● ORIGINAL ●

In the Supreme Court of the State of Nevada

INDICATE FULL CAPTION:

CISILIE A. PORSBØL F/K/A CISILIE ANNE VAILE.....
.....
.....
Appellant(s),

vs.

ROBERT SCOTLUND VAILE.....
.....
.....
Respondent(s).

No.....53798.....

FILED
JUN 0 3 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY... DEPUTY CLERK

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

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JUN 03 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

09-13866

1. Judicial District...**EIGHTH**.....Department.....**I**.....County.....**CLARK**.....
Judge.....**Cheryl B. Moss**.....District Ct. Docket No.....**D230385** .....

2. **Attorney filing this docket statement:**

Attorney.....**MARSHAL S. WILLICK, ESQ.**, Nevada Bar No. **002515**...Telephone.....**(702).438-4100**.....
Firm.....**WILLICK LAW GROUP**.....
Address.....**3591 East Bonanza Road, Suite 200**.....
.....**Las Vegas, Nevada 89110-2101**.....
Client(s).....**Cisilie A. Porsboll f/k/a Cisilie A. Vaile**.....

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing respondent(s):**

Attorney.....Telephone.....
Firm.....
Address.....
Client(s).....
Attorney.....Telephone.....
Firm.....
Address.....

Client(s).....
(List additional counsel on separate sheet if necessary)

4. **Nature of disposition below (check all that apply):**

☐ Judgment after bench trial
☐ Judgment after jury verdict
☐ Summary judgment
☐ Default judgment
☐ Dismissal
  ☐ Lack of jurisdiction
  ☐ Failure to state a claim
  ☐ Failure to prosecute
  ☐ Other (specify) .....
☐ Grant/Denial of NRCP 60(b) relief
☐ Grant/Denial of injunction
☐ Grant/Denial of declaratory relief
☐ Review of agency determination
☐ Divorce decree:
  ☐ Original ☐ Modification
■ Other disposition (specify) Special Order After Final Judgment
.....
.....

5. **Does this appeal raise issues concerning any of the following:** **No.**

☐ Child custody
☐ Venue
☐ Adoption
☐ Termination of parental rights
☐ Grant/denial of injunction or TRO
☐ Juvenile matters

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

See Attachment 1.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

See Attachment 2.

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Whether the District Court erred when it issued the *Findings of Fact, Conclusions of Law, and Order*, determining that NRS 125B.095 was ambiguous, and resolving he perceived ambiguity in favor of the calculation methodology used by the State Welfare Department legacy computer NOMADS. Whether the Marshal Law Program used by the private Bar for the past two decades correctly interprets and applies the interest and penalty statutes, specifically including NRS 125B.095, and comports with the legislative intent of the statute.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

Whether or not NRS 125B.095 is ambiguous. If not, which of two competing interpretations is correct. If so, what is the proper interpretation: (1) Applying the 10% per annum penalty in accordance with the amount of time a child support installment actually remains outstanding; or (2) immediately imposing a full year's penalty the moment an installment goes unpaid, and then disregarding the penalty in all subsequent years the installment remains outstanding.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

.....**None**.....

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A.....**X**.....Yes.....No.....

If not, explain.....

12. **Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

☐ An issue arising under the United States and /or Nevada Constitutions

■ A substantial issue of first-impression

☐ An issue of public policy (as to attorneys, marriage, neccesaries, annulments, and death)

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain. **This Court has not been required to address the issue of how or the outcome of applying penalties to arrears of child support.**

13. **Trial.** If this action proceeded to trial, how many days did the trial last? **2 days**.....

Was it a bench or jury trial? .....**Bench**.....

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

....**No**.....

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from**.....April 17, 2009..... **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

.....

.....

16. **Date written notice of entry of judgment or order served**.....April 17, 2009..... **Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery.....**X**.....or by mail.....**X**.....(specify): copies delivered directly by the court to Greta G. Muirhead, Esq. (Unbundled), attorney for Robert Scotlund Vaile, Donald W. Winne, Jr., Esq., Senior Deputy attorney General, and Teresa Lowry, Esq., Clark County district Attorney, Child Support Division. Copy was mailed to Robert Scotlund Vaile, In Proper Person.

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filling.

NRCP 50(b) .....Date served ..... By delivery .....or by mail ..... Date of filing .....
NRCP 52(b) .....Date served ..... By delivery .....or by mail..... Date of filing .....
NRCP59(e).....Date served .....By delivery .....or by mail .....Date of filing .....

Attach copies of all post-trial tolling motions.—N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion..... **Attach a copy.**

(c) Date written notice of entry of order resolving motion served..... **Attach a copy, including proof of service.**

(i) Was service by delivery.....or by mail.....(specify).

18. **Date notice of appeal was filed**.....May 6, 2009.....

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other**.....NRAP 4(a).....

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1).....NRS 155.190 .....(specify subsection) .....
NRAP 3A(b)(2).....**X**..... NRS 38.205 .....(specify subsection) .....
NRAP 3A(b)(3)..... NRS 703.376.....
Other(specify).....

Explain how each authority provides a basis for appeal from the judgment or order:

The final order in this case was entered on April 17, 2009, disposing of all remaining issues before the court specifically, the calculation of the 10% penalty on any amounts that remain unpaid.

Argument on the issue of interest and penalties were set for July 11, 2008, each side was permitted to file supplemental points and authorities on the issue of child support penalties. At the hearing held June 11, 2008, it was agreed that neither the principal amount of the arrears, and interest on those arrears, was not in dispute. The only remaining issue was calculation of the 10% penalty. Robert Scotlund Vaile's claim is that there was more than one legitimate interpretation of NRS 125B.095, with which the State of Nevada, represented by the Attorney General's Office, agreed, further stating their preferred interpretation was the inaccurate methodology that ignores actual dates of payment (only figuring which month a payment is made) and imposes 100% of the annual penalty immediately, and never again thereafter.

21. List all parties involved in the action in the district court:

Robert Scotlund Vaile - Plaintiff,

Cisilie A. Porsboll f/k/a Cisilie A. Vaile - Defendant.

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

n/a

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (i.e., order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.

Plaintiff's claim is that penalties are not calculated correctly, and that the Marshal Law Program is flawed, while the trial court states that while the Marshal Law Program is not flawed it finds that the statute is ambiguous, and actually imposing the per annum penalty each year support remains unpaid would impose an unreasonable financial impact on the obligor, and thus the Welfare/NOMADS approach is preferable.

Defendant's position is that the Marshal Law Program correctly determine's the penalty for child support arrears in accordance with NRS 125B.095, and that it is not unreasonable for a non-custodial parent who has defied for years an obligation to support a child to be subject to financial consequences for failure to pay, since the penalty statute only provides a continuing incentive to actually pay child support if the amount of the penalty increases over time.

23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

Yes .....X..... No .....

25. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below**:**

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes .....No..... **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.**

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes ..... No.....

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

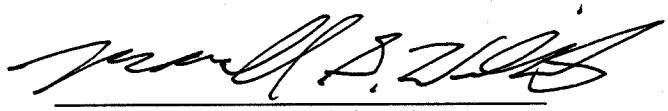
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

CISILIE A. PORSBOLL
Name of appellant

Marshal S. Willick, Esq.
Name of counsel of record

MAY 31, 2009
Date


Signature of counsel of record

State of Nevada, County of Clark
State and County where signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of June, 2006, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Mr. Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Plaintiff *In Proper Person*

An employee with the WILLICK LAW GROUP

P:\wp13\VAILE\LF0289.WPD

ATTACHMENT 1:

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1. Cisilie A. Vaile vs. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark, and The Honorable Cynthia Dianne Steel, District Court Judge, Family Court Division, Respondents, and Robert Scotlund Vaile, Real Party in Interest; Supreme Court Case No. 36969; 118 Nev. 262, 44 P.3d 506 (2002).

2. Cisilie A. Vaile vs. Robert Scotlund Vaile; Supreme Court Case No. 37082; Order Dismissing Appeal filed September 4, 2002.

3. Robert Scotlund Vaile vs. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark, and The Honorable Cheryl Moss, District Court Judge, Family Court Division and Cisilie A. Porsbøll f/k/a Cisilie A. Vaile; Supreme Court Case No. 51981; Order Denying Petition, dated October 13, 2008.

4. Robert Scotlund Vaile vs. The Eighth Judicial District Court of the State of Nevada, In and For the County of Clark, and The Honorable Cheryl Moss, District Court Judge, Family Court Division, Respondents, and Cisilie A. Porsbøll f/k/a Cisilie A. Vaile, Real Party in Interest; Supreme Court Case No. 52244; Order Denying Petition, dated March 5, 2009.

5. Robert Scotlund Vaile vs. Cisilie A. Porsbøll f/k/a Cisilie A. Vaile; Supreme Court Case No. 52457; Order Dismissing Appeal, dated October 13, 2008.

6. Robert Scotlund Vaile vs. Cisilie A. Porsbøll f/k/a Cisilie A. Vaile; Supreme Court Case No. 52593; Order Dismissing Appeal, date January 15, 2009; motion for rehearing filed January 28, 2009; Order Denying Rehearing, filed March 5, 2009; Petition for En Banc Reconsideration, filed March 18, 2009.

7. Robert Scotlund Vaile vs. Cisilie A. Porsbøll f/k/a Cisilie A. Vaile; Supreme Court Case No. 53687; Notice of appeal, filed April 10, 2009.

ATTACHMENT 2:

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

1. Cisilie A. Porsbøl (formerly Vaile) v. Robert Scotlund Vaile, Case No. 01-281 K/04; Borgarting's Court of Appeal, Oslo, Norway; upheld lower court's ruling, February 9, 2001.

2. Cisilie A. Porsbøl (formerly Vaile) v. Robert Scotlund Vaile, Appeal committee of the Supreme Court Oslo Norway; dismissed respondent's appeal, March 29, 2001.

3. In the Interest of Kaia Louise Vaile and Kamilla Jane Vaile, children; In The District Court of Denton County, Texas 393rd Judicial District Case No. 2000-61344-393; Judgment Ordered, April 17, 2002; Order Denying Motion for New Trial, June 18, 2002.

4. In re R. Scotlund Vaile, Court of Appeals Second district of Texas Fort Worth; Case No. 2-02-133-CV; Writ of Mandamus, Writ of Prohibition and Writ of Attachment for Children and Parties' Responses; Denied, May 9, 2002.

5. Cisilie A. Porsbøl (formerly Vaile) v. Robert Scotlund Vaile, Case No. 00-3031 A/64; Oslo District Court; Judgment and Ruling, February 6, 2003.

6. R. Scotlund Vaile v. Cisilie Anne Porsbøl, Case No. 0008744, Oslo, Norway, Child Support Order, dated March 17, 2003, application dated May 20, 2002. Request for Payment made September 9, 2003.

7. Cisilie Vaile Porsbøl, fna Cisilie A. Vaile, individually and as Guardian of Kaia Louise Vaile and Kamilla Jane Vaile, Minor children vs. Robert Scotlund Vaile, United States District Court Case No. 2:02-cv-00706-RLH-RJJ; Judgment filed March 13, 2006.

8. Cisilie Vaile Porsbøl, fna Cisilie A. Vaile, individually and as Guardian of Kaia Louise Vaile and Kamilla Jane Vaile, Minor children vs. Robert Scotlund Vaile, et al., United States court of Appeals for The Ninth Circuit Case No. 06-15731; Decision dated: March 26, 2008; Rehearing Denied May 28, 2008.

9. Robert Scotlund Vaile vs. Cisilie A. Porsbøl, Kaia L. Vail, Kamilla J. Vaile, Supreme Court of the United States Case No. 08-256; Petition For A Writ of Certiorari was Denied, November 3, 2008.

ORIGINAL

FILED

Aug 7 4 30 PM '98

Lacie Lindeman
CLERK

COMD
JAMES E. SMITH, ESQ.
Nevada Bar #000052
214 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 382-9181
Attorney for Plaintiff,
R. SCOTLUND VAILE

DISTRICT COURT

CLARK COUNTY, NEVADA

R. SCOTLUND VAILE,	)	
	)	
Plaintiff,	)	
	)	CASE NO. D 230385
vs.	)	DEPT. NO. G
	)	DOCKET:
CISILIE A. VAILE,	)	
	)	
Defendant.	)	

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JAMES E. SMITH
ATTORNEY AND COUNSELOR AT LAW
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http://www.james-smith.com

COMPLAINT FOR DIVORCE

COMES NOW Plaintiff R. SCOTLUND VAILE, by and through his attorney, JAMES E. SMITH, ESQUIRE, and for a Cause of Action against Defendant, CISILIE A. VAILE, complains and alleges as follows:

I.

That Plaintiff is a resident of the State of Nevada, and for a period of more than six weeks immediately preceding the commencement of this action, has resided and been physically present in the State of Nevada, and now resides and is domiciled therein, and during all of said period of time, Plaintiff has had, and still has the intent to make the State of Nevada his home, residence and domicile for an indefinite period of time.

JAMES E. SMITH
ATTORNEY AND COUNSELOR AT LAW
214 SOUTH MARYLAND PARKWAY
LAS VEGAS, NEVADA 89101
(702) 382-9181
E-MAIL: JAMESSMITH@AOL.COM
http://www.james-smith.com

II.

That Plaintiff and Defendant were intermarried in Salt Lake City, Utah on or about June 6, 1990, and ever since have been husband and wife. That there exists between the parties an Agreement, marked Exhibit 1, attached hereto and incorporated herein by reference, which addresses all issues concerning child custody and visitation, child maintenance and support, division of assets and debts and spousal support and maintenance.

III.

That there are two minor children born the issue of this marriage, to wit: KAIA LOUISE VAILE, born 05/30/91 and KAMILLA JANE VAILE, born 02/13/95. There are no minor adopted children, and Defendant is not now pregnant to the best of Plaintiff's knowledge. That all issues concerning the children are covered in the above-referenced Agreement.

IV.

That the community property of the parties be divided as set forth in the above-referenced Agreement.

V.

That the community debts of the parties be divided as set forth in the above-referenced Agreement.

VI.

That both parties waive any right each may have to spousal support.

. . . . .

. . . . .

VII.

That the parties hereto are incompatible and there is no possibility of reconciliation between them, as their tastes, mental dispositions, views and likes and dislikes have become so widely separate and divergent.

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved, set aside, and forever held for naught, and that the parties hereto, and each of them, be restored to a single, unmarried state;

2. That the child custody, visitation, support and maintenance be ordered as set forth in Paragraph III above;

3. That the community property be divided as set forth in Paragraph IV above;

4. That the community debts be divided as set forth in Paragraph V above;

5. For such other and further relief as this Court may deem just and proper in the premises.

DATED this 14 day of July, 1998.

JAMES E. SMITH, ESQUIRE
Nevada Bar #000052
214 South Maryland Parkway
Las Vegas, Nevada 89101
(702) 382-9181
Attorney for Plaintiff
R. SCOTLUND VAILE

JAMES E. SMITH
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http://www.james-smith.com

. . . . . .

VERIFICATION

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

R. SCOTLUND VAILE, being first duly sworn, deposes and says, that he is the Plaintiff in the above-entitled action, that he has read the foregoing **Complaint for Divorce** and knows the contents thereof, and that the same are true of his own knowledge, except for those matters therein stated on information and belief, and as to those matters he believes them to be true.

R. SCOTLUND VAILE

SUBSCRIBED and SWORN to before me 07/14/98.

NOTARY PUBLIC in and for said County and State

MELODI LEAVITT
Notary Public - Nevada
No. 94-3523-1
My appt. exp. Apr. 8, 2002

JAMES E. SMITH
ATTORNEY AND COUNSELOR AT LAW
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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

_____/

Case No. 98-D-230385

Dept. No. I

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

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

2. On November 14, 2007 Plaintiff, Cisilie Vaile n/k/a Porsboll, through counsel, filed a Motion to Reduce Arrears in Child Support to Judgment, to Establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs.

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

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

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

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

January 15, 2008 Hearing

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

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

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

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

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

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

March 3, 2008 Hearing

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

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

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

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

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

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

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

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

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

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

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

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

June 11, 2008 Hearing

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

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

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

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

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

23. This Final Decision and Order follows.

Findings of Fact, Conclusions of Law and Final Decision

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

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

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

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

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

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

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

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

2. The court may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Actual notice.

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

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

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

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

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

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

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

Contempt and the Order to Show Cause

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

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

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

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

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

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

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

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

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

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

Contempt

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

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

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

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

(c) Prescribes the punishment for the contempt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78. The procedural history in this case is tortuous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100. Mr. Vaile testified to his employment history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117. Mr. Vaile graduated in May 2007.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176. The combined total is $163,459.23.

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

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

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

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

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

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

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

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

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

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

PLAINTIFF'S RENEWED MOTION FOR SANCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

221. The Court reviewed the contents of both letters.

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

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

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

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

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

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

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

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

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

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

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

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

ATTORNEY'S FEES

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

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

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

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

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

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

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

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

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

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

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

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

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

246. The amount of work actually performed was astronomical.

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

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

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

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

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

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

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

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

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

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

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

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

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

259. SO ORDERED.

Dated this 9 day of October, 2008.

CHERYL B. MOSS
District Court Judge

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

ORIGINAL

ORDR
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for Defendant

FILED
FEB 27 11 42 AM '09
CLERK OF THE COURT

98D230385
33572

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant.

CASE NO: 98-D-230385-D
DEPT. NO: I

DATE OF HEARING: 07/24/2008
TIME OF HEARING: 1:45 P.M.

ORDER FOR HEARING HELD JULY ~~27~~ 24, 2008

This matter came before the Hon. Cheryl B. Moss, at the time and date above, on Plaintiff's *Motion to Disqualify Marshal Willick and the Willick Law Group as Attorney's of Record Pursuant to Rules of Professional Conduct 3.7*, and Defendant's *Countermotion for Disqualification of Greta Muirhead as Attorney of Record, For Fees, and For Sanctions Against Both Ms. Muirhead and Her Client*. Defendant, Cisilie A. Porsboll, f.k.a. Cisilie A. Vaile was not present, but was represented by her attorneys of the WILLICK LAW GROUP, and Plaintiff was not present, but was represented by Greta G. Muirhead, Esq., in an *unbundled capacity*. The Court having read the papers and pleadings on file herein by counsel and being fully advised, and for good cause shown:

*****

*****

*****

FINDS AND CONCLUDES:

1. Pertaining to documents presented as Exhibits to Plaintiff's *Motion*, that these documents are part of proceedings before the Bar and are completely confidential.

2. As to Ms. Muirhead appearing in an unbundled capacity before this court, there are no rules as to how many times an attorney may appear *unbundled*.

3. As to any litigation currently in progress in Virginia, the Court does not need to have information on the case to resolve issues in the Nevada case.

4. Attorney Willick's statements on the record as to the Marshal Law Program are not testimony, and had to do only with the design and function of the software, and are completely irrelevant to the Court's decision as to the interpretation of the Statute (NRS 125B.095) at issue.

5. The Willick Law Group and Mr. Willick have been counsel of record on this case for a substantial amount of time.

ORDERS AS FOLLOWS:

1. Exhibit 4 of Attorney Muirhead's original *Motion*, a letter dated June 16, 2008, to the State Bar of Nevada from the WILLICK LAW GROUP Re: Bar Complaint concerning Greta G. Muirhead, Bar No. 3957, shall be STRICKEN from the record. This document has not been read by the Court.

2. Exhibit 1 of Attorney Muirhead's *Reply to Defendant's Opposition*, a copy of a letter dated July 8, 2008, to Attorney Willick from the State Bar of Nevada referencing Grievance file No. 08-100-1012/Marshal Willick, shall be STRICKEN from record.

3. Exhibit 2 of Attorney Muirhead's *Reply to Defendant's Opposition*, a copy of a letter dated July 7, 2008 to Phillip J. Pattee, Assistant Bar Counsel, State Bar of Nevada, referencing Grievance File No. 08-100-1012/Marshal Willick, shall be STRICKEN from the record.

4. Plaintiff's *Motion to Disqualify Marshal Willick and the WILLICK LAW GROUP* is DENIED.

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

5. Defendant's *Countermotion for Disqualification of Greta Muirhead* is DENIED. This *Order* shall be CERTIFIED as the FINAL ORDER. Attorney Willick may choose to take the issue to disqualify Attorney Muirhead to the Supreme Court.

6. Under 18.010, the WILLICK LAW GROUP is entitled to fees as the prevailing party and is, therefore, awarded $2,000 in Attorneys Fees. Said amount is reduced to judgment and collectable by all legal means.

7. Defendant's oral request for a Bond is DENIED.

8. Plaintiff is to file the new *Financial Disclosure Form* forthwith.

9. The Defendant's request for Sanctions under NRCP 11 and EDCR 7.60 is DEFERRED.

10. Attorney Muirhead's oral request for fees is DEFERRED. She may submit a copy of her billing statement for time in Court at her stated rate of $300 per hour for consideration.

11. Evidentiary hearing is set for September 18, 2008, commencing at 1:30 p.m.

12. Hearings on all motions and orders to show cause are set for September 18, 2008, commencing at 8:30 a.m.

DATED this _____ day of FEB 26 2009, 2

DISTRICT COURT JUDGE

Respectfully Submitted by:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Attorneys for Defendant

Approved as to form and content by:

SIGNATURE REFUSED

GRETA MUIRHEAD, ESQ.
Nevada Bar No. 003957
9811 West Charleston Avenue
Las Vegas, Nevada 89117
(702) 434-6004
Attorney for Plaintiff (Unbundled)

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

FILED
2009 APR 17 P 4:14

R. S. VAILE,

Plaintiff,

vs.

Case No. 98-D-230385
Dept. No. "I"

CISILIE A. VAILE,

Defendant

_____/

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER RE: CHILD SUPPORT PENALTIES NRS. 125B.095

TO: **R. S. VAILE,** Plaintiff In Proper Person

TO: **GRETA MUIRHEAD, ESQ.,** Unbundled Attorney for Plaintiff

TO: **MARSHAL S. WILLICK, ESQ.,** Attorney for Defendant

TO: **DONALD W. WINNE, JR, ESQ.,** Attorney General's Office

TO: **TERESA LOWRY, ESQ.,** Clark County District Attorney, Child Support Division

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, Final Decision and Order was entered in the above-entitled matter on the 17th day of April, 2009, a true and correct copy of which is attached hereto.

Dated this 17 day of April, 2009.

By: _____
AZUCENA ZAVALA
Judicial Executive Assistant to the
Honorable Cheryl B. Moss

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

CERTIFICATE OF MAILING

I hereby further certify that on this 17 day of April, 2009, I caused to be mailed to Plaintiff/Defendant Pro Se a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** at the following address:

R. S. VAILE
P.O. Box 727
Kenwood, CA 95452
Plaintiff In Proper Person

I hereby certify that on this 17 day of April, 2009, I caused to be delivered to the Clerk's Office a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** which was placed in the folders to the following attorneys:

GRETA G. MUIRHEAD, ESQ.
9811 W. Charleston Blvd, Ste. 2-242
Las Vegas, Nevada 89117
Unbundled Attorney for Plaintiff

MARSHAL S. WILLICK, ESQ.
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89101
Attorney for Defendant

DONALD W. WINNE, JR, ESQ.
100 North Carson Street
Carson City, NV 89701
Senior Deputy Attorney General

TERESA LOWRY, ESQ.
Clark County District Attorney, Child Support Division
301 Clark Avenue, Suite 100
Las Vegas, Nevada 89101

By: Azucena Zavala
AZUCENA ZAVALA
Judicial Executive Assistant

DISTRICT COURT
CLARK COUNTY, NEVADA

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

_____/

Case No. 98-D-230385

Dept. No. I

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER RE: CHILD SUPPORT PENALTIES UNDER NRS 125B.095

PROCEDURAL HISTORY:

1. This matter was taken under advisement on the issue of calculation of the 10% penalty referenced in NRS 125B.095.

2. A pertinent procedural history in this case is summarized as follows:

3. On November 14, 2007, Defendant, Cisilie Vaile, through counsel, filed a Motion to Reduce Arrears in Child Support to Judgment, to establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs.

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

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DISTRICT JUDGE
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LAS VEGAS, NV 89101

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

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

7. On January 15, 2008, a hearing was held and Plaintiff failed to appear. As a result, Plaintiff was defaulted and Defendant was granted relief requested in their Motion. Child support was set at $1,300.00 per month, child support arrears in the amount of $226,569.23 were reduced to judgment, and Defendant was awarded $5,100.00 in attorney's fees.

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

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

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

11. On March 3, 2008, a hearing was held to address the above listed motions, oppositions, and countermotions. The Court ordered the following:

    A. Plaintiff's Motion to Dismiss was denied.
    B. Plaintiff's Motion to Set Aside was granted.
    C. Plaintiff's Motion to Reopen Discovery was denied.
    D. Defendant's Motion for a *Goad* Order was denied.
    E. The child support arrears amount was confirmed unless Norway modifies said amount.
    F. Defendant was awarded $10,000.00 attorney's fees, and the amount was reduced to judgment.

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

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

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LAS VEGAS, NV 89101

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

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

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

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

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

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

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

21. On June 11, 2008, the Court heard the matter on the various motions before it. The Court ordered the following:

    A. that it had personal jurisdiction over the parties to order child support;
    B. that based on part performance and for purposes of determining a sum certain for the District Attorney to enforce, the amount of $1,300.00 per month for child support was ordered;
    C. that the child support arrears judgment stands but is subject to modification pursuant to NRCP 60(a) and for any payments credited on Plaintiff's behalf;
    D. that the issues of interest and penalties were to be argued at a return hearing on July 11, 2008;
    E. that attorney's fees were deferred.

22. Each side was permitted to file supplemental points and authorities on the issue of child support penalties.

23. After the hearing was conducted on June 11, 2008, the principal amount was not in dispute based on the Court's Order for enforcing a sum certain of $1,300.00 per month less any credits for payments applied.

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24. Further, the method of calculating statutory interest on the child support arrears was not disputed by the parties as they agreed the difference in their respective calculations was minimal.

25. What was disputed was the calculation of the 10% penalty on any amounts that remain unpaid.

26. The District Attorney utilizes its NOMADS (Nevada Online Multi-Automated Data Systems) program.

27. The Marshal Law Program calculates penalties differently.

28. In other words, there is a conflict in the interpretation of NRS 125B.095(2) which states:

> **125B.095. Penalty for delinquent payment of installment of obligation of support.**
>
> **1.** Except as otherwise provided in this section and NRS 125B.012, *if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment.* This penalty must be included in a computation of arrearages by a court of this state and may be so included in a judicial or administrative proceeding of another state. A penalty must not be added to the amount of the installment pursuant to this subsection if the court finds that the employer of the responsible parent or the district attorney or other public agency in this State that enforces an obligation to pay support for a child caused the payment to be delinquent.
>
> (Emphasis added).
>
> ***2.*** *The amount of the penalty is 10 percent per annum, or portion thereof, that the installment remains unpaid. Each district attorney or other public agency in this state undertaking to enforce an obligation to pay support for a child shall enforce the provisions of this section.*
>
> (Emphasis added).

NOMADS vs. MARSHAL LAW PROGRAM (MLP):

29. On July 9, 2008, the State of Nevada, Division of Welfare and Supportive Services, Child Support Enforcement Program (CSEP) filed a Friend of the Court Brief in anticipation of the July 11, 2008, hearing.

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LAS VEGAS, NV 89101

30. The State of Nevada, represented by the Attorney General's Office, acknowledged that NRS 125B.095 is ambiguous and subject to more than one interpretation.

31. Reference was made to the legislative history of AB 604 (1993 Legislative Session) as well as the history of AB 473 (2005 Legislative Session).

32. The State of Nevada asserted that the legislative history indicates that a child support penalty was intended to be a "one time penalty" versus an "ongoing interest charge".

33. The Senior Deputy Attorney General, Donald W. Winne, Jr., wrote, "In fact, based on all the comments contained in the record, the intent of the legislation clearly supports CSEP's position that the NCP [noncustodial parent] is encouraged to pay current monthly payments within the month they are due or a one-time penalty will be charged for failure to pay the current child support obligation in full within one month it is due."

34. Further, "...just as a business charges fees for late payments, the late penalty on an overdue child support payment was never intended to be an ongoing interest calculation until the sum is paid."

35. The State of Nevada essentially argued that the MLP charges the 10% penalty every year, as if it were a continuous interest charge, rather than impose a one-time penalty within a particular month that the child support amount, or a portion thereof, remains unpaid.

36. The State of Nevada further argued that based on its interpretation of NRS 125B.095 and how penalties are calculated, child support obligors/payors are treated equally and not disproportionately.

37. Under the Marshal Law Program, the State of Nevada contends that obligors who are subject to Income Withholding (IW) by their employers incur penalties because they receive, for instance, biweekly paychecks.

38. If, for instance, child support payments are due on the 1st day of the month, the method of involuntary wage withholding would draw money only on the biweekly paydays, which is usually twice per month.

39. Consequently, the MLP would assign an automatic penalty because the entire child support was not paid on the 1st day of that particular month.

40. On the other hand, if the child support is due on the last day of the month, it is possible that the obligor will avoid a penalty if all paycheck

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withholdings received for that month satisfy the entire child support amount.

41. The NOMADS Program, on the other hand, simply imposes a penalty once at the end of the month.

42. Because the NOMADS Program looks only at what amount is left unpaid at the end of the month, it automatically assigns a penalty.

43. The MLP, on the other hand, assigns a penalty on the unpaid amount as soon as the "due date" is triggered without considering if the obligor pays the entire amount in full at the end of the month.

44. Attorney Muirhead demonstrated that when Plaintiff paid the entire $1300 obligation in the month of May 2008, he was still assessed a penalty of $976.11 by the MLP Program. She asserted that since the entire month was paid in full, the 10% penalty should not have been imposed at all.

45. Attorney Muirhead argued that the operative word in Section 1 of NRS 125B.095 was "installment". She believed that "installment" means that the Court should only look to that one particular month to see if all or any portion of the child support amount remains unpaid before assessing a penalty.

46. The State of Nevada has argued that it is the administrative agency that is responsible for developing and interpreting regulations to carry out its enforcement functions.

47. The regulation referred to is NRS 425.365. The State of Nevada asserts that deference must be given to it when the agency interprets the NRS statutes pertaining to its functions to enforce and regulate, unless the interpretation is found to be arbitrary or capricious.

48. On July 11, 2008, a return hearing was held on further proceedings on the penalties issue.

49. Also on July 11, 2008, Attorney Muirhead filed in open court Plaintiff's Supplemental Brief. The Brief was 176 pages long, and included the legislative histories of AB 604 and AB 473.

50. Extensive oral arguments were taken on the record. The hearing lasted several hours.

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51. On August 14, 2008, The Willick Law Group, on behalf of Defendant, filed a Supplemental Brief on Child Support Principal, Penalties, and for Attorney's Fees.

52. Essentially, Attorney Willick asserts that the MLP does not charge double interest.

53. Rather, based on their interpretation of NRS 125B.095, the MLP imposes a 10% penalty on any remaining unpaid amount within a given month. The amount of the penalty depends on the due date of the child support obligation, whether it is the 1st day of the month, the 15th day, or the last day of the month.

54. In their brief, Attorney Willick contended that when MLP is applied, the total amount of the penalty "at the end of the year" actually turns out to be LESS than what NOMADS calculates.

55. As an example, on page 11 of their August 14, 2008 Supplemental Brief, Attorney Willick explains the MLP calculates a year-end penalty of $89.50 while the State of Nevada CSEP Agency calculates $230.00 based on "hypothetical sums due and sums paid" as illustrated in the Welfare Division's Manual.

56. However, the amount of the penalties under the MLP calculations grows much larger than what NOMADS would charge after 23 months. In her Brief filed August 1, 2008, Attorney Muirhead compared the calculations after 24 months.

57. Under MLP, the penalties would be $3,244.75. Under NOMADS, the penalties total $3,120.00.

58. As more months pass after the 24th month, the MLP calculations of the penalties continue to grow even larger until it reached in excess of $52,000 by May 2008, while the NOMADS Program assessed penalties in excess of $12,000 through the same time frame.

59. Consequently, the different interpretations of the statute have resulted in grossly disparate calculations of the 10% penalty.

60. Attorney Willick seemed to suggest that NRS 125B.095 (2) should be interpreted to give full meaning to the words "per annum".

61. This means that any remaining child support sums that are unpaid each year (and every year thereafter) continue to accrue penalties, albeit at a

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lesser rate before 24 months elapse, as opposed to NOMADS assessing a one-time penalty at the end of the month and no further penalties accrue.

62. This is the main difference in the calculations between MLP and NOMADS.

63. Attorney Willick argued that the State of Nevada's interpretation ignores the "per annum" concept by leaving the penalty as a one-time fine at the end of each month.

64. Attorney Willick asserted that the penalty is meant to be applied "per annum" which should mean "every year".

65. Accordingly, the penalty is smaller at year's end, but it continues to accrue each year thereafter thus giving full consideration to the words "per annum".

66. The MLP also considers the words "or portion thereof" by assessing a penalty depending on the due date of the child support obligation.

67. Attorney Willick submitted that the MLP can automatically calculate the penalty in this fashion, and NOMADS allegedly cannot do such calculations.

68. Exhibit 1 to the State of Nevada's July 9, 2008 Friend of the Court Brief is an Attorney General Opinion Letter on NRS 125B.095.

69. The AG's Office submitted that the words "per annum" cannot render the phrase "or portion thereof" as mere surplusage.

70. Accordingly, the AG's Office takes the position that the statute, read as a whole, takes into consideration "per annum" by dividing 10% into 12 months or 8.33%, and takes into consideration "or portion thereof" by imposing the 8.33% penalty once at the end of each month on any unpaid sum.

71. In the case at bar, the two different interpretations of the statute result in a marked difference in calculations of the 10% penalty as between MLP and NOMADS.

72. NOMADS calculated a penalty of $12,148.29 through May 2008. MLP calculated a penalty of $52,333.55. There is a difference between the two programs of over $40,000.00.

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REVIEW OF AB 604 and AB 473 LEGISLATIVE HISTORY:

73. As to AB 604, during the June 23, 1993 session of the Senate Committee on Judiciary, page 17, Assemblyman Robert M. Sader said to the Committee, "You want to motivate somebody to pay on time and have an enforceable penalty ... that is what this is about."
74. The testimony of Attorney Frankie Sue Del Papa before the Committee states the 10% penalty "will serve as an incentive to parents to remain current on monthly support obligations."

75. As to AB 473, the Assembly Committee on Judiciary met on April 11, 2005. On page 19, Assemblyman Carpenter noted,

"I have a concern about the amount of interest that you are going to be charging. You are charging 10 percent every month so in a year that adds up to 120 percent. If they couldn't pay whatever was due at the end of that first month, they certainly are not going to be able to pay the amount at the end of the year. I didn't see anything wrong with the way it was written before when it was 10 percent a year. But at 10 percent a month, a lot of these people will never be able to pay that amount. I'm probably one of the biggest sticklers that people ought to pay their child support, but they can't pay something that is impossible to pay, and you keep adding penalty upon penalty or interest upon interest. It really defeats the whole situation."

76. Susan Hallahan, Chief Deputy District Attorney, Family Division, Washoe County, responded:

"This bill does not purport to change how penalties are calculated. The penalty statute as it states right now is 10 percent per annum or a portion thereof. It has to be added to the portion of the monthly payment that was not paid. If you were to, for example, charge the penalty at the end of the year, then there could be a noncustodial parent that doesn't pay anything from January through November and then in December pays $1200 to satisfy their annual child support obligation." Interest and penalties are separate. The purpose of interest is to make the custodial parent whole for the value of her money that she should have received or he should have received today but doesn't receive until 6 months from now. The purpose of the penalty is to encourage the obligor to pay each and every month as he is ordered to pay. This penalty is a one-time snapshot and is charged only during that calendar month for any delinquency you have. So if the obligor pays each month, he or she would not accrue an additional penalty."

77. Assemblyman Carpenter followed with:

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"It says a 10 percent penalty must be applied at the end of each calendar month against the amount of an installment or a portion of the installment that remains unpaid in the month in which it was due. So it seems to me if they owed $100 and there is a 10 percent penalty that month, it would make it $110. Then the next month it is going to be another 10 percent of $110 so that's $111. Simple interest would be 120 percent at the end of the year, so instead of owing $100, they would owe way over $200. It's contradictory in trying to get them to pay, because there is no way they can pay it."

78. Chief Deputy District Attorney Hallahan replied:

"Logically, you would think that would be the way it would work out. But if you owe $100 and I don't pay it this month, I am assessed $10 at the end of the month. If I don't pay $100, I have another $10 and now it's $20. If I don't pay anything for the whole year and I owe $1,200, I am assessed 10 percent penalty which is $120. Whether you calculate it at the end of the month or at the end of the year, it still is $120."

79. Louise Bush, Chief of Child Support Enforcement, Welfare Division, Nevada Department of Human Resources, commented:

"NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's Opinion, legislators intended the penalty to be a one-time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment. Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty. Mr. Sader said, 'It should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about.' Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing. This bill removes the ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee."

80. Donald W. Winne, Jr., Deputy Attorney General, Nevada Department of Human Resources, offered the following:

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"I, frankly, think it leaves some question as to whether or not this is a one-time late payment fee. I can tell you that when this bill was originally passed, it was clear they wanted us to be like a credit card. If you don't pay on time, this is your one-time late fee. I'm not personally comfortable with the current language as it exists. I don't represent the agency. You asked me here as a person who got involved in this because I drafted this opinion. I would agree with you, Mr. Conklin, the language as it appears still needs work in order for me to feel comfortable, after going through this exercise and making sure they get the intent correct, that this is just a one-time late fee and it won't be adding up like Mr. Carpenter was worried about."

81. Attorney Willick of the Willick Law Group commented:

"By way of background, everything is now clocked in accordance with how the court sets the child support obligation. Specifically, courts have a great deal of leeway and exercise a great deal of discretion as to how support should be paid. For example, all due on the first of the month, due on the 10th and 25th, or all due on the last day of the month, et cetera. There are all kinds of untold variations on that throughout the child support orders currently in effect. I will start with subsection 2 because it is the bigger problem. If subsection 2 is altered as stated, it would treat similarly situated people differently. For example if Person A had a child support order due on the 1st and Person B had a child support obligation due on the 25th, Person A would basically have 29 days within which to pay child support without incurring a penalty. Person B would only have 5 days. That difference, in my opinion, would rise to the level of a constitutional concern because it would treat similarly situated people differently. The problem is shifting the focus from a child support due date clock to a month-end due date clock. It leads to a great deal of problems. It would also cause a differential in the calculation date and the due date for how much should be paid between those 2 individuals causing a great deal of confusion, as a practical matter, in the family courts of this state. It would be very difficult to calculate in the real world, although I suppose it would be possible. It would lead to an appearance of greater unfairness to similarly situated people. .... Finally, the problem here with due respect to the district attorneys and the Attorney General's Office, is one of the tail wagging the dog. They are attempting to solve a calculation methodology problem left over from legacy hardware and software which is inadequate to any modern calculation task. It is a particularly difficult calculation problem. We have solved it with a microcomputer program for a couple thousand dollars years ago. I have given both the software and the source code to the state repeatedly. They have this legacy software, NOMADS, that they are trying to make do a job that it is not suited to do. They are attempting to conform the law to conform how their computer works. I would suggest that this is a bad basis for altering public

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policy and altering statutes. I suggest it may be time that they just face up to the fact that they have wasted a huge amount of money on trying to fix something which may or may not ever be fixable. But certainly they should not start amending the law to conform to the problems that we know are built into that hardware system."

LEGAL DISCUSSION

82. The Nevada Supreme Court in ***Irving v. Irving***, 134 P3d. 718, 720 (2006) stated,

> "Because the interpretation of a statute is a question of law, the proper standard of review is de novo. This court follows the plain meaning of a statute absent an ambiguity. Whether a statute is deemed ambiguous depends upon whether the statute's language is susceptible to two or more reasonable interpretations. When a statute is ambiguous, we look to the Legislature's intent in interpreting the statute. Legislative intent may be deduced by reason and public policy."

83. In the instant case, both Attorney Willick and the State of Nevada agree that NRS 125B.095(2) is ambiguous and open to different interpretations.

84. Consequently, the MLP and the NOMADS programs are at odds with each other in calculating the 10% penalty on Mr. Vaile's past unpaid child support amounts to the tune of a $40,000.00+ difference.

85. The Court believes the parties behind the MLP and the NOMADS program both agree that the legislative intent behind NRS 125B.095 is to "motivate" a child support obligor to pay each month in a timely manner.

86. The Court therefore FINDS there is no dispute that the legislative intent of AB 604 and AB 473 is "motivational".

87. The trial court in this case, notwithstanding, must also take a closer look at the legislative history on how to interpret the phrases "installment", "per annum", and "or a portion thereof".

88. As quoted in ***Irving***, *supra*, the court may deduce legislative intent "by reason and public policy".

89. Attorney Willick's MLP calculator appears to give more emphasis on the phrase "per annum" because the 10% penalty is ongoing year after year, but with a lesser resulting penalty in the first 24 months.

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90. This view heavily supports public policy of "motivating" the obligor parent to pay timely, but there is a greater financial consequence for the noncustodial obligor who waits many years beyond the first 24 months.

91. Attorney Willick argued that a one-time penalty will not necessarily motivate the obligor parent because that is just what it is, a one-time penalty that will sit and not grow on the books.

92. In his Brief filed on August 14, 2008, Attorney Willick writes,

"Welfare then ignores the penalty forever, failing to calculate ***any*** penalty for the second (or any later) year a sum remains outstanding. The private Bar, by contrast, calculates the penalty in accordance with how much of a year has passed, so that the penalty imposed on an obligation due in January, is less in February than it is in March, and continues to be assessed for however many years an installment remains outstanding, giving meaning to the statutory phrases 'per annum' and 'remains unpaid'."

93. Certainly, this is a compelling public policy reason, but the ***Irving*** case also directs the trial court to look to "reasoning" to deduce legislative intent.

94. Under the "reasoning" factor, apart from the public policy aspect, Assemblyman Carpenter reasoned that the obligor parent would never be able to pay an "impossible amount" that grows exponentially.

95. In addition, the State of Nevada argued that the MLP penalties amount grows larger and exceeds the NOMADS amount after 23 months.

96. However, as discussed in more detail below, the technical implementation of assessing the 10% penalty MUST comport with the Federal Child Support Enforcement Program.

97. The State of Nevada pointed out in their Supplemental Friend of the Court Brief filed September 5, 2008, that MLP starts exceeding the NOMADS penalty calculations after 23 months. Page 3, lines 3-4.

98. The State of Nevada appears to take a more balanced interpretation of the two phrases "per annum" and "portion thereof" by using a fractional percentage of 8.33% (10% divided by 12 months) and assessing it on any remaining unpaid portion of child support.

99. In other words, both phrases are given equal weight and consideration under the State of Nevada's interpretation. "Per annum" is complied with by dividing 10% into 12 months. "Portion thereof" is complied with by

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assessing the fractional 8.33% penalty to the unpaid portion of child support for a particular calendar month.

100. As discussed above, Attorney Muirhead also argued that the word "installment" in Section 1 of NRS 125B.095 should require the court to focus on a particular month and that month only.

101. She pointed out that even though Mr. Vaile paid $1300 for the entire month of May 2008, he was still penalized $976.11. Consequently, she believed that the word "installment" is rendered meaningless.

102. From a "reasoning" standpoint, the assessment of $976.11 (when an entire month of support was paid) appears less reasonable and less logical because the 10% penalty is only supposed to be imposed on any "remaining unpaid amount" ***for that month only*** according to the statute, thus giving meaning to the word "installment" as well.

103. The MLP, however, calculates differently by complying with "per annum" on an ongoing year after year basis.

104. Another illustration of "reasoning" is analyzed and deduced by the Court here.

105. As cited above, the legislative history comments from Louise Bush, Chief of Child Support Enforcement, Welfare Division, Nevada Department of Human Resources is worth mentioning again:

"NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's Opinion, legislators intended the penalty to be a one-time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment. Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty. Mr. Sader said, 'It should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about.' Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing. This bill removes the

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ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee."

106. Attorney Willick offered the following: "[I]f you owe money to Best Buy, and don't pay on time, they hit you up with a late payment fee. And if you don't pay the bill by the ***next*** month? They charge you again – every time a billing cycle passes without you making the payment you owed originally."

107. Attorney Muirhead, in her Brief filed August 1, 2008, offered this: "[C]ounsel for Plaintiff has attached a copy of her recent Embarq telephone bill. You will note that the due date is August 9, 2008 in the amount of $15.68. If the $15.68 is received after August 20, 2008, a penalty or late payment fee of $5.00 is imposed as it is now $20.68 that is due. (Exhibit 3) In the legislative history in support of AB 604 (NRS 125B.095), page 61, former Attorney General Frankie Sue Del Papa commented that '...delinquent power bills to late credit card payments are assessed late fees and penalties, yet missed child support payments are not...' (Exhibit 4)".

108. Louise Bush's comments and Attorney Muirhead's comments appear more logically congruous.

109. Attorney Willick's Best Buy example above is correct to a degree. However, logically extending the example, if the debtor actually does pay all or part of the bill, or even at least the minimum monthly amount due that Best Buy is demanding the following month, ***no late fee (penalty) will be charged*** for that month.

110. What happens, however, is that the amount for the late penalty/fee for the previous month is added to the total bill and the debtor is charged interest on the amount with the added penalty/late fee included. The debtor can never go back and have the late fee eliminated or reversed. This would "motivate" the debtor to pay on time the next month or the same penalty would apply.

111. On a more technical note, the MLP Program clearly has the capabilities of assessing the 10% penalty depending on the due date of the child support obligation.

112. From a public policy standpoint, Attorney Willick argued that obligor parents who have different due dates, whether early in the month, the middle of the month, or the end of the month, will be treated equally via the MLP calculations.

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113. However, according to the State of Nevada, NOMADS is designed to comply with Federal CSEP requirements, not because it cannot calculate what the MLP Program can do. The NOMADS calculator has been doing this since 1995.

114. Moreover, the State of Nevada, in their briefing filed September 5, 2008, page 3 lines 14-23, expressly pointed out that the CSEP agency must follow federal law.

"CSEP looks at all the payments within the month 45 CFR 302.51(a)(1) requires distribution of child support payments within the month be credited to the child support amount due in the month. Therefore, the monthly payment emphasis rather than a date specific emphasis comes from the federal requirement, not a system requirement. This is even more imperative when more than 75% of all CSEP collections on the 98,853 enforcement cases come from income withholdings (IW) and a majority of those are on a biweekly pay period basis. If CSEP took the defendant's view of the world it would be penalizing all the obligors on IW who are paid on a biweekly pay period with their employers. CSEP must follow the requirements of the Federal Child Support Enforcement Program and provide collection of child support on a massive scale."

115. Under a "reasoning" viewpoint, federal preemption and deference must be followed by the state trial court.

116. This Court, however, concedes that that federal preemption issue was not raised during the legislative hearings of AB 604 and AB 473, but the instant proceedings in this case no doubt creates a dilemma for CSEP to enforce the issuance of penalties that might risk losing federal benefits across the board.

117. This Court, however, believes that while the legislative history is silent on this issue raised by Deputy Attorney General Winne in his Friend of the Court Brief, this is an important public policy concern the Court should not ignore.

118. While Attorney Willick suggested "the tail is wagging the dog", it does not appear that CSEP is refusing to implement a different method of calculating child support penalties for convenience of administration.

119. Rather, CSEP has rational reasons for complying with (CFR) federal regulations. Otherwise, huge amounts of federal funding would be lost. This Court is not aware of how the MLP Program avoids this dilemma.

120. Further, because more than a majority of the Nevada CSEP cases involve income withholding on a biweekly pay period basis, it appears that the

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MLP calculation methods could never be reconciled with the NOMADS method of calculation because NOMADS is subject to federal regulations.

121. The State of Nevada also argues that the 2005 Legislature did not take any action to change the status quo of how CSEP assesses the 10% penalty.

122. There was a two-year deferment of implementing the penalty from 1993 to October 15, 1995, in order for CSEP to implement the penalty calculation program.

123. Twelve years later, when AB 473 was submitted for consideration in 2005 requesting clarification of NRS 125B.095, the status quo was maintained and no changes were adopted by the Legislature.

124. In the Nevada Supreme Court case of ***Oliver v. Spitz***, 76 Nev. 5, 6, (1960), the Court wrote,

"* * * only in a clear case will the court interfere and say that * * * a rule or regulation is invalid because it is unreasonable or because it is in excess of the authority of the agency promulgating it. Moreover, an administrative rule or regulation must be clearly illegal, or plainly and palpably inconsistent with law, or clearly in conflict with a statute relative to the same subject matter, such as the statute it seeks to implement, in order for the court to declare it void on such ground.

"It is only where an administrative rule or regulation is completely without a rational basis, or where it is wholly, clearly, or palpably arbitrary, that the court will say that it is invalid for such reason." 73 C.J.S., sec. 104(a), p. 424.

Furthermore acquiescence by the legislature in promulgated administrative rules made pursuant to express authority may be inferred from its silence during a period of years. Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 313, 53 S.Ct. 350, 77 L.Ed. 796.

(Emphasis added).

125. As discussed above, the Court FINDS there is a rational basis for why NOMADS calculates penalty in a particular manner (i.e., complying with federal regulations or lose federal funding).

126. The Court further FINDS that CSEP's method of calculating penalties gives equal and balanced consideration to the phrases "installment", "per annum" and "portion thereof" contained in NRS 125B.095.

127. The manner in which the MLP Program does its calculations, on the other hand, puts more emphasis on "per annum" above all the other phrases, and appears to take away the meaning of "installment" (focusing on a

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particular month and that month only) by calculating penalties in months where the obligor has paid the full amount of child support.

128. But "public policy" is only half of the equation. The other half of the equation requires the Court to look at "reasoning". ***Irving, supra.***

129. This Court believes a more reasonable interpretation of NRS 125B.095 requires giving balanced and equal considerations to the meaning of "installment", "per annum", and "portion thereof".

130. The Court must also follow prior Nevada case law which states that when an administrative agency develops and implements certain regulations and practices, the regulations cannot be invalidated if there was a "rational basis" behind them.

131. Attorney Willick wrote in his Brief filed August 14, 2008, page 14: "Specifically, in 2005 Welfare cooked up AB 473, which would have altered the statutory penalty as follows:

[~~The amount of the penalty is~~] ***If imposed***, a 10 percent [per annum, or portion thereof, that the] ***penalty must be applied at the end of each calendar month against the amount of an*** installment ***or portion of an installment that*** remains unpaid[.] ***in the month in which it was due***.

All aspects of the calculation of interest and penalties were discussed at length in the resulting hearing held before the Assembly Judiciary Committee. After hearing and reading everything about why the law was the way it was, why the Welfare Division was trying to change the law to conform to their outdated computer capabilities, and why it would be a really terrible idea to do so, the Legislature left the "how-to-compute penalties" portion of the statute exactly as it was, knowing how the private Bar had been doing the calculations for 17 years (as to interest) and 10 years (as to penalties)."

132. However, Attorney Willick's argument is contrary to case law established by the Nevada Supreme Court in ***Oliver v. Spitz, supra***.

133. Rather, as dictated by ***Oliver***, because the Legislature did not enact the Welfare's proposal to revise NRS 125B.095 and essentially remained silent on the instant penalties issue since 1993, thus leaving the CSEP's method of calculating penalties status quo, this Court can infer that the Legislature has given "express authority" to CSEP. ***Oliver, supra.***

134. The Court also has viewed the instant case from another "reasoning" perspective. When one looks at the total end result of Mr. Vaile's final

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assessment of child support arrears consisting of principal in the amount of $114,469.96 and interest of $43,444.42 through May 31, 2008 according to the NOMADS calculations (which is minimally different from the MLP calculations), and looking at the marked differences in penalties $12,148.29 (NOMADS) versus $52,333.55 (MLP), the NOMADS calculated penalties are approximately 10% of the principal amount of $114,469.96 while the MLP calculated penalties are approximately 50% of the same amount. The "end result" is that the noncustodial obligor is really being charged 50% in penalties under the MLP Program.

135. Attorney Willick's view that "deadbeat" parents should be motivated to pay is not unreasonable public policy given the frustration of custodial parents waiting for child support money that is supposed to go to the children.

136. However, the Court believes that in reality, an end result of penalties amounting to 50% of the amount of the principal arrears (at least after the first 23 months of nonpayment), leads to an unreasonable financial impact on the noncustodial obligor.

137. The Court, however, does **not** in any way condone a course of conduct of nonpayment or late payments. There are additional remedies for the custodial obligee parent such as contempt, sanctions, attorney's fees and incarceration.

138. The Court FINDS that the MLP Program is **not** flawed. The MLP Program merely uses a different interpretation of NRS 125B.095.

139. Accordingly, this Court believes that all prior calculations under the MLP in other cases in this department, and possibly other departments, should not be rendered void because this was an "issue of first impression" and both sides of the instant case agree the statute is clearly ambiguous.

140. The Court notes that Attorney Willick expressed that he would recalibrate his MLP Program if this Court found a different interpretation.

141. Finally, the Court is cognizant that the penalties issue is a very important issue to both Plaintiff and Defendant, as well as the Attorney General's Office and the District Attorney for the Child Support Division.

142. Therefore, IT IS HEREBY ORDERED that this Findings of Fact, Conclusions of Law, and Decision and Order Re: Child Support Penalties NRS 125B.095 shall be certified as a final order for purposes of any appeal to the Nevada Supreme Court.

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143. IT IS FURTHER ORDERED that Plaintiff's request for relief and request for reconsideration of the penalties amount is granted.

144. IT IS FURTHER ORDERED that through May 2008, the child support penalties amount is $12,148.29.

145. IT IS FURTHER ORDERED that because NRS 125B.095 is ambiguous and subject to different interpretations, and because this Court required extensive legal briefing and oral argument on the issue of calculating child support penalties, each party shall bear their own attorney's fees and costs.

146. IT IS FURTHER ORDERED that there is a separate issue of attorney's fees requested by Attorney Willick pursuant to NRS 125B.140 which states:

Enforcement of order for support.

1. Except as otherwise provided in chapter 130 of NRS and NRS 125B.012:

(a) If an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this state.

(b) Payments for the support of a child pursuant to an order of a court which have not accrued at the time either party gives notice that he has filed a motion for modification or adjustment may be modified or adjusted by the court upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction of the modification or adjustment.

2. Except as otherwise provided in subsection 3 and NRS 125B.012; , 125B.142; and 125B.144:

(a) Before execution for the enforcement of a judgment for the support of a child, the person seeking to enforce the judgment must send a notice by certified mail, restricted delivery, with return receipt requested, to the responsible parent:

(1) Specifying the name of the court that issued the order for support and the date of its issuance;

(2) Specifying the amount of arrearages accrued under the order;

(3) Stating that the arrearages will be enforced as a judgment; and

(4) Explaining that the responsible parent may, within 20 days after the notice is sent, ask for a hearing before a court of this state concerning the amount of the arrearages.

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(b) The matters to be adjudicated at such a hearing are limited to a determination of the amount of the arrearages and the jurisdiction of the court issuing the order. At the hearing, the court shall take evidence and determine the amount of the judgment and issue its order for that amount.

(c) The court shall determine and include in its order:

(1) Interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due; and

(2) A reasonable attorney's fee for the proceeding,

unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts. Interest continues to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

(d) The court shall ensure that the social security number of the responsible parent is:

(1) Provided to the Division of Welfare and Supportive Services of the Department of Health and Human Services.

(2) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

3. Subsection 2 does not apply to the enforcement of a judgment for arrearages if the amount of the judgment has been determined by any court.

(Emphasis added).

147. The Court reviewed the Willick Law Group billing statements for the time period June 10, 2008 through July 6, 2008. This was attached to their Motion to Strike filed on July 8, 2008 as Exhibit A.

148. The Willick Law Group charged a total of $20,443.11 for the above billing. However, some of the charges did not pertain to the issues of child support arrears and interest.

149. Therefore, the Court only looked at billing charges relevant to the issues on this Decision and Order. As noted above, under NRS 125B.140(2)(c)(2), the Court shall determine and include a "reasonable attorney's fee".

150. Here, the Court FINDS the Plaintiff, Mr. Vaile, is in arrears in the amount of $114,469.96 through the end of May 2008. Under the statute, the Defendant is entitled to a reasonable attorney's fee.

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151. IT IS FURTHER ORDERED that the Defendant, Cisilie A. Porsboll, f/k/a Cisilie A.Vaile, shall be awarded the sum of $12,000.00 as and for attorney's fees in accordance with NRS125B.140.

152. A copy of this Findings of Fact, Conclusions of Law and Final Decision and Order shall be provided to Greta Muirhead, Esq., Marshal Willick, Esq., Deputy Attorney General Donald W. Winne, Jr., and the Clark County District Attorney, Child Support Division.

153. SO ORDERED.

Dated this 17 day of April, 2009.

CHERYL B. MOSS
District Court Judge

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DISTRICT JUDGE
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