

IN THE SUPREME COURT OF THE STATE OF NEVADA

CISILIE A. VAILE,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK; FAMILY LAW
DIVISION, THE HONORABLE
CYNTHIA DIANE STEEL, DISTRICT
JUDGE,

Respondent.

and

R. SCOTLUND VAILE,

Real Party in Interest.

S.C. DOCKET NO. 36969
D.C. CASE NO. D 230385

FILED

MAR 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

**RESPONDENT'S REQUEST TO SUPPLEMENT RECORD
FOR WRITS OF PROHIBITION/MANDAMUS**

COMES NOW Respondent, R. SCOTLUND VAILE, by and through his attorney of record PETER M. ANGULO, ESQ., of the law firm of RAWLINGS, OLSON, CANNON, GORMLEY & DESRUISSEAUX, and submits the following request to supplement record for Writs of Prohibition/Mandamus.

POINTS AND AUTHORITIES

This Court has recently allowed the supplementation of the record before it by the full factual background against which a proper opinion may be written. Consistent with that action, Respondent Vaile hereby requests the Court to accept, additionally, attached Exhibit "1" which is a file-stamped copy of the Order to Show Cause filed on behalf of Mr. Vaile before Judge Steele in February of 2000. This was the Motion which ultimately led to Judge Steele issuing an order rejecting Petitioner's custodial rights in the children and which, it has been argued, was not subject to any proper opposition by Petitioner.

Law Offices of
RAWLINGS, OLSON, CANNON
GORMLEY & DESRUISSEAUX
1775 West Sahara Avenue, Suite 1000
301 EAST CLARK AVENUE, SUITE 1000
LAS VEGAS, NEVADA 89101-4597
(702) 384-4012 TELECOPIER (702) 383-0701

RECEIVED
MAR 05 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

01-63994

1 The import of this document is that it further exposes the dishonest
2 mischaracterization of relevant facts provided so blithely by Petitioner in this case. At oral
3 argument, one of the questions asked was whether Judge Steele had been informed of legal
4 proceedings which preceded the filing of the Order to Show Cause. Petitioner has claimed
5 Mr. Vaile improperly refused to disclose such proceedings. However, the recent
6 supplement accepted by this Court by Petitioner proves that formal legal proceedings did
7 not occur in Norway--relative to the custodial rights of the children--until after legal
8 proceedings had already occurred in Nevada. In filing that later matter, Petitioner never
9 disclosed to the Norway court that a Nevada court was already in consideration of that exact
10 issue.

11 As important as this fact is, attached as Exhibit "1" to that Order to Show Cause is
12 the Affidavit of R. Scotlund Vaile. In that Affidavit, he specifically notes to the court--at
13 Paragraph 7--that on December 20, 1999 and January 17, 2000, he went to Oslo, Norway
14 to attempt to resolve the issue regarding custody of the children through an "organized
15 mediation." Unfortunately, the mediation was not successful and Petitioner still wrongfully
16 refused to release the children. This Affidavit clearly establishes that Judge Steele was
17 informed of the presence of Norwegian proceedings relative to the custodial rights of the
18 children before the instant matter was brought before her court. However, they were
19 properly described to Judge Steele not as litigation, but as a *mediation*. Thus, Judge Steele
20 had possession of this information prior to rendering her proper decision in April, 2000.

21 The addition of this document to the formal record of the court is important as it
22 further establishes the position, and concerns, expressed by Mr. Vaile throughout this
23 proceeding. First, Judge Steele was fully informed at each step along the way as she
24 rendered her decisions. Second, Petitioner knew and understood the rights and
25 responsibilities but refused to act in any manner so as to protect herself.¹ Finally, this

26
27 ¹The court will recall the representation made at oral argument by Petitioner that
28 she had allegedly discovered the legal inadequacy of her Nevada divorce--upon which
she had previously relied--in November of 1999. However, she refused to file any court

1 evidence serves as further vindication, that Petitioner has continuously misrepresented vital
2 facts both to Judge Steele and to this Honorable Court throughout the course of this legal
3 proceeding.

4 CONCLUSION

5 For the foregoing reasons Respondent Vaile respectfully requests this Court allow
6 the instant supplementation to occur so that the record might be complete.

7 DATED this 1 day of March, 2001.

8 Respectfully submitted,

9 RAWLINGS, OLSON, CANNON,
10 GORMLEY & DESRUISSEAUX

11 By 

12 PETER M. ANGULO, ESQ.
13 301 E. Clark Avenue, Suite 1000
14 Las Vegas, Nevada 89101
15 Attorneys for Real Party in Interest

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document challenging the sufficiency of the divorce until almost one year later.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 2nd day of March, 2001, I mailed a copy of the foregoing RESPONDENT'S REQUEST TO SUPPLEMENT RECORD FOR WRITS OF PROHIBITION/MANDAMUS to the following parties at their last known address, postage fully prepaid thereon:

MARSHAL S. WILICK, ESQ.
3551 E. Bonanza Road, Suite 101
Las Vegas, Nevada 89110
Attorney for Cisilie A. Vaile


An Employee of RAWLINGS, OLSON,
CANNON, GORMLEY & DESRUISSEAUX

EX I

FILED

FEB 18 4 04 PM '00

Shirley B. Paragins
CLERK

OTSC
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

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

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; THE IMMEDIATE RETURN OF THE MINOR CHILDREN TO THE COUNTRY OF THE UNITED STATES AND THE STATE OF NEVADA; FOR AN ORDER AWARDING PLAINTIFF PRIMARY PHYSICAL CUSTODY OF THE MINOR CHILDREN; ATTORNEY'S FEES AND COSTS

Date of Hearing:
Time of Hearing:

ORAL ARGUMENT REQUESTED: YES X NO



COMES NOW the Plaintiff, R. SCOTLUND VAILE, by and through his attorney,
JOSEPH F. DEMPSEY, ESQ, of the law firm of DEMPSEY, ROBERTS & SMITH, LTD., files
this Motion for an Order to Show Cause Why Defendant Should Not Be Held In Contempt Of
Court For Failure To Return the Parties' Minor Children to The State of Nevada as agreed upon
in the Parenting Plan

Plaintiff moves this Court for the following relief:

1. An Order directing the Defendant to Appear and Show Cause why the Defendant
should not be held in Contempt of Court and directing Defendant to immediately return the
children to the United States, State of Nevada, County of Clark, and provide Plaintiff with the
children's passports and other documents to enable international travel with Plaintiff.

2. An Order holding Defendant 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 Act) and Nevada Revised Statute 125.510(7),
which adopted the provisions of the 14th Session of the Hague Conference on Private
International Law.

3. An Order awarding Plaintiff primary physical custody of the parties's two minor
children, to wit: KAIA 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.

4. For an award of attorney's fees and costs.

This Motion is made and based upon the pleadings and papers on file herein and any
argument or evidence as may be adduced at the hearing of this matter.

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DATED this 14th day of February, 2000.

Respectfully submitted,

DEMPSEY, ROBERTS & SMITH, LTD.

By: *Joseph F. Dempsey*

JOSEPH F. DEMPSEY, ESQ.

Nevada Bar # 004585

520 S. 4th St., Suite 360

Las Vegas, Nevada, 89101

Attorneys for Plaintiff

R. SCOTLUND VAILE

ORDER TO SHOW CAUSE

DATE OF HEARING:

TIME OF HEARING:

TO: CISILIE A. VAILE, Defendant.

Upon reading the Affidavit of Counsel submitted herewith, and the Affidavit of R.

SCOTLUND VAILE, wherein Plaintiff's counsel recites that the Defendant has failed to comply with the provisions of the Decree of Divorce and the Stipulated Parenting Plan, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant, CISILIE A. VAILE, is ordered to appear before the above-entitled Court, Family Division, in Department G thereof, on the 29 day of March 2000, at the hour of 9:30 o'clock A.m., to show cause why this Court should not impose sanctions for her failure to purge herself of contempt of Court, to include imposition of a sentence of confinement in jail.

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FAILURE TO APPEAR AT THE TIME AND PLACE STATED ABOVE WILL


RESULT IN A BENCH WARRANT BEING ISSUED FOR YOUR ARREST.

DATED this 16 day of Feb, 2000.

CYNTHIA DIANNE STEEL

DISTRICT COURT JUDGE

Submitted by:


JOSEPH F. DEMPSEY, ESQ.
Nevada Bar No. 004585
520 S. Fourth Street, Ste. 360
Las Vegas, Nevada 89101
Attorneys for Plaintiff

AFFIDAVIT IN SUPPORT OF ORDER TO SHOW CAUSE
AFFIDAVIT OF JOSEPH F. DEMPSEY, ESQ.

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

JOSEPH F. DEMPSEY, ESQ., being first duly sworn, deposes and says:

I am an attorney duly licensed to practice law before the courts of the State of Nevada; I represent the Plaintiff herein; and I am, therefore, competent to testify as to the matters contained herein.

That in July 1998, R. SCOTLUND VAILE and CISILIE A. VAILE executed and entered into an agreement (a copy of said agreement is attached to the Motion as Exhibit "2") wherein the

1 parties set forth their respective rights and responsibilities regarding the care, custody and control
2 of the minor children.

3 That Article IV, paragraph 5 of said agreement states that Cisilie shall temporarily reside
4 in Oslo Norway with the children until July 1, 1999 or until Scotlund shall have arranged to move
5 Cisilie and the Children to the United States, in accordance with paragraph 4(b), whichever is
6 later.
7

8 That paragraph 4 of Article IV states: (a) subject to paragraph 5, each party covenants and
9 agrees that if at any time it shall be the Residential Parent and for so long as it remains the
10 Residential Parent, such party shall make its primary residence in the United States of America in
11 the greater metropolitan areas of Las Vegas, Nevada; Salt Lake City, Utah; San Francisco,
12 California; San Diego, California; Denver, Colorado; Charlotte, North Carolina; Boston,
13 Massachusetts; or any other city on which the parties shall hereafter mutually agreement by
14 amendment to this Agreement in accordant with paragraph 2 of Article Vill.
15

16 That paragraph 4(b) of Article IV states: Subject to paragraph 5, Cisilie agrees that as the
17 initial Residential Parent she will take up residence within twenty miles of Scotlund's place of
18 residence in whichever of the Accepted Metropolitan Areas that he shall have selected, subject to
19 the following conditions; (I) Cisilie shall have no obligation to move to the United States to take
20 up residence there before July 1, 1999; (ii) Scotlund shall have given Cisilie at least four weeks
21 prior notice of the timing of such move; (iii) Scotlund shall pay or cause his employer to pay all
22 of Cisilie's and the Children's reasonable moving expenses from Oslo, Norway to the Initial
23 Accepted Metropolitan Area, including; prepaid airfare, moving expenses for a reasonable amount
24 of personal effects, meals and lodging in London or any other destination between Norway and
25 the Initial Accepted Metropolitan Area where they are required to stay overnight, meals and
26

1 lodging at the Initial Accepted Metropolitan Area until Cisilie is able to move into a suitable
2 apartment for herself and the Children, but in no event for mor than 21 days after their arrival, and
3 the first month's rent for the apartment selected by Cisilie for herself and the Children in the Initial
4 Accepted Metropolitan Area.
5

6 That Scotlund Vaile has satisfied each and every requirement set forth in the Agreement,
7 including: purchasing airfare for Cisilie and the children; arranging transportation for Cisilie's and
8 the children's personal effects; and Scotlund has made arrangements to lease an apartment for
9 Cisilie and the children to reside in Las Vegas.
10

11 That Cisilie refuses to move from Norway to Las Vegas.

12 That in compliance with EDCR 5.11, Scotlund has attempted to resolve this issue with
13 Cisilie. Scotlund even traveled to Oslo, Norway and attended two formal mediation sessions with
14 Cisilie on December 20, 1999 and January 17, 2000. However, Cisilie still refuses to move to Las
15 Vegas or allow the children to move to Las Vegas without her.
16

17 That Scotlund has been only permitted supervised visitation of the children since Cisilie
18 decided not to move back to the U.S.

19 That it is my opinion and belief that CISILIE A. VAILE is willfully and maliciously
20 keeping the children from their father and is illegally keeping the children outside the United
21 States. The steps taken by Cisilie are causing irreparable harm to the relationship between my
22 client and his children. Further, the actions being taken by Cisilie are in direct contradiction to the
23 agreement she signed in August 1998 and are in direct violation of NRS 125A.350 and NRS
24 125.510(7).
25

26 That it is my belief that the issues addressed in this Motion will not be resolved without
27 Court intervention.
28

That the cost of preparing this Motion and the supporting documents is \$1,500.00, which should be paid by the Defendant, CISILIE A. VAILE.

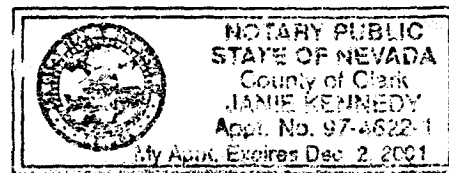
Further your affiant sayeth naught.

Joseph F. Dempsey
JOSEPH F. DEMPSEY, ESQ.

SUBSCRIBED and SWORN to before me

this 14 day of February, 2000.

[Signature]
NOTARY PUBLIC, in and for said
County and State



POINTS AND AUTHORITIES

1.

INTRODUCTION

The parties to this action were divorced in Clark County, Nevada on August 21, 1998.

There are two minor children born the issue of the marriage, to wit: KAIA LOUISE VAILE, born May 30, 1991, and KAMILLA JANE VAILE, born February 13, 1995. In July 1998 prior to the divorce the parties entered into a separation agreement, wherein the parties set forth their respective rights and responsibilities. The separation agreement was merged with the Decree of Divorce at the time of divorce. A copy of the Decree of Divorce and the Agreement between the parties is attached hereto as Exhibit "2" and is incorporated herein by this reference.

It was always understood between Scotlund and Cisilie that the children would temporarily reside with Cisilie in Oslo, Norway until July 1999. Scotlund agreed to allow the children to move to Norway with the complete understanding and agreement by Cisilie that she

1 and the children would move back to the United States to reside within twenty miles of Scotlund.
2 Cisilie moved to Norway as agreed. However, when Scotlund began making arrangements for
3 Cisilie and the children to move to Las Vegas, Cisilie began showing signs of not complying with
4 the parties agreement.
5

6 Scotlund has made every effort to be reasonable with Cisilie. Scotlund has purchased
7 airline tickets for Cisilie and the children (see Exhibit "3", attached hereto). Scotlund has also
8 inquired with different companies with regard to shipping Cisilie's and the children's personal
9 effects (see Exhibit "4", attached hereto). Scotlund has also made arrangements to lease an
10 apartment in a respectable Las Vegas community. Further, Scotlund has gone to Oslo, Norway
11 and attempted to resolve the conflict through organized mediation. Cisilie simply refuses to return
12 to Nevada.
13

14 II.

15 ARGUMENT

16 I. Cisilie is in Contempt of Court.

17 The agreement executed and entered into between the parties sets forth a detailed
18 understanding regarding the care and custody of the minor children as well as the rights and
19 obligations of Scotlund and Cisilie. Specifically, the agreement states as follows:
20

21 4. *Residency in the United States. (a) Generally.* Subject to
22 paragraph 5, each party covenants and agrees that if at any time is
23 shall be the Residential Parent and for so long as it remains the
24 Residential Parent, such party shall make its primary residence in the
25 United States of America in the greater metropolitan areas of Las
26 Vegas, Nevada; Salt Lake City, Utah; San Francisco, California; San
27 Diego, California; Denver, Colorado; Charlotte, North Carolina;
28 Boston, Massachusetts; or any other city on which the parties shall
hereafter mutually agreement by amendment to this Agreement in
accordance with paragraph 2 of Article III (each an "Accepted
Metropolitan Area"). Each party that is now or shall hereafter become
a Residential Parent shall endeavor to provide the Non-Residential

Parent with a reasonable opportunity to reside within twenty miles of the Residential Parent in one of the Accepted Metropolitan Areas.

(b) *Initial Residential Parent.* Subject to paragraph 5, Cisilie agrees that as the initial Residential Parent she will take up residence within twenty miles of Scotlund's place of residence in whichever of the Accepted Metropolitan Areas that he shall have selected (the "Initial Accepted Metropolitan Area"), subject to the following conditions:

(i) Cisilie shall have no obligation to move to the United States to take up residence there before July 1, 1999.

(ii) Scotlund shall have given Cisilie at least four weeks prior notice of the timing of such move;

(iii) Scotlund shall pay or cause his employer to pay all of Cisilie's and the Children's reasonable moving expenses from Oslo, Norway to the Initial Accepted Metropolitan Area, including:

(A) prepaid airfare (via London or otherwise);

(B) moving expenses for a reasonable amount of personal effects;

(C) meals and lodging in London or any other destination between Norway and the Initial Accepted Metropolitan Area where they are required to stay overnight;

(D) meals and lodging at the Initial Accepted Metropolitan Area until Cisilie is able to move into a suitable apartment for herself and the Children, but in no event for more than 21 days after their arrival; and

(E) the first month's rent for the apartment selected by Cisilie for herself and the Children in the Initial Accepted Metropolitan Area.

(iv) There shall at the time Cisilie first arrives and shall thereafter continue to be reasonably suitable and affordable housing for Cisilie and the Children within twenty miles of Scotlund's place of residence in the Initial Accepted Metropolitan Area.

(v) Cisilie shall have the right to change her place of residence within the Initial Accepted Metropolitan Area at any time and as many times as she wishes, provided that her new place of residence remains within twenty miles of Scotlund's initial place of residence.

(vi) Cisilie shall have the right to change her place of residence from the Initial Accepted Metropolitan Area to any other Accepted Metropolitan Area, upon the occurrence of any of the following events:

(A) Scotlund shall have relocated his place of residence more than 100 miles from the center of the Initial Accepted Metropolitan Area;

(B) there is no longer reasonably suitable and affordable housing for Cisilie and the Children within the Initial Accepted Metropolitan Area; or

(C) the parties shall have mutually agreed in writing.

(vii) If Scotlund shall have moved more than twenty (20) miles of Cisilie's place of residence, Cisilie shall have no obligation to relocate to within twenty (20) miles of his new residence, but instead shall be free to relocate to anywhere within the Initial Accepted Metropolitan Area subject to her general obligation set forth in the second sentence of paragraph 4(a) of this Article.

(viii) Cisilie shall have the right to change her place of residence from the Initial Accepted metropolitan Area to anywhere in the world if she is no longer a Residential Parent.

5. **Temporary Residence in Norway.** (a) From the date hereof until the later of July 1, 1999 and the date on which Scotlund shall have arranged to move Cisilie and the Children to the United States in accordance with paragraph 4(b), Cisilie shall have the right to reside with the Children in the greater metropolitan area of Oslo, Norway.

As previously stated in the affidavit of counsel in support of an Order to Show Cause above, as well as the affidavit of R. Scotlund Vaile, attached hereto as Exhibit " I ". Scotlund has complied with each and every requirement set forth in the agreement. Cisilie simply refuses to comply with the terms of the Decree of Divorce and the Parenting Plan by refusing to move the children back to

Nevada as agreed. Cisilie is depriving Scotlund of his close relationship with the children. Cisilie's actions are contemptuous at best, and entirely illegal.

NRS 22.010. Acts or omissions constituting contempt.

The following acts or omissions shall be deemed contempts:

"3. Disobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers.

NRS 22. 100. Penalty for contempt.

"Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged; and if it be found that he is guilty of the contempt, a fine may be imposed upon him not exceeding \$500, or he may be imprisoned not exceeding 25 days, or both, but no imprisonment shall exceed 25 days except as provided in NRS 22.10."

Scotlund has no desire to interfere with Cisilie's relationship with the children and would prefer that Cisilie would realize that she cannot continue on her current course of denying Scotlund meaningful contact with the children. At the very least, Cisilie should be admonished by this court and reminded of the provisions of the following Nevada Revised Statute:

NRS 125.510 Court orders; modification or termination of orders; form for orders; court may order parent to post bond if parent resides in or has significant commitments in foreign country.

1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:

(a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and

(b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties. The party seeking such an order shall submit to the jurisdiction of the court for the purposes of this subsection. The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires the modification or termination. The court shall state in its decision the reason for the order of modification or termination if either parent opposes it.

6. All orders authorized by this section must be made in accordance with the provisions of chapter 125A of NRS and must contain the following language:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detains, conceals or removes the child from a parent, guardian or other person having lawful custody of a right of visitation of the child in violation of an order of this court, or removes the child from the jurisdiction of the court without the consent of either the court or all persons who have the right to custody or visitation in subject to being punished for a category D felony as provided in NRS 193.130.

7. In addition to the language required pursuant to subsection 6, all orders authorized by this section must specify that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign country.

8. If a parent of the child lives in a foreign country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall include in the order for custody of the child, the United States is the country of habitual residence of the child for the purposes of applying the terms of the Hague Convention as set forth in subsection 7.

b) Upon motion of one of the parties, the court may order the parent to post a bond if the court determines that the parent poses an imminent risk of wrongfully removing or concealing the child outside the country of habitual residence. The bond must be in an amount determined by the court and may be used only to pay for the cost of locating the child and returning him to his habitual residence if the child is wrongfully removed from or concealed outside the country of habitual residence. The fact that a parent has significant commitments in a foreign country does not create a presumption that the parent

1 poses an imminent risk of wrongfully removing or concealing the
2 child.

3 Cisilie should be ordered to appear before this Court and show cause why she should not be
4 held in contempt. Further, Scotlund requests an Order from this Court directing Cisilie to immediately
5 comply with the terms of the agreement and move herself and the children to Las Vegas.

6 2. Alternative Request for Change of Primary Physical Custody:
7

8 Should this Court be unable to convince Cisilie to comply with the terms of the agreement
9 between the parties, then Scotlund requests that this Court enter an Order granting Scotlund primary
10 physical custody of the minor children and awarding Cisilie specific rights of visitation after posting
11 a bond as provided for in Section 8(b) of NRS 125.510; restrict Cisilie's visitation to the vicinity of
12 Clark County, limit Cisilie's visitation to only one child at a time and compel Cisilie to deliver the
13 children's Norwegian passports to Scotlund's attorney, once the children have arrived in Las Vegas,
14 Nevada.
15

16 In considering a change of custody the court should determine the best interest of the children
17 and consider which parent is more likely to interfere with the other parent's rights to visitation.

18 **NRS 125.480 Best interest of child; preferences; considerations of**
19 **court; presumption when court determines that parent or person**
20 **residing with child is perpetrator of domestic violence.**

21 1. In determining custody of a minor child in an action brought under
22 this chapter, the sole consideration of the court is the best interest of
23 the child. If it appears to the court that joint custody would be in the
24 best interest of the child, the court may grant custody to the parties
25 jointly.

26 2. Preference must not be given to either parent for the sole reason
27 that the parent is the mother or the father of the child.

28 3. The court shall award the custody in the following order of
preference unless in a particular case the best interest of the child
requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to
either parent. If the court does not enter an order awarding joint
custody of a child after either parent has applied for joint custody, the

court shall state in its decision the reason for its denial of the parent's application. When awarding custody to either parent the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the non-custodial parent.

In this case, by refusing to comply with the provisions of the agreement between the parties, Cisilie is clearly interfering with Scotlund's relationship with his daughters. Should Cisilie continue to refuse to move as previously agreed, Scotlund has no alternative but to request an Order awarding him primary physical custody of the minor children. Scotlund simply wants to be guaranteed that he will be able to continue to have a close relationship with his daughters and asks this honorable Court for assistance in that regard.

3. Attorney's Fees:

Cisilie's refusal to comply with the terms of the agreement has placed Scotlund in a position where he has no alternative but to seek Court intervention by way of this Motion. Scotlund has fully complied with E. D.C. R. S. II and beyond. Scotlund has even traveled to Oslo, Norway in an attempt to resolve this matter through organized mediation. Cisilie simply refuses to fulfil her obligations per the agreement. Therefore, Scotlund requests that this honorable Court award him attorney's fees in the amount of \$1,500.00.

WHEREFORE, Plaintiff prays for the following:

1. An Order directing the Defendant, CISILIE A. VAILE, to Appear and Show Cause why the Defendant should not be held in Contempt of Court and directing Defendant to immediately return the children to the United States, State of Nevada, County of Clark, and provide Plaintiff with the children's passports and other documents to enable international travel with Plaintiff.

2. An Order holding Defendant 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

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125A.350 (Parental Kidnaping Prevention Act) and Nevada Revised Statute 125.510(7), which adopted the provisions of the 14th Session of the Hague Conference on Private International Law.

3. An Order awarding Plaintiff primary physical custody of the parties's two minor children, to wit: KAIA 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.

4. For an award of attorney's fees and costs.

Dated this 14th date of February, 2000.

Respectfully Submitted,

By: 

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

AFFIDAVIT IN SUPPORT OF MOTION PURSUANT TO E.D.C.R. 5.11
AFFIDAVIT OF R. SCOTLUND VAILE

STATE OF NEVADA)

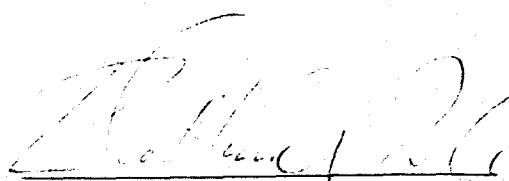
)ss:

COUNTY OF CLARK)

I, R. SCOTLUND VAILE, being first duly sworn, say: That at all times herein affiant was and is over the age of twenty-one and competent to testify as to the truth of the facts asserted herein.

1. That affiant is the Plaintiff in the above entitled matter.
2. That in July, 1998, my former spouse, CISILIE A. VAILE, executed and entered into an agreement which formally set forth our respective rights and obligations with regard to the care and custody of our two daughters, KAIA LOUISE VAILE and KAMILLA JANE VAILE.
3. That Cisilie and I agreed that she would be permitted to live with the children in Oslo, Norway on a temporary basis, but that she and the children would move to within twenty miles of my residence after July 1, 1999.
4. That when Cisilie and I became divorced on August 21, 1998, the agreement was merged with the Decree of Divorce and became an Order of the Court.
5. That I have complied with all the terms of the agreement with regard to providing Cisilie with airfare for her and the children from Oslo, Norway to Las Vegas, Nevada. I have also contacted shipping companies to arrange for the shipment of Cisilie's and our daughter's personal effects. I have also made arrangements for the lease of an apartment in a suitable neighborhood for Cisilie and the children to reside. I have provided Cisilie with everything that is required of me. Yet, Cisilie refuses to move the children to Las Vegas.
6. That I want to be able to continue to have a close relationship with my daughters. However, if Cisilie is unwilling to comply with the terms of our agreement, then I am left with no choice but to seek a change in primary physical custody from Cisilie to me.
7. That on December 20, 1999 and January 17, 2000, I went to Oslo, Norway to attempt to resolve this issue through organized mediation. However, Cisilie still refuses to move to Las Vegas with the children. Therefore, I am asking this Court to issue an Order directing Cisilie to move the children to Las Vegas or in the alternative award me primary physical custody of our daughters.
8. Lastly, I am requesting that the Court order Cisilie to pay my reasonable attorney's fees in the amount of \$1,500.00.

SWISS CONFEDERATION
CANTON AND CITY OF ZURICH
CONSULAR AGENCY OF THE
UNITED STATES OF AMERICA


R. SCOTLUND VAILE

SUBSCRIBED AND SWORN to before me
this 10 day of February, 2000.

NOTARY PUBLIC in and for said
County and State.

Ellen Bruckmann
U. S. Consular Agent