ORIGINAL

Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,

Appellant,

vs.

CISILIE A. PORSBOLL fka, CISILIE A. VAILE,

Respondent.

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

MOTION FOR REHEARING AND RECONSIDERATION

I. INTRODUCTION

In accordance with NRCP 40, Appellant requests rehearing and reconsideration of this Honorable Court's dismissal of this case because Appellant believes that the Court may have overlooked or misapprehended the points of fact and law discussed herein.

II. BRIEF PROCEDURAL HISTORY OF THIS CASE ON APPEAL

- On April 2002, the Nevada Supreme Court disposed of this case by holding that the Eighth Judicial District Court, Department I ("lower court") did not have personal jurisdiction over either party, or subject matter jurisdiction over the case.[1]

[1] *Vaile v. Eighth Judicial District Court*, 44 P.3d 506, 511 (Nev. 2002)

09-02378

- On November 9, 2007, Respondent (Defendant below) requested[2] that the lower court revive the case.
- On March 20, 2008, following a hearing on March 3, 2008, the lower court filed an *Order Amending the Order of January 15, 2008.*
- On March 31, 2008, Appellant Vaile timely 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.*[3] See Appendix A.
- On August 15, 2008, the lower court entered an *Order for Hearing Held June 11, 2008* which partially addressed issues raised in Appellant's motion for reconsideration and to amend.
- On September 11, 2008,[4] Defendant below sent notice of entry of *Order for Hearing Held June 11, 2008.*
- On September 14, 2008,[5] Appellant filed a *Notice of Appeal,* wherein he noticed appeal of the following orders:
    - *Order Amending the Order of January 15, 2008* filed March 20, 2008
    - *Order for Hearing Held June 11, 2008* filed August 15, 2008
- On October 9, 2008, less than 30 days[6] after the September 11, 2008 notice of entry of *Order for Hearing Held June 11, 2008,* Appellant filed *Renewed Notice of Appeal,*[7] wherein he noticed appeal of the same two orders as previously noticed:
    - *Order Amending the Order of January 15, 2008*, filed on March 20, 2008

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[2] "*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] March 3, 2008 was the hearing date which resulting in the order of March 20, 2008.

[4] Notice of entry of orders must be made within 10 days under NRCP 58(e). Defendant below was several weeks late in providing notice of entry of order to Appellant.

[5] Appellant had not yet received notice of entry of order sent three days prior.

[6] NRCP 4(a)(1) generally allows 30 days from notice of the entry of an order to file a notice of appeal.

[7] In order to avoid any argument that the previous notice of appeal was filed prematurely, i.e. before notice of entry had been served, Appellant renewed his notice of appeal.

- *Order for Hearing Held June 11, 2008* filed August 15, 2008 and noticed as to entry of order on September 11, 2008

- On October 9, 2008,[8] the lower court issued *Findings of Fact, Conclusions of Law, Final Decision and Order*
- On November 3, 2008, Appellant filed an *Amended Notice of Appeal,*[9] wherein he noticed appeal of the following orders:
  - *Order Amending the Order of January 15, 2008*, filed on March 20, 2008.
  - *Order for Hearing Held June 11, 2008* filed August 15, 2008 and noticed as to entry of order on September 11, 2008
  - *Findings of Fact, Conclusions of Law, Final Decision and Order*, dated October 9, 2008
- On January 15, 2009, this Court entered an *Order Dismissing Appeal* for lack of jurisdiction.

III. ARGUMENT

This Court's January 15, 2009 *Order Dismissing Appeal* recited two reasons for dismissing the current appeal. Firstly, with regard to the March 20, 2008 order, the Court noted that the 33 days from the service date of the lower court's order, during which Appellant could file a notice of appeal, had long since expired. With regard to the June 11, 2008 order, the Court held that it is not appealable because it is not a final order. The Court did not address the appealability of the lower court order dated October 9, 2008. Appellant Vaile addresses each holding of the Court herein.

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[8] Appellant had not yet received the order issued the same day as his *Renewed Notice of Appeal*

[9] Since no additional fees are required to amend a notice of appeal, Appellant e-filed the *Amended Notice of Appeal* on November 3, 2008. See Appendix B for a print of the actual PDF document filed. *Certificate of Service* for the *Notice of Appeal* was also e-filed on November 3, 2008. See Appendix D.

A. APPELLANT'S TIME TO FILE A NOTICE OF APPEAL OF THE MARCH 20, 2008 ORDER DID NOT EXPIRE BECAUSE HE TIMELY FILED A MOTION UNDER RULE 59

NRAP 4(a)(4) states:

> "If a party timely files in the district court any of the following motions under the Nevada Rules of Civil Procedure, the time to file a notice of appeal runs for all parties from the entry of an order disposing of the last such remaining motion, and the notice of appeal must be filed no later than 30 days from the date of service of written notice of entry of that order:
>
> . . .
>
> (iii) a motion under Rule 59 to alter or amend the judgment;
> (iv) a motion for a new trial under Rule 59.

Notice of entry of the March 20, 2008 order was dated March 23, 2008. On March 31, 2008, Appellant Vaile timely 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.*[10] See Appendix A. That motion title reflects a request to "amend" the order, as well as a request for a new "hearing" (trial). In order to make clear that the motion was made under Rule 59, the motion begins with clarification of that fact: "Plaintiff R. Scotlund Vaile hereby requests this Court to reconsider the order entered on March 20, 2008 in light of the controlling law on point, to amend that order to correspond to the actual findings made during the hearing on March 3, 2008, or to grant a new hearing on the matter, all *in accordance with NRCP Rule 59.*" (emphasis added). See Appendix A.

Because a Mr. Vaile timely filed a motion under Rule 59 as laid out in NRAP 4(a)(4), the time to file a notice of appeal runs for all parties from the entry of the order disposing of the issues raised in the motion. Those issues were not finally resolved until the lower court issued its *Findings of Fact, Conclusions of Law, Final Decision and Order* on October 9, 2008. See Appendix B. Mr.

[10] March 3, 2008 was the date of the hearing which produced the order filed March 20, 2008.

Vaile's Notice of Appeal prior to the 33-day time period from notice of entry of the October 9, 2008 order, was timely and effectively vests jurisdiction with this Court. Since the Court overlooked (or was perhaps not fully informed) of the additional filings[11] in this case, Appellant requests that the Court reinstate the appeal.

B. The October 9, 2008 Order Is Also Appealable

This Court's *Order Dismissing Appeal* did not address its jurisdiction to handle the appeal of the *Findings of Fact, Conclusions of Law, Final Decision and Order* of October 9, 2008 which Appellant referenced in his *Amended Notice of Appeal*. See Appendix B. This fact suggests that the Court either overlooked the *Amended Notice of Appeal* which shows that this order was also appealed, or that the Court never saw the amended notice because the lower court clerk failed to transmit the notice and related documents to this Court in accordance with NRAP 3(e). Appendix B includes a copy of the *Amended Notice of Appeal* for this Court's reference.

Since Appellant's *Amended Notice of Appeal* document was filed in a timely manner under the rules, and since it appeals at least one order which by its own title is final, this Court has jurisdiction to address the issues raised by Appellant on appeal.

C. The June 11, 2008 Order is Appealable Because It Denied or Failed to Address Injunction Relief

NRCP 3A(b)(2) states:

(b) An appeal may be taken:

. . .

(2) From an order granting or refusing a new trial, or granting or

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[11] Appellant's *Renewed Notice of Appeal* specifically references "Plaintiff's timely *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* filed March 31, 2008." See Appendix C.

refusing to grant or dissolving or refusing to dissolve an injunction . . .

Appellant's *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* was filed March 31, 2008 and a hearing scheduled for June 11, 2008. This motion specifically included a request for injunctive relief. Namely, Appellant requested that enforcement of the order that resulted from the March 3, 2008 hearing be stayed. At the June 11, 2008 hearing, the lower court did not grant the injunctive relief requested by Mr. Vaile. Because the lower court refused to grant Mr. Vaile the injunction sought, the *Order for Hearing Held June 11, 2008* is appealable under Rule 3A(b)(2).

Because the Court may have overlooked the denial of injunctive relief in the *Order for Hearing Held June 11, 2008,* it is substantially appealable. Appellant requests that the Court rehear the matter and reconsider dismissal of the appeal in this case.

IV. CONCLUSION

Appellant respectfully requests that the Court rehear and reconsider the dismissal of this appeal because the Court overlooked (or may not have been provided) the relevant facts that demonstrate that the Court has jurisdiction under Nevada law to consider each order detailed in the *Amended Notice of Appeal.* In the event that the case is placed back on the docket, Appellant further requests that he be allowed to proceed with full briefing on appeal.

Respectfully submitted this 26th day of January, 2009.

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Appellant in Proper Person

Appendix A

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CLERK OF THE COURT

R. Scotlund Vaile
Pro Se Plaintiff
PO Box 727
Kenwood, CA 95452
(707) 833-2350

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE, Plaintiff, vs. CISILIE A. PORSBOLL, fna CISILIE A. VAILE, Defendant.	CASE NO: 98D230385 DEPT. NO: I DATE OF HEARING: June 11, 2008 TIME OF HEARING: 9:00 AM

Oral Argument Requested

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

Plaintiff R. Scotlund Vaile hereby requests this Court to reconsider the order entered on March 20, 2008 in light of the controlling law on point, to amend that order to correspond to the actual findings made during the hearing on March 3, 2008, or to grant a new hearing on the matter, all in accordance with NRCP Rule 59. Mr. Vaile also enters objections and moves for a stay of enforcement of the March 20, 2008 order. Mr. Vaile brings this motion based on the irregularity of the proceedings on March 3, 2008, the newly discovered evidence attached hereto, and the errors in law which occurred at the hearing. Mr. Vaile requests

this relief based on the pleadings and papers previously filed in this case and the Points and Authorities cited herein.

NOTICE OF MOTION

TO: Cisilie Porsboll, Defendant

TO: Marshal S. Willick, Attorney for Defendant.

PLEASE TAKE NOTICE that the attached motions will be heard by Department I of the Eighth Judicial District Court – Family Division on June 11, 2008 at 9:00 AM at 601 N. Pecos, Las Vegas, Nevada, 89101.

POINTS AND AUTHORITIES

BACKGROUND FACTS AND PROCEDURAL HISTORY

Mr. Vaile fully set forth the facts involving the interactions between the parties and the history of the case in this Court in his *Motion to Set Aside Order of January 15, 2008, and to Reconsider and Rehear the Matter, and Motion to Reopen Discovery, and Motion to Stay Enforcement of the January 15, 2008 Order*. This Court held a hearing on March 3, 2008 under a shortened schedule to determine whether to set aside an order entered on January 15, 2008. The January 15, 2008 order was entered in response to Ms. Porsboll's *Motion to Reduce Arrears in Child Support to Judgment, to Establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs* which contained a request for this Court to recognize and restate a child support award entered *ex parte* by a federal court in Las Vegas. The Ninth Circuit Court of Appeals entered a Memorandum opinion on March 26, 2008 holding that the federal district court improperly decided the issue of child support, and vacated the child support award which Ms. Porsboll claimed should have been given full faith and credit by this Court. The memorandum opinion is attached hereto as Exhibit A.

During the hearing in this Court on March 3, 2008, Mr. Vaile properly requested and was granted leave to appear telephonically. At the request of the clerk, he called into the Court chambers five times. During the first four conference call attempts, the audio system, appearing to malfunction, provided feedback and squelch on the Court's end once the speakerphone was activated, and it was, at times, impossible to hear Mr. Vaile on the other end of the telephone except very faintly.[1] The fifth time Mr. Vaile called back, the feedback would come and go, but was primarily on Mr. Vaile's end of the telephone, and he could not hear the Court except very faintly (Tr. 10:23:05, 10:24:41).[2] Mr. Vaile raised his concerns in not being able to hear the Court several times during the proceedings (Tr. 10:46:13, 10:46:26, 10:51:34, 11:13:20). Additionally, at the end of the hearing Mr. Vaile made a request to view, seek clarification and countersign the order before it was signed by the Court because of his inability to effectively participate in the hearing. (Tr. 11:13:30, 11:13:48). The Court denied Mr. Vaile's request, but informed him that he could file a motion once he received the order. (Tr. 11:25:19).[3] The first time Mr. Vaile was able to understand the entirety of what took place during the hearing was when he obtained the video transcript in the mail. And the first time Mr. Vaile saw the order that resulted from the hearing was several days after it was signed by the Court.

Mr. Vaile makes herein his points of clarification, arguments, and objections to the matters presented during the hearing which he was prevented from raising at the hearing itself and others justified under the law.

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[1] The Court recognized that Mr. Vaile did not in any way cause this interference (Video Transcript, hereinafter "Tr.," 10:22:47) as it seems to have only manifested itself once the Court's speakerphone was activated.

[2] The Court indicated that it would "just have to yell into the microphone." (Tr. 10:24:44).

[3] "I'll just let him submit the order. And you'll get the detailed findings. You can file a motion to amend or try to deal with Mr. Willick directly on any of those."

ARGUMENT

I. THE HEARING VIOLATED MR. VAILE'S PROCEDURAL DUE PROCESS RIGHTS BECAUSE HE COULD NOT EFFECTIVELY PARTICIPATE IN THE HEARING

Firstly, Mr. Vaile objects to the irregularity in the proceedings held on March 3, 2008, because they effectively deprived Mr. Vaile of procedural due process under the law. Without the ability to hear the proceedings in the Court, except when the Court yelled into the microphone, Mr. Vaile was prevented from fully responding to the Court's comments, objecting to issues, or seeking further clarification of the findings of the Court. Although Mr. Vaile could hear opposing counsel better than the Court, it was impossible to follow the dialog between the Court and opposing counsel since Mr. Vaile could hear, at most, only one side of those conversations. As such, the procedural due process requirements to which a litigant has a right in seeking redress before a court of law was violated under both state and federal Constitutional standards. Mr. Vaile requests a new hearing without procedural irregularities, or in the alternative, preservation of this objection in the event of appeal.

II. THE ORDER VIOLATES MR. VAILE'S SUBSTANTIVE DUE PROCESS RIGHTS BECAUSE IT RETROACTIVELY AND SIGNIFICANTLY ALTERS HIS CONTRACT WITH MS. PORSBOLL

Although Mr. Vaile could not hear the Court's discussion of this point during the hearing, the Court threw out the parties' agreement on child support and replaced it with a new retroactive agreement under a contract theory. (Tr. 11:07:11).[4] The Court held that it would reform the contract, and apply that reformation back to the date of the Nevada Supreme Court's opinion. (Tr.

[4] "First in time, first in right. The Nevada court order which is the decree of divorce which is that paragraph 8 which I voided out for public policy and instead replaced it under contract principles with the NRS 125B.070 and .080 as a strict reading of 25% for the two children that existed and you do it one time for the time that the exact income he was making at the time of that year that the decree was filed."

11:17:07).[5] The Court based its retroactive contract theory on the doctrine of partial performance.[6] See finding #13. As such, the Court materially altered the terms of the bargained for exchange between the parties, and in fact removed all of Ms. Porsboll's obligations under the contract, and all of Mr. Vaile's benefit. In addition to this substantive alteration to the contract going forward, the changes were applied retroactively. Finally, this contract reformation retroactively negated Ms. Porsboll's unequivocal repudiation of the contract. Any of these three changes would violate Mr. Vaile's substantive due process rights to contract and are impermissible under state and federal constitutional standards.

The US Constitution mandates that "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or *Law impairing the Obligation of Contracts*, or grant any Title of Nobility." US Const. Art. I, § 10, Cl 1 (emphasis added). Based on this clause, statutes are not to be given retrospective or retroactive effect if to do so would *impair or destroy contracts*, disturb vested rights, or create new obligations. County of Clark v. Roosevelt Title Ins. Co., 80 Nev. 530, 534 (Nev. 1964). The US Supreme Court has long held that the Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties. United States Trust Co. v. New Jersey, 431 U.S. 1, 17 (U.S. 1977). In summary, the

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[5] It's not a modification; it's under contract principles. . . . It is a, what do you call it, a reformation, rescission and reformation.

[6] The doctrine of partial performance is confined only to contracts relating to lands, the nonexecution of which would operate as a fraud upon the party who had made partial performance to such an extent that he cannot be reasonably compensated in damages. It is an equitable principle, frequently invoked in actions for the specific performance of parol contracts for the purchase of land, under which possession had been taken, improvements made, and where there has been payment or partial payment of the purchase price. Nehls v. William Stock Farming Co., 43 Nev. 253, 258 (Nev. 1919)

same principle of substantive contract rights applies to both the passing of statutes and to judicial actions.

These principles do not change when the subject matter of the agreement is child support. The Nevada Supreme Court has held that in a situation warranting modification of child support, the court may make the modification effective either as of the time of filing the petition or as of the date of the decree of modification, or as a time in between, but it may not modify the decree retroactively. Ramacciotti v. Ramacciotti, 106 Nev. 529, 532 (Nev. 1990). Furthermore, characterizing an action as one for reformation or rescission rather than equitable modification does not alter the fundamental nature of the underlying dispute. Marquis & Aurbach v. Eighth Judicial Dist. Court, 146 P.3d 1130, 1137 (Nev. 2006). Accordingly, attaching a different label to the contract change does not allow the change to be applied retroactively.

Importantly, Mr. Vaile pointed out in his filings on the matter and during the hearing (Tr. 10:53:48), that Ms. Porsboll had previously testified under oath that she had not supplied Mr. Vaile with any documentation which was required for him to be able to calculate child support under the parties' agreement. She communicated her unequivocal intent not to do so, thereby repudiating the contract that she made with Mr. Vaile on child support (under advice of current counsel). Rather, she expressed her intention to use the Norwegian system to seek child support. Ms. Porsboll did not provide any evidence to contradict Mr. Vaile's testimony on this point, and her counsel made no attempt to refute Mr. Vaile's evidence. Despite the fact that Mr. Vaile's testimony on this subject (he was under oath) was undisputed, Mr. Vaile requested discovery to more fully demonstrate these facts for this Court, but his request was denied. This denial was in error because the Nevada Supreme Court has held that equitable defenses such as estoppel or waiver may be asserted by the obligor in a proceeding to

enforce or modify an order for child support or to reduce child support arrearages to judgment." Mason v. Cuisenaire, 128 P.3d 446, 452 (Nev. 2006). Denying Mr. Vaile the ability to show that Ms. Porsboll both repudiated the contract and also prevented Mr. Vaile from even calculating the correct amount by refusing to provide the documentation under the contract necessary for him to do so, is a substantive and impermissible interference by the Court with the parties' contract.

Lastly, the Court decided on an amount of child support which does not comport with NRS 125B.070, and is, in fact, in excess of the statutory cap. The Court apparently accepted Ms. Porsboll's reasoning that since Mr. Vaile paid $1,300 in child support during one year when his income was higher than normal and Ms. Porsboll's income was lower than normal, that amount should apply to every year forward regardless of the parties' agreement or statutory law to the contrary.[7] This finding was made despite Mr. Vaile's production of the agreement which clearly states that child support obligations were to be calculated annually based on the factors provided[8] and Porsboll's counsel's admission that the $1,300 number is not to be found in the agreement. (Tr. 11:15:37).[9] Nevada law clearly requires that child support awards must conform to the statutory guidelines. Khaldy v. Khaldy, 111 Nev. 374, 378 (Nev. 1995). The Court cited no reason to depart from the statutory guidelines. The Court's action in this regard was an impermissible departure from the statute.

Mr. Vaile requests relief to remedy the denial of his substantive due process rights by way of the following requests to the Court. Mr. Vaile requests that if the Court continues to find that personal and subject matter jurisdiction exists in

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[7] Ms. Porsboll's counsel argued that $1,300 was the appropriate monthly sum because "[s]ome amount has to be established. The federal court findings were that he went through his machinations and determined that thirteen hundred dollars per month was the amount due and actually paid it for a period of time." (Tr. 11:01:17).

[8] Norway's child support provisions also apparently use the income of both parties and the custody and visitation arrangements in its calculation of child support.

[9] "That number is not in there."

this case, that the Court allow Mr. Vaile discovery and compulsory process to demonstrate that Ms. Porsboll repudiated her agreement with Mr. Vaile and effectively prevented Mr. Vaile from adhering to the terms of the contract. Alternatively, if the contract is found void based on public policy grounds, Mr. Vaile requests discovery to investigate the type and extent with which the Norwegian system has instituted child support orders (as Ms. Porsboll claims), so that the Court can make a determination under NRS 130.204 and 130.207 relative to whether it can enter a controlling order.[10] If the Court finds (over Mr. Vaile's objection) that it has jurisdiction to enter a controlling order under Nevada law, Mr. Vaile requests a prospective child support order which comports with the Nevada statutory mandates, and that he be allowed to provide the relevant documentation to support that finding.

III. THE ORDER VIOLATES THE PROHIBITION ON EX POST FACTO ORDERS

Although never raised or discussed by the Court during the March 3, 2008 hearing, a finding (#15) and holding (#3) of criminal liability found its way into the order submitted *ex parte* by Porsboll's counsel and signed by the Court. Since the order retroactively required Mr. Vaile to comply with a child support contract with reformed terms that did not exist until March 3, 2008, and because Mr. Vaile's retroactive failure to adhere to those terms imposes criminal liability, the Court has applied an ex post facto ruling against Mr. Vaile which violates both the Nevada and US constitutions. N.R.S. Const. Art. 1, § 15, US Const. Art. I, § 10, Cl 1. According to the US Supreme Court an *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed. Collins v. Youngblood, 497 U.S. 37, 45 (U.S. 1990). Furthermore, the *ex post facto* prohibition applies equally to emanations from courts as it does

[10] Presumably, the previous order, void against public policy, cannot be a Controlling Order.

to legislative acts. Bouie v. Columbia, 378 U.S. 347, 353 (U.S. 1964) (internal cites omitted).[11]

In this case, clearly Mr. Vaile was not obligated to follow a contract which Ms. Porsboll unequivocally repudiated. Furthermore, he was prevented from fulfilling the terms of the contract because Ms. Porsboll openly admitted that she refused to provide the information that he required to calculate support. Not only were Mr. Vaile's actions not punishable, they were completely innocent. The order issued by the Court here makes Mr. Vaile's previous innocent actions criminal, creating an ex post facto law which applies to him alone. This result is not only unjust, it is a violation of the minimum standard of rights provided to citizens under the Nevada and federal Constitutions. This violation will be remedied by providing the requests for relief that Mr. Vaile made in the previous section.

IV. FURTHER REQUESTS TO AMEND ORDER

Mr. Vaile is particularly troubled by the order that was submitted by Porsboll's counsel and signed by the Court, which was signed on March 20, 2008. In particular, significant findings and holdings made during the hearing were materially altered by Porsboll's counsel, and wholesale additions were included with facts and issues not discussed by the Court on March 3, but which favor Porsboll. Findings and holdings favorable to Mr. Vaile were similarly excluded. As such, Mr. Vaile requests the following corrections, alterations or amendments to the order in accordance with the actual findings and holdings made during the March 3, 2008 proceedings. Since the Court encouraged Mr. Vaile to cite to the video transcript of the hearing to dispute any inclusions, (Tr. 11:25:31[12]), which he has done throughout this document, Mr. Vaile requests that the Court require

[11] The Court seemed to recognize this principle, at least in part, based on its statement that, "[u]nder the case of Day vs. Day, I cannot retroactively modify a child support agreement." (Tr. 11:18:31).

[12] "Everything is on the video. So you have a dispute, you cite to the video."

Ms. Porsboll's counsel to do the same in any eventual attempt to refute Mr. Vaile's assertions herein.

Order Title

The order submitted and signed by the Court based on the March 3, 2008 hearing is titled "*Order Amending the Order of January 15, 2008.*" This title mischaracterizes what the Court pronounced at the March 3rd hearing. This Court specifically set aside the order of January 15, 2008, and did not amend it, despite Ms. Porsboll's counsel's argument to the contrary. (Tr. 11:09:38[13]) The Court further stated: "Just to be clear, I set aside the order and replaced it with today's detailed findings and decision which you will prepare and I'll sign off on." (Tr. 11:20:14). This is the first of many manipulations by Porsboll's counsel of the actual findings of the Court on March 3, 2008, as compared to the prepared order. Mr. Vaile requests that the language which incorrectly indicates that the January 15, 2008 order was amended be removed from the order title.

Finding Number 1:

The first finding included in the order addresses personal jurisdiction at the time the original support order was entered, which would have been 1998. However, Mr. Vaile argued in his Motion to Dismiss that this Court did not have personal jurisdiction *after* the Nevada Supreme Court made it's ruling of no personal jurisdiction in 2002, not before. The finding as written does not address Mr. Vaile's argument on the subject. Accordingly, Mr. Vaile requests a finding relative to whether personal jurisdiction exists in this case now in light of the Nevada Supreme Court's opinion, and whether that Court's finding on the matter of personal jurisdiction is the law of the case here.

[13] "Set aside the order from Jan 15, 08."

In the March 3 hearing, the Court found that "the Nevada Court does have personal jurisdiction over the Plaintiff because he filed a joint petition here. He submitted to the jurisdiction. And I think that's enough to have minimum contacts for the long arm statute." (Tr. 11:04:15). "The Supreme Court decision on child custody and visitation has no impact." (Tr. 11:05:07). Mr. Vaile requests that these findings be reflected in the order.

Additionally, the Court denied Mr. Vaile's Motion to Dismiss because it held that, "[w]e do have personal jurisdiction on the child support issue." (Tr. 11:09:45). The Court did not make any finding relative to subject matter jurisdiction, the second basis Mr. Vaile asserted supports dismissal. In response to Mr. Vaile's argument that Ms. Porsboll did not provide any basis for the Court's subject matter jurisdiction in this matter in their various pleadings (Tr. 10:46:06), and that no statute allows the Court to assert subject matter jurisdiction over two parties and their children who have never lived in Nevada, Porsboll's counsel cited to his December 19, 2007 brief and exclaimed that "the only applicable law" (Tr. 10:36:01) was NRS 130.201. (Tr. 10:36:44). NRS 130.201 is the first section under Article 2 of the statute, and is titled "Extended Personal Jurisdiction." If there were any question whether NRS 130.201 is solely a personal jurisdiction statute based on this title, and that it does not provide a basis for the subject matter jurisdiction of the Court, one need look no further than NRS 130.201(2) which begins, "The bases of personal jurisdiction set forth in subsection 1 . . . ." Subject matter is not provided for under this section.

If this Court agreed with Porsboll's counsel on their only asserted basis for subject matter jurisdiction, Mr. Vaile requests the order to reflect the Court's finding that NRS 130.201 is the basis for subject matter jurisdiction here. If the Court finds another basis for subject matter jurisdiction, Mr. Vaile requests the Court to make an appropriate finding on this point.

Lastly, the Court never stated that Nevada law requires child support to be stated as a sum certain amount during the March 3rd hearing. As such, Mr. Vaile requests removal of this portion of the finding.

FINDING NUMBER 3:

The Court never made the statement that forms the first sentence of this finding. Furthermore, there was no evidence submitted at the hearing which suggests that Mr. Vaile caused the child support provisions to be drafted. The language in this finding that reflects this as fact is contrary to the Nevada Supreme Court's finding in this case that Ms. Porsboll was not subject to duress when she mediated and signed the agreement (which was created by the mediator himself). The Court did not make any finding relative to Mr. Vaile causing the child support provisions to be drafted during the hearing, and the Court never addressed whether it had jurisdiction over custody and visitation, as these matters were not even before the Court. Accordingly, Mr. Vaile requests correction of this finding to capture the finding from the hearing that "The variable agreement has been thrown out the window by the Court as void against public policy for mixing residential times with child support." (Tr. 11:16:51).

FINDING NUMBER 4:

The first sentence of this finding that claims that the decree of divorce required Mr. Vaile to pay child support to Ms. Porsboll on a monthly basis is inaccurate, and does not accurately reflect the Court's actual finding on the matter. Child support was due based on with whom the children lived at the time, and the agreement called for custody to be shared between the parties with each being a residential parent at different times during the childrens' minority. Mr. Vaile was not the only party required to pay child support under the agreement.

Regardless, the Court never made this finding as written at the March 3, 2008 hearing. Mr. Vaile requests its removal.

Additionally, Mr. Vaile submitted evidence that was unanswered in the hearing that he did **not** make any determination in the amount of $1,300, and the federal court finding that Ms. Porsboll seeks to use in support of this "fact" of her own creation has been vacated. Furthermore, during the hearing, Porsboll's counsel admitted that this amount was not to be found in the agreement. (Tr. 10:40:51). Mr. Vaile requests that this finding reflect that he followed the terms of the contract, rather than that he determined the appropriate child support amount. Mr. Vaile also requests removal of the language in this section and in the footnote which suggests that he performed the criminal act of "child abduction" and "kidnapping" since Mr. Vaile has never been found guilty of these offenses. Mr. Vaile reminds that this Court previously upheld what it called a "pick-up order" to "resecure" his children from Norway.

FINDING NUMBER 5:

Although portions of this finding were argued by Porsboll's counsel during the hearing, counsel's remarks are not evidence, and the Court made none of these findings in this section in the hearing. Again, there was no evidence whatsoever submitted that Mr. Vaile was the author of any "methodology" or that it was "erroneous" in any case. Mr. Vaile requests that the finding on this point reflect only the actual finding made by the Court during the hearing, namely that "The Nevada court order which is the decree of divorce which is that paragraph 8 which I voided out for public policy and instead replaced it under contract principles with the NRS 125B.070 and .080 as a strict reading of 25% for the two children that existed and you do it one time for the time that the exact income he was making at the time of that year that the decree was filed." (Tr. 11:07:11).

FINDING NUMBER 6:

This finding was not made by the Court during the hearing because it was not relative to any of the matters before the Court. Mr. Vaile did not seek modification of any child support order which would require an Affidavit of Financial Condition. Since this finding was not made during the hearing, Mr. Vaile requests removal of the finding.

FINDING NUMBER 7:

The Court did not make this finding during the hearing either, and no evidence was submitted to support this finding. In fact, the Court denied Mr. Vaile's request for discovery to investigate this matter further and submit evidence to the Court on this point. As such, Mr. Vaile requests that this finding be removed from the order.

FINDING NUMBER 8:

The Court did not make this finding during the course of the hearing and Mr. Vaile requests its removal. This finding, like most of those discussed by Mr. Vaile herein, were simply arguments made by counsel during the hearing, not findings made by the Court under any theory.

FINDING NUMBER 9:

The Court did not make this finding in the course of the hearing on March 3, 2008, and no evidence was submitted on the subject. The Nevada Supreme Court held the the children's habitual residence[14] was Norway in 2002, which negates any need for this Court to recharacterize that holding. That Court's holding, that neither the parties nor the children ever lived in Nevada or had substantial contact

[14] As such, Norway must be the children's "home state" under NRS 130. "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately preceding the time of filing a petition or comparable pleading for support . . . ." NRS 130.10119.

with the state, is the law of the case here. Since the finding as written was never made by the Court, Mr. Vaile requests that it be removed.

FINDING NUMBER 10:

This Court did not make this finding and Mr. Vaile requests it to be removed. Furthermore, it is a blatant mischaracterization of the opinion of the Nevada Supreme Court. The Nevada Supreme Court's opinion does not require recharacterization in this order, and Mr. Vaile requests removal of this finding.

FINDING NUMBER 11:

This finding is a recitation of Ms. Porsboll's arguments at the hearing, but does not reflect any finding of the Court on the matter. Therefore, Mr. Vaile requests its removal. In actual fact, this Court found that its order is the Controlling Order. (Tr. 11:10:20[15]). Mr. Vaile requests inclusion of this actual finding in the order, with clarification as to whether the Court was referring to the previous order (which was void against public policy), or whether this new order is the "Controlling Order."

Under NRS 130.205 "[a] tribunal of this State that has issued a child-support order consistent with the law of this State has and shall exercise continuing and exclusive jurisdiction to modify its child-support order if the order is the controlling order." The finding as written by Porsboll is not only inaccurate, it directly contradicts the statutory law. Mr. Vaile requests that this finding be altered to reflect that this Court has continuing and exclusive jurisdiction under NRS 130.205, or alternatively why this statute does not apply. If this Court finds that it does not have jurisdiction to modify the controlling order, as it found

[15] "The UIFSA law, NRS chapter 130, Nevada is the controlling order."

several times throughout the hearing (Tr. 11:06:36,[16] 11:07:44,[17] 11:10:08[18]), Mr. Vaile requests clarification as to what event triggered the loss of modification jurisdiction for this Court, or transfer of that jurisdiction to Norway.

Additionally, since the Court found that the principle of "First in Time" applies to child support orders, (Tr. 11:07:11,[19] 10:43:08[20]) Mr. Vaile requests that the order reflect this finding. Additionally, Mr. Vaile requests clarification as to why NRS 130.204(2), which appears to contradict the "first in time" rule, does not apply given that Ms. Porsboll asserted that Norway had entered child support orders in her original pleading, and admitted the fact again at least twice in open court (Tr. 10:42:20, 10:52:12). If the Court finds that it need not consider simultaneous proceedings unless the foreign order is lodged[21] in Nevada, then Mr. Vaile requests the Court to include that finding in the order, together with the finding that Mr. Vaile's discovery request, which would allow this fact to be determined, was denied.

Mr. Vaile does not object to the findings relative to the Court's judicial notice that Norway is seeking support of the children. However, Mr. Vaile requests that the findings reflect that the Court has taken judicial notice of the fact that Norway is not a party to the UIFSA as Mr. Vaile argued during the hearing. (Tr. 10:49:00[22]). Under NRS 130.10179: "'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or

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[16] "And now the Court doesn't have any modification jurisdiction under the UIFSA law."

[17] "I don't have any jurisdiction over that [modification]. Norway would be the people to modify that."

[18] "I will not modify, I can't. I don't have jurisdiction."

[19] "First in time, first in right."

[20] "First in Time"

[21] The Court specifically asked that the following finding be included in the order, but it was excluded by Porsboll's counsel. "Court specifically asked for this finding. "No Norway court order has ever been lodged in as a foreign judgment for purposes of enforcement and collection in the Nevada case." (Tr. 11:06:52).

any territory or insular possession subject to the jurisdiction of the United States." Clearly this definition does not include Norway.

FINDING NUMBER 12:

This Court did not make this finding at the hearing, and in fact, did not make any findings or holdings relative to Mr. Vaile's arguments that the federal court order is subject to *res judicata*. (Tr. 11:10:52[23]) Despite Ms. Porsboll's counsel's admission in the March 3, 2008 hearing that the federal Court did not have authority or jurisdiction to enter a child support order (Tr. 10:39:31), this finding appeared in the order without any mention by the Judge during the hearing. It should be removed on that ground alone. However, since the federal court order on this matter has now been reversed, this finding is wholly inaccurate as well. Mr. Vaile requests that it be removed.

However, Mr. Vaile does request that the Court make a finding of the fact that Ms. Porsboll has **not** in this case complied with EDCR 5.33 which requires a breakdown of the arrearage that she claims exists as Mr. Vaile argued in his filings and during the hearing. (Tr. 10:57:34). Mr. Vaile also requests the Court to make a finding relative to why compliance with this statutory mandate was excused, especially in light of Porsboll's counsel's only explanation for noncompliance, that "[w]e just didn't want to stretch backwards another 8 years prior in time." (Tr. 10:59:08). Lastly, Mr. Vaile requests a finding relative to when the arrearage began to accrue, whether it accrued while the children lived with Mr. Vaile, and reflect whether amounts reflected in the March 20, 2008 order takes into account the amounts Mr. Vaile paid in child support through the Nevada District Attorney. (These requests would be unnecessary had 5.33 been

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[22] Whether Norway is a party to the UIFSA is particularly relevant, because only another UIFSA "state" can relieve the controlling jurisdiction of continuing and exclusive jurisdiction, something Norway could never do under the terms of the statute.

[23] "I don't know if I can or should say anything about that."

complied with.) Mr. Vaile asks that the calculations be attached to the order and made available to other courts which may review this issue.

FINDING NUMBER 13:

This finding was not made by the Court during the March 3, 2008 hearing. Additionally, since this finding relies on the vacated federal order, Mr. Vaile requests its removal. Insofar as the Court determines that $1,300 per month payments are appropriate, Mr. Vaile requests the Court to make a detailed finding as to the reason for the departure from the statutory maximum contained in NRS 125B.070.

FINDING NUMBER 14:

This finding was not only not made by the Court during the hearing, it is contrary to the abundant evidence that Mr. Vaile presented which demonstrates his several payments, Ms. Porsboll's admissions during the March 3rd hearing that Mr. Vaile has provided in excess of $9,000 to the Nevada DA (Tr. 10:52:37), and the Court's judicial notice that Mr. Vaile provided well in excess of the statutory maximum to his children for two years. As such, Mr. Vaile requests removal of this finding.

FINDING NUMBER 15:

Not only was this finding never made by the Court, this matter was never raised by the Court during the course of the hearing. Furthermore, there is no reason to restate Nevada criminal law as a finding in a civil case, except that it forwards Porsboll's counsels' private and improper purposes and threats against Mr. Vaile. As such, Mr. Vaile requests that this finding be deleted.

FINDING NUMBER 16:

Along the same lines as Finding Number 15, the Court never made this finding or discussed this matter during the course of the hearing. Mr. Vaile requests that it be removed.

FINDING NUMBER 17:

Again, this finding was not made by the Court during the hearing nor was any discussion during the hearing made on this point. It is an inaccurate statement given the Ninth Circuit's recent order vacating the Judgment referenced in this order and must be removed.

FINDING NUMBER 18:

This finding was not only not made by the Court, it is contradictory to the Court's statements. In fact, the Court said that "I appreciated the intellectual exercise, " (Tr. 11:04:05), "I don't think the legal arguments were frivolous, I think it was definitely an intellectual exercise . . . " (Tr. 11:21:22) and "[b]ecause he did not lose on the frivolous motions, 7.60, the Goad order is not granted at this time" (11:22:49). Mr. Vaile requests that these statements be reflected as findings in the order, and that the false statements created by Porsboll's counsel be removed.

HOLDING NUMBER 1:

The Court made no findings relative to these numbers during the hearing, and in light of the federal court order which has been vacated, it represents an inaccurate statement that an arrearage exists at all. Mr. Vaile requests removal of this holding.

HOLDING NUMBER 3:

The Court did not make any findings on this point, and this subject was not a topic of discussion during the hearing. The language of this holding was not made by the Court, and is inappropriate for inclusion as a holding here.

HOLDING NUMBER 7:

There was, to my knowledge, no "Motion for Insufficiency of Process and/or Insufficiency of Service of Process." Rather, these were grounds for dismissal in the Motion to Dismiss in the event that the Court had chosen to interpret Ms.Porsboll's filing as the opening of a new case. This holding is not relevant.

HOLDING NUMBER 9:

The Court made no findings or holdings on this matter. As it stands, this holding is directly contrary to the Court's admonitions that Mr. Vaile should "[f]ile the appropriate motion once [he] watch[es] the video in full length" (Tr. 11:14:17), ". . . if he had a problem with any kind of the language, he'll have to file the appropriate motion to amend or whatever" (Tr. 11:20:21), and that Mr. Vaile "is free to file motions as long as they have merit" (Tr. 11:22:58). Mr. Vaile requests that these findings and/or holdings be included in the final order, and that the Court remove this holding as written because it is simply false.

HOLDING NUMBER 10:

The Court actually held that Porsboll's fees were to be **denied** under EDCR 7.60 (Tr. 11:21:17[24]), but granted her attorney's fees under NRS 18.010 (Tr. 11:21:22[25]), in an amount of $10,000 which supports Porsboll's attorney's work on this case since November 1, 2007 (Tr. 11:24:14). The Court never mentioned,

[24] "I'm going to award you attorney's fees because you prevailed on the merits. Not under 7.60."

and Porsboll's counsel never requested fees under NRS 125B.140(c)(2). Furthermore, Mr. Vaile formally objects to the granting of attorney's fees to Ms. Porsboll's counsel for 1) preparation of a motion and hearing appearance (January 15, 2008) for establishment of an arrearage without compliance with EDCR 5.32 and 5.33 and which produced an order which was eventually set aside, 2) preparation of documents with false assertions of facts, and 3) filings and preparation for, and appearance at, a hearing where Mr. Vaile was granted his motion (03/03/08 - Motion to Set Aside Granted.) NRS 18.010 plain language only allows attorney's fees to be granted to the prevailing party. Mr. Vaile requests the Court to reflect it's actual findings in the order, and to remove the spurious additions made by Porsboll's counsel from this holding.

V. REQUESTS FOR ADDITIONAL FINDINGS NOT INCLUDED IN THE ORDER

A. BASIS FOR MOTION TO SET ASIDE AND REHEAR THE MATTER

In his briefing for his Motion to Set Aside, Reconsider and Rehear the January 15, 2008 order, Mr. Vaile cited several grounds as the basis for his motion. Although the Court granted the relief he sought, the Court did not make any findings relative to what basis the Court used to grant this relief under NRCP Rule 59 or Rule 60. These issues presented by Mr. Vaile ranged from Ms. Porsboll's violations of Rule 5.32, and 5.33 to clerical mistake and fraud. Mr. Vaile requests that the Court make findings on each of those assertions in this case, particularly whether Ms. Porsboll complied with Rule 5.32 and 5.33. Additionally, Mr. Vaile requests the Court to record a finding that Mr. Vaile's evidence on the misconduct of Porsboll's counsel was undisputed and no contrary evidence was presented to the Court. Finally, Mr. Vaile requests the Court to state findings relative to whether the Court relied on any of the false facts

[25] "I don't think the legal arguments were frivolous, I think it was definitely an intellectual exercise, but I will award you 18.010 on prevailing party on both of his motions."

presented by Porsboll's counsel when it granted Ms. Porsboll relief on January 15, 2008.

B. Motion for Sanctions

Similarly, the Court did not make any findings or rule on Mr. Vaile's motion for sanctions against Porsboll's counsel. Mr. Vaile requests the Court to find, based on the evidence he presented, whether the facts alleged by Porsboll's counsel (and definitely disputed with evidence from Mr. Vaile) were true or not, and then make a determination as to whether the allegations were material in the course of the proceedings, particularly with regard to the order that issued on January 15, 2008. Absent findings and a ruling on this matter, it appears that this motion is still pending.

VI. Motion to Stay Enforcement of the March 3, 2008 Order

Ms. Porsboll's counsel included language in the proposed order which imposes criminal liability against Mr. Vaile for not retroactively adhering to the retroactive contract between he and Ms. Porsboll. Criminal liability was not only not included in the findings or holdings by the Court during the hearing on March 3, 2008, it was not even a matter of discussion during the hearing. Although Mr. Vaile would like to appear personally in Nevada for the hearing addressing the present motion in order to avoid the technical difficulties experienced during the March 3, 2008 hearing, appearing will now subject him to immediate criminal prosecution. As such, Mr. Vaile requests that the Court stay enforcement of the March 20, 2008 order until these matters are finally heard, and to grant him immunity from prosecution in the event he can appear at the hearing. Mr. Vaile further requests that the Court depart from its general policy against summary proceedings, and that the Court rule on this matter on the pleadings and without oral argument so that Mr. Vaile may appear in person.

CONCLUSION

Mr. Vaile respectfully requests the Court to reconsider the March 20, 2008 order, to make the alterations in the order requested, or alternatively to set aside the March 20, 2008 in its entirety and to rehear the matter, to register his objections, and to stay the order and grant him immunity until after the rehearing.

Respectfully submitted this 31st day of March, 2008.

_____/s/ R.S. Vaile_____
R. Scotlund Vaile
Pro Se Plaintiff
PO Box 727
Kenwood, CA 95452
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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 MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Roger L. Hunt, District Judge, Presiding

Submitted March 18, 2008**

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

JS/Research

06-15731

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

Robert Scotlund Vaile appeals pro se from the district court's judgment in favor of plaintiffs following a bench trial in this action alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") and various state laws. We have jurisdiction under 28 U.S.C. § 1291. We affirm in part, vacate in part, and remand.

Contrary to Vaile's contention that the district court lacked jurisdiction over the state law claims, the district court had supplemental jurisdiction because the operative facts for the RICO and state law claims were the same. *See Brady v. Brown*, 51 F.3d 810, 815-16 (9th Cir. 1995).

The Nevada district court properly concluded that it had personal jurisdiction over Vaile because plaintiffs' claims arose from the custody order that Vaile obtained in Nevada state court. *See Thompson v. Thompson*, 798 F.2d 1547, 1549 (9th Cir. 1986) (concluding, in action under Parental Kidnapping Prevention Act, that California district court had personal jurisdiction over defendant who had previously filed for divorce and custody in California state court), *aff'd*, 484 U.S. 174 (1988); *see also Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 863-68 (9th Cir. 2003) (concluding that second action "sufficiently a[rose] out of or

result[ed] from" first action); *Baker v. Eighth Judicial Dist. Court*, 999 P.2d 1020, 1023 (Nev. 2000) ("Nevada's long-arm statute . . . reaches the limits of due process set by the United States Constitution.").

Appellees' failure to bring their tort claims against Vaile in the Nevada or Texas family law proceedings does not bar their claims under the doctrine of res judicata or the rules governing compulsory counterclaims. *See Noel v. Hall*, 341 F.3d 1148, 1166 (9th Cir. 2003) (requiring federal courts to apply state law in determining preclusive effect of state court judgments); *In re J.G.W.*, 54 S.W.3d 826, 833 (Tex. App. 2001) (holding that tort claims based on ex-spouse's wrongful taking of children were "ancillary to" prior custody proceedings and thus not barred by res judicata). The issue of whether Vaile's false statements were intentional is not subject to collateral estoppel because Vaile's intent was not "actually litigated and essential to" the state court judgment. *Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 801 (Tex. 1992); *LaForge v. State*, 997 P.2d 130, 133 (Nev. 2000) (defining collateral estoppel under Nevada law). Moreover, to the extent Vaile argues that the Nevada Supreme Court concluded that he did not make false statements to obtain the custody order, his argument is unpersuasive. *See*

Vaile v. Eighth Judicial Dist. Court, 44 P.3d 506, 519 (Nev. 2002) (discussing Vaile's "untruthful representations" to the state court).

The district court did not err by concluding that Vaile was liable for intentional infliction of emotional distress. First, to the extent the district court judgment can be construed as a default judgment based on Vaile's consent, the intentional infliction of emotional distress claim was adequately pleaded in the Second Amended Complaint. *See Benny v. Pipes*, 799 F.2d 489, 495 (9th Cir. 1986), *amended*, 807 F.2d 1514 (9th Cir. 1987). Second, there was evidence that (1) Vaile made false statements to obtain both a custody order from the Nevada state court and new passports for Vaile and Porsboll's two children; and (2) then, without notice to Porsboll, Vaile took the children from Porsboll in Norway and brought them to the United States. *See Dillard Dep't Stores, Inc. v. Beckwith*, 989 P.2d 882, 886 (Nev. 1999) (outlining elements of intentional infliction of emotional distress claim under Nevada law); *see also Lentini v. Cal. Ctr. for the Arts*, 370 F.3d 837, 843 (9th Cir. 2004) (reviewing findings of fact for clear error). Because damages were properly awarded under the intentional infliction of emotional distress claim, we do not address Vaile's challenge to the RICO and

related state law claims. *See Lentini*, 370 F.3d at 850 ("We may affirm a district court's judgment on any ground supported by the record[.]" (citation omitted)).

The district court did not abuse its discretion by denying Vaile's motion for leave to file a counterclaim because Vaile's motion was filed six months after he filed his original answer and the record "does not reflect any reasonable explanation" for the delay. *Ralston-Purina Co. v. Bertie*, 541 F.2d 1363, 1367 (9th Cir. 1976).

Further, the district court did not abuse its discretion by denying Vaile's request to continue the pretrial conference on the eve of trial. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 961 (9th Cir. 2001) (explaining that a district court's decision concerning a continuance is entitled to great deference and will be reversed only if there is a clear abuse of discretion).

However, the district court improperly decided the issue of child support. The Second Amended Complaint does not allege a claim for unpaid child support and there is no evidence in the record of express or implied consent to try the issue. *See Consol. Data Terminals v. Applied Digital Data Sys., Inc.*, 708 F.2d 385, 396 (9th Cir. 1983). Accordingly, we vacate the award of damages for unpaid child support and remand to the district court for further proceedings. *See id.* at 397.

We deny Vaile's request to remand this case to a different judge because the record does not indicate that the case presents the rare circumstances necessary to warrant reassignment. *See Hernandez v. City of El Monte*, 138 F.3d 393, 402-03 (9th Cir. 1998).

Appellees' request for an order prohibiting Vaile from future filings is denied.

The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

Appendix B

R. Scotlund Vaile
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(707) 833-2350
Plaintiff in Proper Person

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

R. SCOTLUND VAILE, Plaintiff, vs. CISILIE A. PORSBOLL, fka CISILIE A. VAILE, Defendant.	CASE NO: 98 D230385 DEPT. NO: I

AMENDED NOTICE OF APPEAL

Plaintiff R. Scotlund Vaile hereby amends his notice of appeal to the Supreme Court of Nevada from the following judgments:

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

Dated this 1st day of November, 2008.

/s/ R. S. Vaile
R. Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

Appendix C

R. Scotlund Vaile
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Plaintiff in Proper Person

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

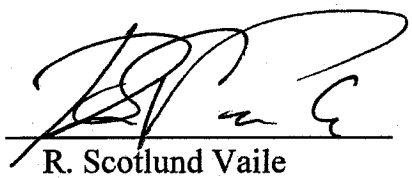
R. SCOTLUND VAILE, Plaintiff, vs. CISILIE A. PORSBOLL, fka CISILIE A. VAILE, Defendant.	CASE NO: 98 D230385 DEPT. NO: I

RENEWED NOTICE OF APPEAL

Plaintiff R. Scotlund Vaile hereby appeals to the Supreme Court of Nevada from the final judgments certified for appeal:

1. *Order Amending the Order of January 15, 2008,* filed on March 20, 2008, and (following Plaintiff's timely *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* filed March 31, 2008)
2. *Order for Hearing Held June 11, 2008* filed August 15, 2008 and noticed as to entry of order on September 11, 2008

Dated this 9th day of October, 2008.



R. Scotlund Vaile
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Plaintiff in Proper Person

Appendix D

R. Scotlund Vaile
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Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT 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 *Motion for Rehearing and Reconsideration* was served by depositing the same in the U.S. Mail at Sacramento, 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 26th day of January, 2009.

R. Scotlund Vaile
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Appellant in Proper Person