

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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**

9 ROBERT SCOTLUND VAILE,
10 Appellant,

Supreme Court Case Numbers:
61415, 61626
District Court Case No: 98D230385

11 vs.

13 CISILIE A. PORSBOLL,
14 Respondent.

**MOTION TO CONSOLIDATE AND
MOTION TO DEFER FILING FEE
AND COST BOND**

18
19 **I. MOTION TO CONSOLIDATE**

20
21 **A. BACKGROUND**

22 On July 10, 2012, the district court entered an order titled *Court's Decision*
23 *and Order* in which the district court held, directly contrary to this Court's
24 instruction, that "NRS 130.207 does not apply in this case." The district court
25 entered a judgment for child support principle arrears and interest, which it
26 immediately "reduced to judgment and [made] collectible by any lawful means."
27 It also held Mr. Vaile in contempt for not adhering to the newly computed (and
28 retroactive) amounts and sanctioned him in the amount of \$38,500. The district

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1 court granted Respondent's request to enforce previous attorney fee awards, and
2 awarded additional attorneys fees to Respondent. Appellant filed a notice of
3 appeal on July 30, 2012.

4 However, the district court's decision deferred setting two amounts for
5 further orders: 1) although the district court ordered child support penalties in
6 accordance with the NOMADS program in its July decision, it deferred the
7 *amount* of those penalties for a subsequent order to be entered after the court
8 received an updated audit from the District Attorney's Office; and 2) although the
9 court ordered Respondent attorneys fees payable, it also deferred the amount of
10 the latest request for attorneys fees until after it received a proposed order from
11 Respondent's counsel. On August 16, 2012, the district court entered an order
12 granting Respondent an additional \$57,483.38 in attorneys fees and costs. On
13 August 17, 2012, the district court entered an order setting the child support
14 penalties amount at \$15,162.41. Appellant filed an amended notice of appeal on
15 August 27, 2012. The Supreme Court clerk assigned a separate case number in
16 response to the amended notice of appeal.

17 18 B. ARGUMENT

19 In the long course of this case, the core issue has been the conflict between
20 this Court's decisions, and the manner in which the district court has interpreted
21 and executed those decisions. This conflict has included, among the issues
22 already briefed to the Court, a number of conflicts between the district court's
23 interpretation of the temporary or final nature of its orders, and those of this
24 Court. For example, on October 13, 2008, this Court issued an *Order Dismissing*
25 *Appeal* that held that "the district court's March 20, 2008 order and the August 15,
26 2008 order . . . are *temporary* orders that may not be appealed." (emphasis
27 added). Contrarily, in an April 5, 2010 order, the district court held that "[t]he
28

1 Court restates that its Order of March 20, 2008, was a final, valid, and
2 enforceable order of the Court.”

3 Because of the difficulty in predicting either court's interpretation of finality,
4 and in order to avoid further conflict on this issue, Appellant has attempted to
5 ensure that each recent order has been appropriately included in a notice of
6 appeal. Mr. Vaile filed a Notice of Appeal of the district court's July 10, 2012
7 *Court's Decision and Order* on July 30, 2012. Because the orders and awards
8 were reduced to judgment and made enforceable with finality, this order appears
9 to be independently appealable. Even though the subsequent orders only clarified
10 two amounts ordered in the previous judgment, Mr. Vaile amended his notice of
11 appeal on August 27, 2012 to include these subsequent orders in the event that the
12 July 10, 2012 order is interpreted as final only after entry of the subsequent
13 orders.

14 The subsequent orders on attorneys fees and penalties do not contain any
15 independently appealable subject matter that is not included in the appeal of the
16 July 10, 2012 decision of the district court. Whether the district court may grant
17 attorneys fees to the non-prevailing party is already addressed in the appeal
18 statement. Likewise, the actual amount of penalties, if in fact child support
19 arrearages are due after NRS 130.207 is applied and all defenses are properly
20 considered, is not in dispute. As outlined, these orders were included in the
21 amended notice of appeal only in order to ensure completeness and finality of the
22 July 10, 2012 order.

23 Accordingly, Appellant requests that the Court consolidate the case number
24 (61626) that was opened in response to the amended notice of appeal which
25 included the subsequent district court orders issued on August 16, and August 17,
26 2012, with the case (61415) that was opened as a result of the original notice of
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1 appeal of the July 10, 2012 decision of the district court. All matters at issue are
2 properly encompassed in case 61415.

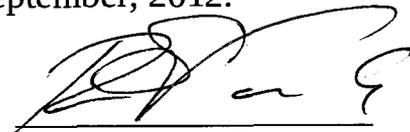
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4 **II. MOTION TO DEFER FILING FEE AND COST BOND**

5 Because Appellant's amended notice of appeal was docketed separately, a
6 separate filing fee and cost bond would be due under this case number. Based on
7 Appellant's current unemployment status since April of this year, Appellant
8 requested a deferment of the cost bond on case 61415 while the district court (and
9 potentially this Court) considers Mr. Vaile's motion to proceed *in forma pauperis*.
10 The district court has not yet ruled on this motion, but a copy of this motion is
11 attached hereto as Exhibit 1. Appellant likewise requests that the filing fee and
12 cost bond under case 61626 be deferred until resolution of the motion to proceed
13 *in forma pauperis* is decided, or until Mr. Vaile secures gainful employment
14 again.

15
16 **III. CONCLUSION**

17 Appellant hereby requests that case numbers 61415 and 61626 be
18 consolidated and the the filing fee and cost bond for case 61626 be deferred until
19 Appellant's pending *Motion for Leave to Proceed in Forma Pauperis* has been
20 determined.

21
22 Respectfully submitted this 10th day of September, 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



CLERK OF THE COURT

1 **MPFP**

2 Robert Scotlund Vaile

3 PO Box 727

4 Kenwood, CA 95452

(707) 833-2350

Plaintiff in Proper Person

6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 ROBERT SCOTLUND VAILE,

10 Plaintiff,

11 vs.

12 CISILIE A. PORSBOLL,

13 fka CISILIE A. VAILE,

14 Defendant.

CASE NO: 98 D230385

DEPT. NO: I

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17 **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

18 Plaintiff, Robert Scotlund Vaile, hereby requests leave to proceed in *forma*
19 *pauperis* on appeal of this Court's Decision and Order, dated July 10, 2012. As
20 this Court was fully briefed on April 9, 2012, Mr. Vaile lost his job in April, and
21 has not yet secured employment. As attested by the attached affidavit, Mr. Vaile
22 is unable to pay further fees, costs and bonds required on appeal.

23 Dated this 13th day of August, 2012.

24
25 /s/ R. S. Vaile

26 Robert Scotlund Vaile

27 PO Box 727

28 Kenwood, CA 95452

(707) 833-2350

Plaintiff in Proper Person

1 I further swear that the responses which I have made to the questions and
2 instructions below relating to my ability to pay the cost of prosecuting the appeal
3 are true.

4 1. **Are you presently employed?** I am not presently employed. The
5 date of my last employment was April 3, 2012. My wages had been
6 approximately \$11,900 per month with my last employer. I received a total of
7 \$86,878.20 in gross earnings in salary and wages in 2012 prior to my position
8 being eliminated. This includes severance pay and health care allowance
9 provided by the company.

10 2. **Have you received within the past twelve months any income**
11 **from a business, profession or other form of self-employment, or in the form**
12 **of rent payments, interest, dividends, or other source?** Other than my salary, I
13 have not received income from any other source in the last twelve months. I have
14 cashed in the entirety of my 401k from my last employer (my only retirement
15 savings) in order to meet the family's ongoing expenses during my
16 unemployment.

17 3. **Do you own any cash or checking or savings account?** I have a
18 total of \$10 in cash, \$672.96 in checking, and \$3.31 in savings accounts.

19 4. **Do you own any real estate, stocks, bonds, notes, automobiles, or**
20 **other valuable property (excluding ordinary household furnishings and**
21 **clothing)?**

22 I do not own any real estate, stocks, bonds, notes, automobiles or other
23 valuable property. I am currently leasing two vehicles whose values are each less
24 than the respective payoff amount.
25
26
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1 5. List the persons who are dependent upon you for support and
2 state your relationship to those persons. I am my family's only source of
3 income. The following persons are dependent on me for support:

- 4 Heather Vandygriff Vaile – wife
5 Robert Lunden Vaile – son
6 Alexa Liberty Vaile – daughter
7 Madison Elizabeth Vaile – daughter
8 Mark Austin Vaile – son

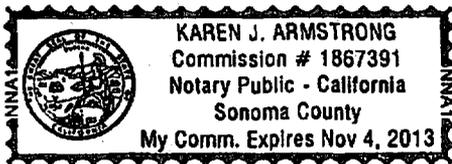
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10 I understand that a false statement or answer to any question in this
11 affidavit will subject me to penalties for perjury.

12
13
14 Signed:



15 Robert Scotlund Vaile

16
17 SUBSCRIBED AND SWORN to before me this *13* day of *August*,
18 2012.



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28 Notary Public

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CERTIFICATE OF SERVICE

Plaintiff Robert Scotlund Vaile hereby certifies that I served a true and correct copy of the foregoing *Motion to for Leave to Proceed In Forma Pauperis* by depositing a true and correct copy in the U.S. Mail at Kenwood, California in a sealed envelope, with first-class postage pre-paid and addressed as follows:

Marshal S. Willick
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Attorneys for Defendant

Dated this 13th day of August, 2012.

/s/ R.S. Vaile
Robert Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person