

FILED

JUN 05 2009

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Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

7 R. SCOTLUND VAILE,

8 *Appellant,*

10 vs.

11 CISILIE A. PORSBOLL fka, CISILIE
12 A. VAILE,

14 *Respondent.*

Supreme Court Case Nos: 52593,
53687, ✓
53798

District Court Case No: 98 D230385

**MOTION TO CONSOLIDATE APPEALS
AND
MOTION TO ALLOW FULL BRIEFING**

I. INTRODUCTION

20 Three notices of appeal are currently pending with this Court addressing
21 various orders issued by the same family court in the same case arising out of a
22 common nucleus of operative facts. In the spirit of efficiency, and to minimize
23 the legal filings and time required to both prosecute and defend these appeals,
24 Appellant Vaile¹ respectfully requests that the Court consolidate the appeals into
25 one, and allow both parties full briefing on issues before the Court.

27 ¹ Mr. Vaile is technically the respondent of appeal number 53798, since Ms. Porsboll filed
28 the notice of appeal on that particular order. As such, Mr. Vaile adds the surname to the
typical party title herein

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1 **III. ARGUMENT**

2 **A. CONSOLIDATING THE CASES ADDS EFFICIENCY FOR BOTH THE PARTIES AND**
3 **THE COURT**

4 NRAP 3(b) allows for the consolidation of appeals upon motion of a party.
5 The equivalent lower court rule in NRCP 42 indicates that consolidation is
6 justified when it avoids unnecessary costs or delay. Respondent Porsboll recently
7 filed a motion with this Court requesting attorneys fees and costs pending appeal
8 based on the false allegation that Mr. Vaile had an intent to maximize legal filings
9 and to draw out these proceedings. This motion should put that falsity to rest.
10 Consolidating these three cases that address the same case and controversy will
11 simplify the issues in this case for the Court and its staff, and allow the parties the
12 opportunity to efficiently brief all issues together. As this accomplishes the
13 efficiency and reduction in incurred fees that Respondent also appears to request,
14 it is anticipated that there will be no objection on her part.

15
16 Mr. Vaile has pointed out in previous filings to this Court that his primary
17 issue on appeal is that the lower court is openly defying this Court's
18 pronouncement that that court did not have jurisdiction of the parties or the
19 subject matter. Of course, subject-matter jurisdiction is not waivable, and a
20 court's lack of such jurisdiction can be raised for the first time on appeal. *Colwell*
21 *v. State*, 118 Nev. 807, 812 (2002). Since the issue of subject matter jurisdiction
22 will be argued and briefed on appeal by Mr. Vaile, regardless of which appeals
23 are actually heard, it appears that efficiency would dictate that this, and the other
24 arguments, be presented together at one time for this Court.

25 Additionally, it would appear that entertaining objections to Mr. Vaile's en
26 banc request to reinstate case number 52593 is unnecessary at this juncture. Mr.
27 Vaile's issues will necessarily be addressed in either the second or third appeals,
28 even if 52593 is not reinstated. As such, the exercise in opposing the

1 **II. RELEVANT HISTORY ON APPEAL**

2 Because of Mr. Vaile's relative unfamiliarity with Nevada procedure, and in
3 an abundance of caution in preserving his challenges to the jurisdiction of the
4 lower court, Mr. Vaile filed a notice of appeal for each of three orders entered by
5 the lower court since Respondent Porsboll requested the lower family court to
6 reopen this case in contravention of this Court's previous mandate that the lower
7 court lacked jurisdiction in this case. These notices of appeal were amended each
8 time and are the subject of appeal number 52593. Currently, this Court is
9 contemplating Mr. Vaile's *Petition for En Banc Reconsideration* of the dismissal
10 of this appeal based on what appears to be a mistake made in the lower court's
11 clerk's office in forwarding the last of these notices to this Court.

12 Respondent Porsboll's attorneys failed to notice an additional order entered
13 by the lower court, that of the July 24, 2008 hearing, until almost eight months²
14 after entry, on March 2, 2009. Mr. Vaile again filed an amended notice of appeal
15 addressing this order. However, this time, the clerk of this Court issued a new
16 case number, 53687. This is the second case pending with this Court.

17
18 In response to the lower court's order entered on April 17, 2009, which
19 found against the commercial software marketed by Respondent's counsel,³ and
20 used to calculate child support arrearages in this case, Respondent filed a notice
21 of appeal. This appeal is docketed with case number 53798 and is the third of the
22 appeals pending with this Court.

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26 ² NRS 58(e) requires notice of entry of an order to be served within 10 days of entry of the
27 order.

28 ³ Respondent's counsel's apparent conflict in representing his client in light of his interest in
defending his software package was the subject of a Petition for Writ of Mandamus in this
Court, case number 52244.

1 reinstatement of appeal 52593 would only cause Respondent's counsel, and the
2 Court, unnecessary efforts. Although Appellant Vaile still requests that appeal
3 52593 be reinstated in order to eliminate any question as to the scope of the facts
4 and record which are relevant to the appeals. At the same time, Appellant Vaile
5 requests that the appeals be consolidated, effecting the efficiency that both parties
6 and the Court desire.

7 **B. FULL BRIEFING IS NECESSARY TO ADDRESS ALL ISSUES ON APPEAL**

8 In addition to misinterpreting what appears to have been clear mandate and
9 the law of the case previously pronounced by this Court on jurisdiction, the lower
10 court has appeared to stray significantly from Nevada law on several fundamental
11 points. Additionally, issues raised in these appeals call into question important
12 public policy issues such as whether it is the vendor of commercial software, who
13 claims his software is being used by many attorneys throughout the state, or the
14 Attorney General's office, and in turn the District Attorneys offices throughout
15 the state, is calculating child support arrearages for thousands of Nevada citizens
16 in accordance with Nevada law. Given the number, importance and complexity
17 of these issues, Appellant Vaile respectfully requests that he be allowed to
18 provide a full briefing in accordance with NRAP 28, as opposed to briefing on the
19 forms provided by the Pilot Program in Civil Appeals.
20

21 Although Mr. Vaile professes no expertise in appellate litigation, he has, due
22 to his recent formal legal education, demonstrated capability to conduct relevant
23 legal research and to formulate intelligent arguments, both in the lower court and
24 before this Court. As such, Appellant Vaile request to fully brief this
25 consolidated appeal.⁴
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28 ⁴ In the event the Court decides against consolidation, Mr. Vaile requests full briefing on the individual appeals.

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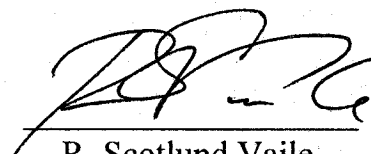
C. ALTERNATIVE REQUEST

There is currently no dispute as to the words and holdings that were issued in the decision of this Court in April 2002 on jurisdiction. The relief was largely that sought by Respondent Porsboll before this Court. The parties only differ on whether the lower court is authorized to ignore or reinterpret this Court's previous mandate, or to find jurisdiction where none exists under the law. If this Court meant what it said when it held that the lower court had neither personal jurisdiction of the parties based on no contacts with Nevada, nor subject matter jurisdiction of this case since the parties could not confer it on the court, then dismissal would appear to be appropriate rather than consolidation. If this Court has determined, based on the filings before this Court, that the lower court is disobeying this Court's mandate, then Appellant Vaile requests reiteration of its previous holding to the lower court, directing dismissal of the case, rather than consolidation.

IV. CONCLUSION

Appellant respectfully requests that this Court consolidate the appeals currently pending before this Court and to allow Appellant Vaile to brief fully. In the alternative, Appellant Vaile requests an order directing the lower court to dismiss the case.

Respectfully submitted this 4th day of June, 2009.



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