ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

CISILIE A. VAILE,

Petitioner,

vs.

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

and

R. SCOTLUND VAILE, Real Party in Interest

S.C. Docket No. 36969

D.C. Case No. D230385

FILED

MAY 17 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

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

Petitioner, CISILIE A. VAILE, by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLICK, P.C., submits the following supplemental exhibits from the Norway and Texas proceedings, for the Court's consideration:

1. *Norway Supreme Court Interlocutory Appeals Committee Judgment* affirming the Appeals Court Judgment, entered March 29, 2001. The order that it affirmed was the February 9, 2001, Norway appellate Order, which was provided to this Court in Cisilie's Supplemental Exhibits, Post Oral Argument, filed February 16, 2001. That appellate order, in turn, reversed the November 29, 2000, Norwegian district court order referred to in footnote 48 on page 28 of the Majority Opinion.

The document is relevant because the Court's footnote indicated that the Court might not have known that the Order referenced had been reversed, and that reversal upheld. Texas took judicial notice of the final Norwegian order, which stated that Norway has jurisdiction over the

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(702) 438-4100

02-08761

parties and the children to make a custody determination. Both parties appeared in person, with counsel, in Norway and were given ample opportunities to argue their cases.

2. District Court of Denton County, Texas, Cisilie's First Amended Special Appearance, which asked the Texas court to dismiss Scotlund's action due to a lack of subject matter jurisdiction. Although this was filed on November 2, 2000, we did not have this document before this week.

The relevance goes to the question, on the cross-motions for rehearing, as to whether Nevada or Texas should have had the Hague Convention or any other hearings. The Texas Court was kept fully informed as to the litigation in both Norway and Nevada. In keeping with its earlier policy of giving full faith and credit to sister state's decisions, Texas suspended its litigation on the Vaile matter after it issued a Temporary Injunction in November, 2000, restraining both parties from removing the children from its jurisdiction. When the Norway decisions were entered (indicating custody should be litigated in Norway), Texas took notice of the Norway proceedings and waited for the decision from the Nevada Supreme Court (as to whether the Hague decision could be made in Nevada).

3. *Opinion* from the Court of Appeals, Second District of Texas, Fort Worth. Following the April 17, Denton County District Court Order which gave full faith and credit to this Court's *Opinion* and released the children into Cisilie's care, Scotlund filed a petition for a writ of prohibition and writ of mandamus and writ of attachment. The Texas Appeals Court issued a stay until the matter was heard, and on May 9, 2002, Scotlund's petitions were denied, indicating that the Texas appellate court accorded this Court's *Opinion* full faith and credit, as had the lower court. The relevance is to the cross-motions for rehearing, in that the Texas appellate court has concurred that

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under the Texas Family Code, and the UCCJEA, Nevada was the correct jurisdiction in which the Hague Convention decision should have been, and was made.

DATED this 15th day of May, 2002.

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

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
ROBERT CERCEO, ESQ.
Nevada Bar No. 005247
3551 East Bonanza, Suite 101
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Attorneys for Petitioner

CERTIFICATION OF SERVICE

I hereby certify that service of the foregoing was made on the 15th day of May, 2002, pursuant to EDCR 7.26(a), by faxing a true copy of the same to fax number (702) 383-0701 and additionally by U.S. Mail addressed as follows:

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

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

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HP LaserJet 3100
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SEND CONFIRMATION REPORT for
MARSHAL S. WILLICK
4385311
May-15-02 4:55PM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
874	5/15 4:46PM	0'00"	3830701	Send	0		Remote Fax was Busy 961
874	5/15 4:50PM	5'18"	702 383 0701	Send	18/18	EC120	Completed

Total 5'18" Pages Sent: 18 Pages Printed: 0

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and
R. SCOTLUND VAILE, Real Party in Interest

S.C. Docket No. 36969
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Translation from Norw[illegible]

EX 1

[Norwegian Coat
of Arms]

THE SUPREME COURT INTERLOCUTORY APPEALS COMMITTEE

On March 29, in the year 2001 the Interlocutory Appeals Committee of the Supreme Court consisting of judges Gjølstad, Coward and Bruzelius in

case no. 2001/433, civil case, interlocutory appeal:.

Robert Scotlund Vaile (Elsbeth Bergsland, Attorney-at-Law)

versus

Cisilie Vaile (Elisabeth Hagen, Attorney-at –Law)

pronounced the following

JUDGEMENT:

The case concerns the question of whether the Oslo Municipal Court is the correct venue in a case concerning physical custody and visitation with joint children pursuant to the Children Act (cf. Section 64, first paragraph, litra b of this Act).

In 1990, Cisilie Vaile, who is a Norwegian citizen, married Robert Scotlund Vaile, an American citizen, in Salt Lake City, USA. The children Kaia Louise, born May 30, 1991 and Kamilla Jane, born February 13, 1995, have both Norwegian and American citizenship. The family lived in the USA until August 1, 1997, when they moved to London.

At the request of Robert Vaile, the Clark County District Court in the state of Nevada, USA, issued a divorce order for the parties on August 10, 1998. The District Court also based itself on an agreement written in English between the parties to the effect that Cisilie Vaile should have physical custody of the children until they reached the age of 10, and that she undertook to take up residence after July 1, 1999 "within twenty miles" of such residence in the USA as Robert Vaile might choose within the areas specified in the agreement. Simultaneously with the English agreement, the parties entered into an agreement in Norwegian concerning physical custody and visitation with the children.

Cisilie Vaile and the children moved from London to Oslo in July 1998. Robert Vaile moved to Las Vegas, Nevada, at around the end of 1999/beginning of 2000.

On February 18, 2000 Robert Vaile made a complaint through the Clark County District Court, Nevada, requiring the return to the USA of the children, and that he should have physical custody. On March 24, 2000, Cisilie Vaile made a complaint through the Oslo Municipal Court, with the claim that the children should live permanently with her, and that Robert Vaile's visitation with the children should be stipulated at the discretion of the Court. She petitioned for a temporary decision

pursuant to Section 38 of the Children Act. On May 18, 2000 the Municipal Court imposed an injunction on the children leaving Norway.

On April 12, 2000 the District Court of Clark County, Nevada, issued an order according to which the children were to live permanently with Robert Vaile in the USA.

In his answer of May 22, 2000, to the Municipal Court, Robert Vaile pleaded for the case to be dismissed, alternatively that the Municipal Court cannot make a decision based on the merits of the case before his petition for the children to be delivered to him pursuant to the Haag Convention has been finally decided.

In connection with visitation with the children in the days around May 17, 2000, Robert Vaile took the children with him to the USA. On May 29, 2000, the Norwegian Ministry of Justice applied on Cisilie Vaile's behalf for the return of the children to Norway pursuant to the rules of the Haag Convention.

On October 25, 2000, the District Court in Nevada issued an order that the children should remain in Robert Vaile's custody in Texas, USA. The District Court considered that it had "emergency jurisdiction" over the children until the matter of custody was finally decided by a Norwegian court or a court in Texas.

The Oslo Municipal Court issued an order on November 9, 2000, with the following conclusion:

> "Case 00-03031 A/66 is dismissed.
> Each of the parties shall bear their own costs."

Cisilie Vaile appealed the decision of the Municipal Court to the Borgarting Appeals Court, which on February 9, 2000, issued an order with the following conclusion:

> "1. The case shall be brought before the Oslo Municipal.Court
> 2. The question of case costs shall be left until the decision that concludes the case."

In contrast to the Municipal Court, the Appeals Court found that the children have domicile in Norway (cf. Section 64, first paragraph, litra b of the Children Act). For further details of the case, reference is made to the judgements of the lower courts.

Before the time limit, Robert Vaile appealed the order of the Appeals Court to the Interlocutory Appeals Committee of the Supreme Court on the basis of misinterpretation of the law. The main points of his arguments are as follows:

The Appeals Court has interpreted Section 64, first paragraph, litra b of the Children Act incorrectly in finding that the children must be regarded as domiciled in Norway. The provision establishes that cases concerning custody, whom the child should live with permanently and visitation rights may be brought in Norway if the defendant or the children are resident in Norway. Where the plaintiff, the mother, is resident is in reality irrelevant.

In case of doubt, the evaluation will be based on a discretionary overall appraisal. The Interlocutory Appeals Committee has a limited right to review in connection with "interpretation" of the law. The Committee can review the considerations to which weight shall or may be attached in the appraisal, but not the actual result of the appraisal.

The Appellant agrees that the place where the children are staying for the present cannot simply be the deciding factor, but at the same time it must be correct to take account of the fact that the children's present stay in the USA is based on interests of restoration in connection with the agreement entered into by the parties in 1998. The Norwegian agreement states that the Engli

agreement "applies in its entirety". The English agreement establishes that both parents and the children undertake to settle in the USA. The children had lived just over 6 and just over 2 years, respectively, in the USA before the move to the UK. The agreement shows the parties' joint intention to settle permanently in 1998. This clear and unambiguous intention regarding settling must be decisive for the court's evaluation.

The Appeals Court correctly finds that the parties regarded Cisilie Vaile's and the children's stay in Oslo as temporary. However the Appeals Court reaches an incorrect conclusion in judging the situation such that "the stay changed to take on such a nature of permanency that the conclusion following from a holistic assessment is domicile in Oslo pursuant to Section 64 b) of the Children Act." The Appeals Court has attached weight to the fact that the elder daughter was half way through her second school year, and the younger went to pre-school, and that Cisilie Vaile had found a position as a teacher and hence a financial basis for remaining in the country. The appellant argues that even in the case of short stays it is self-evident that children of an age when school is compulsory actually go to school. Pre-school is also natural for smaller children. The adult carer must gain the means to keep them even if the stay is of short duration.

The Appeals Court has not taken account of the fact that the children have now lived in the USA for almost 10 months. It is clear that the court must take account of the children's place of residence today, particularly when this is in accordance with the parties' agreement.

The appellant also refers to page 794 of the Norwegian Legal Gazette of 1987. Although in some respects the actual circumstances of the present case are very different from the case in 1987, where the Supreme Court had full competence, the viewpoints are nevertheless interesting from a legal point of view. The question there was whether the children had obtained residence in Norway following mother's self-help, which took place after father's self-help. The family was initially going to stay in Norway temporarily, for a year. The decision was reached with a majority of 3:2. The majority maintained that the children had obtained residence in Norway, and placed emphasis on the fact that at the time of the Supreme Court's decision on the appeal the children had been in Norway for nearly 3 years, that they went to Norwegian school and pre-school and had found a place in the community. The majority felt that the mother's self-help was "a sort of restoration of the status quo".

Robert and Cisilie Vaile never lived together in Norway. The precondition for the temporary stay was that after July 1, 1999 the children would move to the USA. Thus Robert Vaile's self-help – the fact that he took the children with him to the USA on May 17, 2000 – was "a sort of restoration of the status quo", i.e. residence in the USA, a country they had lived in before, and which it had been agreed in 1998 that they would settle in again. In contrast to the case from 1987, the parties in the present case had the same intention with respect to residence in the USA.

The appellant has made the following plea:

> "1 Case no. 00-03031 A/66 before the Oslo Municipal Court is dismissed.
>
> 2 Robert Scotlund Vaile is awarded the costs of the case for the Municipal Court, the Appeals Court and the Supreme Court in the amount of NOK 16 000."

In her answer to the appeal Cisilie Vaile has made a counter-assertion. It is argued primarily that the appeal must be dismissed pursuant to Section 404, second paragraph of the Civil Procedures Act, since the decision has no significance beyond the present case, and also because there are no other circumstances giving grounds for the appeal being reviewed. It is argued alternatively that the appeal must be dismissed because the Appeals Court's interpretation of the law is correct. The main points of her arguments are as follows:

The Interlocutory Appeals Committee cannot review the actual application to the given fact. The interpretation and the legal provisions upon which the Appeals Court has based itself, including the assessment of the significance of the appellant's action on May 17, 2000, are correct.

It is not correct that the children's present stay in the USA is based on interests of restoration with respect to the parties' agreement. The agreement does not mention the USA in its entirety, only specific states. Texas is not mentioned in the agreement, a state with which neither the children nor the parties have previously had any connection. The Appeals Court has also found this. The agreement is also based on Cisilie Vaile having custody of both the children until they turn 10. Nor is there any question of any restoration with respect to the decision of the Clark County District Court of April 12, 2000. This decision presupposes that the children are brought to Nevada. Moreover, it has been obtained through deliberately incorrect information from Robert Vaile to the effect that the children had lived all their lives in Las Vegas.

It is not correct that the Appeals Court has not taken into account that since May 17, 2000, the children have been in the USA. However, the Appeals Court has correctly found that this cannot be accorded significance (cf. Backer: The Children Act, page 391).

As regards the appellant's reference to page 794 of the Norwegian Legal Gazette, 1987, it is argued that in the present case there is no question of any restoration (cf. the argument already made in this respect). Another fundamental difference is that the "transfer" to Norway in July 1998 in the present case took place according to agreement. The Appeals Court's appraisal in our case is entirely in line with the Supreme Court's appraisal in the case from 1987.

The following plea is submitted:

"Primarily

The judgement of the Appeals Court is affirmed.

Alternatively

1. The appeal is dismissed.

2. Cisilie Vaile, or the public is awarded the costs of the case for the Oslo Municipal Court, the Borgarting Appeals Court and the Interlocutory Appeals Committee of the Supreme Court, in the total amount of NOK 16 500."

In a subsequent pleading, Robert Scotlund Vaile has submitted comments to the answer to the appeal.

It is argued that the respondent's review of the agreement of July 1998 is imprecise and in part incorrect. The point of the agreement in question is entitled "Residency in the United States". Thus it is the place of residence in the USA that is dealt with. It is correct that at the outset what is called "Metropolitan Area" should form the basis for settling in the USA – and Texas is not covered by this area – but it was also a condition that Cisilie Vaile should live "within twenty miles of Scotlund's place of residence".

It was only when it was clear that Cisilie Vaile would not make any move to the USA at all that Robert Vaile chose to move to Texas. He informed her in October 2000 that he would still move to Las Vegas if it meant that she would come to the USA.

The appellant continues to maintain that the children's stay in the USA is now based on restoration considerations, even though the agreement initially stipulated that the mother should have custody of the children until they turned 10. The clear objective the parties had that the children should grow up in the USA has not been changed by a new agreement.

It is not correct that Robert Vaile has made a "deliberately incorrect statement to the District Court", to the effect that the children had lived all their lives in Las Vegas. The printout from the court session show this. When the judge asks "how long were the children here before they went to Norway", there can be no doubt that "here" means the USA.

The "transfer" to Norway from the UK took place according to agreement, but the retention in Norway did *not*. If the agreement is to be made the basis with respect to whether the children's stay in Norway was legal, it can hardly be said that the agreement should not be valid for the point that the children moved to the USA according to agreement.

The claim for costs is now NOK 18 000.

The Interlocutory Appeals Committee of the Supreme Court notes that the appeal applies to the Appeals Court's decision on an appeal, and that the Committee's competence is thus restricted according to Section 404 first paragraph of the Civil Procedures Act. The appeal claims to be directed at the Appeals Court's interpretation of the law, which the Committee can review.

The conditions for it being possible for a case on physical custody or visitation with children to be decided by a Norwegian court are laid down in Section 64 of the Children Act. The question in our case is whether the children "are domiciled" in Norway (cf. Section 64, first paragraph, litra b). In their interpretation of this rule, the Appeals Court correctly takes as its starting point that in doubtful cases the decision has to be based on a discretionary overall appraisal. As the appellant also states, in a further appeal the Interlocutory Appeals Committee can then review whether the Appeals Court has attached weight to the correct legal factors, whereas the actual execution of discretion cannot be reviewed.

In the Appeals Court's ruling it furthermore states:

> "The place where the children are currently staying cannot simply be the deciding factor. As a rule it must be required that the children's stay is of a permanent nature, objectively viewed, and that in a subjective respect the intention is to remain there over time, ... The evaluation must take as its point of departure the time when the case was brought, here the complaint to the Oslo Municipal Court on March 24, 2000."

The Appeals Court then states that even if it was originally intended as a temporary arrangement when the mother moved with the children to Oslo, the stay may nevertheless over time have changed to take on such a nature of permanency that it fulfils the requirement in Section 64 first paragraph litra b of the Children Act. The court finds that the mother found it best for the children to remain living permanently in Oslo, and that this was her motivation for disregarding the agreement into which the parties had previously entered. The court believes that the decision can then hardly be judged a form of self-help, and refers to the fact that Norwegian law relating to children recognises that agreements as to whom the child shall live with permanently etc. can be revised if this is in the best interests of the child. The Appeals Court finally states that the case can count on having adequate light shed on it if it is brought before the Oslo Municipal Court, and that the fact that the father succeeded in taking the children out of the country on May 17, 2000, cannot be accorded significance.

The Interlocutory Appeals Committee cannot see that in so doing the Appeals Court has expressed any incorrect interpretation of the law. As previously stated, the Committee cannot review the actual execution of discretion, and the same applies to the Appeals Court's appraisal of the evidence.

The decision of the Appeals Court must accordingly be affirmed.

The respondent has claimed to be awarded the costs of the case before the Municipal Court, the Appeals Court and the Interlocutory Appeals Committee. The Committee believes, like the Appeals Court, that the question of costs should be left until the decision that concludes the case (cf. Section 179, first paragraph, litra 3 of the Civil Procedures Act.

The decision is unanimous.

CONCLUSION:

The decision of the Appeals Court is affirmed.

The question of case costs is to be left until the decision that concludes the case.

Kirsti Coward Bruzelius	Liv Gjølstad	Karin M.
(sig.)	(sig.)	(sig.)
[no signature]	[no signature]	[no signature]

True transcript certified:

[signature] Kristin Alstad

[stamp] OFFICE OF
THE SUPREME COURT
OSLO

True translation certified:

BEVERLEY WAHL OSLO NORGE GOVERNMENT ENGLISH TRANSLATOR

Government authorized translator

EX 2

NO. 2000-61344-393

FILED
00 NOV -2 AM 11:38
SHERRI ADELSTEIN
DISTRICT CLERK DENTON CO., TX
BY _____ DEPUTY

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

NO. 2000-20640-158

IN THE INTEREST OF	§	
	§	
KAIA LOUISE VAILE	§	
AND	§	
KAMILLA JANE VAILE	§	IN THE DISTRICT COURT
	§	DENTON COUNTY, TEXAS
CHILDREN	§	158TH JUDICIAL DISTRICT

RESPONDENT'S FIRST AMENDED SPECIAL APPEARANCE

NOW COMES CISILIE A. VAILE, Respondent, and files this First Amended Special Appearance under Rule 120a of the Texas Rules of Civil Procedure. Respondent's legal domicile is outside Texas and is in the country of Norway. Respondent's person and property are not amenable to process issued by the courts of Texas, and Respondent prays that the Court so rule. None of the grounds for personal jurisdiction provided in Section 102.011(b) of the Texas Family Code has been established.

In addition to the above first amended special appearance, and without waiving it, Respondent requests this Court to dismiss this action because Texas lacks subject-matter jurisdiction in this action under section 152.201 of the Texas Family Code.

In the alternative and without waiving the foregoing, if the court finds that is has subject-matter jurisdiction to make a child-custody determination in this proceeding, Respondent requests this Court to decline jurisdiction or, alternatively, stay these proceedings until the Texas

Court makes a UCCJEA telephone call to the Norway Court in order that a determination can be made regarding the appropriate court for these proceedings to take place. Texas is an inconvenient forum to make a custody determination under the circumstances in this case and Norway is a more appropriate court in forum for this custody determination. There are on-going proceedings in a court in Oslo, Norway, Cause No. 00-03031A/66 in which both Petitioner and Respondent have personally appeared with counsel. Petitioner and Respondent participated in two separate mediation sessions in Norway in connection with the Norway Court cause number. Petitioner personally appeared before the court in Norway with his attorney. Petitioner submitted himself to personal jurisdiction in the Norway court. The name of the judge in Norway is Liv Dahl, which is a female judge with a direct telephone number of 011 47 22 035398. The telephone number of her court clerk/court coordinator is 011 47 22 035200. The facsimile number for Judge Dahl is 011 47 22 03 5387. The time in Oslo, Norway is seven hours ahead of the time in Texas. For example, at 9:00 a.m. in Texas, it is 4:00 p.m. in Oslo, Norway.

Petitioner wrongfully kidnapped the children by deceit and trickery in Norway on May 17, 2000. The children are wrongfully in Texas as a result of Petitioner's action and first arrived in Texas on or about June 1, 2000.

Further, if the Court find that Texas is an inconvenient forum or that Petitioner has engaged in conduct that causes this court to decline jurisdiction, Respondent asks that the Court require Petitioner to pay necessary travel and other expenses, including attorney's fees, incurred by Respondent or any witness of Respondent. Respondent requests that the Court order that the payment be made to the Clerk of the Court for remittance to Respondent.

Respectfully submitted,

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

Attorney for Respondent

The undersigned states under oath:

"I am Respondent in the foregoing Respondent's First Amended Special Appearance. I have personal knowledge of the allegations and facts stated in it and they are true and correct."

Cisilia Anne Vaile

THE STATE OF TEXAS)

COUNTY OF DENTON)

Before me the undersigned notary public, on this day personally appeared Cisilia Anne Vaile, proved to me through Passport I.D. number 95J0705684-3 to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 2nd day of November, 2000.

Notary Public, State of Texas

BETH GINA HONEYCUTT
MY COMMISSION EXPIRES
December 23, 2004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above was hand-delivered to Brian Holman, Attorney for R. Scotlund Vaile, 512 West Hickory Street, Suite 224, Denton, Texas 76202 in accordance with the Texas Rules of Civil Procedure on this the 2nd day of November, 2000.

Mike Gregory
Attorney for Respondent

EX 3

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-02-133-CV

IN RE R. SCOTLUND VAILE — RELATOR

ORIGINAL PROCEEDING

OPINION

The court has considered relator's petition for writ of prohibition and writ of mandamus and writ of attachment for children and the parties' responses. It is the court's opinion that relief should be denied. Accordingly, relator's petition for writ of prohibition and writ of mandamus and writ of attachment for children is denied. The court vacates its April 17, 2002 Order that granted relator temporary relief.

Relator shall pay all costs incurred in this proceeding, for which let execution issue.

PER CURIAM

PANEL B: LIVINGSTON, DAUPHINOT, and HOLMAN, JJ.

DO NOT PUBLISH
TEX. R. APP. P. 47.3(a)

MAY 09 2002