

FILED

SEP 04 2012

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CLERK OF SUPREME COURT
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1 Robert Scotlund Vaile
2 PO Box 727
3 Kenwood, CA 95452
4 (707) 633-4550
5 *Appellant in Proper Person*

6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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9
10 **ROBERT SCOTLUND VAILE,**
11 **Appellant,**

12 **vs.**

13
14 **CISILIE A. PORSBOLL,**
15 **Respondent.**

Supreme Court Case No: 61415
District Court Case No: 98D230385

**EMERGENCY MOTION
TO STAY PROCEEDINGS AND
ENFORCEMENT IN THIS CASE
PENDING APPEAL**

ACTION REQUIRED
prior to *October 15, 2012.*

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17
18
19 **I. INTRODUCTION**

20
21 The particular conflict currently before the Court began as a result of
22 Respondent Porsboll seeking a child support order in Norway after this Court sent
23 the children to Norway for custody determinations in April 2002. Years later,
24 Porsboll's Nevada attorneys calculated that by hiding the presence of the
25 controlling Norwegian child support orders, they could procure a child support
26 award that exceeded the Norwegian orders, and get lucrative attorney fee awards
27 from a friendly local court by reopening the Nevada proceedings. However, this
28 Court put a stop to counsel's scheme with its January 26, 2012 decision which

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1 required the district court to do precisely what Mr. Vaile advocated below,
2 namely, to 1) reveal the Norwegian orders, 2) assess the orders' priority under
3 NRS 130.207, and if the Nevada decree has priority, 3) calculate any relevant
4 child support according to the dictates of the 1998 divorce decree (subject, of
5 course, to waiver, impossibility and estoppel). Mr. Vaile was able to procure and
6 provide the Norwegian orders to this and the district court in furtherance of this
7 Court's remand, but the district court struck those orders, refused to apply NRS
8 130.207, and refused to calculate support without modification under the dictates
9 of the decree. Because the district court has gone forward with an agenda which
10 directly contradicts the directives of this Court, and because the effects of the
11 district court's order in defiance of this Court have irreversible consequences on
12 Appellant, a stay of the proceedings and the enforcement of the district court's
13 order is required.

14 **II. RELEVANT FACTS**

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16 Appellant's recent petition for writ of mandamus and his Civil Proper Person
17 Appeal Statement, filed concurrently with this Motion, have more fully laid out
18 the facts in this case. The Court may wish to consider the larger set of facts in
19 deciding this motion.

20 During the April 9, 2012 hearing in the lower court, Appellant requested the
21 district court to stay the proceedings pending appeal in the event that the district
22 court determined not to honor the controlling Norwegian orders. The district
23 court's decision and order issued on July 10, 2012 did not honor the controlling
24 Norwegian orders, and did not stay the proceedings as requested or address
25 Appellant's motion on this topic.

26 Despite the fact that this Court overturned the district court's orders, the
27 district court refused to reverse the attorney's fees previously awarded in that
28

1 matter, and then ordered over \$57,000 in additional fees – all to the non-
2 prevailing party. The court's order made those fees immediately collectible and
3 ordered Mr. Vaile's gross wages be garnished up to 50%. The district court then
4 more than doubled the amount of child support Mr. Vaile was required to pay
5 over the arbitrarily modified amount previously reversed by this court, replacing
6 it with another modification that differs significantly from the amount called for
7 in the 1998 decree. The new modified child support amount demanded by the
8 district court is a staggering \$2870.13 per month.

9 This district court has full knowledge that Mr. Vaile is unemployed, and has
10 received an updated Financial Affidavit detailing his monthly fixed costs and
11 household expenses. The court is also aware of the significant health problems of
12 two of his children, knows his detailed fixed monthly expenses for five
13 dependents, yet is still requiring unreasonable payment.

14 The oldest of the parties children, now twenty-one years old, has lived on
15 her own in Oslo Norway since before she was emancipated in May 2009. Since
16 December 2011, the younger child, now seventeen, has resided with the older
17 child. Neither child receives any portion of the child support collected under the
18 Nevada decree. Under Norwegian law, upon reaching age 18, the child is entitled
19 to 100% of the child support principle and any child support arrearages, interest
20 or penalties that may have accrued. Since this latest round of litigation began,
21 Porsboll has been receiving the entire child support amount after the Willick Law
22 Group has deducted its 40% contingency from those payments.

23 24 **III. ARGUMENT**

25 26 **A. LIKELIHOOD OF SUCCESS ON THE MERITS WEIGHS IN FAVOR OF APPELLANT**

27 The likelihood of a petitioner's success on the merits of a case is a
28 consideration when injunctive relief is sought. Although not a requirement for

1 this Court to issue a stay of the proceedings pending appeal, the Court may
2 consider the likelihood of Appellant's success on the merits of his case in
3 determining whether a stay should be granted. In this case, Appellant has a very
4 high likelihood of success on the merits given that the district court has openly
5 contradicted the mandates of this Court's January 2012 decision. Not only has the
6 district court refused to apply NRS 130.207 as instructed by this Court, it has also
7 refused to reverse its previous judgments, and has continued to modify the 1998
8 decree contrary to this Court's direction. There can be no clearer evidence of
9 meritorious claims on appeal than when a district court directly defies the State's
10 Supreme Court. As such, a stay of the enforcement of the lower court's
11 contradictory orders are justified.

12
13 **B. A STAY IS NECESSARY TO MAINTAIN THE STATUS QUO**
14 **AND TO AVOID CONFLICTING ORDERS**

15 Under the child support theory asserted by Porsboll, and adopted by the
16 district court in its decision, Mr. Vaile would still owe over half a million dollars
17 in child support principle, interest, penalties and attorneys fees under the district
18 court's latest modification of the Nevada decree. Contrarily, under the child
19 support orders issued by the Norwegian authorities, who are most informed as to
20 the actual monetary support needs of the children, Mr. Vaile has far exceeded his
21 child support obligations to the parties' children through to the time when both
22 children are emancipated – if the monies collected by Nevada, or sent to Norway
23 directly during the proceedings in Nevada, are credited towards the Norwegian
24 obligations.

25 This Court previously overturned the district court's arbitrary monthly child
26 support amount (suggested by Porsboll's counsel) of \$1,300 per month for two
27 children. This amount was far in excess of the maximum statutory amount, and a
28 substantial modification of the 1998 divorce decree. In response to this Court's

1 reversal, the district court ordered a monthly child support amount of \$2870.13
2 for one child – a significant modification from the 1998 decree. This amount is
3 more than twice the amount previously overturned for two children, and 40% of
4 Mr. Vaile's last take-home salary. Obviously the district court is intent on making
5 Mr. Vaile pay for the gall to appeal its decision.

6 Appellant has requested that the California court, in accordance with
7 UIFSA, enter an order for child support payment¹ in accordance with the latest
8 Norwegian order (a modification requested by Porsboll in Norway in 2008 – see
9 Exhibit 1) which is approximately \$780² per month in payment of child support
10 for one child, in the event that it determines that Mr. Vaile has not yet exceeded
11 his child support obligations in toto. Since California has implemented UIFSA,
12 including section 207 which this Court had instructed the district court to use to
13 resolve the conflict in orders, the California court will necessarily recognize the
14 Norwegian order's controlling effect.³ In order to avoid the conflict that will
15 necessarily result between enforcement of the Norwegian and the recent Nevada
16 district court orders, Appellant requests that this Court order a stay of further
17 collection of child support under the Nevada district court's order pending appeal,
18 or in the alternative, order collection of \$780 per month to preserve the status
19 quo, with instructions to the Nevada District Attorney to defer collection priority
20

21 ¹ This conflict in the court below has never been about Mr. Vaile's willingness to
22 pay child support. Mr. Vaile has communicated to Porsboll repeatedly over the
23 years a willingness pay. Contrarily, Porsboll has refused to provide the
24 Norwegian child support orders, and until this Court's January 2012 decision,
25 refused to follow the tenets of the 1998 decree or provide income information
26 so that child support could be calculated under the decree.

27 ² 780 USD = 4680 NOK * 0.16667 USD/NOK

28 ³ As this Court was previously informed, the California Superior Court
previously held that the Nevada district court lacked authority to modify child
support, and that as a result, the Nevada district court's orders purporting to do
so were unenforceable in California, prior to this Court reaching the same
conclusion on the matter.

1 to the California Department of Child Support Services. The Department of
2 Child Support Services will provide payment to the Norwegian National Office
3 for Social Insurance Abroad, the governmental agency in Norway which actually
4 issued the orders, and will ensure that 100% of the child support payments flow to
5 the children, rather than to Porsboll and her attorney who are wrongfully
6 intercepting the whole of it without any benefit to the children.

7
8 **C. COLLECTION OF ATTORNEYS FEES SHOULD BE STAYED BECAUSE THEY**
9 **SHOULD HAVE NEVER BEEN AWARDED TO THE NON-PREVAILING PARTY**

10 As outlined in the writ petition and appeal statement, the district court's
11 order contradicts and otherwise defies the decision issued by this Court on
12 January 26, 2012 on nearly every point. NRS 18.010 allows attorney's fees to be
13 granted only to a *prevailing party*, however the district court granted them to
14 Porsboll's counsel even though she lost in every respect on appeal. After this
15 Court's January reversal, the parties are in precisely the situation that they started
16 in when Porsboll's counsel initiated this matter in 2007. This Court basically
17 required the district court to proceed in the manner that Mr. Vaile advocated five
18 years ago.

19 By attempting to hide the presence of the Norwegian orders, Respondent's
20 attorneys have prolonged the conflict between the parties, wasted significant time,
21 money and judicial resources, and sought to harass Mr. Vaile. While neither this
22 Court's decision, nor the law would reward the fraudulent and unethical conduct
23 of counsel, the district court allowed the significant attorney fee awards to the
24 non-prevailing party to stand. What is worse, is that the district court ordered the
25 attachment of Mr. Vaile's gross income up to 50% with full knowledge of the
26 significant non-discretionary obligations of the Vaile family.

27 The district court's order is abusive and should be stayed pending the appeal
28 of this case. Because this Court's reversal of the district court's decisions should

1 have reversed the attorney fee awards had the district court been willing to adhere
2 to this Court's mandates, staying those awards will in no way disadvantage
3 Porsboll. In fact, Porsboll's counsel has been financing all litigation against Mr.
4 Vaile for their own personal reasons. Appellant requests that the Court stay the
5 enforcement of the attorney fee awards ordered by the district court.

6
7 **D. THE EFFECTS OF NOT STAYING ENFORCEMENT ARE DIRE**

8 During periods when the district attorney's office did not collect child
9 support from Mr. Vaile's salary directly, he sent payments directly to Porsboll in
10 Norway. Although indicating during the April 9, 2012 hearing that it was the
11 court's policy to apply child support payments made directly to a party when, as
12 here, the check is marked "Child Support" in the memo line, the district court
13 changed its mind, and held that it would not credit Mr. Vaile's payments to child
14 support.⁴ The district court held that "zero child support" was paid during these
15 months, and scheduled a contempt hearing on October 22, 2012, noting that Mr.
16 Vaile "is facing incarceration and contempt" for the violation that the district
17 court fabricated.

18 The district court has demonstrated a clear bias in this matter, and a
19 complete disregard for justice. Not only has the district court entered a decision
20 with which it knows is impossible for Mr. Vaile to comply, the court has negated
21 Mr. Vaile's efforts to comply with previous court rulings so that it would have an
22 opportunity to punish him. According to Mr. Vaile's calculations, he would have
23

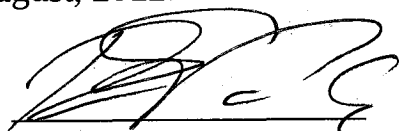
24 ⁴ The district court justified not crediting these payments to support because of a
25 temporary order that the district court issued on April 5, 2010 following a
26 hearing on March 8, 2010 which required Mr. Vaile to make payments to
27 Porsboll's attorney on threat of contempt. Obviously, this order had nothing to
28 do with the child support payments at issue here. Additionally, it was this 2010
district court order that prompted this Court to "stay all proceedings in District
Court Case No. D230385, pending further order of this Court" on July 20, 2012,
and within the scope of those overturned by this Court's reversal.

1 to secure employment with salary that exceeded \$1,485,410.00 per year in order
2 to earn enough to meet the monetary awards in the district court's judgment, and
3 cover the family's fixed monthly expenses. In the event that this does not happen,
4 the district court has shown a repeated willingness to incarcerate and sanction Mr.
5 Vaile, and has only been prevented from doing so by this Court's intervention.
6 Appellant requests this Court to stay the enforcement of the district court's
7 judgments pending the adjudication of this appeal.

8 9 IV. CONCLUSION

10 A district court with a very apparent bias and which surely knows that its
11 judgment will be overturned on appeal would be expected to execute an unusually
12 harsh judgment with immediate effect in order to exact punishment prior to the
13 aggrieved party obtaining relief from this Appellate Court. Only a stay of the
14 enforcement of the district court judgments will prevent this abuse. Without a
15 stay, the district court would be rewarded for ignoring the mandates of this Court,
16 and Respondent rewarded for concealing the Norwegian orders which should
17 rightfully nullify this action and bring resolution to the case. In order to avoid the
18 dire effects that enforcement of the district court's orders would cause, Appellant
19 respectfully requests a stay of the proceedings in the district court, as well as a
20 stay on enforcement of all monetary judgments.

21
22 Respectfully submitted this 30th day of August, 2012.

23
24 

25 Robert Scotlund Vaile
26 PO Box 727
27 Kenwood, CA 95452
28 (707) 633-4550
Appellant in Proper Person

Exhibit 1



Vaile Robert Scotlund
2 North Lewis St
Lexington, Va 24450-2708 Usa
USA

NAV National Office for Social Insurance Abroad
Postboks 8138 Dep.
0033 Oslo
Norway

Case number: 0008744

Executive Officer: Øyvind Haugneland

Date: February 13, 2008

Child support - notification of decision

Case number: 0008744 (Please refer to this case number when contacting us).

Custodial parent:	PORSBØLL CISILIE ANNE	Date of birth:	05/01/1969
Non-custodial:	VAILE ROBERT SCOTLUND	Date of birth:	05/01/1969
Children:	VAILE KAIA LOUISE	Date of birth:	30/05/1991
	VAILE KAMILLA JANE		13/02/1995

The custodial parent submitted a claim for alteration of child support on August 20, 2007.

Norwegian authorities can handle child support cases when one of the parties or the child resides in Norway cf. The Children Act, section 83. The provision reads as follows: "The question of child support can be handled by the national insurance Service or a Norwegian court of law b) if one of the parties or the child resides in Norway".

Contents of decision - alteration

We have made a decision in the case. See the outline below:

The child/children's name(s)	From	To	Monthly amount
VAILE KAMILLA JANE	September 1, 2007		NOK 4 680

Child support is rounded off to the nearest tenth. Please find enclosed an outline of the basis for this decision.

Child support is altered from the month after the application for reassessment was submitted.

Child support will be regulated according to the cost-of-living index every year, the first time on July 1, 2009.

Contents of decision - no alteration

We have made a decision in the case. See the list below for detailed information:

The child/children's name(s)	From	To	Monthly amount
VAILE KAIA LOUISE	September 1, 2007		NOK 4 250

NAV Utland

Postadresse: Postboks 8138 Dep. // 0033 Oslo

Besøksadresse: Langkaia 1 // 9. Etg // 0150 Oslo
Tel: 23311300 // Faks: 23311301

www.nav.no

We have made a decision in the case. We find no reasons to alter the current child support. The child support amount will continue as before. Please find enclosed an outline indicating the information that this decision is based on.

Ground rules

The decision is made in accordance with The Children Act Chapter 8.

According to The Children Act section 66 both parents have a duty to rear their children. Both parents shall bear the expenses of maintaining and educating the child according to their ability. The duty to rear the children exists for both parents whether they live with their children or not.

The stipulation of child support is made in accordance with The Children Act section 71 with pertaining provisions. The child support shall be based on what it costs to rear the child (the maintenance cost). The maintenance cost is based on appropriate rates developed by the Ministry of Children and Equality. The maintenance cost is divided between the parents based on their incomes. The non-custodial parents' share of these expenses (the child support) is rounded off to the nearest sixth of the maintenance cost. When the child support is set the non-custodial parent's ability to pay the child support is considered. The non-custodial parent's income is considered against tax expenses, expenses for medical insurance, housing, food clothing and support of own children in own household. It is not the non-custodial parent's actual expenses that are considered but expenses based on appropriate rates on the costs of living. A deduction in the child support is given if the parties have a written agreement stating the extent of time the child shall spend with the non-custodial parent or if the extent of time the child shall spend with the non-custodial parent has been publicly determined.

In accordance with section 4 paragraph 6, a party's income shall be stipulated on a discretionary basis, if the party does not provide the necessary documentation, or if there is reason to believe that he or she are withholding information that could be of importance to the decision.

According to The Children Act section 74 both parties may make a claim for alteration of the child support if there are special reasons for such an alteration. It is regarded as a special reason if new circumstances results in an alteration of the child support that is at least 10 per cent different from the current amount. The child support is as a main rule altered with effect from the month after a claim for alteration has been made.

Case résumé

We received an application for alteration of child support from the custodial parent on August 20, 2007. A notice was sent to the parties on September 18, 2007. The notice to the non-custodial parent was also sent for service through the Child Support Enforcement authorities in Virginia. We have not received an answer from any of the parties.

The parties' incomes

The custodial parent receives rehabilitation allowance from the Norwegian social insurance. The allowance equals an income of NOK 221 000 per year. This income is used in the stipulation of child support.

We have not received any documentation on the non-custodial parent's income. We have therefore, in accordance with section 4 paragraph 6 in the provision to the Children Act section 71, stipulated his income to NOK 800 000 per year. The stipulation is based on the non-custodial parent's education and information about his former income.

Stipulation of child support

When the above named incomes are used in the stipulation of child support the non-custodial parent shall be paying 5/6 of the monthly maintenance cost. The non-custodial parent has full payment ability.

The stipulated child support for Kaia Louise is not more than 10 percent different from the current child support and has therefore not been altered.

Collection

The stipulated child support will be collected by the National Insurance Collection Agency. The non-custodial parent will receive information from the collection agency regarding payments. The collection agency will forward the collected amount to the custodial parent reduced for the advance payments received. The non-custodial parent shall not pay the child support directly to the custodial parent.

Information

Both parties have the right to appeal this decision.

An appeal must be submitted to us within three weeks from receipt of this notification. Please find enclosed detailed information concerning the appeal process.

Should you require guidance or further information, please do not hesitate to contact us.

NAV National Office for Social Insurance Abroad

Tormod Bergene-Engen
Senior Executive Officer

Øyvind Haugneland
Senior Executive Officer