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5 Appellant in Proper Person

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

7 R. SCOTLUND VAILE,

8 *Appellant,*

9 vs.

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

12 *Respondent.*

Supreme Court Case Nos: 52593,
53687,
53798 ✓

District Court Case No: 98 D230385

FILED

NOV 12 2009

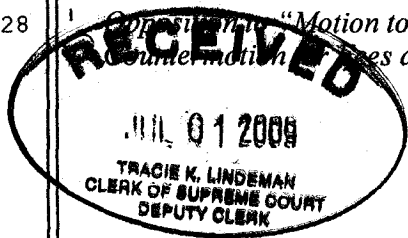
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Shoum*
DEPUTY CLERK

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16 **RESPONSE IN SUPPORT OF**
17 **MOTION TO CONSOLIDATE APPEALS**
18 **AND**
19 **MOTION TO ALLOW FULL BRIEFING**
20 **AND**
21 **OPPOSITION TO COUNTERMOTION FOR FEES AND COSTS**

22 **I. INTRODUCTION**

23 Ms. Porsboll's opposition to Mr. Vaile's motion to consolidate the appeals
24 pending before this Court argues that Mr. Vaile is "less deserving"¹ than other
25 litigants to have his request granted for the law to be applied in these cases. In
26 her previous filing, Ms. Porsboll's counsel complained of the volume of work
27 they were required to do in prosecuting their case against Mr. Vaile. In order to
28 demonstrate his good faith in pursuing his appeals of the matters below, Mr.

¹ *Opposition to "Motion to Consolidate Appeals and Motion to Allow Full Briefing" and
Counter Motion for Fees and Costs, hereinafter ("Opp"), 1.*



1 Vaile moved to have the appeals consolidated in order to streamline the appellate
2 process for all parties involved.

3 While it is obvious to most that consolidation offers efficiencies and would
4 decrease the work required of both Porsboll's counsel and this Court's staff,
5 Porsboll's counsel claims in opposition to the motion that consolidation would tie
6 up scarce judicial resources, inflict damage on their client,² create confusion and
7 frustrate justice.³ These claims are unexplained in Ms. Porsboll's opposition and
8 clearly defy logic.

9 What is most clear from Porsboll's opposition, is her counsel's purpose in
10 opposing the motion. In Ms. Porsboll's previous filing⁴ before this Court, her
11 counsel claimed to have expended \$500,000 in fees and costs in this case. In her
12 opposition to the instant motion, less than one month later, her counsel claims
13 that that number has risen to \$600,000.⁵ Apparently her counsel's six page
14 opposition carried a price tag of \$100,000. It is no mystery why her counsel is
15 opposing motions that would decrease the volume of work they are required to
16 do; it is clearly contrary to the interests of her counsel,⁶ especially considering
17 that the lower court in this case awarded Porsboll's counsel attorney's fees even
18 when Mr. Vaile won the merits of his motions.

19 Ms. Porsboll's opposition is thin on argument, and largely void of
20 controlling law on the merits of the case. However, due to incorrect
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22
23 ² Opp. 1.

24 ³ Opp. 2.

25 ⁴ *Motion for Fees and Costs Pending Appeal, 2* (dated May 27, 2009).

26 ⁵ Opp. 2.

27 ⁶ Porsboll's filings in this Court and below make clear that Porsboll will not be paying any
28 portion of the attorney's fees that her counsel incurs here. As Mr. Vaile pointed out in
previous filings to this Court, Porsboll's counsel is intercepting his 40% contingency of
funds paid by Mr. Vaile, including the child support payments Mr. Vaile is making to his
children.

1 interpretations of the law as presented by Porsboll, Mr. Vaile respectfully presents
2 this response.

3 POINTS AND AUTHORITIES

4 **II. FACTS**

5
6 Mr. Vaile would refer the Court to the *Motion for Consolidation* for the
7 relevant factual history. Mr. Vaile corrects facts referred to in *Respondent's*
8 *Answer to Petition for En Banc Reconsideration* in a separate response to that
9 filing. Mr. Vaile will not attempt to re-argue that issue here other than to note
10 that Mr. Vaile has not filed any notice of appeal outside the time limit as specified
11 in the Nevada appellate rules, either early or late.

12 **III. ARGUMENT**

13 **A. CONSOLIDATING THE CASES ADDS EFFICIENCY FOR BOTH THE PARTIES AND** 14 **THE COURT**

15
16 Ms. Porsboll's opposition contains no answer to the obvious efficiencies
17 that would be added through consolidation. Her argument is, in essence, that
18 consolidation is not necessary because, she believes, Mr. Vaile's appeals should
19 be dismissed. That argument is not relevant to the current motion.

20 Porsboll next suggests that the rules that allow for joinder of the appeals
21 are not relevant because the appeals "raise no identical issues"⁷ and because there
22 are no "common questions of law or fact."⁸ Ms. Porsboll spends the remaining
23 pages of her brief arguing her view on personal and subject matter jurisdiction,
24 which aptly demonstrates the lack of logic in her claim that there are no identical
25 issues between the appeals. The threshold jurisdictional topics Porsboll argues
26 are, of course, identical in all the appeals pending before the Court. Resolution of
27

28 ⁷ Opp. 3.

⁸ Opp. 4.

1 these issues rely on common questions of law or fact in these appeals, including
2 some of those that Ms. Porsboll argues. These issues involve the exact same
3 case, the same facts, and that same parties.⁹

4 In order to reach the merits on the amount of child support principle owed
5 (a major topic in Mr. Vaile's appeal) or the amount of child support penalties
6 owed (the sole basis of Ms. Porsboll's appeal), the Court will also have to resolve
7 additional issues in common between the appeals. They include whether a lower
8 court may ignore this Court's previous mandate, whether the law of the case may
9 be reassessed by the lower court, whether two parties may unwillingly confer
10 subject matter jurisdiction on the lower court, whether the lower court may
11 retroactively modify a child support agreement between the parties, whether the
12 lower court may judicially undo waiver by one of the parties, etc. All these issues
13 must necessarily be addressed, whether the appeals are handled separately or
14 together, in order to reach a determination as to whether child support principle
15 and penalties are correct. Consolidation will allow the Court to hear and decide
16 these issues uniformly and with clarity to the benefit of not only these parties, but
17 as precedent for others.

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

19 Ms. Porsboll also argues in opposition to full briefing that no briefing is
20 required at all with regard to the issues Mr. Vaile raises on appeal. Again, Ms.
21 Porsboll's argument is undone by the very fact that she spends the majority of her
22 opposition in arguing her view on these issues. Obviously, these issues do indeed
23 require full briefing. The issues, which even Ms. Porsboll's counsel finds
24 complex, may not be summarized in a sentence or decided without the relevant
25 facts or legal precedent. Mr. Vaile's request for full briefing is to allow the Court
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27
28 ⁹ The case cited by Porsboll, *Ewell v. State*, 105 Nev. 897, 785 P.2d 1028 (1989), supports consolidation when these factors exist.

1 to make a fully informed decision on these issues which are clearly of import to
2 the State of Nevada.

3 Ms. Porsboll's brief does, however, provide an accurate snapshot of the
4 theory of jurisdiction which Porsboll presented before the lower court and which
5 she reiterates here. Her theory is that since personal jurisdiction over the parties
6 exists, then subject matter also necessarily exists.¹⁰ Ms. Porsboll does not quote
7 any statutory or case law to support this theory for the obvious reason that it does
8 not exist under the law. The theory itself demonstrates a fundamental
9 misunderstanding of the most basic foundations upon which our legal system
10 relies. Personal jurisdiction is not equivalent to subject matter jurisdiction.¹¹ Ms.
11 Porsboll's theory also ignores the holding of this Court in this very case that
12 neither personal jurisdiction or subject matter jurisdiction exists.

13
14 **1. The Principles of Estoppel Prevent this Court from Entertaining Ms.
15 Porsboll's Argument on These Points**

16 When Ms. Porsboll took the parties' children to Norway for a visit in 1998, it
17 was based on the parties' agreement incorporated in the decree of divorce that she
18 would return the children one year later. After the one year, Ms. Porsboll
19 withheld the children in Norway, and renege on every aspect of her agreement
20 including to return the children. The family court¹² below ordered the children
21 picked-up and returned. Once Ms. Porsboll secured Nevada counsel, the claim
22 that she was under duress when she signed the decree of divorce was made for the
23 first time to the lower court and then repeated to this Court. The lower court
24 found, and this Court affirmed that Ms. Porsboll had not been under duress, and

25 ¹⁰ See Opp. at 4.

26 ¹¹ The biography for Ms. Porsboll's lead counsel suggests that he has written on and teaches
27 CLE courses on the basics of jurisdiction. This suggests that this misunderstanding of the
basics presenting in the opposition is *pretended* with the intent of misleading the Court.

28 ¹² The district court judge handling this case in 1998 was different than the lower court judge
currently handling this case.

1 that estoppel prevented Ms. Porsboll from making one claim to the court in 1998,
2 and making the opposite claim years later.

3 The technique which failed in 2002, is being deployed by Ms. Porsboll (or
4 rather her same counsel) again in 2009. The basis of Ms. Porsboll's appeal to this
5 Court in 2000 was that jurisdiction in this case *did not exist*. Mr. Vaile argued
6 jurisdiction was indeed proper since the parties *attempted* to submit to the
7 jurisdiction of the court. This Court found in Ms. Porsboll's favor on this point.
8 When the jurisdiction Ms. Porsboll claimed was proper in 2000 (Norway) no
9 longer suited her needs in 2007, she returned to the lower court and claimed, this
10 time, that jurisdiction *did exist* in Nevada. Clearly the principle of estoppel
11 prevents the Court from entertaining the argument made under the revived flip-
12 flop technique. Estoppel prevented it in 2002, the same as it prevents it in 2009.

13
14 **2. Personal Jurisdiction Analysis was Completed by This Court Which Held**
15 **that Personal Jurisdiction Did Not Exist**

16 The most obvious flaw in Ms. Porsboll's theory that personal jurisdiction
17 equals subject matter jurisdiction is that personal jurisdiction, according to this
18 Court, does not exist. Ms. Porsboll supports her argument to the contrary based
19 on an irrelevant snippet¹³ from this Court's 2002 decision which points out that
20 the lower court *had colorable* personal jurisdiction of the parties. *Colorable*
21 personal jurisdiction¹⁴ exists when the court is under the mistaken impression that

22 ¹³ The quote from the 2002 decision presented by Ms. Porsboll is offered without context. In
23 context, it is clear that the second sentence, albeit dicta, was intended to demonstrate the
24 Court's point that personal jurisdiction does not equate to subject matter jurisdiction over
25 all issues. It is clear that the second sentence is dicta because the Court hypothesized on
26 what a lower court "might" order, and because no child support issues were before the
27 Court or decided in the 2002 opinion.

28 ¹⁴ This Court explained the concept of *colorable* jurisdiction being *temporary* in its
discussion of whether the divorce was void or voidable in the 2002 decision. "[W]hen the
proof exhibited has a legal tendency to show a case of jurisdiction, then, although the proof
may be slight and inconclusive, the action of the court will be valid *until it is set aside* by a
direct proceeding for that purpose." *Vaile v. Eighth Judicial District Court*, 118 Nev. 262,
271; 44 P.3d 506, 512; 271, 512 (2002) (emphasis added).

1 it has jurisdiction because it appears “to be true, valid, or right.”¹⁵ Ms. Porsboll's
2 brief omits that this Court held that, despite what the lower court *thought it had* in
3 1998, that court did not in actuality have personal jurisdiction over the parties. It
4 is difficult to dismiss the clarity of that holding:

5 The children have never lived in Nevada. Neither party has ever lived
6 in Nevada. The children have never had any contact with Nevada,
7 much less substantial contact with the state. Neither do the parents
8 have substantial contact with Nevada.

9 * * *

10 We conclude that the district court did not have personal jurisdiction
11 over either party.

12 *Vaile*, 118 Nev. at 275, 268; 44 P.3d at 515, 511.

13 The question is not what the lower court thought it had in 1998 before all the
14 relevant facts were known. The question is whether personal jurisdiction of the
15 parties existed after this Court's 2002 decision and since. This Court's 2002
16 decision appears to put that matter to rest with clarity. Yet Porsboll's counsel,¹⁶
17 and the lower court¹⁷ below, appear to misunderstand this clearness.

18 3. Subject Matter Jurisdiction is Not Personal Jurisdiction

19 Ms. Porsboll's argument that subject matter jurisdiction exists because
20 personal jurisdiction exists appears to unwind given this Court's holding that the
21 lower court did not have personal jurisdiction of the parties. However, even if
22 personal jurisdiction did exist, subject matter jurisdiction must still be established
23 independently. This Court devoted considerable space in its 2002 decision
24 teaching counsel this concept:

25 ¹⁵ Black's Law Dictionary (8th ed. 2004)

26 ¹⁶ Ms. Porsboll's counsel contradicts outright this Court's holding in their opposition: “The
27 Court had personal jurisdiction over Scott because he submitted himself to the jurisdiction
of the Court . . .” Opp. 4.

28 ¹⁷ Demonstrating its confusion of the topic due to being misled by Porsboll's counsel, the
lower court held that it *has* “colorable personal jurisdiction.”

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Parties may not confer subject matter jurisdiction upon the court by their consent when it does not otherwise exist.

* * *

The court may not assume jurisdiction over matters . . . based on a "contract theory"¹⁸ or upon its view that because it has asserted personal jurisdiction over the parties, it can order them to do or not to do certain things.

* * *

Unless the court can exercise subject matter jurisdiction according to the terms of the [law] which Nevada has adopted, it is without authority to enter any order adjudicating rights the rights of the parties with respect to [areas covered by that law.]

* * *

[S]ubject matter jurisdiction cannot be waived and may be raised at any time, or *sua sponte* by a court of review. *Vaile*, 118 Nev. at 275-276; 44 P.3d at 515-516. (footnote not in original)

Not only does Ms. Porsboll's theory defy the law as established by this Court, it causes a nonsensical result. If the exercise of personal jurisdiction necessitated the exercise of subject matter jurisdiction, then the Courts of Nevada would necessarily have subject matter jurisdiction of cases between any parties resident in any state or country regardless of where the cause of action occurred, simply by virtue of their filing in the Nevada courts. The result that follows Porsboll's theory makes no sense.

Despite Porsboll's argument to the contrary, UIFSA also rejects her theory. At Ms. Porsboll's impassioned request, this Court held that neither the parties nor the children *ever lived in Nevada*. No Nevada law allows a court of this state to take subject matter jurisdiction of child support issues for parties or children who

¹⁸ The lower court also held that it has jurisdiction to modify the parties' support agreement based on a contract theory.

1 have never lived in the state. UIFSA, which is the Uniform *Interstate* Family
2 Support Act is actually not relevant in this case at all, because no interstate orders
3 are at issue here. Ms. Porsboll is not seeking to enforce a Norway order in
4 Nevada or vice versa (Norway is obviously not a signatory to UIFSA, and the
5 lower court refused to take judicial notice or allow discovery to verify the
6 existence of any Norway support orders). The issues on appeal revolve around
7 Ms. Porsboll request that the Nevada family court establish a child support order
8 in Nevada – no interstate orders are involved.

9 Even if UIFSA was applicable and an interstate order was at issue, no
10 provision of UIFSA¹⁹ allows a signatory state to modify an out of state order
11 without subject matter jurisdiction either, even if personal jurisdiction is proper.
12 The official comments to section 611 of UIFSA make that point clear:

13 [I]mplicit in a shift of jurisdiction over the child support order is that
14 the agreed-upon tribunal *must have subject matter jurisdiction and*
15 *personal jurisdiction* over at least one of the parties or the child, *and*
16 that the other party submits to the personal jurisdiction of that forum.
17 In short, UIFSA does not contemplate that *absent parties can agree to*
18 *confer jurisdiction on a tribunal without a nexus to the parties or the*
child. (emphasis added).

19 There is no dispute that all parties, and their children have at all relevant
20 times been absent from the Nevada forum, based on facts judicially established
21 by this Court. This was the very holding that Ms. Porsboll sought and which is
22 now the law of the case. Neither UIFSA nor any other Nevada law²⁰ allows a
23 Nevada court to exercise jurisdiction of the absent parties' child support issues.

24 Mr. Vaile's purpose in requesting full briefing is to have an opportunity to
25 fully demonstrate that the lower court did not have jurisdiction to enter or modify
26

27 ¹⁹ Ms. Porsboll's counsel also holds himself out as an expert in UIFSA. As such, her counsel,
of all attorneys, should be able to recite, or at least look up, UIFSA's scope.

28 ²⁰ *Estin v. Estin*, 334 U.S. 541 (1948), even as quoted by Porsboll, stands for proposition that
a court not overstep its jurisdictional bounds.

1 (retroactively) a child support order. Based on the importance of the resolution of
2 these key issues, full briefing is appropriate.

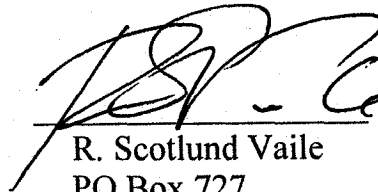
3 **IV. OPPOSITION TO COUNTERMOTION FOR FEES AND COSTS**

4 Ms. Porsboll did not present any argument in support of her countermotion
5 for fees and costs, which obviates the need for a reply. We may assume that the
6 same arguments in which were made in her *Motion for Fees and Costs Pending*
7 *Appeal* were intended here. Since Mr. Vaile opposed that motion with
8 thoroughness, and has demonstrated herein the unreasonableness of the fees that
9 Porsboll's counsel is charging, the frivolousness of the legal arguments her
10 counsel is presenting, and the lack of logic in opposing consolidation, any motion
11 for fees and costs by Ms. Porsboll is wholly unjustified. Mr. Vaile requests that
12 the countermotion be denied.
13

14 **V. CONCLUSION**

15 Appellant respectfully continues to request that this Court consolidate the
16 appeals currently pending before this Court and to allow Appellant Vaile to brief
17 fully. In the alternative, Appellant Vaile requests an order directing the lower
18 court to dismiss the case.
19

20 Respectfully submitted this 30th day of June, 2009.

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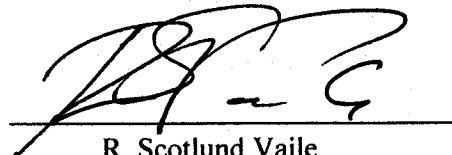
District Court Case No: 98 D230385

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that a true and correct copy of Appellant R. Scotlund Vaile's
15 *Request to File Response and Opposition, and Reply in Support of Motion to*
16 *Consolidate Appeals and Motion to Allow Full Briefing and Opposition to*
17 *Countermotion for Fees and Costs* was served by depositing the same in the U.S.
18 Mail at San Francisco, California in a sealed envelope, first-class postage pre-
19 paid, addressed as follows:

20 Marshal S. Willick
21 Willick Law Group
22 3591 E. Bonanza Road, Suite 200
23 Las Vegas, NV 89110-2101
24 *Attorneys for Respondent*

25 Dated this 30th day of June, 2009.



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