



1 As was pointed out in the recent *Answering Brief* for case No. 52593, the cost of litigating  
2 this case has risen to over \$600,000 in time incurred and costs. Attorney's fee awards already made  
3 against Scott, plus interest, exceed \$220,000. Scott has not paid a dime toward these awards, despite  
4 his six-figure income.<sup>2</sup> We ask the Court to look to the *Answering Brief* for a complete recitation  
5 of the tortuous history of filings of Appeals and Writs by Scott. They can be deemed nothing short  
6 of frivolous, vexatious, and without procedural, precedential, or moral value.

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8 **III. ARGUMENT**

9 **A. Appeals Should Not Be Consolidated**

10 The *Answering Brief* as to whether this Court should allow *En Banc Reconsideration*,  
11 explains that this Court has been correct in dismissing every *Writ* and *Appeal* filed by Scott. The two  
12 Appeals filed by him – Case No. 52593 and Case No. 53687 – are both for orders that were  
13 substantively unappealable at the time they were filed.

14 In Case No. 52593, Scott has appealed from Orders that were not final and/or were out of the  
15 jurisdictional time limit established for appeals.<sup>3</sup>

16 In Case No. 53687, Scott filed his appeal seven days before the final order was even issued  
17 by the lower court.<sup>4</sup>

18 We are confident that this Court will find – as it has in every other instance where he has  
19 filed an Appeal or Writ – that the remaining Appeals are untimely and substantively unappealable.

20 Allowing a consolidation of a valid appeal with two “even arguably” questionable appeals  
21 would only serve to create confusion and aid in frustrating justice.<sup>5</sup>

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24 <sup>2</sup> Scott has submitted a Financial Disclosure Form where he admits making over \$120,000 a year.

25 <sup>3</sup> See *Answering Brief* for Case No. 52593, for a detailed explanation of why these *Orders* were unappealable.

26 <sup>4</sup> *Id.* Also see NRAP 4(a)(6) for timeliness of appeals.

27 <sup>5</sup> *Id.* at Exhibit QQ, demonstrates how Scott has attempted to confuse matters with his multiple filings.

1           **B.     NRAP 3(b) and NRCP 42 Are Inapplicable To This Case**

2                   1.     NRAP 3(b)

3           NRAP 3(b) states:

4           If two or more persons are entitled to appeal from a judgment or order of a district court and  
5           *their interests are such as to make joinder practicable*, they may file a joint notice of  
6           appeal, or may join in appeal after *filing separate timely notices of appeal*, and they may  
7           thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order  
8           of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of  
9           the parties to the several appeals.

10           (Emphasis Added.) Here, joinder is not possible as Scott's interests are not "such as to make joinder  
11           practicable" and he has not filed a "separate timely notice of appeal."

12           As to consolidation, Scott's appeals are to orders that have already been ruled as  
13           substantively unappealable and raise *no* identical issues. Lacking some linkage, the appeals can't  
14           be consolidated.<sup>6</sup>

15           A cross-appeal *would* have been proper – had Scott timely filed such a pleading with the  
16           Court.<sup>7</sup> Of course, he did not.

17           In short, NRAP 3(b) is inapplicable to this case and does not support a consolidation of  
18           Scott's frivolous, untimely, and unserved appeals with Case No. 53798 – the only timely appeal  
19           before the Court.

20                   2.     NRCP 42

21           NRCP 42 states:

22           When actions involving a common question of law or fact are pending before the court, it  
23           may order a joint hearing or trial of any or all the matters in issue in the actions; it may order  
24           all the actions consolidated; and it may make such orders concerning proceedings therein  
25           as may tend to avoid unnecessary costs or delay.

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<sup>6</sup> See *Ewell v. State*, 105 Nev. 897, 785 P.2d 1028 (1989), where the Court found that "Since appellants were co-defendants in proceedings in district court, and since their appeals raised some identical issues on appeal, accordingly, their appeals were consolidated for purposes of disposition.

<sup>7</sup> See *Mahaffey v. Investor's Nat'l Sec. Co.*, 102 Nev. 462, 725 P.2d 1218 (1986), where the Court found timely notice of cross-appeal is jurisdictional with respect to the cross-appeal.

1 Here, there is no “common question of law or fact” pending before the Court. Scott wants  
2 to relitigate a matter having nothing to do with the pending appeal (which addresses the correct  
3 calculation methodology of penalties on long-outstanding child support awards). Scott wants to find  
4 some way to cause this Court to revisit its 2002 *Opinion* that ordered return of the kidnaped children.

5 Absent a finding of a common issue of law or fact, a case can’t be consolidated based upon  
6 NRCP 42.

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8 **C. No Full Briefing Is Required**

9 Based solely on the above, *no* briefing is required for appeals this Court will surely find to  
10 be untimely and lacking jurisdiction.

11 As to Scott’s argument that the lower Court misinterprets the *Opinion* from this Court in  
12 *Vaile v. Eighth Judicial District Court*,<sup>8</sup> as he has done *every time* he has referred to this case, he  
13 mis-reads or mis-quotes the Court’s opinion. What this Court actually said was:

14 Because the voidable decree has not been set aside, the court had colorable personal  
15 jurisdiction over the parties and the subject matter of their marital status. Simply because  
16 a court might order one party to pay child support to another in the exercise of its personal  
jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject  
matters of child custody and visitation.

17 We hope that the Court finally puts this “issue” to rest. The Court had personal jurisdiction  
18 over Scott because he submitted himself to the jurisdiction of the Court by way of his multiple  
19 fraudulent filings; as such, the court below had the jurisdiction under UIFSA<sup>9</sup> to order support for  
20 the minor children. However, the Court lacked jurisdiction over *custody and visitation*, because the  
21 children never lived in Nevada.

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26 <sup>8</sup> 118 Nev. 262, 275, 44 P.3d 506 (2002).

27 <sup>9</sup> Codified in NRS 130.

1 Scott fails to understand – or pretends to fail to understand – that under the principle of  
2 “divisible divorce,” jurisdiction over a marriage does not necessarily carry with it jurisdiction to alter  
3 every legal incident of marriage.<sup>10</sup>

4 In *Estin*, the wife had obtained a New York separate maintenance award. The husband  
5 subsequently sought to terminate that order in a Nevada divorce. Entry of a divorce decree was  
6 affirmed, but the Court added that if the divorce proceeded *ex parte*, the Nevada court could only  
7 terminate the marriage. The resulting decree would not prevent a court of another state with  
8 jurisdiction over the parties from adjudicating the remaining *incidents* of the marriage.

9 The Uniform Interstate Family Support Act (“UIFSA”) governs child support and has been  
10 adopted in every State. Nevada adopted it in 1997 as NRS Chapter 130. The Uniform Child  
11 Custody Jurisdiction and Enforcement Act, or UCCJEA, replaced the older UCCJA, and was  
12 intended to provide clearer standards for which States can exercise original jurisdiction over a child  
13 custody determination, and clarify continuing and modification jurisdiction in custody cases.

14 The rules governing support and custody operate independently of one another. The courts  
15 of this State might be called upon to enforce a child support obligation against someone found here,  
16 or filing here, while having no jurisdiction over custody matters.<sup>11</sup> The obligor parent can *always*  
17 be sued for child support where that parent lives or has submitted to the jurisdiction of the court,<sup>12</sup>  
18 because child support is set by the court with personal jurisdiction over the paying parent.

19 In other words, every incident of a divorce action has its own jurisdictional test for when a  
20 court may, or may not, act. Each must be answered separately by the court hearing the matter, when  
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23 <sup>10</sup> *Estin v. Estin*, 334 U.S. 541 (1948).

24 <sup>11</sup> See *Vaile v. District Court*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002), *supra*; *Kulko v. California*, 436 U.S. 84,  
25 91-92, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978) (where a defendant is subject to a State’s jurisdiction, his rights in the  
26 matters ancillary to divorce may be determined by its courts).

27 <sup>12</sup> See NRS 130.201(1)-(2); see also, e.g., Prof. John J. Sampson, “UIFSA: Ten Years of Progress in Interstate Child  
28 Support Enforcement” (Legal Education Institute National CLE Conference on Family Law, Aspen, Colorado, 2003)  
at 184 (Prof. Sampson was the official Reporter for the UIFSA legislation for NCCUSL, which created it).

1 jurisdiction is in question.<sup>13</sup> As explained by the United States Supreme Court over 60 years ago in  
2 *Estin*, a court might have jurisdiction over some, but not all, of these incidents.

3 There is no question that the court below had jurisdiction over the parties and to issue a child  
4 support order. Since this is true, there are no complex, or important, or even arguable issues in any  
5 of Scott's appeals that require briefing. His request should be denied.  
6

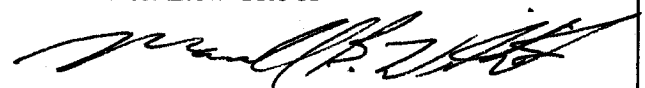
#### 7 IV. CONCLUSION

8 Scott wants to consolidate the valid pending appeal with two others, both of which should  
9 be promptly dismissed. His motion should be denied with prejudice. Scott's current motion, like  
10 every other appeal and/or writ he has filed, has only served to raise litigation costs and divert scarce  
11 judicial resources for attempted re-argument of a matter decided nearly a decade ago. There is no  
12 basis to brief or consolidate appeals that are not jurisdictionally before the Court and that seek to  
13 address issues long since decided in published opinions.

14 In addition to an order denying consolidation and full briefing, Scott should be ordered to pay  
15 all costs and fees for having to respond to yet another frivolous filing. Proof of actual payment of  
16 those fees should be a precondition to this Court's allowance of any further filings by Scott.

17 DATED this 15<sup>th</sup> day of June, 2009.

18 WILLICK LAW GROUP

19 

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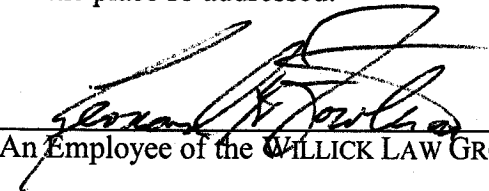
27 <sup>13</sup> Jurisdiction must be established in order to enter lawful orders over several subjects, including the parties, the  
28 marriage, property, to order support – both child and alimony – and over custody and visitation.

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the WILLICK LAW GROUP and on the 15<sup>th</sup> day  
3 of June, 2009, I deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, a true  
4 and correct copy of the foregoing Opposition and Countermotion, addressed to:

5  
6 Robert Scotlund Vaile  
7 P.O. Box 727  
8 Kenwood, California 95452  
9 *Petitioner In Proper Person*

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

12   
13 An Employee of the WILLICK LAW GROUP

14 P:\wp13\VAILE\RLC1484.WPD