ORIGINAL

Scotlund Vaile
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(707) 833-2350
Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

R. SCOTLUND VAILE,

Appellant,

vs.

CISILIE A. PORSBOLL fka, CISILIE A. VAILE,

Respondent.

Supreme Court Case No: 52593
District Court Case No: 98 D230385

PETITION FOR EN BANC RECONSIDERATION

I. INTRODUCTION

In accordance with NRAP 40A, Appellant requests en banc reconsideration of a panel of this Honorable Court's *Order Denying Rehearing*, filed March 5, 2009 (09-05674). This petition should be granted because 1) reconsideration by the full court is necessary to secure and maintain uniformity of its decisions, and 2) because the proceeding involves a substantial precedential and public policy issues.

09-06906

II. BRIEF PROCEDURAL HISTORY OF THIS PETITION

In the course of the lower court litigation, Appellant timely noticed appeal of three district court orders:

- Order I - *Order Amending the Order of January 15, 2008*, filed on March 20, 2008
- Order II - *Order for Hearing Held June 11, 2008* filed August 15, 2008 and noticed as to entry of order on September 11, 2008
- Order III - *Findings of Fact, Conclusions of Law, Final Decision and Order*, dated October 9, 2008

Appellant filed a notice of appeal[1], renewed notice of appeal[2], and amended notice of appeal[3] cumulatively addressing the three orders.

On January 15, 2009, a panel of this Court entered an *Order Dismissing Appeal*[4] for lack of jurisdiction because, it found, the notice of appeal of Order I was not timely, and Order II was not appealable. The panel did not address Order III at that time.

On January 26, 2009, Appellant submitted a *Motion for Rehearing and Reconsideration* wherein he argued: 1) that a motion under NRCP 59 had been filed, extending the time required to file a notice of appeal of Order I in accordance with NRAP 4(a)(4); 2) that Order II was appealable under NRAP 3A(b)(2) because it denied injunctive relief; and 3) that Order III, which had not been addressed by the order dismissing the appeal, was also properly and timely noticed for appeal.

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1 *Notice of Appeal* filed September 14, 2008, addressing Orders I and II

2 *Renewed Notice of Appeal* filed October 9, 2008, addressing Orders I and II

3 *Amended Notice of Appeal* filed November 3, 2008, addressing Orders, I, II, and III

4 See Appendix A for the *Order Dismissing Appeal*.

On March 5, 2009, the panel filed an *Order Denying Rehearing*[5] noting only that Appellant had not attached file-stamped copies of Order III, or its corresponding notice. The panel's order of denial did not address the appealability of Order I or Order II.

III. ARGUMENT

A. EN BANC REHEARING SHOULD BE ORDERED TO ENSURE UNIFORMITY IN THIS COURT'S PREVIOUS JURISDICTIONAL DECISIONS IN THIS CASE

In April 2002, this Court, *en banc*, disposed of this case by holding the following concerning the jurisdiction of the lower court:

> The first question before us is whether the district court had jurisdiction to enter its decree of divorce in 1998. 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.
>
> . . .
>
> The children have never lived in Nevada. Neither party has ever lived in Nevada. The children have never had any contact with Nevada, much less substantial contact with the state. Neither do the parents have substantial contact with Nevada. The district court had no subject matter jurisdiction over the issue of child custody.
>
> Parties may not confer jurisdiction upon the court by their consent when jurisdiction does not otherwise exist.
>
> . . .
>
> The district court lacked subject matter jurisdiction over matters of custody and visitation when it entered the decree of divorce in 1998, and therefore the provisions of the decree which purport to fix the obligations of the parties with respect to custody and visitation are void.
>
> *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 268, 275, 277 (Nev. 2002).

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[5] See Appendix B for the *Order Denying Rehearing.*

Despite the clear holdings from this Court in 2002, and the complete absence of both parties from Nevada for the past ten years, the lower court in this case reopened the case and exercised jurisdiction over the parties (over appellant's objection) on its own theory of jurisdiction. The lower court's improper assertion of jurisdiction of this case the first time around, when no personal nor subject matter jurisdiction existed, prompted rebuke from this Court on this matter in April 2002. Undissuaded, the lower court continues to ignore the mandate and authority of this Court, effectively overruling the decision of this Court.

This improper assertion of jurisdiction, and the continued defiance of the lower court for this Court's authority, lies at the center of the issues on appeal here. If this Court rejects this appeal, the lower courts may receive the message that they may proceed unchecked in disregard of this Court's decisions. Rejection of the appeal would also send the message that attorneys are free to argue that parties may, in fact, confer subject matter jurisdiction on the Nevada courts when it does not otherwise exist - even when "[n]either party has ever lived in Nevada." *Id.* In order to ensure the uniformity and authority of its orders to both the bench and bar, this Court must rehear this matter and direct the compliance of the lower court.

B. REHEARING IS NECESSARY IN ORDER TO ENSURE UNIFORM APPLICATION OF THE NEVADA APPELLATE RULES

Two appellate rules apply to the appealability of the orders at issue here. The first is NRAP 4(a)(4) which extends the time to file a notice of appeal to 30 days from the entry of an order disposing of the last motion made under Rule 59. There is no factual dispute that Appellant timely filed a Rule 59 motion after Order I issued,[6] or that his notice of appeal of that order was filed long before 30

[6] A file-stamped copy was attached to Appellant's petition for rehearing as Appendix A

days from the last order's[7] notice. The Order denying appeal by the panel did not address Appellant's reference to the rule, or comment on its very direct applicability in this case. Rehearing is necessary to avoid non-uniform application of the Court's own rules, which appear to have been overlooked here.

The second applicable appellate rule is NRAP 3A(b)(2) which allows an appeal to be taken from an order granting or refusing a new trial, or granting or refusing to grant or dissolving or refusing to dissolve an injunction. As Appellant pointed out in his petition for rehearing, this rule applies to Order II because that order refused injunctive relief. Again, although Appellant clearly argued the point, the panel did not reference or comment on the rule's applicability here. In order to avoid interpretation of the panel's decision that the civil or appellate rules may have arbitrary applicability, rehearing by the En Banc Court is necessary.

C. Rehearing is Necessary to Address the Substantial Precedential and Public Policy Issue of Denying Appellant Relief Because of a Lower Court Clerk's Error

The *Order Denying Rehearing* appears to deny relief because appellant did not attach file-stamped copies of Order III, or the file-stamped amended notice of appeal to his petition for rehearing. The panel's statement implies that the Court had not received these documents from the clerk of the district court in accordance with NRAP 3(e) which requires that they be transmitted to this Court by that clerk. A file-stamped copy of Order III is attached hereto as Appendix D, and Appellant previously attached the amended notice of appeal to the petition for rehearing as appendix B. Since Appellant e-filed the amended notice of appeal, and the clerk does not automatically return a file-stamped copy of e-filings, appellant attached a copy of the actual file that he had e-filed. Although

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[7] The 30 day period has actually still not run, as notice of entry of the last order disposing of issues which arose under Appellant's Rule 59 motion, was only just noticed on March 2, 2009. See Appendix C.

Appellant did not have the file-stamped document to attach to the petition, both the notice and Order III should have been delivered to the Court by the district court clerk. It would appear contrary to public policy to deny a litigant access to an appellate process based on the district court clerk's failure to deliver the relevant documents to this Court.

Upon further investigation by Appellant, it appears that the e-filing clerk rejected, without notice, Appellant's amended notice of appeal because (unbelievably) it included the certificate of service to opposing counsel. (See Appendix E for the redacted e-filing report of this transaction downloaded from the e-filing system).[8] Again, these actions by the clerk are contrary to those laid out in NRAP 3(a)(2) titled "Deficient Notice of Appeal." Under the rule, despite perceived deficiencies, the clerk *must* file the notice and transmit the record to the Nevada Supreme Court, and then notify the Appellant of any deficiencies in writing. Based on the panel's order, it would appear that the clerk failed to follow the rules on all three points. Again, it is against public policy and poor precedent to deny any appellant a judicial remedy because a clerk errs in following the relevant rules. In order to avoid contravention of public policy to allow litigants access to judicial processes, the Court should reconsider this issue en banc.

D. REHEARING IS NECESSARY TO ADDRESS THE SUBSTANTIAL PRECEDENTIAL AND PUBLIC POLICY ISSUE OF REJECTING THE APPEAL OF ALL ORDERS IF ONE ORDER IS UNAPPEALABLE

The *Order Denying Rehearing* appears to dispose of the appeal of *all* orders because documents related to Order III were not attached to the petition for rehearing as described above. Even if Order III was not appealable, Orders I and II *were* appealable and properly noticed. These two orders were not addressed in

[8] This shows that the Notice of Appeal was indeed filed on November 3, but rejected on November 4, 2008 because it had attached a second document, the Certificate of Service. Because no notice was sent, Appellant was unaware of any issue with the filing.

the panel's denial of rehearing. The implication of the denial is that if one order in the relevant notice of appeal is found to not be appealable, then Appellant loses the right to appeal from any order. Certainly this precedent is neither logical nor just. Additionally, this holding is not in accord with this Court's own rules, and contrary to the public policy of the judicial system in affording litigants access to the appellate process. Rehearing should be ordered to ensure that an arbitrary rule which is clearly against public policy is not applied in this, or future cases.

E. Rehearing is Necessary to Address the Substantial Public Policy Issue of Asserting Jurisdiction When It Properly Lies Elsewhere

In April 2002, this Court held that neither party to this action has ever lived in Nevada and that the lower court had neither personal jurisdiction nor subject matter jurisdiction of this case. This court then voided the parties obligations to one another, and deferred to the subject matter jurisdiction of a foreign court for further proceedings. Apparently unsatisfied with the reach or result of the foreign court's jurisdiction, Respondent returned to Nevada over six years later to ask the lower court to reinterpret this Court's jurisdictional holding and to reclaim jurisdiction in this case. Since both parties lived in foreign jurisdictions continuously for the past ten years, there is no basis to alter the holdings of this Court, and no Nevada or foreign statute confers jurisdiction on this state's courts here. Even the district court judge, in the hearing on September 18, 2008, stated that the court did not have "continuous and exclusive" jurisdiction in this case. That court proceeded, nonetheless, to bind Appellant to its retroactive orders.

When a state court takes jurisdiction of a case where neither party has ever lived in the state, and where no state statute confers jurisdiction, it necessarily intrudes on the domain of the foreign jurisdictions where the parties live and where subject matter properly lies. If this Court decides not to intervene in preventing the lower courts of this state from displacing the authority of foreign

jurisdictions, the parties only recourse is to petition the foreign jurisdictions to resolve the matter further. The foreign courts will be asked to resolve whether a Nevada lower court may over-rule the holdings of Nevada's highest court, and whether a Nevada court can assert jurisdiction over citizens who have lived, at all relevant times, not in Nevada, but within the jurisdiction of the foreign courts.

This process can only bring disrepute to the Nevada judicial system. The foreign court would most logically side with the Nevada Supreme Court, while begging the question as to why this Court would have allowed the lower court to proceed unchecked. The other option would be for the foreign court to sanction the exercise of jurisdiction by the Nevada lower court, which would necessarily require the conclusion that the lower court's theory of jurisdiction was correct, and that this court's theory had been wrong. Either result relies on a foreign court to resolve the conflict between the lower and appellate courts of this State.

It is clearly contrary to the public policy of the State of Nevada to rely on foreign courts to resolve jurisdictional conflicts within the State's judicial system, or to intrude on the province of the courts of other jurisdictions. En banc rehearing should be ordered to resolve this important public policy issue.

IV. CONCLUSION

Appellant respectfully requests that the Court rehear the dismissal of this appeal en banc because of the very substantial public policy issues involved, and to ensure uniformity with the previous judgments of this court.

Respectfully submitted this 15th day of March, 2009.

R. Scotlund Vaile
PO Box 727
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(707) 833-2350
Appellant in Proper Person

Appendix A

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Appellant,
vs.
CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,
Respondent.

No. 52593

FILED

JAN 15 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

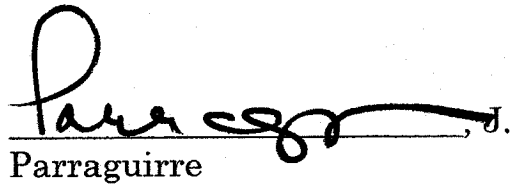
ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order amending a prior order and an order for a hearing. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

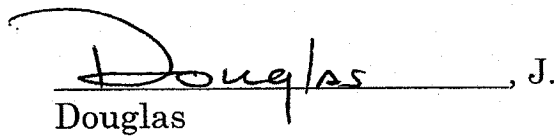
In this appeal, appellant challenged a March 24, 2008, district court order amending a prior order and a June 11, 2008, order for a hearing. First, notice of entry of the district court's March 24, 2008, order was served on appellant by respondent's counsel via U.S. mail on March 23, 2008. Because service of the notice of entry was by mail, appellant had 33 days from the date of service to file his notice of appeal. See NRAP 4(a)(1); NRAP 26(c). Appellant's notice of appeal was therefore due to be filed in the district court on or before April 28, 2008. Appellant filed his notice of appeal on October 17, 2008, 172 days after the 33-day period for filing his notice of appeal had expired. Since appellant's notice of appeal was untimely, we lack jurisdiction to consider this appeal. See Healy v. Volkswagenwerk, 103 Nev. 329, 331, 741 P.2d 432, 433 (1987) (noting that an untimely notice of appeal fails to vest jurisdiction in this court).

Next, the June 11, 2008, order is not substantively appealable. In particular, the district court's order indicates that the order is temporary. Orders that are subject to review and modification by the district court are temporary orders from which no appeal may be taken. See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review). Accordingly, as we lack jurisdiction to consider this appeal, we

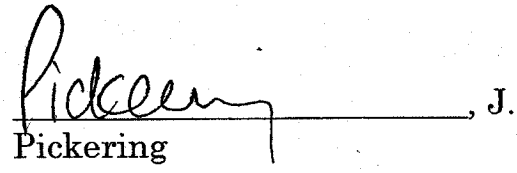
ORDER this appeal DISMISSED.[1]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk

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[1]In light of this order, we deny as moot appellant's Motion to Allow Full Briefing and Extend Time for Filing of Transcript Request.

Appendix B

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Appellant,
vs.
CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,
Respondent.

No. 52593

FILED

MAR 05 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING REHEARING

Proper person appellant seeks rehearing of this court's January 15, 2009, order dismissing this appeal for lack of jurisdiction. In particular, appellant contends that on October 9, 2008, the district court entered an appealable final order and that he filed an amended notice of appeal from that order, as well as the two orders named in the original notice of appeal docketed in this court. But appellant's assertions are not supported by file-stamped copies of the October 9, 2008, district court order or the amended notice of appeal that he claims to have filed. We are therefore not persuaded that we have overlooked or misapprehended any material issue of fact or law, and rehearing is thus not warranted. NRAP 40(c). Accordingly, we deny rehearing.

It is so ORDERED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk

Appendix C

NEOJ
WILLICK LAW GROUP
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Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE, Plaintiff, vs. CISILIE A. PORSBOLL F.K.A. CISILIE A VAILE, Defendant.	CASE NO: 98-D-230385-D DEPT. NO: I DATE OF HEARING: 07/24/2008 TIME OF HEARING: 1:45 P.M.

NOTICE OF ENTRY OF ORDER FOR HEARING HELD JULY 24, 2008

TO: ROBERT SCOTLUND VAILE, Plaintiff, in Proper Person.

PLEASE TAKE NOTICE that an *Order* for the above referenced hearing was duly entered on March 2, 2009, by filing with the Clerk, and the attached is a true and correct copy thereof.

DATED this 2nd day of March, 2009.

WILLICK LAW GROUP

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

Appendix D

DISTRICT COURT
CLARK COUNTY, NEVADA

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

/

Case No. 98-D-230385

Dept. No. I

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER

1. The procedural history in this case is as follows:

2. On November 14, 2007 Plaintiff, Cisilie Vaile n/k/a Porsboll, through counsel, filed a 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.

3. On December 4, 2007 Defendant, Robert Scotlund Vaile, filed a Motion to Dismiss Defendant's Pending Motion and Prohibition on Subsequent Filings and to Declare This Case Closed Based on Final Judgment by the Nevada Supreme Court, Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction, Insufficiency of Process and/or Insufficiency of Service of Process and Res Judicata and to Issue Sanctions or, in the Alternative, Motion to Stay Case.

4. On December 19, 2007 Defendant filed an Opposition to Plaintiff's Motion and Countermotion for Fees and Sanctions under EDCR 7.60.

5. On January 10, 2008, Plaintiff filed a Response Memorandum in Support of Motion to Dismiss Defendant's Pending Motion....and Opposition to Defendant's Countermotion for Fees and Sanctions.

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

January 15, 2008 Hearing

6. On January 15, 2008 a hearing was held. Plaintiff, Mr. Vaile, failed to appear.

7. As a result, Plaintiff was defaulted, and Defendant was granted relief requested in their Motion as follows:

    A. Child support was set as a fixed amount at $1,300.00 per month.
    B. Child support arrears in the amount of $226,569.23 were reduced to judgment.
    C. Defendant was awarded $5,100.00 in attorney's fees.

8. On January 23, 2008 Plaintiff filed a Motion to Set Aside Order of January 15, 2008, and to Reconsider and Rehear the Matter, Motion to Reopen Discovery, and Motion to Stay Enforcement of the January 15, 2008 Order.

9. On February 11, 2008 Defendant filed an Opposition to Plaintiff's Motion to Set Aside Order of January 15, 2008....and Countermotion for Dismissal under EDCR 2.23 and the Fugitive Disentitlement Doctrine, for Fees and Sanctions under EDCR 7.60 and for a Goad Order Restricting Future Filings.

10. On February 19, 2008 Plaintiff filed a Reply to Opposition to Motion to Set Aside Order....and Opposition to Defendant's Countermotions.

March 3, 2008 Hearing

11. On March 3, 2008 a hearing was held to address the above listed Motions, Oppositions, and Countermotions. The Court ruled as follows:

    A. Plaintiff's Motion to Dismiss was denied.
    B. Plaintiff's Motion to Set Aside Order of January 15, 2008 was granted.
    C. Plaintiff's Motion to Reopen Discovery was denied.
    D. Defendant's Motion for a Goad Order was denied.
    E. The child support arrears amount was confirmed unless Norway modifies it.
    F. Defendant was awarded $10,000.00 attorney's fees which were reduced to judgment.

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DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

12. On March 31, 2008 Plaintiff filed a Motion for Reconsideration and to Amend Order or, Alternatively, for a New Hearing and Request to Enter Objections, and Motion to Stay Enforcement of the March 3, 2008 Order.

13. On April 14, 2008 Defendant filed an Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Goad Order or Posting of Bond and Attorney's Fees and Costs.

14. On April 22, 2008 Plaintiff filed a Reply Memorandum in Support of Motion for Reconsideration....and Opposition to Countermotions.

15. On May 2, 2008 Defendant filed an Ex Parte Motion for Examination of Judgment Debtor. The Ex Parte Order was filed on May 10, 2008.

16. On May 5, 2008 Plaintiff filed a Renewed Motion for Sanctions.

17. Also on May 5, 2008 Defendant filed an Opposition to Plaintiff's Renewed Motion for Sanctions and Countermotion for Requirement for a Bond, Fees and Sanctions under EDCR 7.60.

18. On May 20, 2008 Plaintiff filed a Reply Memorandum in Support of Plaintiff's Renewed Motion for Sanctions and Opposition to Countermotions.

19. On June 5, 2008 Plaintiff filed an Opposition to Defendant's Ex Parte Motion for Examination of Judgment Debtor.

20. Also on June 5, 2008 Plaintiff filed a Motion to Recuse the undersigned Judge.

June 11, 2008 Hearing

21. On June 11, 2008, the Court heard the matter on the various motions, oppositions, countermotions, and replies. The Court ordered the following:

    A. The Motion to Recuse was denied.
    B. The Court had personal jurisdiction over the parties to order child support at the time of entry of the Decree.
    C. Based on part performance and for purposes of determining a sum certain for the District Attorney to enforce, the fixed amount of $1,300.00 per month for child support was ordered.
    D. The child support arrears judgment stands but is subject to modification pursuant to NRCP 60(a) and for any payments credited on Plaintiff's behalf.

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FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

E. The issue of interest and penalties was to be argued at a return hearing on July 11, 2008.
F. An evidentiary hearing was set for Plaintiff to show cause why he should not be held in contempt for failure to pay child support since April 2000.
G. Both parties' requests for attorney's fees were deferred.

22. The Evidentiary Hearing on the Order Show Cause for non-payment of child support went forward on September 18, 2008.

23. This Final Decision and Order follows.

Findings of Fact, Conclusions of Law and Final Decision

24. **NRS 125B.020 (1) states, Obligation of parents.**

1. The parents of a child (in this chapter referred to as "the child") have a duty to provide the child necessary maintenance, health care, education and support.

25. **NRS 125.210 states, Powers of court respecting property and support of spouse and children.**

1. Except as otherwise provided in subsection 2, in any action brought pursuant to NRS 125.190, the court may:

(a) Assign and decree to either spouse the possession of any real or personal property of the other spouse;

(b) Order or decree the payment of a fixed sum of money for the support of the other spouse and their children;

(c) Provide that the payment of that money be secured upon real estate or other security, or make any other suitable provision; and

(d) Determine the time and manner in which the payments must be made.

2. The court may not:

(a) Assign and decree to either spouse the possession of any real or personal property of the other spouse; or

(b) Order or decree the payment of a fixed sum of money for the support of the other spouse,

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DISTRICT JUDGE
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LAS VEGAS, NV 89101

if it is contrary to a premarital agreement between the spouses which is enforceable pursuant to chapter 123A of NRS.

3. Except as otherwise provided in chapter 130 of NRS, the court may change, modify or revoke its orders and decrees from time to time.

4. No order or decree is effective beyond the joint lives of the husband and wife.

26. **NRS 130.10111 states, "Duty of support" defined.**

"Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

27. **NRS 425.350 states, Duty of parent to support child; assignment of right to support upon acceptance of assistance; appointment of administrator as attorney in fact; enforceability of debt for support; notice of assignment.**

1. A parent has duties to support his children which include any duty arising by law or under a court order.

2. If a court order specifically provides that no support for a child is due, the order applies only to those facts upon which the decision was based.

3. By accepting assistance in his own behalf or in behalf of any other person, the applicant or recipient shall be deemed to have made an assignment to the division of all rights to support from any other person which the applicant or recipient may have in his own behalf or in behalf of any other member of the family for whom the applicant or recipient is applying for or receiving assistance. Except as otherwise required by federal law or as a condition to the receipt of federal money, rights to support include, but are not limited to, accrued but unpaid payments for support and payments for support to accrue during the period for which assistance is provided. The amount of the assigned rights to support must not exceed the amount of public assistance provided or to be provided. If a court order exists for the support of a child on whose behalf public assistance is received, the division shall attempt to notify a located responsible parent as soon as possible after assistance begins that the child is receiving public assistance. If there is no court order for support, the division shall with service of process serve notice on the responsible parent in the manner prescribed in subsection 2 of NRS 425.3822 within 90 days after the date on which the responsible parent is located.

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DISTRICT JUDGE

FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

4. The recipient shall be deemed, without the necessity of signing any document, to have appointed the administrator as his attorney in fact with power of substitution to act in his name and to endorse all drafts, checks, money orders or other negotiable instruments representing payments for support which are received as reimbursement for the public assistance previously paid to or on behalf of each recipient.

5. The rights of support assigned under subsection 3 constitute a debt for support owed to the division by the responsible parent. The debt for support is enforceable by any remedy provided by law. The division, through the prosecuting attorney, may also collect payments of support when the amount of the rights of support exceeds the amount of the debt for support.

6. The assignment provided for in subsection 3 is binding upon the responsible parent upon service of notice of the assignment. After notification, payments by the responsible parent to anyone other than the division must not be credited toward the satisfaction of the debt for support. Service of notice is complete upon:

(a) The mailing, by first-class mail, of the notice to the responsible parent at his last known address;

(b) Service of the notice in the manner provided for service of civil process; or

(c) Actual notice.

28. **NRS 31A.280, states, Effect of order for assignment; duty of employer to cooperate; modification of amount assigned; reimbursement of employer; refusal of employer to honor assignment; discharge of employer's liability to pay amount assigned.**

1. An order for an assignment issued pursuant to NRS 31A.250 to 31A.330, inclusive, operates as an assignment and is binding upon any existing or future employer of an obligor upon whom a copy of the order is served by certified mail, return receipt requested. The order may be modified or revoked at any time by the court.

2. To enforce the obligation for support, the employer shall cooperate with and provide relevant information concerning the obligor's employment to the person entitled to the support or that person's legal representative. A disclosure made in good faith pursuant to this subsection does not give rise to any action for damages for the disclosure.

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

3. If the order for support is amended or modified, the person entitled to the payment of support or that person's legal representative shall notify the employer of the obligor to modify the amount to be withheld accordingly.

4. To reimburse the employer for his costs in making the payment pursuant to the assignment, he may deduct $3 from the amount paid to the obligor each time he makes a payment.

5. If an employer wrongfully refuses to honor an assignment or knowingly misrepresents the income of an employee, the court, upon request of the person entitled to the support or that person's legal representative, may enforce the assignment in the manner provided in NRS 31A.095 for the enforcement of the withholding of income.

6. Compliance by an employer with an order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's income affected.

Contempt and the Order to Show Cause

29. There is presently a wage withholding on Mr. Vaile's wages for $1,300.00 per month plus $130.00 towards child support arrears.

30. Mr. Vaile testified he presently earns a salary of $120,000.00 per year. In early 2008, he received a $10,000.00 signing bonus.

31. Therefore, his gross monthly income is $130,000.00 divided by 12 months equals $10,833.00 gross per month rounded down.

32. The Plaintiff, now known as Cisilie Porsboll, has alleged that her ex-husband, Robert Scotlund Vaile, willfully failed to pay child support since April 2000.

33. In Defendant's Fourth Supplement filed on July 30, 2008 the District Attorney began involuntary wage withholding on July 3, 2006.

34. From April 2000 to July 3, 2006 there were no payments from Mr. Vaile to Mrs. Porsboll for child support.

35. After July 3, 2006 payments withheld for child support did not total the full amount of $1,300.00 per month.

36. Also, after July 3, 2006 there were gaps in payments where no monies were collected over a span of several months.

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37. Some of the gaps of zero payments are as follows:
9/1/06-11/1/06 (2 months)
12/1/06-2/1/07 (2 months)
6/1/07-3/1/08 (9 months)

38. At the commencement of the September 18, 2008 trial, the accuracy of Defendant's Schedule of Arrearages filed on July 30, 2008, as it pertains to Amounts Due, Amount of Payment Received, and Interest was not at issue. (The Court's decision on the Penalties issue is presently on hold based on a recent filing by Mr. Vaile of a Petition for Writ of Mandamus on the denial of Plaintiff's Motion to Disqualify Attorney Marshal Willick).

Contempt

39. **NRS 22.030 states, Summary punishment of contempt committed in immediate view and presence of court; affidavit or statement to be filed when contempt committed outside immediate view and presence of court; disqualification of judge.**

1. If a contempt is committed in the immediate view and presence of the court or judge at chambers, the contempt may be punished summarily. If the court or judge summarily punishes a person for a contempt pursuant to this subsection, the court or judge shall enter an order that:

(a) Recites the facts constituting the contempt in the immediate view and presence of the court or judge;

(b) Finds the person guilty of the contempt; and

(c) Prescribes the punishment for the contempt.

2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.

3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person. The provisions of this subsection do not apply in:

(a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree was entered in such court by a

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predecessor judge thereof 10 years or more preceding the bringing of contempt proceedings for the violation of the judgment or decree.

(b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district.

40. In the instant case, NRS 22.010 subsection 2 applies as this is an "indirect contempt".

41. Defendant is required under the statute to submit an affidavit or a petition for order show cause.

42. The Court finds Defendant has complied with this provision in several ways.

43. First, Mrs. Porsboll's counsel filed a Countermotion on December 19, 2007 and requested that Mr. Vaile "be detained until he pays a significant amount of the monies he is in arrears". Opposition and Countermotion, page 8.

44. An affidavit of attorney was attached on page 10 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

45. Second, on February 11, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion asserting the same claims that Mr. Vaile has "refused to honor and obey" court orders.

46. An affidavit of attorney was attached on page 14 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

47. Third, on April 11, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion.

48. This pleading contained a more extensive recitation of her claims against Mr. Vaile that he, among other things, "has not voluntarily paid a dime of child support", that he is in "massive arrears" and that "a bench warrant be issued for his arrest for felony arrearages in child support".

49. An affidavit of attorney was attached on page 19 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

50. Fourth, on May 2, 2008 Mrs. Porsboll's counsel filed an Ex Parte Motion for Order Allowing Examination of Judgment Debtor. Mrs. Porsboll's counsel requested such an Order for the purpose of satisfying judgments for child support arrears and attorney's fees.

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51. Mrs. Porsboll's counsel further claimed that Mr. Vaile has not honored the court orders and his arrearages "continue to grow on a daily basis." Page 3.

52. An affidavit of attorney was attached on page 4 attesting to the facts in the Motion.

53. Fifth, on May 5, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion. Counsel made the same claims against Mr. Vaile and requested he be detained for nonpayment of child support.

54. Mrs. Porsboll's counsel also requested that Mr. Vaile post a $10,000.00 bond.

55. An affidavit of attorney was attached on page 8 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

56. Sixth, on July 23, 2008 a written Order Show Cause was filed with the Court and subsequently served on the Plaintiff.

57. Based on the above, the Court finds that Mr. Vaile clearly has been put on notice of the claims of nonpayment of child support and of Mrs. Porsboll's requests for contempt sanctions.

58. An order must be reduced to writing, signed by a Judge, and filed with the Clerk of the Court. Division of Child Family Svcs. v. Eighth Judicial Dist. Ct. of Nevada, 92 P.3d 1239 (2004).

59. Here, prior Orders signed by the Court have been filed relating to child support arrears judgments against Mr. Vaile.

60. Although the amount of child support arrears has been challenged in previous hearings, the Court finds the amount of arrears nonetheless is very substantial such that Mr. Vaile cannot claim he is current with his child support obligation for purposes of this Court determining contempt.

61. It should be noted that Mr. Vaile presently has an appeal pending on the validity of the child support arrears judgments due to lack of jurisdiction.

62. Mr. Vaile also presently has a Petition of Writ of Mandamus pending as to the Court's denial of his request to disqualify attorney Marshal Willick.

63. Notwithstanding, Mr. Vaile had no objection going forward with the Evidentiary Hearing on September 18, 2008.

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64. The Court also ruled that the trial would go forward as the appeal does not result in an automatic stay.

65. Mr. Vaile made an oral request to stay the trial, but the Court denied his oral request as there was no basis to grant a stay.

66. In McCormick v. Sixth Judicial Dist. Ct. ex rel. Humboldt County, 67 Nev. 318, 218 P.2d 939 (1950), the Nevada Supreme Court stated, "[T]he inability of the contemners to obey the order (without fault on their part) would be a complete defense and sufficient to purge them of the contempt charged. But in connection with this well-recognized defense two comments are necessary. Where the contemners have voluntarily or contumaciously brought on themselves the disability to obey the order or decree, such defense is not available." (citations omitted).

67. One of Mr. Vaile's defenses at the September 18, 2008 trial was that he believed the District Court had no jurisdiction to enforce the child support provisions of the Decree of Divorce based on the Nevada Supreme Court's 2002 opinion.

68. Mr. Vaile testified that in the Texas proceedings following the Nevada Supreme Court's decision in April 2002, Mrs. Porsboll and her Texas attorneys allegedly requested that the Decree of Divorce not be enforced as a whole.

69. Mrs. Porsboll's Nevada counsel asserted in Closing Arguments there was no such request by Mrs. Porsboll's Texas counsel.

70. The Court finds there was no substantial evidence at trial to support Mr. Vaile's contention.

71. Further, the Court finds that the Nevada Supreme Court appeal filed by Mr. Vaile on September 15, 2008 does not "retroactively excuse" him from paying his child support obligation since April 2000.

72. Mr. Vaile should not be able to "hide behind" his illogical rationalization that he is not required to pay any child support at all because of alleged lack of jurisdiction.

73. Under Nevada law, every parent, including Mr. Vaile, has a BASIC duty to financially support their children.

74. Mr. Vaile did not pay child support for six years and three months between April 2000 and July 2006.

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75. Even after July 2006 only partial payments were collected via involuntary wage assignment. Mr. Vaile has never paid voluntary child support since April 2000.

76. While it is true there are custodial parents who, for many years, do not actively seek collection of child support for a number of reasons, the Vaile case is different.

77. Mrs. Porsboll testified she always anticipated receiving child support from Mr. Vaile. As discussed below, Mrs. Porsboll did not waive her right to receive child support.

78. The procedural history in this case is tortuous.

79. Mr. Vaile is highly intelligent and now legally trained. He even admitted he entered law school because of the Nevada case. He has a Master's degree. He has a Juris Doctor degree from Washington and Lee University in Virginia. He passed the California Bar Exam on the first try and is awaiting issuance of a license to practice law in that state.

80. Mrs. Porsboll, who lives in Norway, would not have had the resources or skills to maneuver through the legal system that Mr. Vaile has demonstrated.

81. From November 2007 to September 18, 2008, it took approximately 10 months to get to trial.

82. During this time period, Mr. Vaile filed several intervening motions and two Petitions for Writ of Mandamus to the Nevada Supreme Court.

83. As noted above, the Court finds there have been no direct or voluntary payments from Mr. Vaile from April 2000 to the present. There have only been involuntary wage withholdings by the District Attorney's Office since July 3, 2006.

84. The Nevada Revised Statutes clearly contemplate a BASIC obligation and duty of a parent to support their children.

85. Mrs. Porsboll has provided 100% of the children's financial support from April 2000 until an involuntary wage withholding was instituted in July 2006.

86. The involuntary wage withholding did not consistently result in full collection of the $1,300.00 amount each month until recently in 2008.

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87. Financial support should not have been borne by one parent alone, especially for over six years, as has occurred in this case.

88. The better logic would be to submit the child support payments, even under protest, and vigorously pursue any appeals.

89. And even if Mr. Vaile prevails and claims a refund (had he paid the child support under protest but that is not the case here), the children would likely be entitled to such monies no matter what.

90. Mr. Vaile also submitted a defense argument that because Mrs. Porsboll was receiving government child assistance from Norway, he would be "excused" from paying child support.

91. The Court finds this argument irrelevant. The Court is not aware of any statute or case law that says an obligor parent is excused from paying child support based on government assistance from a foreign country.

92. NRS 201.020 criminalizes the "persistent" refusal to pay court-ordered child support. One persists in refusing to pay child support *whenever* there are two or more consecutive months during which the supporting parent willfully, and without legal excuse, refuses to remit the full amount required by court order. Any such willful refusal to remit the full amount required by court order constitutes a refusal to pay "support and maintenance" for that month. Any such willful refusal to pay the full amount required persisting for more than one year would violate the felony provisions of the statute. We emphasize, however, that NRS 201.020 is inapplicable whenever a parent's persistent *failure* to provide support does not rise to the statutory standard of "willfully" *refusing* to comply with court-ordered support. Thus, the standard for nonsupport is objectively defined, and a conviction under the statute depends upon a factual finding of a persistent, willful refusal, without legal excuse, to pay court-ordered support during the relevant time period. Sheriff, Washoe County, Nevada v. Vlasak, 111 Nev. 59; 888 P.2d 41 (1995).

93. Here, the Court finds the definition of "willful" to mean two or more consecutive months that an obligor parent willfully does not pay the full amount in the court order.

94. However, this is different from "failure" to pay. An obligor parent might not be able to pay due to a number of reasons such as involuntary temporary loss of a job (but not willful underemployment) or for medical reasons and inability to work.

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95. As discussed above, the Court finds it unreasonable that Mr. Vaile would go six years and three months without paying child support to Mrs. Porsboll because of his belief that he was not jurisdictionally and legally required to do so.

96. Mr. Vaile could have paid the monies under protest. In this way, at least their two daughters would have received financial support.

97. The Court finds Mr. Vaile did not pay for over six years. Under NRS 201.020, "persistent refusal" occurs when an obligor parent willfully refuses to pay two or more consecutive months of support.

98. The length of time that Mr. Vaile did not pay indicates willful conduct. Mr. Vaile could have paid the child support under protest until his jurisdictional arguments could be resolved in the appellate court.

99. Mrs. Porsboll testified that Mr. Vaile has the ability to earn substantial income based on his educational background and prior history of earning over $100,000.00 per year.

100. Mr. Vaile testified to his employment history.

101. In 1998, he was working in England earning 70 British pounds per hour as a contractor or about $100.00 US per hour. This translated into an income in excess of $100,000 per year.

102. In 1999, Mr. Vaile earned the same income.

103. In May 2000, he relocated to Texas and ceased doing consulting work as of February 2000.

104. Mr. Vaile did not work from February to May 2000.

105. Subsequently, he consulted for Bank of America and a staffing company in Dallas. He was earning about $50.00 per hour.

106. Mr. Vaile worked in Texas during all of 2001. His wages were $53,700 annually.

107. In 2002, he earned $67,000.

108. In 2003, he earned $87,000 or $106,000 if Medicare earnings are included.

109. In 2004, he earned $62,400.

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110. In 2005, he earned nothing. He entered law school in August 2004. His first year was in McGeorge Law School in Sacramento, California.

111. Mr. Vaile then transferred to Washington and Lee University in Virginia and graduated in May 2007.

112. Mr. Vaile worked while a law student at Washington and Lee University.

113. During law school, he was employed part time in early 2006 doing Sober Driving, a program sponsored by the university. He earned $75.00 for a 4-hour shift and worked one shift approximately every two weeks.

114. Mr. Vaile also had summer employment before his third year of law school working for Baker Botts. By that time, the District Attorney's Office began withholding.

115. The withholding was $936 monthly. He earned $2500.00 per week for six weeks or $15,000.

116. In Fall 2006, he worked for the Sober Driving program again until final exams period at the end of March 2007.

117. Mr. Vaile graduated in May 2007.

118. From May 2007 to February 2008, he did not work.

119. Mr. Vaile was hired by Deloitte & Touche in February 2008.

120. Based on the above, Mr. Vaile earned significant income until he entered law school.

121. From April 2000 forward, when child support payments stopped, he clearly earned at least $50,000 per year.

122. The Court finds Mr. Vaile had the ability and financial resources to pay child support. He could have even paid the child support under protest.

123. The Court finds based on Mr. Vaile's employment history the lack of child support payments shows willful conduct.

124. "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. Cunningham v. Eighth Judicial Dist. Court, 102 Nev. 551 (1986).

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125. In the case at bar, the Court finds Mr. Vaile was on notice in the Decree of Divorce of his basic obligation to pay child support.

126. However, Mr. Vaile would argue that the child support provision in the Decree was convoluted and confusing based on the fact that the parties had to exchange tax returns yearly and had to apply a complicated mathematical formula.

127. This Court later decided at the June 11, 2008 hearing that $1,300.00 amount was the "sum certain" to be enforced.

128. Under contract principles, specifically rescission and reformation, the convoluted portions of the Decree were vacated and modified by the Court to reflect $1,300.00 per month as a "sum certain" unless one party files a motion to modify in the appropriate jurisdiction, either Norway or California depending on who the moving party is.

129. Neither Mr. Vaile nor Mrs. Porsboll complied with exchanging their tax returns each year following entry of the Decree of Divorce. Neither party made any effort to apply and utilize the convoluted mathematical formula.

130. It is therefore possible that the child support order was not clear or unambiguous for purposes of the Court's authority to find Mr. Vaile in contempt.

131. However, the Court finds Mr. Vaile nevertheless paid nothing for over six years.

132. The Court finds his conduct willful because Mr. Vaile understood he had a BASIC duty and obligation to pay child support. In fact, Mr. Vaile voluntarily paid child support from the time the Decree was entered until April 2000.

133. The Court believes its authority to find him in contempt is not merely eradicated by the fact that the Decree of Divorce contained a convoluted formula for purposes of determining his child support amount each year.

134. To find otherwise would be contrary to the policy behind NRS 125B.020(1) which states that a parent has a duty to support their children.

135. Mr. Vaile submitted another defense argument at trial. He claimed that he and Mrs. Porsboll had an "agreement" and that she allegedly believed she could not enforce the Decree of Divorce because of the Nevada Supreme Court decision.

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136. First, the Court finds the Nevada Supreme Court decision only vacated those portions of the decree relating to child custody and visitation, not child support.

137. Second, the Court finds there was "colorable jurisdiction" because Mr. Vaile sought the divorce in Nevada, and he submitted himself to jurisdiction for purposes of paying child support.

138. Third, Mr. Vaile actually paid child support from August 1998 to April 2000. This means he understood during this time period that he had a duty to support their children.

139. When Mr. Vaile claimed he had physical custody of the children from May 2000 to April 2002 and therefore should not be obligated to pay, this Court denied his request because there were already findings by the Hague Court that he wrongfully removed the children from Norway. The children were placed back in their mother's custody in 2003.

140. Fourth, it is inconceivable that Mrs. Porsboll had the legal training to understand her legal rights to collect child support. She lives in a foreign country. She retained the Willick Law Group to represent her. The Willick Law Group has never withdrawn as her counsel.

141. Mrs. Porsboll signed no written agreements for waiver of child support. She would have consulted with her lawyers if she were to sign any agreements. No agreements were ever signed or presented to the Court.

142. Mrs. Porsboll had Texas attorneys representing her. Her Nevada counsel argued in Closing Arguments at the September 18, 2008 trial that no such representation of waiver or desire not to enforce child support was made before a Texas tribunal.

143. The Court finds any waiver on Mrs. Porsboll's part would have to have been intentional, knowing, and voluntary. There was no evidence or testimony at the trial to support an intentional, knowing, and voluntary waiver in Texas or in Nevada. Moreover, such a waiver would have been placed on the court record by her counsel.

144. To the contrary, Mrs. Porsboll contacted the Norwegian government for child support. She testified her understanding was that if there were no efforts taken for collection of child support in Nevada, the Norwegian government would step in to enforce and collect.

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145. In addition, Mrs. Porsboll asked her Nevada counsel to go forward with federal court proceedings to seek a judgment for arrearages.

146. In her trial testimony, Mrs. Porsboll denied ever telling Mr. Vaile she would not collect child support from him.

147. She also testified Mr. Vaile was educated and capable of earning a substantial income.

148. Further, she testified she was suspicious of his efforts to hide money just before the divorce was filed in Nevada.

149. Based on all of the above, the Court FINDS AND ORDERS AS FOLLOWS:

150. Mr. Vaile willfully refused to pay child support from April 2000 to July 2006.

151. Mr. Vaile is in contempt of the Decree of Divorce.

152. Mr. Vaile was on notice under the Decree of Divorce to pay child support.

153. Mr. Vaile paid $1,300.00 per month from August 1998 to April 2000.

154. There were no payments until the District Attorney's Office commenced wage withholding on July 3, 2006.

155. All child support payments since July 3, 2006 have been collected involuntarily.

156. Under NRS 22.010, the Court, in its discretion, could monetarily sanction Mr. Vaile up to $500.00 for every month he willfully did not pay child support. He did not pay from April 2000 to July 2006 or a total of 76 months. $500.00 x 76 = $38,000.00.

157. However, the Court will **NOT** issue monetary sanctions for the 76 months of zero child support payments based on its finding above that the original child support provision in the Decree of Divorce was not clear and specific.

158. If the original child support order contained in the Decree is not exactly clear and specific, then the Court cannot find Mr. Vaile in contempt.

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159. At the June 11, 2008 hearing, the Court subsequently clarified the child support order declaring a sum certain of $1,300.00 per month and eliminated the complex mathematical formula.

160. Mr. Vaile is obligated to continue to pay child support of $1,300.00 per month until it is modified.

161. The Nevada Court does not presently have authority to modify child support because both parents no longer live in the State of Nevada.

162. This child support order is now clear, specific, and unambiguous for purposes of any claims of future contempt.

163. The Court also noted above that its authority to find Mr. Vaile in contempt for zero payments of child support is **NOT** merely because of a convoluted mathematical formula contained in the Decree of Divorce.

164. The Court still finds Mr. Vaile in contempt for non-payment of child support for over six years.

165. As previously stated, he could have paid ANY amount of child support (other than ZERO) and expressed he was doing so under protest.

166. Under NRS 22.010, the Court has discretion to impose up to 25 days incarceration for every month Mr. Vaile willfully refused to pay child support. A total of 76 months could result in a maximum total of 1900 days of jail time.

167. However, the Court has consistently imposed much lower sanctions if there are reasons to support lesser sanctions.

168. First, this is essentially the first time Mrs. Porsboll has requested contempt against Mr. Vaile for non-payment of child support before the Court. The Court would treat this as a "first offense" type case.

169. Second, the Court anticipates that so long as Mr. Vaile continues to work at his present employment with Deloitte & Touche earning substantial income in excess of $100,000.00 per year, Mrs. Porsboll would continue to receive child support payments from him.

170. Third, the Court typically allows for "purging" of contempt by giving Mr. Vaile the power to take himself out of contempt by paying a portion of his arrearages and maintaining steady payments in the future.

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171. If he complies and purges the contempt, any prior contempt findings would be dismissed completely and retroactively.

172. The Court is aware that Mr. Vaile has a pending application for a license to practice law in the State of California, having passed the bar exam already.

173. If Mr. Vaile elects to purge himself from contempt with this Court and comply with the child support order in the future, the contempt finding would be retroactively "erased" or "expunged" from the record.

174. Here, the child support PRINCIPAL ARREARS total $118,369.96 as of August 1, 2008.

175. The STATUTORY INTEREST on the arrears amounts to a total of $45,089.27.

176. The combined total is $163,459.23.

177. Therefore, IT IS ORDERED that Mr. Vaile may purge out of his contempt if he pays approximately 10 percent of the total child support arrears, exclusive of statutory penalties. The Court sets a reasonable purge amount at **$16,000.00**.

178. IT IS FURTHER ORDERED that Mr. Vaile shall be given a reasonable time and a reasonable payment schedule to purge out of contempt and pay the amount of $16,000.00 to the Clark County District Attorney's Office.

179. Mr. Vaile shall pay in eight monthly installments as follows:

$2,000.00 due no later than November 15, 2008
$2,000.00 due no later than December 15, 2008
$2,000.00 due no later than January 15, 2009
$2,000.00 due no later than February 15, 2009
$2,000.00 due no later than March 15, 2009
$2,000.00 due no later than April 15, 2009
$2,000.00 due no later than May 15, 2009
$2,000.00 due no later than June 15, 2009

180. IT IS FURTHER ORDERED that the above payment schedule is reasonable, and if Mr. Vaile fails to comply with the payments and deadlines set, the finding of contempt shall stand retroactive to the date of filing of this Decision and Order.

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181. IT IS FURTHER ORDERED that the wage withholding by the District Attorney for the payments of $1,300.00 for current support and $130.00 for arrears shall continue. This Decision and Order shall have no impact on the involuntary wage assignment for CURRENT support.

182. IT IS FURTHER ORDERED that if Mr. Vaile fails to purge out of contempt, the Court shall hold a hearing to determine compliance or lack thereof and the potential imposition of contempt sanctions, including incarceration.

183. If Mr. Vaile fails to appear in the Nevada courtroom, the Clark County District Attorney shall then refer the matter to the California District Attorney in the county where Mr. Vaile resides for enforcement of this Court's Orders, for issuance of a bench warrant, and/or for incarceration.

184. IT IS FURTHER ORDERED that if Mr. Vaile's physical and mailing addresses change in the future, he shall file his new address(es) in Case Number D230385 no later than 30 days from the date he moved.

185. IT IS FURTHER ORDERED that if Mr. Vaile's telephone number(s) change in the future, he shall file his new telephone number(s) in Case Number D230385 no later than 30 days from the date he acquired the new number(s).

PLAINTIFF'S RENEWED MOTION FOR SANCTIONS

186. On May 5, 2008 Plaintiff filed a Renewed Motion for Sanctions.

187. Also on May 5, 2008 Defendant filed an Opposition to Plaintiff's Renewed Motion for Sanctions and Countermotion for Requirement for a Bond, Fees and Sanctions Under EDCR 7.60.

188. On May 20, 2008 Plaintiff filed a Reply Memorandum in Support of Plaintiff's Renewed Motion for Sanctions and Opposition to Countermotions.

189. In his Renewed Motion for Sanctions, Mr. Vaile alleges that Mrs. Porsboll's counsel misrepresented to the Court there was a fixed amount of $1,300.00 per month for child support in the Decree of Divorce.

190. The Court did not establish the sum certain of $1,300.00 per month until the hearing of June 11, 2008.

191. A misrepresentation to the Court must be knowing and intentional.

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192. The Court finds Mrs. Porsboll's counsel's statements to the Court were not knowing and intentional.

193. Rather, counsel argued that a fixed amount must be determined for purposes of collection and enforcement by the District Attorney. This is what they requested in their original motion filed on November 14, 2007.

194. Second, Mr. Vaile asserts that Mrs. Porsboll's counsel stated that he (Mr. Vaile) knowingly refused to honor the federal court judgment and refused to pay child support despite the fact that involuntary wage withholding commenced on July 3, 2006.

195. The Court finds there was no knowing and intentional misrepresentation if, at the time of the filing of their November 14, 2007, Motion, there was a then valid federal court judgment for arrears.

196. The Ninth Circuit Court of Appeals later vacated the child support arrears judgment contained in the Federal District Court judgment.

197. Mrs. Porsboll's counsel relied on the federal court judgment until it was later vacated by the Ninth Circuit. This does not constitute a knowing and intentional misrepresentation.

198. As to Mr. Vaile's claim that Mrs. Porsboll's counsel represented that he (Mr. Vaile) knowingly refused to pay child support, the Court finds there was no knowing or intentional misrepresentation.

199. It is true that Mr. Vaile failed to make any direct or voluntary child support payments from April 2000 to the present.

200. It is also true that Mr. Vaile commenced paying child support, albeit involuntarily, through wage assignment, as of July 3, 2006.

201. Obviously, the statement made by Mrs. Porsboll's counsel is subject to having two interpretations. As such, there can be no finding of a knowing and intentional misrepresentation if there is more than one meaning behind the statement.

202. Third, Mr. Vaile alleges that Mrs. Porsboll's counsel made a misrepresentation that he (Mr. Vaile) earned in excess of $100,000.00 per year.

203. The Court finds there is no knowing or intentional misrepresentation if Mrs. Porsboll's counsel had limited information about Mr. Vaile's income at the time they filed their Motion on November 14, 2007.

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204. As was established at trial, Mr. Vaile did initially earn in excess of $100,000.00 annually from the date of filing of the Decree of Divorce until 2000.

205. In 2001, Mr. Vaile earned $53,700.00. But Mrs. Porsboll's counsel did not have the benefit of this information available to them at the time they filed their November 14, 2007 Motion.

206. Counsel also did not have Mr. Vaile's financial earnings for 2002 forward until the information was made available to them in preparation for the Order Show Cause Evidentiary Hearing.

207. Mrs. Porsboll's counsel had limited information. After the Decree was filed on August 21, 1998 neither party exchanged tax returns on a yearly basis forward. Accordingly, there was no information available to Mrs. Porsboll or her counsel as to Mr. Vaile's income.

208. Fourth, Mr. Vaile alleges that Mrs. Porsboll's counsel failed to inform the Court at the January 15, 2008 hearing that he (Mr. Vaile) filed a Motion to Dismiss on December 4, 2007.

209. It should be noted that when he filed his Motion to Dismiss on December 4, 2007 Mr. Vaile did not request a hearing date. There was no Notice of Motion Hearing filed, and therefore the Motion was accepted by the Clerk of Court without setting a court date.

210. The Court finds no knowing and intentional misrepresentation. Mrs. Porsboll's counsel was not required to disclose or discuss Mr. Vaile's Motion to Dismiss during the January 15, 2008 hearing because it was not before the Court for adjudication that day.

211. Further, the fact that Mrs. Porsboll's counsel filed an Opposition to the Motion to Dismiss prior to the January 15, 2008 hearing does not indicate they had a duty to inform the Court.

212. Counsel had an ethical duty to file the Opposition in a timely manner in accordance with the 10-day rule or the Motion to Dismiss would have gone unopposed.

213. However, none of the above findings demonstrate a knowing and intentional misrepresentation to the Court.

214. Mrs. Porsboll's counsel discussed only what was properly before the Court and what orders and judgments have already been obtained in the federal

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court (although the child support judgment was later vacated by the Ninth Circuit).

215. Fifth, Mr. Vaile contends that Mrs. Porsboll's counsel allegedly misrepresented that he (Mr. Vaile) was not paying child support when counsel admitted that the District Attorney's Office had collected $9,000.00 from wage withholdings.

216. As discussed above, Mrs. Porsboll's counsel made a statement that Mr. Vaile knowingly refused to pay child support. The statement was not knowing and intentional. It could be subject to differing interpretations.

217. The statement could mean that there were no direct or voluntary payments by Mr. Vaile. Under this interpretation, this would be a true statement.

218. The statement could also mean that the amount collected ($9,000.00) was trivial (in Mrs. Porsboll's counsel's opinion) in relation to what counsel termed as "massive arrears." Under this interpretation, counsel could have made the statement to make a point.

219. Sixth, Mr. Vaile asserts that Mrs. Porsboll handed over collection and enforcement of child support to Norway and that her counsel was merely attempting to advance their own interests.

220. Mr. Vaile attached a letter to his Motion from the National Insurance Collection Agency in Norway, as well as the response letter from the Willick Law Group dated April 13, 2007.

221. The Court reviewed the contents of both letters.

222. The Norwegian agency's letter is clear as to their intent. The agency was inquiring if payments have been collected and that such payments should be forwarded from the United States to Norway.

223. The Norwegian agency also acknowledged there was a collections case in Nevada, but was merely asking if the case was passive. If so, the agency requests the case be transferred to Virginia.

224. The Court finds the letter does not indicate the agency wanted to actively enforce collection in Norway if the State of Virginia were to take the case from the State of Nevada.

225. Accordingly, there was no knowing and intentional misrepresentation by Mrs. Porsboll's counsel because there was nothing in the agency's letter affirmatively stating that Norway would actively pursue collection.

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226. Rather, the agency was merely inquiring as to which state would handle collection of child support.

227. Seventh, Mr. Vaile also alleges that Mrs. Porsboll's counsel advised the Court there were no simultaneous proceedings in Norway for collection of child support.

228. The Court finds this statement accurate based on the contents of the Norwegian agency's letter.

229. As noted above, the agency was asking if the Nevada case was active. Otherwise, Norway would ask that the case be transferred to Virginia (where Mr. Vaile was residing and attending law school at the time).

230. The agency's statement that Mrs. Porsboll "handed over collection to this office" is interpreted to plainly mean that she assigned her rights to the agency for the purpose of receiving the child support payments, not to actively pursue collection.

231. The agency was aware Nevada was doing the collections but was unsure if the Nevada case was active. If not, the agency wanted the State of Virginia to handle collection of payments.

232. This process is similar to custodial parents assigning their rights to the District Attorney's Office for purposes of receiving and distributing payments.

233. Based on the above, IT IS ORDERED that Mr. Vaile's Motion for Renewed Sanctions is hereby denied in its entirety.

ATTORNEY'S FEES

234. The Court is aware this is highly contested litigation.

235. Both parties requested attorney's fees and costs.

236. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349 (1969), applies. "Under *Brunzell*, when courts determine the appropriate fee to award in civil cases, they must consider various factors, including the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and the result obtained.

237. In family law cases, trial courts are required to evaluate the Brunzell factors when deciding attorney fee awards. Additionally, in Wright v.

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Osburn, this court stated that family law trial courts must also consider the disparity in income of the parties when awarding fees. Therefore, parties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in Brunzell and Wright.

238. The first factor considered is the quality of the advocate. Here, the Court finds that Mrs. Porsboll's counsel has been diligent and prepared throughout these proceedings, as well as prompt in court appearances.

239. Mrs. Porsboll's counsel has qualities of competency and experience in conducting trials in Family Court.

240. The second factor is the character and difficulty of the work performed.

241. The Court finds Mrs. Porsboll's attorneys have tackled all the issues in this case with competence. This case was highly contentious.

242. Mr. Vaile filed numerous motions leading to a *Goad* Order. The Willick Law Group has had to file numerous pleadings to respond to Mr. Vaile's Motions.

243. Mr. Vaile is legally trained having graduated from a prestigious law school and having passed the California Bar Exam on the first try.

244. As a result, the character and difficulty of the work increased significantly as the Willick Law Group had to respond to all of Mr. Vaile's legal claims.

245. The third factor is the work actually performed by the attorney. The Willick Law Group has filed several updated billing statements.

246. The amount of work actually performed was astronomical.

247. The fourth factor is the result obtained. The Court finds Mrs. Porsboll and her counsel prevailed on the issue of contempt as it pertains to Mr. Vaile failing to pay child support from April 2000 to July 3, 2006.

248. The Court also finds that Mrs. Porsboll and her counsel prevailed in successfully defending Mr. Vaile's Motion for Renewed Sanctions.

249. The Court also finds that Mr. Vaile prevailed on the issue of monetary contempt sanctions because NRS 22.010 required a clear and unambiguous order as to a fixed amount of $1,300.00 per month for child support. The amount was not determined as fixed until the hearing of June 11, 2008.

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250. However, as discussed in detail above, the Court's authority to make a finding of contempt was **not** eradicated merely because the Decree of Divorce contained a convoluted mathematical formula.

251. Mr. Vaile had a "basic" duty and obligation to financially support their two minor children.

252. Mr. Vaile paid no voluntary or direct payments for over 6 years. The facts and testimony at trial established he had the means and resources to pay the child support in years where he earned in excess of at least $50,000.00 (years 1999-2001).

253. Mrs. Porsboll was the primary prevailing party at trial. The Willick Law Group attorneys obtained favorable results for her. Mrs. Porsboll is entitled to attorney's fees and costs in this regard under NRS 18.010.

254. The fifth factor considered by this Court is the disparity in income between the parties. The trial court must evaluate the incomes of the parties in family law cases as noted above.

255. The Court viewed both parties' historical and present financial conditions and finds there have been past and present gross disparities in income.

256. The Court reviewed the attorney billing statement from Mrs. Porsboll's counsel in their Fourth Supplement filed on July 30, 2008. The fees totaled over $53,000.00.

257. However, the bill includes charges relating to the issue of judgment debtor examination, the issue of child support penalties, the issue of the Motion to Strike, and the issue of the Motion to Reconsider. These issues are not the subjects of this decision.

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258. Accordingly, IT IS ORDERED that Mrs. Porsboll shall be awarded the sum of $15,000.00 as and for ATTORNEY'S FEES AND COSTS.

259. SO ORDERED.

Dated this 9 day of October, 2008.

CHERYL B. MOSS
District Court Judge

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DISTRICT JUDGE
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Appendix E

Status	Filers Name	Filing Code	Filing Title	Case Number	Case Name	Reviewer Name	Date Filed	Account Name	Comments	Rejection Reason	Rejection Comments
Rejected	R. Scotlund Vaile	ANOT	Amended Notice of Appeal	D230385	D230385 - Vaile R S vs. Vaile Cisilie A	Aisha Watson	11/04/08 11:20 AM	R. Scotlund Vaile		Two Documents Submitted as One	
X	R. Scotlund Vaile	ANOT	Amended Notice of Appeal	D230385	D230385 - Vaile R S vs. Vaile Cisilie A		11/03/08 07:49 AM	R. Scotlund Vaile			

R. Scotlund Vaile
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Kenwood, CA 95452
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Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

R. SCOTLUND VAILE,
Petitioner,

vs.

CISILIE A. PORSBOLL fka, CISILIE A. VAILE,
Respondent.

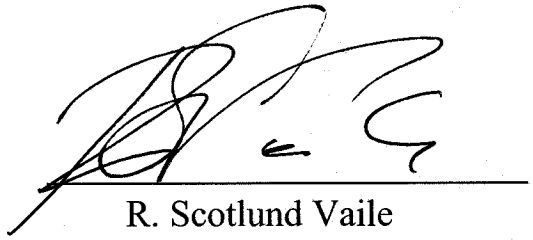
Supreme Court Case No: 52593
District Court Case No: 98D230385

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellant R. Scotlund Vaile's *Petition for En Banc Reconsideration* was served by depositing the same in the U.S. Mail at Santa Rosa, California in a sealed envelope, first-class postage pre-paid, addressed as follows:

Marshal S. Willick
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Attorneys for Respondent

Dated this 15th day of March, 2009.



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