ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA
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CISILIE A. VAILE

Appellant,

vs.

R. SCOTLUND VAILE,

Respondent.

S.C. NO. 37082 & 36969
D.C. NO: D230385

FILED
APR 09 2002
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

MOTION TO STRIKE "RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO SUSPEND BRIEFING SCHEDULE" OR IN THE ALTERNATIVE, MOTION FOR PERMISSION TO FILE REPLY

Petitioner, Cisilie A. Vaile, by and through her attorneys, the LAW OFFICE OF MARSHAL S. WILLICK, P.C., pursuant to NRAP 27, requests the relief listed above for Respondent's failure to comply with NRAP 26. This Motion is based upon the following Points and Authorities.

POINTS AND AUTHORITIES

I. UNTIMELY FILING OF OPPOSITION

Respondent's *Opposition* was filed 27 days after our *Motion* was filed; it was due within ten days.[1] The Clerk's office has informed us that the late filing was permitted based upon the late filing of Respondent's counsel's substitution as counsel on the appeal, presumably to prevent unfair surprise, etc., to opposing counsel. However, counsel should not be rewarded for his own technical failure to include the appeal's case number in his substitution filing; he has been fully informed, and acted as sole counsel in the appeal, for more than a year.

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02-06302

On December 4, 2000, Mr. Angulo filed a substitution of attorney in the Family Court (case number D230385), and followed that with a filing in this Court on December 7, 2000 (in the Writ action, Case 36969). Although Mr. Angulo indicated to this office that he represented Scot in ***all*** aspects of the case, he inadvertently failed to include the appeal number on his substitution to this Court. Likewise, the law office of Dempsey, Roberts & Smith has uniformly told us that they no longer represented Respondent in any way, and we have dealt solely with Mr. Angulo since the time of his substitution.

The error was discovered as early as February 14, 2001, when this office noticed that Mr. Dempsey, rather than Mr. Angulo, had been copied with the February 14, 2001, letter from this Court. Exhibit A. We informed the Court's clerk of the substitution of attorney and pointed out the discrepancy to Mr. Angulo.[2] Additionally, as any document was sent to us without verification that it had been copied to Mr. Angulo, we forwarded copies to his office. Exhibit B. We have been doing so for over a year now, making sure that both Mr. Angulo and Dempsey, Roberts & Smith were fully informed at each step, since Mr. Angulo had not yet made his formal notice of appearance.

From the first telephonic settlement conference with Ms. Tavano, held March 5, 2001, Mr. Angulo participated in the appeal settlement process as Scot's sole attorney in that case. *See* Exhibit C, facsimile of the Settlement Conference Status Report from Ms. Tavano to counsel. He has repeatedly maintained for over a year that he is counsel in the appeal, as well as the Writ case, and that all communications should go through him. Mr. Angulo cannot now profess to just having substituted in as Scot's attorney on the appeal; he has acted in that capacity for over a year now.

Accordingly, we believe that Mr. Angulo should not be permitted to file a late opposition based on any incorrect presumption that he has "recently substituted in" or otherwise had inadequate notice. Our opponent simply elected to wait several weeks past the deadline to either file an opposition or seek formal substitution, which we do not believe should entitle him to any special advantages.

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[2] In fact, Mr. Angulo was reminded several times to correct his December 7, 2000, filing. It now appears that he never did so, presumably to take the procedural advantage now given him.

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the Court's decision on the Writs "unnecessary." As the decisions facing the Courts concern ***jurisdictional*** errors committed by the District Court, the parties are impotent to agree to their resolution in any way that would be intellectually honest and legally meaningful. If the Court reverses the District Court's Orders, as we have requested, no "settlement" they reach would have ***any*** value, being based on proceedings that lacked subject matter jurisdiction. Any "settlement" reached under such circumstances would be rendered moot.

Within the scope of what could legitimately be explored, Cisilie negotiated in good faith at the settlement conference; however the parties were unable to reach an agreement (as predicted by counsel, given the legal realities). We could not in good faith agree to any proposal that a settlement be "permanent" and unchangeable regardless of the outcome of the Writs.[5]

III. SCOTLUND'S NEW ASSUMPTION OF FACTS; TIME

Scot has been dying to tell the Court that Cisilie participated in a "marriage" ceremony long after and outside of the record of the Writs, in an attempt to influence this Court's decision on that pending decision. Only this Court's prohibition Order entered March 23, 2001, prevented his "supplementing" the record before now.

Instead, Scot has grabbed the opportunity to mislead the Court with inaccurate comments by filing his (untimely) *Opposition*. Our responses (to be fleshed out if this Court permits a Reply) are several.

First, any action by either party after the Court took the matter under submission are outside the record and irrelevant to the matters before the Court.

Second, even if the new matters our opponent wishes to present were considered (and even if they were completely accurate, which is not really the case), our original argument is that the district court incorrectly refused to make a Hague determination, in violation of international law, and incorrectly granted a "divorce" where it lacked subject matter jurisdiction to do so, making any

[5] We could, of course, have lied, and made "stipulations" knowing that if the underlying proceedings on which they were based were found to be without subject matter jurisdiction, all would be unwound. Neither our client, nor this office, would engage in such deceitful behavior, nor should this Court countenance such behavior, if it occurs.

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purported "marriage" by either party invalid. Nevada never had jurisdiction over the children, who have never lived in this state, and any custodial determinations made by the Nevada courts should be reversed and turned over to the court of proper jurisdiction.

Cisilie put her entire life on hold in May, 2000, and has patiently waited since then for the courts of Nevada to return her children. Both parties have been living their lives as best they can given the uncertainty of their status; Cisilie has done so still hoping that the Nevada courts would send her daughters back to her, ***and*** fully understanding that if, as we submit, the district court's actions were without jurisdiction, no purported marriage – by her or by Scotlund, could be valid.

Undersigned counsel has the deepest respect for this Court, its members, and both the difficulty and the dedication involved in the Court's work. With due respect to, and for, that deliberative process, however, counsel is ethically compelled to request of this Court that a decision in the underlying Writs must be made.

In addition to the treaty obligations of the United States (here represented by this Court)[6] – the reality is that this Court was completely right in its admonition of nearly ten years ago, criticizing the lower courts for

> inadequate attention to the real impact that these decisions, and particularly the delay in these decisions, have on children's lives. . . . Time is more of the essence in these cases involving children than in any other cases and decisions should be made promptly after the close of evidence. Otherwise irreparable harm can be caused to the entire family, and especially the children. Leaving children and their families in limbo for months without allowing them to make appropriate plans is in no one's best interests. For adults a few months may seem like a short time, but for children, a few months is a significant percentage of their lives. Top priority should be given to resolving their situations.

Sims v. Sims, 109 Nev. 1146, 865 P.2d 328 (1993). The *Vaile* case stood submitted in this Court on February 7, 2001. No substantive child custody order can be entered by any court, anywhere, so long as the Hague Convention matter remains before this Court. Convention, Article 16.[7]

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[6] The Hague Convention on the Civil Aspects of International Child Abduction, and its implementing legislation, the International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601-11610, includes the commitment of the contracting states (in Article 11) to make a determination under the treaty within six weeks of the initial filing of a petition asserting that children have been wrongfully taken from their habitual residence..

[7] 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 . . . .

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Additionally, Cisilie has been communicating with the woman Scot "married" in the midst of the District Court proceedings in 2000 – and has since "divorced." The information she imparted to Cisilie about the conditions under which her children are being held virtually incommunicado at the Texas compound, in addition to what the Vaile girls have told her directly, has further alarmed Cisilie about her daughters' safety in Scot's care.

In short, this Court's lengthy consideration of the pending Writs has endangered the welfare, if not the future lives, of the minors at issue in these proceedings, and undersigned counsel implores the Court, in the strongest possible terms, to complete its deliberations and issue a decision in the pending Writ Petitions.

IV. CONCLUSION

We respectfully renew our request that any briefing schedule be delayed until the Court has rendered a decision on the writs. Our opponent's decision should be stricken as untimely; if that request is refused, we should be permitted to file a more expansive Reply. A decision in the Writs should be issued at the first date practicable.

DATED this 5th day of April, 2002.

Respectfully submitted by:
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CERTIFICATION OF SERVICE

I hereby certify that service of the foregoing was made on the 5th day of April, 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,
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Courtesy Copy

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

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