its processes, as well as contempt for the orders of various courts in the United States and elsewhere in the world.

37. Scotlund has knowingly refused to provide support for his children for a period of some six years. Under any conceivable mathematics, the sum he owes in arrearages exceeds the thresholds set out in NRS 201.020(2)[5] and Title 18, Chapter 11A, Section 228 of the United States Code ("Failure to pay legal child support obligation")[6] for felony non-support under state and federal law.

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[5] On multiple grounds. There is a court ordered support obligation that Scotlund has knowingly failed to pay, arrearages in the amount of $10,000 or more have accrued since the time a court first ordered him to pay support, there has been a second or subsequent violation in that additional arrearages totaling $5,000 or more have accrued since the time a court first ordered him to provide support, and arrearages totaling $5,000 or more have accrued since the time a court in another jurisdiction first ordered him to provide support.

[6] Again, on multiple bases. The child to whom support is owed resides in another state, there is a court-ordered support obligation, there has been a willful failure to pay the support obligation for a period longer than two years, and there are arrearages of more than $10,000. Scotlund has used interstate or foreign commerce with the intent to evade a support obligation that has been unpaid for over a year and that is greater than $5,000.

38. As a direct and proximate result of Scotlund's wrongful acts, Cisilie has been caused to expend hundreds of thousands of dollars to locate, visit, and ultimately litigate to recover custody of her children. Scotlund's disregard of all orders entered by all courts to date purportedly required the expenditure of costs and time worth over $349,000 to bring this matter to trial.

39. If any of these Findings of Fact are more properly considered Conclusions of Law, they should be so construed.

CONCLUSIONS OF LAW

1. Scotlund has committed fraud, conspiracy, kidnaping or abduction, intentional and negligent infliction of emotional distress upon all three Plaintiffs, false imprisonment of the children, and intentional interference with Cisilie's custodial rights.

2. Scotlund's intentional perjury and offering false evidence in the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, in *Vaile v. Vaile*, Case No. D230385, his kidnaping or abduction of the children, and his obtaining passports for the children with falsified documentation, renders Scotlund liable for punitive damages.

3. This judgment shall be considered non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(6) as Scotlund has, by virtue of his conduct, committed a willful and malicious injury against all three Plaintiffs.

4. Scotlund is guilty of non-support of his children under applicable state and federal law.

5. Scotlund is in direct contempt of this Court for violation of the Orders of Judge Hunt regarding Calendar Call, and for violation of directions set forth in the Order Regarding Trial.

6. Scotlund's course of conduct in the actions noted above, and the amount of economic and other harm inflicted by Scotlund, is shocking to the conscience and demonstrates a wanton and malicious conduct, or a conscious disregard for the wrongfulness of his actions, entitling Plaintiffs to imposition of punitive damages.

7. Plaintiffs are entitled to an award of attorney's fees and costs in this action.

8. If any of these Conclusions of Law are more properly considered Findings of Fact, they should be so construed.

DECISION

Based upon the foregoing Findings of Fact, Conclusions of Law, and the evidence elicited at trial, it is the decision of the Court that judgment enter in favor of the Plaintiffs and against Defendant Robert Scotlund Vaile as follows:

1. Plaintiff Cisilie Vaile Porsboll is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.

2. Minor Plaintiff Daia Louise Vaile is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.

3. Minor Plaintiff Kamilla Jane Vaile is awarded $150,000.00 as and for injury, pain and suffering, including emotional and psychological pain, suffering and distress caused by R. Scotlund Vaile's abduction or kidnaping, false imprisonment, acts of fraud and conspiracy, and negligent or intentional infliction of emotional distress.

4. Plaintiff Cisilie Vaile Porsboll is awarded damages of attorneys fees and costs, awarded in other cases as a result of her having to come to the United States to recover her children, overturn fraudulently obtained orders, and regain custody of her children, in the amount of $272,255.56, plus interest until paid.

5. Plaintiff Cisilie Vaile Porsboll is awarded judgment against Defendant R. Scotlund Vaile for arrears in child support payments, including interest and penalties, as of February 2006, in the amount of $138,500.00.

6. Plaintiff Cisilie Vaile Porsboll is awarded punitive damages against Defendant R. Scotlund Vaile in the amount of $100,000.00.

7. Plaintiff Cisilie Vaile Porsboll is awarded attorneys fees and costs in this action in an amount to be determined upon submission of sufficient documentation and verification as required by the Local Rules.

Dated: March 13, 2006.

Roger L. Hunt

ROGER L. HUNT
United States District Judge

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ROBERT SCOTLUND VAILE, Appellant, 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.	S.C. DOCKET NO.: 51981 D.C. NO.: 98D230385

CERTIFICATE OF SERVICE

I HEREBY CERTIFY service of Cisilie's *Answer to "Petition for A Writ of Mandamus Pursuant to Nevada Rules of Appelate [SIC] Procedure Rule 21"* was made the 16th day of July, 2008, pursuant to NRCP 5(b), by depositing a copy in the United States Mail, postage prepaid, addressed as follows::

Greta G. Muirhead, Esq.
9811 West Charleston Blvd., Suite 2-242
Las Vegas, Nevada 89117
Attorney for Petitioner

Employee of the WILLICK LAW GROUP

P:\wp13\VAILE\LF0368.WPD

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