

ORIGINAL

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

DEC 20 2000

BY JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

SUPPLEMENTAL APPENDIX TO R. SCOTLUND
VAILE'S OPPOSITION TO EMERGENCY PETITION
FOR WRIT OF
MANDAMUS AND WRIT OF PROHIBITION

PETER M. ANGULO, ESQ.
Attorney for Real Party in Interest
Nevada Bar No. 003672
301 E. Clark Avenue, St. 1000
Las Vegas, Nevada 89101
(702) 384-4012

RECEIVED

DEC 20 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Law Offices of
RAWLINGS, OLSON, CANNON
GORMLEY & DESRUISSEAU
A Professional Corporation
301 EAST CLARK AVENUE, SUITE 1000
LAS VEGAS, NEVADA 89101
(702) 384-4012 TELEFAX (702) 383-0701

10-22203

SUPPLEMENTAL APPENDIX

- A. Decree of Divorce dated August 21, 1998
- B. Affidavit in Support of Motion Pursuant to EDCR 5.11 of R. Scotlund Vaile dated February 10, 2000
- C. Order dated April 12, 2000
- D. Notice of Entry of Order dated April 19, 2000
- E. Notice of Appeal dated November 22, 2000
- F. The Oslo District Court Order dated November 9, 2000

EX A

FILED

AUG 21 1 52 PM '98

John Smith
CLERK

DECD
JAMES E. SMITH, ESQ.
Nevada Bar #000052
214 South Maryland Parkway
Las Vegas, Nevada 89101
702-382-9181
Attorney for Plaintiff,
R. SCOTLUND VAILE

DISTRICT COURT

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. C

DECREE OF DIVORCE

The above entitled cause having come on for summary disposition on this day before the Court, the Plaintiff having requested summary disposition by and through his counsel, JAMES E. SMITH, ESQ., and the Defendant having interposed her ANSWER IN PROPER PERSON, and the Court being fully advised in the premises finds; that the Plaintiff is now and for more than six weeks prior to the verification of the Complaint in this action has been an actual, bona fide resident and domiciliary of the County of Clark, State of Nevada, actually and physically residing and being domiciled therein during all of said period of time, and that this Court has jurisdiction over both of the parties hereto and of this cause of action, that each and every one of the allegations contained in Plaintiff's Complaint were and are true, that there are no minor adopted children of the parties, and Defendant is not now pregnant, that the

JAMES E. SMITH
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http://www.james-smith.com

1 parties have both waived their respective rights to spousal support, and that Defendant
2 has waived her rights to FINDING OF FACT, CONCLUSIONS OF LAW and written
3 NOTICE OF ENTRY OF JUDGMENT, and that Plaintiff is entitled to the relief prayed for
4 in said Complaint upon the grounds alleged therein, and good cause appearing
5 therefore;
6

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of
8 matrimony now and heretofore existing between Plaintiff and Defendant be dissolved,
9 set aside, and forever held for naught, and that the parties hereto, and each of them,
10 be restored to a single, unmarried state;
11

12 IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that the attached
13 Agreement is hereby adopted and incorporated herein as though fully set forth herein;
14

15 IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that with regard
16 to the two minor children of the parties, to wit: KAIA LOUISE VAILE, born 05/30/91
17 and KAMILLA JANE VAILE, born 02/13/95, the child custody, visitation, maintenance
18 and support of the minor children IS HEREBY ORDERED as set forth in the above-
19 referenced Agreement.
20

21 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that the parties
22 understand they are bound by the provisions of NRS Chapter 125, and that the minor
23 child may not be removed from the State of Nevada without consent of the parties or
24 Order of the Court and that:

25 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION
26 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS
27 ORDER IS PUNISHABLE AS A FELONY BY UP TO 6 YEARS IN PRISON.
28 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,

ATTORNEY AND COUNSELOR AT LAW
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guardian or other person having lawful custody or 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 consent of either the court or all persons who have the right to custody or visitation is subject to being punished by for a category D felony as provided in NRS 193.130.

IT IS FURTHER HEREBY ORDERED that said minor children are the habitual residents of the State of Nevada and, pursuant to the provisions of NRS 125.510(7), the parties are hereby notified as follows:

"...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."

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pursuant to the provisions of NRS 125.450 and NRS 31A, et seq., the non-custodial parent is now notified that the withholding or assignment of wages and commissions for the payment of child support IS HEREBY ORDERED should any support become delinquent for 30 days, or such earlier period of time as set out in NRS 31A, et seq.:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that notice is hereby given pursuant to NRS 125B.145 that the Court is required to review child support obligations upon request by the parent, legal guardian or an attorney every three years to determine if the support being paid is within the formula of NRS 125B.070;

IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that the community property of the parties is divided as set forth in the above-referenced Agreement;

.....
.....
.....

1 IT IS FURTHER HEREBY ORDERED, ADJUDGED and DECREED that the
2 community debt of the parties is divided as set forth in the above-referenced
3 Agreement.

4 DATED and DONE this 10th day of August, 1998.
5

6 **CYNTHIA DIANNE STEEL**
7 **DISTRICT COURT JUDGE**
8

9 Submitted by:

10 

11 JAMES E. SMITH, ESQ., NSB #52
12 214 South Maryland Pkwy.
13 Las Vegas, Nevada 89101
14 702-382-9181
15 Attorney for Plaintiff R. SCOTLUND VAILE
16
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AFFIDAVIT IN SUPPORT OF MOTION PURSUANT TO E.D.C.R. 5.11
AFFIDAVIT OF R. SCOTLUND VAILE

STATE OF NEVADA)

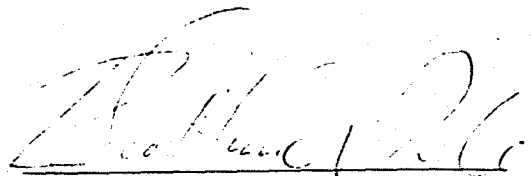
)ss:

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 18 day of February, 2000.

NOTARY PUBLIC in and for said
County and State.

Ellen Bruckmann
U. S. Consular Agent

EX C

FILED

APR 12 2 21 PM '00

Shirley S. Higgins
CLERK

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

DEMPSEY, ROBERTS & SMITH, LTD.
ATTORNEYS AT LAW

520 South Fourth Street, Suite 360
Las Vegas, Nevada 89101
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1 other dates relative to this case currently scheduled; and the Court having reviewed all the papers,
2 pleadings and records on file herein, together with the oral argument of counsel and good cause
3 appearing; the Court finds:

4
5 IT IS HEREBY ORDERED that Plaintiff's Motion for an Order Directing Defendant to
6 Appear and Show Cause why Defendant should not be held in Contempt of Court for Failing to
7 Return the Minor Children to Nevada is GRANTED.

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

12
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant is in
14 Contempt of Court for Defendant's willful and intentional violation of the provision of the Decree
15 of Divorce, in violation of Nevada Revised Statute 125A.350 (Parental Kidnaping Prevention
16 Act0 and Nevada Revised Statute 125.510(7), which adopted the provisions of the 14th Session
17 of the Hague Conference on Private International Law.

18
19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded
20 primary physical custody of the parties's two minor children, to wit: KAIL LOUISE VAILE, born
21 May 30, 1991, and KAMILLA JANE VAILE, born February 13, 1995, and awarding Defendant
22 specific visitation rights, within the County of Clark or requiring Defendant to post a bond in
23 accordance with NRS 125.510.
24

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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

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EX D

FILED

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Shirley S. McGuire
CLERK

1 NEOJ
2 JOSEPH F. DEMPSEY, ESQ.
3 Nevada Bar No. 004585
4 DEMPSEY, ROBERTS & SMITH, LTD.
5 Attorneys at Law
6 520 South Fourth Street, Suite 360
7 Las Vegas, Nevada 89101
8 (702) 388-1216
9 Attorneys for Plaintiff
10 R. SCOTLUND VAILE

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

11 R. SCOTLUND VAILE,
12 SSN: 519-02-6087,
13
14 Plaintiff,

Case No. D230385
Dept. No. G

15 VS.

16 CISILIE A. VAILE,
17 SSN: 280-92-2900,
18
19 Defendant.

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

NOTICE OF ENTRY OF ORDER

20 PLEASE TAKE NOTICE that a Order was entered in the above entitled matter on April
21 12, 2000. A copy of said Order is attached hereto.

22 Dated this 19th day of April, 2000.

23 Respectfully submitted,
24 DEMPSEY, ROBERTS & SMITH, LTD.

25 By: *Joseph F. Dempsey*
26 JOSEPH F. DEMPSEY, ESQ.
27 Nevada Bar # 004585
28 520 S. 4th 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
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CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of DEMPSEY, ROBERTS & SMITH, LTD., and that service of the foregoing NOTICE OF ENTRY OF ORDER was made on the 19th day of April, 2000 by depositing a true copy of the same in the United States mail at Las Vegas, Nevada, postage prepaid, addressed as follows:

R. Scotlund Vaile
c/o Heather Vaile
12718 Acadian Trail
Austin, TX 78727

and to

Elisabeth Hagen
VOGT, ENGEBAKKEN, HAGEN
Nedrestorgate 11b
3015 Drammen
Norway
Attorney for Defendant

Cisilie Anne Vaile
Goteborggaten
0566 Oslo
Norway

Janie Kennedy, An employee of
DEMPSEY, ROBERTS & SMITH, LTD.

DEMPSEY, ROBERTS & SMITH, LTD.

ATTORNEYS AT LAW

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Las Vegas, Nevada 89101
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EX E

1 NOAS
2 LAW OFFICE OF MARSHAL S. WILICK, P. C.
3 MARSHAL S. WILICK, ESQ.
4 Nevada Bar No. 002515
5 3551 E. Bonanza Road, Suite 101
6 Las Vegas, NV 89110-2198
7 (702) 438-4100
8 Attorneys for Plaintiff

FILED

Nov 22 2 25 PM '00

Shirley L. Ruggione
CLERK

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

10 R. SCOTLUND VAILE,
11 Plaintiff,

12 vs.

13 CISILIE A VAILE,
14 Defendant.

CASE NO: D 230385
DEPT NO: G

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

NOTICE OF APPEAL

17 NOTICE IS HEREBY GIVEN that Cisilie A. Vaile, Defendant above named, hereby
18 appeals to the Supreme Court of Nevada from the Order rendered by Judge Cynthia Diane Steel, and
19 entered on 25th day of October, 2000.

20 DATED this 22nd day of November, 2000.

21 Respectfully submitted by:
22 LAW OFFICE OF MARSHAL S. WILICK, P.C.

Marshal S. Willick

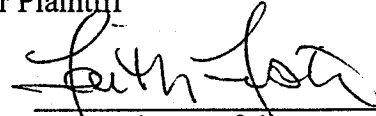
23 MARSHAL S. WILICK, ESQ.
24 Nevada Bar No. 002515
25 ROBERT CERCEO, ESQ.
26 Nevada Bar No. 005247
27 3551 East Bonanza, Suite 101
28 Las Vegas, Nevada 89110
(702) 438-4100
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing *Notice of Appeal* was made this 20 day of November, 2000, pursuant to EDCR 7.26(a), via facsimile to (702) 388-2514 and by first class U.S. mail, and addressed as follows:

JOSEPH F. DEMPSEY, ESQ.
Dempsey, Roberts & Smith, Ltd.
520 South Fourth Street
Las Vegas, NV 89101
Attorney for Plaintiff



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

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Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
63	11/22 2:00PM	0'00"	3882514.....	Send.....	0	Remote Fax was Busy..... 961
63	11/22 2:03PM	0'31"	702+388+2514	Send.....	2/ 2	EC144	Completed.....

Total 0'31" Pages Sent: 2 Pages Printed: 0

1 NOAS
2 LAW OFFICE OF MARSHAL S. WILLOCK, P. C.
3 MARSHAL S. WILLOCK, ESQ.
4 Nevada Bar No. 002515
5 3551 E. Bonanza Road, Suite 101
6 Las Vegas, NV 89110-2198
7 (702) 438-4100
8 Attorneys for Plaintiff

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. SCOTLUND VAILE,
Plaintiff,

vs.

CISILIE A VAILE,
Defendant.

CASE NO: D 230385
DEPT NO: G

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

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Cisilie A. Vaile, Defendant above named, hereby
appeals to the Supreme Court of Nevada from the Order rendered by Judge Cynthia Diane Steel, and
entered on 25th day of October, 2000.

DATED this 22nd day of November, 2000.

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

Marshal S. Willock

MARSHAL S. WILLOCK, ESQ.
Nevada Bar No. 002515
ROBERT CERCEO, ESQ.
Nevada Bar No. 005247
3551 East Bonanza, Suite 101
Las Vegas, Nevada 89110
(702) 438-4100
Attorneys for Defendant

FX F

Certification by Translator

I, TARA CHACE, certify that I am fluent in the
English and Norwegian languages, and that the above/attached
documents are accurate translations of the original documents in the English language.

December 5, 2000
Date Signed

Name:

Address:

Tara F Chace
Tara F Chace
1516 NE 98th St
Seattle WA
98115-2325

[Norwegian
coat of
arms]

THE OSLO DISTRICT COURT

On November 9, 2000, a court session was held in the Oslo Courthouse for the pronouncement of an

ORDER

Judge:	Assistant Judge Liv Dahl
Case Number:	00-03031 A/66
Plaintiff:	Cisilie Vaile, Gøteborggt. 1, 0566 Oslo
Counsel for Plaintiff:	Attorney Elisabeth Hagen, Nedre Storgt. 11b, 3015 Drammen
Defendant:	Robert Scotlund Vaile, Pb 2845, Denton Texas 76202, USA
Counsel for Defendant:	Attorney Elisabeth Bergsland, pb 471 Sentrum, 0105 Oslo

The following

order

was pronounced:

The case concerns the physical custody of and visitation with the parties' joint children, Kaia Louise Vaile, born May 30, 1991 and Kamilla Jane Vaile, born February 13, 1995. The Plaintiff has also petitioned for the granting of divorce. The Defendant has pleaded for the case to be dismissed. This court will decide whether the case can be heard before the Oslo District Court.

Background of the case:

Cisilie Vaile, a Norwegian citizen, and Robert Scotlund Vaile, an American citizen, entered into matrimony in Utah, USA on June 6, 1990. They lived in Ohio and Virginia before they moved to London in August of 1997. Both the children were born in the USA, and have both Norwegian and American citizenship.

The parties were divorced through a decree from the District Court, Clark County, Nevada dated August 10, 1998. At that same time, an order was made regarding the physical custody of the children based on an agreement between the parties dated July 9, 1998. According to that agreement/decreed, Cisilie Vaile would have physical custody of the children until they were 10 years old. She was further required as residential parent to take up her residence within 20 miles of the Defendant's residence in the USA (see agreement's Art IV, point 4), however, she was not obliged to move to the USA before July 1, 1999. According to the agreement's Article IV, point 5, she had right to reside with the children in Norway until July 1, 1999.

On July 9, 1998, the parties also entered into a Norwegian agreement concerning custody. According to that agreement, the parties were to have joint custody, while the Plaintiff was to have physical custody of both children. This agreement refers to the English agreement "... which is completely valid in its totality."

The Plaintiff and children have lived on Gøteborggt in Oslo since July 1998. The Defendant appears to have resided partly in London and partly in Switzerland. He has reportedly had visitation with his daughters 1-2 times per month.

Before July 1999, Robert Scotlund Vaile stated that he was going to move back to the USA and wanted Cisilie Vaile and the children to move to the USA as well. The Plaintiff was opposed to this.

A mediation certificate from the Sentrum Family Counseling Services, Oslo, dated January 17, 2000 is included.

On February 18, 2000, Robert Scotlund Vaile filed a motion with the District Court, Clark County, Nevada requesting the "return" of the children and also physical custody.

Attorney Elisabeth Hagen filed a petition with the Oslo District Court on behalf of Cisilie Vaile on March 27, 2000. In this petition, it is requested that the mother be given physical custody of the children and that the father should have visitation according to the court's discretion, and under supervision, and a temporary decision in this regard was also requested.

In accordance with pleading, and before proper answer was filed, the Oslo District Court issued an injunction on the children leaving the country.

Proper answer was filed May 22, 2000. This answer showed, among other things, that the District Court, Clark County, Nevada issued an order on April 12, 2000 and granted the father physical custody of the children. The answer primarily argues for dismissal, alternatively that the Oslo District Court cannot make a decision in the case until the application for return according to the Hague convention is finally decided. With respect to the case's validity, it was further submitted that the father should have physical custody and the mother have visitation according to the court's discretion.

It was later clarified that the Defendant, likely in the course of his visitation with the children on May 17, 2000, had taken the children out of Norway and to the USA.

On May 29, 2000, the Norwegian Justice Department sent an application on Cisilie Vaile's behalf for the return of the children under the Hague convention of October 25, 1980.

The Oslo District Court decided on August 28, 2000 to stop the case until the application for return was finally decided, see Norwegian Parental Kidnapping Prevention Act, Section 19, Number 1.

Responding to a motion from Cisilie Vaile, the District Court, Clark County, Nevada reached a decision on October 25, 2000 with the following findings:

“It is hereby ordered that the Defendant’s MOTION TO SET ASIDE FRAUDULENTLY OBTAINED DIVORCE, OR IN THE ALTERNATIVE, SET ASIDE ORDERS ENTERED ON APRIL 12, 2000 AND REHEAR THE MATTER, AND FOR ATTORNEY’S FEES AND COSTS is DENIED and the Court makes no Hague Convention determination on the Defendant’s MOTION FOR IMMEDIATE RETURN OF INTERNATIONALLY ABDUCTED CHILDREN.

It is further ordered that the children are to be returned to Texas in the custody of Plaintiff, Scotlund Vaile, on October 25, 2000. The children’s passports will remain in the custody of this Court until a court of competent jurisdiction issues an order regarding custody of the children. The passports of the Plaintiff and Defendant, Cisilie Vaile, will be immediately returned by the Court.

It is further ordered that Defendant, Cisilie Vaile, is awarded liberal visitation with the children while Defendant is in Las Vegas, until October 25, 2000, and then later in Texas while this Court awaits word from another court that will assert jurisdiction over the children.

It is further ordered that the children shall remain in the Plaintiff’s temporary custody in Texas until the Court receives an Order from whichever court is deemed to have jurisdiction over the children.”

It is declared in the order that the court “never had jurisdiction over the Children, because the children were never present in this state.” Point 8 of the order is quoted:

“This Court is going to keep emergency jurisdiction over the children until some other court says “I have jurisdiction over the children and I will relinquish you of that responsibility.” The two judges from the State of Texas and Norway need to talk to each other and decide who has jurisdiction. The victor court will call this Court and advise of the jurisdictional decision. This Court will then relinquish jurisdiction. This Court will return the children to the State of Texas until it receives the call from Texas or Norway. The court with jurisdiction needs to sign an order, cosigned by the other court, and this Court must receive the countersigned order before it releases jurisdiction....”

With respect to the issue of dismissal, the Defendant presents the following:

A plea has been made to dismiss the case since neither the Defendant nor the children are resident in Norway (cf. Section 64, Paragraph 1, litra b of the Children Act).

The children have lived in Norway since July 14, 1998 according to a contract between the parties. This dwelling place was only to be temporary, according to the pleading's exhibit 2, page 11, point 5. After July 1, 1999, Cisilie Vaile was required to move to the USA.

In communications regarding their divorce, the parties spent much time discussing the situation of the children. The Defendant's account was that it would be the best for the children to move back to the USA, where they had lived most of their lives. Out of consideration for the Plaintiff, however, he accepted that she could live one year in Norway with the children.

After Cisilie Vaile and the children moved to Norway, Robert Scotlund Vaile investigated job possibilities in the USA, and sought residence for all the parties from the summer of 1999. He pursued a job in Chicago. Cisilie Vaile initially accepted this as a city of residence, but later, in the spring of 1999, she changed her mind and in October of 1999, she admitted that she had no intention of moving back to the USA.

Cisilie Vaile's stance of not being willing to move back to the USA is contrary to the agreement. Her unlawful attitude cannot result in the assumption that the children have domicile in Norway. Consequently, the case must be dismissed from the Oslo District Court. Reference is given to page 402 of the Norwegian Legal Gazette of 1984, which must be construed to mean that an extended stay is not sufficient foundation for a party or children to be considered "residents" in the country. It is necessary for there to be an "intention" for the stay to be permanent. This intention has never existed between the parties. Further reference is given to page 1144 of the Legal Gazette of 1993 where it is established that moving the children by self-help¹, as a general rule, is not sufficient proof that the children have changed residence. Cisilie Vaile has in reality exercised self-help by retaining the children in Norway past the agreed time period.

Additionally, the court should arguably dismiss the case based on the fact that the disagreements presented in the petition have already been decided by the American courts (cf. Norwegian Children and Parents Act, Section 64, paragraph 1c).

¹ Although no good direct English translation for self-help, the English expression "taking the law into your own hands" is consistent.

The Plaintiff has essentially presented the following:

The Plaintiff understands that the Defendant asserts that Las Vegas should be the correct location of jurisdiction given the precedence of the divorce decree. The Plaintiff contends that the parties at the time of the divorce resided in London. The domicile principle suggests that London was, at the outset, the correct jurisdiction, and it would have been the English law that would have been applicable.

The Defendant chose the jurisdiction of Las Vegas, Nevada because he wanted a quick divorce. The Defendant misrepresented that he had lived in Nevada for more than 6 weeks before the case was filed on July 14, 1998, in order to have the case handled in Las Vegas. The Defendant stayed in Las Vegas only from July 9 until July 22, 1998.

Las Vegas has never had jurisdiction. The District Court, Clark County, Nevada has issued judgments in July 1998 and April 2000 based on incorrect information from the Defendant. According to Norwegian law, this should have the effect of setting aside the decision (cf. Norwegian Civil Procedures Act, Section 384, paragraph 2 and Section 385). There are corresponding American laws. According to American attorneys with whom the Plaintiff has had contact, the Defendant risks the decision being set aside and penalties in this case.

It is argued that at the time the case was brought, the children were resident in Norway (cf. Children Act, Section 64, first paragraph, litra b). The Defendant's unlawful self-help does not change this. The Oslo District Court is the correct jurisdiction.

From the preliminary commentary for the Act (cf. Norwegian Government Reports 1977:35), it is understood that the foundation of a child's place of residence being the judicial district is that the decisions shall be made where the decision-making authority can make a reasonable assessment of the child's condition. According to theory and legal practice, the question of the "child's residence" pursuant to Section 64 of the Children Act should be answered based on a concrete and complete overall assessment.

Residence in Norway was established according to agreement between the parties. Norway was established as the country of residence starting in July 1998. There is no unlawful self-help on the part of the Plaintiff. Residence in Norway was not of a purely short-term or temporary nature. She has not undertaken the move to influence selection of jurisdiction.

The conflict between the parties arose at Christmastime 1999, at a point when none of them lived in the USA.

The Defendant must have understood as soon as 1998 that the Plaintiff's move to Norway was not temporary. She could not move to the USA because she had neither job, income, nor right to residency.

Reason and appropriateness indicate that at the time the case was brought, the children should be considered resident in Norway.

The practice of law shows that those cases where the courts have not considered the child to be a resident in the country where they physically resided are cases where the actual residence was established unlawfully after the conflict in question arose.

This case must be heard by the Oslo District Court.

After the decision dated October 25, 2000 from the court in Nevada was reached, it was asserted that none of the parties have any connection to Texas, but that this residence was established in June of last year. The kidnapping on May 17 changed the children's physical place of dwelling through unlawful self-help, contrary to the Oslo District Court's injunction against leaving the country, and contrary to the Hague convention and the Parental Kidnapping Prevention Act. The Defendant has, using self-help, prevented a legal trial of potential order for return. He has sought to influence the jurisdictional question by creating an illegal facade of establishing Texas as the actual residence for the children. Physical residence founded on unlawful self-help can not lead to the assumption that the children have changed their "residence" according to the Children Act, Section 64, see Karnov's note 153.

The Court is encouraged to propose to solve the case in line with the decision from the District Court in Nevada by contacting the judge in Denton, Texas. A hearing is scheduled there November 8, 2000. The Defendant has put forward a case there to impose restrictions on the Plaintiff's visitation with the children. Meanwhile, the Court is also encouraged to issue a decision to hear the case before the Oslo District Court.

Divorce

The Plaintiff has also requested in the pleading dated July 7, 2000 pronouncement of a divorce. The Plaintiff asserts that the American divorce decree is based on misrepresentation from the Defendant, an error that would unconditionally lead to the decree being set aside (cf. Civil Procedures Act, Section 384, paragraph 2, point 2, and Section 385). According to American attorneys, the likely result in the USA will also be that the divorce decree is set aside. The Plaintiff had planned to remarry on July 2, 2000. She had to cancel this because, according to American attorneys, in the event that the divorce decree is set aside, she would risk being accused of bigamy. Therefore, there is need for a decree of divorce (cf. Norwegian Marriage Act, Section 22, and Section 27, paragraph 2).

Discussion by the Court

This court decided on August 28, 2000 to stop handling the case until the Plaintiff's application for return of the children according to the Hague convention was finally decided (cf. Parental Kidnapping Prevention Act, Section 19, point 1). There was no mention of formal estoppel based on the Marriage Act, Section 107. Likewise, a separate decision is not necessary to bring the case before the Court again. It is stated in the Parental Kidnapping Prevention Act, Section 19, number 1, that the court can not come to a *decision on the merits of the case* in custody or visitation rights cases that have arisen in this country based on the Children Act, if the child has already been requested returned in accordance with the Hague convention. See the Justice Department's administrative directive G-136/91, page 73. This Court finds, especially given this latest development in the case, that a determination should now be made about whether the case should proceed to the Oslo District Court. The Court has not found it necessary to receive additional evidence from the parties.

The Court will take a position as to whether the children have domicile in the country according to the Children Act, Section 64, first paragraph, litra b. This will be decisive for Norwegian court's authority.

First of all, it should be noted that foreign judgments regarding parental rights, custody, and visitation rights are only recognized in Norway pursuant to the agreement with foreign states, entered with the justification in the Civil Procedures Act, Section 167 and 168. Norway joined the Convention of the Council of Europe of May 20, 1980 regarding recognition and acknowledgement of decisions of parental rights and of restoration of parental rights. Norway has no such convention obligation with respect to the USA. Both Norway and the USA are signatories to the Hague Convention of October 25, 1980 on civil aspects of International Child Abduction.

The question of domicile according to Section 64, first paragraph, litra b, of the Children Act can not be solved through agreement between courts in another state, as the decision from the District Court in Nevada on October 25, 2000 seems to suggest.

The parties' Norwegian agreement of July 9, 1998 contains a clause that states that suit cannot be raised in Norway and that the parties accept the jurisdiction of Nevada, USA. The Court rejects this portion of that agreement in the following. The parties do not have dispositive rights over the matter. Reference is also given to Backer's commentary on the Children Act, page 392 where it states that an agreement to restrict Norwegian jurisdiction can certainly not be accepted as valid.

The Court takes the situation in July 1998 as the basis. At that time, the parties entered into a detailed agreement concerning custody of the children. According to the agreement, the parties were to have joint custody, while the mother would have physical custody of the children until they were 10 years old. She further pledged, as residential parent, to take up her residence within 20 miles from the Defendant's residence in the USA (Agreement's article IV, point 4), but as such was not obliged to move to the USA before July 1, 1999. According to article IV, point 5, she had a right to live with the children in Norway until July 1, 1999. The District Court, Clark County, Nevada issued a decree regarding custody in keeping with this agreement. In that respect, the Court understands that the American judgment applies as the equivalent of an in-court compromise concerning the relationship to the children.

Consistent with the parties' agreement and the American court order, Cisilie Vaile moved to Oslo with the children in July 1998 and has lived here since. The Court understands that in July 1998, she had plans to make her stay in Norway permanent. As a point of departure, this supports the assumption that the children should be considered to reside in Norway. At the same time, it must be acknowledged that Robert Scotlund Vaile was at no time in agreement with this, but was adhering to the agreement/court decree wherein Cisilie Vaile and the children's stay in Norway would be temporary. It was disclosed that he, from the summer of 1999, looked for work and residence in the USA, with the expectation that the agreement would be followed. He also gave notice to Cisilie Vaile that the agreement should be carried out, and later filed a motion with the District Court, Clark County, Nevada.

This Court's view is that decisive emphasis must be given to the parties' agreement from July 1998 and the August 10, 1998 decree from the district Court, Clark County, Nevada. According to this, Cisilie Vaile's stay in Norway was to be temporary. The Court points out that a planned,

temporary stay of approximately one year is not the basis for the children to have domicile in Norway (see Backer's Commentary to Children Act, page 390).

Residence that occurs through self-help of one of the parents should not be weighed in deciding where the children shall be considered residents in relation to Section 64 of the Children Act, first paragraph, litra b, and Norwegian Government Reports 1977:35, page 105. This Court finds that Cisilie Vaile's residential intent and actual carrying out of this intent – contrary to the parties' agreement and against the will of Robert Scotlund Vaile – is also a form of self-help that should not have significance in the domicile question.

In this case, this Court cannot see that there exists any reason to deviate from the view that self-help does not change the child's residential status. At the time the case was initiated in Norway, the children had already stayed in Norway approximately 9 months longer than the planned temporary stay. This time period should not, in this Court's view, cause Norwegian courts to now have jurisdictional authority in the case. The length of children's stay in Norway must be compared to the time that they resided in the USA, where they lived until they were 6 and 2 1/2 respectively. As such, they have lived longer in the USA than in Norway. The Court also observes that a Norwegian court will now have a poorer foundation for assessing the situation of the children than would a court near the residence of the children in the USA.

The Court has considered the actions of the father who during visitation in May took the children from Norway to the USA without the mother's knowledge. Although at that point, he had been given physical custody by the American court (District Court in Nevada April 12, 2000), this was an unlawful course of action (cf. Parental Kidnapping Prevention Act, chap IV). However, this Court does not consider this as an argument in favor of the children being considered to have domicile in Norway, when they did not have it in the first place.

The Court finds no reason to address the Plaintiff's assertions in terms of the Defendant's residence that affect the validity of the American court rulings. The Court understands that these motions have been dismissed (denied) by the last decision from Nevada. Regardless, Cisilie Vaile has not contested that she entered into an agreement between the parties wherein her stay in Norway would be temporary.

Consequently, the Court has determined that the children do not have domicile in Norway.

The Court has also considered whether there exists so-called emergency jurisdiction for Norwegian courts to hear the case. Section 64 of the Children Act must be supplemented with emergency jurisdiction in specific instances where reasonable and appropriate considerations exist that create jurisdiction that would bring clarity to a child's legal situation (cf. Legal Gazette of 1993, page 1144). The Court finds that the conditions do not exist for emergency jurisdiction. As the case stands today, a court in Nevada has already exercised "emergency jurisdiction" while it waits to find out if the case can be heard in Texas. There is no doubt that the case will be given completely satisfactory treatment in the USA.

As a result, the Court's conclusion is that this child custody case is dismissed from the Oslo District Court.

Judgment for Divorce

The Plaintiff has also requested a judgment for divorce according to the Marriage Law, Section 22 and 27, paragraph 2. According to the Civil Procedures Act, Section 419, paragraph 1, point 2, the Plaintiff can initiate marriage cases before the Norwegian Court. However, the Court does not recognize that it has jurisdiction in this actual case.

Section 27, second paragraph of the Marriage Law indicates that a divorce case can be decided by the court in connection with a case regarding "... Children Act questions on joint children, that include a requirement for separation or divorce." The Court finds that it is not necessary to take a position on whether the request for divorce can be heard once the Children Act case has been dismissed. The parties are already divorced by an American court ruling dated August 12, 1998. The Court understands that the divorce decree was tried in the District Court in Nevada October 25, 2000, and that Cisilie Vaile's motion was "denied."

There is no reason to believe that the divorce would not be honored in Norway. The authority to recognize foreign divorces is delegated to the county governors.

Refer to Skoghøi for the lawsuit demands: Civil Procedure page 304-305. It is this Court's view that there is no real legal uncertainty in the relationship between the parties with regard to their divorce and a Norwegian decree for divorce would, therefore, be without practical meaning. The Plaintiff's concern of being accused of bigamy in the USA is purportedly no longer an issue given the decision of October 25, 2000 from Nevada.

Accordingly, the Court finds that since the case now deals with a request for a judgment of divorce, it must be dismissed based on Section 54 of the Civil Procedures Act, since the requirement for legal applicability is not fulfilled.

Case Costs

The Defendant has requested a judgment that the Plaintiff pay the case costs.

The case is dismissed. According to the main rules in Section 175, first paragraph of the Civil Procedures Act, the Plaintiff should then be required to reimburse the Defendant for case costs. However, the Court has discretion in the reimbursement obligation if it finds reason "due to legal questions of uncertainty." The Court finds that there is sufficient legal doubt as to whether it was advisable to file a child custody case before the Norwegian courts that case costs will not be ordered against this party.

The Court has not received any comments from the Defendant concerning the request for divorce. Therefore, the Court reasons that the Defendant does not have costs in connection with this portion of the case.

Accordingly, each of the parties must bear their own costs.

Conclusion:

Case number 00-03031 A/66 is dismissed.

Each of the parties will bear their own costs.

Court dismissed

Liv Dahl [signature]

Liv Dahl
Assistant Judge

The order can be appealed to the Norwegian District Appeals Court.

The interlocutory appeal must be submitted in writing to the Oslo District Court within 1 – one – month from the time the order is given. The appellant can also apply by the deadline to the office of the court and have the statement of appeal recorded there. The appellant must pay the appeal fee, which is 6 times the court charge, at the time that the statement of appeal is submitted. As of January 1, 2000, this fee is NOK 3,600.