IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CISILIE A. PORSBOLL, f/k/a
CISILIE ANNE VAILE,

Appellant,

vs.

ROBERT SCOTLUND VAILE,

Respondent.

S.C. NO. 53798
D.C. NO: 98-D-230385-D

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE NEW ISSUES RAISED BY RESPONDENT

1. Whether the lower court erred in finding that it had jurisdiction over the issue of child support.
2. Was the enforcement of child support in this case a modification of child support.
3. What is really CSEP's position.
4. Is it proper to impose a full annual penalty on the first day a child support payment goes into arrearage, and then never impose any further penalty, despite the statutory direction to impose the penalty "per annum."

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INTRODUCTORY STATEMENT

Appeal from *Final Decision and Order Re: Child Support Penalties NRS 125B.095*, by the Hon. Cheryl B. Moss filed April 17, 2009, making a determination that NRS 125B.095 is ambiguous and subject to different interpretations, and that penalties on child support arrears should be calculated under the methodology used by the State Welfare system since 2005, rather than that used by the private Bar since the penalties provision went into effect in 1995.

Pursuant to the direction of the Court and the Nevada Rules of Appellate Procedure, this *Reply* addresses any new matter set forth in the opposing brief; the only such issue raised by Scot's *Answering Brief* is an issue of jurisdiction of the District Court, based on his misrepresentation of the plain words of the April, 2002, decision of this Court, in an attempt to evade all responsibility for support of the children he kidnaped in 2000.

Additionally, this Court has asked us to reply to the amicus brief submitted by the State Welfare Office. The positions raised there have been addressed as well.

This *Reply* follows.

STATEMENT OF FACTS

Scot's *Answering Brief* is the latest of his continual efforts over the past decade to re-litigate and alter facts that have been long-since finally determined, knowingly making false assertions of fact, building on those by mis-citations to authority, irrelevancies, circular reasoning, and mis-direction of fault, all in an attempt to avoid paying child support and to continue his abuse of the judicial process.

Scot's recitation of facts in his *Answering Brief* tries to bend the facts of the case, and reads like a fairy-tale, which attempts to shift the fault for his kidnap to Cisilie, undersigned counsel, and this Court. In Scot's version of the facts he has never done anything wrong.

This comports with his actions over the past decade, during which he has paid nothing of the million dollars in tort judgments, child support arrears, and attorney fee awards imposed against him by the courts of at least two States and one federal district, while

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continuing to cost everyone with which he interacts vast sums of money in legal expenses by his incessant, vexatious, relitigation.[1] To date, no court has taken adequate steps to actually stop this ongoing abuse of the innocent by this kidnaper and tortfeasor.

A complete recitation of the lengthy history of this case is unnecessary and would be a waste of the Court's time, but the factual history proffered by Scot in his *Answering Brief* is a work of fiction, and is so seriously flawed that it requires that we address it, at least briefly.

Much of the history of this case is irrelevant to the issues raised by Scot in his *Answering Brief*, so we have tried to restrict the recap to events that relate only to jurisdiction, but silence on any point should not be taken as acquiescence – virtually every factual assertion made by Scot is either a distortion or an outright lie; after a decade's experience with the fellow, we have concluded that he is pathological, and utterly shameless

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[1] *See Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (holding that the kidnaped children were to be returned to their mother in Norway); *Vaile v. Porsboll, et al.*, United States Supreme Court (rejecting Scotlund's attack on this Court's *Opinion* requiring return of the children); *Vaile v. Vaile*, Case No. D 230385 (finding that as of July 24, 2003, Scotlund owes $116,732.09 for the attorney's fees incurred in recovering the children by Nevada counsel, and as of October 9, 2008, Scotlund owes the sum of $118,369.96, in principal, and $45,089.27 in interest for a total of $163,459.23 in child support arrears that Scotlund has refused to pay since the kidnaping, plus penalties which have yet to be decided by the court); *In re Kaia Louise Vaile and Kamilla Jane Vaile*, No. 2000-61344–393, District Court of Denton County, Texas 393rd Judicial District (finding as of April 17, 2002, Scotlund owes attorney's fees of $20,359.00 with interest at 10% per annum, compounded annually, travel expenses of $25,060.00, with interest at 10% per year compounded annually, and an award for $81.00 for costs of court with interest at 10% per annum, compounded annually, for fees incurred in recovering the children by Texas counsel); *Vaile, Cisilie A. v. Vaile, Robert, Scotlund*, No. 00-3031 A/64, Oslo District Court, dated February 6, 2003, confirming Cisilie's custody of the children and entitlement to payment of child support; *Vaile v. Vaile et al.*, No. CV-S-02-0706-RLH-RJJ (*Judgment* dated March 13, 2006, holding Scotlund liable for $450,000 in combined damages in favor of Cisilie A. Porsboll, Kaia Louise Vaile, and Kamilla Jane Vaile, for injury, pain and suffering, and $100,000 in punitive damages); *Vaile v. Vaile, et al.*, No. 06-15731, Ninth Circuit Court of Appeals (rejecting Scotlund's attacks on the tort suit judgment).

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– he apparently is unable to perceive that he is a bad actor that permanently damaged the lives of multiple people, including his own children,[2] and he is determined to take no responsibility for doing so.

The parties' history was set out in *Vaile v. District Court*.[3] Scot's attempt to persuade this Court to disregard that history is legally meaningless, as those findings are the law of the case.[4] But his efforts to re-write that history nevertheless deserve note here, because they are an ongoing part of his efforts to perpetrate fraud on the courts of Nevada, which merits special, enforced sanctions.

Scot's false claims start on the first line of his "Factual History," where he claims that "each party hired attorneys in Nevada to help guide them through the divorce." In fact, he arranged for a brief phone call between Cisilie (in England) and some lawyer selected by his agents, who she never met, and who provided her no assistance; I believe this was briefed in the 2002 writ proceedings and a subject of discussion during the original oral argument in this case, as part of Justice Maupin's inquiry into what benefits either party might have received.

More central to the issues here is Scot's attempted defense in this Court of his false claim that the "children have lived here all their lives"[5] during his fraud on the trial court leading to the custody order he used as a pretext in the kidnap. As Judge Steel testified by

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[2] During the federal tort suit, the defendants had the children examined by Dr. Stephanie Holland, who concluded that the psychological and emotional damage to the children from the kidnap would undoubtedly be long-lasting and severe, and could require permanent psychological care into adulthood.

[3] *Vaile v. District Court*, 118 Nev. 262, 267, 44 P.3d 506 (2002).

[4] *Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 807 P.2d 208 (1991) (when a case goes up on second appeal, holdings in first appeal between same parties remain binding).

[5] *See* RAB at 2-3.

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affidavit in the resulting federal tort suit,[6] her order was based on a detailed series of repeated lies by Scot and his lawyer in open court as to where the children had lived. The Nevada federal district court termed Scot's representations "further and other false assertions of fact . . . under which he fraudulently induced Judge Steel . . . to issue a change in custody."[7]

In short, this Court's 2002 findings that the children lived first in England, and then in Norway, for years before Scot kidnaped them to the U.S., was fully supported during the discovery in the later tort case, making Scot's current attempt to lie on the point simply a further effort to perpetrate fraud, now directing those efforts at this Court.

The relevance here has to do with the jurisdiction of a court to enforce a support order when a litigant has repeatedly submitted himself to the jurisdiction of that court, resulting in issuance of the order.

As this Court's 2002 *Opinion* recited, Scot used his mother's Nevada address to file for divorce in Nevada in 1998, falsely claiming to be a Nevada resident, but actually having only been in the State five days.[8] This Court also noted that the district court was misled by the language of the "cleverly worded" but fraudulent complaint and affidavit.[9] The divorce

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[6] *See* Exhibit 1, Appellant's Supplemental Appendix: CAV00001-CAV00005 (affidavit of Judge Steel). While normally proceedings in other courts are outside the scope of review of an appeal, this Court has recently verified that it may choose to take notice of facts "capable of verification from a reliable source, whether we are requested to or not, under NRS 47.150(1), or of facts that are "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute" under NRS 47.130(2)(b). *Mack v. Estate of Mack*, 125 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 9, Mar. 26, 2009).

[7] *See* Exhibit 2, Appellant's Supplemental Appendix: CAV00006-CAV00018, *Findings of Fact, Conclusions of Law and Decision* and *Judgment* of Hon. Roger L. Hunt, United States Federal District Court for the District of Nevada, filed March 13, 2006.

[8] *Vaile v. District Court*, 118 Nev. 262, 267, 44 P.3d 506 (2002).

[9] *Vaile v. District Court*, 118 Nev. 262, 270, 44 P.3d 506 (2002).

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was granted August 10, 1998, and the $1,300 monthly child support paid by Scot was (allegedly) set pursuant to Nevada Statute.

For the first two years after the parties' divorce – from August, 1998, to March, 2000, Scot paid child support of $1,300 per month.[10]

In May, 2000, Scot, got the fraudulent order discussed above, on the pretext of which he kidnaped the children during a visit in Norway, secreted them out of Norway and into the United States, and moved the children to Texas.

In October, 2000, the district court held an evidentiary hearing, finding that Scot had satisfied Nevada's residency requirement even though he had never lived in Nevada and had not been physically present in the state for the requisite six weeks.

A Hague Petition was filed by Cisilie, leading to this Court's 2002 *Opinion* ordering return of the children to their Habitual Residence, and further finding that the district court had relied upon Scot's false representations when it issued its order in 2000, that the provisions in the divorce decree as to custody and visitation were void and unenforceable, but that the decree itself was voidable, not void, and would stand.[11]

The children were returned to Norway, despite Scot's attempts – twice – to grab them again before they could leave the country. The district court entered a fee award for more than $100,000 in legal fees and other costs incurred to recover the children after Scot's kidnap. Scot has never paid a penny of the judgment.

Since the return of the children to Cisilie, Scot has refused to pay any of the judgments rendered against him, or any child support, despite repeated demands, orders, and attempts at collection. He went to law school in Virginia, and the D.A. first managed a wage

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[10] AAP Vol1, pg CAV00147.

[11] Scot appealed this Court's *Opinion* to the United States Supreme Court, but his petition for hearing was denied on March 10, 2003.

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assignment against him while he was working at a Texas law firm as a summer associate in 2006.[12]

On November 14, 2007, Cisilie filed her *Motion to Reduce Arrears in Child Support to Judgement, to Establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs.*[13] On January 15, 2008, the district court issued its order,[14] amended it on March 20, 2008,[15] and finalized it on April 17, 2009.[16]

On November 12, 2009, this Court issued its order consolidating appeals and resolving motions.

ARGUMENT

I. RESPONSE TO ANSWERING BRIEF

A. Jurisdiction to Establish Child Support is Obvious and Incontestable

This dispute came before a Nevada district court because Scot chose Nevada in which to file papers calling for him to pay child support. He has reversed his position, now claiming that he can't be made to pay child support because the children have never lived in Nevada and he has never lived here, despite his earlier sworn submissions that he was a resident and that the children had "always lived here." His lengthy and repetitious arguments can be dismissed fairly summarily.

It was Scot who filed the *Complaint for Divorce* in Nevada. It was he who drafted the *Decree of Divorce* swearing that the $1,300 payments being made complied with Nevada

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[12] AAP Vol. 2, pgs CAV00351-CAV00359.

[13] AAP Vol 1, pgs CAV00090-CAV00122.

[14] AAP Vol 1, pgs CAV00124-CAV00128.

[15] AAP Vol 1, pgs CAV00129-CAV00143.

[16] AAP Vol 2, pgs CAV00376-CAV00399.

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child support law. Scot's entire argument ignores the fact that the Uniform Interstate Family Support Act ("UIFSA")[17] was expressly designed for both establishment ***and*** interstate enforcement of child support obligations. His disingenuous mis-citations of modification provisions as if they have anything to do with establishment are meaningless.

UIFSA was drafted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL")[18] and has been adopted in ***every*** State. Nevada adopted the 1996 version of UIFSA on June 30, 1997.[19] The bill adopting UIFSA was part of a sweeping change of Nevada's welfare rules and regulations, part of the Congressional push to bring the entire nation into uniformity of procedure and results relating to child support establishment and enforcement cases.[20]

The additional federally-mandated provisions are contained in NRS chapters 31A, 125B, and 425. Like the UCCJEA did with the federal PKPA, UIFSA follows up on a federal enactment with a similar purpose and construction.[21]

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[17] The "Uniform Interstate Family Support Act," enacted in Nevada as NRS chapter 130.

[18] Now 116 years old, NCCUSL provides States with non-partisan draft legislation intended to bring "clarity and stability" – and most especially, consistency – to various areas of the law. Explicitly supportive of the federal system, members of NCCUSL must be lawyers, and include lawyer-legislators, attorneys in private practice, State and federal judges, law professors, and legislative staff attorneys, who have been appointed by State governments as well as districts and territories to research, draft and promote enactment of uniform State laws in areas where uniformity is desirable and practical.

[19] *See* 1997 Nev. Stats. Ch. 489. The enactment, essentially required by Congress, replaced the prior "URESA" interstate child support enforcement mechanisms.

[20] *See* "Prefatory Note" to UIFSA, posted on the website of the National Conference of Commissioners on Uniform State Laws (NCCUSL), at http://www.law.upenn.edu/bll/ulc/uifsa/final2001.htm.

[21] *See* 28 U.S.C. § 1738B (1994) (Full Faith and Credit for Child Support Orders Act, or "FFCCSOA").

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In 2000, NCCUSL reviewed UIFSA in light of nation-wide interpretations of the language as enacted.[22] A new drafting committee conducted a single meeting, in March, 2001, which provided clarifying wording changes approved by NCCUSL at its Annual Meeting the following August. The Nevada Legislature did not revisit NRS Chapter 130 to enact those wording changes until 2007.[23]

The date of the technical amendments is not relevant to any outcome. NCCUSL stressed that ***no*** amendments since the original enactment "make a fundamental change in the policies and procedures established in UIFSA 1996."[24] In other words, the amendments were meant only as a matter of ***clarification***, not a substantive change, to the provisions as enacted by the Nevada Legislature in 1997, which have been in effect since that time.

Notably, the rules governing support and custody jurisdiction operate independently of one another. The courts of this State might be called upon to enforce a child support obligation against someone found here, or filing here, while having no jurisdiction over custody matters.[25] The obligor parent can ***always*** be sued for child support where that parent

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[22] *Id.*

[23] The bill can be found at http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=213. The bill was actually signed into law as of May, 2007, but the legislative amendment to UIFSA statutes technically did not go into effect until October 1, 2007.

[24] *Id.*

[25] *See Kulko v. California*, 436 U.S. 84, 91-92, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978) (where a defendant is subject to a State's jurisdiction, his rights in the matters ancillary to divorce may be determined by its courts).

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lives or submits to the jurisdiction of a court,[26] because child support is set by the court with personal jurisdiction over the paying parent.

It is for that reason why this Court's 2002 holding was entirely correct:

> Because the voidable decree has not been set aside, the court had colorable personal jurisdiction over the parties and the subject matter of their marital status. Simply because a court might order one party to pay child support to another in the exercise of its personal jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject matters of child custody and visitation.[27]

Notably, it is the above quote which Scot repeatedly attempts to twist to mean the opposite of what it says – as if this Court declared that Nevada did ***not*** have child support jurisdiction – while in actuality, since the divorce decree was held to be valid, Nevada (of course) ***did*** have jurisdiction to establish a child support obligation, as this Court held.[28]

NCCUSL put significant energy into trying to harmonize the provisions of the UCCJEA with those of UIFSA. It is not always possible, given the very different jurisdictional foundations, but the intention is there, which is why so many of the definitional and other provisions read so similarly. Still, distinctions remain.

The specific example relevant here is that, while the child custody jurisdictional rules are deliberately child-centered, the jurisdictional rules for support initiation are deliberately

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[26] *See* NRS 130.201(1)-(2); *see also, e.g.*, Prof. John J. Sampson, "UIFSA: Ten Years of Progress in Interstate Child Support Enforcement" (Legal Education Institute National CLE Conference on Family Law, Aspen, Colorado, 2003) at 184 (Prof. Sampson was the official Reporter for the UIFSA legislation for NCCUSL, which created it).

[27] *Vaile v. District Court*, 118 Nev. 262, 275, 44 P.3d 506, 515 (2002).

[28] Scot has most recently made that argument in a California action he has filed there seeking to have the California courts declare that any efforts to make him actually pay any part of the massive Nevada judgments against him would constitute "conversion." Exhibit 3, Appellant's Supplemental Appendix: CAV00019-CAV00035, Superior Court of California County of San Francisco, Case No. CGC-89-490578, filed 8/16/2009. That is one reason we ask that this Court's disposition of this case be as clear and forceful as possible, so we can provide copies to other courts.

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expansive.[29] There are multiple bases for exercise of child support jurisdiction over a non-resident obligor, operating independently and in the alternative:[30]

> 1. Personal service of summons or other notice of the child support proceeding within this State.
> 2. Submission by the obligor to the jurisdiction of this State in a record, by consent, by entering a general appearance or filing a responsive document having the effect of waiving any contest to personal jurisdiction.
> . . . .
> 7. Any other basis "consistent with the Constitution of this state and the Constitution of the United States for exercise of personal jurisdiction."

Apparently, Scot is not the only litigant who has made the ridiculous assertion that his submission to the jurisdiction of the court did not convey subject matter jurisdiction to establish a child support order against him. The official comments to the Model Act[31] show the deletion in the final act (2001) of the previous heading reference to "extended personal jurisdiction," making it clear that any of the enumerated acts convey full subject matter and personal jurisdiction to enter a child support award as the text itself clearly indicates.

In fact, the official comments to Section 201 go on to state:

> Sections 201 and 202 assert what is commonly described as long-arm jurisdiction . . . for purposes of establishing a support order. . . . Inclusion of this long-arm provision . . . is justified because residents of two separate states are involved in the litigation, both of whom are subject to the personal jurisdiction of the forum. . . . this is sufficient to invoke additional UIFSA provisions in an otherwise intrastate proceeding. . . . The intent is to insure that every enacting State has a long-arm statute that is as broad as constitutionally permitted.
> . . . .
> Subsection (2) expresses the principle that a nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering or entering an appearance.

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[29] *See* NRS ch. 130, Article 2 (Jurisdiction).

[30] NRS 130.201.

[31] http://www.law.upenn.edu/bll/archives/ulc/uifsa/final2001.htm.

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Likewise, the comments to the clarified Section 202 make clear why the Nevada family court maintained indefinite jurisdiction to enforce the order once made, including by way of the clarification of the sum certain to be paid:

> This section can be said to state a legal truism, albeit a useful one. That is, once a tribunal issues a support order binding on the parties . . . jurisdiction in personam continues absent the statutorily specified reasons for its termination. The rule established by UIFSA is that the personal jurisdiction necessary to sustain enforcement . . . of an order of child support . . . persists as long as the order is in force and effect, even as to arrears, *see* Sections 205-207, 211, *infra*. This is true irrespective of the context in which the support order arose, *e.g.*, divorce, UIFSA support establishment, parentage establishment, modification of prior controlling order, etc. Insofar as a child-support order is concerned, depending on specific factual circumstances a distinction is made between continuing, exclusive jurisdiction to modify an order and continuing jurisdiction to enforce an order, *see* Sections 205 and 206, *infra*.

It is for the above reasons (among others) that Mr. Vaile submitted himself to the jurisdiction of the courts of Nevada for the setting of a child support order and its enforcement, even though his divorce *Complaint* contained a fraudulent assertion of residency and Nevada had no jurisdiction over questions of child custody.

B. Rejection of Scot's Spurious Arguments

Pages 5-8 of the *Answering Brief* is Scot's request that this Court ignore the holding from 2002 quoted above, and instead find that the Nevada courts had no jurisdiction to order him to do anything, in effect voiding and setting aside the decree of divorce he submitted and requested be entered.

Scot claimed residence in order to get the divorce in Nevada, and later lied to the court to get the (later voided) custody order; he is not allowed to evade his responsibilities by claiming that the district court does not have personal and subject matter jurisdiction. Or, as this Court tersely put it back in 2002:

> Scot should not be allowed, after committing a fraud upon our courts, to reap the dubious benefits of his action as he is attempting to do here.[32]

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[32] *Vaile v. District Court*, 118 Nev. 262, 274, 285 (2002).

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Nevada has continuing jurisdiction pursuant to NRS 130.202 to enforce its support order.[33]

Scot does no better in the argument (at 9-14) that the district court lacked subject matter jurisdiction over child support, as the comments from UIFSA quoted above make clear. There are only two other points meriting mention from that section.

First is Scot's spurious assertion (at 12) that Norway is not a "state," which is belied by NRS 130.035 (2):

> As used in this section, "foreign country or political subdivision" means a foreign sovereign nation or a political subdivision thereof.

Second is Scot's equally preposterous assertion (at 13) that "public policy" would prefer that no child support order could be imposed against him despite his submission to the jurisdiction of the courts of this State for that purpose, which again is adequately addressed by the face of and comments to UIFSA set out above.

Similarly, Scot's mischaracterization of the record at (14-19) has no validity. There has been no modification of child support,[34] only clarification of the sum due as a dollar sum certain during an enforcement proceeding, as the Nevada Legislature mandated be done by its amendment to NRS 125B.070(1)(b) some years ago. As the district court made clear, since neither party lives in Nevada, Scot would have to file any modification request in

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[33] Personal jurisdiction acquired by a tribunal of this State in a proceeding under this chapter or other law of this State relating to a support order continues as long as a tribunal of this State has continuing and exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by NRS 130.205, 130.2005 and 130.206.

[34] The statutory framework of UIFSA is echoed in the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B(e)(2)(A), which states that a State can only modify its own prior orders if it continues to be the state of residence of the child or of any individual contestant.

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Norway, and Cisilie would have to file any modification request wherever Scot lived, since UIFSA requires for modification that the requesting party "play an away game."[35]

Nevada has had jurisdiction to enforce its support order since the original support order was entered, and neither party has taken any steps to modify it in the other's home jurisdiction; all of Scot's ramblings (at 16-19) about multiple orders and modification jurisdiction are simply irrelevant.

At 19-26, Scot tries to argue that child support penalties cannot be imposed on him. He's wrong.

Scot's "estoppel" argument (at 20-26) is meaningless because the jurisdiction to impose a child support order is clear, only custody and visitation provisions were found to be void by this Court's 2002 *Opinion*, and there has never been any kind of waiver of child support (despite Scot's attempted use of double [at 21] and triple [at 23] hearsay to assert otherwise).

Likewise, the fact that it took the authorities from 2002 until 2006 to catch up to Scot and actually start garnishing support does not constitute any kind of "waiver" of anything, nevertheless any "intentional relinquishment of a known right."[36]

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[35] UIFSA (2001) "Prefatory Note," at "Basic Principles of UIFSA," "Modifying a Support Order," "Modification Statutorily Restricted":
. . . the party petitioning for modification must be a nonresident of the responding State and must submit himself or herself to the forum State, which must have personal jurisdiction over the respondent, Section 611. The vast majority of the time this is the State in which the respondent resides. A colloquial short-hand summary of the principle is that ordinarily the movant for modification of a child support order "must play an away game."

[36] *See generally Parkinson v. Parkinson*, 106 Nev. 481, 796 P.2d 229 (1990). It's a small detail, but Scot's assertion (at 25) that this firm represented Cisilie in 1998 at the time of Scot's fraudulent divorce filing is false. Our first involvement in this case came when the The National Center for Missing and Exploited Children asked us to assist in the recovery of the kidnaped children after Scot snatched them in 2000.

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Scot's assertion (at 16) that he should get credit for the period of time between his kidnap of the children and their recovery ignores this Court's holding in *Day*,[37] but more generally is so reprehensible that it should be "rejected on the ground of inherent absurdity."[38]

Scot's comments as to the penalty calculations (at 26-29) are addressed in our response to the brief submitted by Welfare, addressed below.

In short, Scot has for years attempted to evade paying anything to support his children, an obligation he established and set himself when he perpetrated his original fraud on the Nevada courts in 1998. There has been no "retroactive modification" of the child support obligation, or any other change; no change was made to the amount Scot had been paying in child support prior to his kidnap of the children.[39] Scot is just terribly unhappy that he might actually have to pay it.

II. RESPONSE TO AMICUS BRIEF

The following sections of this *Reply Brief* address the arguments submitted in the amicus brief filed by Welfare. The history in this matter has been fully addressed in *Appellant's Opening Brief*, and no additional history elements are believed relevant or necessary.

The NRAPs direct a *Reply* to answer only new matters set forth in the Amicus Brief which have not already been adequately addressed in *Appellant's Opening Brief*. The amicus brief mostly just repeats errors and mis-statements that were already addressed in *Appellant's Opening Brief*, and were discussed in detail in *Cisilie's Supplemental Brief on Child Support*

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[37] *Day v. Day*, 82 Nev. 317, 417 P.2d 914 (1966).

[38] *See Mosley v. Figliuzzi*, 113 Nev. 51, 930 P.2d 1110 (1997).

[39] As an aside, the sum of $1,300 for two children is below the guideline support that someone making $140,000 per year – as Scot is – should be paying.

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Principal, Penalties and Attorneys Fees,[40] so not pointing them out again here should not be taken as any kind of concession that they have improved with age.[41]

A. New Issues or Claims

The *Amicus Brief* claims (at 2) that a "change in the agency's interpretation of the statute" would require CSEP to temporarily stop the enforcement of child support judgments, set hearings to obtain new judgments, and would "essentially bring to a standstill an already overburdened child support enforcement system." This appears false, for three reasons.

First, in this private family law case between two private litigants, Welfare has no calculations to change – the D.A. is merely garnishing a six-figure child support arrearage order, and whether a bigger or smaller penalty is added to it will not alter anything Welfare is doing in any way, but merely increase, by some amount, the total sum to be collected.

Second, no new, different, or additional hearings are required, and Welfare is certainly not required to "stop collecting child support." As was the case when Welfare (finally) started collecting penalties at all in 2005, it would simply continue doing what it is doing anyway – except calculating penalties correctly instead of incorrectly the next time the arrearages are updated. If the agency is calculating penalties, it is definitionally dealing with

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[40] AAP Vol 2, pgs CAV00238-CAV00283.

[41] For example, it is just incomprehensible why Welfare cannot get its math straight. On page 7, footnote 13, Welfare repeats precisely the same mathematical error of fact we addressed in the *Opening Brief* at page 18, lines 12-16 & n.71. We have no explanation why Welfare continues to repeat, falsely, that the private Bar's calculation of penalties would be the same as its for the first two years arrears accrue unpaid. In actuality, after one year of unpaid $100 per month child support payments, Welfare would have assessed $120. The private Bar – assessing the largest penalty on the oldest unpaid arrearage – assesses $66.62. At the end of year two, when the Welfare penalty would be $240, the private Bar's assessment is $213.56.

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a case in which there are arrearages; all that is in issue is the size of the penalty to be collected.[42]

District Attorneys do not rush into court every time an obligor falls into arrears. Rather, the arrearage calculation is performed outside of court, appears on the obligor's account statement, and only becomes the subject of a judgment once a party requests a hearing or a case comes up for periodic review. None of that would change if Welfare was compelled to do the penalty calculations precisely and correctly.

Which leads to the third reason Welfare's assertion is bogus – stripped of bureaucratic pretension, it is that Welfare is just too busy to comply with Nevada law. This is the same excuse it used in refusing to enforce the statutes requiring the collection of interest and penalties ***at all*** for most of 20 years, and it rings just as hollow now.

B. Reply To Other Points

1. "Interest of Amici"

The amicus brief fails to state any way in which it has ***any*** interest in the outcome of this case, legitimate or otherwise, beyond a personal agenda of its author. The brief (at 2) fails to state any way in which the family court's calculation of the penalties to be assessed against Scot will have any impact whatsoever on its programs, operations, or even any collection it is called on to make in this case.

As with virtually all cases between private litigants in family court litigation, the Welfare system has nothing to do with what is owed, why, or how much. At some point (as in this case) a judgment total might be given to a D.A. to institute a wage garnishment against

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[42] In family court, such false predictions of calamitous results if an order is issued are termed the "Boogah Woogah" argument, also sometimes called the "Ghostbuster's Claim" ("Fire and brimstone coming down from the skies! Rivers and seas boiling! Forty years of darkness! Earthquakes, volcanoes ... The dead rising from the grave! Human sacrifice, dogs and cats living together... mass hysteria!"). *See Ghostbusters* (Columbia, 1984) (motion picture).

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a deadbeat, but the universal practice of the D.A.'s offices for the past 30 years has been to conform their records to the judgment of the district courts as to what the total to be collected might be. The brief suggests no reason for any change in that policy now.

In fact, the brief makes this point itself – at page 11, it notes that Welfare has not been joined in this case, and has no stake whatsoever in its outcome. Welfare's calculation methodology is entirely indefensible, but as the amicus brief notes, this appeal does not address any calculation Welfare has done or any case in its system, so its actions and internal regulations are not before the Court as part of this appeal.

2. Statement of Facts

It is an aside with no impact on the outcome, but in the interest of keeping the factual history straight, Welfare was not first offered use of the MLAW source code in 2005, but back in 1991 – that is why it was in use by the Washoe County D.A. starting in 1992. Clark County just reported that it was "too busy" to calculate interest or penalties.

And modification of the program to "calculate and track the allocation of . . . six different arrearage categories" would be simple and cheap to do; Welfare just never made any such request.

3. Ambiguity of NRS 125B.095

Welfare's selective quotation of one line of a letter in the record notwithstanding, this Court presumably will make its own decision as to whether the statute is ambiguous, and either hold that "When a statute's language is clear and unambiguous, there is no room for construction and the apparent intent must be given effect,"[43] or find an ambiguity and construe the statute in accordance with legislative intent.

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[43] *Petition of Phillip A.C.*, 122 Nev.1284, 149 P.3d 51 (2006).

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4. The Legislative History and Welfare's Sleight-of-Hand

The *Opening Brief* noted that Welfare insists on using terminology it started using in 2005, but pretending that it constituted some sort of "legislative history" of a statute passed by the Nevada Legislature more than a decade earlier in 1993.[44] Without addressing the case law stating how and why doing so is improper, Welfare continues the practice (at 5-7) in its submission to this Court.

The expression "one-time penalty" is a latter-day objective Welfare seeks to engraft on the legislation, not anything the legislative history says is appropriate, and repeating the phrase again and again does not make it any more relevant. Likewise, the legislative record does not include any concern for paying a child support installment "within the month it is due" (another phrase repeated multiple times in the amicus brief). That term merely reflects the month-end batch-cycle limitation of the legacy NOMADS system.

The brief's comments (at 5-6) regarding counsel's correspondence with either former legislators seeking research, or complaining about mis-use of public office to advance a personal agenda, are outside of the record and therefore not appropriately discussed any further.

More troubling is Welfare's pretense that at the time of the April 11, 2005, hearings before the Assembly Judiciary Committee, there was any kind of "status quo" by Welfare being examined. There wasn't. What was before the Committee was Welfare's plan to alter the statute to match NOMADS.

If, as Welfare now asserts (at 10), it began doing calculations as it indicates a couple of months earlier, that fact had nothing to do with the hearings. The hearings neither sought nor obtained "allowance" to perform the calculations pursuant to Welfare's bill. And it is just not possible to assert with intellectual honesty that refusing to enact language that would

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[44] AOB at 9, 17-19.

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have permitted such a calculation somehow "really" constituted an endorsement of the very provision that was rejected.

5. Actual Calculation Differences

Welfare's continuing mis-statement of the math is addressed above, but the amicus brief (at 7) correctly agrees that there are differences between the Bar's methodology (used since 1991) and that used by Welfare starting in 2005. Further, there is agreement (at 8) that for long-term deadbeats such as Scot who do not pay anything, penalties are higher after two years of non-payment then they would be if Welfare was doing the calculations.

However, Welfare's repeated reference to "year end calculation" is a non-sequitur. The Bar does no such thing. Rather, whenever an installment comes due, the ***statute*** creates a one-year period, from whenever that particular installment was due, before 10% of that installment is again assessed as a penalty. Nothing happens at "year end." Each installment that "remains outstanding" simply has a 10% penalty assessed at the end of every year in which that installment still was not made – as the statute says on its face should be done.

The middle paragraph on page 8 appears entirely irrelevant to the subject of this non-welfare case between private litigants. There are no issues of spousal support, "medical cash," insurance premiums, or anything else. The only question presented is how to calculate a statutory penalty on a known child support arrearage. Neither the private Bar nor the family courts has any difficulty at all differentiating between child support and other sums due for the purpose of calculating interest (as to all) and penalties (as to child support only). The MLAW program, for example, does so automatically.

The key difference in methodology is illuminated at the bottom of page 8 – if someone is making current payments, but has massive arrears, Welfare's impose-and-forget methodology supplies ***no*** incentive at all to ever actually pay those arrears, directly contrary

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to the stated purpose of the Attorney General who proposed the penalty provision in the first place in 1993.[45]

6. As to Whether the Lower Court Was Misled

The discussion in the amicus brief (at 9) as to bi-weekly pay withholdings is utterly irrelevant to the issue before this Court, but it does provide a useful window into the problem with Welfare's enforcement of child support generally. The brief asserts (at 9) that "the monthly payment emphasis rather than a date specific emphasis comes from the federal requirement, not a system requirement."

The Welfare collections methods were built to safeguard federal funding, which has the minimum requirement of what must be done within a month. But the federal law does ***not*** say – or anywhere even imply – that any agency anywhere should ignore the actual due date of an obligation when calculating interest or penalties. Welfare's pretense that inaccuracy and sloppy accounting is required by federal mandate is a farce.

Rather, it a matter of *State* law – including the multiple holdings of this Court cited in the *Opening Brief*[46] – that require those assessing and collecting arrears (and interest and penalties on those arrears) to calculate what is owed from the actual ***date*** it is owed, and to credit payments from the actual ***date*** those payments are made. To say "well, anywhere within the month it comes due or is paid all counts the same" has nothing whatsoever to do with any federal mandate – it is just the level of sloppiness at which administrative convenience does not result in forfeiture of federal funds. But Welfare does not even ***pretend*** that it complies with this Court's directions for the past 30 years.

The application of penalties has nothing to do with income withholding periods, and it does not penalize an obligor who gets paid bi-weekly. Inside or outside of the Welfare

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[45] *See* quoted remarks of Frankie Sue Del Papa, AOB at 8.

[46] *See* AOB at 6, n.32 & 7 n.34.

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system, both obligors and obligees are entitled to have their obligations asserted, and their payments credited, when ***actually made***. The asserted desire of Welfare to make the entire court system match their sloppy accounting is nothing less than the assertion that this Court should reverse all of its holdings as to what constitutes "due" and what constitutes "paid."

And Welfare makes no excuse at all for its failure to calculate interest on child support arrearages accruing between 1987 and 2004, or penalties between 1995 and 2005 – in defiance of statutes specifically requiring it to do both.

7. Amicus' Conclusions

Welfare's assertion (at 11) that it doesn't see how actually imposing penalties on unpaid child support that continue to "remain unpaid" would create an incentive to pay that support is such a nonsequitur that further comment appears unnecessary.

More subtle is the tap dance on page 12, where Welfare concedes that the district court got backward which calculation (Welfare's or the Bar's) actually does what, but suggests that since Welfare likes the erroneous result, this Court should adopt it.

III. CONCLUSION

Scot's *Answering Brief* attempts once again to re-litigate facts that have been finally determined, knowingly provides false assertions of fact, and then builds on those by mis-citations to authority, irrelevancies, circular reasoning, and mis-direction, all constituting part of his decade-long abuse of the judicial process, his ex-wife, and this law firm, as this Court's records of a host of his dismissed appeals and writ applications should adequately document.

As to the specific matter put before the Court in Scot's *Answering Brief*, this Court decided in 2002 to let the *Decree* stand, UIFSA clearly established jurisdiction based on Scot's filings to set child support, and the district court is enforcing the support obligation. Little more should need to be said.

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This Court's disposition of this case should include notation of the multiple attempts made by Scot to further perpetrate fraud on the court, note the six-figure child support arrearage, and direct the district attorney to commence prosecution for criminal non-support under NRS 201.020.

As to the *Amicus Brief*, Welfare's view of how the statute should be construed has already been expressly rejected by the Nevada Legislature within the past four years, would be counterproductive and illogical if applied, and would be poor public policy if implemented. It simply makes no sense to read the words "per annum" and "remains unpaid" out of a statute intended to assess penalties at 10% per annum on the sum of arrears that remain unpaid.

Calculation of both interest and penalties in accordance with the length of time installments of support remain outstanding is logically and legally correct, and serves the purpose for which the statutory provisions were implemented. The district court order holding otherwise, based on multiple errors of fact and law, should be reversed and this matter remanded for imposition of penalties in accordance with the intent of the statute, as calculated by the private Bar methodology since the penalties provision went into force in 1995.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e) which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of November, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WILLICK LAW GROUP, and on the 24th day of November, 2009, I deposited in the United States Mails, postage prepaid, at Las Vegas, Nevada, a true and correct copy of the *Appellant's Reply Brief*, and *Appellant's Supplemental Appendix* addressed to:

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Motion to File Appellant's Reply Brief in Excess of 15 Pages, and *Appellant's Reply Brief* electronically filed November 23, 2009, at 5:40 P.M. and 6:24 P.M. respectively, due to administrative error, Appendix was included in Reply, and Motion was unnecessary. Appellant's Reply Brief refilled electronically with Appendix on November 24, 2009. There is regular communication between the place of mailing and the places so addressed.

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