

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,

Petitioner,

vs.

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

Respondent.

SC Case No: 52593
DC Case No: 98-D-230385

FILED

JUN 08 2009

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

MOTION FOR FEES AND COSTS PENDING APPEAL

I. INTRODUCTION; SCOPE OF ISSUES:

In the eight years since he kidnaped his children in Norway and fled to Texas, Scott has instituted litigation in seven different venues, and has not convinced any of those courts that he was justified in doing all the terrible things he did to his children and former spouse.¹ His current *Petition for En Banc Reconsideration* before this Court seeks merely to re-litigate an issue which has long since been decided by this Court and several others.

This Court's *Order Directing Answer to Petition For En Banc Reconsideration* requires our client to incur further expenses – which will go unpaid because she is poor – to respond to yet another frivolous and vexatious filing by Scott. Accordingly, Cisilie seeks attorney's fees in accordance with established case law to defray these additional costs.

¹ See *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (holding that the kidnapped children were to be returned to their mother in Norway); *Vaile v. Porsboll, et al.*, United States Supreme Court (rejecting Scott's attack on this Court's *Opinion* requiring return of the children); *Vaile v. Vaile*, Case No. D 230385 (finding that as of July 24, 2003, Scott owes \$116,732.09 for the attorney's fees incurred in recovering the children by Nevada counsel, and as of October 9, 2008, Scott owes the sum of \$118,369.96, in principal, and \$45,089.27 in interest for a total of \$163,459.23 in child support arrears that Scott has refused to pay since the kidnaping, plus penalties); *In re Kaia Louise Vaile and Kamilla Jane Vaile*, No. 2000-61344-393, District Court of Denton County, Texas 393rd Judicial District (finding as of April 17, 2002, Scott owes attorney's fees of \$20,359 with interest at 10% per annum, compounded annually, travel expenses of \$25,060, with interest at 10% per year compounded annually, and an award for \$81 for costs of court with interest at 10% per annum, compounded annually, for fees incurred in recovering the children by Texas counsel); *Vaile, Cisilie A. v. Vaile, Robert, Scotlund*, No. 00-3031 A/64, Oslo District Court, dated February 6, 2003, confirming Cisilie's custody of the children and entitlement to payment of child support; *Vaile v. Vaile et al.*, No. CV-S-02-0706-RLH-RJJ (*Judgment* dated March 13, 2006, holding Scott liable for \$450,000 in combined damages in favor of Cisilie A. Porsboll, Kaia Louise Vaile, and Kamilla Jane Vaile, for injury, pain and suffering, and \$100,000 in punitive damages); *Vaile v. Vaile et al.*, No. 06-15731, Ninth Circuit Court of Appeals (rejecting Scott's attacks on the tort suit *Judgment*).

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POINTS AND AUTHORITIES

II. FACTS

Since July, 2008, Scott has filed, or caused to be filed, seven separate appeals or writs in this Court. All but two of these have been dismissed. Our initial research on his *Petition for En-Banc Reconsideration* is that it also is ripe for dismissal for lack of jurisdiction.²

The cost of litigating this case has risen to over \$500,000 in time incurred and costs. Attorney's fee awards already made against Scott, plus interest, exceed \$220,000. Scott has not paid a dime toward these awards, despite his six-figure income.³

We asked Judge Moss to institute a payment schedule for these massive fee arrears,⁴ but she declined to do so.⁵ We have been unable to execute any collection against Scott as he does not put money in a bank and has leveraged his home and other possessions to the point that no equity remains, transferred assets to the name of others, and even had his current spouse file for bankruptcy in a fraudulent effort to evade his outstanding obligations.

The substantial cost of appellate work has been discussed at the Ely conference and elsewhere. The Justices of this Court have stated that they realize and appreciate those costs. Cisilie is unable to fund such litigation. Scott has all but admitted that he attempts to maximize legal filings and procedures for the purpose of injuring this law firm by running up work for which our client cannot hope to pay, thus requiring us to pay for it – apparently his form of “revenge” for our having recovered the kidnaped children from him and returned them to their mother.

² None of the five already dismissed Appeal or Writs were within the jurisdiction of this Court and neither of the remaining two are within the jurisdiction of this Court. Our *Answer* specifying the details of how and why is being separately filed.

³ Scott has submitted a Financial Disclosure Form where he admits making over \$120,000 a year.

⁴ See *Kennedy v. Kennedy*, 98 Nev. 318, 646 P.2d 1226 (1982) (where interest is accruing on a judgment, the payment schedule must “allow the liquidation of arrearages on a reasonable basis,” including the accruing interest); *Reed v. Reed*, 88 Nev. 329, 497 P.2d 896 (1972) (courts have discretion to determine the method of paying a judgment).

⁵ This issue will be presented to the Court shortly in the appeal recently filed (No. 53798) dealing with interest, penalties, and fees on the large child support arrears Scott has run up over the past decade.

1 Scott has voluntarily paid nothing toward the more than **\$1,000,000** awarded against him in
2 arrearages, attorney's fee awards, federal tort damage awards, and child support.⁶

3
4 **III. ARGUMENT**

5 It is clear from the voluminous filings in this Court and the one below⁷ – and by Scott's
6 active evasion of judgments for the past decade – that he has no intention of ever paying *any*
7 judgment against him. He has appealed every single order from the district court and from every
8 other Court in which he has appeared. The Ninth Circuit Court of Appeals specifically forbade him
9 from filing any more papers, based on his relentless vexatious filings.⁸ The same is now happening
10 in this Court.

11 We understand the need for access to the Court's for justice, but when a litigant uses the
12 court filings as a weapon specifically to financially injure his opponent and her counsel, the Court
13 must take action to ensure *all* parties are protected. This Court has already opined about the damage
14 to innocent defendants that can be wrecked by vexatious litigants.⁹

15 Fortunately, this Court has provided just the relief required in existing case law to ensure that
16 vexatious litigants or those that have the means to file countless appeals – they have to pay for the
17 litigation costs of their opponent. This Court should order that Scott must actually *pay* fees to Cisilie
18 before he is allowed to proceed in any matter before this Court, to ensure Cisilie can meet him in
19 court on equal footing.

20 It is important to distinguish actual payment of those fees from a simple "award" of
21 additional attorney's fees. Scott cares nothing about any such award, because he has zero intent of
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24 ⁶ The District Attorney is garnishing his wages for the \$1,300 in child support and is taking an additional \$130 for the arrearages that are over \$160,000. At that rate of collection, they cannot be paid off during the life of the parties.

25 ⁷ The case file now fills nine banker's boxes, plus the currently open files.

26 ⁸ See Exhibit A, United States Court of Appeals for the Ninth Circuit, Order, filed May 28, 2008.

27 ⁹ See *Jordan v. DMV*, 121 Nev 44, 110 P.3d 30 (2005).

1 actually paying any such award, and has gone to great lengths to make himself immune to
2 collections. An “award” of attorney’s fees will not dissuade Scott from further frivolous and
3 vexatious filings, and will not protect Cisilie. We already have over \$160,000 in attorney’s fee
4 awards which Scott refuses to pay and is actively evading.

5 For an effective order, Scott must be ordered to actually *deliver* to Cisilie – via our office –
6 the entire award of fees required to continue further litigation in this case.¹⁰

7 Additionally, this Court should order that no further litigation should be allowed by Scott in
8 the lower court until a good faith effort is made to begin paying down the massive arrearages in
9 previously-assessed fees that have been ordered but remain unpaid.¹¹

10 There is ample legal precedent for this Court to award attorney’s fees in an appeal in a
11 domestic relations case. Dating back to 1882, this Court found that the court or judge may, “at any
12 time after the filing of the complaint, require the husband to pay such sums as may be necessary to
13 enable the wife to carry on or defend” the suit.”¹²

14 *Lake* has been cited since that time as authority for this Court to award fees, including on
15 appeal. Fees have been awarded citing back to *Lake*, in *Herrick v. Herrick*,¹³ *Jeffers v. Jeffers*,¹⁴
16 *Baker v. Baker*,¹⁵ and *Caye v. Caye*.¹⁶ Each of these cases ordered the husband to pay the attorney’s

20 ¹⁰ The Order should encompass all Courts in the State of Nevada to ensure fees are paid before further litigation is
21 authorized.

22 ¹¹ A reasonable payment would be no less than 1% of his amassed arrearage each month.

23 ¹² *Lake v. Lake*, 16 Nev. 363 (1882).

24 ¹³ 54 Nev. 323 (1932).

25 ¹⁴ 55 Nev. 69 (1933).

26 ¹⁵ 59 Nev. 163, 173-76 (1939).

27 ¹⁶ 66 Nev. 78 (1949).

1 fees for his ex-wife to defray the costs of an appeal. Additionally, Nevada Statutes provide for a fee
2 award.¹⁷

3 NRS 125.040(1)(c) allows a court to order fees “To enable the other party to carry on or
4 defend such suit.” This Court has determined that the power to award allowances and suit money
5 remains part of the continuing jurisdiction of the court.¹⁸

6 Here, Scott makes several thousands of dollars per month *more* than does Cisilie, who is
7 unable to pay counsel at all. It is well within his means to pay her fees and certainly, based upon the
8 number of his filings, he should be compelled to do so.

9 There was no challenge below to the conclusion that Scott paid no child support at all for
10 about a decade, and has run up massive arrears. This Court has held that under NRS 125B.140(c)(2),
11 the district court must award fees to the party seeking to enforce a child support obligation unless
12 the court finds that the responsible parent would experience an undue hardship.¹⁹ No such finding
13 has been or could be made in this case, and the statute further provides that “additional attorney’s
14 fees must be allowed if required for collection.”

15 All of these proceedings in this Court are “required for collection,” as they are a continuation
16 of our efforts to collect the massive arrears from Scott, and his continuing efforts to evade paying
17 them. Accordingly, the child support enforcement statute provides an independent basis for an
18 award of fees in this Court – again, to be actually *paid* before Scott is permitted to proceed.

19 A denial of fees in these circumstances would be tantamount to a denial of justice. Allowing
20 a vexatious litigant to use the judicial system to avoid paying legitimate judgments and required
21 support while creating intolerable costs for counsel for the innocent party would only facilitate the
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24 ¹⁷ See NRS 125.040; *Love v. Love*, 115 Nev. 572, 959 P.2d 523 (1998).

25 ¹⁸ See *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (1971), cited in *Love v. Love*, 114 Nev. 572, 581, 959 P.2d 523
26 (1998); *Halbrook v. Halbrook*, 114 Nev. 1455, 1461, 971 P.2d 1262 (1998). Any money not used directly for this appeal
would be applied toward Scott’s massive arrearages in attorney’s fees already awarded and reduced to judgment.

27 ¹⁹ *Edgington v. Edgington*, 119 Nev. 577, 80 P.3d 1282 (2003).

1 vexatious misbehavior and encourage others of means to starve out their opponents regardless of the
2 legal or factual grounds.

3

4 **IV. CONCLUSION**

5 Based on Scott's ability to pay, his decade-long record of vexatious and frivolous filings, and
6 Cisilie's inability to continue litigation in this case without fees actually being *paid* by Scott, Cisilie
7 requests an order from this Court for a minimum of \$15,000 to be paid by Scott before being allowed
8 to continue forward on this appeal, or any other action in this or any other Court of the State of
9 Nevada. In conjunction with an order for payment of existing fee awards on some reasonable
10 schedule, such a lump-sum precondition order would serve the interests of justice, and abide by the
11 statutory direction.

12 DATED this 4th day of ^{June}~~May~~ 2009.

13

WILLICK LAW GROUP



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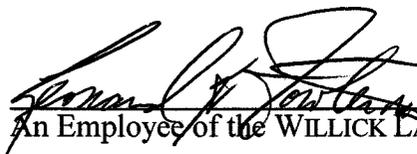
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the WILLICK LAW GROUP and on the 8th day of ~~May~~ ^{June} 2009, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the *Motion for Fees and Costs Pending Appeal*, addressed to:

Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Petitioner In Proper Person

This is the address as listed by Petitioner in his pleadings, and there has been communication between the place of mailing and the place so addressed.


An Employee of the WILLICK LAW GROUP

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EXHIBIT A

FILED

UNITED STATES COURT OF APPEALS

MAY 28 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CISILIE VAILE PORSBOLL; et al.,

Plaintiffs - Appellees,

v.

ROBERT SCOTLUND VAILE,

Defendant - Appellant,

and

KELLENE BISHOP; et al.,

Defendants.

No. 06-15731

D.C. No. CV-02-00706-RLH/RJJ

District of Nevada,

Las Vegas

ORDER

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See Fed. R.*

App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.

/Research