Robert Scotlund Vaile
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Appellant in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

	Supreme Court Case No: 61415 District Court Case No: 98D230385
ROBERT SCOTLUND VAILE, Appellant, vs. CISILIE A. PORSBOLL, Respondent.	**REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY PROCEEDINGS AND ENFORCEMENT IN THIS CASE PENDING APPEAL** ACTION REQUIRED prior to ***October 15, 2012.***

I. INTRODUCTION

Contrary to Respondent's assertions, the granting of Appellant's request for a stay in this case does not increase cost of litigation or delay this Court's just resolution of the case. In fact, the result is just the opposite; cost and delay increase without the stay. If the Court does not stay the case while the appeal is pending, Respondent will most certainly continue to add to the more than **70** motions and filings[1] they have made in the district court since 2007, and the district court will continue to grant each request from Respondent's counsel for

[1] A review of the docket sheet in the district court will validate that this is no exaggeration.

12-29812

additional fees[2], even if this Court later overturns the underlying relief. Respondent's fee awards, which they now claims exceed $1.3 million[3] will also increase. Importantly, the district court has scheduled a contempt hearing in October for child support payments that Appellant actually made.[4] Failing to stay the case will give the district court continued *carte blanche* to defy this Court to the severe detriment of Appellant in terms of fines and imprisonment, and cause need for further appeals and emergency relief. In order to avoid the inevitable churn of litigation that has characterized this case, Appellant respectfully requests that this Court urgently intercede and stay this case.

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[2] The district court has never denied Respondent a request for attorney fees regardless of how outlandish the request. There is perhaps no better example of needlessly running up litigation costs than Respondent's recent opposition briefs to Appellant's requests to proceed *in forma pauperis*, to consolidate, and for full briefing. Appellant's requests for relief do not imposition Respondent in any way, yet litigation expenses were incurred with the certain expectation that the district court will later reward Respondent's counsel for the frivolity.

[3] The attorney fee amounts asserted by Respondent's counsel are disingenuous as they include the attorney's fees that Respondent's *counsel* has *personally incurred* in defending his unlawful actions in other states including defamation and abuse of process in Virginia, and being three times enjoined by the US Bankrupcty Court in the Northern District of California for violating Mrs. Vaile's bankruptcy discharge injunction. Contrary to Respondent's assertions, these cases against the Willick Law Group and its principal are unrelated to the matter before the district court below, and were never appealed because all relief was granted against Willick or settled by his insurance carriers. Respondent's assertions to the contrary are untrue. *Opp.*, 1.

The admission that the Willick Law Group is willing to run up a tab for $1.3 Million in ***upaid*** fees does show that counsel are fully financing the litigation for their own unethical purposes. *Opp.*, 9, fn. 7.

[4] Respondent falsely asserted (*Opp.*, 9) for the first time here that the District Attorney's office previously informed Mr. Vaile that any child support payments made directly to Porsboll would be considered gifts. Not only did Respondent submit no evidence of this fact in the lower court, it also directly contradicts Mr. Vaile's testimony below that he had no such communications from the District Attorney's office, either before or after the payments were made. Respondent's assertion is wholly and completely unsupported and false.

II. RELEVANT FACTS

Although Respondent assigns unnamed "outright lies" to Appellant's motion, the only fact presented by Appellant which Respondent actually contradicts is that Mr. Vaile preemptively requested a stay of the case before the district court on April 9, 2012. *Opp.*, 4. Although Mr. Vaile cannot yet afford[5] to order the written transcripts to prove this point, he has ordered the audio recording and will forward that to the Court immediately with the appropriate time index to demonstrate that the request was in fact made. Of course, a request to stay *need not* be made in the district court if, as here, the request would be "impractical." NRAP 8(a)(2)(i). The district court has obviously made up its mind to go forward with the contempt hearing and to otherwise disregard this Court's several mandates, making another request to the district court impractical. Nonetheless, the audio transcript will demonstrate that the request was made as asserted.

Another important fact that Respondent gets wrong is the assertion that the 1998 separation agreement was somehow created by Mr. Vaile. When the parties were divorced in 1998, only Porsboll was law-trained, having studied law for several years in Oslo before the parties were married. So as not to disadvantage either party in the development of the separation agreement, the parties worked for several months with an independent third-party mediator (an American attorney working in Europe at the time) who took input from both parties and actually created the separation agreement. Both parties signed the agreement in England after independently reviewing it with separate legal counsel in Nevada.

After hiring Marshal Willick over two years later in Las Vegas in 2000, Porsboll asserted for the first time that the separation agreement that she helped to

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[5] As noted previously, Mr. Vaile's request to proceed *in forma pauperis* is still pending before the district court.

develop[6] and then reviewed with her Nevada attorney, was signed only under duress, and that the third-party mediator was essentially Mr. Vaile's partner in the mediation proceedings. Both the previous district court and this Court soundly rejected Porsboll's duress claims over ten years ago. See *Vaile v. Vaile*, 118 Nev. 262, 273-274 (2002). Porsboll's repeated assertions that Mr. Vaile created[7] the separation agreement is as false today as it was when the fiction was judicially rejected over ten years ago.

III. ARGUMENT

A. Likelihood of Success on the Merits Weighs in Favor of Appellant

The fact that the district court's July decision and order directly conflicts with this Court's January decision is readily apparent from a mere reading of the two decisions. In order to overcome the obvious likelihood of Appellant's success on the merits of a case, Respondent asserts that "[t]here are no conflicting [child support] orders" which would have required the district court to follow this Court's instructions to resolve the conflict in accordance with NRS 130.207. *Opp.*, 7. Section 2 of the UIFSA conflict resolution statute, codified in NRS 130.207, requires its application when *"two or more child-support orders have been issued by tribunals of this State or another state with regard to the same obligor and same child."* The child support orders issued by Norway at the request of Porsboll were filed with the district court (and this Court), and they

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[6] Every tenet that Porsboll wanted was included in the separation agreement including removing the children to Norway for a one-year ***visit*** following the divorce. With her knowledge of Norwegian law, Porsboll certainly knew at the time that she would be able to convince Norway to disregard her US agreement and successfully retain the children in Norway once she arrived for her "visit."

[7] If Mr. Vaile had been devious enough to control the tenets of separation agreement, or had legal knowledge sufficient to understand all the intricacies of that agreement, surely he would not have created an agreement which was not so detrimental to his interests.

apply to the same obligor (Mr. Vaile) and the same children. As such, the two orders (the Norwegian and the Nevada decree) fall squarely into the definition provided under NRS 130.207(2). Respondent's denial of the existence of the Norwegian orders, like the district court striking the notice containing them, is as futile an effort as the district court's assertion that NRS 130.207 does not apply because there was only one order immediately after the first order was issued. Buried in a footnote in Respondent's opposition, she actually admits that the Norwegian orders exist, but labels them "irrelevant internal Norway welfare orders" in the hopes that this characterization removes them from the applicable statute. See *Opp.*, 8, fn 4. None of these efforts justify the defiance that the district has shown this Court's directive to properly apply NRS 130.207 to resolve the conflict. It is highly likely that this Court will continue to require, or rather find as a matter of law, what it mandated the defiant district court to do last time.

B. A Stay is Necessary to Maintain the Status Quo and to Avoid Conflicting Orders

Respondent attached an order from the California court to her Opposition, pretending that it held that California does not have jurisdiction in the case currently pending in the California family court. This is not so. The current case numbered SFL 49802 pending in the California court is a UIFSA-compliant request to register the Norwegian orders and to declare them controlling in accordance with Section 207 of UIFSA. This is basically the same request Mr. Vaile made to the district court below, but in Mr. Vaile's home state. The California court has not yet reached a decision in this matter.

In the previous California case, from which the order provided was the result, the California court determined that it did not have jurisdiction to modify the Nevada district court orders because the district court did not have jurisdiction to enter those orders in the first place – precisely as this Court held. Although

there is little chance that this Court would be fooled by Respondent's slight of hand, Appellant wanted to set the record straight.

The last Norwegian child support modification requested by Porsboll in Norway in 2008 required Mr. Vaile to pay 4,680 Norwegian Kroner per month in support of the younger child.[8] This amount is approximately $780[9] per month, and is the amount that Mr. Vaile requested that the California court require him to pay each month if it determines that his obligations under the Norwegian orders have not been exceeded. Neither Porsboll, nor her counsel, attended the relevant hearing in California on the matter, and cannot possibly claim to have any knowledge to challenge Mr. Vaile's accurate portrayal of events in that forum.

In order to avoid the conflict that will necessarily result when one court properly applies section 207 of UIFSA, and another court refuses to do so, Appellant requests that this Court order a stay of further collection of child support under the Nevada district court's order and defer to the California Department of Child Support Services. Appellant also requests that the stay require the Clark County District Attorney's Office to lift any federal intercepts in place as they detrimentally effect Mr. Vaile's job search.[10]

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[8] Contrary to Respondent's assertions, this Norwegian child support order is a part of the lower court record. *Opp.*, 6.

[9] This number is very nearly the statutory maximum under NRS 125B.070. Respondent's counsel claims to have trouble computing this number. *Opp.*, 6. This is unsurprising. Using their home-grown commercial software, the Willick Law Group computed Mr. Vaile's child support penalties in this case to be over $88,000 while the DA's office calculated the amount to be just over $15,000.

[10] Mr. Vaile was required to decline a worthwhile job offer because there was a requirement for occasional international travel in the job assignment. The federal authorities will not allow Mr. Vaile to renew his U.S. passport when he owes in excess of $2,500 in child support, which is the case under the district court's recent order. The District Attorney must be required to remove federal intercepts in order for Mr. Vaile to renew his passport.

C. Collection of Attorneys Fees Should Be Stayed Because They Should Have Never Been Awarded to the Non-Prevailing Party

As previous outlined, following this Court's January decision, the parties were in precisely the position they would have been had Respondent accepted Mr. Vaile's invitation to follow the 1998 separation agreement, long before any attorney's fees were incurred by Porsboll. The evidence below clearly demonstrates that Respondent refused Mr. Vaile's invitation to follow the agreement and instead sought alternative relief that consisted in unlawful modification of the 1998 decree, and concealment of the controlling Norwegian orders. Respondent does not dispute that she was the non-prevailing party in every respect on appeal. Yet Respondent claims that her counsel are still entitled to attorney's fees as the non-prevailing party in the litigation according to *Edgington v. Edgington*, 119 Nev. 557 (2003) because child support is still due.

Firstly, if the district court had followed the directive of this Court to resolve the conflict in child support orders in accordance with UIFSA, then no child support would be due. Secondly, this Court has never found attorney's fees to be due to a non-prevailing party in any case. Thirdly, when a party such as Respondent conceals relevant evidence (i.e., the presence of the Norwegian child support orders) which causes an additional five years of litigation, then they should not be entitled to fees for their malicious acts. Fourthly, *Edgington* refers to NRS 125B.140(2)(c)(2) for the proposition that attorneys fees shall be due when a child support order is being enforced. However, NRS 125B.140 is *subject to* UIFSA as contained in NRS 130. See NRS 125B.140(1). As this Court outlined in its January 2012 decision, UIFSA is the controlling law in this case, making NRS 125B wholly irrelevant. Lastly, attorney's fees shall be awarded under 125B.140 "unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts." See NRS

125B.140(2)(c)(2). Here, undue hardship is readily evident from the employment situation of Mr. Vaile. Each of these five factors would prohibit Respondent from collecting fees in the lower court.

Under Respondent's theory, her counsel should be entitled to attorney's fees if child support is due, even though those attorney's fees were incurred in other states, for litigation expenses for those other than Respondent herself,[11] and for matters outside the scope of actually seeking child support enforcement of the relevant order. Where, as here, counsel have maintained the litigation for the sake of earning litigation fees, awarding fees would be particularly unjust. But because UIFSA applies to this action, under the language of NRS 125B.140 itself, the statute offered by Respondent does not apply. Every statutory and policy factor required attorneys fees to be denied to Porsboll in the facts of this case.

D. The Effects of Not Staying Enforcement are Dire

As previously noted, Mr. Vaile has paid in excess of the child support principle required under the Norwegian orders that Porsboll herself sought in that country. Additionally, the children who were intended to be beneficiaries of the child support proceeds do not live with Porsboll, and do not receive the support funds. Moreover, Porsboll gets her legal representation from the Willick Law Group *gratis*. Despite receiving in excess of what she requested for child support in Norway, Respondent claims without explanation that the effects of the stay on Porsboll would be dire. Nothing could be further from the truth.

In characteristic fashion, Respondent's counsel makes up baseless false allegations and accusations when relevant legal arguments are unavailable to them, or argues against straw men rather than Appellant's actual arguments.

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[11] For example, the district court previously granted an award of attorney's fees for the legal representation of *Porsboll's counsel* in California proceedings for unlawful collection attempts.

Respondent has no support for assertions that Mr. Vaile is faking unemployment, that he actually intends to be unemployed, or that he has income that he is mysteriously transferring to unknown persons. The assertion that Mr. Vaile would put his family's welfare at risk in order to make a compelling legal argument in this Court is simply ridiculous, and speaks more to the character of Respondent's counsel[12] than of Appellant. Furthermore, Appellant has not argued that a stay should be granted because he is unemployed, or because he wishes to avoid litigation expenses. *Opp.*, 5.

Mr. Vaile's financial affidavit submitted in the court below on penalty of perjury details his family's actual monthly income (including his wife's), assets and expenses. Mr. Vaile has requested a stay in order to avoid imprisonment, and so that his income (once he secures employment) is not wrongfully intercepted to a degree that will prevent him from supporting his family. It is ironic that Respondent is grasping for a sinister objective, while freely admitting that their goal is to subject Mr. Vaile to contempt proceedings, have Mr. Vaile imprisoned (*Opp.*, 5), and intercept more than 50% of his income (*Opp.*, 10).

Respondent's only argument that a stay is not necessary is because her counsel has been unable to collect given Mr. Vaile's lack of employment. See *Opp.*, 6. Mr. Vaile has aggressively sought employment and intends to be employed soon. Since Respondent's counsel has demonstrated that they are adamant about collecting against Mr. Vaile's employer in accordance with the district court's July decision (50% of income plus almost $3,000 per month in child support), Respondent's failure to collect so far does nothing to mitigate the

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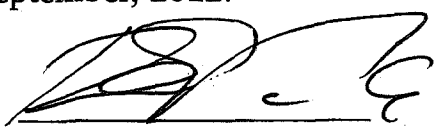
[12] The fact that Respondent's counsel has been held liable for defamation by a US District Court in Virginia, which necessarily requires the assertion of falsity as an element, and that Willick continues to employ a felonious child predator in its family law offices to continue to prosecute this case (according to Willick's own billing statements) demonstrates that there is no ethical bar which Willick will not stoop beneath.

adverse effects of the district court's judgment. Respondent's counsel has been restrained and enjoined by the California Superior Court, the California family court, three times from the US Bankruptcy court, and sued by Mr. Vaile's previous attorney in Virginia state court for repeated unlawful collection attempts. In fact, the current district court is the only court in the country that has endorsed the conduct of Respondent's counsel. These actions by the district court have been mitigated only by this Court's previous orders to stay. This Court's intervention is still necessary now.

IV. CONCLUSION

As previously explained, only a stay of the enforcement of the district court judgments will prevent further abuse in the district court. In order to avoid the dire effects on Appellant that enforcement of the district court's orders would cause, Appellant respectfully requests a stay of the proceedings in the district court, as well as a stay on enforcement of all monetary judgments. Appellant also requests that the Clark County District Attorney's office be required to lift any federal intercepts in place.

Respectfully submitted this 18th day of September, 2012.



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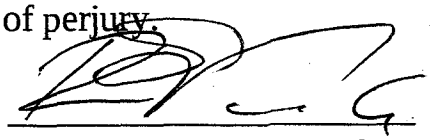
AFFIDAVIT IN SUPPORT OF MOTION TO STAY AND CERTIFICATE OF COMPLIANCE

1. I, Robert Scotlund Vaile, certify that I have authored this motion based on my first-hand knowledge and experience in this case.
2. The averments to facts in the motion above I know to be true, or make based on my information and belief.
3. I believe that I will suffer irreparable injury if this stay is not granted.
4. This filing complies with NRAP Rule 32(a)(4)-(6), and is produced in proportionally space typeface Times New Roman and 14 point font in LibreOffice Writer and does not exceed 10 pages.
5. I make these statements under penalty of perjury.



Robert Scotlund Vaile

CERTIFICATE OF MAILING

I hereby certify that on September 18, 2012, I deposited in the United States Mail, postage prepaid, at Kenwood, California, a true and correct copy of *REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS AND ENFORCEMENT IN THIS CASE PENDING APPEAL*, addressed as follows:

Marshal S. Willick, Esq.
Willick Law Group
3591 E. Bonanza Road, Suite 200
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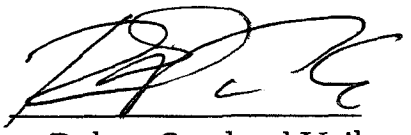
Attorney for Respondent

Signed,



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