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IN THE SUPREME COURT OF THE STATE OF NEVADA

CISILIE A. VAILE,

Petitioner,

vs.

S.C. Docket No. 36969
D.C. Case No. D230385

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

FILED

FEB 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. M. Casado
DEPUTY CLERK

**MOTION FOR PERMISSION TO SUBMIT
SUPPLEMENTAL EXHIBITS RELATING TO PETITIONS FOR
WRIT OF MANDAMUS
AND
WRIT OF PROHIBITION**

Petitioner, CISILIE A. VAILE ("Cisilie"), by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLYCK, P.C., and pursuant to NRAP 2, 21, and 27, hereby moves this Court for permission to submit *Supplemental Exhibits*.

This case is before the Court on an emergency Petition for two writs. No formal briefing has been done, and there was no time before filing the Petition to obtain a transcript of the proceedings. After the Petition was filed, the Real Party in Interest, R. SCOTLUND VAILE ("Scot") hired new counsel (Mr. Angulo), who had the disadvantage of not being present at the hearing.

The *Opposition* filed by his new counsel includes various errors and misstatements of fact which we attribute to counsel not having been present at the hearing, and taking his client's representations as factual. We immediately requested the court transcriber to produce transcripts, which we have just received.

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FEB 05 2001
JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

1 This request is made for the purpose of the Court having a clear factual history on which to
2 base its disposition of the writ petitions, and in the interest of conserving the very limited time
3 possible for oral argument to the legal merits rather than any quibbling about who said what during
4 the proceedings in the trial court. While certain of Mr. Angulo's factual assertions are not a part of
5 the record and are clearly rebutted by the *Supplemental Exhibits*, we hasten to add that we suggest
6 no wrongdoing by opposing counsel; this case has a complex fact pattern and many documents. We
7 submit, however, that misstated facts should be corrected in the interest of allowing this Court to
8 give its full consideration to the legal merits of the matter.

9 The *Supplemental Exhibits*, submitted with this *MOTION*, include:

- 10 1. Transcript from the Eighth Judicial District Court evidentiary hearing of October 9,
11 2000.
- 12 2. Transcript of the brief Eighth Judicial District Court hearing of March 29, 2000.
- 13 3. A translation of Cisilie Vaile's *APPEAL* of the decision of the Municipal Court of
14 Oslo.
- 15 4. A copy of *Mozes v. Mozes*, No. 98-56505, 2001 U.S. App. LEXIS 291, (U.S.C.A.,
16 9th Cir., Jan. 9, 2001), a recent appellate result in a case that was discussed
17 throughout Cisilie's *MOTION* filed September 21, 2000, and which is included for
18 the convenience of the Court.

19 The reason for our request to file the transcripts and translation is to correct certain factual
20 errors in Scot's *Opposition*.

21 1. Error page 3, lines 18-19. The decision to select Nevada for the filing of the divorce
22 action was made by Scot, not Cisile. *Supplemental Exhibit 1*, at 32, lines 4-5.

23 2. Error page 3, lines 24-25, page 4, lines 1-2. Scot only changed the mailing address on one
24 credit card prior to May 12, 1998. He did not change his driver's license or register to vote in
25 Nevada until the day he signed the verification on his complaint claiming to have been a resident for
26 the prior six weeks. *Supplemental Exhibit 1*, at 20, lines 2-10; 62, lines 7-9; 63, lines 3-21; 54, line
27 17 through 56, line 13.

1 3. Error page 4, lines 5-10. Scot did not come to Nevada every time he returned to the
2 United States from Europe, and did not testify that he “believed he had spent more than six weeks”
3 in this state prior to filing. While he refused to give a straight answer, Scot conceded that he was
4 not physically in Nevada between a brief vacation in 1996 and July 9 or 10, 1998, when he flew in
5 to sign the affidavit claiming to be a resident. *Supplemental Exhibit 1*, at 12, line 3 through 14, line
6 23; 17, lines 1-18; 18, line 17 through 19, line 11; 32, lines 13-20; 39, line 22 through 40, line 1; 52,
7 line 7 through 54, line 7.

8 4. Error page 4, lines 11-12. Cisilie testified that she was threatened by Scot immediately
9 prior to signing the *London Agreement*.¹ In fact, Scot lost his passport to the London authorities for
10 the four weeks immediately preceding his arrival in Nevada on or about July 9, 1998, *because* he
11 had threatened to take the children from Cisile and leave her childless and penniless in London.
12 *Supplemental Exhibit 1*, at 68, line 15; 74, lines 12-18; *see* 37, lines 1-5; 37, line 23 through 38, line
13 19.

14 5. Error page 4, lines 21-23, page 5, lines 1-2. Cisilie did not “obtain independent legal
15 advice” prior to signing the *Agreement*, nor was she “represented by Nevada attorney David A.
16 Stephens, bar number 000902,” or anyone else. All of the documents were prepared by Scot’s
17 attorney and Cisilie signed them in proper person. Mr. Stephens was selected by Scot and Cisilie
18 only had one opportunity to speak with him on the phone. Scot did not give her any privacy for the
19 conversation. *Supplemental Exhibit 1*, at 66, lines 8-12; 74, lines 9-11; *see* 33, line 8 through 35,
20 line 15.

21 6. Error page 5, lines 7-9. The *Agreement* provided that Cisilie was to remain primary
22 physical custodian of the children at least until they each reached the age of ten. The “single
23 condition” stated by Scot is incorrect,² and he violated the custody terms of his own *Agreement* when
24

25 ¹ There was additional evidence on the point, but the Court directed counsel not to introduce any additional
26 testimony or evidence relating to threats or duress.

27 ² As noted in the writ petition, the divorce made it legally impossible for Cisilie to move to the United States
28 if she wanted to do so. The severability clause in Scot’s *Agreement* rendered that provision void, while retaining
Cisilie’s primary physical custody of the children. *Agreement*, Appendix Vol. 2, Exhibit 15, at Exhibit 1, Art. VIII(7),
page 20 of 23.

1 he kidnaped the children from Norway. *Agreement*, Appendix Vol. 2, Exhibit 15, at Exhibit 1, Art.
2 IV(2), page 7 of 23; *see Supplemental Exhibit 1*, at 72, lines 6-15.

3 7. Error page 5, lines 15-16 and page 14, lines 20-22. There was no finding by Judge Steel
4 that Cisilie was untruthful in her testimony regarding her understanding of the residency requirement
5 to obtain a divorce. *See* Appendix Vol. 3, Exhibit 29. Further, Cisilie's testimony was simply that
6 she did not know or understand any of the time requirements to obtain a divorce. *See Supplemental*
7 *Exhibit 1*, at 68, lines 6-15.

8 8. Error page 5, lines 21-24. Scot did not testify that he was "confident" about *any* relevant
9 time periods; while he refused to give a definitive answer, and could not account for his time in
10 Nevada, it did not amount to six weeks, inclusive of the time for the evidentiary hearing in 2000.
11 *See Supplemental Exhibit 1*, at references noted in Error No. 3 above, and 51, line 19 through 52, line
12 9; *see* 23, lines 6-21. He also specified that he lived in London from the time he left Virginia in 1997
13 until October, 1998. He was unable to give any specific time in Nevada to substantiate his comment
14 that it was "possible" that he had been here for six weeks.

15 9. Error page 5, footnote 4 and page 8, lines 18-21. There *is* no such document as the
16 "Norwegian Agreement." The document referred to as executed on July 9, 1998, is the *Agreement*
17 drafted by Scot's attorney in London that he had Cisilie sign just before he got on a plane for the
18 United States. *Agreement*, Appendix Vol. 2, Exhibit 15, at Exhibit 1, Art. IV(2), page 23 of 23.

19 10. Error page 5, lines 25-26, page 5 lines 1-2. The mediation sessions in Norway beginning
20 in November, 1999, were court annexed sessions, mandatory under local law prior to the next level
21 of filings in Oslo. Scot, fluent in Norwegian, having lived there for two years prior to the marriage,
22 submitted to the jurisdiction of the Oslo court and participated in the mediation sessions. Scot
23 obtained Norway counsel and proceeded with filings. There were no "special appearance" style
24 documents filed by Scot in Oslo. *Appendix* Vol. 1, Exhibit 1, at Exhibits G, H, I, J, & K.

25 11. Error page 6, lines 5-6. Cisilie never "conceded" the legitimacy of Scot being a resident
26 of Nevada; she simply signed a proper person affidavit prepared by Scot's attorney stating that she
27 *believed* his assertions to be true – which she did until told by Norway counsel that Scot's divorce
28 complaint was fraudulent. *Supplemental Exhibit 1*, at 68, lines 6-14; 72, lines 8-10.

1 12. Error page 7, footnote 5, and page 6, line 28. The “some obscure mention to a
2 document” alleged not to exist in the Appendix is located at Vol. 2, Exhibit 3, DD. This was the
3 responsive pleading from Norway counsel, in English but in normal Norwegian pleading format,
4 informing the Nevada court that there were ongoing custody proceedings in Norway and that the
5 Nevada court should notice that it did not have proper jurisdiction in the case. The assertion that no
6 answer was made is simply wrong, but the judge never read it. *Appendix* Vol. 2, Exhibit 3, EE.

7 13. Error page 7, footnote 6. As demonstrated by *Supplemental Exhibit 2*, Scot not only did
8 not “inform Judge Steel of the proceedings in Norway,” he lied as to every aspect of where the
9 children had lived up to that point, making up a story that Cisilie and the children had left Las Vegas
10 for a vacation in Norway, and that Cisilie was refusing to “return” from there.

11 14. Error page 13, lines 1-7. Scot could not recall with any certainty whether he came
12 directly to Nevada after July 9, 1998, although he did arrive by July 14. He could not recall any
13 specific places he was located during July and August, 1998, nor how long he stayed at any such
14 location. He may or may not have been in Las Vegas, San Francisco, or Los Angeles at any specific
15 time. In other words, he was not even in Nevada, pre or post filing combined, for six weeks. *See*
16 *Supplemental Exhibit 1*, at references noted in Error Nos. 3 & 8 above, and at 14, line 22 through 17,
17 line 18.

18 15. Error page 14, lines 7-9. It was not “the intent of the parties” to take up residence in
19 Nevada for a sufficient time to obtain a divorce; the only “intent” ever expressed by Cisilie was not
20 to oppose Scot obtaining a divorce. *See Supplemental Exhibit 1* at 22, line 24 through 23, line 5; 68,
21 lines 8-9.

22 16. Error page 7, line 11, and page 16, lines 13-19. Scot did not merely “utilize ‘self-help’”
23 in enforcing a legitimate custody order. *Supplemental Exhibit 2*, page 2, lines 10-22, reveals Scot’s
24 outright lie to the trial court in the March proceedings that led to Judge Steel’s pick-up order; he
25 falsely claimed that he and the children lived in Nevada for the children’s *entire lives*, in Scot’s
26 effort to secure a custody order prior to the parental kidnaping. His deliberate lie, coupled with the
27 trial court’s never reading the submission from Norway, is what allowed Scot to get possession of
28 a court order with which he attempted to “legitimize” his kidnap of the children from Norway.

1 17. Error page 9, lines 5-8. Scot asserts that Norway has dismissed the custody case on its
2 merits. This is not accurate. *Supplemental Exhibit 3* is a translation of the appeal before the
3 Norwegian court concerning the custody proceedings; that proceeding is still pending. In any event,
4 it is clear from the Court's findings that it is willing to *defer* to the final decision to be made by our
5 courts – specifically including the determination of this Court on these writ petitions. The fact that
6 the courts of another country are willing to *acquiesce* to the decisions made by the Nevada courts
7 does not in any way legitimize those rulings. If this Court rules that the trial court properly had and
8 exercised jurisdiction, then the Norway court would respect that ruling and not pursue the matter
9 further; by the same token, if this Court grants the writ petitions, the Norway courts will immediately
10 return to making the substantive custodial and related decisions that should be done by those courts.

11 Finally, for the Court's convenience, Cisilie submits the latest decision in the *Mozes* case that
12 was discussed Cisilie's *MOTION* regarding habitual residence as *Supplemental Exhibit 4*. On
13 January 9, 2001, the Ninth Circuit Court of Appeals reversed and remanded the matter. The most
14 recent printing of this case on LEXIS is provided for the Court's convenience. Looking to the issue
15 of determining "habitual residence," the Appeals court found that "the agreement between the
16 parents and the circumstances surrounding it must enable the judge to infer a shared intent to
17 abandon the previous habitual residence."

18 The relevance of the opinion goes to where the children were "habitually resident" in this
19 case, and thus which country's courts should decide the substantive custody issues. The Vaile's
20 children were *never* residents of Nevada; their residence before their 1998 move to Norway was
21 England, away from which both parties moved (this establishes the parent's mutual "deliberate
22 decision to abandon" that earlier residence). There was a shared intent between Cisilie and Scot to
23 *abandon London* as the children's habitual residence, and except for Norway, no other place can
24 have jurisdiction to make the Hague ruling, under the interpretation of the Convention by the Ninth
25 Circuit. By the rules of the Convention, and the federal law implementing that Convention, the
26 children must be immediately returned to Norway where the substantive custody issues should be
27 addressed.

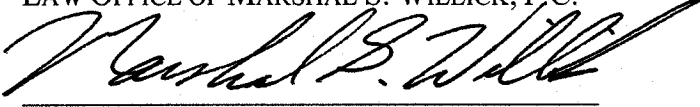
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In light of the above, we request that this Supplemental Exhibits be filed, become part of the record in this case, and that they be considered in the disposition of the writ petitions now pending before this Court.

Respectfully submitted this 2nd day of February, 2001.

Respectfully submitted by:
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