No. 55446

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

I. RELEVANT HISTORY REGARDING THE PENDING WRIT PETITION

After the hearing held on October 26, 2010, during which Defendant's counsel falsely represented to the court that a 2003 judgment for attorney's fees against Petitioner had been renewed in accordance with the law, the family court ordered Mr. Vaile to interplead funds to the Court in payment of those attorney's fees on threat of criminal contempt.

During a hearing on February 3, 2010, the lower court signed an order vacating the writ of garnishment against Mr. Vaile's employer, Deloitte & Touche LLP, which had been issued based on the lapsed 2003 judgment. Nevertheless, the family court still issued an order requiring Mr. Vaile to interplead funds in support of the expired 2003 judgment for attorney's fees stating simply that the order issued in the October 26, 2010 hearing still "stands."

On February 17, 2010, Petitioner requested this Court to intercede to prevent him from being jailed or allowing the family court to force him into bankruptcy by requiring payment of funds that he did not have. Petitioner also requested this Court to stay the action in the family court.

On February 19, 2010, this Court issued an order directing Defendant to answer the petition, "limited to the issue of whether the 2003 attorney fee judgment was properly renewed as required by statute and this [C]ourt's precedent." This Court also granted a

temporary stay of "that portion of the district court's ruling that requires petitioner to deposit funds with the district court, pending further order from this court."

Despite this Court's stay, on February 25, 2010, the family court entered a written order requiring Mr. Vaile to deposit funds with the district court on threat of contempt.

On March 8, 2010, the lower court heard Defendant's claims that a federal court order subsumed and extended the 2003 judgment for attorney's fees against Petitioner. Defendant's counsel presented no evidence or binding legal authority in support of their request. Following the hearing, the lower court ordered an involuntary wage assignment against Mr. Vaile for 25% of his salary to be paid directly to the Willick Law Group for attorneys fees. See Exhibit A, 4. This Court's stay is still in place.

II. ARGUMENT

In *Answer* to the petition for a writ, Defendant below failed to answer "the issue of whether the 2003 attorney fee judgment was properly renewed as required by statute and this [C]ourt's precedent" as directed by this Court. Defendant claims that she need not answer the question posed by this Court because "it is moot" and because Defendant has a new theory which she believes, will retroactively legitimize the lower court's order directing Petitioner to make payments against a void order. Defendant's theory is that there is a different order against which Petitioner should pay that justifies the lower court orders issued in direct contravention of this Court's mandate.

A. Post Hoc Rationalization Cannot Justify the Previous Orders for Payments Against an Invalid Judgment

Even in light of Defendant's version of the facts, there is no justification for the lower court's orders requiring Petitioner to pay against the 2003 judgment following the October 26, 2009 and February 3, 2010 hearings. The payment of several thousands of dollars was due into the lower court on March 8, 2010. Had this Court not intervened in the matter and issued the stay, the lower court would have held Mr. Vaile in contempt of court for not paying into the district court against the 2003 judgment which both the lower court and Defendant's counsel knew was invalid.

Defendant argues that the matter is moot now and was moot on February 17, 2010, when Mr. Vaile filed his petition for writ of mandamus. Firstly, Petitioner observes that an unlawful order cannot be *in place* at the same time that the matter is *moot.* The suggestion is nonsensical. In fact, the matter is still not moot since the lower court's order is merely stayed by virtue of this Court's order, and because the lower court made another order which violates this Court's stay. Secondly, in order for this matter to have been moot on February 17, it would have been necessary that the lower court's improper decision to register and enforce the federal court order, which it made on March 8, 2010, was a foregone conclusion as of February 17th. While Mr. Vaile is unfamiliar with the understanding that Defendant's counsel has with the lower court, Mr. Vaile understood on February 17th that the matter would still have to be litigated. Clearly, this matter was not moot on February 17, 2010 because the Court had not made its decision at the time, nor is the matter moot now.

The fact remains that the lower court relied[1] on counsel for Defendant's blatant misrepresentations to the lower court on October 26, 2009 that the 2003 order had been renewed. Counsel claims that his misrepresentations were simply his own "error" and that he simply could not remember the sequence of events.[2] By February 3, 2010, the lower court had been made aware that the renewal did not actually take place, but still required Petitioner to pay against the expired judgment. Even if the lower court had already determined as of February 3, 2010[3] to accept counsel for Defendant's new justification at a future hearing, that decision could not have served as a legal basis for the order against Mr. Vaile on February 3rd.

When the lower court ordered Mr. Vaile to pay the funds into the court, there was simply no legal basis for the court to do so, and this Court's remedy was necessary.

B. No Evidence Suggests that 2003 Judgment was Same as 2006 Judgment for Attorney's Fees

Even if Defendant's newly conceived theory of liability against Mr. Vaile had preceded the lower court's order, that theory is not viable under the law. The first and most obvious flaw in Defendant's theory is that $116,000 does not equal $272,000. At the hearing on March 8, 2010, where Defendant's request to register the federal court's

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1. This reliance was over the objection of Mr. Vaile that no evidence of the renewal had been presented to the court.

2. See *Real Party in Interest's Opposition to Petitioner's Motion to Stay Interpleading of Funds to the District Court*, 6. This situation is precisely the reason that a party who is not subject to cross-examination should not be able to provide testimony in a case.

3. The registration request had not been served on Petitioner as of the date of the February 3, 2010 hearing, as it was apparently filed on February 1, 2010.

default judgment was finally heard, Defendant's counsel presented not a single shred of evidence that the attorney fee award mentioned in the federal court judgment had any connection whatsoever to the 2003 judgment for attorneys fees awarded by the Nevada lower court. And Defendant does not refer to or even allege any evidence of this fact in answer to this writ petition either.

Furthermore, it would have been impossible for the $116,000 attorney fee judgment issued by the family court in 2003, to have been relitigated and reissued in the amount of $272,000[4] as a part of the 2006 judgment without offending the principles of *res judicata.* Defendant's theory relies on the assertion that the same issue was litigated twice, just in different amounts. This would have been unlawful for the federal court to do.

Although the lower court has at all times relied on the self-proclaimed expertise and unsworn testimony of Defendant's counsel throughout these proceedings, this reliance is misplaced, especially given counsel's propensity to remember relevant facts only when the matter is elevated to this Court. Regardless, assertion of facts by counsel cannot be treated as evidence, and cannot provide the basis for a litigant to fulfill her burden of proof. Without proof that the $116,000 was the same as the $272,000 referred to in the federal court judgment, and that a judgment of this type did not violate claim preclusion, Defendant's theory of post hoc rationalization for the lower court's order against Mr. Vaile for payment of attorney's fees is also without legal basis.

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4. Defendant's counsel fails to admit that the federal court ultimately denied attorney's fees in that case. See Exhibit B.

C. A Federal Court Order May Not Be Registered in a Family Court

Even if the federal court order[5] was valid, that order may be enforced only as dictated by federal statutes. Fed. R. Civ. P. 69(a)(1) states:

> **A money judgment is enforced by a writ of execution,** unless the court directs otherwise. The procedure on execution — and in proceedings supplementary to and in aid of judgment or execution — must accord with the procedure of the state where the court is located, but **a federal statute governs** to the extent it applies.

This rule not only mandates that enforcement of the federal order may only be effected through execution (not by forced installment payments on threat of contempt), but it also states that federal statute governs the matter. The relevant federal statute on registration of a federal court order is 28 USC §1963. This statute clearly mandates that a federal judgment may only be registered ***outside*** the district where the judgment was entered. It states:

> A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in **any other district** or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown may be enforced only by execution by federal rule.

The default judgment in question was entered in Las Vegas, Nevada, and can be registered only in a district outside this district. Defendant was advised of the relevant rule when the federal court previously denied Defendant's request to enforce the federal judgment on Mr. Vaile, an out of state litigant. See Exhibit C.

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5. It is important to note that the federal court order was a default judgment, written and submitted to the federal court by Defendant's counsel. Mr. Vaile was not provided a copy before it was submitted, and it recites a series of false facts to justify the relief granted therein.

Even if the federal order could, under the federal statutes, be registered in the state court within the same district, it could not be registered in a family court. Under NRS 3.223(a), a ***domestic*** judgment may be registered in a family court, but ***not*** a judgment outside the domestic domain. The Nevada statute addressing domestic judgment registration (NRS 130) is specifically enumerated in NRS 3.223(a), but registration of judgments outside this domain (NRS 17) are not included. According to this Court's decision in Landreth v. Malik, 125 Nev. Adv. Op. 61 (2009), NRS 3.223 prescribes the jurisdiction of the family court. Unless and until the family courts are empowered to address all issues that may arise in the registration of all forms of judgments on any cause of action (torts, securities, bankruptcies, etc), then the policy behind limiting the family court jurisdiction is justified.

Although Defendant may prefer to register the federal tort judgment in a family court which is predisposed to order relief against Petitioner regardless of prohibitions by this Court, the family court's jurisdiction is limited. This district court may not register a judgment that falls outside those prescribed by statute, and is prohibited by the relevant federal statutes and rules from doing so as well.

D. JUDGMENT RENEWAL IS NOT ACCOMPLISHED BY MENTION IN ANOTHER COURT'S ORDER

This Court has determined that the legislature's dictates of how judgment renewal shall take place in Nevada (NRS 17.214) requires strict compliance. Leven v. Frey, 123 Nev. 399, 402, 168 P.3d 712, 714 (2007). Because Defendant could not demonstrate compliance with this statute, Defendant has propounded another theory – that mention

of a different amount in a different judgment with no evidence of any connection between the two, automatically renews the first judgment. This theory has no support in the renewal statute, or in this Court's decisions. As such, it must be rejected by this Court.

III. CONCLUSION

Defendant's answer continues to ask that this Court not apply the law to this case based on the assertion that Petitioner is bad and Defendant's attorneys are good. While application of this false theory may have worked in influencing children on the playground, it has no place in the exercise of jurisprudence under the law. Petitioner requests that the Court apply Nevada law and require the lower courts to do the same.

The matters in this case continue to flow up to this Court because of the outright refusal of the lower court to apply the law or to follow this Court's mandates. This case began again when the family court refused to follow this Court's 2002 decision holding that the Nevada courts had neither personal jurisdiction of the parties, nor subject matter jurisdiction in the case. The matter became more serious when the lower court refused to follow this Court's precedent prohibiting the institution of retroactive child support arrearages. Despite this Court's stay of requiring unjustified payment from Mr. Vaile, the lower court issued orders on February 25, March 25, and April 5, 2010 that directly contradict this Court's mandate. Since this Court is the only avenue for relief of the abuse of judicial power, Petitioner respectfully requests that this Court take appropriate action.

Further evidence of the abuse of judicial power is evident in the April 5, 2010 order attached as Exhibit A. Paragraphs 1-5 of that decision demonstrate that the lower court interprets a stay in California litigation as transfer of the case to the Nevada family court for decision on the merits, without the California litigants even being parties to the matter. The lower court then granted attorneys fees to all defendants in the California litigation, including $100,000 to Defendant's counsel. Paragraph 6 of the April 5, 2010 order demonstrates that the lower court determined to decide the jurisdictional merits of a case before another California court, this time the California family court. Despite instructing the parties that they would have to go to California or Norway to further modify the retroactive modifications to child support finalized in the October 9, 2008 order, the lower court (or rather counsel for Defendant) is apparently displeased that Mr. Vaile has done just that, and seeks now to decide for the California court that it does not have jurisdiction of the matter.

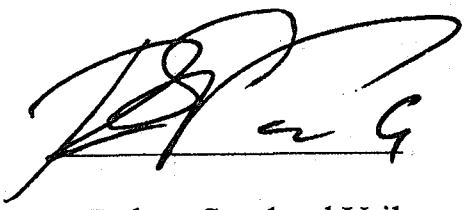
Paragraph 8 of the April 5, 2010 decision is based on a request for declaratory judgment to help *Defendant's counsel* with litigation in Virginia by judicially changing the facts of this case to state that March 20, 2008 order was "final, valid and enforceable." This ruling directly conflicts with this Court's October 13, 2008 order stating that the March 20, 2008 order was a temporary order that could not be appealed. See Exhibit D.

These decisions by the lower court in defiance of this Court's order and its precedent must necessarily flow up to this Court for review. Defendant labels Mr. Vaile

vexatious for not keeping quiet about the abuses of the lower court, made in satisfaction of Defendant's counsel's outrageous demands. Petitioner respectfully requests this Court to take action to more fully mandate that the lower court obey this Court's orders and Nevada law.

Extraordinary relief is still required given the lower court's order requiring Petitioner to make unjustified payments directly to defendant's counsel despite this Court's stay of the same. These payments are now past due and the order threatens to apply NRS 31.480 (arrest statute) if Petitioner is unable to pay. If this Court does not act, then the lower court will have been enabled to force Petitioner into bankruptcy or worse to satisfy Defendant's counsel.

Respectfully submitted this 26th day of April, 2010.



Robert Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Petitioner in Proper Person

CERTIFICATE OF SERVICE

I certify that I am the Petitioner in this action, and that on the 26th day of April, 2010, I served a true and correct copy of the foregoing *Request to File Reply and Exhibits in Support of Writ and Reply Memorandum in Support of Writ of Mandamus*, and *Reply Memorandum in Support of Writ of Mandamus or Prohibition* by placing the document in:

✓ U.S. Mail, first class postage prepaid; or

___ National courier (Fedex or UPS) with expedited delivery prepaid,

and addressed as follows:

Marshal S. Willick
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Attorneys for Real Party in Interest

Honorable Cheryl B. Moss
Eighth Judicial District Court
Family Division
601 North Pecos Road
Las Vegas, NV 89101-2408
Respondent

Robert Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Petitioner in Proper Person

REPLY MEMORANDUM
IN SUPPORT
OF WRIT OF MANDAMUS OR PROHIBITION

EXHIBIT A

ORDER FOR HEARING HELD MARCH 8, 2010
DATED APRIL 5, 2010

Electronically Filed
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CLERK OF THE COURT

NEO
WILLICK LAW GROUP
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Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. PORSBOLL, FNA CISILIE A. VAILE,

Defendant.

CASE NO: 98-D230385
DEPT. NO: I

DATE OF HEARING: n/a
TIME OF HEARING: n/a

NOTICE OF ENTRY OF ORDER

TO: ROBERT SCOTLUND VAILE, Plaintiff, In Proper Person.

PLEASE TAKE NOTICE that an *Order for Hearing Held March 8, 2010*, was duly entered by the Court on the 5th day of April, 2010, and the attached is a true and correct copy.

DATED this 9th day of April, 2010.

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
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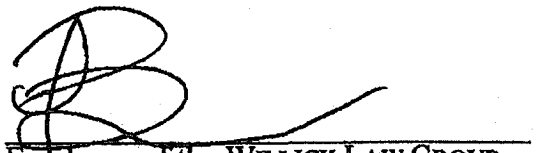
(702) 438-4100
Attorneys for Defendant

CERTIFICATE OF MAILING

I hereby certify that service of the foregoing *Notice of Entry of Order* was made on the 9th day of April, 2010, pursuant to NRCP 5(b), by depositing a copy of same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Mr. Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452

Mr. Robert Scotlund Vaile
1435 Adobe Canyon Road
Kenwood, California 95452
Plaintiff in PROPER PERSON



Employee of the WILLICK LAW GROUP

P:\wp13\VAILE\FF12360.WPD

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. PORSBOL f/k/a CISILIE A. VAILE,

Defendant.

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

DATE OF HEARING: 03/08/2010
TIME OF HEARING: 1:30 P.M.

ORDER FOR HEARING HELD MARCH 8, 2010

This matter having come before the Hon. Cheryl B. Moss, on Defendant's *Motion for Declaratory Relief*, Plaintiff's *Motion to Vacate Judgment or in the Alternative, For New Hearing On the Matter*, and Status Check Re: California Case. Present at the hearing was Raleigh C. Thompson, Esq. of the law firm of MORRIS PETERSON representing DELOITTE & TOUCHE, LLP, Robert Scotlund Vaile, in *Pro Per*, and Richard L. Crane, Esq., and Marshal S. Willick, Esq., of the WILLICK LAW GROUP, representing Cisilie Porsboll. Based upon the pleadings on file and oral argument, the Court makes the following findings, conclusions, and orders:

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FINDINGS:

1. The entirety of the California case was deferred to Nevada, as all of the evidence, witnesses, and pleadings, are in Nevada as stated in the language of the California Order. (Time Index: 16:34:34)

2. The Court takes notice that Scotlund has filed an *Appeal* in his California actions on March 5, 2010, and that defense counsel has just been made aware of the filing; however, this Court finds that the filing of a Notice of Appeal in California has no effect on the case currently before this Court, which may proceed to make findings related to the case. (Time Index: 16:34:04)

3. As to Scotlund's California claims for the *Abuse of Process* and *Conversion*. These claims are before this Court. Though this Court does not have the authority to order the California court to do anything, the matter is stayed in California on the basis of a finding of *Forum Non Conveniens*, in favor of this Court. In accordance with the *Order* from California, and this Court's close familiarity with the lengthy history, facts, evidence, procedures, and parties, and after hearing argument on the merits of the matter, this Court finds there is no valid cause of action for *Abuse of Process* or *Conversion* against Richard L. Crane, Esq., Marshal S. Willick, Esq., Cisilie Porsboll, the WILLICK LAW GROUP, or DELOITTE & TOUCHE related to the attempted collection of judgments against Mr. Vaile. (Time Index: 16:35:14 and 17:19:04)

4. The reason this Court stayed it decisions in this matter earlier was to find out what the California court was going to do regarding the issue of the garnishment. The California court deferred the case back to Nevada on the basis of a finding of *Forum Non Conveniens* in favor of this Court. This has allowed this Court to proceed on the merits and to make the above findings. (Time Index: 16:35:28)

5. As to the garnishment previously attempted by the WILLICK LAW GROUP to collect on the various judgments against Mr. Vaile, the Court finds that this approach is not viable. The Court is not barred from setting installment payments, for what the Court sees as equitable reasons. This Court has issued installment orders in the past and considering the cost of

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garnishment an other equitable issues, the Court has sufficient reasons to require installment payments by Mr. Vaile on the various judgments against him. (Time Index: 16:35:50)

6. As to the action filed by Mr. Vaile in Sonoma, California, pursuant to NRS 125A.225, a Court of this state shall treat a foreign country as if it were a State of the United States, and under UIFSA, Norway is considered a State. California is subject to UIFSA as well, codified under the statutory code there, and thus does not have jurisdiction to modify the current support order. (Time Index: 16:41.20)

7. The issue regarding providing of a certified copy of the *Affidavit of Renewal* to Scotlund is moot, and was not required. (Time Index: 16:43:25)

8. The Court restates that its *Order* of March 20, 2008, was a final, valid, and enforceable order of the Court. The order remained enforceable until an order setting it aside, or an order modifying the support order was issued by this Court. In this case, the March 20, 2008, *Order* was not modified until issuance of the *Order* of October 9, 2008, and thus was final, valid, and enforceable throughout that time.[1] (Time Index: 16:44:32) Any motions filed in this Court between March 20, 2008, and October 9, 2008, or proceedings elsewhere, did not affect the validity, finality, or enforceability of the March 20, 2008, *Order*. Lastly, the Supreme Court of the State of Nevada, by implication, has also found that the *Order* of March 20, 2008, was a final, valid and enforceable *Order*. (Time Index: 16:44:32 and 16:52:46)

9. Deloitte & Touche, LLP, pursuant to NRS 31A.100, as an employer which complies with a notice to withhold income that is regular on its face, may not be held liable in any civil action for any conduct taken in compliance with the notice. Further, compliance by an employer with a notice to withhold income is a discharge of the employer's liability to the obligor as to that portion of the income affected. (Time Index: 16:49:50)

[1] Under oath, Mr Vaile stated that "I never claimed that the March 20, 2008, *Order* was not valid or enforceable in Nevada as soon as it was entered." (Time Index 14:40:00)

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10. Pursuant to NRS 31.480, the Court does not have the authority to have a party arrested for monies owed. However, the Court will allow the Defendant to revisit NRS 31.480 at a later date if money is not actually paid in accordance with this *Order*. (Time Index: 16:38:42)

11. The United State District Court's *Order* of March 13, 2006, subsumed the June 24, 2003, *Order* of this Court. NRS 3.223 is not violated, and *Landreth* does not apply, in seeking enforcement of the March 13, 2006, Federal Court *Order* properly filed in this Court. The Court finds that the federal action arose directly out of the domestic relations action and the Hague action for the return of the kidnaped children. *Landreth* does not disallow this Court from making rulings on issues that stem directly from the action before this Court. (Time Index: 16:40:20)

12. Pursuant to NRS 31.295, which is the garnishment statute, which this Court applies by analogy as a guideline for a court ordered involuntary wage assignment, the installment amount shall be limited to 25% of Mr. Vaile's total gross wages, after subtracting the sum being collected for child support, as it would be used for the purposes of garnishment.[2] (Time Index: 16:37:30)

13. The Court notes that under NRCP 19, 20, and 21, the Court has broad discretion to allow or deny joinder of parties, and finds that Marshal S. Willick, Esq., WILLICK LAW GROUP, and Deloitte & Touche, LLP, need not be made parties or joined in this action to make the findings and rulings herein. (Time Index: 16:49:30)

ORDERS:

1. An *Involuntary Wage Assignment* shall be implemented against Scotlund pursuant to NRS 31.295. The installment payment shall not exceed 25% of Scotlund's gross income each month, collecting against combined current child support, child support arrearages, attorney's fees, and federal tort judgments. Scotlund's employer shall deduct $541.92 per pay period

[2] The total amount that Mr. Vaile is to pay each month will always be 25% of his gross income, against the sums he owes for current child support, child support arrearages, attorney's fees, and for the remainder of the federal tort judgments awarded against him, plus interest and penalties, until all those judgments have been paid.

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from Scotlund's wages, for a total of $1,174.16 per month to be sent directly to the WILLICK LAW GROUP, beginning with the first pay period on or after April 15, 2010, and continuing within five days of each pay period thereafter. (Time Index: 16:38:00)

2. If the wage assignment has not begun by April 15, 2010, for whatever reason, Scotlund shall be responsible for making the payments directly to the WILLICK LAW GROUP until the wage assignment begins or indefinitely if no wage assignment begins. If Scotlund fails to ensure the payments are in the hands of the WILLICK LAW GROUP at least 5 days after any pay period, he shall become subject to the penalties, sanctions, and remedies provided by NRS 22.010 and NRS 31.480. (Time Index: 16:38:42 and 17:03:50)

3. Scotlund's *Motion to Vacate Judgment* is STAYED, due to his *Appeal* of the October 26, 2009 *Order*. (Time Index: 16:39:52)

4. The March 20, 2008, *Order* was a *Final, Valid, and Enforceable Order* until the Court issued its *Order* of October 9, 2008.[3] (Time Index: 16:44:32)

5. The March 13, 2006, Federal District Court *Judgment* subsumed and incorporated this Court's June 2003, attorney's fee *Order*; NRS 3.223 was not violated and the Supreme Court's decision in *Landreth* does not apply to the filing and seeking enforcement of the Federal Court *Order*. (Time Index: 16:40:10)

6. Pursuant to NRS 17.340, the filing of any order of a court of the United States is proper and enforceable and does not violate *Landreth*. The Federal Court Judgment was properly filed in the Family Division of the District Court. (Time Index: 16:40:10 & 17:00:38)

7. Pursuant to *Brunzell*, NRS 18.010, and 18.005(16), Cisilie is AWARDED Attorney's Fees. Cisilie shall file a *Memorandum of Costs*. This issue is under advisement and the Court will issue a minute order as to the attorney's fees or any clarification of findings. (Time Index: 17:30:10)

8. An award of attorney's fees to DELOITTE & TOUCHE, LLP, is reserved. (Time Index: 17:28:04)

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[3] The United States Constitution's requirement that all orders from sister states shall receive full faith and credit applies.

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9. The WILLICK LAW GROUP shall prepare the *Order* from today's hearing within ten days, Scotlund shall have five days to sign as to form and content.

APR 05 2010

DATED this ___ day of [redacted], 2010.

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 the Defendant

P:\wp13\VAILE\LF1003.WPD

Approved as to form and content:

SIGNATURE REFUSED

ROBERT SCOTLUND VAILE
P.O. BOX
Kenwood, California 95452
Plaintiff *In Proper Person*

REPLY MEMORANDUM
IN SUPPORT
OF WRIT OF MANDAMUS OR PROHIBITION

EXHIBIT B

CLERK'S MEMORANDUM REGARDING TAXATION OF COSTS
DENIAL OF ATTORNEY'S FEES AND COSTS
DATED SEPTEMBER 17, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CISILIE VAILE PORSBOLL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	2:02-cv-0706-RLH-RJJ
	)	
ROBERT SCOTLUND VAILE, et al.,	)	
	)	
Defendants,	)	
	)	

CLERK'S MEMORANDUM REGARDING TAXATION OF COSTS

August 15, 2008 Plaintiff filed a Bill of Costs (#336) in the court's CM/ECF system, but attached a document entitled "Submission of Documentation and Verification of Attorney's Fees Awarded July 23, 2008." Clerk's office staff electronically notified counsel of the need for a docket correction and to download and complete form AO 133 Bill of Costs, then refile. Local Rule 54-1(a) requires the bill of costs be filed ". . . on the form provided by the clerk . . ."

A Bill of Costs (#337) was filed by plaintiffs on the correct form August 25, 2008. Defendant ROBERT SCOTLUND VAILE filed his Objection to Bill of Costs (#337) and Opposition to Request for Attorneys Fees (#338) on September 8, 2008.

Defendant ROBERT SCOTLUND VAILE's Objection and Opposition (#338) details numerous arguments, briefly restated as follows: filing of the Bill of Costs is untimely (LR 54-1); a motion for attorney fees should have been filed (LR 54-16(a); many costs are not taxable and others are indistinguishable as they are not itemized as required (LR 54-1(b)); fees for transcripts (LR 54-3); other costs are not itemized as required (LR 54-1 (b)); and attorney travel costs and travel time (LR 54-4).

The clerk finds the Bill of Costs (#337) was not timely filed and therefore cannot tax costs.

Even if the Bill of Costs had been timely filed, costs would not be awarded as there is no provision under which the clerk can allow attorney's fees to be taxed as part of the Bill of Costs (see Local Rule 54-16). Additionally, the clerk is unable to make a determination from the 101 pages of exhibits attached to the Bill of Costs which items pertain to those being requested to be taxed and which pertain to the request for attorney fees. (See Local Rule 54-1(b)

LANCE S. WILSON, Clerk
United States District Court

Dated: September 17, 2008

Deputy Clerk

REPLY MEMORANDUM
IN SUPPORT
OF WRIT OF MANDAMUS OR PROHIBITION

EXHIBIT C

US DISTRICT COURT ORDER
DENYING JUDGMENT DEBTOR EXAM
DATED MAY 20, 2008

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

CISILIE VAILE PORSBOLL, *et al.*,

Plaintiffs,

vs.

ROBERT SCOTLUND VAILE, *et al.*,

Defendant,

2:02-cv-706-RLH-RJJ

ORDER

This matter is before the Court on an Ex Parte Motion for Order Allowing Examination of Judgment Debtor (#327).

The Court having reviewed the Ex Parte Motion (#327) finds that the Debtor resides in California. Good cause appearing therefore,

IT IS HEREBY ORDERED that the Ex Parte Motion for Order Allowing Examination of Judgment Debtor (#327) is **DENIED** as the Debtor is outside of the jurisdiction of the court. *See*, N.R.S. 21.270 and Fed. R. Civ. P. 69.

DATED this 20th day of May, 2008.

ROBERT J. JOHNSTON
United States Magistrate Judge

REPLY MEMORANDUM
IN SUPPORT
OF WRIT OF MANDAMUS OR PROHIBITION

EXHIBIT D

NEVADA SUPREME COURT
ORDER DISMISSING APPEAL
DATED OCTOBER 13, 2008

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Appellant,
vs.
CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,
Respondent.

No. 52457

FILED

OCT 13 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from district court orders denying several motions regarding child support. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Our review of the documents transmitted to this court pursuant to NRAP 3(e) reveals a jurisdictional defect. Specifically, the orders appealed from are not substantively appealable.

In this case, the district court's March 20, 2008, order amending the January 15, 2008, order and the August 15, 2008, order concerning the order for hearing held June 11, 2008, both indicate that additional documentation must be supplied and that the district court contemplates further review and determination of the child support amounts. Orders that are subject to review and modification by the

08-26267

district court are temporary orders that may not be appealed.[1] Accordingly, as we lack jurisdiction to consider this appeal, we

ORDER this appeal DISMISSED.[2]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk

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[1]See In re Temporary Custody of Five Minors, 105 Nev. 441, 777 P.2d 901 (1989) (holding that no appeal may be taken from a temporary order subject to periodic mandatory review); Sugarman Co. v. Morse Bros., 50 Nev. 191, 255 P. 1010 (1927) (indicating that no appeal may be taken from a temporary restraining order); see also NRAP 3A(b)(2).

[2]On September 22, 2008, appellant was issued a notice to pay the filing fee required by NRS 2.250. To date, appellant has still not paid the filing fee. Appellant's failure to pay the filing fee constitutes an independent basis for dismissing this appeal.