

FILED

DEC 19 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie Lindeman*
DEPUTY CLERK

1 Robert Scotlund Vaile
2 2201 McDowell Avenue
3 Manhattan, KS 66502
4 (707) 633-4550
5 *Appellant in Proper Person*

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

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8
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10 **ROBERT SCOTLUND VAILE,**
11 **Appellant,**

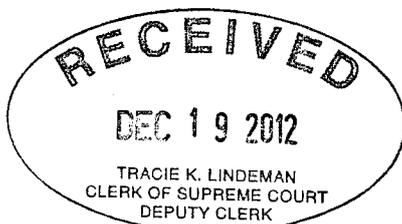
12 vs.

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

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

16 **ACTION REQUIRED**
17 **prior to January 21, 2013.**

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19
20 **RENEWED**
21 **EMERGENCY MOTION**
22 **TO STAY PROCEEDINGS AND ENFORCEMENT**
23 **IN THIS CASE PENDING APPEAL**



12-40204

1 **I. INTRODUCTION**

2 Having filed his opening brief in this matter on December 11, 2012,
3 Appellant renews his motion to stay both the enforcement and proceedings in the
4 court below – pending resolution of the appeal. This motion is made based on the
5 changed circumstances in this case, and the factors enumerated under NRAP 8(c).

6 **II. BACKGROUND AND FACTS**

7 The facts of the case were set forth with citations to the record in Appellant's
8 Opening Brief.¹ On September 4, 2012, Appellant filed a motion to stay this case
9 while the matter was on appeal. This Court denied the request to stay the case on
10 October 22, 2012. Since the filing date of the motion to stay, the following
11 circumstances which justify further consideration have changed in this case, and
12 the matter is now fully ripe for review.

13 **A. THE CALIFORNIA COURT DETERMINED THE CONTROLLING ORDER**

14 Starting in 2008, Mr. Vaile requested that the Nevada district court require
15 Respondent Porsboll to disclose the Norwegian child support orders to the court,
16 and to make a determination under NRS 130.207 as to which order (Norway's or
17 Nevada's) was controlling. On January 26, 2012, after appeal of the underlying
18 matter, this Court required that the district court do just that – determine whether
19 there was a Norwegian order and to assess its bearing on the Nevada decree under
20 NRS 130.207. On remand, the district court refused to make this determination
21 because it found NRS 130.207 to be inapplicable. ROA4877.

22 Mr. Vaile submitted the Norwegian and Nevada orders to the California
23 court where Appellant lived, and asked that court to do what the Nevada district
24 court refused to do, specifically – to make a controlling order determination under
25 section 207 of UIFSA. ROA4814-4837.² The California court made this
26 determination in accordance with UIFSA (in line with this Court's previous
27

28 ¹ Mr. Vaile will continue to cite to the Record on Appeal in this brief, using the
notation "ROA" followed by the page number.

1 mandates), and found that the Norwegian order with its subsequent modifications
2 were indeed controlling. The California court also required Mr. Vaile to file
3 notice of that order in the relevant tribunals of Norway and Nevada. Mr. Vaile has
4 filed that notice concurrently with this motion.

5 Because the Norwegian order is controlling, the California court also
6 requires that:

7 No agency, enforcement officer, or employer shall collect or demand
8 child support from Petitioner contrary to this order, or based on child
9 support orders other than the 2003 Norwegian child support order
registered in Sonoma County pursuant to this order.

10 See *Order*, 4.

11 The California court also sets forth the amount of child support and
12 arrearages that is actually due under the Norwegian order based on the Request
13 for Payment provided by the Norwegian child support agency. The court set up a
14 payment plan in order for Mr. Vaile to fulfill his payment obligations in full
15 around the time that his youngest daughter reaches 18 years of age. *Id.* The
16 California court has made a determination³ of the controlling child support order
17 which is binding on all other states based on the Full Faith and Credit of Child
18 Support Orders Act, 28 U.S.C. 1738B. This occurrence is a changed circumstance
19 which warrants a reconsideration of this Court's previous decision to decline to
20 enter a stay of the proceedings and enforcement of the district court's order below.

21 B. APPELLANT VAILE HAS BEGUN NEW EMPLOYMENT

22 Mr. Vaile found employment and has begun to collect a paycheck at his new
23 job. As would be expected, the Nevada district attorney has issued a withholding

24 ² Porsboll's counsel apparently "forgot" that she provided him copies of the
25 pleadings served on her in the California action, which counsel then filed into
26 the record in the district court. In a recent filing below, Porsboll's counsel has
newly asserted that she received insufficient notice of those proceedings.

27 ³ Although the order was filed in Sonoma County on November 1, 2012, Mr.
28 Vaile only recently received the order due to his relocation in relation to his
new employment.

1 order to Mr. Vaile's new employer. See Exhibit 1. Because Mr. Vaile was
2 unemployed and did not have income previously, the district court's order
3 requiring collection of an unreasonable amount of child support⁴ and attorneys
4 fees of half of his gross income were merely theoretical. However, the impact
5 now is very real and significant. Together, the payments for child support and
6 attorneys fees ordered by the district court equal \$8,870.13 per month, which is
7 approximately \$1,500 more than Mr. Vaile's take-home pay. Implementing these
8 payments would obviously prevent Mr. Vaile from maintaining his employment.
9 Since Mr. Vaile is the sole income earner for his family of seven, enforcement of
10 the monetary judgments would create a dire situation.

11 **C. THE NORWEGIAN AGENCY HAS MADE CLEAR ITS DEMAND FOR PAYMENT**

12 The Norwegian agency's letter, which was attached to the notice of the
13 California order, makes clear that the agency is indeed demanding collection from
14 Mr. Vaile, based on Porsboll's requests for support through that agency. The
15 Norwegian agency invokes, in their letter, the agreement between Norway and the
16 United States that attended their declaration by the Department of State as a
17 Foreign Reciprocating Country. The fact that Norway is demanding payment
18 from Mr. Vaile starkly contradicts the arguments of Porsboll's counsel, offered in
19 the district court below, that the Norwegian child support order was a mere
20 administrative order, strictly internal to Norway, which should be ignored by
21 tribunals in the U.S. The revelation that Norway is actively seeking child support
22 in accordance with a federal agreement which preempts state law or procedure to
23 the contrary, is a significant change in circumstance from September 4, 2012.

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27 ⁴ The district court ordered Mr. Vaile to pay over \$2,870.13 a month in child
28 support, over twice the amount previously ordered prior to being overturned by
this Court. This amount alone is nearly half of Mr. Vaile's take-home pay.

1 *res judicata* effect of the district court's previous orders prevents this Court from
2 reversing the previous award of attorney fees; (2) NRS 130.207 only applies to
3 simultaneously issued orders; (3) NRS 130.6115 does not apply because Nevada
4 is not a foreign country; and (4) waiver only applies when a party signs a written
5 agreement specifically waiving benefits. These theories have no basis under the
6 law, and demonstrate not only that the district court has no sense for justice, but
7 that it is willing to defy this Court's mandates, Nevada law, and logic in order to
8 rule for the benefit of the court's favored party.

9 Not only do the district court's actions bring the Nevada justice system into
10 disrepute, they also make other courts, which are intent on following the law, take
11 action to mitigate those actions of the Nevada district court. The Sonoma County
12 Family court correctly analyzed and applied UIFSA law (in line with the
13 mandates of this Court), and its order is now in direct conflict with that of the
14 Nevada court. Because the effects of the Nevada court's orders are dire, and this
15 Court's appellate cycle relatively long, Mr. Vaile will be forced to seek relief
16 from the Nevada judgment from other courts if a stay is not put into place.

17 Because the decisions from other states will undoubtedly mitigate the effects
18 of the unsupportable judgment of the district court, and supplant the role that this
19 Court plays in demanding order and conformance to law from the lower courts of
20 the State, the object of the appeal will be frustrated. The district court well knows
21 that if it creates an order (as here) to which Mr. Vaile cannot physically comply, it
22 will create the situation which Porsboll actively seeks where Mr. Vaile is
23 eventually incarcerated, or a situation where Mr. Vaile adheres instead to the
24 orders of the Norwegian and California tribunals instead of the Nevada orders –
25 in which case Porsboll will seek dismissal of the appeal based on Mr. Vaile's
26 defiance of the district court's orders. In either scenario, the abuses of the district
27 court go unchecked, and it persists in its independence of this Court's appellate
28 directives.

1 If alternatively, this Court issues a stay as requested, it will preserve the
2 authority of the appellate court, and the honor of the Nevada judicial
3 establishment. It will also preserve the objective of the appeal to require judicial
4 and legal compliance of the district court.

5 B. APPELLANT WILL SUFFER SERIOUS INJURY IF THE STAY IS DENIED

6 As noted above, enforcement of the district court's July 2012 order would
7 prevent Mr. Vaile from supporting his family. Obviously, Mr. Vaile could simply
8 not afford to keep his new job unless enforcement is stayed, and no party benefits
9 from such a scenario. There are few impacts of a district court's orders which
10 cause more injury than to remove one's ability to maintain a livelihood when one
11 has responsibility for so many. Additionally, Porsboll's Nevada counsel have
12 insistently goaded the district court to imprison Mr. Vaile⁵ and have, in a recent
13 filing in the district court demanded an order that includes "issuing a warrant for
14 his arrest and physically locking him up." Injury to Appellant is clearly imminent.

15 Each time that Appellant brings the abuses of the district court to the
16 attention of this Court, the district court's actions against Mr. Vaile become more
17 severe, and the district court's bias more pronounced. For example, in 2008, the
18 district court arbitrarily instituted retroactive child support payments against Mr.
19 Vaile in the amount of \$1,300⁶ per month, and sanctioned him \$16,000 for his
20 failure to pay these new amounts *retroactively*. After reversal and remand by this
21 Court, the district court instituted \$2,870.13 per month in payments, added
22 \$38,500⁷ in further sanctions, and changed long-standing Nevada law in order to
23 rule in favor of Porsboll. Without overturning her previous award of attorney
24

25 ⁵ While it is clear that the imprisonment of Mr. Vaile does not in any way serve
26 any interests of his client, it does satisfy the retribution that counsel seeks for
27 Mr. Vaile's gall to oppose him both in Nevada and in other states.

28 ⁶ Plus arrearages payment, plus interest and penalties, and attorneys fees.

⁷ The district court did not overturn her previous order for sanctions against Mr.
Vaile, even though this Court reversed her order.

1 fees, the district court granted Porsboll's counsel another \$57,000 in fees and
2 costs. The district court scheduled another contempt hearing against Mr. Vaile for
3 January 22, 2013 (see below) and indicated that Mr. Vaile "is facing incarceration
4 and contempt" at that hearing. The district court's pattern of abuse is clear, and
5 this Court's mandates have done nothing to dissuade the district court from its
6 wrongful path.

7 If this Court does not issue a stay, Appellant will suffer irreparable or
8 serious injury because the ability to support his family will be immediately
9 prevented, his job will be lost, and his career irreparably injured. Additionally,
10 Mr. Vaile faces incarceration by the district court if the stay is not put into place.

11 **C. RESPONDENT WILL SUFFER NO INJURY IF THE STAY IS GRANTED**

12 The notice of the California order which is filed concurrently with this
13 motion illustrates that a child support order is currently in place which requires
14 Mr. Vaile to pay in accordance with the Norwegian child support orders which
15 Porsboll sought and was granted in Norway. The Norwegian authorities, who are
16 closest to their needs, will provide these support funds to the children, the
17 youngest of whom will reach age 18 in February. It is important to note that the
18 children do not now, and have not for a long time lived with Respondent Porsboll.
19 Under Norwegian law, the children are entitled to the child support proceeds in
20 their minority, and upon reaching age 18, have rights to receive all principal and
21 arrears directly. Porsboll has never turned these funds over to the children, even
22 upon their expulsion from her home or upon reaching the age of majority. Instead,
23 she and her Nevada counsel have shared these monies between themselves.

24 Because Porsboll has no support costs for the children who are the intended
25 beneficiaries of the child support, she will suffer no injury if the stay is granted.
26 Because the children will receive payments in precisely the amounts that Porsboll
27 requested from the Norwegian authorities years ago, Porsboll will suffer no injury
28 if the stay is granted. Because Porsboll is not entitled to receipt of the child

1 support payments under Norwegian law, she will suffer no injury if the stay is
2 granted. If the stay is indeed issued, the children at issue, instead of Porsboll and
3 her Nevada counsel, are those who will benefit.

4 **D. APPELLANT IS LIKELY TO PREVAIL ON THE MERITS OF HIS APPEAL**

5 Appellant's opening brief deals with no complex area of law. This Court
6 cited the relevant statute from UIFSA to the district court, and then required that
7 the district court follow that law. The district court simply refused. The district
8 court's reasoning for that disobedience is transparent, and the motives of the
9 district court in reaching a particular result is most obvious. The law is clear, this
10 Court's instructions were clear, and the merits of the appeal are clear. As such,
11 Appellant is likely to prevail on the merits of his appeal.

12 Although California has the advantage of at least one appellate case on point
13 to guide its family courts, the California Superior Court found the law on point to
14 be clear, as reflected in its October 30, 2012 decision. The decision of an
15 unbiased court on the relevant law is evidence that the law on point is clear. In
16 this case, the district court has openly contradicted the mandates of this Court's
17 January 2012 decision. Not only has the district court refused to apply NRS
18 130.207 as instructed by this Court, it has also refused to reverse its previous
19 judgments, and has continued to modify the 1998 decree contrary to this Court's
20 direction. There can be no clearer evidence of merit on appeal than when a district
21 court directly defies the State's Supreme Court. As such, a stay of the
22 enforcement of the lower court's contradictory orders are justified.

23 **E. THE JANUARY HEARING IS TO ADDRESS ISSUES IN**
24 **THE SCOPE OF THE APPEAL BEFORE THIS COURT**

25 The district court has scheduled a contempt hearing for January 22, 2013.⁸ In
26 the decision and order issued on July 11, 2012, the district court stated:

27
28 ⁸ The hearing was moved from October 22, 2012 to January 22, 2013 while this
Court was contemplating the first motion to stay.

1 Concerning Ms. Porsboll's latest request for contempt for failure to
2 pay child support after June 15, 2009, the Court finds that zero child
3 support was paid for eleven (11) specific months, namely May 2010
4 and May 2012 to June 2012. (ROA4886.)

5 When the district attorney's office did not withhold support from Mr. Vaile's
6 salary, he sent payments directly to Porsboll in Norway. The DA did not collect
7 from May 2010 to October 2010, when the California court prohibited attachment
8 of Mr. Vaile's salary, July 2011 to September 2011 when Mr. Vaile changed
9 employment⁹ and May 2012 to June 2012 after Mr. Vaile became unemployed.

10 The district court indicated during the April 9, 2012 hearing that it was that
11 court's policy to apply child support payments made directly to a party when, as
12 here, the checks are clearly marked "Child Support" in the memo line. However,
13 in the decision and order issued by the district court on July 12, 2012, the district
14 court held that it would *not* credit Mr. Vaile's payments of child support during
15 these periods.¹⁰ Even though Mr. Vaile actually made the payments, the district
16 court held that "zero child support" was paid during these months, and scheduled
17 a contempt hearing, noting that Mr. Vaile "is facing incarceration and contempt"
18 for the violation – which the district court itself fabricated. *Id.*

19 A timely notice of appeal divests the district court of jurisdiction to act and
20 vests jurisdiction in this Court. Rust v. Clark Cty. School District, 103 Nev. 686,
21 688, 747 P.2d 1380, 1382 (1987). A district court may continue to act only when
22 the issue is entirely collateral to and independent from that part of the case taken
23 up by appeal, and in no way affected the merits of the appeal. Kantor v. Kantor,

24 ⁹ Delay was DA's in effectuating automatic withholding of out-of-state employer.

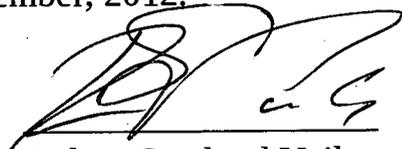
25 ¹⁰ The district court justified this point in its decision by reference to a temporary
26 order issued during a March 8, 2010 hearing, which required payments to be
27 made to Porsboll's Nevada counsel. The April 9, 2010 order from this hearing
28 was that which prompted this Court to stay the entire proceedings in the case on
July 20, 2012 (case #55446). This temporary order was overturned when this
Court reversed the final judgments, but the court is continuing to enforce it.

1 116 Nev. 886, 8 P.3d 825, 830 (2000). Since the core issue on appeal is whether
2 child support under the Nevada decree was due during the period cited by the
3 district court, given the issuance of the controlling Norwegian order, the subjects
4 of the district court's hearing is very much affected by the matters before this
5 Court on appeal. Whether the district court's actions at the January hearing will
6 stand is entirely dependent on how this Court decides the matter on appeal. As
7 such, the hearing subject matter in the district court is clearly before this Court on
8 appeal, and the proceedings in the district court should be stayed.

9 **IV. CONCLUSION**

10 This particular district court has demonstrated that it will continue to walk
11 an awry path until checked by this Court's intervention. Based on the significant
12 change in circumstances, Mr. Vaile requests reconsideration from this Court. The
13 object of the appeal will be frustrated unless this Court intervenes. Additionally,
14 the effects of the district court's order without a stay are dire for Appellant, while
15 Respondent would suffer no injury if the stay is granted. Furthermore, Appellant
16 is likely to prevail on the merits of the underlying appeal in this action. Therefore,
17 Appellant requests that this Court stay both the proceedings, and the enforcement
18 of judgments issued by the lower court while the case is on appeal.

19
20 Respectfully submitted this 17th day of December, 2012.

21
22 

23 Robert Scotlund Vaile
24 2201 McDowell Avenue
25 Manhattan, KS 66502
26 (707) 633-4550
27 *Appellant in Proper Person*
28

Exhibit 1

367
W89746

83622

INCOME WITHHOLDING FOR SUPPORT RECEIVED

- ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
- AMENDED IWO
- ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
- TERMINATION of IWO

2012 DEC 10 AM 10:54

Date: 12/05/2012
OF REPORTS

Child Support Enforcement (CSE) Agency Court Attorney Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO Instructions <http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm#forms>). If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory NEVADA Remittance Identifier (include w/payment) 522604100A
 City/County/Dist./Tribe NEVADA INITIATING COUNTY Order Identifier 00000109978
 Private Individual/Entity _____ CSE Agency Case Identifier 522604100A

<p><u>KANSAS DEPARTMENT OF ADMINISTRATION</u> Employer/Income Withholder's Name</p> <p><u>900 SW JACKSON ST</u> Employer/Income Withholder's Address</p> <p><u>TOPEKA KS 66612</u></p> <p>Employer/Income Withholder's FEIN _____</p> <p>Child(ren)'s Name(s) (Last, First, Middle) <u>VAILE, KAMILA</u></p>	<p>RE: <u>VAILE, ROBERT</u> Employee/Obligor's Name (Last, First, Middle)</p> <p><u>519-02-6087</u> Employee/Obligor's Social Security Number</p> <p><u>VAILE POBSOLL, CISILIE</u> Custodial Party/Obligee's Name (Last, First, Middle)</p>
<p>Child(ren)'s Birth Date(s) <u>02/13/1995</u></p>	

ORDER INFORMATION: This document is based on the support or withholding order from NEVADA (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$2,754.15 Per MONTH current child support

\$115.98 Per MONTH past-due child support - Arrears greater than 12 weeks? Yes No

\$ _____ Per _____ current cash medical support

\$ _____ Per _____ past-due cash medical support

\$ _____ Per _____ current spousal support

\$ _____ Per _____ past-due spousal support

\$ _____ Per _____ other (must specify) _____

for a Total Amount to Withhold of \$2,870.13 per MONTH

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$662.34 per weekly pay period \$1,435.07 per semimonthly pay period (twice a month)

\$1,324.68 per biweekly pay period (every two weeks) \$2,870.13 per monthly pay period

\$ _____ Lump Sum Payment: Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is NEVADA (State/Tribe), you must begin withholding no later than the first pay period that occurs 14 days after the date of this Order/Notice. Send payment within 7 working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to 50% of disposable income for all orders. If the employee/obligor's principal place of employment is not NEVADA (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm for the employee/obligor's principal place of employment.