IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE,

Petitioner,

vs.

CISILIE A. PORSBOLL F/K/A CISILIE A. VAILE,

Respondent.

S.C. NO. 61415
D.C. NO. 98-D-230868-D

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

I. INTRODUCTION

Scotlund's *Renewed Emergency Motion To Stay Proceedings* includes monumental misrepresentations and outright lies as to how the case has proceeded in the lower court; we note that he has declined to produce the transcripts from those proceedings that would establish the falsity of his claims.

In any event, his request is without legal support and is the action of a desperate man who realizes he is looking at incarceration for his decade-long utter contempt of every court that has ruled against him – including this Court – and every court order that requires him to actually pay what is owed.

Scotlund brings up complete irrelevancies in an effort to misdirect the Court's attention from the fact that he has gone forum shopping, has lied to other courts, has ignored the orders of every court, and now defies the jurisdiction of ***this*** Court and the courts of Nevada in an attempt to avoid paying long overdue child support.

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In short, Scotlund is unhappy that he now is being ordered to actually pay his long-overdue child support.[1] If he had complied with the child support agreement that ***he*** drafted and was entered as an order of the Nevada Courts at the time of his 1998 divorce, he would not have a massive arrearage or have been subjected to attorney's fee awards and sanctions for the past decade.

Now that this Court and the court below have found that Scotlund has a massive arrearage and have entered the orders necessary to actually collect – and to hold him in contempt if he continues to evade and refuse to do so – he has run back to this Court – yet again – seeking a stay to the collection, for the sole purpose of further delay. His request is totally devoid of merit.

As such, we ask the Court to deny Scotlund's *Renewed Emergency Motion* in its entirety and with prejudice.

II. POINTS AND AUTHORITIES

A. FACTS

The ***actual*** facts of this case – which are supported by the record – are provided below and (of course) bear little resemblance to the strained (well, actually, mostly made up) version provided in all of Scotlund's filings.[2]

On January 26, 2012, the Court issued its *Order of Reversal and Remand*, stating:

> Because we conclude that the district court's establishment of a $1,300 per month sum certain for Vaile's child support obligation constitutes

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[1] Scotlund still refuses to pay the ordered support. He sent a check for $150 for July and a check for $150 for August. He has not paid any support – current or arrears – since then.

[2] Some of this *Opposition* repeats the facts provided to the Court in the Original *Opposition to Stay* filed when Scotlund first asked for a stay in this case.

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> an impermissible modification of the original support obligation, we reverse the district court's order setting Vaile's support payment at $1,300, and we further reverse the arrearages calculated using the $1,300 support obligation and the penalties imposed on those arrearages. We remand the matter to the district court for further proceedings consistent with this opinion.

The Court added a footnote:

> 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.

[Emphasis added.]

Scotlund lied to this Court, claiming that its remand "required the lower court to review this issue under NRS 130.207." The footnote quoted above says no such thing. In fact, however, the lower court ***did*** review NRS 130.207 (along with every other statutory provision cited by both sides) and correctly determined that Nevada had issued the controlling order.[3]

On April 9, 2012, the district court held a hearing specifically on the issues on remand and on our *Motion For An Order To Show Cause* based on Scotlund's failure to pay child support in accordance with the 1998 *Decree of Divorce*, for his failure to inform the court of his change of address, and for failure to begin payments on the attorney's fee judgments awarded against him. The court heard extensive oral argument on all issues and ruled that the parties were to further brief their respective positions. A briefing schedule was ordered and it was stipulated that the minutes of the hearing would act as an order of the court in accordance with EDCR 7.50.

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[3] As discussed below, the district court did exactly as this Court ordered and determined that the Norwegian orders had no effect on the proceedings as they were not entered in accordance with UIFSA.

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In accordance with the lower court's *Order*, both Cisilie and Scotlund filed FDFs on April 23, 2012, but Scotlund's was neither complete nor in accordance with the NRCP 16.2 rules.

Scotlund filed his briefing on the effect of the Norwegian child support orders and their applicability under UIFSA on May 9. His brief was to include a calculation of child support under both the Nevada child support orders and under the Norwegian child support orders. He failed to provide that information. Cisilie filed her responsive briefing on the issues required by the family court on May 21.

Per this Court's remand order, we provided supplemental filings calculating child support arrearages based on collection efforts by the District Attorney's office, once Scotlund finally provided some financial information – though not in accordance with the 1998 *Decree of Divorce* – that allowed us to do a comprehensive arrearage calculation based on Scotlund's annual income since 2000.

The Court held another hearing on June 4 to allow oral argument on the briefings that had been filed. The court posed many legal and technical questions to both parties about the effects of UIFSA and as to the nature of the Norwegian orders. The Court then took the matter under advisement.

On July 10, the lower court entered a *Decision and Order* addressing all remanded issues. Scotlund was unhappy – as always – that his position was identified as meritless and his legal argument faulty.

Seeking delay, Scotlund filed a so-called *Emergency Petition for Writ of Mandamus Under NRAP 27(e)* in this Court on July 19. On July 23, this Court denied it.

His present *Appeal* followed on July 30. On August 29, Scotlund filed a document entitled *Amended Notice of Appeal.*

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On October 15, a *Notice Regarding Non-Payment of Transcripts* was filed in the Eighth Judicial District Court.

On October 22, this Court issued an *Order* that dealt with a number of issues including Scotlund's request for a stay of proceedings – which was denied.

Scotlund failed to inform this Court, the lower court, or this office that he had secretly begun proceedings to register the Norwegian child support orders in Sonoma County, California (without notice to anyone who might contest it) and to declare that they were controlling. That Court, without the advantage of the record from Nevada or the participation of Cisilie Porsbol – who was never served with the underlying California action – made decisions based on Scotlund's false assertions contrary to those that were already part of the Nevada record.

Scotlund's failure to inform the California Court that the entirety of his arguments there were already on appeal to this Court and that the issue of the Norwegian Orders had already been completely addressed by the Nevada District Court indicates the level of deceit to which he will eagerly sink in continuing efforts to obfuscate proceedings and try to avoid his child support obligations.

On December 5, 2012, Scotlund filed a *Notice That No Transcript Is Being Requested* for his underlying Appeal in this Court, in an effort to prevent this Court from finding, as it would have to, that his argument before the lower court was given a fair hearing and that the court ruled on the appropriate law. The transcripts would also make plain that his representations to this Court as to the proceedings below are lies as the lower court followed the remand directions to the letter.

On December 19, 2012, Scotlund filed a *Notice* in this Court which included a copy of the unenforceable California order. The underlying *Motion* opposed here was filed the same day.

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III. OPPOSITION

A. The Request for a Stay of Proceedings and Enforcement Should be Denied

Scotlund claims that his unnoticed, illegitimate actions in California that resulted in an unenforceable order under UIFSA are a "change of circumstance" on the basis of which this Court should grant a stay of the lower court's actions. He is – of course – wrong.

This is not the first time Scotlund has tried to use his own bad or illegal behavior as an excuse to not comply with Court orders. For example, he repeats in his instant *Motion* the thrice-rejected assertion that he should not have to pay child support to his ex-wife for the period of time that he held the children after kidnaping them from Norway.[4]

Even more amazingly, Scotlund's filing threatens ***this*** Court that he will continue to seek the relief he wants in any Court with an open door if he does not get his way.[5] It is his professed belief that lying in other forums creates enforceable orders. He needs to be dissuaded of this belief and educated as to the repercussions of ignoring the orders of this Court – which will hopefully be one result of the scheduled contempt proceedings.

As noted above, Scotlund purposely did not get transcripts of the hearings that resulted in the *Orders* currently on appeal as he does not want this Court to see the

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[4] His argument is that the child support agreement says that no child support will be paid by him when he has possession of the children. The classic definition of "chutzpah" – applicable here – is: "that quality enshrined in a person who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan." *Williams v. Georgia*, 190 S.E.2d 785 (Ga. 1972) (*quoting* Leo Rosten, *The Joys of Yiddish*). English simply lacks an equivalent term for accurately describing this level of arrogance.

[5] See Appellant's *Motion* page 5, lines 14 through 16.

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discussion that was held by both sides of this case. He will continue to misdirect, misrepresent, and lie at every opportunity with the hope that this Court will not see the truth.

Scotlund again lied to the Court in claiming that we are attempting to collect $8,870.13 per month.[6] As this Court is aware, the collection by a VI-D child support collection agency is limited to a certain percentage of Scotlund's monthly pay. No more than that can be directly collected, but the arrearages to those other awards will continue to grow until he begins payments toward their satisfaction. Since Scotlund admits his pay is at least $7,370 per month, if 25% of his income were subject to the collection, he would only be paying $1,842.53 per month. This is far ***below*** what he has agreed to pay in the original "unmodified" child support agreement, which the lower court proceedings are seeking to enforce.

The facts are that Scotlund has not paid a penny toward his child support obligation since last August. Had he made an attempt to pay his support as ordered by the district court he would not be subject to contempt. However, a complete refusal to pay is another matter: Scotlund is not being held in contempt for refusing to pay the amounts established by his agreement, he is being held in contempt for refusing to pay anything at all when he was fully aware that some amount of child support was due.

As a courtesy to the Court, we will not reargue the issues that are already clearly in the record on the validity of the lower court's decision and orders. We ask the Court to incorporate the same as it sees fit when reviewing this *Opposition*.

Scotlund's arguments as to why the stay should be granted are bogus. The "object of the appeal" will not be defeated if a stay is not granted. This Court has already ruled that personal jurisdiction still exists in Nevada over Scotlund and that

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[6] See Appellant's *Motion* at page 3, lines 1 through 10.

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child support ordered is due and owing. The amount of the child support is the subject of the appeal. Scotlund refused to pay ***any*** support for months; ***that*** is the subject of the contempt hearing.[7]

Scotlund claims he will suffer "serious injury" if the stay is denied. What he will suffer is finally facing decade-delayed justice for his refusal to comply with court orders. It only takes a reading of his *Motion* to realize the utter contempt for which he holds both the district court and the decisions of this Court. It is clear that he will continue to run to courthouses all over the country if this Court doesn't do what he demands.

Scotlund then argues that the Respondent will suffer no injury if the stay is granted. Scotlund refuses to acknowledge that his injury of his victim ex-wife and children is ***ongoing*** and that every day that he continues to refuse payment of the back child support causes additional injury to the innocent parties in this case.

Again, it only takes a reading of his *Motion* to see his true motive. He hates the fact that his ex-wife has an attorney that continued to represent her even though she could not afford to pay. The fact that she might pay her bill to us with money that she receives from him is so distasteful to him that he refuses to pay any at all.[8]

Lastly, Scotlund fatuously argues that he is "likely to prevail" on the merits of his appeal. Scotlund's position is completely contrary to UIFSA. As noted by Justices Saitta and Pickering in their address to the Family Law Section at the Advanced Family Law seminar in December, 2012, that uniform law – which has

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[7] Even if the court order out of California was enforceable – and it is not – even that Court found that Scotlund still had a child support arrearage.

[8] The point is not relevant to these proceedings at all, but it is perhaps worth noting that contractual agreements between us and our client that do not violate Rules of Professional Conduct are not reviewable on appeal by a third party.

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been adopted by every state in the nation – is clear as to the jurisdiction of a court to modify an existing order, and the procedures in doing so.

The orders issued in Norway did not comply with UIFSA and are not enforceable. The California order is likewise unenforceable for the same reason.[9] The ***only*** ways Scotlund could prevail on his appeal is if the appeal was decided on factual lies based on defiance of the record of what occurred in the district court (facilitated by refusing to obtain the necessary transcripts) or if this Court decided to interpret and apply UIFSA contrary to the holdings of every other appellate opinion on the subject in the past ten years.

B. The California Order Does Not "Vitiate" Any Order From Nevada

The California order was obtained without notice to Cisilie, was obtained after the issue had already been decided in Nevada, was brought in secret while the same issue was on appeal in Nevada, and was made without the benefit of the Nevada record.

California did not have jurisdiction over Cisilie and thus lacked jurisdiction to modify or even rule on the validity of the Nevada order. The ***only*** court with jurisdiction to determine the validity or applicability of the Norwegian orders is the only court with personal jurisdiction over both parties – the Nevada court. A court order elsewhere made without jurisdiction is entitled to no full faith and credit treatment.[10]

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[9] That court found it had personal jurisdiction over Cisilie because she sought to enforce the child support order in that state. This position is preposterous.

[10] *See, e.g., Adams v. Adams*, 107 Nev. 790, 820 P.2d 752 (1991) (no Full Faith and Credit given to California order obtained by forum-shopping father).

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Arguing that an improperly obtained California order in some way negates the jurisdiction of either this Court or the district court to enforce its orders is ludicrous. Scotlund can run to any court he chooses, filing bogus proceedings without notice or jurisdiction; it will have zero effect on the jurisdiction of this Court and the lower court.[11]

As argued at length and briefed extensively in the lower court, in order to get a qualifying order in Norway Scotlund would have had to subject himself to that court's jurisdiction by registering the Nevada order there and asking for the modification, or by stipulating with Cisilie and filing a written waiver in Nevada – the initiating state – to allow the Norwegian court to proceed. He did neither.

California can't fix that defect no matter what the improvidently-entered order there says. The Nevada order remains the only valid and enforceable child support order as Scotlund has not done what he was required to do if he wished to change that fact.[12]

This Court should clearly state that the California order is a dead letter and is completely unenforceable. The Court should also sanction Scotlund for his obvious forum shopping and outright lying to this Court and to the California court.

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[11] He can, of course, go to Norway to modify the ***prospective*** support, but that won't affect any of the accrued arrearages.

[12] Ironically, Scotlund was advised almost a decade ago to go to Norway to seek a modification if he so desired a change. He refused to go as he feared being arrested by the Norwegians for kidnaping the children.

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C. The District Court Has Jurisdiction To Enforce Its Orders

Contrary to Scotlund's misuse of the law when citing to *Rust*[13] and *Kantor*,[14] the district court retains jurisdiction to enforce its orders until and unless a stay is in place. To obtain a stay, Scotlund was required to obtain a supersedeas bond to protect Cisilie's interest.[15] He of course, did not follow that rule, as his sole intent is to ensure that the support owed is never paid, and a bond might actually provide the long-delayed arrearages.

After this Court denied his original request for a stay, the district court moved ahead with the scheduled contempt hearing. This is the same contempt hearing that was scheduled at the time Scotlund requested his first stay of enforcement. Nothing has changed since that time except that Scotlund has lied to a foreign court and obtained an unenforceable order without notice. Neither of these actions deserve consideration by this Court beyond imposition of direct sanctions against Scotlund for his behavior.

The Court can't be misled by Scotlund's overt deception and deceit. His request for a stay should be denied with prejudice and his California order formally noted as unenforceable and irrelevant.

IV. CONCLUSION

Scotlund's request is without any further support than when he asked for the stay back in October when his first request for stay was denied. He is subject to the same contempt – though he has since then missed a number of additional child

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[13] *Rust v. Clark Cty. School District*, 103 Nev. 686, P.2d 1380 (1987).

[14] *Kantor v. Kantor*, 116 Nev. 886, P.3d 825 (2000).

[15] See NRCP 62(d).

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support payments – that he was facing when he requested his first stay. Nothing else has changed.

His request should be denied with prejudice and sanctions should be considered for his considerable duplicitous behavior since filing his appeal.

This Court's remand last January was for the court below to set child support in accordance with the 1998 *Decree of Divorce*. That was done. The remand also asked the court to determine whether the Norwegian child support orders had any effect on the setting of a child support amount in accordance with the 1998 *Decree*. The lower court made that decision as well. There are no conflicting orders and the lower court did not vary from the orders of this Court on remand.

It is long past time to end Mr. Vaile's many years of evading and delaying justice.

Respectfully submitted,

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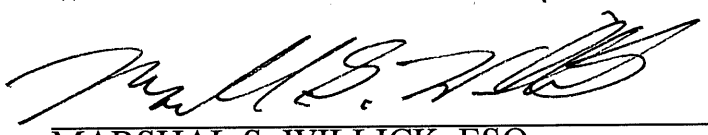

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CERTIFICATION OF COMPLIANCE

1. I hereby certify that this filing complies with the formatting requirements of NRAP 27(d)(1)(E) & (d)(2), NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because:

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

[**X**] Proportionately spaced, has a typeface of 14 points or more and contains 3435 words.[16]

DATED this 2nd day of January, 2013.

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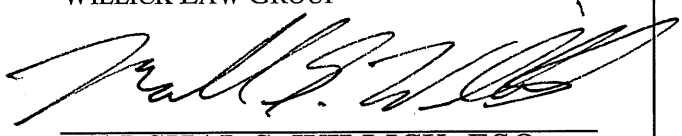

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[16] We attempted to confirm compliance with the "type volume limitations" of the current rule sets; the Supreme Court Clerk informed us that the amendments to ADKT 467 did not apply. While, with the cover page and this certificate of compliance, this filing is 13 total pages, we believe that we are in compliance with the rules.

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on the 2nd day of January, 2013, pursuant to EDCR 7.26(a), by U.S. Mail addressed as follows:

Mr. Robert Scotlund Vaile
2201 McDowell Ave.
Manhattan, KS 66502
Appellant In Proper Person

That there is regular communication between the place of mailing and the place so addressed.

Trisha Vallo
An Employee of the WILLICK LAW GROUP

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