IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE,
Appellant,
vs.
CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,
Respondent.

S.C. NO. 61415
D.C. NO. 98-D-230385-D

ROBERT SCOTLUND VAILE,
Appellant,
vs.
CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,
Respondent.

S.C. NO. 62797

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

I. INTRODUCTION

As directed by the *Order Directing Answer To Petition for Review* issued by this Court on July 21, 2016, Cisilie Porsboll provides the following *Answer*.

Scotlund continues to use the appellate courts of this and other states to further delay collection of ***ANY*** child support arrears or attorney's fees. His arguments include misstatements of both law and logic and he continues to misquote both this

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Court and the Court of Appeals in furtherance of his attempted misdirection as to the issues actually presented.

There is no danger of affecting Nevada's receipt of federal funding or establishing a "Nevada only" legal precedent under UIFSA in this case ***unless*** any of Scotlund's arguments are found to have any merit whatsoever.

Scotlund contends that the district court "defied this Court's previous order" by "overruling a federal agency." Nothing of the kind occurred. This Court asked the district court to determine if there was a Norwegian child support order and to determine if it had any impact on the case. That is exactly what the district court did.

The district court attempted to calculate the massive arrearages using the convoluted child support formula included in the parties' *Decree of Divorce*. The Court of Appeals found that the district court's precise calculations were flawed and lacked sufficient findings. However, nothing in the *Decision* indicated there is ***not*** a massive child support arrearage. In fact, the Court of Appeals found it "troubling" that Scotlund is still not paying any of that massive arrearage in child support.[1]

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[1] As a matter of record, the district court has already held hearings giving both parties the opportunity to be heard as to the correct calculation of the child support arrearages in accordance with the directions from the Court of Appeals. Scotlund refused to even acknowledge the district court's direction to provide information and refused to participate in the hearings. A new child support arrearage order was issued

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Scotlund argues that the Court of Appeals gave the district court authority to "inflict punishment" by requiring him to pay child support during the period he had abducted the children from 2000 to 2002. The assertion is bogus.

This Court found in *Vaile I* that Scotlund had wrongfully taken the children from their mother and refused to return them.[2] His abduction of the children did not make him the "residential parent" under the terms of the *Decree*. There was no punishment, just a valid order that he pay child support to the rightful residential parent despite his kidnaping of the children.

Lastly, Scotlund argues that the Court of Appeals upheld a finding of contempt when "the basis was overturned." This is another misstatement of the facts and the record. Scotlund ***did*** fail to appear at the hearing; Scotlund ***did*** fail to pay any amounts toward his child support arrearages; Scotlund ***did*** fail to properly update the Court as to his employment; Scotlund ***did*** fail to update the Court file as to his

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on June 21, 2016, and Notice of Entry was issued on the same day. No appeal was filed, and the new determination of child support arrearages is now an unappealable order.

[2] *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 44 P.3d 506, 519 (2002), Because Scotlund removed the children from their habitual residence while Cisilie was validly exercising custody rights over the children, and because he removed the children under the false pretense of a valid custody order, Scotlund wrongfully removed the children from Norway.

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address; Scotlund ***did*** fail to make payments toward his sanction judgments; and, Scotlund ***never did*** file an updated Detailed Financial Disclosure Form.[3] The facts are patent on the face of the record.

Scotlund argues that his contempt charge was criminal rather than civil as there was no provision for a purge. This is also untrue. The contempt order allowed him to purge the contempt by the payment of $40,000.[4] He refused to pay it – or anything.

This *Response* follows.

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[3] Scotlund includes additional issues that are dealt with in turn in this *Answer*.

[4] *See* Exhibit A for the entirety of the contempt charges and the purge amount listed in paragraph 10.

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II. STATEMENT OF RELEVANT FACTS[5]

The underlying facts of this case – which could take up nearly 50% of the brief – are recited in *Vaile v. Eighth Judicial Dist. Court*[6] and *Vaile v. Porsboll.*[7] As a courtesy to the Court, only those facts from after the issuance of *Vaile v. Porsboll* that relate directly to the matters before this Court will be provided, though the record includes the entire history of the case.[8]

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[5] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. The "Statement of Facts" in Scotlund's *Request for Review* is entirely missing. Additionally, his statement of facts in his *Opening Brief* intermixes procedure, factual assertions (some accurate and some not), considerable argument, and proposed motivational explanations. For example, Scotlund's footnote (at 1) contends that "Eventual communications from the relevant Norwegian agency indicate that the order was sent to a previous invalid address for Vaile and then returned undelivered." This is not only the first time this has been suggested in the 17 years this case has been in litigation, but Scotlund has never offered ***any*** proof of this new assertion anywhere. The *Opening Brief* references (at 2) Scotlund's unsupported assertion that Cisilie sought and was granted a modification (an increase) to the Norwegian welfare determination as if it was a factual finding, which it was not. It would take more space than we have to point out all such errors and fabrications; the Court is asked to instead refer to the facts recited in the published court decisions and opinions, those that are part of the record, and the recital in this *Responsive Brief* pursuant to NRAP 28(b).

[6] *Vaile v. Eighth Judicial Dist. Court,* 118 Nev. 262, 44 P.3d 506 (2002).

[7] *Vaile v. Porsboll*, 128 Nev. ___, 268 P. 3d 1272 (Adv. Op. No. 3, Jan 26, 2012).

[8] We refer to the record supplied in cases 61415 and 62797 throughout this *Answer*.

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As directed by this Court in the remand ordered in *Vaile v. Porsboll*, the district court held hearings on April 9, and June 4, 2012, on the issues of whether the Norwegian welfare determination had any effect on the controlling nature of the original Nevada Child Support Order and on the total owed in accrued child support, interest, penalties, and attorney's fees. Both sides participated fully in those hearings and filed extensive briefings in support of their positions.[9]

On July 10, 2012, the district court issued its *Decision and Order.*[10] The district court found that Norway's internal administrative welfare process of setting a minimum child support sum was not and did not attempt to be a modification of the Nevada child support *Order*. The findings underlying that conclusion were that Scotlund had never sought modification of the Nevada order in Norway, and that the parties had never jointly filed a waiver in Nevada giving Norway jurisdiction to

[9] The April 9, 2012, hearing was set as an *Order to Show Cause Hearing*. Contrary to Scotlund's current assertions, he was required to be present at that hearing. He has never been granted permission to attend an evidentiary hearing telephonically.

[10] ROA, V23, pgs. 4875-4887.

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proceed with a modification. Those are the ***only*** two ways in which the Nevada order could be modified under UIFSA.[11]

The *Decision and Order* computed child support and arrearages as required by this Court's remand, determining that the child support calculation required Scotlund to pay nearly double that which had been ordered before this Court's decision.[12]

Further, the district court restated its prior order requiring that any child support ***not*** collected by the District Attorney's office ***must*** be paid through the Willick Law Group offices.[13]

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[11] As a matter of record, the California Court of Appeals for the 1st Appellate District ***also*** found that no evidence suggested that Porsboll registered the 1998 Nevada support order in Norway before the Norwegian agency rendered its support order, as would have been required under UIFSA for a valid modification.

[12] The convoluted child support calculation was devised by Scotlund in 1998 and was included in the parties' *Decree of Divorce*. Scotlund's claim that Cisilie "was not the prevailing party" in the underlying *Orders* is incorrect, since he was found to owe child support as Cisilie sought; this Court simply found the district court's original calculation were a prohibited "modification" of the sum actually due, and remanded for entry of a higher arrearage figure as called for by the 1998 *Decree*.

[13] The district court had originally made this a requirement of Scotlund in an *Order* issued at a hearing on March 8, 2010. ROA, V18, pgs. 3925-3930. The court never altered or rescinded that *Order*.

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The district court deferred to the District Attorney's office to calculate penalties owed and stated that a further order would be issued stating the amount owed in penalties.

Lastly, the district court required the Willick Law Group to submit a *Memorandum of Fees and Costs* for the determination of attorney's fees as required by NRS 125B.140.[14]

On August 16, 2012, the Court entered an *Order* in accordance with NRS 125B.140, in the amount of $57,483.38.[15] An identical *Order* was inadvertently re-entered the following day (the orders were duplicative, not cumulative).

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[14] NRS 125B.140(2)(c) states: The court ***shall*** determine and include in its order:

(1) Interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due; and

(2) A reasonable attorney's fee for the proceeding....

[Emphasis added.] *See also Edgington v. Edgington*, 119 Nev. 577, 80 P.3d 1282 (2003) (attorney's fee awards are mandatory where child support arrears are found, in the absence of an express finding that "the responsible parent would experience an undue hardship" by paying such fees).

[15] ROA, V23, pgs. 4967-4968.

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On August 17, the district court entered its *Order On Child Support Penalties*[16] as calculated by the District Attorney's Office, awarding $15,162.41 in mandatory child support arrearage penalties under NRS 125B.095.

On October 30, 2012, the district court via minute order[17] set a hearing on Cisilie's *Motion for An Order To Show Cause* for January 22, 2013.

Unhappy with the decisions being made in both the district court and Nevada Supreme Court, and while the case remained in full litigation in Nevada, Scotlund began making covert filings in California without service on Cisilie and obtained a rogue "default" order stating that the Norwegian welfare determination was the "controlling order." That default order was issued months after Nevada had already ruled that the Norwegian welfare determination was ***not*** controlling. Because Scotlund never told the California court about the Nevada proceedings, the court there never had a chance to note that the existing Nevada order on the same question was entitled to full faith and credit.[18]

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[16] ROA, V23, pgs. 4969-4970.

[17] ROA, V25.

[18] The California Order was issued on November 1, 2012, a full four months after the Nevada Order. When we found about it, we appealed that ruling through a special appearance seeking to set aside the rogue default order. Oral argument was held in the First District court of Appeals on February 24, 2015. The decision was

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Scotlund has used the rogue default order from California to block collection actions in his current home state of Kansas, telling the courts ***there*** that California and Nevada are "in conflict."

In Nevada, Scotlund waited nearly three months until the last possible moment before his contempt hearing – until January 15, 2013 – to file a spurious *Notice of Intent to Appear By Telephone*[19] in violation of Supreme Court Rule Part IX Rule 4(2)(b)(2), which requires a litigant to appear at an evidentiary hearing where his testimony is required. We filed an objection the next day – January 16 – stating all of the reasons why Scotlund's "notice" (request) should be denied.[20]

On January 17, the district court, via minute order,[21] denied Scotlund's "notice" and requiring him to attend the hearing.[22] On January 18 – the Friday before a three-

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provided to the Court of Appeals in a Supplemental filing.

[19] ROA, V24, pgs. 5213-5214.

[20] ROA, V24, pgs. 5215-5219.

[21] ROA, V25.

[22] Contrary to Scotlund's contentions, he actually had some three ***months*** to arrange to attend the hearing. He only tried to use the telephonic appearance rules at the last moment to try to avoid being present and thus avoid the incarceration order he knew was coming for his contempt.

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day weekend – Scotlund filed a motion requesting a continuance.[23] There was no time to file an opposition or for the district court to actually respond before the hearing set for January 22.

On January 22, the district court held the properly noticed *Order to Show Cause* hearing, denied Scotlund's late-filed request for a continuance, and defaulted Scotlund for his refusal to appear. On February 15, the district court issued the resulting *Decision and Order on Attorney's Fees*,[24] and on February 20, issued its substantive *Order* from the hearing.[25]

Scotlund appealed the orders for child support and his contempt. The Court of Appeals issued it's *Order Affirming in Part, Dismissing in Part, Reversing in Part and Remanding* on December 29, 2015, for the consolidated cases 61415 and 62797.

On Scotlund's request for rehearing, the Court of Appeals issued its *Order Granting Rehearing in Part, Denying Rehearing in Part and Affirming.*

Scotlund then sought review by this Court to achieve further delay.

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[23] ROA, V24, pgs. 5220-5224.

[24] ROA, V24, pgs. 5254-5256.

[25] ROA, V24, pgs. 5262-5265.

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III. ANSWER

A. The District Court Did Not "Overrule a Federal Agency"

1. UIFSA Is Controlling When Determining the Validity of a Purported "Competing Order"

UIFSA[26] governs the underlying dispute. UIFSA was intended to establish an efficient, fair and uniform means of enforcing support orders across jurisdictional lines. One of its core concepts is that only ***one*** support order may be in force at any given time, which is enforceable but not modifiable by other jurisdictions.[27] This was a significant departure from earlier law (URESA and RURUESA), under which multiple and conflicting child support orders were both possible and problematic.[28] UIFSA was unanimously approved by the National Conference of Commissioners on Uniform State Laws in August of 1992, and has since been adopted by all 50 states.[29]

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[26] The Uniform Interstate Family Support Act, further detailed below.

[27] 9 U. Laws Ann. (2005) Interstate Family Support Act (1996) Prefatory Note to Background Information, p. 284; *de Leon v. Jenkins*, 143 Cal. App. 4th 118, 124 (2006).

[28] 9 U. Laws Ann., *supra*, Prefatory Note to Establishing a Support Order, p. 287; see also Pub. L. 103-383 (Oct. 20, 1994) § 2, 108 Stat. 4063.

[29] UIFSA was amended in 1996, 2001, and 2008. 9 U. Laws Ann., *supra*, Interstate Family Support Act (2001), Prefatory Note to Background Information, pp. 161-162, (2014 Supp.) Interstate Family Support Act (2008), Prefatory Note to History of Uniform Family Support Acts, pp. 100-102.

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UIFSA includes several jurisdictional provisions designed to work together to implement the one-order system. Once personal jurisdiction has been acquired over the parties, it continues for the life of the order. A state or country[30] that acquires personal and subject matter jurisdiction to issue an initial support order under UIFSA has continuing and exclusive jurisdiction to modify that order until all parties and any children for whose benefit the order was issued have left the state or the parties have consented to the assumption of jurisdiction by a different state.

Even if all parties and children have left the issuing state so that it loses jurisdiction to modify a support order, it retains continuing jurisdiction to enforce the order. In fact, states other than an issuing state may (indeed, must) enforce an out-of-state support order if it was issued in accordance with UIFSA's jurisdictional requirements or a "substantially similar" law. But, a court may not modify an out-of-state order unless it has acquired ***modification jurisdiction*** under the provisions of UIFSA.

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[30] "State" is defined to include foreign countries that have procedures for issuance and enforcement of support orders "substantially similar" to the procedures under UIFSA. Federal law provides that the federal government may establish a reciprocating agreement with any foreign country. (42 U.S.C. § 659a(a).)

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Modification jurisdiction is proper only where (a) the parties have agreed to have the tribunal assume modification jurisdiction, or (b) the obligor, individual obligee and children have all left the issuing jurisdiction, a nonresident seeks modification in the forum state, and the other party is subject to personal jurisdiction in the forum state. In either case, the preexisting order must first be registered with the appropriate tribunal in the state where modification is sought.

Once a proper modification has been ordered, ***that*** tribunal assumes continuing, exclusive jurisdiction over the question of child support and the preexisting order is unenforceable.

These provisions strictly limit the power of courts to modify preexisting support orders from other states, thereby helping to ensure that only one enforceable order prevails at any given time. The registration requirement puts the modifying tribunal on notice that it is being asked to modify another state's order, not to issue an ***initial*** order. The tribunal will thus be alerted to make sure it has jurisdiction under UIFSA to modify a preexisting order.

In addition, UIFSA forces the party who seeks modification to "play an away game on the other party's home field" so as to ensure the modifying state has personal

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jurisdiction over both parties.[31] In practice, this usually means the parent seeking modification must make any request for modification in the state of the ***other*** parent's residence.

Under both current and the prior uniform acts, a modifying order had to be identified on its face as such, or it was not enforceable.[32]

A modification not issued in accordance with UIFSA jurisdictional principles is not entitled to enforcement anywhere. "[U]nder the one-order-at-a-time system, the validity and enforceability of the controlling order continues unabated until it is fully complied with, *unless it is replaced by a modified order issued in accordance with the standards established by [UIFSA].* That is, even if the individual parties and the child no longer reside in the issuing State, the controlling order remains in effect and *may be enforced by the issuing State or any responding State* without regard to the fact that the potential for its modification and replacement exists."[33]

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[31] 9 U. Laws Ann., Interstate Family Support Act (2001) com. foll. § 611, p. 256.

[32] *In re Marriage of Gerkin,*161 Cal. App. 4th 604, 617 (2008) [enforceable under prior law only "if the modification was litigated and noted explicitly on the new order"]; *Landahl v. Telford*, 116 Cal. App. 4th 305, 317-318 (2004) [applying UIFSA and comparing its procedures to prior law].

[33] 9 U. Laws Ann., Interstate Family Support Act (2001), com., § 206, p. 196, italics added; accord, Uniform Interstate Family Support Act Com. (2001), 29F, Pt.

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Federal law specifically requires state adoption of UIFSA in order to receive certain federal funds.[34] One reason for the federal law was to lighten the public burden of supporting children whose parents were not supporting them.[35] The federal legislation requires states to create or designate an organizational unit devoted to collection and distribution of child support payments.[36] Only support orders "issued by a court or an administrative agency of competent jurisdiction" qualify for enforcement under Title IV-D.[37]

Under UIFSA, Norway is considered a state, and thus for a modification order issued by Norway to be controlling, it must significantly comply with the provisions of UIFSA.[38]

2, West's Ann. Fam. Code (2013 ed.) foll. §4910, pp. 50-51.

[34] 42 U.S.C. § 666(f); 9 U. Laws Ann., Interstate Family Support Act (1996) Prefatory Note to Background Information, pp. 284-285; see generally Social Security Act Title IV-D, 42 U.S.C. §§ 651-669b (Title IV-D).

[35] 42 U.S.C. §§ 651, 652; § 17400, subd. (a).

[36] 42 U.S.C. § 654(3), (4).

[37] 42 U.S.C. § 653(p).

[38] Scotlund has repeatedly argued that any order issued by Norway must be regarded as controlling. He then cites to provisions of UIFSA concerning initial child support jurisdiction. It is *res judicata* that the 1998 Nevada order is the initial child support order and that modification jurisdiction is necessary for a new controlling order.

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Also under UIFSA, when more than one support order has been issued, a request may be filed in an appropriate tribunal in the state of residence of either the obligor or individual obligee for an order determining which order is "controlling." Such a determination is necessary to effectuate UIFSA's one-order policy. In theory, however, there should be no reason to use this provision in cases where the support orders both were issued purportedly in compliance with UIFSA, since UIFSA contains jurisdictional limitations designed to prevent the issuance of competing orders. In fact, the controlling order provision was included in UIFSA for the express purpose of resolving priority of preexisting conflicting orders issued under prior law.[39]

The jurisdictional rules under UIFSA makes it appropriate for a court considering a controlling order determination to inquire into whether the tribunals that made the vying support orders had jurisdiction under UIFSA to do so.[40]

Here, this Court required the district court to make the determination as to which order was controlling. The district court held hearings on the issue and

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[39] Uniform Family Support Act Com. (2001), 29F, Pt. 2, West's Ann. Fam. Code (2013 ed.).

[40] *See Stone* v. *Davis*, 148 Cal. App. 4th 596, 602 (2007), concluding state that issued subsequent support order did not have modification jurisdiction under UIFSA.

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concluded, correctly, that Norway had no proper modification jurisdiction under UIFSA. It reasoned that the agency in Norway could only have validly assumed modification jurisdiction if either (1) Vaile as a nonresident of Norway had petitioned for modification in Norway; or (2) both parties had filed written consents in the Nevada court allowing the Norway tribunal to modify the child support order and assume jurisdiction.[41]

Even if Scotlund's proposition that Cisilie "sought a modification" to the Nevada order were true (and it isn't – all efforts were characterized strictly as enforcement proceedings), neither of the above provisions would apply as ***Scotlund*** would have had to seek a modification, and he would have had to register the Nevada order in Norway ***before*** making his request.

Neither of those things ever happened. It is uncontroverted that the parties never agreed to jurisdiction in Norway, and Scotlund never registered or asked to modify the Nevada order in Norway.[42] Thus, the district court continued to enforce

[41] NRS 130.61 l(l)(a), (b) (2014).

[42] There is no evidence to suggest that Porsboll (either) registered the 1998 Nevada support order in Norway before the Norwegian agency rendered its support order. (UIFSA § 609.)

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the 1998 Nevada support order. As such, this Court and the district court complied with UIFSA and never "overruled" any Federal Agency as Scotlund asserts.[43]

No one disagrees with Scotlund's contention that Norway is a Foreign Reciprocating Country (FRC). However, that does not relieve the parties of their requirements under UIFSA for an order issued by Norway to comply with the modification provisions in order to supplant a preexisting child support order with a new controlling order.[44]

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[43] The Court should note that Scotlund uses argument in his brief that *Vaile I* established that only Norway had jurisdiction of the parties. This is a misstatement of the law of the case. *Vaile I* said that only Norway had jurisdiction over custody matters. It clearly found that a child support order entered in Nevada was valid and enforceable.

[44] The entirety of Scotlund's arguments on pages 4 through 6 of his brief concern the enforceability of a Norwegian ***initial*** child support order in the United States. Since Norway has never issued an initial child support order in this case, his argument is entirely irrelevant.

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2. The Norwegian Court Did Not "Assume Jurisdiction"

Scotlund again attempts to confuse the facts. He claims that Norway "may" assume jurisdiction.[45] We agree with that point. However, it never did, since UIFSA requirements were never met (or even attempted).

The Court of Appeals was not the only court that has set out the standards required for a "state" to assume jurisdiction. The California Court of Appeals for the 1st Appellate District examined exactly the same point and made exactly the same finding in 2015.[46] Nothing further needs to be discussed here.

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[45] Scotlund argues that the federal government has already determined that Norway can take jurisdiction. However, that is not what the FRC stands for. The FRC indicates that Norway has child support laws that are similar to those in the United States. This does not relieve Norway from complying with UIFSA for modification jurisdiction.

[46] See *Respondent's Supplement* filed with the Court of Appeals of the State of Nevada in cases 61415 and 62797 as required by the California Appellate Court of the 1st Appellate District.

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3. Scotlund Never Registered the Norwegian Order in Nevada

As this Court is aware, registration of a child support order is specified by NRS chapter 130: it requires the person seeking registration to file a petition for registration giving proper notice to all concerned parties.

That never happened. Scotlund had not done anything even faintly similar to such a registration at the time this Court rendered its decision in *Vaile II* as the Court noted in footnote 4 of that decision.[47] To this day, Scotlund has not registered nor requested that the Norwegian support orders be registered in Nevada, he has only attached them to other filings.

Scotlund attempts to make it the problem of the Nevada Court of Appeals that he [Scotlund] does not know the law and attempts to mislead this Court that there is some sort of federal mandate that requires Nevada to blindly accept the Norwegian orders as controlling.[48] His assertions are specious.

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[47] Although the parties' appellate filings and various parts of the appellate record allude to a possible child support order entered by a Norway court, no such order is contained in the appellate record, nor does it appear that the district court was provided with any such order. Consequently, on remand, the district court must determine whether such an order exists and assess its bearing, if any, on the district court's enforcement of the Nevada support order.

[48] He again argues that *Vaile I* established that the Nevada Courts did not have jurisdiction over the parties and the children. He fails to state that jurisdictional

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B. Child Support Arrearages Are Not "Punishment"

Scotlund attempts to argue that the orders issued by the district court in 2000 were valid until they were overturned. That is not the law of the case. Specifically, this Court held:

> The district court, however, relied upon Scotlund's ***untruthful*** representation when it issued its order granting him custody of the children. At the hearing held to decide whether Cisilie was in contempt of court for failing to bring the children to the United States as contemplated by the parties' agreement, the district court asked Scotlund how long he and the children had lived in Nevada. Scotlund responded that they had lived in Nevada "all their lives." The district court then issued its order holding Cisilie in contempt. This order further stated that Cisilie was to immediately return the children to Scotlund's custody.
>
> Had the district court been apprised of the true facts, the order compelling Cisilie to return the children to Scotlund's custody might not have been granted. Moreover, the underlying basis for the order, the provision in the divorce decree incorporating the parties' agreement as to custody and visitation, is void and unenforceable.
>
> Accordingly, when Scotlund traveled to Norway to take custody of the children, he did so ***under an invalid order***. Further, Cisilie was properly exercising custody rights over the children when Scotlund arrived in Norway. Because Scotlund removed the children from their habitual residence while Cisilie was validly exercising custody rights over the children, and because he removed the children under the ***false pretense of a valid custody order***, Scotlund ***wrongfully*** removed the children from Norway.[49]

[Emphasis added.]

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statement ***only*** applied to child custody. *Vaile II* reiterated in footnote 2: We reject Vaile's attempt to resurrect challenges to Nevada's personal jurisdiction over the parties, which were previously determined in *Vaile v. District court*, 118 Nev. 262, 268-77, 44 P.3d 506, 511-16 (2002). Moreover, the Nevada district court retains continuing personal jurisdiction over the parties under NRS 130.202. [UIFSA]

[49] *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 44 P.3d 506, 519 (2002).

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As such, Scotlund wrongly held the children and he should have been paying child support during that entire time.[50] He certainly should not benefit from his wrongdoing; the public policy ramifications of any other ruling would be horrific.[51]

Additionally, this Court has already dealt with this issue in *Vaile II* at footnote 9.[52] Scotlund made this argument in that case and this Court rejected it as not being meritorious. The law of the case[53] in this matter is that Scotlund has ***never*** been the residential parent and thus has owed child support for the entire minority of the children from the date of divorce.

The payment of child support is not "punitive" in nature. Scotlund always had the duty to support his children – he just refused to do so.

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[50] *Day v. Day*, 82 Nev. 317, 417 P.2d 914 (1966), holding that money paid directly to a son can't be used as an offset to child support owed to the mother.

[51] *Mack v. Estate of Mack*, 125 Nev. 80, 206 P.3d 98 (2009). This case deals directly with Nevada's slayer statute but is analogous in that its central holding is that a wrongdoer should not benefit from his acts.

[52] *Vaile v. Porsboll*, 128 Nev. ___, 268 P.3d 1272 (Adv. Opn. No. 3, Jan. 26, 2012).

[53] *Office of State Eng'r v. Curtis Park Manor Water Users Ass'n*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985), providing that [t]he doctrine of the law of the case provides that where an appellate court states a principle of law in deciding a case, that rule becomes the law of the case, and is controlling both in the lower court and on subsequent appeals, as long as the facts are substantially the same.

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Lastly, Scotlund argues that Cisilie suffered "no economic impact" due to his not paying child support while he wrongfully held them in the United States. Cisilie would disagree since she has a massive attorney's fee bill, costs for the counseling of the children that were adversely affected by Scotlund's actions, and multiple costs, fees, expenses, and damages reflected in the huge tort judgment that Scotlund has never paid.

C. The Appellate Court Correctly Upheld Scotlund's Contempt of Court

Scotlund first lies that the district court had granted him permission to attend the hearing telephonically. That did not happen. In fact, this Court's rules concerning telephonic appearances specifically exclude hearings on orders to show cause as hearings that can be attended via communications equipment.[54]

The truth is that Scotlund waited some two months before filing a purported "notice to appear telephonically." We immediately objected and the Court ordered that he appear. He did not appear. There was no "short notice" as he was aware of

[54] See Supreme Court Rule Part IX, Rule 4(2)(b)(2).

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the hearing and is charged with knowing the law concerning his appearance at an evidentiary hearing.

His request for a continuance was untimely; it was filed late on a Friday before a three day weekend and the hearing was scheduled for the following Tuesday.

It is uncontroverted that Scotlund had paid nothing in child support for the period for which he was held in contempt. Had he been paying anything toward his massive arrears, he presumably would not have been held in contempt.[55]

Scotlund argues that he was subject to "criminal contempt sanctions" as the order required that he be incarcerated for 275 days (11 counts of contempt at 25 days per count) with no bail. However, he fails to note that the same order allowed him to purge his contempt by paying $40,000 in back child support. Since there was a purge clause in the order, it is not criminal contempt.[56]

As to whether it is proper to appeal a contempt order, this Court has determined that:

> No rule or statute authorizes an appeal from an order of contempt. See NRAP 3A(b) (listing orders which may be appealed); NRS Chapter 22

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[55] As noted, the Court of Appeals noted and found it "troubling" that he had paid nothing toward his child support.

[56] *Lewis v. Lewis*, 132 Nev. ____, ____ P.3d ____ (Adv. Op. 46, Jun. 30, 2016) (a contempt order that does not contain a purge clause is criminal in nature).

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> (concerning grounds and procedure for imposing contempt sanctions). We therefore conclude that this court does not have jurisdiction over an appeal from a contempt order where no rule or statute provides for such an appeal. Rather, contempt orders must be challenged by an original petition pursuant to NRS Chapter 34.[2]
>
> Writ petitions are also more suitable vehicles for review of contempt orders. Particularly where the purpose of the contempt order is to coerce compliance with the district court's orders, it appears preferable for the district court to be able to modify its orders to meet changing circumstances. A writ petition permits the district court this flexibility because the court retains jurisdiction over the order during the pendency of the writ petition. In contrast, the district court would be divested of jurisdiction to modify or vacate the contempt order once a notice of appeal had been filed.[57]

[Some internal footnotes omitted.]

Scotlund argues that an appeal is warranted when the basis for the contempt order is otherwise appealable. He misstates the law again. In *Matter of Water Rights of Humboldt River*,[58] the contempt charge was specifically laid out in NRS 533.220. In other words, there was "a rule or statute that grants direct appeal" for contempt. That case is inapplicable to this one.

Scotlund's remedy was through a writ petition. He argues against this on the basis that the time for filing such a writ has long since passed, and then uses circular

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[57] *Pengilly v. Rancho Santa Fe Homeowners*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000).

[58] *Matter of Water Rights of Humboldt River*, 118 Nev. 901, 59 P.3d 1226 (2002).

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logic in claiming that a writ will not be granted if one has a plain, speedy, and adequate remedy in the ordinary course of law (in other words, an appeal).

Pengilly is the controlling case and Scotlund's request for review of his contempt through direct appeal is without merit as this Court lacks jurisdiction to consider it.[59]

D. Other Questions Raised by Scotlund

1. Attorney's Fees Were Required

Scotlund misrepresents the truth again in claiming that Cisilie has "consistently argued that she should not abide by the parties' child support agreement or by the Norwegian orders for support."

As the California and Nevada courts have both held, the Norwegian orders are not enforceable in any state under UIFSA, whether or not they are or ever were enforceable in Norway.

Cisilie has always referenced the agreement entered into by the parties (as incorporated in the resulting *Decree*) as the basis for the child support owed.

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[59] Scotlund cites to no statute or law that allows for a direct appeal of contempt in this instance.

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Previously, we noted that establishment of a sum certain child support order is required under IV-D program and NRS 125B.070 and attempted to obtain an arrearage based on that sum certain. This Court determined that establishing that sum certain would actually be an inappropriate "modification" rather than "enforcement," but at no time has any court of competent jurisdiction found that child support was not owed. The only uncertainty was the precise ***amount*** owed.

Under NRS 125B.140(2)(c)(2), the district court had little discretion but to award attorney's fees, because arrearages exist. The amount of the award is discretionary (a "reasonable attorney's fee"), but an award must be made if there is an arrearage absent extraordinary findings, which Scotlund, enjoying a six-figure income pocketed while refusing to pay any child support, could never meet.

Scotlund argues that Cisilie has not been the prevailing party and thus is not entitled to fees. Over and above the fact of the statutory requirement that fees "shall" be awarded when there is an arrearage, Cisilie has actually prevailed in every decision. Yes, the amount of the child support has been overturned due to calculation errors (due mainly to the convoluted calculation methodology that Scotlund created and can't get right himself) but he has ***always*** been found to owe the support and he has never tried to actually pay that arrearage.

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The Court of Appeals required Scotlund to appeal the award of attorney's fees to have them overturned. This is not new.[60] In fact, NRAP Rule 14 states:

> A docketing statement shall state specifically all issues that a party in good faith reasonably believes to be the issues on appeal. The statement of issues is instrumental to the court's case management procedures, however, such statement is not binding on the court ***and the parties' briefs will determine the final issues on appeal.***

[Emphasis added.]

In other words, if Scotlund did not argue the issue in his Opening Brief and specifically list the issues on appeal, he is not entitled to relief.

2. This Court Already Rejected Scotlund's Other Arguments

This is a matter of common sense and basic reading of this Court's decisions. Specifically, when the Court said:

> Additionally, in light of our resolution of this matter, we do not reach Porsboll's challenge, in Docket No. 53798, to the methodology employed by the district court to calculate Vaile's statutory penalties and the ensuing penalties.[61]

it indicated that the issue was not addressed, and that there was no reason to deal with the issue.

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[60] Scotlund cites to no authority to support his position that the attorney's fees should be reversed.

[61] *Vaile v. Porsboll*, 128 Nev. ___, 268 P.3d 1272 (Adv. Opn. No. 3, Jan. 26, 2012), end of footnote 9.

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By contrast, when the Court said:

> With regard to Vaile's remaining challenges to the district court's decision, to the extent they are not explicitly addressed herein, we have considered Vaile's arguments and conclude that they lack merit.[62]

the Court was telling Scotlund that his further arguments and assertions of error were denied, whether because they were unsupported, spurious, or otherwise not worth the Court's time to address individually. Nothing further need be said on the point here.

3. The Court of Appeals Did Not Create A "New Standard For Judicial Estoppel"

Even if Cisilie ***had*** sought the Norwegian child support order (and it was the Norwegian welfare system that actually did so) the enforceability of that order is still controlled by UIFSA. As argued above, it is not enforceable because there has never been any modification of the Nevada order.[63]

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[62] *Id.*, beginning of footnote 9.

[63] Of interest here is that Scotlund admits that he did not participate in any way in the Norwegian welfare action which established that country's minimum child support order, which fact alone is all that is necessary for our position that it is unenforceable under UIFSA.

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This Court clearly established when judicial estoppel is appropriate in *Mainor v. Nault*,[64] when it held: "The primary purpose of judicial estoppel is to protect the judiciary's integrity rather than the litigants.[65] The court may invoke the doctrine at its discretion.[66] However, '[j]udicial estoppel is an extraordinary remedy' that should be cautiously applied only when 'a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage.[67]' Judicial estoppel does not preclude changes in position not intended to sabotage the judicial process."[68]

"Although not all of these elements are always necessary, the doctrine generally applies 'when' (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or

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[64] *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004).

[65] *Drain v. Betz Laboratories, Inc.*, 81 Cal. Rptr. 2d 864, 867 (Ct. App. 1999).

[66] *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001).

[67] *Kitty-Anne Music Co. v. Swan*, 4 Cal. Rptr. 3d 796, 800 (Ct. App. 2003).

[68] *U.S. v. Real Property Located at Incline Village*, 976 F. Supp. 1327, 1340 (D. Nev. 1997); *Breliant*, 112 Nev. at 669, 918 P.2d at 318.

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accepted it as true); (4) the two positions are totally inconsistent; and (5) ***the first position was not taken as a result of ignorance, fraud, or mistake.***'"[69]

It is clear that this Court determined that ignorance is a standard that has been in place at least since 2004. Of course, we would contend that Cisilie was not taking contrary positions as the Norwegian orders are separate from the Nevada controlling order, but in any case, there is no "new standard" for judicial estoppel displayed in any aspect of this case.

IV. CONCLUSION

The bottom line to this case is that the Norwegian welfare determination is unenforceable in any way, anywhere (except, possibly, internally within Norway). With that in mind, Scotlund's entire argument, position, and assertions fail.

Scotlund's filings are rife with inaccuracies, tortured readings of the law and record, and outright lies.

[69] *Furia v. Helm*, 4 Cal. Rptr. 3d 357, 368 (Ct. App. 2003) (quoting *Thomas v. Gordon*, 102 Cal. Rptr. 2d 28, 32 (Ct. App. 2000) (quoting *Drain*, 81 Cal. Rptr. 2d at 868 (quoting *Jackson v. County of Los Angeles*, 70 Cal. Rptr. 2d 96, 103 (Ct. App. 1997)))).

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His contention that the Court of Appeals decision somehow sets Nevada apart from all other jurisdictions under UIFSA is just plain wrong – as the California appellate courts have recently held. Scotlund just refuses to understand how UIFSA works even though it has been explained to him multiple times in Nevada and recently in California where the courts determined that they lacked any jurisdiction to proceed.

We ask the Court to deny his request for review as expeditiously as possible so we can get this child support case back on track for actual collections.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 28.2

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using WordPerfect Office X3, Standard Edition in font size 14 and type style Times New Roman; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more and contains **7,172** words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains ______ words or _________ inch of text; or

[X] Does not exceed 30 pages.

3. *Finally,* I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of August, 2016.

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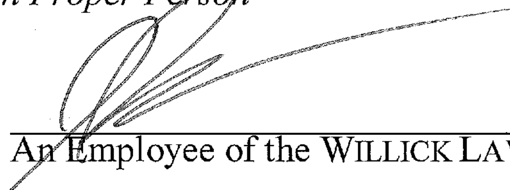
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 4th day of August, 2016, documents entitled *RESPONDENT'S ANSWER TO PETITION FOR REVIEW* were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorney's listed below at the address, email address, and/or facsimile number indicated below:

Mr. Robert Scotlund Vaile
2201 McDowell Avenue
Manhattan, Kansas 66502
scotlund@vaile.info
legal@infosec.privacyport.com
Plaintiff In Proper Person



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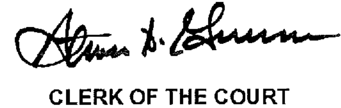

CLERK OF THE COURT

ORDR
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE, Plaintiff, vs. CISILIE VAILE PORSBOLL, Defendant.	CASE NO: 98-D-230385-D DEPT. NO: I DATE OF HEARING: 01/22/2013 TIME OF HEARING: 1:30 P.M.

ORDER FOR HEARING HELD JANUARY 22, 2013

This matter came before the Court on Defendant's *Motion For Order to Show Cause Why Robert Scotlund Vaile Should Not Be Held In Contempt For Failure To Pay child Support and For Changing Address Without Notifying The Court; To Reduce Current Arrearages to Judgment; and For Attorney's Fees and Costs*, and Defendant's *Oppositions*. Defendant, Cisilie A. Porsboll, f.k.a. Cisilie A. Vaile was not present as she resides in Norway, but was represented by her attorneys of the WILLICK LAW GROUP, and Plaintiff was not present, nor represented by counsel, having been duly noticed, and the Court having read the papers and pleadings on file herein by counsel and being fully advised, and for good cause shown:

FINDS AS FOLLOWS:

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FEB 04 2013
DISTRICT COURT
DEPT I

1. That Plaintiff had filed a *Notice of Intent to Appear By Telephone* on January 15th, an *Objection to Notice of Intent to Appear by Telephone* was filed by Defendant on January 16th, and the Court Denied Plaintiff's request to appear by telephone on January 17th.

2. That pursuant to Nevada Supreme Court Rule 4(2)(b)(2), personal appearance is required for this Evidentiary Hearing for Contempt. (Time Index: 14:30:00 - 14:33:01)

3. The Court is also aware of the Plaintiff's filing requesting a continuance of this hearing, which is denied, and his request that Cisilie be physically present at the hearing, which the court finds as being moot, as he has failed to appear. (Time Index: 14:33:20 - 14:37:20)

4. The Supreme Court DENIED Mr. Vaile's request for a Stay of this hearing. (Time Index: 14:40:20; 14:44:44)

5. Mr. Vaile began his new employment on November 1st, in Kansas, it is reasonable that he relocated to Kansas at least the day before he began his employment, and that he had a duty to inform the Court and the parties of the relocation within 30 days of the move. Further, Mr. Vaile is aware of the continuing duty to update his *Financial Disclosure Form*, to reflect a change of employment and income. (Time Index: 14:56:40 - 14:53:16)

6. Mr. Vaile's notice of change of address was untimely. (Time Index: 15:30:08)

7. Mr. Vaile is in Default and is found to be in Contempt for failure to pay child support as order for a total of 11 months. (Time Index: 15:27:40)

8. Mr. Vaile is a high income earner, and due to the nature of this case he needs to file the *Detailed Financial Disclosure Form*. (Time Index: 15:36:10 - 15:38:34)

IT IS HEREBY ORDERED that:

1. Mr. Vaile was NOT granted approval to appear telephonically. (Time Index: 14:33:01; 15:27:15)

2. Cisilie's Exhibits A thru G, are admitted. (Time Index 14:43:35)

3. Mr. Vaile's *Motion to Continue* is DENIED. (Time Index: 14:33:38)

4. Mr. Vaile is in DEFAULT for failing to appear for today's hearing. (Time Index: 15:27:40)

5. Cisilie was not required to appear at this hearing as her attendance is moot. (Time Index: 14:37:20)

6. Defendant argued that the Court *Order* from California stating that a child support order from Norway was controlling, was obtained by fraud by Mr. Vaile. The Court orders that the California order is not binding in this matter. (Time Index: 14:39:07)

7. Cisilie's *Motion and Request for Relief* are GRANTED. (Time Index: 14:42:55)

8. Mr. Vaile is found to be in CONTEMPT for failure to pay child support in the months of May through October, 2010; July through September, 2011; and May through June 2012. (Time Index: 15:27:40)

9. Mr. Vaile has failed to pay child support in the amount of $2,870.13 per month, for the 11 months specified, totaling a principal arrearage of $31,571.43, accumulated interest in the amount of $62,466.86, and penalties in the amount of $15,162.41. (Time Index: 15:28:10)

10. Mr. Vaile may purge the Civil Contempt charge for the specified months by making a lump sum payment of $40,000.00. (Time Index: 15:44:13)

11. Mr. Vaile is ADMONISHED that he is required to inform the Court and Counsel of any change of address or employment. (Time Index: 15:35:15)

12. Mr. Vaile is in CONTEMPT for failure to notify the Court and counsel of having obtained new employment. (Time Index: 15:30:08)

13. Mr. Vaile is sanctioned in the amount of $500.00, said amount is to be paid no later than 30 days from the Notice of Entry of this *Order*. (Time Index: 15:31:30)

14. Mr. Vaile is directed to provide written notification to the WILLICK LAW GROUP and the Court of any change in employment within 10 days of the date of hire. (Time Index: 15:33:00)

15. Mr. Vaile is to provide the WILLICK LAW GROUP and the Court written notice of any change in his address within 10 days of the relocation. (Time Index: 15:32:20)

16. Mr. Vaile is to file an updated *Detailed Financial Disclosure Form*, and serve on counsel no later than March 15, 2013, at 5:00 p.m. (Time Index: 15:37:01)

17. Mr. Vaile shall commence payment of the $38,000.00 in sanctions specified in the July 10, 2012, *Order* at a rate of $1,000.00 per month, due by the 15th of each month, commencing

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February 15, 2013, until paid in full. Once the sanctions have been paid in full the payments are then to be applied to the previous award of Attorney's fees in the amount of $100,000.00 until paid in full. Failure to make timely payments as ordered until paid in full is under the pain of contempt. (Time Index: 15:41:25)

18. Cisilie is awarded attorney's fees, yet to be determined; WILLICK LAW GROUP is to file a *Memorandum of Cost and Fees* for the period of July 2012 to January 2013. (Time Index: 15:45:35)

19. WILLICK LAW GROUP specifically reserved the right to seek additional findings of contempt for July, 2012 forward. (Time Index: 15:45:55)

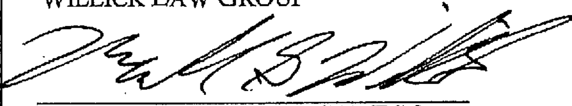
20. The Court issued a Bench Warrant for Mr. Robert Scotlund Vaile to serve 275 days of incarceration in the Clark County Detention Center, without bail, on the accumulated charges of CONTEMPT. (Time Index: 15:28:35)

21. WILLICK LAW GROUP shall prepare the *Order* for today's hearing, and prepare a separate *Order* for additional fees and costs.

DATED this ___ day of FEB 12 2013, 2013.

DISTRICT COURT JUDGE

Respectfully Submitted By:
WILLICK LAW GROUP



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