ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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CISILIE A. VAILE

Appellant,

vs.

R. SCOTLUND VAILE,

Respondent.

S.C. NO. 36969
D.C. NO: D230385

FILED

MAY 01 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

MOTION TO AMEND DECISION OF APRIL 11, 2002, AND PETITION FOR REHEARING

Petitioner, Cisilie A. Vaile, by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLICK, P.C., pursuant to NRAP 27 and NRAP 40, requests that this Court correct certain discrepancies of fact within the decision of April 11, 2002, and, if those factual errors are deemed of sufficient importance, consider altering the holding of the Opinion accordingly, with or without holding a formal rehearing.

Some of the matters related below are substantive, and might or might not cause reconsideration by one or more members of this Court as to one or more of the points decided. Some other points are non-substantive, relating mainly to matters of propriety in the identification of counsel, which are probably unobjectionable, and which this Court has traditionally permitted where appropriate. This Motion is based upon the following Points and Authorities.

POINTS AND AUTHORITIES

I. FACTUAL AND LEGAL ERRORS CONTAINED IN THE DECISION SHOULD BE CORRECTED

A. Chronological Misstatement as to the Parties' "Agreement" Discussed in the Opinion

The Opinion incorrectly relates that "She [Cisilie] ultimately obtained an agreement from Scotlund upon which the British court based an order dated June 8, 1998." *Opinion* at 3, ll. 11-13.

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There was no such agreement underlying the British court order, and counsel does not believe that either side ever asserted that there was such an agreement. The June 8, 1998, restraining order taking Scotlund's passport was based on Cisilie's fear that he would kidnap the children, and the fact that he had hidden the children's passports. The only agreement involved is the written "Agreement" which was drafted by Scot ***after*** the June 8 restraining order was issued by the British court, and was signed in London ***after*** the British Court's order releasing Scot's passport to him.

On July 8, 1998, the British Court released the passports, giving the children's passports to Cisilie; the formal written order issued the following day specifically allowed her to leave that court's jurisdiction with the children. When the British court made its decision, the parties had not yet signed the "Agreement," and there is no evidence that the British court ever saw it.

It was on July 9, 1998, just before Scotlund flew to the United States, that Cisilie was taken by him to the American Embassy for her signature to be witnessed on the "Agreement."

Summarizing, the "Agreement" was devised by Scotlund, the British Orders were not based on the "Agreement" in any way, and Cisilie signed the "Agreement" only after the British Court released Scot's passport to him.

It is not clear to counsel whether the majority's decision to invoke the doctrine of judicial estoppel against Cisilie was based in part on this factual error, but it seems possible. Addressing the two dissents, the Opinion states that Cisilie "took advantage of those aspects of the agreement which allowed her to take custody of the children . . . ." *Opinion* at 15-16. In fact, she had been awarded custody by a British court without reference to the "Agreement" drafted by Scotlund, and when she signed the "Agreement" and relocated to Norway, there was no Nevada court order.

B. Cisilie did not Specifically Affirm Scotlund's Nevada Residency

At several points, the Opinion recites that Cisilie "admitted that Scotlund was a resident of Nevada." *See Opinion* at 14, 15. As her signature on the document, prepared by Scotlund's attorney, was explicitly made the basis for imposition of the doctrine of judicial estoppel against her, we submit that the Court should note that the *Answer in Proper Person* did not actually contain any such

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words, but just a general statement that "Answering Paragraphs I through VI of Plaintiff's COMPLAINT FOR DIVORCE, Defendant admits these allegations."

The relevance of the distinction is that noted in the dissent by Justices Young and Shearing, insofar as Cisilie, who was unrepresented and speaks English as a second language, received only those papers and a note telling her to sign where indicated "so she could be divorced." She was never asked to specifically address where Scotlund lived for six weeks preceding his filing, or even if she knew that fact one way or the other. I submit that the Opinion should recite that the *Answer* contained a general admission of allegations, and itself was silent as to residency of any person.

For this Court to state that Cisilie "admitted that Scotlund was a resident of Nevada," it must conclude that she had both the capacity and the intent to cross-reference the *Answer* to the *Complaint*, understand the terminology, and join with Scotlund in a deliberate falsehood. There is no evidence of any of those things in the record. As a matter of fairness, if this Court is going to apply an equitable doctrine against Cisilie on the ***presumption*** that she understood the factual and legal meaning of the papers she signed, and therefore intended to deceive the Nevada divorce court, despite the circumstances, I respectfully suggest that the presumption should be set out on the face of the Opinion.

C. Cisilie *Did* Respond to Scotlund's Nevada Motion

The Opinion incorrectly states, at page 5, that "Cisilie did not respond to Scot's Nevada Motion" for contempt and for a change of physical custody of the children. As it could have been part of the reasoning underlying the judicial estoppel result, the matter should be clarified.

As the Opinion notes, Cisilie petitioned the Norwegian Court to allow her to remain in Norway in November, 1999, and Scotlund participated in those court proceedings. *Opinion* at 5. After he participated in mandatory mediation sessions in Norway, he had his Nevada attorneys file his Nevada motion for contempt and a change of custody on February 18, 2000, and then had his Norway attorneys file a stalling pleading in Norway pending the March 29 hearing date .

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The Nevada hearing was set for March 29. Under the rules, Scotlund was required to serve Cisilie by March 8.[1] He failed to do so; the verification of service provided by Scotlund shows that Cisilie did not receive his Nevada Motion until March 23.

Despite the lateness of the service, the language barrier, and Cisilie's Norwegian attorney's lack of knowledge about Nevada court practices, Cisilie nevertheless ***did*** respond to the Motion, in papers received by Department G on March 24, 2000.[2]

Unfortunately, the pleading was done in the typical Norwegian court style and was mistakenly rejected on March 24 by Judge Steel's secretary as an "ex-parte communication."[3] After it sat in either the secretary's office or the Clerk's Office for ten days, Cisilie's response was eventually filed in the district court, on April 4, 2000.[4]

Because it was intercepted and held without filing by some court employee until a full week after the motion hearing was held, Judge Steel did not ***know*** that Cisilie had responded to the motion. The Judge inquired whether Cisilie had been served with the Motion during the March 29, 2000, hearing, and Mr. Dempsey assured her that it had been served – he just failed to mention that it had been served less than a week prior to the hearing. The court staff failed to inform the Judge that any response had been received from Norway, and the document was only filed after the Order had issued from the bench at the March 29, hearing.

The bottom line, however, is that Cisilie ***did*** file a response to Scotlund's motion, and the recital in the Opinion to the contrary is therefore incorrect.

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[1] EDCR 2.20(a) requires that a hearing can be set "not less than 21 days from the date the motion is ***served*** and filed." [Emphasis added.] EDCR 2.20(b) states that an opposing party can file an opposition "[w]ithin 10 days ***after service*** of the motion." [Emphasis added.] Scotlund's service was only ***6 days*** prior to the set hearing.

[2] *See* Exhibit DD of the Supplemental Exhibits filed September 25, 2000, in the Appendix to Appellant's Emergency Petition for Writ of Mandamus and Writ of Prohibition, Volume 2, Exhibit 3. For the convenience of the Court, a clean copy is attached as Exhibit 1 to this filing.

[3] *See* Exhibit EE of the Supplemental Exhibits filed September 25, 2000, in the Appendix to Appellant's Emergency Petition for Writ of Mandamus and Writ of Prohibition, Volume 2, Exhibit 3. For the convenience of the Court, a clean copy is attached here as Exhibit 2. This sequence of events was discussed in the *Petition* at 8.

[4] We did not become aware that there was a file-stamped copy in the district court record until after the proceedings below had been concluded. A copy is included here as Exhibit 3.

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The relevance to this factual error goes to the majority's imposition of the doctrine of judicial estoppel against Cisilie, which it explained has the purpose of preventing parties from shifting their position to suit the requirements of another case concerning the same subject matter. The filing was the very first American court document filed on Cisilie's behalf once she had consulted with counsel and thus discovered that Scotlund could not be considered a "resident" of Nevada and that the decree of divorce was probably fraudulent and void. Her disclosure of that discovery to the court below, immediately after she knew it, would appear to be relevant to this Court's decision as to application of the equitable doctrine of judicial estoppel against her. The fact should be corrected in either case, and in light of that and some matters gone over below, the Court may wish to reassess its conclusion as to judicial estoppel.

D. This Court Should Reverse the Findings Regarding Whether Cisilie was Coerced or Under Duress

The Opinion states, at 14, that the district court

> determined as a matter of fact that Cisilie was not coerced or operating under duress. In fact, Cisilie had signed an answer to the complaint which admitted the fact of Scotlund's residence. Based upon these findings, which we will not disturb, the district court determined that Cisilie was estopped from attacking the decree's validity.

Opinion at 14. I respectfully suggest that this decision was in error based on both a factual error, and a legal error as to the standards this Court has previously enunciated.

First, as to the facts, the claims below regarding duress and coercion did not relate to Cisilie's signing of the ***Answer***, but to the facts and circumstances of her signature of the "Agreement" far earlier. *See Motion for Immediate Return of Internationally Abducted Children* filed September 21, 2000, at 40 n.61. The district court's "finding" of a lack of duress in her signature of the *Answer* was a nonsequitur which is explained by the lower court's refusal to entertain Cisilie's testimony on the subject, as discussed below.

As to Cisilie's signature of the *Answer*, our position was that she was tricked into signing it, by being told only that she "had to" sign the papers presented in order to get divorced, coupled with Scotlund's reminder that if she did not do what she was told – sign the papers – Scot would take the children. *Id.* at 9.

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Counsel is aware, of course, of the usual rule regarding substantial evidence and this Court's deference to the district court on questions of fact. *See Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d 645 (1994) (reversing alimony award where the record did not reveal evidence sufficient to support lower court's findings). Since this case was presented to this Court on shortened time by way of extraordinary writ, however, some of the benefits of formal briefing and response, including the supplying of full transcripts, were not present.

As noted in our original *Petition* leading to that Opinion, however,

> The court made rulings about Cisilie's state of mind, finding no coercion or duress (Exhibit 29 at 3), but the court prohibited counsel (several times) from eliciting any evidence on those points, repeatedly claiming that the hearing was restricted to state jurisdiction, and that no such information would be relevant.

Petition filed November 7, 2000, at 17, n.26. Our recital of what happened at the hearing was not contested by Scotlund; if necessary, transcripts could be produced for precise quotations.

This Court has long held that findings of fact will be set aside when they are clearly erroneous, and they are clearly erroneous when they are not supported by substantial evidence. *Pandelis Constr. Co. v. Jones-Viking Assoc.*, 103 Nev. 129, 734 P.2d 1236 (1978).

In a wide variety of contexts, this Court has held that the exclusion of evidence relevant to a decision makes that decision erroneous. *See, e.g., Dugan v. Gotsopoulos* 117 Nev. ___, 22 P.3d 205 (Adv. Opn. No. 28, May 7, 2001) (improper exclusion of evidence regarding damages was reversible abuse of discretion); *Shawn M. v. State*, 105 Nev. 346, 775 P.2d 700 (1989) (refusal to hear closing argument constituted reversible error); *Nevada v. Teeter*, 65 Nev. 584, 200 P.2d 657 (1948) (exclusion of testimony as to subject ruled upon was unjust and constituted reversible error); *State v. Sella*, 41 Nev. 113, 168 P. 278 (1917) (trial court's rejection of proffer of testimony was reversible error); *Gardner v. Gardner*, 23 Nev. 207, 45 P. 139 (1896) (the admission of incompetent evidence is only ***not*** reversible error when it appears that the verdict or finding was not based upon it).

Here, Scotlund stated that Cisilie was not coerced or under duress, but Cisilie was repeatedly prevented from admitting any testimony or other evidence on the issue of how she was coerced at

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any point in time leading up to her signatures on either the "Agreement" or the *Answer*.[5] Where a district court prevents the ***presentation*** of evidence as to an issue, but then rules on it anyway, the court commits reversible error, and that ruling should not stand.

In the context of this Opinion, resolving a petition for an extraordinary writ in a case in which the district court lacked subject matter jurisdiction or personal jurisdiction, this Court should not permit an erroneous ruling to stand that could be found to have a preclusive effect in other proceedings – conducted in a court that ***does*** have jurisdiction to hear the facts of the case and enter appropriate rulings.

Accordingly, this Court should delete from its opinion any indication of approval of the finding that Cisilie was not coerced or under duress when she signed the proper person answer demanded by Scotlund through his attorney.

E. Clarification of Scotlund's Attorney's Names

The Court majority opinion correctly notes that Scotlund's divorce attorney filed a Complaint in 1998 containing false assertions of residency and a "cleverly drafted" residency affidavit which purported to, but did not, corroborate that false claim of residency. *Opinion* at 12. The majority also noted the false assertion by Scotlund and his attorney, when they sought the pick-up order in 2000, that the children had lived in Nevada "all their lives." *Opinion* at 27.

The dissent of Justices Young and Shearing goes further, noting Scotlund's obvious intent to mislead in those documents, and separately discussing the false statement during the proceedings in March, 2000, when Scotlund and his attorney asserted that the children had lived in Nevada "all their lives." *Dissent* at 7-8. Based on those perjurious statements, the *Dissent* refers Scotlund and his attorney to the District Attorney and State Bar, respectively, for investigation of prosecution.

Undersigned counsel concurs entirely with the identification and the condemnation of the reprobate conduct identified. However, in the interest of fairness, it is submitted that the Court

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[5] The dissent of Justices Young and Shearing note the absence of any evidence that Cisilie knowingly participated in Scotlund's fraud, *Dissent* at 5, n.15, but the entire Court apparently overlooked the fact that the district court actively prevented us from presenting any testimony or other evidence on that point. *See Petition* at 17, n.26. Our assertion as to what evidence was permitted or excluded below was unrefuted by opposing counsel.

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should acknowledge that there were three different sets of attorneys for Scotlund involved in these proceedings.

Scotlund's divorce attorney was James Edward Smith, Nevada Bar No. 0052, 8516 W. Lake Mead Blvd., Ste. 134, Las Vegas, NV 89128. ***That*** Mr. Smith is not to be confused with Billy Smith, Jr., Esq., with the office of DEMPSEY, ROBERTS, & SMITH, LTD., who was not involved in this case. The attorney who drafted the false documents in 2000 asserting Nevada residence,[6] accompanied Scotlund to the hearing before Judge Steel, and made the false assertion about the children living in Nevada "all their lives"[7] was Joseph F. Dempsey, Esq., Bar No. 4585, 520 South Fourth Street, Ste. 360, Las Vegas, NV 89101, of DEMPSEY, ROBERTS, & SMITH, LTD. The attorney who appeared before this Court and argued the case for Scotlund, however (and whose name appears on the first page of the *Opinion* as his counsel) was Peter M. Angulo, Esq., Bar No. 3672, RAWLINGS, OLSON, CANNON, GORMLEY & DESRUISSEAUX, 301 E. Clark Avenue, #1000, Las Vegas, NV 89101.

Especially where the conduct of trial counsel has been condemned in an opinion, the practice of this Court has been to identify that the attorney named at the beginning of the opinion was not trial counsel. *See, e.g., Daniels v. State*, 100 Nev. 579, 688 P.2d 315 (1984). As a matter of professional courtesy to Mr. Angulo, I request such a note in this Opinion. Further, given that the conduct referred to the Bar for investigation was actually that of two separate attorneys, I respectfully suggest that it would be appropriate to be more specific in that referral.

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[6] Scot's motion complained that Cisilie had refused to "move the children ***back*** to Nevada." Motion filed February 18, 2000, at 10-11.

[7] Scotlund told the lower court: "We lived here all their lives," and Mr. Dempsey re-emphasized: "They were born in the United States and lived in Las Vegas prior to leaving. . . ." Mr. Dempsey argued that Nevada had "clear jurisdiction over the children" based on the "facts" that the children had been "removed" from their "home" in Las Vegas for a "visit" to Norway, but that Cisilie had refused to "return" to Las Vegas. *See* Transcript of the March 29, 2000, hearing, at 2. [A clean copy is attached as Exhibit 4, for the Court's convenience.] ***All*** of the asserted "facts" were false.

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F. Suggestion of Error of Law as to the Hague Convention and the Jurisdiction of the Nevada Courts

Preliminarily, counsel notes complete agreement with the conclusion reached by both the majority and the dissents that the district court lacked jurisdiction to make a child custody order at the time it entered the decree, and later pick-up order, since neither the children nor any litigant had ever lived in this state. *Opinion* at 19-20.

The situation is somewhat different as to the Hague determination, however. As it appears that the Court may have misapprehended a matter of both fact and law relating to the Hague determination, which was perhaps caused by poor explanation by undersigned counsel, I apologize for any lack of clarity, and will try to correct the factual backdrop, and applicable law.

The majority opinion recites that part of the social policy underlying its election to find the divorce decree voidable rather than void was the preservation of its jurisdiction to order that the Hague Convention decision to return the children to Norway was thereby retained by our courts. *Opinion* at 16. The two dissents separately conclude that they would find the decree void, even ***if*** the result of that decision was to eliminate the power of the Nevada courts to make a Hague determination to return the children. *See Dissent of Justice Maupin* at 1, 3; *Dissent of Justices Young and Shearing* at 7.

This case is a case of first impression in this state; there is no prior application in our law of the Hague Convention on the Civil Aspects of International Child Abduction. Counsel concurs in all respects with this Court's application of the substantive provisions of the Convention and its decision that the children were to be returned to Norway for a custodial determination forthwith. I respectfully suggest, however, that the Court might have misapprehended a procedural aspect of the Convention and its enabling legislation, which might have led to erroneous conclusions in the Opinion.

Specifically, the majority stated that since Scotlund and the children resided in Texas, a finding that the divorce decree was void would have the result that the Court "would not be in a position to order the Hague determination. Cisilie would be put in the position of having to begin anew and commence, if she can, a proceeding against Scotlund in Texas." The two dissenting

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opinions reached the same conclusion. I suggest that this is incorrect, and that even if the Court decided that Nevada lacked subject matter jurisdiction or personal jurisdiction sufficient to permit entry of a divorce, and the decree was void in all respects, the Hague determination could still have been ordered by this Court.

By way of background, the Convention uses the terms "member countries" and "contracting States" interchangeably; the term "State" in Hague terms usually means the United States collectively, not the component States of this country. 22 C.F.R. § 94.1(b). Article 6 of the Convention authorizes "Federal States" to designate one or more Central Authority, but unlike some other such countries (notably Canada), the United States elected to have a single Central Authority, which is located in the Office of Citizens Consular Services of the United States State Department. 22 C.F.R. § 94.2. It contracts with a quasi-governmental non-profit corporation, the National Center for Missing and Exploited Children, to determine in which court a Hague proceeding should be brought and secure counsel to do so.

A petition for return can be brought either directly to a court in the "Contracting State" (i.e., the United States), or by application to the Central Authority, which then assists in securing counsel for the purpose of filing a petition in the "appropriate court in the Contracting State where the child is located" (i.e., the "proper" American court). 22 C.F.R. § 94.3; Appendix C – Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10,503, 10,507 (March 26, 1986).

As the majority points out, the federal district courts, and the state courts, have concurrent original jurisdiction to decide cases brought before them pursuant to the Convention. 42 U.S.C. § 11603(a). *Opinion* at 21. The Convention is meant to be expansive, granting authority to "any court" to make temporary orders as necessary to serve the purposes set out in the Convention.[8]

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[8] The formal commentary from the Department of State when the Convention was presented for ratification was that "any court may take or cause to be taken provisional measures under State or Federal law, as appropriate, to protect the child from neglect or abuse or to prevent its removal from the jurisdiction or its concealment, while the petition filed pursuant to the Convention and this Act is pending." Written Testimony of Peter H. Pfund, Assistant Legal Adviser for Private International Law, Department of State, before the House Judiciary Committee, Subcommittee on Administrative Law and Governmental Relations, February 3, 1988, at 6.

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As Justice Maupin noted, actions under the Convention must be made in a "court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed." *Dissent of Justice Maupin* at 3. What was apparently unclear to the Court (for which undersigned counsel takes at least partial responsibility, as we briefed the factual background), is how the changing factual situation ***in Nevada*** as it relates to these parties provides complete jurisdiction to make the Hague determination by the time it came before the Court.

Neither the federal implementing legislation, ICARA,[9] nor its regulations, provide a definition of "place" or any specific guidance for determining ***which*** court in the United States is "proper," except to state that the duty to have a prompt hearing and determination regarding return supersedes any possible conflict under the UCCJA or PKPA, or with a custody order rendered in favor of an abductor before a court had notice of the wrongful removal or retention. Appendix C, *supra*, at 10504-10505. The presence or absence of "home state" jurisdiction under those statutes is irrelevant for Hague purposes, since the order in question is explicitly ***not*** a custody order, but only a means for restoration of a "factual status quo ante" so the courts of the ***country*** of habitual residence can ***make*** a custody order. *Id.* at 10505.

In this case, the American Central Authority, operating through the National Center for Missing and Exploited Children, contacted undersigned counsel for the purpose of filing the petition for return in a Nevada court because the Central Authority was on notice that there was already an ongoing legal action in this jurisdiction (the motions initiated by Scotlund).[10]

As this Court has noted, Scotlund's filings in the district court were fraudulent. However, those filings set in motion a sequence of events that created jurisdiction in Nevada to make the Hague determination. While it was not (apparently) clear from the facts previously provided to this

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[9] The International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601-11610.

[10] It was unclear where Scotlund had absconded to with the children; his filings claimed Nevada, but rumor placed Scotlund and the children in Ohio, Virginia, New York, and Texas. Nothing in the Convention or ICARA suggests that a kidnaper can defeat the treaty by keeping his precise location unknown or in flux. The Convention is not concerned with "jurisdiction" per se; it is designed so that ***some*** court will have the children before it and take steps to return them to the country which can then determine their custody.

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Court, the cross-allegations of kidnaping led Judge Steel to issue an order whereby the children were to be picked up and maintained in protective custody at Child Haven pending a hearing as to what was actually going on. *See Order* filed September 29, 2000.

Before that order could be enforced, Scotlund voluntarily ***brought the children to Nevada himself***, where they were placed into Child Haven on September 30. In other words, by September 30, 2000, the ***only*** "place where the child is located" was Nevada, which remained true through the date where the Hague request was made to and rejected by the district court (which error this Court has now reversed).

At the time the children were brought to Nevada, the district court had not yet heard the evidence proving that Scotlund was never a resident, and that the divorce complaint was fraudulent. The lower court was acting with ostensible authority at that time. Irrespective of that, however, the ***fact*** was that at the time of the proceedings below in October, 2000, ***only*** a Nevada court could entertain a Hague proceeding under 42 U.S.C. § 11603(b), since this was the only place where the children were located.

It was Scotlund's own actions, and filings, that gave the district court emergency jurisdiction to issue orders for the protection of the children, until and unless it could be determined that the court of some other state should issue such orders. Until this Court ruled that the Nevada orders he had earlier obtained were improper, both parties were obligated to proceed in Nevada, and both the Texas and Norway courts properly deferred to our proceedings.

Specifically, NRS 125A.050(3) provides that "physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody." NRS 125A.050(d) provides that our courts may exercise jurisdiction to make child custody orders when it appears that no other state would have jurisdiction "or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction." And, of course, at the time of the order reviewed by this Court by writ, both children ***were*** physically present in Nevada.

In this case, Scotlund had initiated proceedings in Nevada by his 1998 and 2000 filings, long before he first sought to invoke the jurisdiction of the Texas courts in August, 2000, to make

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domestic relations orders.[11] The Nevada Order he attempted to register in Texas was the fraudulent pick-up and contempt order ultimately ruled void by this Court. *Id.*

Cisilie, through Texas counsel, made a special appearance in the Texas court on September 15, 2000, in which she informed the Texas court that it lacked jurisdiction over her, and that the Nevada order had been obtained by way of fraud.[12]

The ***Texas*** court suspended all further proceedings in that state until the Courts of Nevada could determine whether Scotlund's decree, and custody and contempt orders, were proper, or were fraudulent. That determination was eventually made when this Court's *Opinion* held void all custody aspects of both the decree and the later orders Scotlund obtained to enforce it.

The UCCJA encourages states to defer to one another in such circumstances, and provides mechanisms by which one state can ask another to resolve a legal or factual dispute. *See* NRS 125A.220, 125A.230. In this case, the Texas courts decided – correctly – that Nevada was best equipped to decide whether or not the underlying Nevada orders had been procured by Scotlund fraudulently. The physical presence of the children in Nevada, and the Texas court's deferral of decision-making under NRS 125A.050(d) was the only "emergency jurisdiction" or "vacuum jurisdiction" required for our state to act pursuant to the direction of the American Central Authority to make a Hague determination ***at the time of the proceedings in October, 2000***.

In other words, while the Nevada courts lacked subject matter jurisdiction or personal jurisdiction sufficient to grant a divorce in 1998, and Scotlund's subsequent pick-up and contempt order was therefore also void, the district court ***did*** have jurisdiction to make a Hague determination in October, 2000, because the children were physically located here at that time, and the only other possible court that could have acted had elected to defer to our courts.

This Court has previously endorsed a state's short-term exercise of emergency jurisdiction where necessary for the protection of children, until and unless it can be determined that some other

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[11] *See* Appendix to Emergency Petition for Writ of Mandamus, Volume 1, Exhibit U of Exhibit 1. For the convenience of the Court, a clean copy is attached here as Exhibit 5.

[12] *See* Appendix to Emergency Petition for Writ of Mandamus, Volume 1, Exhibit V of Exhibit 1. For the convenience of the Court, a clean copy is attached here as Exhibit 6.

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state can and will exercise lawful jurisdiction to make such orders as are necessary for that purpose. *See Adams v. Adams*, 107 Nev. 790, 820 P.2d 752 (1991) (California assumption of emergency jurisdiction was proper based on claim of abuse, but only temporarily until judges could confer to see which jurisdiction was proper).[13]

Accordingly, the Nevada district court qualified under the deliberately-expansive definitional provision of:

> any court which has jurisdiction to of such action and which is authorized to exercise its jurisdiction in the place [i.e., country] where the child is located at the time the petition is filed.

42 U.S.C. § 11603(b). Any other reading of the applicable law gives rise to the conundrum expressed by the majority and dissenting opinions – either to allow a fraudulently-obtained decree obtained without jurisdiction to stand, or give cover to the wrongdoer by finding that our courts lacked the power to correct the wrongdoing. I suggest that the Convention and ICARA be read expansively, as intended, so that once Scotlund invoked the power of our courts to make a decision, ***and*** brought the children here, ***and*** the only other possible court deferred to Nevada, our courts were granted the authority by international treaty to make the required Hague determination.

Once ***any*** state or federal court of the United States could hold a hearing at which the treaty obligations of the United States under the Convention could be raised and decided, the superseding duty of the American court was to make the Hague determination. This Court made it, and the Texas courts granted that order full faith and credit, and enforced it by putting the children on a plane for Norway. If there is to be any application of estoppel principles in this case, I respectfully submit that

---

[13] Nevada was still not the children's "home state," and our court still could not make a legitimate custodial determination in October, 2000. Of course, since the children had been in Texas only because they were kidnaped and brought there, Texas was not their "home state" either, and their presence there did not create a habitual residence. *See Isaac v. Rice*, http://hiltonhouse.com/cases/Isaac_fed_dist.txt (Civ. Action No. 1:97CV353, N.D. Miss. 1998) (child was not "habitual resident" of Israel, despite his presence there for 11 years, when he had been brought to that country by kidnap without the knowledge or consent of the left-behind parent); *see also Diorinou v. Mezitis*, 237 F.3d 133 (2d Cir. N.Y. 2001); *Lops v. Lops*, 140 F.3d 927 (11th Cir. 1998) (there, as here, the children were placed in protective custody of the local department of family services, and thus were "located" in that jurisdiction for purposes of ICARA; the opinion notes that in some circumstances, children at issue in a Hague case can be seized in one state, and be transferred to and "located" in a different state at the time of the Hague determination). Only Nevada, where the children were located when the court proceedings were held, could have made the requisite Hague determination.

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it be invoked to preclude Scotlund from arguing that our courts lacked such jurisdiction in the action he filed as was necessary to correct his wrongs.

II. UNRESOLVED QUESTIONS THAT SHOULD BE ADDRESSED IN THE OPINION

As predicted by counsel in earlier motions in this Court, the decision on the writs mooted the subject matter of the appeal (No. 37082), which has, accordingly, been withdrawn. However, there are a couple of issues presented by this case (and the Court's disposition of it) which should be resolved, either as required by law or in the interest of the parties, and for the purpose of judicial economy, since the absence of resolution seems likely to cause considerable further litigation.

A. This Court Should Have Required an Attorney's Fee Order by the District Court

Article 26 of the Convention provides in part:

> Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

The United States, which does not have the subsidies for counsel prosecuting Hague return cases that are found in some other countries, elected to make the imposition of fees and costs against a kidnaper mandatory, absent special findings. Specifically, Section 11607(b)(3) of the International Child Abduction Remedies Act requires any court ordering the return of a child under the Convention to award fees and costs to the petitioner unless the respondent establishes that such order would be "clearly inappropriate". 42 U.S.C. § 11607(b)(3). *See Feder v. Evans-Feder*, 63 F.3d 217, 224 (3d Cir. 1995); *Diorinou v. Mezitis*, *supra*, 237 F.3d 133 (2d Cir. N.Y. 2001).

The official commentary from the State Department explained the purpose of essentially requiring the imposition of fees against a kidnaper:

> This provision of the Act and the provisions of article 26 that it reflects were intended to provide an additional deterrent to wrongful international child removals and retentions.

Written Testimony of Peter H. Pfund, *supra* n.8, at 8.

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In this case, our client is virtually impecunious, and the very limited funding supplied by the Norwegian government ran out long ago, before the proceedings in this Court were even begun. At this point, our client has an unpaid balance owed to this firm of well over $35,000.00. On the other hand, Scotlund took the entirety of everything these parties earned during their marriage, and while we are informed that he is apparently now claiming to be "unemployed," he lives on a ranch in Texas, and has no problem fully funding his own international travel and the filings of a fleet of lawyers in multiple jurisdictions.

Only this Court can make an award of attorney's fees for the appellate proceedings, and this Court is typically reluctant to make any such award for district court proceedings, on the basis that such awards are better considered below. *See Korbel v. Korbel*, 101 Nev. 140, 696 P.2d 993 (Nev. 1985); *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (Nev. 1998); *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (Nev. 1971).

Accordingly, we ask that this Court add to the *Opinion* an award to Cisilie of costs and fees on appeal, ***and*** that the Court amend the *Opinion* to provide for a proceeding in the district court for the fixing of costs and fees incurred below pursuant to the Convention and ICARA.

B. The Writ of Prohibition was not Formally Ruled Upon

The Opinion clearly granted the requested Writ of Mandamus, which issued and has been enforced. The decision on the requested Writ of Prohibition is less clear.

Our Petition sought a Writ of Prohibition preventing the district court from providing a divorce decree to a non-resident, and setting aside all orders issued to enforce that divorce decree. *See Petition* filed November 8, 2000, at 17-18. All those orders concerned child custody, which was the focus of both parties in this Court. Since the Opinion found the district court had neither personal nor subject matter jurisdiction, and strikes all child-related portions of the orders below as void, it could be said that the requested writ was granted. On the other hand, since the divorce itself was left in place, it could be said that the writ was denied.

The question is of more than academic interest. Since issuance of this Court's Opinion, Scotlund has taken steps in at least two states to thwart this Court's orders, trying to get the Texas

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courts to ignore and "overrule" this Court's rulings, and trying to intercept the plane returning the children to Norway, while it was briefly on the ground in Tennessee. Undersigned counsel would like to wrap up any loose ends as securely as possible, to prevent them from being picked at or used as a basis of collateral attack on this Court's *Opinion* in other jurisdictions.

Obviously, the resolution of this point may well be dependent on whether any of the above substantive points cause any changes in the Opinion.

C. The District Court Lacked Jurisdiction over Issues of Property, Debts, Alimony, and Child Support

This Court's decision vacated all matters pertaining to custody and visitation for a lack of subject matter jurisdiction. *Opinion* at 28. It is submitted that Nevada also lacked jurisdiction over all financial and property matters of the parties, as neither of them ever resided in the state of Nevada, and that the *Opinion* should so state.

The parties' personal property was almost entirely in Virginia, London, and Norway at the time the Divorce Decree was entered. The only property that was in Nevada were the few personal belongings that Scotlund had stored at his mother's house for the times when he visited there. There was no real estate here.

Neither party had ever earned any income within Nevada. Scotlund had been, and continued to be, employed in London, England for over a year before, and for over a year after, the divorce. Cisilie was working in London for a short time, and procured employment in Norway once she moved there in July, 1998.

This Court has issued an Opinion stating that the district court lacked both subject matter jurisdiction and personal jurisdiction. Whether or not the Decree is voided in toto, it seems clear that Nevada could not have had jurisdiction over the parties' assets or debts, or over issues of spousal or child support. *See Estin v. Estin*, 334 U.S. 541, 92 L. Ed. 1561, 68 S. Ct. 1213 (1948) (Nevada decree cannot dispose of property interests of spouse over whom there was no personal jurisdiction); *Noffsinger v. Noffsinger*, 50 F. Supp. 810 (D.D.C. 1943) (Nevada decree invalid for want of residence is not a bar to a maintenance award being entered elsewhere).

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Since the courts of other jurisdictions that will review this Court's Opinion will look to it for guidance on what provisions of the decree (if any) can be given lawful effect under Nevada law, I respectfully request that the Opinion formally state that the jurisdictional prerequisites for those orders were not fulfilled.

III. REQUEST FOR INSERTION OF NAME OF ATTORNEY ON OPINION

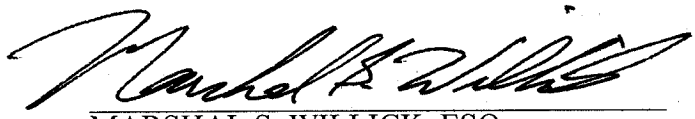
The title page of the opinion lists only the name of undersigned counsel as attorney for the Petitioner. Robert Cerceo is an associate attorney of this firm who was instrumental in all the work leading up to resolution of this case, and who was even present at oral argument. As a courtesy to him, I request that the Court change the names of Petitioner's counsel to read: LAW OFFICE OF MARSHAL S. WILLICK, P.C., Marshal S. Willick, and Robert Cerceo, Las Vegas.

IV. CONCLUSION

There are a number of factual errors in the Court's recitation that should be corrected or clarified for the reasons set out above. Additionally, it appears that the Court may have overlooked or misapprehended an independent legal basis for directing the lower court to perform the necessary Hague determination, which if utilized may have eliminated a policy basis for finding the decree voidable rather than void. The fee award required by the Convention and ICARA absent being "clearly inappropriate" should be made, the Writ of Prohibition should be formally decided, and a statement of Nevada's non-jurisdiction over certain issues should be added to the Opinion.

DATED this 29th day of April, 2002.

Respectfully submitted by:
LAW OFFICE OF MARSHAL S. WILLICK, P.C.



MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
ROBERT CERCEO, ESQ.
Nevada Bar No. 5247
3551 East Bonanza, Suite 101
Las Vegas, Nevada 89110
Attorneys for Petitioner

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CERTIFICATION OF SERVICE

I hereby certify that service of the foregoing was made on the 29th day of April, 2002, pursuant to EDCR 7.26(a), by faxing a true copy of the same to fax number (702) 383-0701 and additionally by U.S. Mail addressed as follows:

Peter M. Angulo, Esq.
RAWLINGS, OLSON, CANNON,
GORMLEY & DESRUISSEAUX
301 E. Clark Avenue, #1000
Las Vegas, NV 89101
Attorney for Respondent

An Employee of the LAW OFFICE OF MARSHAL S. WILLICK, P. C.

P:\WP9\vaile\FF2698.WPD

LAW OFFICE OF
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HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
MARSHAL S. WILLICK
4385311
Apr-29-02 7:18PM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
462	4/29 7:08PM	10'12"	702 383 0701	Send.....	40/40	EC144	Completed.....

Total 10'12" Pages Sent: 40 Pages Printed: 0

IN THE SUPREME COURT OF THE STATE OF NEVADA

****

CISILIE A. VAILE

Appellant,

vs.

R. SCOTLUND VAILE,

Respondent.

S.C. NO. 36969
D.C. NO: D230385

MOTION TO AMEND DECISION OF APRIL 11, 2002, AND PETITION FOR REHEARING

Petitioner, Cisilie A. Vaile, by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLICK, P.C., pursuant to NRAP 27 and NRAP 40, requests that this Court correct certain discrepancies of fact within the decision of April 11, 2002, and, if those factual errors are deemed of sufficient importance, consider altering the holding of the Opinion accordingly, with or without holding a formal rehearing.

Some of the matters related below are substantive, and might or might not cause reconsideration by one or more members of this Court as to one or more of the points decided. Some other points are non-substantive, relating mainly to matters of propriety in the identification of counsel, which are probably unobjectionable, and which this Court has traditionally permitted where appropriate. This Motion is based upon the following Points and Authorities.

POINTS AND AUTHORITIES

I. FACTUAL AND LEGAL ERRORS CONTAINED IN THE DECISION SHOULD BE CORRECTED

A. Chronological Misstatement as to the Parties' "Agreement" Discussed in the Opinion

The Opinion incorrectly relates that "She [Cisilie] ultimately obtained an agreement from Scotlund upon which the British court based an order dated June 8, 1998." *Opinion* at 3, ll. 11-13.

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EXHIBIT 1

Kontorfellesskap

Advokat
Anne Cathrine Vogt MNA

Advokat
Brit Engebakken MNA

Advokat
Elisabeth Hagen MNA

ANSWER

TO

DISTRICT COURT, CLARK COUNTY, NEVADA

Plaintiff: **R. Scotlund Vaile**

Defendant: **Cisilie A. Vaile**

Case: No. D 230385
Dept. No. G.

Defendant Cisilie A. Vaile has now received R. Scotlund Vailes motion.

Defendant Cisilie A. Vaile denies that the motion is in the jurisdiction of District Court Family Division, Clark County, Nevada on the grounds that neither the plaintiff nor the defendant or the children have ever resided or have had domicil in Clark County, Nevada.

From 2nd August 1997 until July/August 1998 both parties and the children were living together in London, England.

Since mid July 1998 defendant and the children have had residence according to agreement between plaintiff and defendant in Gøteborggaten 1, 0566 Oslo, Norway.

Correct jurisdiction in this matter must be the Court of Oslo, Norway. According to this jurisdiction defendant Cisilie Anne Vaile has filed a motion to the court of Oslo, Norway. Plaintiff R. Scotlund Vailes Norwegian lawyer Elsbeth Bergsland is sendt a copy of this motion.

***

In the light of the above the plaintiff R. Scotlund Vailes motion must be dismissed from the District Court, Clark County, Nevada.

Drammen, 24th March, 2000

EHagen

Elisabeth Hagen
lawyer

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
FAMILY COURTS & SERVICES CENTER
601 North Pecos Road
LAS VEGAS, NEVADA 89101-2408

CYNTHIA DIANNE STEEL
PRESIDING DISTRICT JUDGE

Department G
(702) 455-6940
FACSIMILE (702) 455-5989

March 24, 2000

Elisabeth Hagen, Esq.
Fax 32 89 42 05

Re: Vaile vs. Vaile
Case No: D 230385

Dear Ms. Hagen:

This office has received your correspondence in the above-referenced matter. Pursuant to Judge Steel's policy, unless there is a specific request from the Court to the attorneys, litigants, doctors, or psychologists, for further information, **all** other correspondence will be considered to be ex-parte communication and must be returned to the author of such communication without presentation to the Judge.

All matters sought to be brought to the attention of the Court must be done via properly filed motions and served upon all interested parties.

Sincerely,

Angela Root,
Judicial Executive Assistant

AR

Enc.: as stated above
cc: James E. Smith, Esq.

EXHIBIT 3

FILED

District Court

Clark County, Nevada

Apr 4 8 40 AM '00

Shirley B. Parraguirre
CLERK

82

R. Scotlund Vaile

Plaintiff.

-vs-

Cisilie A Vaile

Defendant.

Case No: D230385

Dept. No: G

Response To Plaintiff's Motion

Date of Hearing:
Time of Hearing:

Signature: Janet B. DeRaulis

Janet B. DeRaulis

Submitted By:

(SIGNATURE)

Name:
Address:
City/State/Zip:
Telephone:
Attorney for:

REV 3/99/cc jb

Kontorfellesskap

Advokat
Anne Cathrine Vogt MNA

Advokat
Brit Engebakken MNA

Advokat
Elisabeth Hagen MNA

ANSWER

TO

DISTRICT COURT, CLARK COUNTY, NEVADA

Plaintiff: **R. Scotlund Vaile**

Defendant: **Cisilie A. Vaile**

Case: No. D 230385
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***

In the light of the above the plaintiff R. Scotlund Vailes motion must be dismissed from the District Court, Clark County, Nevada.

Drammen, 24th March, 2000

Elisabeth Hagen
lawyer

EXHIBIT 4

COPY

FILED

2001 JAN 26 PM 1:44

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. S. VAILE Plaintiff, vs. CISILIE A. VAILE Defendant	CASE NO. D230385 DEPT. G

BEFORE THE HONORABLE CYNTHIA D. STEEL, DISTRICT COURT JUDGE

PARTIAL TRANSCRIPT RE: PLAINTIFF'S MOTION FOR ORDER DIRECTING DEFENDANT TO APPEAR AND SHOW CAUSE RE: CONTEMPT

WEDNESDAY, MARCH 29, 2000

APPEARANCES:

PLAINTIFF:	R. S. VAILE
PLAINTIFF'S ATTORNEY:	JOSEPH DEMPSEY 520 South Fourth Street, #360 Las Vegas, Nevada 89101 (702) 388-1216
DEFENDANT:	NO APPEARANCE
DEFENDANT'S ATTORNEY:	NO APPEARANCE

LAS VEGAS, NEVADA WEDNESDAY, MARCH 29, 2000

P R O C E E D I N G S

(THE PROCEEDINGS BEGAN AT 09:38:46)

(THE REQUESTED PORTION OF THE PROCEEDINGS BEGAN AT 09:40:29)

MR. DEMPSEY: My client gave the defendant an opportunity to go and return to Norway, that's her native country, but -

THE COURT: After the divorce.

MR. DEMPSEY: - after the divorce, but it was for a year, and the decree -

THE COURT: How long were the children here before they left for Norway?

MR. DEMPSEY: How long were they here?

MR. VAILE: We lived here all their lives.

MR. DEMPSEY: Throughout their life.

THE COURT: Okay. I just wanted to make sure I had the proper jurisdiction over the children.

MR. DEMPSEY: Right. They were born in the United States and lived in Las Vegas prior to leaving. He let her go for a year, and her remedy if she wanted to change jurisdiction of the children was to return to the United States, Las Vegas -

THE COURT: To this Court.

MR. DEMPSEY: - to this Court and file a motion.

THE COURT: Right.

MR. DEMPSEY: Asking for leave to return to Norway. She didn't do that. And the problem is, Your Honor, it's like somebody getting a visa, going to a foreign country for six

months and at the end of the six month you have one or two options. You either apply for a new visa or you leave.

THE COURT: Huh huh.

MR. DEMPSEY: She just remained in Norway and basically snubbed her nose at the Court and said I'm staying here. And now she wants to argue jurisdiction from Norway.

THE COURT: No.

MR. DEMPSEY: No. You return to this Court -

THE COURT: I have jurisdiction, it's clear.

MR. DEMPSEY: Absolutely.

THE COURT: I'm the only Court that has jurisdiction.

MR. DEMPSEY: Absolutely, there's no issue. That's all I have to say, Your Honor.

THE COURT: Then your relief would be granted as to all issues.

(THE REQUESTED PORTION OF THE PROCEEDINGS ENDED AT 09:41:40)

(THE PROCEEDINGS ENDED AT 09:42:15)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the videotape of the proceedings in the above-entitled case to the best of my ability.

DATED this 26 day of January, 2001.

Deborah S. Casper

DEBORAH S. CASPER
Transcriber

EXHIBIT 5

STATE OF TEXAS

CAUSE NO. 2000-61344-393

R. SCOTLUND VAILE vs. CISILIE A. VAILE

* IN THE DISTRICT COURTS OF
* DENTON COUNTY, TEXAS
* 393RD JUDICIAL DISTRICT COURT

NOTICE OF REGISTRATION OF FOREIGN JUDGMENT/SUPPORT ORDER

DENTON COUNTY DISTRICT CLERK
P. O. BOX 2146
DENTON, TEXAS 76202
940-565-8530

FILED BY: BRIAN S. HOLMAN
1108 N. LOCUST
DENTON, TX 76201

TO:

Cisilie A. Vaile
C/o Ragnhild Eng
0566 Oslo, Norway

SS#: 280-92-2900

1. A COPY OF A FOREIGN JUDGMENT-FAMILY SUPPORT ORDER HAS BEEN REGISTERED IN THE 393RD JUDICIAL DISTRICT COURT OF DENTON COUNTY, TEXAS PURSUANT TO SECTION 159.605 OF THE TEXAS FAMILY CODE.

2. A REGISTERED ORDER IS ENFORCEABLE AS OF THE DATE OF REGISTRATION IN THE SAME MANNER AS AN ORDER ISSUED BY A TEXAS COURT.

3. A REGISTERED FAMILY ORDER MAY BE MODIFIED IN THE SAME MANNER AS A FAMILY ORDER ISSUED BY A TEXAS COURT.

4. A HEARING TO CONTEST THE VALIDITY OR ENFORCEMENT OF THE REGISTERED ORDER MUST BE REQUESTED WITHIN 20 DAYS AFTER THE DATE OF MAILING OR SERVICE OF THIS NOTICE.

5. FAILURE TO CONTEST THE VALIDITY OR ENFORCEMENT OF THE REGISTERED ORDER IN A TIMELY MANNER WILL RESULT IN CONFIRMATION OF THE ORDER AND ENFORCEMENT OF THE ORDER AND PRECLUDES FURTHER CONTEST OF THAT ORDER WITH RESPECT TO ANY MATTER THAT COULD HAVE BEEN ASSERTED REGARDING THE VALIDITY OF THE ORDER.

GIVEN UNDER MY HAND AND SEAL OF COURT IN DENTON, DENTON COUNTY, TEXAS THIS THE 28TH DAY OF AUGUST, 2000.

SHERRI ADELSTEIN, DISTRICT CLERK
DENTON COUNTY, TEXAS

Stephanie Campbell
STEPHANIE CAMPBELL

CERTIFIED MAIL RECEIPT NO:

Sent 1st Mail

2000-61344393

ORD
JOSEPH F. DEMPSEY, ESQ.
Nevada Bar No. 004585
DEMPSEY, ROBERTS & SMITH, LTD.
Attorneys at Law
520 South Fourth Street, Suite 360
Las Vegas, Nevada 89101
(702) 388-1216
Attorneys for Plaintiff
R. SCOTLUND VAILE

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. SCOTLUND VAILE,
SSN: 519-02-6087,

Plaintiff,

VS.

CISILIE A. VAILE,
SSN: 280-92-2900,

Defendant.

CASE NO.: D230385
DEPT. NO: G

Date of Hearing: March 29, 2000
Time of Hearing: 9:30 a.m.

ORDER

Plaintiff's Motion for an Order Directing Defendant to Appear and Show Cause why Defendant should not be held in Contempt of Court for Failing to Return the Minor Children to Nevada having come on for hearing on the above indicated date. Plaintiff, R. SCOTLUND VAILE, present and being represented by his attorney, JOSEPH F. DEMPSEY, ESQ., of the law firm of DEMPSEY, ROBERTS & SMITH, LTD.; and Defendant, CISILIE A. VAILE, having been properly served with a copy of said Motion by the District Court of Oslo, Norway, adequate time having passed, and Ms. Vaile having failed to respond; with no court hearing dates or any

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ATTORNEYS AT LAW
520 South Fourth Street, Suite 360
Las Vegas, Nevada 89101
(702) 388-1216 • Fax: (702) 388-2514

other dates relative to this case currently scheduled; and the Court having reviewed all the papers, pleadings and records on file herein, together with the oral argument of counsel and good cause appearing; the Court finds:

IT IS HEREBY ORDERED that Plaintiff's Motion for an Order Directing Defendant to Appear and Show Cause why Defendant should not be held in Contempt of Court for Failing to Return the Minor Children to Nevada is GRANTED.

IT IS FURTHER ORDERED that Defendant is held in Contempt of Court and Defendant is to immediately return the children to Plaintiff, and provide Plaintiff with the children's passports and other documents to enable international travel with Plaintiff to the United States, State of Nevada, County of Clark.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is in Contempt of Court for Defendant's willful and intentional violation of the provision of the Decree of Divorce, in violation of Nevada Revised Statute 125A.350 (Parental Kidnaping Prevention Act0 and Nevada Revised Statute 125.510(7), which adopted the provisions of the 14th Session of the Hague Conference on Private International Law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded primary physical custody of the parties's two minor children, to wit: KAIL LOUISE VAILE, born May 30, 1991, and KAMILLA JANE VAILE, born February 13, 1995, and awarding Defendant specific visitation rights, within the County of Clark or requiring Defendant to post a bond in accordance with NRS 125.510.

...

...

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ATTORNEYS AT LAW
520 South Fourth Street, Suite 360
Las Vegas, Nevada 89101
(702) 388-1216 • Fax: (702) 388-2514

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded attorney fees and costs in the amount of $1,500.00.

DATED this 11 day of April, 2000

CYNTHIA DIANNE STEEL
DISTRICT COURT JUDGE

Respectfully Submitted By:

By: _____
JOSEPH F. DEMPSEY, ESQ. ESQ.
Nevada Bar No. 4585
DEMPSEY, ROBERTS & SMITH, LTD.
520 S. Fourth St., Suite 360
Las Vegas, Nevada 89101
Attorneys for Plaintiff
R. SCOTLUND VAILE

DEMPSEY, ROBERTS & SMITH, LTD.
ATTORNEYS AT LAW
520 South Fourth Street, Suite 360
Las Vegas, Nevada 89101
(702) 388-1216 • Fax: (702) 388-2514

Shirley B. Parraguirre
CLERK

APR 10 3 27 PM '00

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

AFFIDAVIT OF LAST KNOWN ADDRESS

COUNTY OF DENTON §
§
STATE OF TEXAS §

Before me the undersigned authority personally appeared BRIAN S. HOLMAN, and after being duly sworn stated, based on information and belief, the following:

1. The address of Petitioner, R. Scott Vaile, is 12137 Merrill Road, Pilot Point, Texas.

2. The last known post office address of **CISILEY A. VAILE** is:

c/o Ragnhild Eng
Cisiley A. Vaile
Goteborgs Gate #1
0566 Oslo, Norway

3. The attorney for **CISILEY A. VAILE** is unknown.

Brian S. Holman
State Bar No. 00784287

SUBSCRIBED AND ACKNOWLEDGED BEFORE ME by the said Brian S. Holman on this 24st day of August, 2000.

Notary Public, State of Texas

Isabel Cano
Notary Public, State of Texas
My Commission Expires
JUNE 17, 2003

AFFIDAVIT OF LAST KNOWN ADDRESS

COUNTY OF DENTON §
§
STATE OF TEXAS §

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c/o Ragnhild Eng
Cisiley A. Vaile
Goteborgs Gate #1
0566 Oslo, Norway

3. The attorney for **CISILEY A. VAILE** is unknown.

Brian S. Holman
State Bar No. 00784287

SUBSCRIBED AND ACKNOWLEDGED BEFORE ME by the said Brian S. Holman on this 24st day of August, 2000.

Notary Public, State of Texas

Isabel Cano
Notary Public, State of Texas
My Commission Expires
JUNE 17, 2003

EXHIBIT 6

NO. 2000-61344-393

R. SCOTLUND VAILE	§	
	§	
VS.	§	**IN THE DISTRICT COURT OF**
	§	**DENTON COUNTY, TEXAS**
CISILIE A. VAILE	§	**393RD JUDICIAL DISTRICT**

RESPONDENT'S SPECIAL APPEARANCE

NOW COMES CISILIE A. VAILE, Respondent, and files this Special Appearance under Rule 120a of the Texas Rules of Civil Procedure. Respondent's legal domicile is outside Texas and is in the country of Norway. Respondent's person and property are not amenable to process issued by the courts of Texas, and Respondent prays that the Court so rule.

Prayer

Respondent prays that the Court grant the relief requested in the special appearance.

Respectfully submitted,

Mike Gregory
State Bar No. 08435000
303 N. Carroll Blvd., Suite 100
Denton, TX 76201
Ph: (940) 387-1600 / Metro: (972) 434-3828
Facsimile: (940) 387-2173

Attorney for Respondent

The undersigned states under oath:

"I am Mike Gregory, attorney for Respondent in Respondent's foregoing Special Appearance. The allegations and facts stated therein are true and correct based on my information and belief."

Mike Gregory

THE STATE OF TEXAS)

COUNTY OF DENTON)

Before me the undersigned notary public, on this day personally appeared Mike Gregory, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 15th day of September, 2000.

Notary Public, State of Texas

BETH GINA HONEYCUTT
MY COMMISSION EXPIRES
December 23, 2000

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above was served on Brian Holman, Attorney for R. Scotlund Vaile, P.O. Box 2252, 512 West Hickory Street, Suite 224, Denton, Texas 76202 in accordance with the Texas Rules of Civil Procedure on the 15th day of September, 2000.

Mike Gregory
Attorney for Respondent

NO. 2000-61344-393

R. SCOTLUND VAILE

VS.

CISILIE A. VAILE

00 SEP 15 PM 3:42

SHERRI ADELSTEIN
DISTRICT CLERK DENTON CO. TX

BY _____ DEPUTY

§ IN THE DISTRICT COURT OF
§ DENTON COUNTY, TEXAS
§ 393RD JUDICIAL DISTRICT

CONTEST AND OBJECTION TO VALIDITY OR ENFORCEMENT OF REGISTRATION OF FOREIGN JUDGMENT/SUPPORT ORDER

Subject to special appearance in this cause, NOW COMES CISILIE A. VAILE, Respondent, and files this Contest and Objection to the Validity or Enforcement of Registration of Foreign Judgment/Support Order in this Cause.

Respondent seeks all of the relief entitled to Respondent through Texas Family Code Sections 159.606 and 159.607. Respondent requests that the court vacate the registration. Respondent contests all remedies being sought by the registering party, R. SCOTLUND VAILE.

Respondent, as the nonregistering party, requests a hearing to contest the validity or enforcement of the registered order as per Texas Family Code Section 149.606(c). The issuing tribunal lacked personal jurisdiction over the contesting party. The Nevada Order that was registered in Texas was obtained by fraud.

WHEREFORE, premises considered, Respondent, nonregistering party, requests a hearing to contest the validity or enforcement of the registered order and that she be given notice of the day, time, and place of the hearing. Respondent further prays for all other relief to which she may be entitled in law or in equity.

Respectfully submitted,

Mike Gregory
State Bar No. 08435000
303 N. Carroll Blvd., Suite 100
Denton, TX 76201
Ph: (940) 387-1600 / Metro: (972) 434-3828
Facsimile: (940) 387-2173

Attorney for Respondent

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Mike Gregory
Attorney for Respondent