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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. D230385

FILED

FEB 05 2001

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

**SUPPLEMENTAL EXHIBITS
FOR
WRIT OF MANDAMUS
AND
WRIT OF PROHIBITION**

Petitioner, CISILIE A. VAILE, by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLYCK, P.C., submits the following supplemental exhibits:

1. Transcript from the Eighth Judicial District Court evidentiary hearing of October 9, 2000.
2. Transcript of the brief Eighth Judicial District Court hearing of March 29, 2000.
3. A translation of Cisilie Vaile's *APPEAL* of the decision of the Municipal Court of Oslo.
4. A copy of *Mozes v. Mozes*, No. 98-56505, 2001 U.S. App. LEXIS 291, (U.S.C.A., 9th Cir., Jan. 9, 2001), a recent appellate result in a case that was discussed

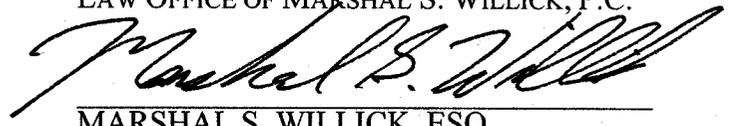
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throughout Cisilie's *MOTION* filed September 21, 2000, and which is included for the convenience of the Court.

DATED this 2nd day of February, 2001.

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



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Attorneys for Petitioner

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EX 1

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**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

R. S. VAILE, Plaintiff

vs.

CISILIE A. VAILE, Defendant

CASE NO. D230385
DEPT. G

BEFORE THE HONORABLE CYNTHIA D. STEEL, DISTRICT COURT JUDGE

PARTIAL TRANSCRIPT RE: HEARING: JURISDICTIONAL

WEDNESDAY, OCTOBER 11, 2000

APPEARANCES:

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Cisilie Vaile	66	74	--	--
DEFENDANT'S WITNESSES:				
Robert Scotlund Vaile	4	56	63	--

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IDENTIFIED

ADMITTED

OCTOBER 11, 2000

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3	Driver's License	61	Stipulated
4	Nevada Voter Registration Card	62	Stipulated
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2 **PROCEEDINGS**

3 (THE PROCEEDINGS BEGAN AT 15:20:32)

4 (THE REQUESTED PORTION OF THE PROCEEDINGS BEGAN AT 16:02:00)

5 THE COURT: I know you're frustrated and I know that you don't feel like I'm doing
6 the right thing, counsel, and I recognize and appreciate that. But you need to proceed
7 with calling your first witness on the jurisdictional issue of whether or not I had any
8 jurisdictional rights to do anything for these parties at all, ever. Go ahead, please.

9 MR. WILLICK: Very good, Your Honor. I'll ask you to issue a formal ruling at the
10 end of today's proceedings based on that question that you asked us to address today.

11 THE COURT: Okay.

12 MR. WILLICK: We would call --

13 THE COURT: Now, it may not be a final order. Because if you want me to do that
14 certification thing that you just requested, you'll need to brief it so they'll have an
15 opportunity to do an opposition.

16 MR. WILLICK: The request for the 54 (b) Cert --

17 THE COURT: Yes, sir.

18 MR. WILLICK: -- specifically?

19 THE COURT: Yes, sir. Okay.

20 MR. WILLICK: Very good, Your Honor. We should be able to do that in short
21 order, if it's required. We would call Scotlund Vaile.

22 THE COURT: Okay. Please take the stand, sir. Right up here.

23 **ROBERT SCOTLUND VAILE,**

24 having been first duly sworn to tell the truth, the whole truth, nothing but the truth, testified
25 as follows:

26 **DIRECT EXAMINATION (16:02:48)**

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BY MR. WILLICK:

Q Would you please state your name and current address for the record.

A I'm Robert Scotlund Vaile. I live at 12137 Merrill Road, Pilot Point, Texas, 76258.

Q When did you move to Pilot Point, Texas?

A The -- In June of this year.

Q I'm sorry?

A June of this year.

Q 2000?

A Yes.

Q From where did you go to get to Nevada -- to Texas?

A Where did I go to get to Texas?

Q From where did you go to get to Pilot Point, Texas?

THE COURT: Where were you before Texas?

MR. VAILE: Directly, I was in Las Vegas.

MR. WILLICK:

Q Where precisely?

A At my parents' home. My --

Q And from what date to what date were you at that address? Well, first, what address are we talking about?

A They currently reside at 2458 Silver Swan Court in Henderson.

Q My question was, where were you?

A And that's where I was.

THE COURT: Then from what date to what date?

MR. VAILE: I was only here for a week or so.

MR. WILLICK:

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Q In June?

A In June.

Q I'll tell you what. We'll take it in reverse order, it might be a little more clear.

THE COURT: In June of 2000?

MR. VAILE: Of this year. Of this year.

THE COURT: Of this year. Okay.

MR. WILLICK: I'll try -- Your Honor, I'll back into it --

MR. VAILE: I take that back.

MR. WILLICK: -- and I think it will be clearer.

MR. VAILE: Can I clarify? It was actually the 4th -- the 4th of July weekend we were here.

MR. WILLICK:

Q Very good. I'm going to go back in time and then bring you back forward, and I think it will be clearer that way and, hopefully, less confusing in terms of my questions.

THE COURT: Great.

MR. WILLICK:

Q Let's back to 1996. In 1996, you were attending school?

A I finished school in 1996.

Q Okay. Where were you attending school?

A Columbus, Ohio.

Q What school?

A Ohio State University.

Q Getting what?

A I was finishing my master's degree in 1996.

Q Masters in?

1 A Masters of Science.
2 Q In what field?
3 A Engineering management, actually.
4 Q What month of the year did you get your degree?
5 A June of 1996.
6 Q Were you employed in the State of Ohio at about that time?
7 A I was employed by the university. I had a research assistantship at that time.
8 Q When --
9 A That ended when my -- when I got my degree.
10 Q Okay. Were you employed in Ohio after that?
11 A No.
12 Q Where were you next employed?
13 A I was employed by Science Applications International Corporation.
14 Q SAIC?
15 A SAIC.
16 Q Which is located where?
17 A Which is located in McLean, Virginia.
18 Q Okay. Before we get to that. I presume that you were under no legal
19 impediments in the State of -- Let me ask it another way. How old were you when you
20 graduated from -- with your masters?
21 A 1996. I guess -- I was born in 1969, so twenty-six, twenty-seven.
22 Q Okay. Over the age of twenty-one?
23 A Yes.
24 Q You've never been convicted of a felony?
25 A No.
26 Q You were eligible to vote?
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1 A I was.
2 Q Did you ever vote in the State of Ohio?
3 A I did.
4 Q When did you last vote in the State of Ohio?
5 A Probably November of 1995.
6 Q Okay. Let's go forward in time. You mentioned that you were hired by SAIC,
7 which is located in Virginia?
8 A Uh-huh.
9 Q When were you hired?
10 A They made an offer to me -- I don't remember the exact date. But I started
11 in September of 1996.
12 Q You actually had to go to Virginia to take that job?
13 A Yes.
14 Q Where in Virginia did you live?
15 A We lived in a little town called Herndon, Virginia.
16 Q Who moved from Ohio to Virginia?
17 A All of us.
18 Q Which is who?
19 A Myself, Cisilie, Kaia and Kamilla.
20 Q How long did that job last?
21 A That particular job, or --
22 Q Yes.
23 A -- how long was I employed with SAIC?
24 Q Well, I don't really care about internal reassignments. How long did you
25 remain in Virginia, employed by SAIC?
26 A I remained in Virginia until the end of July of 1997.
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1 Q And how long did you remain employed by SAIC?
2 A Until October of 1998.
3 Q Okay. We'll get back to that in a moment. While you were in Virginia, did
4 you have a car?
5 A Yes.
6 Q Was it registered?
7 A It was.
8 Q In what state?
9 A In Virginia.
10 Q You got a driver's license?
11 A I did.
12 Q In what state?
13 A A Virginia driver's license.
14 Q Did you register to vote?
15 A I don't think I ever did.
16 Q You earned a salary in the State of Virginia?
17 A I did.
18 Q Did you pay Virginia State Income Taxes on that income?
19 A I did.
20 Q During what years did you file an income tax statement with the State of
21 Virginia?
22 A 1996 and 1997.
23 Q Let's take you forward to July of 1997. You said that you were -- continued
24 to be employed, but you were no longer in Virginia. Where did you go?
25 A The end of July we went to London.
26 Q What was in London?
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1 A I had a temporary assignment there.

2 Q To do what?

3 A To maintain some equipment for a bank.

4 Q Continuing in your employ as a engineering management person?

5 A It was a -- more of an IT-type track that I was pursuing at the time.

6 Q Information technology?

7 A Correct.

8 Q Still in the employ of SAIC?

9 A That's right.

10 Q You were present in London by virtue of what? A temporary visa?

11 A I had what's called an EEA family permit, which stands for European
12 Economic Area permit. Basically, I was allowed to reside in London by virtue of my
13 marriage to Cisilie, who is a European National.

14 Q Using her Norwegian nationality as a basis of your London employment?

15 A Correct.

16 Q You were there essentially on a work visa for you yourself personally?

17 A No work visa. I didn't need to obtain a work visa because of that permit.

18 Q You never formally emigrated from the United States to any other country?
19 You were there temporarily present as a resident alien?

20 A I'm not sure what terms they used to describe my stay there, except that I
21 know that they didn't consider me a resident.

22 Q Well, sure. Let me -- Let me ask the question another way, just to make
23 sure it's clear. You never renounced your United States citizenship?

24 A Oh, no.

25 Q You never became a citizen of the Country of England, or the City of
26 London?

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1 A That's correct.

2 Q You continued to work for SAIC until October of 1998?

3 A That's right.

4 Q At that time, what changed?

5 A I stopped working for SAIC and started contracting.

6 Q I'm sorry?

7 A I started consulting directly.

8 Q Where?

9 A In a lot of places. But for a Swiss bank who was headquartered in Chicago.

10 Q Okay. We'll back up to that. But back to 1997, in England.

11 A Uh-huh.

12 Q When you left Virginia to move to England --

13 A Yes.

14 Q -- did you know precisely how long you would be away from Virginia?

15 A My agreement with SAIC said a maximum of one year.

16 Q But, in fact, it took longer than that. July '97 to October '98.

17 A From the time that I was divorced with Cisilie, I was no longer a -- a resident.

18 But I had the option to extend if -- if I chose to as well.

19 Q Well, that was my point. At the time you left Virginia, it was not a certainty

20 how long you would be away from the State of Virginia.

21 A All I know is that I had an agreement that said that I would be in London for

22 a maximum of one year. So at the time that we left, that was indeed the understanding.

23 Q As of -- Of course, August and September and October of '98, that

24 agreement was no longer valid, since you were still employed, still in London and more

25 than a year had gone by.

26 A Right. I had to -- I had to extend the agreement.

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Q Okay.

A Renegotiate, basically.

Q From the time you left in July of '97, when was the next time you returned to the United States Territory?

A From the time I left July '97, I came back to the states in April.

Q Of what year, please?

A Of 1998.

Q Where exactly did you go?

A I went --

THE COURT: Wait, wait, wait. You came back in April of 1998?

MR. VAILE: Yes.

MR. WILLICK:

Q Can you be more precise as to the date?

THE COURT: No, no. I mean, in April of 1998, you came back to the United States, you were still working for SAIC?

MR. VAILE: Correct.

THE COURT: Okay. Thank you. That's all I was -- Thank you.

MR. WILLICK:

Q But to make sure we're as clear as possible, do you remember the date?

A I don't.

Q Okay.

A I --

Q So sometime in April of 1998 you left London to go where?

A I can't say that I actually left London in April, but I know that I was in Ohio in April.

Q Ohio, United States?

1 A Correct.

2 Q At some point during April of 1998?

3 A That's right.

4 Q How long were you in Ohio?

5 A I can't be certain. It was a week or so.

6 Q Okay. And when you left Ohio, where did you go?

7 A I can't -- I can't recall. I had made so many trips to the states during that time

8 I can't recall if I went to New York or any other city on business because I've traveled very

9 much over the last two years.

10 Q Okay. Well, I'm doing --

11 A So I can't say that --

12 Q -- particularly April of 1998 at this moment.

13 A I can't swear that I only went to Ohio when I was in the United States.

14 Q So it's possible you stopped at least somewhere else?

15 A It's possible that I stopped in other places to work.

16 Q Ultimately, at the conclusion of this trip, where did you go?

17 A Back to --

18 Q London?

19 A Back to London, yes.

20 Q Okay. How long do you think the trip -- I think you said was a week?

21 A No, no. It was two or three weeks.

22 Q Two or three weeks. Starting up in London and ending up in London with

23 an unknown number of stops in between?

24 A Basically.

25 Q Okay.

26 THE COURT: In approximately May of '98 you're back in London?

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1 MR. VAILE: I -- I remember that I was back in London in the end of April, for sure,
2 because --

3 MR. WILLICK:

4 Q Okay. When was the next time you set foot on United States territory?

5 A That was in -- in July.

6 Q Of 1998?

7 A Of 1998.

8 Q Do you recall the date?

9 A I remember that I flew out of London on the 9th of July in 1998.

10 Q To go where?

11 A To the states.

12 Q Right. Where in the United States?

13 A I believe that the first stop of the flight was to D.C., and then to Las Vegas
14 from there.

15 Q Okay. How long were you in D.C.?

16 A It was just a stopover, as far as I remember.

17 Q Okay. So a day, maybe?

18 A Or a few hours.

19 Q Okay. So you think you got to Las Vegas, given the time change, on the
20 10th or the 11th?

21 A Yes.

22 Q How long were you physically in Las Vegas, Nevada?

23 A Again, I don't remember the exact date that I left Las Vegas at that time.

24 Q Well, can you approximate? When do you recall being next anywhere else?

25 A I was back in London in August. I remember for certain that.

26 Q Okay. At some point during that trip, you went to San Francisco, California?
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1 A I don't know for sure.

2 Q Open the book in front of you and turn to Exhibit C, please.

3 A Yes.

4 Q And this document, admitted by stipulation, appears to be an airline ticket
5 with your name on it, going from San Francisco to Los Angeles, California, on July 22.

6 A Uh-huh.

7 Q That would seem to indicate that you were in San Francisco by July 22.

8 A All right.

9 Q So do you recall at this point going to San Francisco?

10 A Well, if I can explain. My company has been flying me all over the world so
11 much that they may just send me tickets. And some flights I make and some I do not
12 make. So, again, I've been to San Francisco many times and I can't say that I honestly
13 remember this trip.

14 Q This appears to be a boarding pass, indicating you picked it up at the airport
15 for the purpose of actually getting on a plane. Do you have any recollection of being in
16 San Francisco in July of 1998?

17 A I'm not trying to avoid your question, but they often send me boarding
18 passes as well.

19 Q Okay.

20 A And so --

21 Q As you sit here, do you have no recollection of being in San Francisco in --

22 A Like I said, I've been to San Francisco many times. It's possible I was in San
23 Francisco in -- at this time as well.

24 Q In July of 1998?

25 A But I honestly can't recall.

26 Q Okay. Who or what is in San Francisco? Business? Pleasure?

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1 A There's a Wooper (phonetic), Dillon, Read office in San Francisco.
2 Q That's a firm?
3 A That's a division of the bank that I was working for.
4 Q So it would be a business trip if you were there at that time?
5 A And I believe my brother was living in San Francisco at that time as well.
6 Q So you may have had personal reasons for visiting as well?
7 A Exactly.
8 Q What, if anything, is in Los Angeles?
9 A Normally, I only go to Los Angeles for a stopover. Probably flew out of Los
10 Angeles, actually.
11 Q Well, you had a girlfriend located in Los Angeles at that time, didn't you?
12 A I had a friend who was a girl, if that's your definition of a girlfriend. That's --
13 Q Well, this is the LDS missionary talked about in our prior correspondence;
14 correct? And this is somebody you knew, that you met in London --
15 A Right.
16 Q -- who you knew lived in L.A. Now, did you visit her during your trip to the
17 states in July of 1998?
18 A I did.
19 Q From when to when --
20 THE COURT: Yes or no. Did?
21 MR. VAILE: Yes.
22 MR. WILLICK: I'm sorry, Your Honor.
23 MR. VAILE: Yes, I did.
24 THE COURT: Did.
25 MR. WILLICK: I'm sorry, Your Honor. I didn't mean to interrupt. I didn't hear you.
26 THE COURT: That's all right.
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MR. VAILE: I did visit her in July of 1998.

MR. WILLICK:

Q Do you recall how long you were physically present in Los Angeles in July of 1998?

A No, sir.

Q Hours, days, weeks?

A Like I said, normally I fly into Los Angeles when I'm on the West Coast to fly back to London. The -- The airline I normally fly is Virgin Atlantic, and I know they leave from Los Angeles.

Q So the answer to your question -- my question is, you don't know?

A I really can't say.

Q You were in L.A. that trip for some indefinite period of time and you believe you left there to go back to England?

A That's entirely possible.

Q And you were back in England by the beginning of August?

A I'm not sure when in August it was.

Q Well --

A But I know I was in London in August.

Q Can you be any more precise?

A I have a number of travel records available to me, but I don't have them with me here. So given some time, I'm sure I can provide more detailed -- more details of my trips.

Q The travel record you're talking about, what -- what are you talking about? Copies of tickets, or a log, or what?

A I have a calendar and I have copies of expense reports, possibly, that I could reference.

1 Q Would your company maintain a record of business travel that it had paid
2 for you to be on in this time period?

3 A Yes.

4 Q Which company is that?

5 A July of 1998, I was still working for SAIC.

6 Q And where is their headquarters? Or, more precisely, who would have the
7 travel records?

8 A SAIC has their own travel department.

9 Q Very good. And you made your arrangements through their travel
10 department?

11 A Normally.

12 Q And where is that travel department?

13 A The last I knew, it was in McLean, Virginia.

14 Q Would it be fair to say that the entirety of the trip from London back to
15 London took less than thirty days?

16 A I really couldn't say.

17 Q What is the maximum amount of time that is possible that you were away
18 from London?

19 A Well, if I left on the 9th and got back in London in August -- let's say it was
20 the end of August -- then that would have been six and a half weeks, I guess.

21 Q And of that time, you spent -- I'm sorry. You said this and I don't recall -- --
22 two weeks in Las Vegas?

23 A I'm not sure how long I was in Las Vegas of those -- of that trip. Like I said,
24 I have some records that I can -- that I can access.

25 Q Where else did you go during that trip?

26 A Again, you're asking me about one of hundreds of trips that I've taken in the
27
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1 last two years.

2 Q Okay. So would it be fair to say, you simply can't say?

3 A I can't say exactly right now.

4 Q Would it be fair to say that you were not physically present in Las Vegas on
5 June 2, 1998?

6 A That's true.

7 Q And that the earliest you could have possibly arrived here is somewhere
8 around July -- what? -- 10th?

9 A July 9th.

10 Q Well, July 9th, you left England?

11 A That's right.

12 Q And you left there after the offices of the Embassy had opened for business?

13 A That's correct.

14 Q London is nine hours ahead of the United States, or the West Coast of the
15 United States?

16 A London is nine -- is eight hours ahead of California.

17 Q Yes. We're in the same time zone here.

18 A Right. Eight hours from here.

19 Q So that would have to make it, if the offices there open at eight o'clock, about
20 three-thirty in the afternoon, local time, here when you left there, even if you made a
21 beeline to the airport the moment those offices opened; right?

22 A I think you're a little bit confused. The time goes the other way.

23 Q Oh, it's the other way, isn't it.

24 THE COURT: You're backwards, I think.

25 MR. WILLICK: Okay. Sorry.

26 THE COURT: It's all right.

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1 MR. WILLICK:

2 Q You applied for a driver's license here?

3 A I did.

4 Q The driver's license department indicates that you did so around July 14th,
5 when they issued your license; is that correct?

6 A That's correct.

7 Q You applied to vote, and the Nevada Voter Registration Office says you did
8 so around July 20th; is that correct?

9 A I applied to vote at -- at the same time that I applied for my driver's license,
10 actually.

11 Q So if there is a six-day gap, it's just paperwork on their part, in their records,
12 from the application to the issuance?

13 A I don't know. All I know is that, when I got my driver's license, they had a
14 form that you could fill out to register to vote, and I filled it out and turned it in at that time.

15 Q Is that the DMV?

16 A Yeah.

17 Q How long was it from the time you were at the DMV until you remember
18 leaving town?

19 A I can't remember the date that I left town. It was --

20 Q Was it that day, that week?

21 A It was over two years ago, so --

22 Q Sure. Did you go to the DMV at the advice of Mr. Smith?

23 A I don't remember if he advised me to do that or not.

24 Q Okay. Why do you remember going to the DMV?

25 A Because I wanted a driver's license in the state that I would be a resident.

26 Q Well, you already had a return ticket to go back to England; right?

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1 A Right.

2 Q All your stuff remained in England?

3 A From the time that I made my residence Nevada, I began to move my things
4 to Nevada.

5 Q Well, let's talk about that. We're talking about July 1998.

6 A Uh-huh.

7 Q You indicated a moment ago that you had a contract with SAIC that had
8 been extended and now carried you through at least October of 1998.

9 A My -- First of all, my contract with SAIC was a month-to-month. I could have
10 returned at any time.

11 Q Right. But as of July, you had extended to at least August. Because in
12 August, you got extended to September. In September, you obviously extended to
13 October.

14 A I'm happy to clarify the situation for you, if you like.

15 Q Well, I mean, really, that calls for a yes or no. Did you extend your contract
16 from July to August?

17 A Did I extend my contract from July to August? Yes.

18 Q And from August to September?

19 A Yes.

20 Q And from September to October?

21 A Yes.

22 Q What precisely do you recall moving to the State of Nevada during that
23 ninety-day period?

24 A All the storage that I had at my -- at my -- When did the ninety days start?

25 Q July, August and September of 1998.

26 A Okay. Well, most of my stuff arrived in June with my parents.

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1 Q Well, with your parents. Your parents moved to Nevada from
2 Massachusetts.

3 A They actually moved to Nevada from Maine.

4 Q Maine. Excuse me. Is that where your stuff was?

5 A I had -- I had goods with them in Maine.

6 Q Okay. I'm not talking about the stuff you'd left with your parents in Maine.
7 I'm talking about your stuff. The stuff you'd been living with in England from 1996 forward,
8 when you relocated from Virginia --

9 A Uh-huh.

10 Q -- with you and your wife and your kids to England.

11 A Uh-huh.

12 Q You obviously had clothes and appliances and stuff that people have.

13 A Well, not so many appliances, since the voltage is --

14 Q Because they use different house current; right. But you had stuff that you
15 needed to live with.

16 A Sure.

17 Q That's the stuff I'm talking about. Did that stuff relocate from England to the
18 United States?

19 A Every trip that I came back I brought -- brought things with me and left it at
20 my place in Las Vegas.

21 Q Now, during that entire period, you were sending stuff to Virginia to be put
22 into storage, weren't you?

23 A No, not during that entire period.

24 Q So if Cisilie remembers that during that period of time your stuff was being
25 returned to the United States to be put in storage in Virginia, her memory is just incorrect?

26 A When Cisilie left for Norway -- Actually, before Cisilie left for Norway, we
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1 packed up a lot of the things that she didn't think that she would need in Norway, and --
2 and I shipped those to Virginia, where our other household goods were stored.

3 Q And your household goods were stored there because you'd left from there?

4 A Right. Because we lived in Virginia and we moved to London, we put a lot
5 of our goods in storage in Virginia.

6 Q Now, you indicated that during my trips. What trips are you talking about
7 after July of 1998?

8 A I traveled to the states at least every month from that time on.

9 Q From July, August, September, October indefinitely?

10 A Uh-huh. At least every month.

11 Q And do you think each of those trips took you to Las Vegas?

12 A That's not certain.

13 Q Well, did any of those trips take you to Las Vegas?

14 A Absolutely.

15 Q Can you be specific as to any trip that took you to Las Vegas?

16 A Again, I'll have to -- I can check records and find out which ones allowed me
17 to come home.

18 Q What's the maximum length of time you might have spent in Las Vegas,
19 Nevada, during any of the trips that you're now talking about in the months after July of
20 1998?

21 A A maximum of two weeks.

22 Q When did you, personally, actually decide to get a divorce from Cisilie?

23 A April.

24 Q Of 1998?

25 A 1998.

26 Q Did you consult with any attorneys anywhere as a result of that decision?
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1 A Yes, I did.

2 Q Which attorneys and what locations?

3 A Well, besides having a couple of friends that were attorneys in -- in London --

4 Q British attorneys?

5 A Well, they were actually American ex-patriots. So they were American

6 attorneys practicing in London.

7 Q Okay.

8 A I don't -- I don't consider that I consulted with them regarding our divorce,

9 but I --

10 Q And I'm sorry if I misstated the question. Again, I'm not interested in every

11 attorney you've ever known. You can't swing a dead cat sometimes without hitting a

12 lawyer. What I want to know is, what attorneys did you talk to from the moment you

13 decided to get a divorce, or started contemplating it, through the time of divorce, and

14 where were they located? About the divorce.

15 A I talked to one attorney in -- in London.

16 Q Name?

17 A I never -- I actually never retained her as an attorney. I did go and talk to

18 her.

19 Q Is this an American or a British attorney?

20 A A British attorney.

21 Q Okay. And that was when?

22 A It was probably June.

23 Q Of 1998?

24 A Yeah, it was definitely June.

25 Q Name?

26 A Sometimes I get the name of this attorney and Cisilie's attorney mixed up

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1 that she had in London. But I believe her name was Ann Murray Hutchinson.

2 Q Okay. What other attorneys do you remember talking about relating to your
3 divorce?

4 A I contacted an attorney in Las Vegas.

5 Q Name?

6 A James E. Smith.

7 Q Okay. Any other attorneys?

8 A Not that I -- Oh, besides my father, maybe?

9 Q He's an attorney in Ohio?

10 A Correct.

11 Q There was an American attorney present in London, a male attorney --

12 A Uh-huh.

13 Q -- of some sort that you took Cisilie to go see at one time. What was that
14 person's name?

15 A Well, first of all, I didn't take Cisilie to go see him, but -- but he was an
16 American attorney, and his name was Randall Guinn.

17 Q He knew all about the divorce.

18 A He's the one that -- that helped us mediate our divorce agreement in
19 London.

20 Q You consider that agreement mediated?

21 A Do I consider the agreement mediated? Absolutely.

22 Q This attorney was a friend of yours and he helped you draft the document
23 in question.

24 A No, he actually was not a friend of mine.

25 Q How did you know this person?

26 A He was a -- a leader in the church in London. And the stake president
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1 referred him to us.

2 Q The stake being the local religious community in London?

3 A It's a -- It's a group of large congregations.

4 Q Right. In London?

5 A In London.

6 Q So the local religious authority directed you to this attorney, who assisted you
7 in writing this agreement?

8 A Yeah. He was directed to us not because he was an attorney, but because
9 he was a counselor in the church.

10 Q And you spoke to him first?

11 A No, I did not. Cisilie spoke to him first and I waited outside, and then I spoke
12 to him.

13 Q Well, who made contact with this individual?

14 A Do you mean as far as arranging the appointment for us to go speak with
15 him?

16 Q Okay, if that's your term.

17 A I'm not sure. But the --

18 Q Well, let me -- let me just direct you --

19 A I really don't know.

20 Q -- through it a little easier. You contacted the stake people?

21 A When we were -- I was the one that informed our local congregation leader,
22 who's called the Bishop, that Cisilie and I had planned to get a divorce. We then, on
23 several occasions, spoke to him, and he referred us to the stake president, who referred
24 us to this -- who spoke to us and then referred us to this counselor to help mediate a
25 solution between us.

26 Q In the meantime, you had already drafted for Cisilie's review a short form
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1 of what would ultimately become the agreement.

2 A We discussed over -- I guess since April, many different things that we
3 hoped to achieve in our divorce, and I put those -- I put those on paper.

4 Q Well, these things that the two of you discussed included terms, such as,
5 if you were ever not satisfied that the children were being raised adequately in the Mormon
6 faith, the children would revert to your sole and singular custody.

7 A That line was never in any agreement that we came to.

8 Q Do you still have the drafts of those agreements?

9 A No.

10 Q Does anybody?

11 A I'm not sure. The mediator basically threw out everything that we had done
12 before and we started anew.

13 Q This mediator lawyer person, was this a series of meetings that the two of
14 you attended together?

15 A Several meetings.

16 Q And how long do you think you spent with this person?

17 A Well, I looked back over my -- over my -- my e-mail log, which I have with me
18 here in Nevada, and from what I can tell, we spoke to him first on June 25th of 1998. And
19 he was done with the agreement, I believe, on July 7th of 1998. So --

20 Q Is it your testimony here today that he drafted this thing?

21 A That he drafted the document?

22 Q Yeah.

23 A Absolutely.

24 Q Do you think that both you and Cisilie were given copies of this thing?

25 A Do I think that we were given copies?

26 Q Yes.

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1 A I know that we were given copies.
2 Q When?
3 A Well, remember, it was a working document through the whole time that we
4 were -- that we were mediating and meeting with this person. But certainly by July 7th, we
5 each had a copy of the final agreement.
6 Q Well, in the meantime, you were in court in London --
7 A Uh-huh.
8 Q -- based on Cisilie's efforts to prevent you from leaving the country with the
9 children.
10 A Let me say that we were in court in London to prevent either party from
11 leaving the country with the children.
12 Q So you think when Cisilie applied to the London courts for an emergency
13 order, it was to prevent either of you from leaving the country with the children?
14 A I don't think that that was Cisilie's intent, no. But the decision and the
15 judgements that were made clearly show that.
16 Q Well, the --
17 THE COURT: Where are we going with this on jurisdiction here.
18 MR. WILLICK: You -- I'm sorry, Your Honor. I was attempting to respond to the
19 Court's inquiry, and perhaps I misunderstood. You, I thought, indicated during opening
20 remarks that you were interested in obtaining a full understanding of the intentions and
21 knowledge of the parties at the time. But I'll move on.
22 THE COURT: With regard to --
23 MR. WILLICK: I thought it was a general inquiry.
24 THE COURT: -- residence, or where they were living, or whatever, yeah.
25 MR. WILLICK: Very good, Your Honor. I'll move on.
26 THE COURT: Because it could be -- any of this stuff may not even be before me.
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MR. WILLICK:

Q During the time that you were in London, starting in 1997, you continued to earn a salary?

A I did.

Q Did you continue to pay taxes in America?

A Yes, I did.

Q So you filed a United States 1040?

A My taxes were prepared as part of the agreement with SAIC. My taxes were prepared by Arthur Anderson. And I have a copy of my tax returns, but I don't know the name of the forms, exactly, that I filed.

Q Okay. If I suggest to you that the 1040 is the tax return, you filed one of those things?

A I filed a tax return.

Q And you filed one in 1997?

A I did.

Q Around what? April of '98 for 1997?

A There's some complicated tax laws in -- in -- when you're working as an expatriot. And I know that you have at least a -- I think it's a six-month automatic extension when you're working outside the United States.

Q Do you know whether you timely filed for 1997 and 1998, or no?

A I know that I had an automatic extension and that I eventually filed the tax return. I believe that the final 1997 tax return was filed in August of 1998, if I remember correctly.

Q Do you know where the copies of those tax returns are?

A I know where one copy is.

1 Q Okay. Where is that copy?
2 A That's -- It's in -- It's in my possession here.
3 Q Here in Las Vegas?
4 A Yes.
5 Q You know that we sent a request to your attorney some days ago asking for
6 that tax return?
7 A I told them that I had that document and would -- and would be able to
8 provide it.
9 Q Do you have any reason why it wasn't given upon request?
10 MR. DEMPSEY: Objection, Your Honor, it calls for speculation.
11 THE COURT: Do we know where the -- Is it in -- Is it in this room right now as we
12 speak, sir, the tax return?
13 MR. VAILE: I don't know. I don't know.
14 MR. WILLICK:
15 Q Did you surrender it to your attorneys?
16 A I believe that the --
17 THE COURT: Do you have a copy to your attorney?
18 MR. VAILE: I believe that Mark Anderson has a copy of it.
19 MR. WILLICK: I'm sorry, I don't know Mr. Anderson.
20 MR. VAILE: He's a law clerk.
21 MR. DEMPSEY: He's my paralegal, the one you accused of being the conductor.
22 THE COURT: Close, counsel.
23 MR. WILLICK:
24 Q When did you surrender the tax return, and for what year was that tax
25 return?
26 A That was 1997.
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1 Q When did you give that to the law clerk for Dempsey, Roberts?
2 A In the last two days.
3 Q And you don't know where it is today?
4 A I -- I assume that -- that it's still available.
5 Q Do you know what state of residence is indicated on the face of the 1040?
6 A I really don't. I assume, if it was 1997, that it was Virginia.
7 Q When did you file your 1998 tax return?
8 A I haven't filed 1998 yet.
9 Q In November -- In October of 2000, you haven't filed your 1998 tax return?
10 A Again, that matter is sitting with Arthur Anderson. Their -- They've filed
11 different extensions and so forth.
12 Q I'm not arguing with you, I'm just making sure we're clear. We're talking
13 about your --
14 A I am absolutely certain, as far as my knowledge, that I have not filed any tax
15 return for 1998 or 1999.
16 Q Did you ever do anything to renounce your residence in the State of Virginia?
17 A Did I do anything to renounce my residence? I'm not sure what that means
18 or how one would go about --
19 Q Sure. Well, did you ever take an action, file a paper, submit an affidavit, take
20 any affirmative action to terminate your residency in the State of Virginia?
21 A I understood that my residence in the State of Virginia would be terminated
22 once I moved to a new residence in Nevada.
23 Q Well, yes. But you didn't physically set foot in Nevada until July of 1998. So
24 in 1998, when you -- Oh, you haven't filed your tax returns for 1998. Do you intend to pay
25 Virginia State income taxes?
26 A No.
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1 Q You don't?

2 A No.

3 Q For any period of 1998?

4 A No. That was really the purpose of -- of me moving my residence to Nevada

5 was to avoid the high state income taxes in Virginia.

6 Q Where did you get that advice?

7 A I don't think I got the advice on that.

8 Q Well, how did you find out?

9 A How did I find out what? That I --

10 Q That Virginia has the high state income taxes and Nevada doesn't?

11 A I don't know. I -- I can't say. I mean, I thought it was pretty common

12 knowledge that Nevada has no state income tax.

13 Q Well, you came through Vegas for a few days on a trip which ultimately

14 headed to California some years earlier. 1996?

15 A That's right.

16 Q And you had no further contact physically with the State of Nevada until the

17 plane landed in July of 1998. So --

18 A I was physically not present in Nevada until -- until July 9th or 10th.

19 Q Right. So --

20 A That's true.

21 Q -- what contact did you have that could have given you common knowledge

22 of Nevada's tax laws?

23 A Well, when you're living -- when you're living abroad and you're -- you're

24 being basically taxed twice, because you have to pay U.K. taxes and you have to pay

25 U.S. taxes, and, so, there's quite a bit of literature available for American ex-patriots that

26 are -- are trying to make their stay better and to save money.

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1 Q Did you consult with a Nevada attorney at any time?
2 A No.
3 Q Was your contact with Mr. Smith restricted to the subject of obtaining a
4 divorce here?
5 A Yes, it was.
6 Q Have you ever been audited in the State of Virginia -- tax audited?
7 A Not that I know of.
8 Q What was your contact with attorney David Stephens?
9 A I believe that David Stephens was the one who represented Cisilie.
10 Q Well, did you meet with Mr. Stephens?
11 A Never.
12 Q Well, he remembers meeting you. You don't recall having any contact with
13 Mr. Stephens?
14 A That would be impossible. If we met, I certainly don't remember meeting
15 him.
16 Q Okay. Do you remember speaking with him?
17 A I remember sending him via e-mail a copy of our divorce agreement. And
18 that --
19 Q How did you ever find that this person existed?
20 A One of the things that the mediator suggested was to make sure that we
21 were both represented in Las Vegas. And I believe that David Stephens is an associate
22 of -- of our bishop in London, and that he found that contact for Cisilie.
23 Q So you think somebody in the church gave you an e-mail address for a Las
24 Vegas attorney, who you then faxed or e-mailed a copy of some paperwork that you were
25 working on in London?
26 A Again, he was Cisilie's attorney, not mine. And the only contact I had with
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1 him was to send him a copy of the agreement, which he then discussed with Cisilie.

2 Q Well, how did you get this guy's e-mail address?

3 A I can't remember. Maybe the bishop gave it to me.

4 Q So you made no phone calls, you gave no notice, you simply e-mailed the
5 document? And you don't recall ever speaking with the gentleman?

6 A I -- I am fairly certain that I never met the gentleman in person.

7 Q Okay. Did you ever speak with him on the phone?

8 A I don't ever recall speaking to him on the phone.

9 Q You were in the room the one time that Cisilie spoke with him.

10 A That's not true. That is not --

11 Q You don't recall there being a time in a motel room, the one time that she
12 was handed a phone number and told to call a guy in Las Vegas, that you were physically
13 present in the room when she had a conversation with somebody purporting to be a
14 Nevada attorney?

15 A As I remember it, Cisilie spoke to him one night, and told me about the
16 conversation when I got home. I don't know anything about a motel room.

17 Q Who paid Mr. Stephens?

18 A That's another thing that I can't quite remember. I remember that the
19 mediator, he said, it's important for you both to have legal counsel. He said, I'll even pay
20 for it. I remember he made the offer. But whether he paid or -- or I paid, I can't
21 remember.

22 Q Cisilie never hired Mr. Stephens to do anything for her, did she?

23 A What do you mean?

24 Q She never hired him. She never found some Nevada lawyer, hired him to
25 represent her as any part of representation in this case, to your knowledge.

26 A She was absolutely represented by Mr. Stephens.
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1 Q And if Mr. Stephens indicates that he has no recollection of her at all, but
2 was asked by you to review a document, would his recollection be faulty?

3 A If he said that he didn't recall ever speaking to Cisilie, absolutely his
4 recollection is faulty.

5 Q How do you know he spoke to Cisilie?

6 A Because when I came home, she told me that he told her that she should
7 be seeking for more alimony.

8 Q So you say that this conversation that she supposedly had with Mr. Stephens
9 occurred when you weren't around?

10 A That occurred when I was not -- I'm not sure I was home, but I was definitely
11 not there.

12 Q And if she specifically remembers you being in the room during the time --

13 A Then she --

14 Q -- she's in error?

15 A She remembers incorrectly.

16 Q Do you remember being ordered by the London court not to apply for a
17 replacement passport?

18 A During -- During the month that -- In June?

19 Q July to August 19 -- June to July 1998?

20 A Yes, I do.

21 Q And it's your belief that that order expired at the time that the London court
22 returned your passport to you?

23 A Yes. There were two orders, by the way. There was one ordering me not
24 to apply for a -- duplicate passports, and one ordering Cisilie not to apply for duplicate
25 passports.

26 Q You know that at the conclusion of the London proceedings, Cisilie was
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1 given the passports of herself and the children and you were given yours, and she was
2 specifically given permission to leave the country by the London court to move to Norway?

3 A Right.

4 Q You were given permission to go wherever you wanted, and you returned,
5 at that time, according to the London court, to the United States.

6 A What happened was, I was given my passports and the American passports.
7 Cisilie was given her passports and the Norwegian passports.

8 Q Is there a reason that that given of passports isn't indicated on the face of
9 the London documents?

10 A I believe it's because I was not represented in that hearing.

11 Q You say it happened anyway, even though the orders don't say it happened?

12 A That's absolutely correct.

13 Q And you think you've got American passports for the kids?

14 A I had the kids' American passports in my possession.

15 Q Even though the order says they were given to mom?

16 A Again, I was subpoenaed to appear on a Friday night, late. There was a
17 hearing on Monday morning. Because Cisilie's attorney didn't want to me to have to -- to
18 go hire counsel and come back and rehear the matter, I agreed that I would be happy to
19 deliver the passports up, provided that Cisilie would do the same, and that neither of us
20 would leave until we got our agreement worked out.

21 Q Well, you had already made flight arrangements to leave London on July 9,
22 1998. The London court knew about it the day before; correct?

23 A That's right.

24 Q And on July 9, 1998, you physically took Cisilie to the American Embassy
25 and had her signature notarized on this agreement that's been attached immediately
26 before you got on a plane for the U.S.?
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A We went to the embassy together. That is true.

Q And you told her that, if she did not sign that agreement with you, at that time, at that place, that you were taking the children and she wouldn't see them again.

A That's completely false.

Q You never made any such threats?

A None. The English attorneys told both Cisilie and I that since they didn't have any jurisdiction over our divorce, we would have to return to America to get a divorce.

Q Let's be clear about these English -- We're talking about solicitors at this point, as opposed to barristers?

A I don't know exactly.

Q Very good. If you don't know, I'm sorry. I don't want to impose --

A I believe -- Well, Cisilie had a barrister and a solicitor. Again --

Q Well, a barrister is the person who actually appeared in court to do what was necessary for the return of the passports on the London orders, that are presented here as Exhibits A and B.

A I remember that.

Q But the person that you dealt with was a solicitor, who is provided by Legal Aid; correct?

A She had both a barrister and a solicitor provided by Legal Aid.

Q Because under the English system, only barristers can approach the bar?

A As I understand it.

Q As you sit here today, are you going to testify in this court that Cisilie signed this agreement under her own free will?

A Absolutely.

Q You didn't do anything to place her under duress? You didn't make any

1 threats?

2 A I made no threats.

3 Q Can you reconcile that with her filing of the papers in the London court,
4 indicating that you had told her that you were going to immediately make off with the
5 children?

6 A First of all, I never said that. Secondly, her concern was, when I took the
7 passports to make sure that she wouldn't run off to London before we had a divorce
8 agreement, she was afraid I was going to run off to America. So when we went to court,
9 we both agreed that we would stay in London until we had worked out our agreement.

10 Q Is there any memorialization of that agreement?

11 A Of what agreement?

12 Q This agreement that you're talking about, that you would both remain in
13 London until you'd worked out this other agreement.

14 A Basically, there's a -- a document that I've seen in your motion that says --
15 that's signed by me. I'm not sure I've seen the one that's signed by Cisilie, however.

16 Q Well, the document -- If you're referring to Exhibit A in the book in front of
17 you is your agreement with the London court that you're not going to take the children and
18 leave the country or apply for a replacement passport.

19 A That's right.

20 Q That was a condition of good behavior imposed by the London court after
21 Cisilie filed her papers preventing you from leaving the country; right?

22 A Like I said, I remember very clearly that I was served with papers on June
23 6th, because it was our -- our anniversary. And I came home, and before our anniversary
24 date, I was served with papers, saying, appear on Monday. So I had no opportunity to get
25 counsel before that time. And I agreed to this in court. And she had a similar undertaking,
26 which I don't find here.

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1 Q When you returned to London in July of 1998, after your trip to wherever you
2 went in the United States, you remained in the same apartment, flat?

3 A Sorry. Could you restate that?

4 Q In 1998, you left. You maybe went to San Francisco. You definitely went
5 to Los Angeles. You were in Las Vegas for some period of time. You don't know where
6 else you went. But eventually you made it back to London. Is that a fair summary?

7 A First of all, I didn't say that I was in Los Angeles. I said that I saw Ms.
8 Cresap during that period.

9 Q I'm sorry. Let's make sure we've got the name straight. Who are we talking
10 about?

11 A Cara Cresap is the -- is the one that Cisilie has made allegations about.

12 Q So you're not sure, at this moment -- if I'm understanding you -- where you
13 saw her?

14 A That's correct. I don't believe I ever saw her in Los Angeles. You just made
15 a statement to say that I did.

16 Q Okay. She lived in Los Angeles?

17 A She lives outside Los Angeles. North of Los Angeles, in Saugus.

18 Q And your company would send you to Los Angeles to go back to England?

19 A Often.

20 Q And you saw her, but you don't know if you saw her in Los Angeles?

21 A No. I said that I didn't think that it was Los Angeles that I saw her.

22 Q Where do you think you saw her?

23 A I believe that she came to Las Vegas during that trip.

24 Q Was that during the ten days that you were doing things in Nevada,
25 somewhere between July 9th and July 15th?

26 A I'm not sure of the exact date, but I know it was during the time that I was in
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1 Nevada.

2 Q Well, let me correct one mistake, with respect, made by your counsel. At the
3 moment that the complaint for divorce was filed in Las Vegas, you were in England;
4 correct?

5 A When was it filed?

6 Q According to the paperwork, August --

7 MR. DEMPSEY: 14th.

8 MR. WILLICK: 8th.

9 MR. DEMPSEY: 8th?

10 MR. VAILE: I don't think that I said that I was in England on August 8th.

11 MR. CERCEO: August 7th.

12 MR. WILLICK: 7th?

13 MR. DEMPSEY: August 7th.

14 MR. WILLICK:

15 Q So you're not sure if you were in England at that time?

16 A No.

17 Q You actually signed your paperwork sometime prior to that, July 10th -- July
18 11th -- 14th. Excuse me. Do you know why it was delayed for two weeks?

19 A I just assumed that that was normal processing.

20 Q Left that to the lawyer?

21 A I felt like I had done everything I needed to do.

22 Q Where do you remember seeing Ms. Cresap?

23 A In -- I know that I saw her when I was in Las Vegas.

24 Q Where? Physically where do you --

25 A I think we went to --

26 Q -- have a recollection of her?

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1 A -- we went to a show together.
2 Q What show?
3 A It was either Mystere or O.
4 Q When?
5 A What date?
6 Q Yes.
7 A I don't know what date it was.
8 Q Did you charge it on a credit card?
9 A That's possible.
10 Q The tickets cost quite a bit.
11 A Uh-huh.
12 Q Do you remember if you paid cash or charge?
13 A I don't. But I could probably check that.
14 Q Where were you staying during your trip?
15 A At my house in Little Valley.
16 Q Well, in fact, you don't have a house in Little Valley. Your mother has a
17 house in Little Valley.
18 A Yeah. I live there too.
19 Q As you sit here today, you're saying you live there too?
20 A I lived -- I lived there too.
21 Q For what period of time did you live in that house?
22 A Again, according to my agreement with SAIC, I had to maintain a U.S.
23 residence. That was my U.S. residence. Every time that I came to America, I came
24 home. Well --
25 Q This agreement with SAIC, where you had to maintain an American
26 residence, is this a formal written document?
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1 A I'm sure it is.

2 Q Do you have a copy of it?

3 A I'm sure I do somewhere.

4 Q Does -- Was it subject to renewal from time to time at the times that you
5 renewed your various contracts?

6 A I know that I had the option to extend my agreement, if that's what you
7 mean.

8 Q Right. Did you have to declare a specific place of residence on your
9 agreements with SAIC? Or did you just have to say --

10 A I would have to look.

11 Q -- I've got a residence in America?

12 A Well, I know that it was required to maintain a U.S. residence. But I don't
13 remember the -- I don't remember if I could specify where. I will have to look at that.

14 Q When you returned to London, you moved back into your existing
15 apartment?

16 A When I returned to London --

17 Q July or August of 1998.

18 A Yeah. We kept it -- kept paying for a couple more months after that.

19 Q You continued your utilities?

20 A Uh-huh.

21 Q You still had your stuff?

22 A I had -- Like I said, I had sent most of our -- our stuff to Virginia at the time.

23 Q Okay. Except for the stuff in Virginia? The things that you said you
24 personally carried and left at your mom's place in Las Vegas?

25 A Right.

26 Q Your stuff was in London. Incidentally, this -- Let's -- Let's go back to London.

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1 As you were there in July and August and September, do you recall ever amending your
2 agreement with Cisilie?

3 A In July, August or September did I amend my agreement with Cisilie?

4 Q No, no. I was -- I was returning you to London, just to place it in time. Do
5 you recall at any time after you returned to London, after your trip to the United States,
6 that you ever amended your agreement with Cisilie?

7 A Absolutely not.

8 Q Turn to Exhibit F in the book in front of you.

9 A Uh-huh. Yes.

10 Q Do you recall drafting an amendment to the agreement which required Cisilie
11 to physically bring the children to you in London for visits, but said that she could maintain
12 her Norwegian address, and extended through the 1999/2000 school year, Cisilie
13 remaining in Norway with the children?

14 A I remember that we discussed extending her stay in Norway, at Cisilie's
15 request. I remember that I typed this up, but we never agreed on this.

16 Q Answer very carefully. Do you recall that this is the first draft of an
17 agreement, which is why it's marked first draft only?

18 A Do I remember that this is the first draft?

19 Q Yes.

20 A Yes, I do.

21 Q Do you recall there being a second draft, which you also wrote and
22 presented to her for signature?

23 A No. I remember that there specifically was no second draft, or third draft,
24 or final draft.

25 Q You're saying that nothing happened out of this agreement? Nobody ever
26 executed it? You proposed it, you typed it, you showed it to her, and nothing happened?
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1 A I know that we were trying to -- to formulate a new agreement so that she
2 could remain in Norway. Then she wrote a letter to this Ms. Cresap that was very ugly.
3 And I was so irritated about it that I said, you know, I let her go to Norway for her own
4 benefit and -- and that she was still being spiteful to me, despite that, and that I was not
5 going to do an extension to the agreement.

6 Q What date do you think that agreement was -- or that letter was?

7 A April 1998.

8 Q So if Cisilie has a specific recollection --

9 A Sorry.

10 Q -- of --

11 A I misspoke.

12 Q I'm sorry. I didn't mean to cut you off.

13 A April of 1999.

14 Q Very good. If Cisilie has a specific recollection of you handing her the final
15 version of this document, demanding that she sign it, specifically including the demand
16 that she fly the children, at her expense, to visit with you, and she did so at your urging,
17 and you kept the only original, she would be mistaken?

18 A That's correct.

19 Q Do you recall participating in court annexed mediation in the Norwegian court
20 in 1999?

21 A I remember that I received a summons to court, or a summons to mediation
22 from some representative of the Norwegian system.

23 Q And you have an attorney in Norway?

24 A I do.

25 Q Her name?

26 A Elsbeth Bergsland.

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1 Q And after consultation with your Norwegian counsel, you engaged in court
2 annexed mediation in the Norwegian court in the latter months of 1999?

3 A You've grouped quite a bit into that one statement.

4 Q Okay. I'll break it up. Did you consult with an attorney before you consulted
5 -- before you engaged in mediation?

6 A I don't believe I did, no.

7 Q Okay. So you did so afterward?

8 A I would have to go back and look at the dates, but I don't believe that I spoke
9 to my attorney. I did not -- I didn't speak to my attorney about mediation. I can't
10 remember if I retained my attorney before or after mediation happened -- or the supposed
11 mediation, as it were.

12 Q Well, let's address that. How many mediation sessions do you think you
13 attended?

14 A I know that I attended two. The first one -- The first mediation session was
15 held without me. I was -- I was given no notice of it, even.

16 Q So for whatever reason, the Norwegian court thinks it gave you notice and
17 said you didn't show, and you say you didn't get notice. But in either event, the first date
18 came and went before you attended mediation?

19 A Well, the Norwegians have never said to me that they even gave me notice
20 of the first one. In fact, they told me that they didn't even have to give me notice for the
21 second and third.

22 Q But at some point you did get notice and you did engage in court annexed
23 mediation in Norway?

24 A I -- I can't say that it was court annexed. I'm not sure what -- what your
25 terms mean.

26 Q Sure.
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1 A All I know --

2 Q Well, despite the characterization. Well, let me just ask you. Turn to Exhibit
3 G in the book in front of you.

4 A Uh-huh.

5 Q It talks about a mediation between you and Cisilie and gives a whole factual
6 recitation of how that mediation came to be. Have you reviewed this document ever?

7 A I'm sure I have at some point.

8 Q Elisabeth Hagen is Cisilie's attorney?

9 A Elisabeth Hagen is Cisilie's attorney, as far as I know.

10 Q Okay. What dates do you recall engaging in mediation through the Norway
11 court system?

12 A Well, I don't recall the exact dates, but I'm sure that I have some record of
13 it.

14 Q How many sessions do you recall attending?

15 A Two.

16 Q At some point, you had your attorney request an extension of time to answer
17 a motion in Norway.

18 A That's not true.

19 Q Well, your attorneys did file an extension of time request for you.

20 A I think that they filed an extension because they hadn't had a chance to talk
21 to me.

22 Q Sure. Well, let's take it in pieces. All these have been admitted into
23 evidence. Exhibit J is the order requiring a response from you?

24 A Okay.

25 Q Do you recall that? Obviously, this is a translation into English.

26 A Right. Yeah, I never received any of these in English.

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1 Q Right. You speak Norwegian?

2 A Yeah, I get by.

3 Q You read, you write, you speak? You can communicate in Norwegian?

4 A I lived there for twenty-two months, so -- But much of the terms in these
5 documents are very legal -- legalese in nature and they're difficult to understand.

6 Q Would it be fair to say that, if you're sitting in a room with a Norwegian who
7 spoke only Norwegian, you could communicate with that individual?

8 THE COURT: Offer of proof of what this has to do with jurisdiction in my
9 courtroom.

10 MR. WILLICK: I'm moving --

11 THE COURT: For the decree.

12 MR. WILLICK: -- to that very next.

13 THE COURT: Okay.

14 MR. WILLICK:

15 Q These proceedings had begun October/November of nineteen ninety --

16 THE COURT: I'm talking about the jurisdiction on the original divorce thing. That's
17 what we're here for today.

18 MR. WILLICK: Very good, Your Honor. I thought you would want the other
19 evidence as well, but I'll skip it and return to 1998.

20 THE COURT: I'm sure I do. I just -- Today's hearing was solely for jurisdictional
21 issues --

22 MR. DEMPSEY: That's my understanding, yes.

23 THE COURT: -- for the decree of divorce.

24 MR. WILLICK:

25 Q As to the agreement to extend, your testimony a moment ago was that you
26 presented the first draft and then you got notice of some letter, and then you never
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1 prepared a second draft because of it?

2 A That's correct.

3 Q Do you recall writing a letter to Cisilie indicating that you were sending her
4 the first draft of the agreement, although you were deeply disturbed about the letter that
5 she had written to the girlfriend?

6 A No. But that's entirely possible.

7 MR. WILLICK: I have no copies, so I'll show this to my opponents.

8 THE COURT: And this has what to do with --

9 MR. WILLICK: The Court asked the question as to the legitimacy of my client's
10 exercise of custodial rights immediately before the removal of the children, and I'm
11 attempting to address the Court's question. Although you did tell me that wasn't one of
12 the issues you were concerned with, you made a preliminary finding --

13 THE COURT: Well, I think that they have to have an opportunity to respond before
14 I make a ruling on that. But, yeah, I do need to know that.

15 MR. WILLICK: That's what I need to go.

16 THE COURT: Okay.

17 MR. DEMPSEY: Can we have a five-minute break, Your Honor, to get copies of
18 this document?

19 MR. ROBERTS: Maybe have a restroom break?

20 MR. DEMPSEY: Yeah.

21 THE COURT: We can do that. I'm -- I'm walking off of this bench at six o'clock on
22 a prior commitment that I cannot avoid.

23 MR. ROBERTS: I understand that, Your Honor. And, you know, we would like to
24 reserve fifteen minutes for closing. It's now ten after -- five after five and we haven't yet
25 had a chance. So we'll take the five minutes out of our hour, but --

26 THE COURT: No, I'll give you the five-minute break. I think it's warranted for
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1 everybody involved.

2 MR. WILLICK: Maybe I can ask the bailiff to please make me a couple of copies?

3 THE COURT: Sure. Absolutely.

4 MR. ROBERTS: And we'll make it five minutes, Your Honor.

5 (Whereupon a recess was taken at 17:08:08

6 * * * * *

7 (Whereupon the proceedings resumed at 17:25:29)

8 MR. DEMPSEY: Real quickly --

9 THE COURT: Sir?

10 MR. DEMPSEY: -- I would like to be able to request that I have some time to
11 present some evidence myself. We only have a little over a half an hour, and I haven't
12 had a chance yet. And I would request, also, that we restrict the closing arguments to just
13 closing -- one ten minutes each for each party.

14 THE COURT: There's not nearly enough time to finish this hearing today, I don't
15 believe. I can't cut plaintiff short because then that -- or defendant, who has the burden,
16 because then he says, I didn't have an opportunity. I absolutely have to let you respond,
17 and I can't do that today.

18 MR. WILLICK: I may be able to accommodate, Your Honor.

19 THE COURT: Yeah.

20 MR. WILLICK: I think within the space of a very few minutes, I can complete --
21 since you've -- You've restricted the topics under that I'm asking questions. Just for
22 completeness of the record --

23 THE COURT: We expanded a little bit, but I kept thinking --

24 MR. WILLICK: Right.

25 THE COURT: -- that they would cease at some juncture and then get back on
26 track, but they didn't.

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1 MR. WILLICK: I'll be done, I believe, within five minutes, and accommodate
2 counsel.

3 THE COURT: Five minutes? You have five minutes.

4 MR. DEMPSEY: For both parties?

5 MR. WILLICK: Well, I -- there's nothing that I can call her to the stand to testify to
6 that's going to be relevant to the question that this Court has said is -- except, possibly,
7 on rebuttal -- to the --

8 THE COURT: We'll let him exceed the scope if that happens. Is that all right with
9 you?

10 MR. DEMPSEY: That's okay, Your Honor.

11 THE COURT: All right, okay, great. If something comes up and you need to
12 exceed the scope on your cross, we'll let you do that.

13 MR. WILLICK: Very good.

14 THE COURT: Would you retake the stand, sir. Go ahead, counsel.

15 MR. WILLICK: Sure.

16 **CONTINUE DIRECT EXAMINATION (17:26:57)**

17 BY MR. WILLICK:

18 Q Just to very quickly conclude the last series of questions. The letter that
19 Cisilie wrote to your former girlfriend had to do with a time period before you sent her the
20 first draft of --

21 MR. DEMPSEY: Your Honor, objection. Former girlfriend?

22 MR. WILLICK: That was how you characterized her.

23 THE COURT: Form of the question. Friend who is a girl.

24 MR. WILLICK: Excuse me. Friend who is a girl.

25 THE COURT: Okay.

26 MR. WILLICK: Yes?
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1 MR. VAILE: No. Well, not from this. This -- This addresses another note that she
2 wrote to somebody else, not the former girl.

3 MR. WILLICK: I see.

4 MR. WILLICK:

5 Q So you don't recall at this point, your memory isn't refreshed that you were
6 already irritated with the letter she was writing before you sent the first draft of the
7 agreement, which is here?

8 A That's right. This says that I was irritated --

9 Q It's okay. And you don't change your testimony that you did a second draft
10 which says that she and the kids can live happily in Norway throughout the '99/2000
11 school year?

12 A I don't change my testimony --

13 Q Okay.

14 A -- that I --

15 Q Let me go back, then, to 1998. On July 14th, 1998, you signed a verification
16 in front of notary Melody Leavitt in the State of Las Vegas indicating that you verified the
17 contents of your Complaint for Divorce; right?

18 A Right.

19 Q Page One, Paragraph One of that Complaint for Divorce says that you, I,
20 have resided and been physically present in the State of Nevada for six weeks
21 immediately preceding. Your sworn verification; right?

22 A Right.

23 Q In fact, that wasn't true; right?

24 A That I had been physically present in the State of Nevada?

25 Q For six weeks immediately preceding your signature on that verification.

26 A Right. I didn't understand at that time that it was a continuous six-week
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1 period.

2 Q It says, for a period of more than six weeks immediately preceding the
3 commencement of this action I have resided and been physically present in the State of
4 Nevada. Now, that's what you signed; right?

5 A Like I said, my understanding at the time -- And I realize what the -- what the
6 law is now. At the time, I thought that I was compliant.

7 Q The question is very simple. You have not been physically present in
8 Nevada for six weeks before July 14th, 1998; correct:

9 A That's true.

10 THE COURT: If you added up --

11 MR. VAILE: Not immediately before --

12 THE COURT: If you added up every day you were ever in Nevada, prior to that
13 day, it wouldn't add up to six weeks, would it? Present -- Physically present in Nevada.

14 MR. VAILE: I didn't -- I didn't say that.

15 THE COURT: Okay.

16 MR. VAILE: I'm not sure that that's not the case. But -- But --

17 THE COURT: I know you're looking at me funny.

18 MR. WILLICK:

19 Q You mean, in your entire life, it's conceivable, if you added up all those days
20 together, the four days that you were here on vacation on your way to San Diego or Los
21 Angeles and the two weeks that you spent here in 1998 and the business trips back here
22 in August, September, October, etcetera, it's conceivable that you spent six physical
23 weeks in the State of Nevada at some point?

24 A In 1998?

25 Q In 1998.

26 A Well, you asked earlier prior to July 14th.

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Q Yes, I know.

A Okay.

Q But the Judge expanded my question and I'm trying --

THE COURT: I'm sorry for the interjection.

MR. WILLICK: Just -- Okay. Then --

MR. VAILE: I think it's entirely possible that I was in Nevada for six weeks.

MR. WILLICK:

Q Ever?

A Even prior to July 14th. What I'm saying is --

Q Well, wait a minute.

A -- not consecutive.

Q Let's explore that. You indicated that you were present for four days in 1996 and that you didn't set foot here again until July 9th, 1998.

A I never --

Q How could that possibly add up to six weeks?

A I never said that I was here for four days in 1996.

Q You took a car trip across the country with your wife and two daughters in 1996; correct?

A That's correct.

Q You spent a total of seventy-two hours, four days, possibly, on vacation in Las Vegas at that time?

A I never said that.

Q Okay. What do you say? How long do you think you spent here on your road trip on your way to California in 1996?

A I don't remember the exact details of it. But I never said that it was only three days.

1 Q Then tell me, how long did you spend?

2 A I don't know exactly how long it was.

3 Q Days, weeks, months, years?

4 THE COURT: It doesn't matter. He was a resident of Virginia at the time.

5 MR. WILLICK: Thank you, Your Honor.

6 THE COURT: He had no intention at that point in time, nor has he stated one at
7 this time, to be a resident at that time.

8 MR. WILLICK: Thank you, Your Honor.

9 THE COURT: So the days wouldn't matter. Go ahead.

10 MR. WILLICK:

11 Q Other than the matter set out on the exhibits that you supplied to your
12 counsel that they filed in their opposition and that we have now sketched on this chart, is
13 there anything you did to either renounce your Virginia residency or establish a Nevada
14 residency between the date you left Virginia in 1996 to go to London and the date your
15 plane touched down in Vegas on July 9th?

16 A Could you state that once more?

17 Q Sure. Other than the things that you have given to your attorney, that we
18 have then turned into this chart --

19 A Uh-huh.

20 Q -- bills -- is there anything you did to renounce your Virginia residency or to
21 establish residency in the State of Nevada between the date you left Virginia in 1996 and
22 the date your plane touched down on July 9th, 1998?

23 A Other than the things that we've talked about here, the only things that I can
24 think of is arranging with my parents to -- to live at their house and for my belongings to
25 be moved there.

26 Q Do you know what date your mother moved to Las Vegas?
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1 A I don't know exactly what date she moved.
2 Q Do you know what month?
3 A I believe it was June.
4 Q It was actually mid-June 1998; right?
5 A Like I said, I don't know the exact date.
6 Q She moved by car from Massachusetts -- Excuse me.
7 THE COURT: Maine.
8 MR. WILLICK: Maine. Sorry.
9 THE COURT: I do the same thing with Ohio and Iowa.
10 MR. WILLICK: I apologize to the Court.
11 THE COURT: It's all right.
12 MR. WILLICK: No confusion was intended. Maine.
13 MR. WILLICK:
14 Q She relocated by ground transportation after the beginning of June 1998?
15 A Uh-huh.
16 Q It's a physical impossibility to move stuff across the United States that
17 distance in less than twenty-four hours, isn't it?
18 A It's impossible to move stuff unless the --
19 Q Your mother isn't a speed demon, is she?
20 A Well, she just got a ticket for going ninety something in a --
21 Q Do you know that if she did anything --
22 THE COURT: The Court would note it would probably take two days to drive.
23 MR. WILLICK: Thank you, Your Honor.
24 THE COURT: Even if she was a speed demon with insomnia.
25 MR. WILLICK: Thank you, Your Honor.
26 MR. WILLICK:
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1 Q The two addresses that you sent your bills to in Las Vegas --
2 A Yes.
3 Q -- one of them was your mother's address. What's the other one?
4 A Well, they were both my mother's address, actually. The first were the first
5 few months -- or first few bills went to was the address where they thought that they were
6 moving into, and the second was the one they ended up moving into.
7 Q So 132 Shearer is not a place where they ever lived?
8 A No, as it turns out.
9 Q And they actually moved to 7640 Little Valley?
10 A That's right.
11 Q And they didn't establish that one until mid-June 1998?
12 A Like I said, I don't know the exact date of it. I'm sure that they had some sort
13 of rental agreement.

14 MR. WILLICK: I pass the witness, Your Honor.
15 THE COURT: Okay. Go ahead.
16 MR. DEMPSEY: Okay, Your Honor, I have some questions on rebuttal.
17 THE COURT: All right. On cross?
18 MR. WILLICK: I'm sorry, I didn't hear the question.
19 MR. DEMPSEY: On cross. I'm sorry, I'm sorry.
20 THE COURT: He said he had questions on rebuttal.
21 MR. DEMPSEY: Recross. I'm sorry, I'm sorry.
22 THE COURT: He's used to being plaintiff on rebuttal, but he's actually, since you
23 had the burden, he's on cross. Go ahead.

24 **CROSS EXAMINATION (17:34:50)**

25 BY MR. DEMPSEY:
26 Q I turn your attention, Scot, to Exhibit C --
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A Uh-huh.

Q -- of defendant's exhibits. Could you tell the Court what that is again, just to refresh the Court's memory?

A That's a boarding pass on United Airlines -- or United Shuttle, actually.

Q Okay. And is -- is it your understanding that when you deliver a boarding pass, that a portion of the boarding pass is given to the airline?

A Yeah. Normally the big portion they retain.

Q And you keep the smaller portion as you board the airplane and hand that to the flight attendant; is that correct?

A Right, so you can find your seat.

Q Given the fact that this is intact, would it sort of imply that that document had never been used?

A It would imply that.

Q All right. I'm also going to ask you to please clarify your employment situation during July through October of 1998. You began to do that, and we would like to have you continue with that, please.

A Uh-huh. So through July, I continued work with SAIC, consulting to a bank. And then in October, I guess they raised their rates to the bank and the bank asked if I would come to work for them on a consulting basis, and I agreed. And started that and then -- I believe October of 1998.

Q Okay. I would like to hand you our exhibit book.

Your Honor, do you have a copy of the exhibit book?

THE COURT: I'm not sure I do. I have one from Mr. Willick. Do you have a copy for me to look at, or you just have the originals?

MR. DEMPSEY: This is the only one I have. But this is your copy. This is the originals, over here.

1 THE COURT: No, this is for Willick. This one is yours? All right. Yes, this is --
2 I've got yours now.

3 MR. DEMPSEY: Okay.

4 THE COURT: I don't have a copy.

5 MR. DEMPSEY. Okay. (Inaudible.)

6 THE COURT: Do you want me to -- Can I have these?

7 MR. DEMPSEY: Yes, please.

8 THE COURT: Thank you so much. All right.

9 MR. DEMPSEY:

10 Q Okay. Scot, I would turn your attention to Exhibit B -- or, excuse me, Exhibit
11 One. And I would ask you -- There's four documents in these exhibits. I would ask you
12 to review those very quickly.

13 A Uh-huh.

14 Q Do you recognize those documents?

15 A Yes.

16 Q And could you tell the Court what they are?

17 A This is various e-mail exchanges between myself and James Smith, my
18 soon-to-be attorney in Las Vegas.

19 MR. DEMPSEY: I would like to move to have those admitted, Your Honor, please.

20 THE COURT: They're already admitted.

21 MR. WILLICK: Already admitted. No objection.

22 THE CLERK: I haven't received any exhibits from them.

23 THE COURT: Oh. You haven't given my clerk these exhibits yet?

24 MR. DEMPSEY: I thought I had.

25 THE COURT: Here. Mark them. Admitted. Go ahead.

26 MR. DEMPSEY: Thank you, Your Honor.

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1 MR. DEMPSEY:

2 Q In the e-mail dated 15 June 1998, there is a request -- it's a communication
3 to you -- from you to Mr. James Smith; is that correct?

4 A This is from James Smith to me.

5 Q I'm sorry. James Smith to you.

6 A That's correct.

7 Q And in that, you requested information on a -- an uncontested divorce; is that
8 correct?

9 A Right.

10 Q And what was the fee that was quoted in that document?

11 A Seven-hundred-and-fifty dollars.

12 Q Okay. And that was for what kind of a divorce?

13 A Uncontested.

14 Q Okay. And why did you assume that you were going to be doing an
15 uncontested divorce?

16 A Because we had an agreement and we just agreed that we would do an
17 uncontested divorce.

18 Q Because you had worked out the terms already in advance; is that correct?

19 A Yes, Cisilie and I. Correct.

20 Q What does this document state with respect to residency in Nevada?

21 A Well, it says that -- that one of us has to come and sign papers and take the
22 Cope class --

23 Q Uh-huh.

24 A -- and -- and that we'll have to sign an affidavit that we've been resident for
25 six weeks.

26 Q Okay. And what was your understanding of what that consisted of?
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1 A Well, I understood that, in order to change my residence, I needed to give
2 up my residence in Virginia, which -- which I did by moving from there, getting a Nevada
3 driver's license, changing all my billing information and having my only physical abode be
4 in Las Vegas.

5 Q And other than what's communicated about residency in these four e-mail
6 communications, did your attorney discuss either in written form or verbally with you any
7 other aspects of residency in the State of Nevada?

8 A No.

9 Q So your understanding was that, what you had indicated prior, that --

10 A That I was resident.

11 Q By mere virtue of the fact that you had changed your address to come here?

12 A And -- And -- Right.

13 Q And you received no countermanding information from your attorney about
14 that?

15 A No.

16 Q I turn your attention to Exhibit Two. And could you please identify for the
17 Court what that document is?

18 A This is a -- a final agreement that -- that Randy Guinn helped us work out.

19 Q Okay. Do you recognize the initials at the bottom of the -- each page of that
20 document?

21 A Yes.

22 Q Do you know if those are your initials?

23 A Cisilie's and mine both.

24 Q Both of those. Okay. Turn your attention to the signature page. Do you
25 recognize the signatures of both yourself and Cisilie on those documents -- this
26 document?

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A Yes.

Q Okay. After signing this document, where did Cisilie go?

A She went to Norway.

Q Okay. Did she take the children with her?

A Yes.

Q Was that pursuant to the terms of this agreement?

A Yes.

Q The fact that she signed it, she immediately exercised her rights under the provisions of this contract.

A That's correct.

Q Is that correct? I would also ask that you tell the Court what your understanding of the governing law of this document agreement is.

A Since we agreed to get a divorce in Nevada, we made reference to it several times throughout the agreement, and I understood that that was the governing law of the document.

Q Okay. And what about child support?

A Child support also was according to Nevada's guidelines.

Q I would turn your attention to what's -- I'm going to submit as Exhibit Three. Do you recognize that document?

A Yes, I do.

Q Okay. Could you tell the Court what that is?

A That's my driver's license.

Q All right. Can you tell the Court when you applied for that?

A July 14th, 1998.

Q Okay. And since that date, have you had any other driver's licenses?

A No.

1 Q In any other states or any countries?
2 A No.
3 Q Did you have to turn in a driver's license to obtain this driver's license --
4 A My --
5 Q -- from another state?
6 A My Virginia driver's license I turned in.
7 Q You turned in your driver's -- Virginia driver's license and you received a
8 Nevada driver's license?
9 A That's correct.
10 Q And from that date to this, you've never had another state's driver's license?
11 A That's correct.
12 Q Okay. I turn to Exhibit Four and ask you to review that document and tell the
13 Court what it is.
14 A That's my voter registration card.
15 Q Okay. And when did you apply for this?
16 A At the same time I got my driver's license, actually.
17 Q Where did you apply?
18 A At the -- the DMV.
19 Q Okay. And have you registered to vote in any foreign country or any state
20 since --
21 A No.
22 Q -- this time?
23 A No.
24 Q I would turn your attention to Exhibit Five. Could you identify for the Court
25 what that document is?
26 A This is Notice of Program Completion. Basically a certificate that I received
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1 once I finished the Cope class.

2 Q And did you finish that class?

3 A I did.

4 Q And was it a requirement of getting a divorce here in Nevada?

5 A It was.

6 Q And you complied with that; is that correct?

7 A Yes, I did.

8 Q All right.

9 MR. DEMPSEY: No further questions, Your Honor.

10 THE COURT: That's it?

11 MR. DEMPSEY: Yes. I would -- I would request to examine Cisilie, if I may. And
12 it's going to take a little while.

13 THE COURT: We don't have a little while. If it's going to take a lengthy amount
14 of time, we don't have it.

15 Counsel --

16 MR. WILLICK: Yes.

17 THE COURT: -- do you have any other questions for this witness?

18 MR. WILLICK: Just three very quick ones, I think.

19 **REDIRECT EXAMINATION (17:44:04)**

20 BY MR. WILLICK:

21 Q The boarding pass indicates insert this end. It's an electronic boarding pass
22 that you slide into the machine and take out, so you get the entire thing when you put it
23 in; right?

24 A Where is that again?

25 Q Exhibit --

26 THE COURT: I don't know that that's important.

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1 MR. WILLICK: Very good.

2 MR. WILLICK:

3 Q You indicated that you've only had the one driver's license since you
4 surrendered the Virginia driver's license and got the Nevada driver's license on July 14th,
5 1998?

6 A That's correct.

7 Q You also indicated at the opening of my examination you've been living in
8 Texas for many months.

9 A Yes.

10 Q You know that you're in violation of Texas law requiring you within thirty days
11 to surrender your Nevada driver's license and get one in Texas?

12 A That is --

13 MR. DEMPSEY: I'm going to object, Your Honor, as to the relevance of that with
14 regard to residency --

15 THE COURT: I think it's very relevant because he said he got his driver's license
16 here because he wanted to have a driver's license in the state in which he was residing.
17 That's why he got his license here. So I think it's a -- it's a fair question.

18 MR. VAILE: So the answer to your question is two parts. Number one, I wasn't
19 certain when I moved to Texas that Texas would be my permanent residence, or if we
20 would be there temporarily. And the second answer is that I don't actually own a vehicle
21 in Texas right now. So --

22 MR. WILLICK:

23 Q Do you own a vehicle anywhere?

24 A No.

25 THE COURT: Okay. Is that it?

26 MR. WILLICK: Very briefly.

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MR. WILLICK:

Q The Arthur Anderson office, which is handling your tax returns, where is it?

A It's somewhere in England. I'm not sure exactly which --

Q England?

A Yes.

Q Is there a United Kingdom CPA working on your taxes?

A I'm not sure that they call them a CPA. But there is a --

Q Equivalent. A registered accountant?

A There is an accountant over there.

THE COURT: It's the same organization that did your '97 ones?

MR. VAILE: That's it.

MR. WILLICK:

Q And the purpose of the U.K. CPAs, or their equivalents, working on the taxes is to try to find an exemption for you to avoid paying Virginia income tax; correct?

A No, they just -- they prepare the whole tax return.

MR. WILLICK: No further questions of this witness.

THE COURT: Okay. Do you have anything else --

MR. DEMPSEY: Not for this witness, Your Honor.

THE COURT: -- for this witness? Okay.

MR. DEMPSEY: I would like to request that I be allowed to call Cisilie, and I can probably --

THE COURT: Sure.

MR. DEMPSEY: -- examine her within ten minutes.

THE COURT: Absolutely. Call her.

CISILIE VAILE,

having been first duly sworn to tell the truth, the whole truth, nothing but the truth, testified

1 as follows:

2 THE COURT: Proceed.

3 MR. DEMPSEY: Thank you, Your Honor. I'm going to turn to the documents that
4 we're just going to start with to give her a jump start so she doesn't have to fish through
5 these documents.

6 **DIRECT EXAMINATION (17:46:50)**

7 BY MR. DEMPSEY:

8 Q Okay, Cisilie. I'm going to turn to what's marked as Exhibit Eight. Do you
9 recognize this document?

10 A Yes.

11 Q Okay. And could you tell the Court what the document is?

12 A It's a answer in proper person.

13 Q Okay. And who is the plaintiff in that case?

14 A Scotlund Vaile.

15 Q Okay. And who is the defendant?

16 A That's me.

17 Q All right. And let me turn to page -- Do you recognize the signature on the
18 signature page?

19 A Yes.

20 Q Is that your signature?

21 A Yes.

22 Q Okay. I would just have you very briefly, if you would, please, read starting
23 Cisilie A. Vaile.

24 A Okay. Cisilie A. Vaile, being first duly sworn, deposes and says that she's
25 the defendant in the above-entitled action, that she has read the foregoing answer in
26 proper person and knows the contents thereof, and that the same are true of her own
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1 knowledge, except --

2 Q Okay. Thank you. And, so, the last statement says, so you know the -- the
3 following information is true of your own knowledge?

4 A Uh-huh.

5 Q Now, I would turn your attention again, if I may, to paragraph one in the
6 answer --

7 A Uh-huh.

8 Q -- and I would have you read that, please.

9 A Answering paragraphs one through six of plaintiff's complaint for divorce,
10 defendant admits these allegations.

11 Q Okay. I would turn your attention to Exhibit Seven. Could you take a look
12 at that document and identify it for the Court, please?

13 A It's a complaint for divorce.

14 Q Okay. And is this in the same action that we had talked about where the
15 answer was filed?

16 A Yes.

17 Q Okay. And I would ask that you please read the first paragraph.

18 A Starting here?

19 MR. WILLICK: I'm sorry, counsel. Which document?

20 MR. DEMPSEY: This is Seven.

21 THE COURT: The complaint for divorce.

22 MR. DEMPSEY: The complaint. Just read the first paragraph --

23 MS. VAILE: Okay.

24 MR. DEMPSEY: -- if you would, please.

25 MS. VAILE: The plaintiff is a resident of the State of Nevada. And for a period of
26 more than six weeks immediately preceding the commencement of this action has resided

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1 and been physically present in the State of Nevada and now resides in his domicile
2 therein. And during all of said period of time plaintiff has had and still has the intent to
3 make the State of Nevada his home, residence and domicile for an indefinite period of
4 time.

5 MR. DEMPSEY:

6 Q Okay. And by -- by signing the answer, you said of your own knowledge that
7 this was absolutely true; is that correct?

8 A I didn't review all of this. All that I thought that I was signing was that, yes,
9 after all he had done, then I agreed to a divorce.

10 Q But -- But it says that you've read the document and you've signed it and you
11 know of everything contained therein is true of your own knowledge. I mean, you made
12 that sworn statement under oath. And if we turn back to your answer, it says -- it's signed
13 in the presence of a notary. Sworn oath that this is -- all the information contained in here
14 is true. Is that correct?

15 A I know that I had no choice but to sign, with the threats that I've been given.

16 Q Where was Scotlund Vaile living at the time you signed this?

17 A At that time, I guess he had just -- Let's see --

18 Q What is the date? Let's turn to the date on that document.

19 A August 7.

20 Q Okay.

21 A Well, it says it's filed August 7th here --

22 Q Okay.

23 A -- complaint for divorce.

24 Q When did you sign that?

25 A Are you looking to my answer, or the --

26 Q I'm talking about the answer; correct.

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1 A Okay. Is that Exhibit Eight?

2 Q That's the document -- Eight, yes, correct.

3 A Okay. Okay.

4 Q That's the acknowledgment that was scratched out. I'm referring to the
5 second page.

6 A Okay. The 31st day of July.

7 Q Okay. Where were you on the 31st day of July?

8 A In Norway.

9 Q Where was Mr. Vaile?

10 A He was probably on his way to London.

11 Q Okay. But he was nowhere near Norway? He wasn't located in Norway at
12 the time?

13 A Not -- Not right then. He came probably the beginning of August.

14 Q But on the date you signed this document, Mr. Vaile -- you were in Norway
15 and Mr. Vaile was not in Norway; is that correct?

16 A Yes.

17 Q All right. I would turn your attention to what's been marked as Exhibit Nine.
18 Can you identify -- Do you recognize this document?

19 A Yes.

20 Q Can you identify it for the Court?

21 A It's a request for mediation pursuant to the Norwegian Children Act.

22 Q Okay. And what is the date on that?

23 A It's November 8th, '99.

24 Q Okay. And who filed this?

25 A My attorney.

26 Q And your attorney is?

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A Elisabeth Hagen.

Q Okay. And I will turn your attention -- I would like you to read this paragraph for me, please, where it begins, the parties --

A Okay. The parties were separated through a divorce decree of August 10th, '98 from the District Court, Clark County, Nevada. The decree was recognized by the Governor of Oslo and Akershus County, Norway, on October 8th, '98.

Q Okay. Does this document anywhere state that your divorce decree was void from the State of Nevada?

A No.

Q Okay. Are you currently engaged?

A Yes.

Q Okay. When did you first become engaged? The date, more or less.

A That was in November of last year.

Q November of '99?

A Yes.

Q Okay. Do you know more or less what date?

A I think it was the -- towards the end.

Q I beg your pardon?

A Towards the end of November.

Q Towards the end of November. All right.

A Maybe Kjetil will remember. I'm not sure of that.

Q All right. And what is your fiancée's name?

A His name is Kjetil Porsboll.

Q Kjetil?

A Yeah.

Q Okay. I don't want to butcher it too badly because I'm going to ask you

1 questions about it. And when was your -- And your wedding was scheduled for June
2 2000, was it not?

3 A Yes.

4 Q Okay. And have you -- you sent out invitations for that wedding; is that true?

5 A Yes.

6 Q Okay. And I'll show you what's been marked as Plaintiff's Exhibit Ten, for
7 identification.

8 MR. WILLICK: It's admitted, counsel.

9 MR. DEMPSEY: I beg your pardon?

10 THE COURT: It's admitted.

11 MR. DEMPSEY: Yes.

12 MR. DEMPSEY:

13 Q Do you recognize that document?

14 A Yes.

15 Q Okay. Could you tell the Court what that document is?

16 A That's an announcement that we're getting married.

17 Q Okay. And what is the date -- I don't read Norwegian, so you'll have to help
18 me with the dates.

19 A It's June 2nd.

20 Q June 2nd of 2000?

21 A Yeah.

22 Q Is your -- the date of the wedding?

23 A Yeah.

24 Q Okay. And what -- there's another date there, the 3rd of -- the 3rd of June.
25 What date is -- What is that for?

26 A We were going to get married in the Temple the 2nd, and have a wedding
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1 dinner the day after.

2 Q So it's a reception, essentially?

3 A Yeah, basically.

4 Q Okay. But now you've put your wedding plans on hold; isn't that correct?

5 A Yes.

6 Q Okay. And the reason for the wedding being put on hold was that on May
7 17th, Scot brought the children back from the United States; isn't that true?

8 A I was told by several attorneys and Hague Convention experts, and I've --
9 I've been in contact with so many attorneys after the kidnapping, they said -- they all said
10 that the -- that the decree is void.

11 Q That wasn't my question. I asked that the reason that the wedding was put
12 on hold was that on May 17th, Scot brought the children back to the United States; isn't
13 that true?

14 A We were still planning on getting married until I got that advice from several
15 attorneys.

16 Q What advice is that?

17 A Not to get married because then I could be judged for plural marriages.

18 Q Okay.

19 A Because they all thought that that would be void.

20 Q How long -- soon after May 17th did you put the wedding plans on hold?

21 A It was about one week before we were supposed to get married.

22 Q Okay. And those plans are currently on hold right now; is that true?

23 A Yes.

24 Q Okay. And you have reviewed the motion submitted on your behalf by Mr.
25 Willick in this case, have you not?

26 A Yes.

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Q Okay. And you reviewed it prior to it being filed; correct?

A Yeah, it was e-mailed to me.

Q Okay. And is everything in that motion true?

A It was only one thing, and it was just -- it just said that I was engaged to Kjetil in '98, but it was really '99.

Q So it was a typographical error?

A Yeah.

Q Okay.

A That was the only thing that I noticed.

Q All right. I'm going to show you what's been marked as Exhibit Eleven, for your identification. If you'd turn the page, please. Thank you. Could you identify that document for the Court, please?

A It's a Supplemental Motion for Immediate Return of International Abducted Children and Motion to Set Aside Fraudulently Obtained Divorce, or in the Alternative, Set Aside Orders Entered on April 12th, 2000 and Rehear the Matter and for Attorney's Fees and Costs.

Q And in which court was that filed?

A Clark County.

Q All right. I would like to turn your attention, if I may, to -- to the verification. And I would like you to read that, if you would, please.

A Okay. Cisilie Anne Vaile, first being duly sworn, deposes and says: I am the defendant in the above-entitled action. I have read the above and foregoing Motion for Immediate Return of Internationally Abducted Children and Motion to Set Aside Fraudulently Obtained Divorce, or in the Alternative, Set Aside Orders Entered on April 12th, 2000 and Rehear the Matter and for Attorney's Fees and Costs, and know the contents thereof.

1 Q Okay. And so other than that one typographical error about the actual
2 engagement date, the document is essentially true -- correct?

3 A Yeah.

4 Q Okay.

5 MR. DEMPSEY: No further questions, Your Honor.

6 MR. WILLICK: I'll try to restrict it to three.

7 **CROSS EXAMINATION (17:57:31)**

8 BY MR. WILLICK:

9 Q One, did you have any independent legal counsel before you signed the
10 Answer in Proper Person?

11 A No.

12 Q What did you think would happen if you did not sign the Answer in Proper
13 Person?

14 A Scotlund told me that I would never see the children again. And I knew from
15 the family history about the father -- the mother kidnapping the -- his -- him and his siblings
16 to Idaho and keeping them in hiding there, changing their last name, and the father
17 kidnapping them back three times. I knew that could be quite possible from the family
18 history.

19 (THE REQUESTED PORTION OF THE PROCEEDINGS ENDED AT 17:58:00)

20 (THE PROCEEDINGS ENDED AT 18:10:26)

21 * * * * *

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

24 
25 ARLENE BLAZI,
26 Transcriber

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CERTIFICATION

I do hereby certify that I have reviewed the transcript of the video and have found it to be a true and accurate transcript of the proceeding.

DATED this 30th day of January, 2001.



DEBORAH S. CASPER
Supervisor
Transcript Video Services

EX 2

COPY

FILED

2001 JAN 26 PM 1:44

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Emily S. Hargrave
CLERK

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R. S. VAILE)
)
Plaintiff,)
)
vs.)
)
CISILIE A. VAILE)
)
Defendant)
_____)

CASE NO. D230385
DEPT. G

BEFORE THE HONORABLE CYNTHIA D. STEEL, DISTRICT COURT JUDGE
PARTIAL TRANSCRIPT RE: PLAINTIFF'S MOTION FOR ORDER DIRECTING
DEFENDANT TO APPEAR AND SHOW CAUSE RE: CONTEMPT

WEDNESDAY, MARCH 29, 2000

APPEARANCES:

PLAINTIFF: R. S. VAILE
PLAINTIFF'S ATTORNEY: JOSEPH DEMPSEY
520 South Fourth Street, #360
Las Vegas, Nevada 89101
(702) 388-1216

DEFENDANT: NO APPEARANCE
DEFENDANT'S ATTORNEY: NO APPEARANCE

1 LAS VEGAS, NEVADA

WEDNESDAY, MARCH 29, 2000

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 09:38:46)

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

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

7 THE COURT: After the divorce.

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

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

12 MR. DEMPSEY: How long were they here?

13 MR. VAILE: We lived here all their lives.

14 MR. DEMPSEY: Throughout their life.

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

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

21 THE COURT: To this Court.

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

23 THE COURT: Right.

24 MR. DEMPSEY: Asking for leave to return to Norway. She
25 didn't do that. And the problem is, Your Honor, it's like
26 somebody getting a visa, going to a foreign country for six
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1 months and at the end of the six month you have one or two
2 options. You either apply for a new visa or you leave.

3 THE COURT: Huh huh.

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

7 THE COURT: No.

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

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

10 MR. DEMPSEY: Absolutely.

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

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

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

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

17 (THE PROCEEDINGS ENDED AT 09:42:15)

18 * * * * *

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

22 DATED this 26 day of January, 2001.

23
24 Deborah S. Casper
25 DEBORAH S. CASPER
26 Transcriber
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EX 3

Attorney-at-Law
Anne Cathrine Vogt MNA

Kontorfellesskap

Attorney-at-Law
Brit Engebakken MNA

Attorney-at-Law
Elisabeth Hagen MNA

APPEAL
TO
BORGARTING COURT OF APPEAL

Appellant: Cisilie Vaile, Gøteborggt. 1, 0566 Oslo

Counsel: Elisabeth Hagen, Attorney-at-Law, N. Storgt. 11 b, 3015 Drammen

Respondent: R. Scotlund Vaile, P.O. Box 2845, Denton, Texas 76202, USA

Counsel: Elsbeth Bergsland, Attorney-at-Law, P.O. Box 471 Sentrum, 0105 Oslo

The case concerns: Appeal of the Oslo Municipal Court's order of November 9, 2000 in case no. 00-03031 A/66

On November 9, 2000, the Oslo Municipal Court pronounced an order in Case 00-03031 A/66 with this conclusion:

Case 00-03031 A/66 is dismissed.

The order of the Oslo Municipal Court is being appealed with the argument that the Oslo Municipal Court has made an incorrect assessment of the evidence and based itself on incorrect application of law in finding that the children Kaia Louise and Kamilla Jane are not domiciled in Norway, and thus dismisses the shared child custody case and thus also the marriage case from the Oslo Municipal Court.

It is argued that Norway is the children's place of residence, and that the case must be brought here, pursuant, among other things, to Section 64 litra b. [of the Children's Act – Translator's addition]

With regard to the question of domicile, it is noted that at the time the marriage foundered, in the summer of 1998, the parties and the children were living in London.

The parties had lived in London since 1 August 1997.

The breach between husband and wife was initiated by the Respondent, since he had met a new woman. As this woman was a missionary in the Mormon community, he did not wish to go through a period of separation, but wanted a rapid divorce process.

In consequence the Respondent chose to use the County of Clark, State of Nevada, Las Vegas, as this was the state in which he was assured of a rapid divorce. It was the Appellant¹

Respondent

¹ Handwritten correction, but supplemented by correction on separate sheet supplied by Ms Hagen – Translator



who was in control with respect to the agreements that were made. The Respondent had all the financial resources in this process; the Appellant was training as a cook, and had no independent finances.

The County of Clark, State of Nevada, Las Vegas, was not the children's domicile at the time of the breach (nor subsequently). Neither at this time nor subsequently did the District Court, Clark County, Nevada, Las Vegas have jurisdiction over the case with respect to the children. Through its decision of October 25, 2000, Annexes 1 and 2 to the pleading of November 3, 2000, the District Court, Clark County, Nevada clearly expressed this (cf. page 3 of the extract from the Court Records, Annex 2, which states that "the court further finds that this court never had any jurisdiction over the children, because the children were never present in this state."

Thus it has been clearly established that District Court, Clark County, Nevada, was not the children's domicile.

At this time, the parties no longer had any links with the places they had lived in the USA; Columbus, Ohio and Virginia. It must be assumed that at the time of the breach, the children's domicile was London.

Permission to take the children on the basis of English jurisdiction was given by Court Order, County Court, London of July 9, 1998, Annex 4 to the Complaint, where it states "by consent leave to the Mother to remove the children permanently from the jurisdiction of Court".

The Appellant and the children moved to Norway on July 10, 1998, and are registered as living at Goteborgg. 1 in Oslo as from July 13, 1998. The move to Norway took place according to agreement with the Respondent.

The Appellant settles in Goteborggate in Oslo with the children. Kaia Louise starts school, Kamilla Jane goes to day-care, and the Appellant secures work as a teacher.

It is argued that it must have been apparent to the Respondent that the Appellant's and the children's stay in Oslo would be of a permanent nature. The Respondent knew that in the USA the Appellant had no work, in the "Agreement" of July 1998 she had had to waive her right to alimony (cf. point 5, page 6, of Annex 2 to the Agreement). It was thus apparent also to the Respondent that the Appellant had no financial means of providing for herself or the children in the USA.

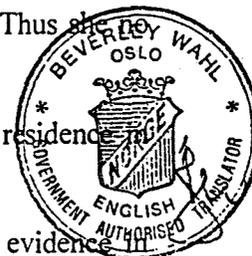
Moreover, in July 1999 the Appellant would have been outside the USA for almost 2 years which, as an American citizen, the Respondent must have known would have the consequence that the Appellant would lose her residence permit, her green card, which in fact she has lost. Thus she no longer has a green card.

It is argued that in moving, both the Appellant and the children legitimately took up residence in Norway.

It is argued that the Oslo Municipal Court has made an incorrect assessment of the evidence finding that the Respondent did not necessarily understand that the move to Norway would be permanent for the Appellant and the children, and that he accepted this when the move took place.

It is argued that the Oslo Municipal Court has applied the law incorrectly in finding that the children did not have domicile in Norway at the time the case was brought.

In October 1999, when the Respondent announced that he aimed to move back to the USA and required that she move to the USA, the children and the Appellant had been living in Norway for 16



months. At that time, it was 2 years and 4 months since the parties had lived in the USA. Kaia Louise had been going to school for 1½ years, Kamilla Jane was in day-care, and they had clearly settled down and put down roots here together with their mother.

The Oslo Municipal court has correctly made its starting point the assumption that the rules regarding jurisdiction in the Norwegian Children Act may not be departed from, i.e. that the parties cannot legally agree a place of jurisdiction, and the Oslo Municipal court has thus correctly disregarded the "Agreement" of July 7, 1998. (The system according to American rules, that the rules regarding place of jurisdiction may not be deviated from, is the same).

Even if the court should take as its starting point that the Respondent did not understand that a move to Norway would be permanent, it is argued that Norway is the children's place of residence and that the Oslo Municipal Court has jurisdiction.

At the time when the dispute arose, i.e. in November 1999, the children had lived in Norway for 16 months, and it was 2 years and 4 months since either of the parties had lived in the USA. At the time the case was brought in March 2000, the children had lived in Norway for 1 year and 8 months, and it was 2 years and 8 months since the children had lived in the USA. (The last place in which the parties and the children lived before Norway was London).

According to the American legal system, the question of jurisdiction accompanies the state that is the children's "home state". These rules follow from Public Law, Parental Kidnapping Prevention Act, litra (b) (4), cf. litra (c)(2)(A), cf. Annex 3 to the Pleading of November 3, 2000. This also follows from the Uniform Child Custody Jurisdiction Act, section 3 (cf. Annex 4 to the Pleading of November 3, 2000).

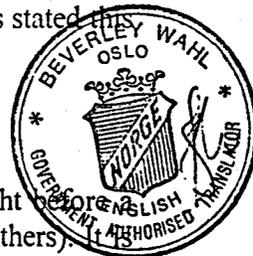
According to the rules cited above, the Home State is the place where the child has been living for the last six months, counting from when the dispute arose. At the time when the dispute arose, it was 2 years and 4 months since the children had lived in the USA. According to these rules, the USA thus does not have jurisdiction over the children.

As regards District Court, Clark County, Nevada, Las Vegas, it emerges from this court's decision of October 25, 2000 (cf. Annexes 1 and 2 to the pleading of November 3, 2000) that the children have never lived in this state, and that District Court, Clark County, Nevada states that this court has never had jurisdiction over the children (cf. point 7 of this decision).

The Oslo Municipal Court has incorrectly based itself on the assumption that any decision of August 10, 1998 from District Court, Clark County, continues to exist. (Reference is made to the remarks of the Oslo Municipal Court on page 9, last paragraph, and page 10, second last paragraph). From the decision of October 25, 2000 of the District Court, Clark County, Nevada, it is clear that Clark County considers that it has never had jurisdiction over the children, because they were never present in that state.

From this background it emerges that no state in the USA was the children's "home state", and no state in the USA had jurisdiction over the children. The District Court, Clark County, has stated this clearly as far as this state is concerned..

It follows from Section 64 of the Norwegian Children Act that the case must be brought before a Norwegian court if the children are resident in Norway (cf. Section 64, litra b, among others). It is clear from theory and practice that the decision as to where the child is to be regarded as domiciled must be based on an overall discretionary assessment. One basic principle is that decisions must be



made where the decision-making authority has the possibility of reaching a justified opinion of the child's situation. In Norwegian Government Report no. 35 of 1977, page 135, it states that "in cases concerning parental responsibility and rights of visitation, it is important that the decision-making authorities are able to form an opinion of the child's situation."

It must be regarded as indisputable that it is Norwegian courts, Oslo Municipal Court, which at the time that the case was brought and of the dispute had a basis for forming a justified opinion regarding the children's situation. It was almost 2½ years since the children had lived in the USA. Nor did the Respondent live in the USA at the time of the dispute and bringing of the case. At the time of the dispute, American courts would have had no possibility of forming an opinion regarding the situation of either the Respondent or the Appellant, or the situation of the children.

It is argued that Oslo Municipal Court has made an incorrect assessment when it finds, on page 10, second paragraph, that the Appellant's execution of intent to settle when she was not willing to travel back to the USA with the children, to be a type of self-help, in the sense of Section 64 of the Children Act.

The reason for the courts disregarding the children's actual place of residence because the actual place of residence has been established through self-help, is to counteract the fundamental principle to the effect that a party may not take the law into his or her own hands without proceeding by way of the courts and to prevent kidnapping situations. This is not the situation in the present case. The place of residence in Norway was established legitimately with the consent of the court in London and according to agreement with the Respondent. The children have not in any way been concealed. The dispute occurred while the children were living in Norway. At the time when the dispute arose, neither of the parties lived in the USA, and thus it was in Norway that the courts had any basis at all for making a decision regarding the children.

The fact that the children are now in Texas, USA, is a result of clear self-help on the part of the Respondent. The Respondent carried out an act of pure kidnapping, during visitation with their mother, the children have reported that they were driven in separate cars to Sweden, where they took a plane/planes², and that for the first week the children were kept separate. The Respondent has attempted the whole time to prevent the children having contact with their mother. The Respondent's self-help can according to a clear understanding of the law not have the consequence that the children's domicile is changed from Norway.

It is argued that the Oslo Municipal Court is to be regarded as the children's place of residence in the sense of Section 64, litra b of the Children Act, and that a case concerning divorce should be brought before the same court, with reference to Section 22 of the Norwegian Marriage Act (cf. Section 27, second paragraph).

With regard to updating with respect to the status of the case in the USA, it is noted that the Appellant has brought the District Court, Clark County's decision of October 25, 2000, before the Supreme Court of Nevada through a writ. The Appellant's American attorneys have in the first instance asked the Supreme Court, Nevada, to order the District Court, Clark County, to make a decision based on the merits of the case. The case has not been decided in Texas either. This court has not adopted a position on the question of jurisdiction either. As I understand it, this is to be taken up at a court hearing in March 2001.

² The Norwegian word 'fly' may be singular or plural.



With reservation for further arguments and evidence, the following

PLEA

is submitted:

1. Case no. 00-03031 A/66 before the Oslo Municipal Court must be brought.
2. The Appellant must be awarded the costs of the case.

This pleading in 6 - six - copies.

Drammen, December 13, 2000

E. Hagen [sig.]
Elisabeth Hagen
Attorney-at-Law

True translation certified:



Beverley Wahl
Government authorized translator

EX 4

Source: All Sources : Federal Legal - U.S. : \$ Federal Cases Within 2 Years, Combined Courts **f**
Terms: mozes v. mozes (Edit Search)

2001 U.S. App. LEXIS 291, *

ARNON MOZES, In re: the Application of, Petitioner-Appellant, v. MICHAL MOZES,
Respondent-Appellee.

No. 98-56505

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2001 U.S. App. LEXIS 291

August 4, 1999, Argued and Submitted, Pasadena, California
January 9, 2001, Filed

PRIOR HISTORY: [*1]

Appeal from the United States District Court for the Central District of California. D.C. No. CV-98-03636-RAP. Richard A. Paez, District Judge, Presiding.

DISPOSITION: REVERSED and REMANDED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant father filed a petition in the United States District Court for the Central District of California, seeking to have his children, who were in the mother's custody in the United States, returned to Israel under the Hague Convention on the Civil Aspects of International Child Abduction. Appellant father appealed the district court's denial of his petition with regard to the three younger children.

OVERVIEW: Mother and Father, Israeli citizens, agreed that their children would profit from a chance to learn English and partake of American culture. Accordingly, appellee mother, with appellant's consent, moved with the children to Beverly Hills, where she leased a home, purchased automobiles and enrolled the children in school. Appellant remained in Israel, but he paid for both the house and the automobiles used by his family. The parties agree that the children would remain in the United States for fifteen months. A year after they arrived in the United States, appellee filed for divorce and custody of the children. Appellant filed a petition seeking to have the children returned to Israel under the Hague Convention on the Civil Aspects of International Child Abduction, which the lower court denied. The court concluded that the lower court's determination of habitual residence relied upon an understanding of that term that gave insufficient weight to the importance of shared parental intent under the Convention. The court remanded for the lower court to determine whether the United States had supplanted Israel as the locus of the children's family and social development.

OUTCOME: The case was remanded for a determination of whether the United States had supplanted Israel as the locus of the children's family and social development because the lower court had relied upon an understanding of that term that gave insufficient weight to the importance of shared parental intent.

CORE TERMS: habitual, retention, custody, habitually, resident, removal, settled purpose, abduction, temporary, lived, abroad, parental, indefinite, abandon, duration, wrongful removal, spent, period of time, indefinitely, intend, question of fact, particular case, realite, .../retrieve?_m=01b433f3717b70820bb2b86dad959a0b&_fmtstr=FULL&docnum=1&_startdoc=1&2/1/01

continuously, abandoned, signatory, spend, intent to abandon, acclimatization, unilateral

CORE CONCEPTS - ♦ [Hide Concepts](#)

 Family Law : Child Custody : Awards

⚡ When a child who was habitually residing in one signatory state is wrongfully removed to, or retained in, another, the latter state shall order the return of the child forthwith. Hague Convention on the Civil Aspects of International Child Abduction, 1980, art. 12, 19 Int'l. Legal Materials 1502. Further, Hague Convention on the Civil Aspects of International Child Abduction, 1980, art. 16, 19 Int'l. Legal Materials 1503 provides that until it has been determined that the child is not to be returned under this Convention, the judicial or administrative authorities of a signatory state shall not decide on the merits of rights of custody.

 Family Law : Child Custody : Enforcement & Modification

⚡ See Hague Convention on the Civil Aspects of International Child Abduction, 1980, art. 3, 19 Int'l. Legal Materials 1501.

 Family Law : Child Custody : Awards

⚡ A court applying Hague Convention on the Civil Aspects of International Child Abduction, 1980, art. 3, 19 Int'l. Legal Materials 1501 must answer a series of four questions: (1) When did the removal or retention at issue take place? (2) Immediately prior to the removal or retention, in which state was the child habitually resident? (3) Did the removal or retention breach the rights of custody attributed to the petitioner under the law of the habitual residence? (4) Was the petitioner exercising those rights at the time of the removal or retention?

 Family Law : Child Custody : Awards

⚡ Findings of habitual residence under the Hague Convention on the Civil Aspects of International Child Abduction call for a standard of review where the reviewing court accepts the district court's historical or narrative facts unless they are clearly erroneous, but exercise plenary review of the court's choice of and interpretation of legal precepts and its application of those precepts to the facts.

 Family Law : Child Custody : Awards

⚡ To the extent that the question is essentially factual, one founded on the application of the fact-finding tribunal's experience with the mainsprings of human conduct, the appellate court reviews the district court's determination of habitual residence under the Hague Convention on the Civil Aspects of International Child Abduction only for clear error. Where, however, the question requires the court to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo.

 Family Law : Child Custody : Awards

⚡ The first step toward acquiring a new habitual residence is forming a settled intention to abandon the one left behind. One need not have this settled intention at the moment of departure; it could coalesce during the course of a stay abroad originally intended to be temporary. Nor need the intention be expressly declared, if it is manifest from one's actions; indeed, one's actions may belie any declaration that no abandonment was intended. Whether there is a settled intention to abandon a prior habitual residence is a question of fact as to which the appellate court defers to the district court.

 Family Law : Child Custody : Awards

✚ In custody cases where intention or purpose is relevant for a determination of habitual residence-- for example, where it is necessary to decide whether an absence is intended to be temporary and short-term--the intention or purpose which has to be taken into account is that of the person or persons entitled to fix the place of the child's residence.

 Family Law : Child Custody : Awards

✚ The decision to alter a child's habitual residence depends on the settled intention of the parents, they cannot accomplish this transformation by wishful thinking alone. It requires an actual change in geography. It requires the passage of an appreciable period of time, one that is sufficient for acclimatization.

 Family Law : Child Custody : Awards

✚ Given enough time and positive experience, a child's life may become so firmly embedded in the new country as to make it habitually resident even though there be lingering parental intentions to the contrary.

 Family Law : Child Custody : Awards

✚ Where children already have a well-established habitual residence, simple consent to their presence in another forum is not usually enough to shift it there. Rather, the agreement between the parents and the circumstances surrounding it must enable the court to infer a shared intent to abandon the previous habitual residence, such as when there is effective agreement on a stay of indefinite duration.

 Family Law : Child Custody : Awards

✚ When a child has no clearly established habitual residence elsewhere, it may become habitually resident even in a place where it was intended to live only for a limited time. The same is true if the child's prior habitual residence has been effectively abandoned by the shared intent of the parents. Where there is no such intent, however, a prior habitual residence should be deemed supplanted only where the objective facts point unequivocally to this conclusion. This, too, may occur during the course of a stay which is not intended to be indefinite.

 Family Law : Child Custody : Awards

✚ When a child has a clearly established habitual residence, and the court does not find an intent to abandon this residence, the question the court needs to answer is not simply whether the child has in some sense "become settled" in the new country. Rather, the appropriate inquiry under the Hague Convention on the Civil Aspects of International Child Abduction is whether the new country has supplanted the original clearly established one as the locus of the children's family and social development.

COUNSEL: Adair Dyer, Austin, TX; William M. Hilton, Santa Clara, California for Petitioner-Appellant.

Ira H. Lurvey, and Judith Salkow Shapiro, Lurvey & Shapiro, Los Angeles, California, for the Respondent-Appellee.

JUDGES: Before: KOZINSKI and THOMAS, Circuit Judges, and ILLSTON, District Judge. *.

* The Honorable Susan Y. Illston, United States District Judge for the Northern District of California, sitting by designation.

OPINIONBY: KOZINSKI

OPINION:

KOZINSKI, Circuit Judge:

In a case of first impression in our court, we interpret the term "habitual residence" in the Hague Convention on the Civil Aspects of International Child Abduction.

I

Arnon and Michal Mozes are Israeli citizens. Married in 1982, they have four children, ranging in age from seven to sixteen years. Until 1997, parents and children lived in Israel, as they had their entire lives. In April 1997, with Arnon's consent, Michal and the children came to Los Angeles. Michal had long wanted to live in the United States, and [*2] both parents agreed that the children would profit from a chance to attend school here, learn English and partake of American culture. Accordingly, Michal moved with the children to Beverly Hills, where she leased a home, purchased automobiles and enrolled the children in school. Arnon remained in Israel, but he paid for both the house and the automobiles used by his family, and stayed with them at the house during his visits to Los Angeles. The parties agree that Arnon consented to have Michal and the children remain in the United States for fifteen months, though they disagree as to what understanding existed beyond that. What we know for certain is that on April 17, 1998, a year after they arrived in the United States, Michal filed an action in the Los Angeles County Superior Court seeking dissolution of the marriage and custody of the children. The court granted temporary custody to Michal, and entered a temporary restraining order enjoining Arnon from removing the children from southern California. Less than a month later, Arnon filed a petition in federal district court, seeking to have the children returned to Israel under the Hague Convention. The oldest child elected to return [*3] to Israel, and did so by mutual agreement of the parents. Arnon now appeals the district court's denial of his petition with regard to the three younger children. n1

-----Footnotes-----

n1 One was aged nine years, and the other two five years, at the time of the district court's decision.

-----End Footnotes-----

II

Adopted in 1980, the Hague Convention on the Civil Aspects of International Child Abduction ["Convention"] n2 is intended to prevent "the use of force to establish artificial jurisdictional links on an international level, with a view to obtaining custody of a child." Elisa Perez-Vera, Explanatory Report P 11, in 3 Hague Conference on Private International Law, Acts and Documents of the Fourteenth Session, Child Abduction 426 (1982) ["Perez-Vera Report"]. n3 Despite the image conjured by words like "abduction" and "force," the Convention was not drafted in response to any concern about violent kidnappings by strangers. It was aimed, rather, at the "unilateral removal or retention of children by parents, guardians or close family members. [*4] " Beaumont & McEleavy, The Hague Convention on International Child Abduction 1 (1999). Such an abductor "rarely seeks material gain; rather, he or she will aspire to the exercise of sole care and control over a

son or daughter in a new jurisdiction." Id. The preamble to the Convention describes the signatory states as "desiring to protect children internationally from the harmful effects of their wrongful removal or retention," effects which are thought to follow when a child "is taken out of the family and social environment in which its life has developed." Perez-Vera Report at P 11. This may occur either through the "removal [of a child] from its habitual environment," or by "a refusal to restore a child to its own environment after a stay abroad." Id. at P 12.

-----Footnotes-----

n2 19 I.L.M. 1501 (entered into force October 25, 1980), also available at <<http://www.hcch.net/e/conventions/text28e.html>>.

n3 Elisa Perez-Vera was the official Hague Conference reporter, and her explanatory report is "recognized by the Conference as the official history and commentary on the Convention and is a source of background on the meaning of the provisions of the Convention available to all States becoming parties to it." *Shalit v. Coppe*, 182 F.3d 1124, 1127-28 (9th Cir. 1999) (quoting Legal Analysis of the Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. 10503 (1986)). The full text of the Perez-Vera Report is available online at <<http://www.hcch.net/e/conventions/expl28e.html>>.

-----End Footnotes----- [*5]

The Convention seeks to deter those who would undertake such abductions by eliminating their primary motivation for doing so. Since the goal of the abductor generally is "to obtain a right of custody from the authorities of the country to which the child has been taken" Id. at P 13, the signatories to the Convention have agreed to "deprive his actions of any practical or juridical consequences." Id. at P 16. To this end, ¶when a child who was habitually residing in one signatory state is wrongfully removed to, or retained in, another, Article 12 provides that the latter state "shall order the return of the child forthwith" Id art. 12, 19 I.L.M. at 1502. Further, Article 16 provides that "until it has been determined that the child is not to be returned under this Convention," the judicial or administrative authorities of a signatory state "shall not decide on the merits of rights of custody." Convention, art. 16, 19 I.L.M. at 1503. The United States and Israel are both signatories to the Convention. n4

-----Footnotes-----

n4 See Hague Conference of Private International Law: Report of the Second Special Commission Meeting to Review the Operation of the Hague Convention on the Civil Aspects of International Child Abduction, 33 I.L.M. 225, 225 (1994). The Convention has been implemented by Congress in the International Child Abduction Remedies Act, 42 U.S.C. § 11601 et. seq.

-----End Footnotes----- [*6]

The key operative concept of the Convention is that of "wrongful" removal or retention. ¶In order for a removal or retention to trigger a state's obligations under the Convention, it must satisfy the requirements of Article 3:

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child

was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Convention, art. 3, 19 I.L.M. at 1501. ¶A court applying this provision must therefore answer a series of four questions: (1) When did the removal or retention at issue take place? (2) Immediately prior to the removal or retention, in which state was the child habitually resident? (3) Did the removal or retention breach the rights of custody attributed to the petitioner under the law of the habitual residence? (4) Was the petitioner exercising [*7] those rights at the time of the removal or retention?

In this case, the answer to the first question is clear. Arnon claims that Michal wrongfully retained the children from the moment on April 17, 1998, when she asked the Los Angeles County Superior Court to grant her custody of them. n5 The district court denied Arnon's petition based on its answer to the second question: It found that as of that date, the children's "habitual residence" was in the United States, not Israel. See Mozes v. Mozes, 19 F. Supp. 2d 1108, 1116 (C.D. Cal. 1998). Our central task is to review this finding, which we do immediately below. In the interest of judicial economy, and in keeping with the policy of expediting Hague Convention cases, we also address the third and fourth questions below. See Part VI infra.

-----Footnotes-----

n5 See Re S and another (minors) (abduction: wrongful detention), [1994] 1 All E.R. 237, 248 (Eng. Fam. Div.) (mother wrongfully retained children by announcing her intent not to return them to Israel, and asserting that she and they had acquired habitual residence in England, even though this occurred before the agreed-upon period of their stay abroad had ended).

-----End Footnotes----- [*8]

III

We begin by identifying the role of an appellate court in reviewing a determination of habitual residence under the Hague Convention. In doing so, we are mindful that Congress has emphasized "the need for uniform international interpretation of the Convention." 42 U.S.C. § 11601(b)(3)(B). The Perez-Vera Report describes "habitual residence" as "a well-established concept in the Hague Conference, which regards it as a question of pure fact, differing in that respect from domicile." Perez-Vera Report at P 66. In seeking to understand this "well-established concept" id., we discover that although the term "habitual residence" appears throughout the various Hague Conventions, n6 none of them defines it. As one commentary explains, "this has been a matter of deliberate policy, the aim being to leave the notion free from technical rules which can produce rigidity and inconsistencies as between different legal systems." J.H.C. Morris, Dacey and Morris on the Conflict of Laws 144 (10th ed. 1980) ["Dacey & Morris"].

-----Footnotes-----

n6 See generally Hague Conventions on Private International Law, at <<http://www.hcch.net/e/conventions/index.html>>. The term "habitual residence" first appears in the Convention Relating to Civil Procedure, March 1, 1954, Articles 21, 32.

-----End Footnotes----- [*9]

Clearly, the Hague Conference wished to avoid linking the determination of which country should exercise jurisdiction over a custody dispute to the idiosyncratic legal definitions of domicile and nationality of the forum where the child happens to have been removed. This would obviously undermine uniform application of the Convention and encourage forum-shopping by would-be abductors. To avoid this, courts have been instructed to interpret the expression "habitual residence" according to "the ordinary and natural meaning of the two words it contains[, as] a question of fact to be decided by reference to all the circumstances of any particular case." *C v S (minor: abduction: illegitimate child)*, [1990] 2 All E.R. 961, 965 (Eng. H.L.).

Certain commentators, however, have gone considerably farther than this, decrying as an unwelcome technical rule any attempt to develop guiding principles for courts to consult when making findings of "habitual residence." n7 This has not, of course, prevented courts faced with disputes under the Convention from articulating what they understand the "ordinary and natural meaning" of the two words to be, or from looking to cases [*10] decided by other courts for help in refining and applying that meaning. Nor should it. Facts, after all, do not come with labels attached, and the family situations of petitioners under the Convention are likely to be quite different from what most people consider "ordinary." In order for decisions under the Convention to be intelligible, courts must be able to explain these conclusions and the reasoning used to reach them. To achieve the uniformity of application across countries, which depends upon the realization of the Convention's goals, courts must be able to reconcile their decisions with those reached by other courts in similar situations. As the leading treatise on the Convention has observed, "only in exchanging and considering other views will a sophisticated and uniform interpretation evolve." *Beaumont & McElevay*, page 4 supra, at 238. Cutting fact-finding tribunals adrift with only the Bellman's map to guide them does not lead to consistency; it leads only to the absence of any common standard by which inconsistency can be identified. n8

-----Footnotes-----

n7 See, e.g., *Dicey & Morris*, page 8 supra at 144-45:

The aim being to leave the notion free from technical rules which can produce rigidity.... It is greatly to be hoped that the courts will resist the temptation to develop restrictive rules as to habitual residence, so that the facts and circumstances of each case can be assessed free of presuppositions and presumptions.

See also E.M. Clive, *The Concept of Habitual Residence*, 1997 *Jurid. Rev.* 137, 147:

Habitual residence is a simple concept which should be applied by concentrating on the ordinary and natural meaning of the two words which it contains and on the facts of the particular case. It should not be embellished by technical rules.... The two words "habitual" and "residence" are quite capable of doing all the work which is required of them without the addition of spurious legal propositions.

Dr. Clive surely overstated his point. We have yet to see a court succeed in applying the words "habitual" and "residence" without the aid of other words to explain why they do or
 .../retrieve?_m=01b433f3717b70820bb2b86dad959a0b&_fmtstr=FULL&docnum=1&_startdoc=1 2/1/01

do not apply to the "facts of the particular case." Whether the other words amount to "spurious legal propositions" depends on whether they help or hinder courts in taking into account, and making sense of, all the circumstances of the cases before them. [*11]

n8 See Lewis Carroll, *The Hunting of the Snark*, Fit the Second (1872):

He had bought a large map representing the sea, Without the least vestige of land: And the crew were much pleased when they found it to be A map they could all understand.

"What's the good of Mercator's North Poles and Equators, Tropics, Zones, and Meridian Lines?"

So the Bellman would cry: and the crew would reply "They are merely conventional signs!

"Other maps are such shapes, with their islands and capes! But we've got our brave Captain to thank" (So the crew would protest) "that he's bought us the best-A perfect and absolute blank!"

See also Carol S. Bruch, *Temporary or Contingent Changes in Location Under the Hague Child Abduction Convention*, *Gedachtnisschrift Alexander Ltidertiz* 43, 45 (H. Schack, ed. 2000) ("This deliberate ambiguity gives courts flexibility in applying the Convention to varying situations. As might be expected, however, it also permits inconsistent and poorly reasoned decisions.") (footnote omitted).

-----End Footnotes-----

The Convention seeks to protect children by creating a [*12] system of rules that will inform certain decisions made by their parents. "Habitual residence" is the central--often outcome-determinative--concept on which the entire system is founded. n9 Without intelligibility and consistency in its application, parents are deprived of crucial information they need to make decisions, and children are more likely to suffer the harms the Convention seeks to prevent. n10 Imagine, for example, a parent trying to decide whether to travel with a child to attempt reconciliation with an estranged spouse in another country," n11 or whether to consent to a child's trip abroad to stay with in-laws. n12 Such parents would be vitally interested in knowing under what circumstances a child's habitual residence is likely to be altered, and it is cold comfort to be told only that this is "a question of fact to be decided by reference to all the circumstances of any particular case." *C v S*, [1990] 2 All E.R. at 965. Parents faced with this response would likely regard the introduction of a few judicial "presuppositions and presumptions," *Dacey & Morris*, page 8 *supra* at 145, with more relief than alarm.

-----Footnotes-----

n9 See Linda Silberman, *Hague Convention on International Child Abduction: A Brief Overview and Case Law Analysis*, 28 *Fam. L.Q.* 9, 20 (1994) ("The Convention does not provide a definition of habitual residence, but identifying the State of habitual residence is critical."). [*13]

n10 See

Friedrich v. Friedrich, 983 F.2d 1396, 1400 (6th Cir. 1993):

It is important to understand that "wrongful removal" is a legal term strictly defined in the Convention. It does not require an ad hoc determination or a balancing of the equities. Such action by a court would be contrary to a primary purpose of the Convention: to preserve the status quo and to deter parents from crossing international boundaries in search of a more sympathetic court.

Since the strict definition of "wrongful removal" is based on the concept of "habitual residence," an ad hoc determination of the latter amounts to an ad hoc determination of the former.

n11 A dilemma discussed in Bruch, note 8 supra, at 58-60. See also Beaumont & McElevay, page 4 supra, at 105.

n12 See Re A (Wardship: Jurisdiction), [1995] 1 F.L.R. 767, 769 (Eng. Fam. Div.).

-----End Footnotes-----

This explains why, while a determination of "habitual residence" under the Convention is primarily factual, it has not been understood to mean that it is left entirely within the unreviewed [*14] discretion of the trial court. Rather, reviewing courts have taken the approach articulated by Lord Scarman:

Though the meaning of ordinary words is ... a question of fact, the meaning to be attributed to enacted words is a question of law, being a matter of statutory interpretation. So ... a question of law arises as to the meaning of [habitual residence], even though it arises only at a preliminary stage in the process of determining a question of fact It is with this preliminary stage that the [reviewing] courts are concerned.

Shah v. Barnet London Borough Council and other appeals, [1983] 1 All E.R. 226, 233 (Eng. H.L.). n13 This is what we refer to in American legal parlance as a mixed question of law and fact, leading the Third Circuit to conclude that "findings of habitual residence call for a standard of review where we "accept[] the district court's historical or narrative facts unless they are clearly erroneous, but exercise plenary review of the court's choice of and interpretation of legal precepts and its application of those precepts to the facts." Feder v. Evans-Feder, 63 F.3d 217, 222 n.9 (3d Cir. 1995). [*15] n14 Our own precedent puts it somewhat differently: "To the extent that the question is essentially factual, one "founded 'on the application of the fact-finding tribunal's experience with the mainsprings of human conduct,'" we review the district court's determination only for clear error. United States v. McConney, 728 F.2d 1195, 1202 (9th Cir. 1984) (en banc) (quoting Commissioner v. Duberstein, 363 U.S. 278, 289, 4 L. Ed. 2d 1218, 80 S. Ct. 1190 (1960)), abrogated on other grounds, Pierce v. Underwood, 487 U.S. 552, 101 L. Ed. 2d 490, 108 S. Ct. 2541 (1988). Where, however,

the question requires us to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration will favor the appellate court, and the question should be classified as one of law and reviewed de novo.

Id.

-----Footnotes-----

n13 Lord Scarman was reviewing a local education authority's application of the term "ordinary residence" in a domestic British statute. In what has become a leading case on "habitual residence" under the Convention, Justice Waite adopted Lord Scarman's discussion, holding that "there is no real distinction between ordinary residence [under British law] and habitual residence [under the Convention]." *Re Bates*, No. CA 122/89, High Court of Justice, Fain. Div'l Ct. Royal Courts of Justice, United Kingdom, P 33 (1989).

-----End Footnotes----- **[*16]**

IV

A: The Relevance of Intent

Perhaps the most straightforward way to determine someone's habitual residence would be to observe his behavior. As Lord Scarman put it, "in their natural and ordinary meaning the words mean that the person must be habitually and normally resident here, apart from temporary or occasional absences of long or short duration." *Shah*, [1983] 1 All E.R. at 234 (internal quotation marks omitted). Under this approach, we might say that if we observe someone centering his life around a particular location during a given period, so that every time he goes away from it he also comes back, we will call this his habitual residence.

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n14 See also *Friedrich*, 983 F.2d at 1398 (reversing district court's finding of habitual residence as an erroneous application of the concept); *Flores v. Contreras*, 981 S.W.2d 246, 249 (Tex. App. 1998) ("We believe this presents a classic mixed question of law and fact.").

-----End Footnotes-----

This approach, while intuitively **[*17]** appealing, suffers from a fatal flaw: It may yield strikingly different results depending on the observer's time frame. A child who spends two months at Camp Chippewah, if observed only during that period, would appear to be habitually resident there. On the other hand, if we follow the same child through to adulthood, we might label a couple of years spent studying abroad a mere "temporary absence of long duration." This indeterminacy is unavoidable, as it is "not desirable, indeed it is not possible, to enter into any game of numbers on the duration required." *Adderson v. Adderson*, 51 Alta. L.R. (2d) 193, 198 (Alberta C.A. 1987). The absence of an objective temporal baseline however, requires that we pay close attention to subjective intent when evaluating someone's habitual residence. n15 Elaborating on the subjective element of the inquiry, Lord Scarman reasoned that for habitual residence to accrue, there must be a "settled purpose":

The purpose may be one or there may be several. It may be specific or general. All the law requires is that there is [sic] a settled purpose. That is not to say that the propositus intends to stay where he is indefinitely; indeed his **[*18]** purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

Shah, [1983] 1 All E.R. at 235.

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n15 See, e.g., *Smith v. The Central Auth.*, No. AP 36/98, High Court, Christchurch, New Zealand (Mar. 2, 1999) ("The fact and duration of residence in a country is not necessarily decisive, especially where a child comes from a settled long-term background and there is then a move, rather the intention which accompanies it is all important."); Shah, [1983] 1 All E.R. at 234 ("The significance of the adverb 'habitually' is that it recalls two necessary features... namely residence adopted voluntarily and for settled purposes."); *Cruse v. Chittum*, [1974] 2 All E.R. 940, 942-43 (Eng. Fam. Div.) (habitual residence requires an element of intention; the residence must not be temporary or of a secondary nature).

-----End Footnotes----- **[*19]**

This passage makes some intuitive sense. Being habitually resident in a place must mean that you are, in some sense, "settled" there--but it need not mean that's where you plan to leave your bones. Nor could we justify limiting habitual residence to persons who settle in an area for some particular motive. All of this is true. None of it is very useful, however, when attempting to decide a borderline case. Even the child who goes off to summer camp arguably has a "settled purpose" to live there continuously "for a limited period." *Id.* No one would seriously contend that the summer camp is the child's habitual residence, but the notion of "settled purpose" alone is powerless to tell us why not. n16

-----Footnotes-----

n16 Cf. *Bruch*, note 8 *supra*, at 46 ("While useful in many particulars, [Lord Scarman's] gloss has also caused problems.").

-----End Footnotes-----

The obvious reason why the camper is not regarded as habitually resident is that he already has an established habitual residence elsewhere and his absence from it--even for **[*20]** an entire summer--is no indication that he means to abandon it. Lord Brandon has discussed the distinction between abandoning a prior habitual residence and acquiring a new one:

There is a significant difference between a person ceasing to be habitually resident in country A, and his subsequently becoming habitually resident in country B. A person may cease to be habitually resident in country A in a single day if he or she leaves it with a settled intention not to return to it but to take up long-term residence in country B instead. Such a person cannot, however, become habitually resident in country B in a single day. An appreciable period of time and a settled intention will be necessary to enable him or her to become so.

C v S (minor: abduction: illegitimate child), [1990] 2 All E.R. at 965. As this passage illustrates, the first step toward acquiring a new habitual residence is forming a settled intention to abandon the one left behind. n17 Otherwise, one is not habitually residing; one is away for a temporary absence of long or short duration. n18 Of course, one need not have this settled intention at the moment of departure; it could coalesce **[*21]** during the

course of a stay abroad originally intended to be temporary. Nor need the intention be expressly declared, if it is manifest from one's actions; indeed, one's actions may belie any declaration that no abandonment was intended. n19 If you've lived continuously in the same place for several years on end, for example, we would be hard-pressed to conclude that you had not abandoned any prior habitual residence. n20 On the other hand, one may effectively abandon a prior habitual residence without intending to occupy the next one for more than a limited period. n21 Whether there is a settled intention to abandon a prior habitual residence is a question of fact as to which we defer to the district court.

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n17 This is consistent with the view held by many courts that a person can only have one habitual residence at a time under the Convention. See, e.g., Friedrich, 983 F.2d at 1401; Freier v. Freier, 969 F. Supp. 436, 440 (E.D. Mich. 1996). The exception would be the rare situation where someone consistently splits time more or less evenly between two locations, so as to retain alternating habitual residences in each. See, e.g., Johnson v. Johnson, 26 Va. App. 135, 493 S.E.2d 668, 669 (Va. Ct. App. 1997) (child had a fully established home in both Virginia and in New York); Beaumont & McElevay, page 4 supra, at 110-11. [*22]

n18 See, e.g., Harkness v. Harkness, 227 Mich. App. 581, 577 N.W.2d 116, 123 (Mich. Ct. App. 1998) (upholding trial court's finding that habitual residence had not changed because "the apartment in Germany was the last place the parties had resided together as a family unit," and "the court found no indication that the parties intended to abandon that residence and to establish a new residence in the United States."). Professor Bruch has suggested an analogous inquiry. See Bruch, note 8 supra, at 51 ("Rather than ask whether a 'settled purpose' is present, [courts] should ask instead whether a merely transitory, contingent, or other temporary purpose is apparent.").

n19 See, e.g., Zenel v. Haddow, 1993 S.L.T. 975, 979 (Scot. 1st Div.) (respondent had renovated kitchen, considered purchasing a new home, and obtained full-time employment in new forum).

n20 For an example of such a fact pattern, see Y.D. v. J.B. (Droit de la famille - 2454), [1996] R.D.F. 512 (Quebec Super. Ct.) (children had lived continuously with both parents and attended school in California for three years). While the trial court in this case declared the only relevant question to be "where the children lived immediately before their removal," id. at 516, it nevertheless made what we would call a finding of settled purpose, remarking that "the members of this family were neither visitors nor tourists in California." Id. See also Beaumont & McElevay, page 4 supra, at 94 ("It would be difficult to affirm that whatever an individual's alleged intention he should not be connected to a country that has been his place of residence over a period of years."). But see Director General et al and M.S., No. SY8917 of 1997, Family Court of Australia at Sydney, P 86 (1998) (two years spent by mother and children in Austria lacked the "necessary settled purpose" to shift their habitual residence there). [*23]

n21 The leading example of this is Re Bates, though one might characterize this case either as one in which the child had no prior habitual residence, ("Her life until now must have been the most nomadic almost, ever to have been experienced by any child of her age."), P 10, or as one in which the child did have one, ("The father owns a house in London to which they have returned after overseas tours and during such brief respites as the father has enjoyed from his professional engagements....") id., but it was abandoned:

New York had by then become the city in which the mother wanted to stay and in which the father had reluctantly agreed to allow her to stay[, pending

whatever] decision ... the parents then made about their personal lives, both generally in relation to the future of their marriage and specifically in relation to the problem of reconciling Tatjana's special needs with the demands of the father's working career.

Id. at P 34. The important point is that focusing on the question of settled intent to abandon a prior habitual residence in those cases where one exists does not equate habitual residence to domicile, which requires "a combination of residence and intention of permanent or indefinite residence." Re B (minors) (abduction), [1993] 1 F.L.R. 993, 998 (Eng. Fam. Div.).

-----End Footnotes----- [*24]

B: Whose intent is it, anyway?

Having concluded that a settled intention to abandon one's prior habitual residence is a crucial part of acquiring a new one, we confront an additional problem: Whose settled intention determines whether a child has abandoned a prior habitual residence? One obvious response would be, the child's. It is, after all, the child whose habitual residence we are out to determine. And indeed we sometimes find courts declaring the intentions of the parents to be irrelevant. n22 There is an obvious problem with this approach, however. Children, particularly the ones whose return may be ordered under the Convention, n23 normally lack the material and psychological wherewithal to decide where they will reside. This leads to the conclusion that, "in those cases where intention or purpose is relevant -- for example, where it is necessary to decide whether an absence is intended to be temporary and short-term--the intention or purpose which has to be taken into account is that of the person or persons entitled to fix the place of the child's residence." n24

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n22 See Friedrich, 983 F.2d at 1401 ("To determine the habitual residence, the court must focus on the child, not the parents, and examine past experience, not future intentions."). See also Y.D. v. J.B. (Droit de la famille - 2454), [1996] R.J.Q. 2509, 2523 (Quebec Ct. App.) ("La realite des enfants doit seule etre prise en compte pour determiner le lieu de leur <<residence habituelle>>; a cet egard ... les desirs, souhaits ou intentions de leurs parents ne comptant pas"). [*25]

n23 If a child has attained the age of sixteen, the Convention no longer applies to it. See Convention, art. 4, 19 I.L.M. at 1501. Further, any child that has "attained an age and degree of maturity at which it is appropriate to take account of its views" may object to being returned and have its wishes considered Id art. 13, 19 I.L.M. at 1502-03. Children who fall under neither of these provisions are clearly not in a position to make independent choices as to where they wish to reside. Cf. Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000) (upholding INS determination that six-year-old child lacked sufficient capacity to assert asylum claims unless represented by adult).

n24 Clive, note 7 supra, at 144. See also Feder v. Evans-Feder, 63 F.3d 217, 224 (3d Cir. 1995) (determination of habitual residence requires analysis of "the parents' present, shared intentions regarding their child's presence"); In re Ponath, 829 F. Supp. 363, 367 (D. Utah 1993) ("Although it is the habitual residence of the child that must be determined, the desires and actions of the parents cannot be ignored The concept of habitual residence must ... entail some element of voluntariness and purposeful design."). As Dr. Clive has pointed out, "this is not to introduce a legal technicality into the law on habitual residence The technicality is already there in the law on decision making for children."

Clive, note 7 supra, at 144-45.

-----End Footnotes----- [*26]

Difficulty arises, of course, when the persons entitled to fix the child's residence no longer agree on where it has been fixed--a situation that, for obvious reasons, is likely to arise in cases under the Convention. In these cases, the representations of the parties cannot be accepted at face value, and courts must determine from all available evidence whether the parent petitioning for return of a child has already agreed to the child's taking up habitual residence where it is. The factual circumstances in which this question arises are diverse, but we can divide the cases into three broad categories.

On one side are cases where the court finds that the family as a unit has manifested a settled purpose to change habitual residence, despite the fact that one parent may have had qualms about the move. n25 Most commonly, this occurs when both parents and the child translocate together under circumstances suggesting that they intend to make their home in the new country. When courts find that a family has jointly taken all the steps associated with abandoning habitual residence in one country to take it up in another, they are generally unwilling to let one parent's alleged reservations [*27] about the move stand in the way of finding a shared and settled purpose. n26

-----Footnotes-----

n25 See Clive, note 7 supra, at 145 ("In some cases it may be possible to conclude on the evidence that in fact they had the same intention.").

n26 See, e.g., Feder, 63 F.3d at 224 ("That Mrs. Feder did not intend to remain in Australia permanently and believed that she would leave if her marriage did not improve did not void the couple's settled purpose to live as a family in the place where [the husband] had found work."); Walton v. Walton, 925 F. Supp. 453, 457 (S.D. Miss. 1996) ("Clearly, even if we accept Mrs. Walton's statement that she did not wish to move to Australia, it cannot be seriously argued that the move was portrayed to her as a mere visit...the evidence does not support a finding that the Waltons' life in Australia ... lacked 'settled purpose.'"); Prevot v. Prevot, 855 F. Supp. 915, 920 (W.D. Tenn. 1994) ("The parties clearly went to France with the intention of settling there and opening a restaurant."), overruled on other grounds, 59 F.3d 556 (6th Cir. 1994); Harsacky v. Harsacky, 930 S.W.2d 410, 415 (Ken. Ct. App. 1996) ("The Harsackys had the settled purpose of bringing their family to the United States in order to locate here on an indefinite basis in the hope that Mr. Harsacky could find employment."); Re F (a minor) (child abduction), [1992] 1 F.L.R. 548, 555 (Eng. C.A. 1991) ("The family did intend to emigrate from the UK and settle in Australia.").

-----End Footnotes----- [*28]

On the other side are cases where the child's initial translocation from an established habitual residence was clearly intended to be of a specific, delimited period. In these cases, courts have generally refused to find that the changed intentions of one parent led to an alteration in the child's habitual residence. n27

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n27 See, e.g., Pesin v. Rodriguez, 77 F. Supp. 2d 1277, 1285 (S.D. Fla. 1999) (settled purpose of family trip was a vacation of finite duration); In re Morris, 55 F. Supp. 2d 1156, 1159 (D. Colo. 1999) (when family left Colorado for 10-month teaching appointment in Switzerland, the parties had a "shared, settled intention to return to Colorado with the child," and mother's unilateral change of position could not make Switzerland the habitual

residence); Freier v. Freier, 969 F. Supp. 436, 438 (E.D. Mich. 1996) (when mother left with child, she informed father that she would be vacationing with parents for one month); Flores v. Contreras, 981 S.W.2d 246, 248 (Tex. App. 1998) (mother brought child to Texas for two-week vacation); Brennan v. Cibault, 227 A.D.2d 965, 965 (N.Y. App. Div. 1996) (mother agreed that child should remain with father in New York for six months, but expected her to return to France on a specific date). Some periods, on the other hand, though sharply delimited, may be too long to expect children to live abroad without acquiring habitual residence. See, e.g., Toren v. Toren, 26 F. Supp. 2d 240, 242 (D. Mass. 1998) (parents had written agreement under which children were to live and study in the United States for four years, after which they were to return to Israel).

----- -End Footnotes- ----- [*29]

In between are cases where the petitioning parent had earlier consented to let the child stay abroad for some period of ambiguous duration. Sometimes the circumstances surrounding the child's stay are such that, despite the lack of perfect consensus, the court finds the parents to have shared a settled mutual intent that the stay last indefinitely. n28 When this is the case, we can reasonably infer a mutual abandonment of the child's prior habitual residence. Other times, however, circumstances are such that, even though the exact length of the stay was left open to negotiation, the court is able to find no settled mutual intent from which such abandonment can be inferred. n29 Clearly, this is one of those questions of "historical and narrative facts" in which the findings of the district court are entitled to great deference. Feder, 63 F.3d at 222 n.9.

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n28 See, e.g., Falls v. Downie, 871 F. Supp. 100, 101 (D. Mass. 1994) ("Falls understood when Downie left with Patrick that he and their child would be staying in the United States for an indefinite period of time."); Slagenweit v. Slagenweit, 841 F. Supp. 264, 269 (N.D. Iowa 1993) ("The parties mutually agreed that Sandra would remain in the custody of Steven for an indefinite period of time in Iowa."); Levesque v. Levesque, 816 F. Supp. 662, 667 (D. Kan. 1993) ("When Britta and Vallery returned to Germany ... there was an intent to remain, at least for a period of time which was indefinite. This was by mutual agreement."); Schroeder v. Perez, 76 Ohio Misc. 2d 25, 664 N.E.2d 627, 632-33 (Ohio Com. Pl. 1995) ("The parties had mutually agreed that Gabriela would remain in the custody of the plaintiff for an indefinite period in Ohio."). [*30]

n29 See, e.g., Meredith v. Meredith, 759 F. Supp. 1432, 1433 (D. Ariz. 1991) (petitioner suggested that respondent take children to France to visit her parents for unspecified period); Harkness v. Harkness, 227 Mich. App. 581, 577 N.W.2d 116, 118-19 (Mich. Ct. App. 1998) (children were left with respondent's parents in Michigan for eight months while both parents were in Germany); Re A, [1995] 1 F.L.R. at 773 (mother's agreement that child should attend school in Pakistan for two years while living with father's relatives was "temporary and conditional" and not sufficient to change the child's habitual residence); Re S and another (minors) (abduction: wrongful detention), [1994] 1 All E.R. at 241 (Eng. Fam. Div. 1993) (family moved from Israel to England, where parents each had one year teaching appointments, though "it was not beyond the realms of possibility that they would have stayed longer"). See also Beaumont & McEleavy, page 4 supra, at 96 ("[A] child might leave with the consent of its primary carer to spend an extended, yet undefined, period of time with its other parent, but then not be returned. Prima facie, this would amount to a wrongful retention...."); Clive, note 7 supra, at 145:

If ... there is a genuine difference [of parental intention] then the conclusion must be that there is no settled purpose or intention. The position is like that of

an adult who cannot decide whether a move is short-term or long-term. In such a case the habitual residence would not be changed until a lengthy period of time had elapsed.

-----End Footnotes----- [*31]

C: Parental Intent and the Circumstances of the Child

While the decision to alter a child's habitual residence depends on the settled intention of the parents, they cannot accomplish this transformation by wishful thinking alone. First, it requires an actual "change in geography." Friedrich, 983 F.2d at 1402. Second, home isn't built in a day. It requires the passage of "an appreciable period of time," C v S (minor: abduction: illegitimate child), [1990] 2 All E.R. 961, 965 (Eng. H.L.), one that is "sufficient for acclimatization." Feder, 63 F.3d at 224. When the child moves to a new country accompanied by both parents, who take steps to set up a regular household together, the period need not be long. n30 On the other hand, when circumstances are such as to hinder acclimatization, even a lengthy period spent in this manner may not suffice. n31

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n30 See, e.g. Feder, 63 F.3d at 219 (six months); Harsacky, 930 S.W.2d at 412 (four months); Re F (a minor) (child abduction), [1992] 1 F.L.R. 548, 555 (Eng. C.A.) ("The family did intend to emigrate from the UK and settle in Australia. With that settled intention, a month can be, as I believe it to be in this case, an appreciable period of time."). [*32]

n31 See, e.g., In re Ponath, 829 F. Supp. 363, 367 (D. Utah 1993) (habitual residence not acquired where mother and child were detained in forum against her desires for ten months by means of verbal, emotional, and physical abuse); Director General et al and M.S., No. SY8917 of 1997, Family Court of Australia at Sydney, PP 28, 29 (1998) (habitual residence not acquired despite two years in Austria, where husband's family was hostile to wife, and wife and children were linguistically and socially isolated). Interestingly, even though these seem to be cases where a lack of effective acclimatization could easily have been found, the courts relied instead on failure of settled parental intent. See In re Ponath, 829 F. Supp. at 368 ("Petitioner's coercion of respondent by means of verbal, emotional and physical abuse removed any element of choice and settled purpose which earlier may have been present in the family's decision to visit Germany."); Director General at P 91 ("Ultimately I am not persuaded on the evidence in this case that these parents ever formed a shared intention to remain in Austria and for it to be the permanent residence of these children.").

-----End Footnotes----- [*33]

A more difficult question is when evidence of acclimatization should suffice to establish a child's habitual residence, despite uncertain or contrary parental intent. Most agree that, given enough time and positive experience, a child's life may become so firmly embedded in the new country as to make it habitually resident even though there be lingering parental intentions to the contrary. n32 The question is how readily courts should reach the conclusion that this has occurred. Since the Convention seeks to prevent harms thought to flow from wrenching or keeping a child from its familiar surroundings, it is tempting to regard any sign of a child's familiarity with the new country as lessening the need for return and making a finding of altered habitual residence desirable. Further, some courts regard the question whether a child is doing well in school, has friends, and so on, as more straightforward and objective than asking whether the parents share a "settled intent." n33 Despite the superficial appeal of focusing primarily on the child's contacts in the new

country, however, we conclude that, in the absence of settled parental intent, courts should be slow to infer from such [*34] contacts that an earlier habitual residence has been abandoned.

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n32 See, e.g., Clive, note 7 supra, at 145.

n33 See, e.g., Y.D. v. J.B. (Droit de la famille - 2454), [1996] R.J.Q. 2509, 2523 (Quebec Ct. App.) ("L'approche axee sur la realite que vivent les enfants permet d'eviter d'avoir & sonder les reins et les coeurs des parents."); Shah, [1983] 1 All E.R. at 235-36 ("The legal advantage of adopting the natural and ordinary meaning ... is that it results in the proof of ordinary residence ... depending more on the evidence of matters susceptible of objective proof than on evidence as to state of mind.").

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The Convention is designed to prevent child abduction by reducing the incentive of the would-be abductor to seek unilateral custody over a child in another country. The greater the ease with which habitual residence may be shifted without the consent of both parents, the greater the incentive to try. The question whether a child is in some sense "settled" in its [*35] new environment is so vague as to allow findings of habitual residence based on virtually any indication that the child has generally adjusted to life there. n34 Further, attempting to make the standard more rigorous might actually make matters worse, as it could open children to harmful manipulation when one parent seeks to foster residential attachments during what was intended to be a temporary visit--such as having the child profess allegiance to the new sovereign. See note 34 supra. The function of a court applying the Convention is not to determine whether a child is happy where it currently is, but whether one parent is seeking unilaterally to alter the status quo with regard to the primary locus of the child's life. n35

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n34 See, e.g., Brooke v. Willis, 907 F. Supp. 57, 61 (S.D.N.Y. 1995) (finding that a six-year-old child had acquired habitual residence during a summer spent in England, because the child was "well accustomed to her surroundings," had been "happy and well taken care of during her stay," and "even stood in the town square with a flag in hand and recited the British Pledge of Allegiance"). [*36]

n35 See 42 U.S.C. § 11601(b)(4) ("The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.").

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Even if deliberate manipulation were not a danger, divining from a child's observed contacts in a new country whether it has come to reside there habitually would be an enterprise fraught with difficulty. Children can be remarkably adaptable and form intense attachments even in short periods of time--yet this does not necessarily mean that the child expects or intends those relationships to be long-lived. It is quite possible to participate in all the activities of daily life while still retaining awareness that one has another life to go back to. In such instances one may be "acclimatized" in the sense of being well-adjusted in one's present environment, yet not regard that environment as one's habitual residence. n36 It thus makes sense to regard the intentions of the parents as affecting the length of time necessary for a child to become habitually resident, [*37] n37 because the child's

knowledge of these intentions is likely to color its attitude toward the contacts it is making.
n38

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n36 See *Beaumont & McEleavy*, page 4 *supra*, at 97 ("Logic would suggest that connections with the former State of residence will weaken slowly, while assimilation in the new State will progressively increase.").

n37 See, e.g., *Clive*, note 7 *supra*, at 145:

The truth of the matter, it seems to me, is that where both parents have the right to fix the child's place of residence and where they are not in agreement on that question, there is a lack of the type of settled intention which enables habitual residence to be changed quickly. Accordingly it will take a considerable period of time for a child to acquire a new habitual residence after a wrongful removal.

n38 Cf. *Beaumont & McEleavy*, page 4 *supra*, at 92 ("In the case of children ... their relationship with their parents ... provides the ties which establish the habit of so residing irrespective of their intentions, likes and dislikes.") (citation omitted).

-----End Footnotes----- **[*38]**

As these considerations illustrate, the broad claim that observing "la realite que vivent les enfants" obviates any need to consider the intent of the parents, *Y.D.*, [1996] R.J.Q. at 2523, is unsound. It also runs counter to the idea that determinations of habitual residence should take into account "all the circumstances of any particular case." *C v S*, [1990] 2 All E.R. at 965. It is easy enough for a court to eschew inquiry into parental intent in cases where other factors are conclusive. But just as hard cases make bad law, easy cases can make for overly broad law--particularly when unqualified statements come to be applied outside of the factual contexts that inspired them. In *Friedrich*, for example, the court's statement that we must "focus on the child, not the parents," 983 F.2d at 1401, came in response to the claims of a mother that her child was habitually resident in the U.S. even though it had always lived in Germany, because she intended to move there with it upon discharge from the military. See *id.* All the *Friedrich* court needed to say in order to reach the correct and obvious result was that, whatever the parents' [*39] intent, habitual residence cannot be acquired without physical presence. The facts of *Friedrich* thus provided no legitimate occasion for a broad pronouncement that parental intent is irrelevant to the question of habitual residence. n39

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n39 Cf. *Walton v. Walton*, 925 F. Supp. 453, 457 (S.D. Miss. 1996) ("Probably the most confusing, though often quoted, statement regarding how one determines habitual residence is that penned by the *Friedrich* court....").

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Similarly, the Quebec Court of Appeal in *Y.D.* made a rhetorical argument against the use of parental intent in general, n40 based on a conflict that most courts would consider trivial. Both parents had moved to California with their children and lived with them there

continuously for three years, leaving behind no possessions in Canada. See Y.D., [1996] R.J.Q. at 2516. When the marriage deteriorated, one parent claimed that the stay had been intended to be temporary. See *id.* There is little room for doubt that the children [*40] had become acclimatized in California, but the same facts also support a finding that the couple had manifested a shared intent to abandon the family's prior habitual residence. n41 Y.D., then, does not illustrate the superiority of focusing exclusively on the circumstances of the child; it illustrates that easy cases are easy, however one analyzes them.

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40 La sagesse de l'approche axee sur la realite des enfants, plutot que sur les intentions des parents, saute aux yeux dans un cas comme celui-ci; madame n'a pas l'intention de demeurer plus longtemps en Californie, monsieur oui. L'intention duquel des deux parents devrait prevaloir pour determiner le lieu de la "residence habituelle" des enfants? L'approche axee sur la realite que vivent les enfants permet d'eviter d'avoir a sonder les reins et les coeurs des parents.

Y.D., [1996] R.J.Q. at 2523.

n41 See, e.g., cases cited in note 26, *supra*. The Quebec court's comment about "reins" and "coeurs", Y.D., [1996] R.J.Q. at 2523, demonstrates undue skepticism toward judicial inquiry into intent, which is a routine and indispensable aspect of many legal doctrines, such as the distinction between murder and manslaughter. Such inquiry does not, as the Quebec court suggests, require exploratory surgery, only attention to the objective manifestations of intent found in words and deeds.

-----End Footnotes----- [*41]

Recognizing the importance of parental intent, some courts have gone off in the other direction, announcing a bright line rule that "where both parents have equal rights of custody no unilateral action by one of them can change the habitual residence of the children, save by the agreement or acquiescence over time of the other parent...." *Re S and another (minors) (abduction: wrongful detention)*, [1994] 1 All E.R. 237, 249 (Eng. Fam. Div.). While this rule certainly furthers the policy of discouraging child abductions, it has been criticized as needing to be "carefully qualified if it [is] not to lead to absurd results."

n42 The point is well taken: Habitual residence is intended to be a description of a factual state of affairs, and a child can lose its habitual attachment to a place even without a parent's consent. Even when there is no settled intent on the part of the parents to abandon the child's prior habitual residence, courts should find a change in habitual residence if "the objective facts point unequivocally to a person's ordinary or habitual residence being in a particular place." *Zenel v. Haddow*, 1993 S.L.T. 975, 979 (Scot. 1st Div.). The [*42] question in these cases is not simply whether the child's life in the new country shows some minimal "degree of settled purpose," *Shah*, [1983] 1 All E.R. at 235, but whether we can say with confidence that the child's relative attachments to the two countries have changed to the point where requiring return to the original forum would now be tantamount to taking the child "out of the family and social environment in which its life has developed." *Perez-Vera Report*, page 3 *supra*, at P 11.

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n42 Clive, note 7 *supra*, at 145:

Suppose, for example, that a child has lived for 15 years in a new country after a wrongful removal. It would be an abuse of ordinary language to say that the child had been habitually resident for all of that time in the country from which he or she had been removed and had not become habitually resident in the new country.

-----End Footnotes-----

V

The district court held that the habitual residence of the Mozes children had shifted from Israel to the United States between [*43] April 1997 and April 1998. It did so based on the following understanding of the applicable standard:

To establish that the habitual residence of a child has shifted, the law requires that a child be in the new forum by mutual consent of the parents and that the child has become settled in that new forum.

Mozes, 19 F. Supp. 2d at 1115. As we have explained, this formulation does not reflect certain considerations that other courts applying the Convention have, for good reason, recognized. ¶Where, as here, children already have a well-established habitual residence, simple consent to their presence in another forum is not usually enough to shift it there. Rather, the agreement between the parents and the circumstances surrounding it must enable the court to infer a shared intent to abandon the previous habitual residence, such as when there is effective agreement on a stay of indefinite duration.

Here, the district court's findings of fact with regard to the shared intentions of the parents, findings to which we defer, were as follows:

The parties stipulate that they agreed that the children would remain in the United States until July 1998. [*44] However, there is a dispute as to whether the parties agreed that the date of return had been extended to July 1999, if it had become indefinite or remained unchanged. At the very least, the parties discussed the possibility of the children remaining in the United States for another year, and may have even come to such an understanding. In April 1998, it is clear that petitioner decided he wanted the children to return to Israel as originally planned by July 1998.

Mozes, 19 F. Supp. 2d at 1115-16. Absent from this discussion is a finding that the parents shared an understanding that their children's stay in the United States would last indefinitely. Having heard the conflicting testimony of both parties and reviewed all the evidence, the district court was able to say only that Arnon and Michal had "discussed the possibility" of extending the stay for one additional year, and that they "may have even come to such an understanding." Id. (emphasis added). n43 The district court did not find that they had actually reached such an understanding.

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n43 Cf. cases cited in note 29, supra.

-----End Footnotes----- [*45]

The district court's reticence is not surprising, given the striking difference between this case and those where courts faced with similarly ambiguous facts have found a settled intent in favor of indefinite residence. In those cases, the country in which it had been agreed the child should spend time was the native country of one of the parents. n44 It is entirely natural and foreseeable that, if a child - goes to live with a parent in that parent's native land on an open-ended basis, the child will soon begin to lose its habitual ties to any prior residence. A parent who agrees to such an arrangement without any clear limitations may well be held to have accepted this eventuality.

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n44 See e.g., Falls, 871 F. Supp. at 101 (child went to live with father and father's parents in their home community of western Massachusetts); Slagenweit, 841 F. Supp. at 265-66 (child moved to United States with father, who was U.S. citizen); Levesque, 816 F. Supp. at 663 (mother took child back to its birthplace in Germany, where the mother's grandmother still resided); Schroeder, 664 N.E.2d at 632-33 (child lived with mother and mother's relatives in Ohio).

-----End Footnotes----- [*46]

The situation here is far different. Michal had never lived in the United States. Prior to their departure, all of her life and the lives of the children had been spent in Israel. All of the family's relatives were there. Further, Michal and the children left for the United States with a temporary visa, casting considerable doubt on whether they would be allowed to remain here indefinitely even if they wished to. n45 Finally, while Michal took steps to obtain work in the United States, the economic base on which the family depended for sustenance remained entirely in Israel. Under these circumstances, the district court was clearly right to refrain from finding that the parents had agreed to an indefinite stay.

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n45 While an unlawful or precarious immigration status does not preclude one from becoming a habitual resident under the Convention, it prevents one from doing so rapidly. See Clive, note 7 supra, at 147. It is also a highly relevant circumstance where, as here, the shared intent of the parents is in dispute. See, e.g., In re Morris, 55 F. Supp. 2d 1156, 1158-59 (D. Col. 1999) (noting that the family lacked Swiss citizenship and passports, and rejecting the mother's testimony that she intended to abandon habitual residence in Colorado when moving from there to Switzerland). Conversely, had Arnon helped Michal obtain a permanent residence visa for herself and the children, we could infer his consent to a residence of indefinite duration.

-----End Footnotes----- [*47]

The district court reasoned, however, that "the fact that a child is to remain indefinitely in a new forum . . . is not a necessary condition to establishing the habitual residence of a child." Mozes, 19 F. Supp. 2d at 1115. This is true; it is not a necessary condition. ¶When a child has no clearly established habitual residence elsewhere, it may become habitually resident even in a place where it was intended to live only for a limited time. n46 The same is true if the child's prior habitual residence has been effectively abandoned by the shared intent of the parents. Where there is no such intent, however, a prior habitual residence

should be deemed supplanted only where "the objective facts point unequivocally" to this conclusion. Zenel, 1993 S.L.T. at 979. This, too, may occur during the course of a stay which is not intended to be indefinite. n47

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n46 See, e.g., Re A and others (minors) (abduction: habitual residence), [1996] 1 All E.R. 24, 32 (Eng. Fam. Div.) (family who took up residence at U.S. military base in Iceland "had no home base of their own elsewhere"); Re Bates, No. CA 122/89 at P 10 (prior to taking up residence in New York apartment for three months, child's life had been "the most nomadic almost, ever to have been experienced by any child of her age"). **[*48]**

n47 See, e.g., Johnson v. Johnson, No. 7505-1995 (Swed. Sup. Admin. Ct. 1996) (child had been living with mother in Sweden for more than two years, under an alternating custody agreement which provided that the child would spend eight years there and four in the United States).

-----End Footnotes-----

The objective facts found here are as follows:

By April 17, 1998, the children had settled into their new home, were enrolled and participating full time in schools and social, cultural, and religious activities. They had successfully completed a year of school in the United States, quickly learned English, made new friends, and were accustomed to and thriving in their new life in Beverly Hills.

Mozes, 19 F. Supp. 2d at 1116. These facts certainly show that the Mozes children, as the district court remarked, spent a "very full year" in the United States. *Id.* But they do not point unequivocally to the conclusion that, at the time Michal petitioned for their custody, the children had ceased to be habitually resident in Israel.

The academic year abroad has become a familiar phenomenon **[*49]** in which thousands of families across the globe participate every year. Older children sometimes do so through organized exchange programs; n48 informal arrangements among friends or relatives may include children who are much younger. n49 Children who spend time studying abroad in this manner are obviously expected to form close cultural and personal ties to the countries they visit--that's the whole point of sending them there for a year rather than simply for a brief tourist visit. Yet the ordinary expectation--shared by both parents and children--is that, upon completion of the year, the students will resume residence in their home countries. If this were not the expectation, one would find few parents willing to let their children have these valuable experiences. The Mozes children departed from Israel with this normal expectation, and there is no evidence that anyone questioned it until their mother decided to file for divorce. The case, then, does not reflect the sort of "brute facts" that require a finding of altered habitual residence so as to avoid an "absurd result[]." Clive, note 7 *supra*, at 145-46.

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n48 The Rotary and AFS Youth Exchange Programs alone send annually over 14,000 students aged 15 and older to study and live for a year in foreign countries. See information available at <<http://www.rotary.org>> and <<http://www.afs.org>>. **[*50]**

n49 See, e.g., *Re A (Wardship: Jurisdiction)*, [1995] 1 F.L.R. 767, 770, 773 (Eng. Fam. Div.) (eight-year-old child sent to live and study with father's family in Pakistan had not lost habitual residence in England after one year).

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The district court appears to have believed that its decision should be governed by a number of cases in which temporary stays abroad resulted in a change of habitual residence. See *Mozes*, 19 F. Supp. 2d at 1114-15 (citing *Zenel v. Haddow*, 1993 S.L.T. 975; *Johnson v. Johnson*, No. 7505-1995 (Swed. Sup. Admin. Ct. 1996); *Re A and others (minors) (abduction: habitual residence)*, [1996] 1 All E.R. 24 (Eng. Fam. Div.); *Re S (a minor) (abduction)*, [1991] 2 F.L.R. 1 (Eng. C.A.)). Three of these cases involved factual situations significantly different from that presented here.

In *Zenel* and *Re A and others*, both parents had resided together with the child for an extended period in the forum found to be the habitual residence. In *Zenel*, both parents had lived in Australia continuously [*51] for fifteen months, during which they had made renovations to the house they lived in, and considered purchasing another home elsewhere in the country. See *Zenel*, 1993 S.L.T. at 979. Five months prior to her sudden decision to remove the child to Scotland, the mother herself had obtained full-time employment in Australia. See *id.* These are the sorts of objective actions that ordinarily lead courts to find a settled intent on the part of a family to take up habitual residence. In *Re A and others*, the family had lived together in Iceland for two years, and the court found that, while the stay was not expected to last indefinitely, "they had no home base of their own elsewhere." [1996] 1 All E.R. at 32.

In *Johnson*, the child had lived with its mother for over two years in Sweden, pursuant to a custody arrangement under which it was to spend a total of eight years there. n50 Its acquisition of a habitual residence in Sweden was thus surely contemplated by the parties. In *Re S*, the court took a position which we have rejected above: that an agreement to let a child spend a school year abroad is sufficient to transfer its habitual residence after only [*52] four months. See *Re S*, [1991] 2 F.L.R. at 1, 20.

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n50 See *Johnson* at P 22. Indeed, had the custody agreement been followed, the child would have spent regularly alternating periods with each parent see *id.* at P 3, and might thus have acquired dual habitual residences. See *Beaumont & McEleavy*, page 4 *supra*, at 110 (arguing that such a conclusion may in certain cases be theoretically appropriate, and would not call for return under the Convention).

-----End Footnotes-----

In conclusion, the district court's determination of habitual residence in this case appears to have relied upon an understanding of that term that gives insufficient weight to the importance of shared parental intent under the Convention. ¶ Given that the *Mozes* children had a clearly established habitual residence in Israel in April 1997, and that the district court did not find an intent to abandon this residence in favor of the United States, the question it needed to answer was not simply whether the children had in [*53] some sense "become settled" in this country. Rather, the appropriate inquiry under the Convention is whether the United States had supplanted Israel as the locus of the children's family and social development. As the district court did not answer this question, we must remand and allow it to do so.

VI

Given the need to resolve these regrettably prolonged proceedings as expeditiously as possible, n51 judicial economy counsels that we address certain issues the district court may confront on remand. Should the district court, after considering our discussion of the applicable principles, reaffirm its holding that the children's habitual residence had shifted to the United States by April 17, 1998, the case should end there. If, on the other hand, the district court decides that the facts do not warrant such a finding, it will have to resolve a series of additional questions. The first of these is whether the retention breached rights of custody attributed to Arnon under Israeli law. n52 pages 6-7 supra. Only if this is the case is the retention wrongful under Article 3 of the Convention. See Convention, art. 3, 19 I.L.M. at 1501.

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n51 See 42 U.S.C. § 11601(a)(4) ("Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies."). [***54**]

n52 Since some jurisdictions recognize the custody rights of parents as joint and several, it is possible for the unilateral retention of a child in a foreign jurisdiction to be irremediable under the Convention. See Beaumont & McElevay, page 4 supra, at 62.

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Article 14 of the Convention provides that we may take direct judicial notice of the law of the habitual residence in order to answer this question. n53 The applicable Israeli law, in turn, states that "in any matter within the scope of their guardianship the parents shall act in agreement." Capacity and Guardianship Law, 1962, 16 L.S.I. 106, 108 (1961-62) (Section 18). By seeking sole custody over the children outside their state of habitual residence then, Michal "disregarded the rights of the other parent which are also protected by law, and ... interfered with their normal exercise." Perez-Vera Report, page 3 supra, at P 71. n54 Nor is there any doubt that Arnon was exercising his parental rights and responsibilities up until the time Michal sought custody. As the district court noted, he had remained in regular contact [***55**] with his family, visited them several times, and "provided all finances needed to support his wife and children in California." Mozes, 19 F. Supp. 2d at 1111. This means that if the children's habitual residence was still in Israel on April 17, 1998, their retention here would be wrongful under the Convention, and the United States would be required under Article 12 to order their return forthwith so that an Israeli court may consider the question of custody. n55

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n53

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Convention, art. 14, 19 I.L.M. at 1503.

n54 When parents who do not live together fail to agree on matters within the scope of their guardianship, the Israeli courts are to determine them in the best interests of the children. See Capacity and Guardianship Law, 16 L.S.I. at 109-10 (Section 25). By seeking to have this determination made in the United States rather than in the country of the children's habitual residence, Michal did precisely what the Convention was intended to prevent. See Perez-Vera Report, page 3 supra, at **[*56]**

n55 We take judicial notice of the fact that, after the district court decided the case and while it was on appeal before us, the Los Angeles Superior Court entered an award in the custody proceeding which it had previously stayed pending resolution of Arnon's claim in the district court. Article 16 of the Convention provides, in pertinent part, that "after receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention ..." Convention, art. 17, 19 I.L.M. at 1503 (emphasis added). Because it has not yet been determined whether the Mozes children must be returned under the Convention, the Superior Court's custody decree is premature. We presume that the Superior Court, or the district court on remand, will take appropriate steps to ensure its compliance with the Convention.

It is worth noting that the district court would not be barred by the Rooker-Feldman doctrine from vacating the Superior Court's custodial decree or its order enjoining removal of the children from California. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16, 68 L. Ed. 362, 44 S. Ct. 149 (1923) (holding federal statutory jurisdiction over direct appeals from state courts beyond the original jurisdiction of federal district courts); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486-87, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983) (holding that claims "inextricably intertwined" with those a state court has already decided beyond the jurisdiction of lower federal courts). Because the doctrine is one of congressional intent, not constitutional mandate, it follows that where Congress has specifically granted jurisdiction to the federal courts, the doctrine does not apply. See, e.g., In re Gruntz, 202 F.3d 1074, 1078-79 (9th Cir. 2000) (en banc) (noting that through statutory writ of habeas corpus and bankruptcy statutes Congress permits federal collateral review of state court and criminal bankruptcy judgments). In this case, Congress has expressly granted the federal courts jurisdiction to vindicate rights arising under the Convention. See 42 U.S.C. § 11603(a). Thus, federal courts must have the power to vacate state custody determinations and other state court orders that contravene the treaty.

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Article 13 of the Convention, however, provides certain exceptions to the duty to return a wrongfully retained child to its state of habitual residence. n56 Because the district court decided that there was no wrongful retention under Article 3, it had no occasion to examine whether any of these exceptions were applicable. Unlike Article 3, which restricts a court's inquiry to the state of affairs prevailing immediately prior to the retention or removal alleged to be wrongful, see page 6 supra, two of the exceptions in Article 13--namely, the risk of physical or psychological harm and objection by a mature child to its return--depend on circumstances at the time a child's return is to be ordered. n57 Should the district court find a wrongful retention to have occurred, it must make a prompt determination as to whether either of these exceptions is applicable n58 and, if not, order the return of the children to Israel forthwith.

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n56

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

Convention, art. 13, 19 I.L.M. at 1502. [***58**]

n57 The remaining exception is clearly inapplicable. As we have pointed out above, the district court found that Arnon continued to exercise his parental rights up until the time of the retention. See page 44 supra. Given that he has litigated continually for the children's return since then, he obviously has not "subsequently acquiesced" in their retention. Convention, art. 13, 19 I.L.M. at 1502.

n58 In making the first of these determinations, the district court must be mindful that it is not deciding the ultimate question of custody, or even permanent return of the children to Israel. That decision will be made by the appropriate Israeli tribunal. The district court must determine only whether returning the children to Israel for long enough for the Israeli courts to make the custody determination will be physically or psychologically risky to them.

-----End Footnotes-----

REVERSED and REMANDED.

The mandate shall issue at once. Fed. R. App. P. 2.

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