IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE, Petitioner, vs. CISILIE A. PORSBOLL, Respondent.	Supreme Court Case No: 61415 On appeal from District Court Case No: 98D230385

PETITION FOR REVIEW

Robert Scotlund Vaile
812 Lincoln Street
Wamego, KS 66547
(707) 633-4550
Petitioner in Proper Person

16-14003

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

In accordance with Rule 40B(a) of the Nevada Rules for Appellate Procedure, this petition requests review of a Court of Appeals decision dated December 29, 2015 titled, *ORDER AFFIRMING IN PART; DISMISSING IN PART; REVERSING IN PART, AND REMANDING,* as well as a decision following rehearing titled, *ORDER GRANTING REHEARING IN PART, DENYING REHEARING IN PART, AND AFFIRMING,* dated April 14, 2016.

II. QUESTIONS PRESENTED FOR REVIEW

1. May a district court overrule a federal agency's determination made under federal statutory authority that a foreign country's laws and procedures substantially comply with UIFSA?
2. May a district court require a parent to pay retroactive child support to a party with whom the subject children did not live as punishment on the residential parent?
3. May an appellate court uphold a district court's finding of contempt when the basis for that contempt is overturned by the appellate court?

III. REASONS TO ACCEPT REVIEW

In this case, the district court has directly defied this Court's previous order, and issued orders that directly conflict with the Uniform Interstate Family Support Act. To reach its decision, the district court overruled a determination by a federal agency as to which foreign countries' orders are subject to enforcement in the US. The agency determination is a key component of a comprehensive federal statutory scheme that underlies United States treaty on reciprocal child support enforcement.

In upholding the lower court's conclusion, the newly appointed Court of Appeals has pronounced Nevada-specific exceptions to uniform law – law which makes federal funding of the State's child support programs dependent on strict compliance and conformity to the Uniform Interstate Family Support Act ("UIFSA") as written. Creating exceptions for Nevada courts puts the state at odds with all other states which have implemented and follow the uniform law as implemented, as well as the courts of foreign countries which participate in the US treaty. It threatens the enforcement of Nevada child support outside the state, as well as the enforcement of all other states' orders in the foreign countries. This Court should hear this matter of first impression because of the significant ramifications to both the state and nation, and to avoid the conflict with the federal statutory scheme which preempts contrary state action.

The Court of Appeals has also given the district court the authority to inflict punishment in a manner that is contrary to fundamental Constitutional guarantees. The Court of Appeals has upheld the district court's imposition of child support against Petitioner during a period when his children lived with him full-time and when he paid 100% of their support, as a punitive sanction.

Furthermore, the district court held Petitioner in contempt, issued a bench warrant, and ordered him imprisoned for a fixed-term, mandatory imprisonment of 275 days - without bail. The Court of Appeals did not overturn the contempt ruling even after it overturned the district court order underlying the contempt sanctions, finding that it lacked jurisdiction to do so. In effect, the Court of Appeals has granted the district court impunity for invoking serious criminal punishment, without any criminal procedure, even after the basis for the contempt was held invalid. These serious matters, again of first impression, demand this Court's attention to restore the order of law, and ensure fundamental Constitutional protections to parties in the courts of the State of Nevada.

IV. POINTS AND AUTHORITIES

A. The District Court May Not Overrule a Federal Agency's Determination Made Under Federal Statutory Authority that a Foreign Country's Laws and Procedures Substantially Comply with UIFSA

1. Norway's Procedures May Not Be Challenged by the State Courts

The last time that this case was on appeal,[1] this Court explained that the purpose of UIFSA was to maintain a single child-support order system. After providing detailed instructions, (specifically referencing NRS §130.207), the Court instructed the district court that it "must determine whether [a Norwegian] order exists, and assess its bearing, if any, on the district court's enforcement of the Nevada order." While the case was on appeal, Petitioner wrote to and secured the Norwegian orders and provided them to both this Court, and the district court. In assessing the controlling order on remand, the district court defied this Court's instruction. Instead, the court adopted a first-in-time theory specifically rejected by UIFSA – it held that the Nevada child support order was first and, therefore, controlling. The lower court held that NRS §130.207 was inapplicable and struck the Norwegian order from the record.

On appeal, the Court of Appeals upheld the lower court's rejection of the Norwegian order on a different theory altogether – a theory not proposed by either the district court or any party below. The Court of Appeals held that it could not find evidence that the Norwegian court had personal jurisdiction of Petitioner Vaile, and that the Norwegian order should not be upheld on that basis.

Never before has a court in the US *sua sponte* challenged a foreign court's jurisdiction over a party who *claimed* submission to the foreign court. The

[1] This Court decided this case first in 2002, in Vaile v. Eighth Jud. Dist. Ct., 44 P. 3d 506, 118 Nev. 262 (2002), hereinafter ("*Vaile I*") and again in January 2012 in Vaile v. Porsboll, 268 P. 3d 1272, 128 Nev. 27 (2012), hereinafter ("*Vaile II*").

standard is that an appellate court will not consider arguments that are raised for the first time on appeal, In re AMERCO Derivative Litigation, 127 Nev. ___, ___ n. 6, 252 P.3d 681, 697 n. 6 (2011). Since Porsboll had no standing to challenge the Norwegian court's personal jurisdiction over Vaile, because personal jurisdiction is an individual's waivable right[2], then neither could the appellate court assert that challenge on her behalf. Furthermore, the appellate court's decision directly conflicts with this Court's decision in *Vaile I*, which sent the two American-born children to Norway 14 years ago under the assumption that Norway was the only court with jurisdiction of the parties.

Both the Court of Appeals, and the district court rejected the procedure set forth in UIFSA for resolving a conflict in child support orders, which gives decisive weight to the home state of the children (Norway). And both Nevada courts refused recognition of the Norwegian order based on what the Nevada courts considered procedural flaws in the Norwegian court system. Under the statutory scheme put in place to support UIFSA between states and foreign countries, it is the federal government which is empowered to investigate and determine whether a country's procedures are sufficient to be granted *Foreign Reciprocating Country* (FRC) status. The federal scheme preempts a state court's ability to overrule the determination by the federal executive agencies here.

> Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in ***substantial conformity*** with the standards set forth in the statute.
>
> 73 Fed.Reg. 72555 (emphasis added). See also 42 U.S.C. 659A.

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[2] Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 US 694, 703 (1982).

> As long as these [standard] elements are satisfied, there is no requirement that the FRC make changes in its procedures for obtaining, recognizing, or enforcing orders for support. ***It is important to note that an FRC does not have to have identical procedures, tools or mechanisms as a U.S. State.***
>
> Office of Child Support Enforcement, A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries http://www.acf.hhs.gov/programs/css/resource/a-caseworkers-guide-for-cases-with-foreign-reciprocating-countries (Last visited Dec. 9, 2012) (emphasis added).

The parties and courts below agree that Norway has been deemed an FRC under this federal scheme.[3]

> Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by Title IV–D of the Social Security Act (the IV–D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. State.
>
> 73 Fed.Reg. 72555

The courts of the State of Nevada do not have the option of implementing variances to UIFSA, rather it is required to implement UIFSA "verbatim" under Federal law:

> On September 29, 2014 President Obama signed Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amends section 466(f) of the Social Security Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws" (referred to as UIFSA 2008). Among other changes, the UIFSA 2008 amendments integrate the appropriate provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was adopted at the Hague Conference on Private International Law on November 23, 2007, referred to as the 2007 Family Maintenance Convention.
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> Section 301(f)(3)(A) of P.L. 113-183 requires that UIFSA 2008 must be in effect in every state "no later than the effective date of laws

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[3] http://www.acf.hhs.gov/programs/cse/international/index.html. ROA4876.

> enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act."
>
> . . .
>
> All states must enact UIFSA 2008 ***verbatim*** by the effective date noted in P.L. 113-183. Where UIFSA 2008 has bracketed language, states may use terminology appropriate under state law. In addition, P.L. 113-183 requires states to make minor revisions to the state plan which OCSE will address in forthcoming guidance.
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> UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF CHILD SUPPORT ENFORCEMENT ACTION TRANSMITTAL AT-14-1, DATE: October 9, 2014, contained in UIFSA Comments (2008) - Final Act with Revised Prefatory Note and Comments in 2015 (emphasis added).

The lower court's assertion that it need not honor the Norwegian order, and the appellate court's challenge to the jurisdictional provisions of the Norwegian court are at odds with UIFSA and the federal pronouncement that Norway's procedures are sufficient to be granted sister-state status.[4] The fact that the comments to UIFSA indicate that enactment of UIFSA 2008 as written is essential to federal funding of state child support programs, and also necessary in order for the United States to fulfill its treaty obligations under the Hague Maintenance Convention of November 23, 2007, did not persuade the Nevada courts to follow the law. Thus, this Court's action is necessary.

2. *The Norwegian Court May Assume Jurisdiction under UIFSA*

On rehearing, the Court of Appeals heard Petitioner's challenge to the fact that even if Norway had been required to strictly follow UIFSA, another

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[4] Prior to the federal pronouncement on Norway's FRC status, the Attorney General of Nevada had also determined that Norway's procedures were sufficient to be granted reciprocity with the state. Presumably, the courts in this case are of the opinion that they may also overrule the State's executive branch determination as well.

provision of UIFSA allows a sister court to modify a child support order when the issuing court lacks modification jurisdiction. See NRS §130.6115. This Court held with clarity that the Nevada district court lacked modification jurisdiction – allowing the Norwegian court freedom to modify even under the strictures of UIFSA. However, the Court of Appeals pronounced an exception to *this* section of UIFSA also. It held that this statutory provision could only have effect when a foreign court 1) explains its basis for the invocation of jurisdiction, 2) references the Nevada order it is modifying, and 3), actually purports to modify the Nevada order.[5] These requirements mandated by the Nevada Court of Appeals have no basis in UIFSA, and again, attaches requirements to the Norwegian court that conflict with the federal determination that their procedures are already sufficient.

3. *Challenges to Foreign Orders are Limited Under UIFSA*

On rehearing, the Court of Appeals also addressed Petitioner's argument that section 607 of UIFSA (NRS §130.607) allows only enumerated defenses to prevent the registration of a foreign order. Consistent with the rest of the scheme, this section does not include provision that allows a party to challenge the procedures of the foreign jurisdiction, the language included in a modification order, or the foreign court's exercise of jurisdiction over the *opposing* party. To dispose of this issue, the Court of Appeals simply asserted that the Norwegian order was not registered in Nevada, suggesting that this made UIFSA's limitation of defenses inapplicable.[6] The appellate court did not explain how Vaile's submission of the Norwegian order to both this Court, and the district court, did not qualify for registration.

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[5] Of course, the vast majority of sister-state child support orders would fail this new test implemented by the appellate court.

[6] Again, this theory was not presented by Respondent in either the court below or on appeal.

The appellate court's implication is that since the district court struck the Norwegian order submitted by Petitioner, instead of registering it as required under UIFSA,[7] then Respondent was free to challenge the Norwegian order on any contrived basis – as opposed to those allowed under UIFSA. The effect of this judicially created loophole is that Nevada courts may simply strike foreign orders in order to be relieved of UIFSA's mandates, and contrary to its purposes.

In short, the Court of Appeals has endorsed the lower court's rejection of the federal mandate to honor Norwegian child support orders – placing significant peril to the State's participation in the federally funded interstate child support program. In 2002, this Court held that the Nevada courts have never had jurisdiction of either of the parties, or the children. The tribunals of the states where Petitioner, Respondent and the children live (tribunals with personal jurisdiction of the parties) have all determined that the Norwegian child support order controls. When a court departs so significantly from what is intended to be a uniform program, conflict between the tribunals is inevitable. Petitioner requests this Court to take up this petition to resolve this important matter with finality.

B. A District Court May Not Require that Retroactive Child Support be Paid to a Party with Whom the Subject Children Did Not Live as Punishment on the Residential Parent

There is no dispute in the record below that the Nevada district court granted Petitioner full custody of the parties' children in April 2000[8] and upheld that grant of custody again in October 2000. Furthermore, there is no dispute that Petitioner

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[7] UIFSA requires the registration of foreign orders, "regardless of their form" of submission. NRS §130.602(2).

[8] The Nevada district court, under a previous judge, held that Respondent Porsboll was wrongfully withholding the children in Norway contrary to the parties' separation agreement.

provided 100% of the support for the children from May 2000 to April 2002, and that Respondent Porsboll provided no support to Petitioner during this period. Despite these undisputed facts, the district court held that Petitioner was required to provide child support to Respondent retroactively for this period because this Court eventually overturned the district court's grant of custody to Petitioner.

Petitioner adhered to the order which was valid at the time; just because this Court eventually reached a different legal conclusion does not mean that the judgment in favor of Petitioner was invalid or void at that time. Bradford v. Eighth Jud. Dist. Ct., 308 P. 3d 122 (Nev, 2013). The district court's imposition of monetary sanctions on Petitioner did not serve any economic purpose. Not only have the children long since emancipated, but Respondent also incurred no economic impact in raising the children during the period in question, since they lived with Petitioner. Respondent offered no support of the children during this period. The district court's retroactive monetary judgment veiled as "child support," compounded with interest, penalties, and attorney's fees, after Petitioner already supported his children during the period in question, can only be interpreted as *punitive* in character.

The US Supreme Court has held that under Constitutional standards, an unconditional penalty is criminal in nature, because it is solely punitive, and is strictly prohibited in civil proceedings. Hicks v. Feiock, 485 US 624, 633 (1988). Petitioner respectfully requests that the Court take up this issue, and overturn the imposition of a criminal sanction on Petitioner which is contrary to Constitutional Due Process guarantees.

C. An Appellate Court May Not Uphold a District Court's Finding of Contempt When the Basis for that Contempt is Overturned by the Appellate Court

The district court granted Petitioner's request to allow him to appear telephonically at a hearing in January 2013, but then, at Respondent's counsel's urging, changed its mind and ordered him to appear one business day before the hearing date. When Petitioner was unable to make arrangements to attend at such short notice, he requested a continuance, but still attempted to appear telephonically on the day of the hearing. After refusing to admit him to the hearing, the district court held him in contempt for failure to pay child support for a short period in accordance with the district court's modified child support order. The district court's order imposed a determinate criminal sanction[9] of "a mandatory 275 days of criminal incarceration in the Clark County Detention Center without bail."[10]

On the underlying issue, the appellate court concluded that "the district court abused its discretion in calculating the support arrearages and we reverse the award of child support arrearages to Porsboll and remand for new calculations in line with the divorce decree." However, on the issue of contempt the appellate court held that "we lack jurisdiction to consider [Petitioner's] appeal as to those decisions as such contempt orders are not substantially appealable." The

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[9] When a party is sentenced to imprisonment for a definite period, the punishment falls under criminal contempt; however, criminal penalties may not be imposed on someone who is not afforded Constitutional criminal proceedings including the requirement that the offense be proved beyond a reasonable doubt. Hicks v. Feiock, 485 US 624, 632, 637 (1988).

[10] It is no coincidence that the district court issued this order shortly after a Kansas court held that the Nevada district court was exceeding her jurisdiction on this matter.

appellate court's reference to *Pengilly,*[11] implies Petitioner could only challenge the contempt part of the district court's order through a petition for writ to this Court.

However, a contempt order can indeed be heard on appeal, when the basis for the contempt order is otherwise appealable. Matter of Water Rights of Humboldt River, 59 P. 3d 1226, 1229 (Nev. 2002). Furthermore, the Court will not issue a writ when a plain, speedy, and adequate remedy in the ordinary course of law exists elsewhere. Paley v. Second Jud. Dist. Ct., 310 P. 3d 590, 592 (Nev. 2013). Neither will the Court exercise its discretion to consider a writ on a case where the underlying matter is moot. Personhood Nevada v. Bristol, 245 P. 3d 572, 574 (Nev. 2010).

In this case, a writ could not have been used to challenge the district court's criminal contempt sanctions because the underlying matter (the controlling child support order and amount) was the subject of appeal – clearly demonstrating both that the contempt was tied to an appealable matter, and that an appellate remedy was available to resolve the matter. Had Petitioner filed both a writ and an appeal, the appellate court's finding that the district court's child support order underlying the contempt was invalid would have made the writ moot. Since the writ was not the proper avenue to challenge the contempt order, the appellate court had jurisdiction to address Petitioner's challenge, and should have overturned the contempt order once the underlying matter was reversed. Petitioner requests that the Court take up this matter to clarify this important question of law.

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[11] Pengilly v. Rancho Santa Fe Homeowners Ass'n, 116 Nev. 646, 649, 5 P. 3d 569, 571 (2000).

D. Other Important Questions that this Case Raises

1. May Attorney's Fees be Awarded to the Losing Party?

Since late 2007[12], Respondent has argued that she need not produce the Norwegian child support order, or abide by the Nevada child support agreement as written. Instead, she has expended all legal efforts in Nevada to secure a *modified* child support order from a court that lacks modification jurisdiction. On appeal in 2012, this Court overturned every one of Respondent's fallacious arguments and remanded with instructions that the Norwegian order be produced, and holding that the district court did not have jurisdiction to modify the parties' agreement. Now, on appeal again in 2016, the appellate court has held as before, that the district court is still not permitted to modify the parties' agreement.

Almost nine years of litigation has resulted from Respondent's desire to improve on her Norwegian child support order (which Petitioner has fulfilled in its entirety). Respondent's many spurious arguments urging the district court to bend the law, together with the subsequent appeals, have returned the parties to their starting place – once again. Yet, the Court of Appeals has refused to overturn attorney's fees[13] that the district court awarded to Respondent's counsel over the years for putting forth arguments and securing judgments contrary to settled statutory law.

A district court is not permitted to award attorney fees or costs unless authorized to do so by a statute, rule or contract. Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998). No Nevada statute allows a grant of attorney's fees to a non-prevailing party. Nevertheless, the Court of Appeals refused to overturn the attorney's fees granted to Respondent, reasoning that a

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[12] *Vaile I* was decided in April 2002. Respondent reopened the case in 2007 to challenge the child support order which she secured from a Norwegian court.

[13] The Court of Appeals overturned only the latest award of attorneys fees.

party must specifically seek to overturn attorney fee awards on appeal, in addition to seeking reversal of the underlying matter. This, of course, makes the appellate courts responsible for upholding or rejecting attorney fees awarded in the district court on every appeal.

A prevailing party attorney fee award should be reversed by the district court upon issuance of remittitur that overturns a prevailing party's judgment – because the party is no longer the prevailing party and is not entitled to the fees previously awarded. By upholding the district court's award of attorney's fees to the non-prevailing party, the appellate court sends the message to family law attorneys that propagating litigation for years with contrived legal positions will continue to be a lucrative endeavor in Nevada. Even when the underlying matter is overturned, the attorneys who did not prevail can keep their fees. This Court should consider accepting this case in order to prevent the unjust enrichment of disingenuous attorneys who abuse the legal system of the State of Nevada.

2. Does the Nevada Supreme Court Implicitly Reject all Arguments Not Discussed on Appeal?

In *Vaile II*, Petitioner raised defenses relative to waiver and prevention based on the undisputed facts that Respondent specifically told Petitioner that she rejected the Nevada child support order in favor of the Norwegian one, and that she refused to provide information to Petitioner which would have allowed him to calculate support under the Nevada order.[14] This Court did not address those defenses because it required a determination as to which order was controlling before these defenses could be applied. On remand, the district court held again that the Nevada order was controlling, and Petitioner raised the defenses in the lower court and on appeal. Even though this Court did not reach the defenses in *Vaile II*, the appellate court determined that this Court had implicitly rejected

[14] Interesting, the appellate court found that this was, in fact, the case.

those defenses prospectively, regardless of which order ended up being controlling.

There is no logic to the appellate court's decision. This Court's decision in *Vaile II* did not discuss a large number of issues raised on appeal that were not relevant to the basis upon which it decided the case. One such argument, supported by the Nevada Attorney General, was that the formula put forth by Respondent's attorney was contrary to State statute and contrary to the uniform practice within the entirety of the State's child support enforcement program. Should the State interpret this argument, which was also not discussed in *Vaile II,* as an implicit rejection of the child support program's standard practices? The appellate court's holding intimates that arguments or defenses not discussed or relevant to the underlying case heard by this Court are implicitly rejected. This Court should consider taking up this case to resolve this wholly invalid rule.

3. May the Court of Appeals Dictate a New Standard for Judicial Estoppel?

One of the oddest aspects of this case is the fact that Respondent specifically sought the Norwegian child support order in Norway (to which she continues to subscribe), while her Las Vegas attorney was attacking the validity of her actions and the resultant Norwegian order in Nevada. Her Las Vegas counsel repeatedly denied that Respondent actually sought a Norwegian child support order, and refused to produce it for Petitioner or the district court for five years. This is a textbook case for judicial estoppel, which would prevent Respondent (or her attorney) from challenging her own actions in Norway.

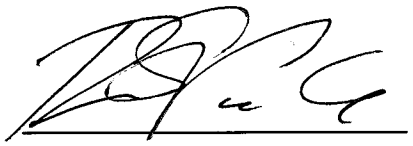
However the appellate court established a new standard for estoppel in Nevada with this case, which requires an "intent to abuse" the Nevada legal system in order for the principle to be applied. The appellate court found that Respondent, who was represented by counsel in both Norway and Nevada, and

who was law-trained herself in Norway, was nevertheless understandably ignorant of how to pursue her rights, relieving her of estoppel's application. If Respondent and her collective legal team were understandably ignorant, then who is not? And is ignorance under the law now a valid defense in Nevada? As applied here, the Court of Appeals' new "understandable ignorance" standard must surely negate application of the principle of estoppel in every case. Unless this Court is satisfied with this new standard, the Court should take up this issue, and re-establish this principle for the lower courts.

V. CONCLUSION

If allowed to stand, the decision of the Court of Appeals in this case removes the State of Nevada from the body of states and foreign countries which subscribe to a federal uniform program intent on honoring and enforcing each others' child support orders. This case threatens not only Nevada's participation and funding in the federal scheme, it also threatens United States' obligations under the treaties upholding that program. Petitioner respectfully requests the Court to take up this case in order to prevent the detriment that will surely follow.

Respectfully submitted this 2nd day of May, 2016.



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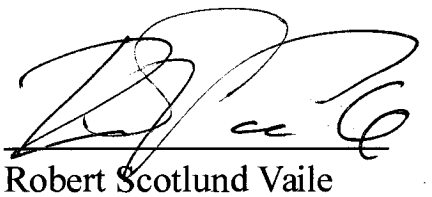
CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for review 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 it has been prepared in a proportionally spaced typeface using LibreOffice in 14-point size Times New Roman type style.
2. I further certify that this petition complies with the type-volume limitations of NRAP 40B(d) because it is proportionately spaced, has a typeface of 14 points or more, and contains 4,496 words as reported by LibreOffice.
3. Finally, I hereby certify that I have written and read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

Dated this 2nd day of May, 2016.



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CERTIFICATE OF MAILING

I hereby certify that on this date, I deposited in the United States Mail, postage prepaid, at Duncanville, TX, a true and correct copy of this *Petition for Review* addressed as follows:

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Dated this 2nd day of May, 2016.

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Attachment 1

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 61415

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

No. 62797

ORDER AFFIRMING IN PART, DISMISSING IN PART, REVERSING IN PART, AND REMANDING

These are consolidated appeals from district court orders in a child support arrearages matter. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Appellant Robert Scotlund Vaile and respondent Cisilie Porsboll were previously married and have two children together. While the procedural history of this matter is lengthy and complicated, the issues before us in these appeals arise from proceedings on remand following the Nevada Supreme Court's reversal of the district court's calculation of child support arrearages and penalties in *Vaile v. Porsboll (Vaile II)*, 128 Nev. 27, 268 P.3d 1272 (2012). Specifically, on remand, the district court entered orders recalculating the arrearages and penalties

and reducing them to judgment, granting Porsboll attorney fees, finding Vaile in contempt of court, and sanctioning him. These appeals followed.

In Docket Number 61415, Vaile challenges orders awarding child support arrearages and penalties and reducing them to judgment, finding him in contempt of court, and confirming that prior attorney fees awards were still valid. In that same docket, Vaile also challenges a separate order granting additional attorney fees and costs. In Docket Number 62797, he challenges an order finding him in default for failure to appear, sanctioning him for violating court orders, and finding him in further contempt of court for failing to pay child support. Vaile also appeals from an order granting attorney fees to Porsboll based on the default entered for Vaile's failure to appear.

The Nevada divorce decree is the controlling order

In *Vaile II*, our supreme court held that the child support order contained in the Nevada divorce decree was the only child support order, but also noted that the parties and the record made reference to a possible child support order entered by a Norway court. *See id.* at 31, 31 n.4, 268 P.3d at 1275, 1275 n.4. As a result, the court directed the district court to "determine whether such an order exists and assess its bearing, if any, on the . . . enforcement of the Nevada support order." *See id.* at 31 n.4, 268 P.3d at 1275 n.4. On remand, a copy of the Norway order was filed with the district court, which applied the Uniform Interstate Family Support Act (UIFSA), NRS Chapter 130, to determine that the Nevada divorce decree was the controlling child support order as Norway lacked jurisdiction to modify the support obligations in the Nevada decree. On appeal, Vaile argues that, under UIFSA, the Norway order is the controlling order. Porsboll disagrees.

Application of UIFSA

UIFSA is designed to ensure that only one child support order is effective at any given time. *Vaile II*, 128 Nev. at 30, 268 P.3d at 1274 (citing Unif. Interstate Family Support Act prefatory note (2001), 9/IB U.L.A. 163 (2005)). "Under UIFSA's statutory scheme, a court with personal jurisdiction over the obligor has the authority to establish a child support order and to retain jurisdiction to enforce or modify the order until certain conditions occur that end the issuing state's jurisdiction and confer jurisdiction on another state."[1] *Id.* Here, in assessing the disputed Norway order, the question before the district court was whether Norway had exclusive, continuing jurisdiction such that it could modify the support obligations contained in the Nevada decree. Questions of subject matter jurisdiction are reviewed de novo. *Holdaway-Foster v. Brunell*, 130 Nev. ___, ___, 330 P.3d 471, 473 (2014).

It is undisputed that, when the Norway order was issued, Vaile did not live in Norway, and there is nothing in the record demonstrating that the Norway court otherwise had jurisdiction over Vaile. As a result, Norway could only obtain jurisdiction to modify the support obligations if Vaile and Porsboll filed written consents in Nevada

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[1]As used in UIFSA, "state" includes foreign countries that have been declared a foreign reciprocating country pursuant to 42 U.S.C. § 659a. NRS 130.10179(2)(b) (2007). Norway was declared a foreign reciprocating country on June 10, 2002. Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 79 Fed. Reg. 49,368, 49,369 (Aug. 20, 2014). Although NRS 103.10179 has since been amended to remove the subsection relied on here, 2009 Nev. Stat., ch. 47, § 44, at 125-26, that amendment does not apply to cases, such as this one, that commenced before October 1, 2009. *Id.* at § 90, at 140.

giving Norway exclusive, continuing jurisdiction over the Nevada order. *See Auclair v. Bolderson*, 775 N.Y.S.2d 121, 123 (N.Y. App. Div. 2004) (providing that, under UIFSA, if no consents are filed to give a new tribunal continuing, exclusive jurisdiction to modify another tribunal's child support order, then the new tribunal must have personal jurisdiction over the non-moving party, among other requirements, to obtain such jurisdiction); Unif. Interstate Family Support Act § 205(b)(1) (2001) (providing that another jurisdiction's tribunal may modify a state's child support order if each party files a written consent in the issuing state for the other tribunal to assume continuing, exclusive jurisdiction); *see also* NRS 130.611(1)(b) (Nevada's codification of that statute). Because neither party filed such consents, Norway lacked jurisdiction to modify the child support obligations set forth within the Nevada divorce decree. *See Auclair*, 775 N.Y.S.2d at 123; Unif. Interstate Family Support Act § 205(b)(1); *see also* NRS 130.611(1)(b). Consequently, the Norway order and its subsequent modifications have no legal effect. *See Jackson v. Holiness*, 961 N.E.2d 48, 52 n.5, 54 (Ind. Ct. App. 2012) (finding that Indiana lacked the ability to modify another tribunal's child support order, in part because the parties had not filed written consents in the issuing state allowing Indiana to do so); *see also Swan v. Swan,* 106 Nev. 464, 469, 796 P.2d 221, 224 (1990) (holding that a district court's custody ruling was void because the court lacked subject matter jurisdiction).[2]

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[2]Vaile also asserts that this court must recognize the order of a California superior court that found the Norway order to be controlling under UIFSA. But the California superior court order has since been overturned by a California appellate court, which also ordered Vaile's case dismissed for lack of jurisdiction. *See Vaile v. Porsboll*, No. A140465, 2015 WL 2454279, at *17 (Cal. Ct. App. May 22, 2015).

Vaile also argues that the district court erred in applying NRS 130.611 because that statute only describes how Nevada may modify another state's child-support order, not how another state may modify a Nevada support order. While Vaile is technically correct, Norway's status as a foreign reciprocating country means that Norway has adopted procedures regarding the modification of United States child-support orders that are in "substantial conformity" with the United States' statutes. *See Country of Lux. ex rel. Ribeiro v. Canderas*, 768 A.2d 283, 285-86 (N.J. Super. Ct. Ch. Div. 2000) (discussing how to determine whether another country's child support order may be enforced by another tribunal under UIFSA); *see also* Unif. Interstate Family Support Act § 611 (2001) (providing the circumstances under which a tribunal may modify another tribunal's child support order). Thus, the district court correctly utilized the modification principles described in NRS 130.611 to determine if Norway had jurisdiction to modify the Nevada divorce decree under UIFSA.

Judicial estoppel

As a final argument in favor of enforcing the Norway order, Vaile asserts the district court should have applied judicial estoppel to bar Porsboll from contesting the validity of the Norway order because she is the one who sought that order. Porsboll responds that estoppel does not apply here because Norway, rather than Porsboll, sought the support in an attempt to recoup welfare benefits it paid to Porsboll. Although not directly addressed by the district court's order, the court's refusal to treat the Norway order as controlling demonstrates its rejection of Vaile's judicial estoppel argument. We review determinations regarding judicial

estoppel de novo. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).

Judicial estoppel is intended "to protect the integrity of the justice system when a party argues two conflicting positions to abuse the legal system," *Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d 563, 567 (2009), and is only to be applied when "a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage." *NOLM*, 120 Nev. at 743, 100 P.3d at 663 (alteration in original) (quoting *Kitty-Anne Music Co. v.* Swan, 4 Cal. Rptr. 3d 796, 800 (Cal. Ct. App. 2003)). Consequently, "[j]udicial estoppel does not preclude changes in position that are not intended to sabotage the judicial process." *Id.* To effectuate this intent behind the doctrine, one of the elements that must be met for judicial estoppel to apply is that "the first position was not taken as a result of ignorance, fraud, or mistake." *Id.* (quoting *Furia v. Helm*, 4 Cal. Rptr. 3d 357, 368 (Cal. Ct. App. 2003)).

Here, even assuming it was Porsboll who sought relief in Norway, there is nothing in the record indicating that the allegedly inconsistent actions of seeking child support both via the Nevada decree and through Norway's court system were taken with intent to abuse the legal system. Rather, it appears Porsboll was simply unsure of how to pursue her rights to child support under UIFSA, and, before the decision in *Vaile II*, the district court was similarly unclear on how the uniform laws applied. Such confusion is understandable given the absence of any Nevada authority addressing the application of UIFSA in situations like the one presented here prior to *Vaile II* and the limited extrajurisdictional authority addressing UIFSA's application to foreign countries' support orders. Under these circumstances, Porsboll's actions in this regard were,

at worst, taken as a result of ignorance, thus precluding the application of judicial estoppel.[3] *See id.*; *see also Deja Vu Showgirls of Las Vegas, LLC v. State, Dep't of Taxation*, 130 Nev. ___, ___, 334 P.3d 387, 391-92 (2014) (concluding that judicial estoppel did not apply when there was no attempt to mislead the court). Accordingly, the district court did not err in declining to apply judicial estoppel, *see NOLM*, 120 Nev. at 743, 100 P.3d at 663, and we affirm the district court's determination that the Norway order was unenforceable and that the Nevada divorce decree is the controlling order.[4]

Waiver and Prevention

Vaile next argues that the district court erred by failing to find that Porsboll waived her right to child support from 2002 to 2007 and by failing to apply the doctrine of prevention to relieve Vaile from his child support obligations. But Vaile raised these same arguments regarding Porsboll waiving her right to support and preventing him from paying support by refusing to provide the necessary financial documents in *Vaile II*, and the Nevada Supreme Court summarily rejected them. 128 Nev. at 34 n.9, 268 P.3d at 1277 n.9.

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[3]The fact that the Norway court entered a child support order and possibly continues to enforce that order (the current status of that order is unclear), even though it does not have jurisdiction to do so under UIFSA, does not create a proper basis for the use of judicial estoppel.

[4]Because we have already determined that Norway did not have jurisdiction to enter its order, we need not address Vaile's argument that the order was entitled to recognition solely because it was an order of a foreign reciprocating country. *See Swan*, 106 Nev. at 469, 796 P.2d at 224 (recognizing that orders issued without subject matter jurisdiction lack validity).

While the extent of the supreme court's discussion of these arguments in *Vaile II* was a simple declaration that, "[w]ith 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," a review of Vaile's appellate briefing in the *Vaile II* case[5] makes clear that these arguments were amongst the "remaining challenges" that were deemed to "lack merit." *Id.* As a result, this determination is the law of the case as to these arguments, and neither the district court nor this court may alter that determination. *See Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007) (stating that a higher court's statement of "a principle or rule of law necessary to a decision . . . becomes the law of the case," which must be followed by lower courts in subsequent proceedings). Accordingly, we conclude the district court properly rejected Vaile's waiver and prevention arguments.

Application of the divorce decree's child support provisions

As discussed above, the Nevada divorce decree is the controlling order regarding Vaile's support obligations. That decree

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[5]*Vaile II* consisted of two consolidated appeals, one filed by Vaile, and one filed by Porsboll. We have reviewed all of Vaile's briefing in that consolidated case in reaching our conclusion that these arguments have already been raised and decided.

Because this matter is directly related to the appeals at issue in *Vaile II*, we take judicial notice of the briefs Vaile filed in *Vaile II*. *See Mack v. Estate of Mack*, 125 Nev. 80, 91-92, 206 P.3d 98, 106 (2009) (taking judicial notice of documents filed in a prior case because the prior case was closely related to the case currently before that court); *see also* NRS 47.130(2) (allowing courts to take judicial notice of facts if certain requirements are met).

provides that Vaile is responsible for support payments whenever he is not the residential parent of both children. Because the Nevada Supreme Court has already concluded that Vaile was not ever the residential parent of both children during the relevant time period,[6] the only issue that remains is the amount of support and penalties Vaile owes pursuant to the decree and Nevada law.

As to the amount of support arrearages awarded by the district court on remand, Vaile argues that the district court's award improperly modified the support obligation laid out in the Nevada divorce decree. Specifically, he asserts that the district court modified the decree by not reducing his support obligation after the parties' older child emancipated, by adopting Porsboll's stated income without supporting evidence, and by using Porsboll's net income to calculate child support rather than her gross income. Porsboll disagrees with these assertions.

In *Vaile II*, the Nevada Supreme Court remanded the district court's arrearages and penalty calculations for the district court to recalculate child support arrearages and penalties under the divorce

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[6]Vaile's argument that he should not be responsible for child support from May 2000 to April 2002, when the children were purportedly in his care, is rejected as without merit. The Nevada Supreme Court already determined that Vaile's taking of the children in 2000 was wrongful, as Porsboll was properly exercising her custody rights at that time. *See Vaile v. Eighth Judicial Dist. Court (Vaile I)*, 118 Nev. 262, 281, 44 P.3d 506, 519 (2002); *see also Vaile II*, 128 Nev. at 34 n.9, 268 P.3d at 1277 n.9 (finding Vaile's remaining arguments to be without merit). Under the divorce decree, the "residential parent" is the parent's home where the child has primary residency. Because Vaile's taking of the children was improper, *see Vaile I*, 118 Nev. at 281, 44 P.3d at 519, the children's primary residence remained with Porsboll. Thus, Vaile owes child support for the period from May 2000 to April 2002.

decree. 128 Nev. at 34, 268 P.3d at 1276-77 (holding that the district court exceeded its jurisdiction in modifying Vaile's child support obligation under the Nevada divorce decree). Here, while Vaile mischaracterizes the district court's actions on remand as improper modifications of the decree, the purported "modifications" that he points to nonetheless highlight the district court's failure to properly apply the express terms of the decree and to compel compliance with the detailed terms contained therein.

The divorce decree mandated that child support be calculated based on the parties' combined income, which is defined, as pertinent here, as including gross income[7] in the amount reported on a United States federal tax return after deducting any amounts received for public assistance. The decree further provided that the maximum amount of the parties' combined income would be limited to $100,000, but allowed that maximum to increase at the same percentage rate as increases in the United States consumer price index. Once calculated, the parties' combined income, or the maximum amount if the combined income exceeded that figure, would then be multiplied by a percentage based on whether Porsboll had custody of one or both children (18 or 25 percent, respectively). The number produced by this calculation would then represent the total child support obligation. And Vaile would then be responsible for the percentage of that obligation that equaled the

[7]The divorce decree presumes that each party will have to file a federal income tax return and defines "gross income" as the amount of income that "should have been reported in the most recent federal income tax return."

percentage his income represented in the combined income total.[8] Under the decree, the amount of support was to be recalculated every year, based on the combined income covered by the tax returns for the previous year, and Vaile was to make his child support payments on the first day of each month.

Here, despite Porsboll's arguments to the contrary, our review of the record and the parties' arguments demonstrates that the district court failed to calculate Vaile's child support arrearages in accordance with the express terms of the decree. As Vaile points out, the district court failed to determine Porsboll's income pursuant to the terms set forth in the divorce decree, and instead, merely adopted Porsboll's calculations of arrearages, without making findings explaining or analyzing why it was concluding that those calculations were correct.

Furthermore, the sole document provided to support Porsboll's stated income as used in her arrearages calculations was from the Tax Administration from Norway. While that document may have accurately stated Porsboll's earnings, it did not state what Porsboll's gross income would have been as filed in a United States federal tax return. And there is nothing in the record to show that Porsboll either argued that the income listed on the Norway tax document would be equal to the required gross income figure or that she attempted to calculate that number.

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[8]The divorce decree provided the example that if Vaile's income was $70,000, and Porsboll's income was $30,000, the parties' combined income would be $100,000. If Porsboll had custody of both children, the total child support obligation would be 25 percent of the combined income, or $25,000. Vaile, whose income represented 70 percent of the combined income ($70,000 out of $100,000), would thus be responsible for 70 percent of the $25,000 child support obligation, or $17,500.

Without evidence demonstrating that the figures provided by Porsboll were equivalent to her United States gross income for each relevant year and district court findings to this effect, it is impossible to determine whether the calculations adopted by the district court properly determined the parties' combined income. And, if the district court did not properly calculate the parties' combined income to determine Vaile's support obligation, then it failed to properly enforce the decree. *See Vaile II*, 128 Nev. at 33-34, 268 P.3d at 1276-77.

Additionally, the calculations provided by Porsboll's counsel do not properly apply the decree's express terms regarding how the $100,000 maximum combined income should be increased from year to year. For example, for 2003, the calculations state that the parties' combined income was $125,440. It then multiplies that amount by the consumer price index to increase the combined income to $128,086.78, and bases Vaile's child support obligation for that year on that amount. But under the express terms of the decree, the parties' maximum combined income is fixed at $100,000 and it is that number that is to be increased according to the consumer price index, not the parties' combined income.

Based on the foregoing, we conclude that the district court failed to properly enforce the divorce decree.[9] While both parties appear to have made this process more difficult by failing to provide all of the necessary information for the district court to accurately calculate the

[9]Vaile also argues that the district court failed to reduce his support obligation from 25 percent to 18 percent when his oldest child emancipated. But our review of the record indicates that the calculations adopted by the district court did reduce Vaile's obligation by the appropriate percentage at the time his oldest child emancipated, even if the amount of that obligation was incorrect.

amount of support owed under the strictures of the decree, the parties are bound by the decree and the district court must apply the express terms of the decree to arrive at its support calculations. Accordingly, we conclude the district court abused its discretion in calculating the support arrearages and we reverse the district court's award of child support arrearages to Porsboll and remand for new calculations in line with the divorce decree.[10] *See Rivero v. Rivero*, 125 Nev. 410, 438, 216 P.3d 213, 232 (2009) (reviewing determinations regarding child support for an abuse of discretion). And, to the extent the district court's awards of penalties and interest to Porsboll were based on the amount of child support arrearages owed by Vaile, those determinations are necessarily reversed and remanded as well.

Attorney fees

Vaile's next argument is that the Nevada Supreme Court's reversal and remand to recalculate child support arrearages and penalties in *Vaile II*, also reversed any prior awards of attorney fees to Porsboll. He further asserts that any awards of attorney fees after the *Vaile II* remand were in error because Porsboll was no longer the prevailing party after the entry of that decision, and thus, she was not entitled to attorney fees. We review an award of attorney fees for an abuse of discretion. *Rivero*, 125 Nev. at 440, 216 P.3d at 234.

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[10]Given the high likelihood that the determinations of arrearages owed on remand will be appealed, we urge the district court to provide explicit findings explaining how it reached each of the year-by-year support amounts in recalculating the amount of arrearages owed on remand so as to facilitate appellate review of any such decision.

First, to the extent Vaile argues that the *Vaile II* opinion constituted an unqualified reversal of all of the district court's decisions, he mischaracterizes the holding of that opinion. Attorney fees are not discussed in that opinion, and the appeal specifically only reversed "the district court's order setting Vaile's support payment at $1,300, . . . the arrearages calculated using the $1,300 support obligation and the penalties imposed on those arrearages." 128 Nev. at 34, 268 P.3d at 1277. Furthermore, our review of the briefing in that case[11] demonstrates that Vaile did not raise any arguments regarding the multiple awards of attorney fees to Porsboll that occurred throughout that litigation. And by failing to challenge those determinations in the cases at issue in *Vaile II*, Vaile has waived any arguments challenging the attorney fee awards entered prior to that decision. *See Weaver v. State, Dep't of Motor Vehicles*, 121 Nev. 494, 502, 117 P.3d 193, 198-99 (2005) (providing that appellate courts need not address arguments that are not argued in a party's opening brief). As a result, we conclude that the district court properly concluded that the pre-*Vaile II* attorney fee awards were not disturbed by the reversal and remand of the arrearages and penalty calculations in the *Vaile II* decision, and we affirm its refusal to revisit those awards on that basis.

We now turn to Vaile's challenge to the post-*Vaile II* award of

[11]As detailed above, we have taken judicial notice of the briefs Vaile filed in the appeals resulting in the *Vaile II* opinion.

$57,483.38 in attorney fees.[12] While we recognize that, absent a finding of undue hardship, NRS 125B.140(2)(c)(2) mandates an award of attorney fees if a district court finds that arrearages are owed, *see Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003) (providing that the district court must award attorney fees under NRS 125B.140 unless it finds an undue hardship), in light of our reversal of the district court's arrearages calculations, we necessarily reverse the award of attorney fees stemming from the arrearages determination. In so doing, we make no comment regarding the merits of Vaile's appellate challenges to this award, and we emphasize that our reversal of this attorney fees award in no way precludes the district court from awarding fees on remand under NRS 125B.140(2)(c)(2). Our reversal of this award is simply for the purpose of allowing the district court to reassess how much, if any, should be awarded in attorney fees under NRS 125B.140(2)(c)(2) once the court has correctly determined the amount of arrearages owed based on a proper application of the terms of the parties' divorce decree.[13]

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[12]Vaile also purports to challenge the district court's award of $20,000 in attorney fees for his failure to appear in district court on an order to show cause, which followed the order awarding $57,483.38. Because Vaile fails to make cogent arguments regarding this award, however, we decline to consider it, and, therefore, necessarily affirm that award. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that an appellate court need not consider issues that are not cogently argued).

[13]While Vaile's argument focuses exclusively on attorney fees, the order at issue here states that the $57,483.38 award is for attorney fees and costs. Because we conclude this award must be reversed, however, we need not address this discrepancy.

Contempt determinations

Next, to the extent that Vaile challenges the district court's findings of contempt and its imposition of sanctions based on these findings, we lack jurisdiction to consider his appeal as to those decisions as such contempt orders are not substantively appealable. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). Accordingly, we dismiss Vaile's appeals to the extent he purports to challenge the findings of contempt and the imposition of contempt sanctions in Docket Number 62797, through his appeal of the "Order for Hearing Held January 22, 2013," filed on February 20, 2013, and in Docket Number 61415, through his appeal of the "Court's Decision and Order," filed on July 10, 2012. *See id.*

Fugitive disentitlement doctrine and vexatious litigant determination

In her answering brief, Porsboll requests that we apply the fugitive disentitlement doctrine to dismiss Vaile's appeals and that we declare him to be a vexatious litigant. We decline these requests. As discussed above, the controlling nature of the Nevada decree and its imposition of an obligation to pay support on Vaile are clear. Thus, all that remains to be done is for the district court to accurately and finally determine the total amount of arrears, penalties, and interest owed and whether attorney fees should be awarded for the post-*Vaile II* proceedings and, if so, what amount should be awarded.

While Vaile's continued failure to pay support is troubling, our resolution of these appeals marks the second time this matter has been remanded for the district court to properly calculate the amount of arrearages owed following Vaile's appeals from the district court's

arrearages determinations.[14] As a result, we decline to exercise our discretion to dismiss the appeals under the fugitive disentitlement doctrine. *See Guerin v. Guerin*, 116 Nev. 210, 213, 993 P.2d 1256, 1258 (2000) (noting that the decision to dismiss an appeal under the fugitive disentitlement doctrine rests within the court's discretion). We also decline to declare Vaile a vexatious litigant—at this time—given that he has, once again, successfully challenged the district court's application of the decree.[15] *See Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 61, 110 P.3d 30, 43 (2005) (providing that one factor to consider in deeming a person a vexatious litigant is whether the filings are frivolous), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670, 672 n.6, 124 Nev. 224, 228 n.6 (2008).

Conclusion

In summation, we affirm the district court's conclusion that the Nevada divorce decree was the controlling child support order under UIFSA; its decisions to not apply judicial estoppel, waiver, or prevention; and its determination that the awards of attorney fees made prior to *Vaile II* remained valid. And we reverse that portion of the district court's order calculating child support arrearages as well as the resulting penalties and interest based on the arrearages calculations and remand for further

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[14]We note that, as discussed above, Porsboll's failure to accurately provide all information necessary for the district court to determine the arrearages played a significant role in the district court's failure to accurately calculate these figures.

[15]Given our reversal and remand of this matter for the district court to properly calculate the amount of arrearages owed, we decline to consider Porsboll's request that Vaile's failure to pay support be referred to the Clark County District Attorney's Office at this time.

proceedings consistent with this order. We likewise reverse and remand with regard to the award of $57,483.38 in post-*Vaile II* attorney fees, but affirm the $20,000 award of attorney fees based on Vaile's failure to appear at a hearing. Finally, we dismiss Vaile's appeals for lack of jurisdiction to the extent he challenges the district court's contempt determinations and the imposition of sanctions based on those determinations.

It is so ORDERED.[16]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk

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[16]In light of this order, we deny as moot any remaining requests for relief pending in these consolidated appeals.

Attachment 2

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE, Petitioner, vs. CISILIE A. PORSBOLL, Respondent.	Supreme Court Case Nos: 61415, 62797 Appeal from District Court Case No: 98D230385

PETITION FOR REHEARING

Robert Scotlund Vaile
812 Lincoln Street
Wamego, KS 66547
(707) 633-4550
Petitioner in Proper Person

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

In a petition for rehearing, Rule 40 of the Nevada Rules for Appellate Procedure requires Petitioner to state briefly and with particularity the points of law or fact that the petitioner believes the appellate court has overlooked or misapprehended. Petitioner respectfully submits that the following points of law or fact were overlooked or misapprehended in the Court's *ORDER AFFIRMING IN PART; DISMISSING IN PART; REVERSING IN PART, AND REMANDING* dated December 29, 2015.

II. POINTS AND AUTHORITIES

A. The Norwegian Tribunal Had Jurisdiction Over Vaile

The Court rested its decision to not require the lower court to give full faith and credit to the Norwegian tribunal's child support order because, the Court held, "Norway lacked jurisdiction to modify the child support obligations set forth in the Nevada divorce decree." (Decision, 4). This conclusion followed the Court's determination that the Norwegian court did not have personal jurisdiction over Vaile and that the parties did not file their consents in the Nevada court. The Court has misapprehended the facts surrounding this matter since the Norwegian court did have jurisdiction over Vaile.

As far back as the original Nevada Supreme Court decision in this case, the record contained facts that Vaile hired counsel in Norway, appeared in the Norwegian proceedings, and argued his case before that tribunal. The orders of the Norwegian courts addressing both custody and child support are before the Court,[1] and reflect the appearance of Vaile and arguments that he submitted to those courts. Furthermore, the record contains Kansas orders that show that Vaile

[1] ROA4246, ROA4269, ROA4276.

paid child support to the Norwegian tribunal wholly fulfilling his child support obligations under the Norwegian orders, reflecting Vaile's acquiescence and obedience to the Norwegian tribunal's authority.[2] There has been no debate in this case that the Norwegian tribunal had jurisdiction over Vaile.

The Court may have further misapprehended the legal background to this issue. Porsboll did not challenge the jurisdiction of the Norwegian tribunal over Vaile either in the lower court or on appeal. The record contains no argument, evidence, or lower court findings that the Norwegian tribunal lacked jurisdiction of Vaile. Of course, Porsboll had no standing to challenge personal jurisdiction over Vaile, because the requirement of personal jurisdiction represents an individual right which may be waived. Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 US 694, 703 (1982). That a party may waive personal jurisdiction through appearance is reflected in section 201 of UIFSA, or NRS 130.201(1)(b). A valid basis for personal jurisdiction over a nonresident is when "[t]he nonresident submits to the jurisdiction of this State by consent in a record, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction." Since Vaile appeared, participated and filed responsive documents in that tribunal, he submitted to the jurisdiction of that court, and it properly exercised jurisdiction over him.

> The Comments to § 201 of UIFSA 2008 provide further guidance:
>
> [U]nder the Convention, a state tribunal may be called upon to determine whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201.

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[2] ROA 4242.

By submitting to the jurisdiction, Norway properly exercised jurisdiction over Mr. Vaile. The appellate court misapprehended this fact.

However, Vaile's appearance in the Norwegian proceedings, or the filing of consents in the record in Nevada by the parties is not the only way that the Norwegian court could have asserted power to modify the Nevada decree. The Court overlooked that UIFSA also allows the assertion of modification jurisdiction if no other court has jurisdiction. See NRS 130.6115. The Nevada Supreme Court (in *Vaile II)* held that Nevada did not ever have modification jurisdiction – a pronouncement which would allow Norway to modify at will. The Court of Appeals omitted any discussion of this section of law, overlooking a statute which resolves the matter with finality.

Petitioner can locate no case law in any US court where a court collaterally negates the personal jurisdiction of a foreign court after a party's explicit submission to the foreign court, or over the party's objection. Not only is the Court's holding contrary to US Supreme Court precedent, the implications of the holding are particularly profound in this case. The same assertion of jurisdiction by the Norwegian tribunal over Vaile's person that supported Norway's child support order also previously supported the Norwegian tribunal's modification of custody from Vaile to Porsboll. This Court's decision would appear at odds with the Nevada Supreme Court's determination to send the two American-born children to Norway for a custody determination. To assert now, 14 years later that the Norwegian tribunal really never had jurisdiction to make those determinations appears to overrule the Nevada Supreme Court's precedent on the matter.

B. The Basis for Refusal to Honor the Norwegian Child Support Order is Not Permissible Under NRS 130.607

The Court appears to have overlooked the applicability of NRS 130.607 to this matter. In order to ensure uniformity, UIFSA has limited the bases under

which a party may contest the registration of a foreign child support order in another tribunal. These exclusive bases are articulated in NRS 130.607. The Court has omitted acknowledgement or discussion of the limitations imposed by this statute, even though the statute is determinative of the matter on appeal.

The first available defense by which a non-registering party may contest foreign court order is when "[t]he issuing tribunal lacked personal jurisdiction over the contesting party." As the contesting party, Porsboll did not and could not assert this defense, as she was the party who requested the child support order from the Norwegian tribunal. Instead, Porsboll challenged the procedures that the Norwegian court followed when it allowed ***her*** (not Vaile) to request modification of the Nevada decree. Porsboll has never asserted that her challenge falls under any allowable defenses under NRS 130.607. According to the UIFSA statute, "If the contesting party does not establish a defense under subsection 1 to the validity or enforcement of the order, the registering tribunal **shall issue** an order confirming the order." NRS 130.607(3).

It is clear that the lower court did not follow the mandate to confirm the Norwegian order under NRS 130.607. The Court's decision appears to either allow a lower court discretion to deviate from UIFSA, or carves out an additional judicial exception to UIFSA § 607. While a judicial exception is not unheard of in State law, the implications for departing from UIFSA for the State are significant for two reasons. Firstly, the Court's acquiescence to the lower court's determination that the procedures that Norway uses when it enters child support orders are insufficient, undermines the pronouncement by the nation's Secretary of State and the Secretary of Health and Human Services that Norway's procedures are indeed sufficient enough that Norway was declared a Foreign Reciprocating Country (FRC), and afforded sister-state status. The Court's

finding appears to misapprehends that the Court has preempted and frustrated the federal scheme.

Secondly, the State of Nevada does not have the liberty to diverge from UIFSA, rather it is required to implement UIFSA "verbatim" under Federal law:

> On September 29, 2014 President Obama signed Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amends section 466(f) of the Social Security Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws" (referred to as UIFSA 2008). Among other changes, the UIFSA 2008 amendments integrate the appropriate provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was adopted at the Hague Conference on Private International Law on November 23, 2007, referred to as the 2007 Family Maintenance Convention.
>
> Section 301(f)(3)(A) of P.L. 113-183 requires that UIFSA 2008 must be in effect in every state "no later than the effective date of laws enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act."
>
> . . .
>
> All states must enact UIFSA 2008 ***verbatim*** by the effective date noted in P.L. 113-183. Where UIFSA 2008 has bracketed language, states may use terminology appropriate under state law. In addition, P.L. 113-183 requires states to make minor revisions to the state plan which OCSE will address in forthcoming guidance.
>
> UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF CHILD SUPPORT ENFORCEMENT ACTION TRANSMITTAL AT-14-1, DATE: October 9, 2014, contained in UIFSA Comments (2008) - Final Act with Revised Prefatory Note and Comments in 2015 (emphasis added).

The comments indicate that enactment of UIFSA 2008 as written is both essential to federal funding of state child support programs, and also necessary in order for the United States to fulfill its treaty obligations under the Hague

Maintenance Convention of November 23, 2007. The Court's departure from the UIFSA requirements appears to misapprehend the potential legal repercussions for the State and Nation.

C. Porsboll's Inconsistent Legal Positions Were Intentional

The Court declined to apply judicial estoppel to Porsboll's challenge to her own judicial actions in Norway because it surmised that Porsboll's actions were neither intentional nor meant to gain an unfair advantage. The Court assumed that Porsboll "was simply unsure of how to pursue her rights to child support under UIFSA." In so doing, the Court overlooked key facts surrounding her actions, and the representation of her counsel on this matter.

Firstly, Petitioner requests the Court to take notice that Porsboll (herself law-trained in Norway) has been represented since 2000 continuously by a Las Vegas attorney who fashions himself a family law expert. Porsboll had this representation in Nevada, as well as legal representation in Norway at the time that she sought to modify the Nevada decree in the Norwegian tribunal. Even if willful legal ignorance could not be imputed to Porsboll personally, it would be incorrect to assume that a "Certified Family Law Specialist" in Nevada cannot figure out how to properly register a foreign order under UIFSA.

Even if we assume that Nevada counsel is incapable of reading UIFSA, additional facts outlined in Vaile's appellate briefs indicate intentional conduct by her Nevada counsel to mislead the Court on this matter. For example, in response to Vaile's repeated requests to produce the Norwegian child support orders in the lower court proceedings, Porsboll's counsel vigorously objected.[3] Porsboll's counsel then fabricated the story that Porsboll did not actually request the child support orders from the Norwegian court but that they were auto-generated by a

[3] Had the orders been produced as requested, the second trip to the Nevada Supreme Court would have been wholly unnecessary.

Norwegian agency. Finally, Porsboll's counsel argued that the Norwegian orders were not intended to be enforced outside Norway. When Vaile finally obtained the orders from the Norwegian authorities, the orders demonstrated that Porsboll's counsel misrepresented each and every one of these material facts about them. The orders state with clarity that Porsboll sought the orders[4], that they were intended to apply to Vaile in the US,[5] and even that Porsboll sought further modification of the Norwegian orders while Nevada counsel was seeking a competing order in Nevada.[6] The Court overlooked the facts that demonstrate that Porsboll and her counsel carried on with methodical intention to mislead the courts regarding Porsboll's inconsistent positions in the Norwegian and Nevada courts. Porsboll's actions support a finding of judicial estoppel by the Court.

D. Consideration of Waiver and Prevention Was Not Necessary to the Nevada Supreme Court's Previous Decision

The Court has misapprehended the Nevada Supreme Court's decision by assuming that Vaile's defenses of waiver and prevention were previously rejected by the Court. The record contains an admission by Porsboll that she made an unequivocal waiver of child support under the Nevada decree. And the Court acknowledged that Porsboll has still not to this date provided Vaile with the income information necessary for him to determine the proper amount of child support.[7] Nevertheless, this Court rejected these defenses by inferring that the Nevada Supreme Court's silence on the matters in *Vaile II* indicate rejection of the defenses.

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[4] ROA4247.

[5] ROA5211.

[6] ROA4276.

[7] The Court's decision demonstrates that all elements of Vaile's defense of prevention have been present until the present.

Petitioner first observes that it would be inconsistent for the Nevada Supreme Court to omit discussion and completely ignore defenses which would be a complete bar to Porsboll's request for retroactive child support. But more importantly, the high Court did not determine the validity of those defenses because they were not necessary to its decision, and impossible to apply at that point in time. In *Vaile II*, the Nevada Supreme Court required the lower court to determine whether a Norwegian order existed, and to assess its bearing on the Nevada decree. Until the lower court made a determination as to which order was controlling, and during which time frames, resolving the effect of the waiver and prevention would have been impossible. A party could not waive child support nor prevent calculation under an order which was not controlling at the time. A determination of effective waiver and prevention simply can not precede the determination of controlling order. To conclude that the Nevada Supreme Court intended the lower court to determine the valid order on remand and to determine appropriate support amounts, but to prospectively ignore all defenses which may apply in any unforeseen scenario is an untenable legal conclusion. This Court misapprehended the Nevada Supreme Court's silence on matters not necessary to its decision to be a rejection of those matters.

E. Vaile Had Primary Custody of the Children Under the Lower Court's April 2000 Order

The Nevada district court granted Vaile custody of the parties' children in April 2000, and a pick-up order to deliver the children from Norway where they were being wrongfully retained by Porsboll at the time. The children lived with Vaile from May 2000 until April 2002 when the Nevada Supreme Court overturned Vaile's grant of custody by the lower court, and required the children to be sent to Norway for child custody determinations. The Court

misapprehended the law to require Vaile to pay support to Porsboll during the two years that the children lived with him.

The Court rested its decision to require Vaile to pay support on the legal conclusion that the children's removal from Norway was "wrongful" by the Nevada Supreme Court. The Supreme Court determined that the removal was wrongful based on two key facts presented by Porsboll to the Court at the time. The first assertion of fact was that Porsboll began legal proceedings in Norway in hopes to legally retain the children there in November 1999, prior to Vaile's request in February 2000 to the Nevada court to order the return the children to the US. In October 2000, Porsboll testified in the Nevada family court that she made a filing to the Norwegian court signaling the beginning of proceedings in that country. Nevertheless, the family court upheld Vaile's custody, and Porsboll appealed. After the case had been fully briefed and submitted to the Nevada Supreme Court, the Norwegian court issued a decision that indicated that Porsboll's case in Norway actually began in March 2000, *after* Vaile initiated proceedings in Nevada. Clearly, Porsboll's assertions to the contrary had been false, but the high Court had already relied on it.

The second fact that the Nevada Supreme Court relied on in finding that the return of the American-born children to the US was "wrongful" was that Vaile had been untruthful to the Nevada lower court when he requested custody of the children. Porsboll's counsel represented on appeal that Vaile told the lower court that the children lived in "Las Vegas" and "Nevada" all their lives – and the Nevada Supreme Court even repeated those assertions as if they were fact in its opinion. In actuality, the family court judge asked Vaile how long they lived "here," to which Vaile answered that "We lived here [in the US] all their [the children's] lives." Although the family court held that no party had intended a fraud on the court, the Nevada Supreme Court relied on the misrepresentation by

Porsboll's counsel on appeal. Porsboll later admitted in deposition that Vaile never asserted that the children lived Las Vegas or Nevada. Even though the misrepresentations resulted in the change of custody from Vaile to Porsboll 14 years ago, there is no reason to propagate the untruths into the child support realm.

Regardless, Vaile was properly exercising custody of the children during the two years that they lived with him, and was the residential parent, until the Nevada Supreme Court overturned that status based on the false facts outlined above. Because it is undisputed that Vaile paid 100% of the children's support costs while they lived with him from May 2000 to April 2002, the Court's determination that Vaile should pay child support to Porsboll while he was already supporting the children can only be interpreted as punitive.

> The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make – and is capable of making – to share fairly the economic burdens of child rearing.
>
> Lambert v. Lambert, 861 NE 2d 1176 (Ind 2007).

Furthermore, requiring Vaile to pay Porsboll funds not used to support the children is "solely and exclusively punitive in character," or an unconditional criminal penalty which is prohibited in civil proceedings. Hicks v. Feiock, 485 US 624, 633 (1988). The Court of Appeals misapprehended the factual history and that US Supreme Court precedent prevents its decision on this point.

F. Contempt Determinations Require Review

The Court of Appeals has misapprehended the law in determining that a finding of contempt and the impositions of sanctions are unappealable. By way of review, Vaile argued on appeal that the Nevada district court abused its discretion by:

1. Withdrawing its permission allowing Vaile to appear telephonically one business day before a hearing, refusing a continuance, and then entering a default, sanctions, and a bench warrant against him for failure to appear;
2. Holding Vaile in contempt for failure to notify the Court of his change in employment despite the fact that no order ever required him to notify the Court;
3. Holding Vaile in contempt for filing a notice of address change two days late, despite Vaile filing a Notice of Address Change within 30 days of relocating;
4. Holding Vaile in contempt for paying Porsboll child support directly for 11 months instead of through her Nevada counsel;
5. Holding Vaile in contempt for not retroactively paying child support in a manner inconsistent with the Nevada divorce decree (and this Court's instant decision); and
6. Imposing a punishment for the combined contempt of a fixed sentence consisting of "a mandatory 275 days of criminal incarceration in the Clark County Detention Center without bail."

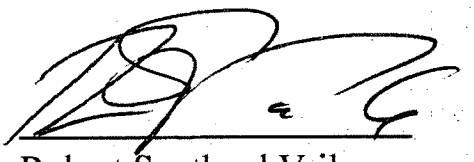
When a party is sentenced to imprisonment for a definite period, the punishment falls under criminal contempt; however, criminal penalties may not be imposed on someone who is not afforded Constitutional criminal proceedings including the requirement that the offense be proved beyond a reasonable doubt. Hicks v. Feiock, 485 US 624, 632, 637 (1988). The lower court here has clearly imposed criminal contempt from within civil proceedings, with none of the Constitutional guarantees afforded a criminal defendant, clearly prohibited by the US Supreme Court. Not only is this Court allowing the criminal sentence imposed on Vaile to stand, it has gone so far as to hold that the criminal contempt orders that include incarceration are not appealable to the appellate court.

Aside from being startling from a Constitutional perspective, this holding encourages lower courts to act at their own discretion, even to deprive a party of the Constitutional liberties and imposing arbitrary criminal sanctions in the name of contempt, for which the appellate Court is without power to act. Petitioner respectfully requests that the Court reconsider whether it has power to ensure that parties are provided Due Process and basic Constitutional guarantees within the Nevada court system.

III. CONCLUSION

Petitioner respectfully submits that the Court of Appeals misapprehended or overlooked several key facts, statutes, binding precedent, and Constitutional guarantees in issuing its recent decision. Petitioner requests that the Court review the matters in light of the facts and law outlined herein.

Respectfully submitted this 15th day of January, 2016.



Robert Scotlund Vaile
812 Lincoln Street
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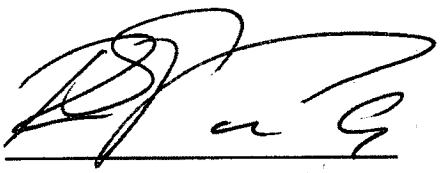
(707) 633-4550
Petitioner in Proper Person

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing 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 it has been prepared in a proportionally spaced typeface using LibreOffice in 14-point size Times New Roman type style.
2. I further certify that this petition complies with the type-volume limitations of NRAP 40 because it is proportionately spaced, has a typeface of 14 points or more, and contains 4,112 words as reported by LibreOffice.
3. Finally, I hereby certify that I have written and read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that it 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 number, if any, of the record on appeal or to the appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 15th day of January, 2016.



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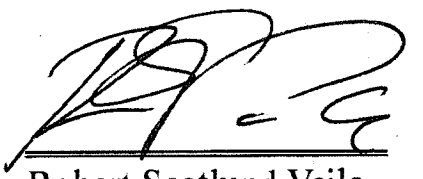
CERTIFICATE OF MAILING

I hereby certify that on January 15, 2016, I deposited in the United States Mail, postage prepaid, at Santa Rosa, CA, a true and correct copy of *Petition for Rehearing* addressed as follows:

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

Dated this 15th day of January, 2016.



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Attachment 3

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 61415

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

No. 62797

ORDER GRANTING REHEARING IN PART, DENYING REHEARING IN PART, AND AFFIRMING

This is a petition for rehearing of this court's December 29, 2015, order affirming in part, dismissing in part, reversing in part, and remanding entered in appellant's consolidated appeals from district court orders in a child support arrearages matter. In seeking rehearing, appellant Robert Scotlund Vaile asserts that this court overlooked two of his appellate arguments regarding the application of Norway's analogue to NRS 130.6115 and the application of NRS 130.607. As these two issues were inadvertently not addressed in our December 29 order, we grant rehearing and reinstate this appeal for the limited purpose of addressing only these issues, which we resolve without further briefing or oral argument. *See* NRAP 40(e). But, as set forth below, we find Vaile's arguments on these points to be without merit, and we therefore affirm the district court's rejection of these arguments in determining that the

Nevada divorce decree constituted the controlling child support order. With regard to Vaile's remaining arguments on rehearing, we conclude that these assertions do not provide a basis for rehearing our December 29 order, and thus, we deny rehearing as to those arguments. *See* NRAP 40(c).

Our December 29 order affirmed the district court's finding that Norway lacked jurisdiction to modify the child support provisions set forth in the Nevada divorce decree and that, as a result, the controlling child support order remained the Nevada decree, not the order issued by the Norway court. But according to Vaile, under the Uniform Interstate Family Support Act (UIFSA), Norway had jurisdiction to modify the support provisions in the Nevada decree under Norway's analogues to NRS 130.6115(1) and (2) (2007),[1] which would allow Norway to obtain modification jurisdiction and modify the Nevada decree based on Nevada's lack of modification jurisdiction.[2] Having considered this argument, we

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[1]This statute was amended after the underlying case was commenced, *see* 2009 Nev. Stat., ch. 47, § 87, at 140, but the amendments only apply to cases commenced on or after October 1, 2009, and thus, are not relevant to this case. *Id.* § 90, at 140.

[2]While Vaile does not provide a citation to the specific Norway provision he is referencing, Norway's status as a foreign reciprocating country, *see* NRS 130.10179(2)(b) (2007) (providing that "state" includes foreign reciprocating countries), *amended by* 2009 Nev. Stat., ch. 47, § 44, at 125-26; Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 79 Fed. Reg. 49,368, 49,369 (Aug. 20, 2014), (recognizing Norway's status as a foreign reciprocating country), necessarily means that it has a law similar to NRS 130.6115 in place. *See Country of Lux. ex rel. Ribeiro v. Canderas*, 768 A.2d 283, 285-86 (N.J. Super. Ct. Ch. Div. 2000) (stating that the status as a foreign reciprocating country means that the country's child support procedures are in substantial conformity with the United States' statutes).

conclude that it does not provide a basis for reversing the district court's determination that Norway lacked jurisdiction to modify the Nevada decree and that the Nevada decree therefore remained the controlling order.

Based on our review of the Norway order, there is nothing set forth in that order indicating that Norway purported to have obtained modification jurisdiction or explaining the basis for Norway's invocation of jurisdiction. Indeed, the Norway order, which was specifically grounded in Norwegian law rather than UIFSA, did not even reference, much less purport to modify, the Nevada decree. Under these circumstances, the Norway order cannot, in any way, be considered to have satisfied the requirements for invoking modification jurisdiction under UIFSA. *See Straight v. Straight*, 195 S.W.3d 461, 465 (Mo. Ct. App. 2006) (concluding that the modifying court in that case failed to meet UIFSA's statutory requirements to obtain modification jurisdiction because "a ruling of jurisdiction by a court that is merely conclusory or that assumes jurisdiction, but is tacit as to the factual basis for that adjudication, does not meet the objectives of uniform acts designed to avoid jurisdictional disputes," and because, under UIFSA, another tribunal does not "assume[ ] jurisdiction by simply stating that it ha[s] jurisdiction"). Given that Vaile does not point to any other order or ruling from the Norway court that could be considered an invocation of modification jurisdiction under the requirements set forth in UIFSA and our review of the record does not reveal any such order or ruling from the Norway court, this argument does not provide a basis for reversing the district court's decision regarding Norway's lack of jurisdiction to modify the Nevada decree and its declaration that the Nevada decree was the controlling order.

In challenging the district court's determination that the Nevada decree was the controlling support order, Vaile next argues that NRS 130.607 (2007)[3] limits the defenses a party may make to the registration or enforcement of a foreign support order and that, because respondent did not rely on these defenses to challenge the Norway order, the district court was obligated to enforce the Norway order pursuant to NRS 130.607(3). But Vaile does not argue, and the record does not show, that he ever sought to register the Norway order in the Nevada district court pursuant to NRS 130.602(1) (2007).[4] As a result, NRS 130.607 never became relevant to the district court's resolution of whether the Norway order was controlling and there was no reason for respondent to rely on or otherwise argue the defenses set forth in NRS 130.607 (2007). *See* NRS 130.607(1) (providing that a party must assert an enumerated defense if it is contesting "the validity or enforcement of *a registered support order*" (emphasis added)). Thus, this argument likewise does not provide a basis for reversing the district court's determination that the Nevada decree was the controlling order.

For the reasons set forth above, we conclude that the two arguments for which rehearing was granted do not provide a basis for reversing the district court's rejection of these arguments and its determination that the Nevada divorce decree was the controlling child

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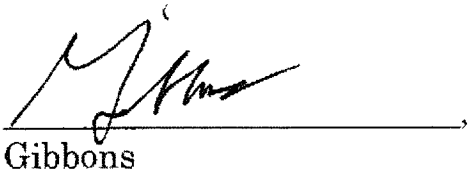
[3]This statute was amended after the underlying case was commenced, *see* 2009 Nev. Stat., ch. 47, § 82, at 138-39, but the amendments only apply to cases commenced on or after October 1, 2009. *Id.* § 90, at 140.

[4]This statute was amended after the underlying case was commenced, *see* 2009 Nev. Stat., ch. 47, § 77, at 136-37, but the amendments only apply to cases commenced on or after October 1, 2009. *Id.* § 90, at 140.

support order. Accordingly, we affirm the district court's rejection of these arguments and its determination that Norway lacked jurisdiction to modify the Nevada decree and that the Nevada decree was the controlling child support order.

It is so ORDERED.



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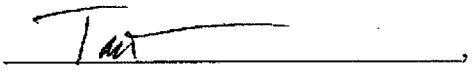

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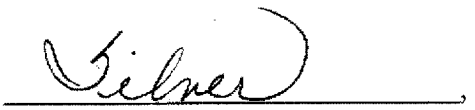

_____, J.
Silver

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Robert Scotlund Vaile
Willick Law Group
Eighth District Court Clerk