IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT SCOTLUND VAILE,
Appellant,

vs.

CISILIE A. PORSBOLL,
Respondent.

Supreme Court Case Nos: 61415, 62797

Appeal from
District Court Case No: 98D230385

APPELLANT'S NOTICE OF CALIFORNIA APPELLATE COURT PROCEEDINGS

Robert Scotlund Vaile
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Appellant in Proper Person

15-900613

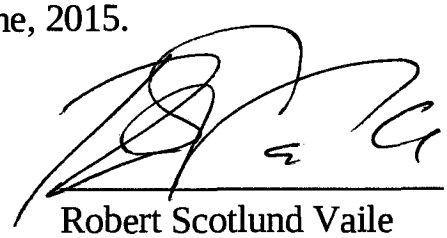
I. INTRODUCTION

On May 22, 2015, the California Court of Appeal, First District, Fourth Division, entered a decision in case number A140465. This decision is slated to become final on June 21, 2015, or 30 days after filing. See California Rules of Court 8.264(b). During this 30-day period, parties may request rehearing in order to bring to the appellate court's attention material errors in fact or law in the court's decision. See Rule 8.268. If the court grants a rehearing to correct its decision, the order granting rehearing vacates the decision. Rule 8.268(d).

The California appellate court's decision requires that it be filed with this Court – presumably once the order becomes final. Nevertheless, Respondent provided the decision to this Court on May 27, 2015.

Because the California court did not have access to the entire Nevada court record, Appellant Vaile filed a petition for rehearing with that court on June 4, 2015 in order to bring to the court's attention a number of material errors in the factual statements in that court's decision, as well as in the law applied. Several of the facts that were corrected, and law discussed in Appellant's petition, are before this Court. Accordingly, Appellant provides that petition with exhibits to this Court in order to provide a complete record and notice of the California appellate proceedings to date.

Respectfully submitted this 5th day of June, 2015.



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CERTIFICATE OF MAILING

I hereby certify that on this date, I deposited in the United States Mail, postage prepaid, at Manhattan, KS, a true and correct copy of *Appellant's Notice of California Appellate Court Proceedings* addressed as follows:

Marshal S. Willick, Esq.
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Dated this 5th day of June, 2015.

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

ROBERT SCOTLUND VAILE, *Plaintiff below/* *RESPONDENT,* vs. CISILIE A. PORSBOLL, *Defendant below/* *APPELLANT.*	Court of Appeal No: **A140465** Superior Court No: SFL-49802 Appeal from an Order of the Superior Court, County of Sonoma Honorable Bradford DeMeo, Honorable Nancy Case Shaffer, Judges

RESPONDENT'S PETITION FOR REHEARING

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I. INTRODUCTION

The Court issued its decision in this matter on May 22, 2015. It is evident that the Court used significant resources attempting to understand the complexity of the litigation history, and to identify the relevant law in the matter. Nevertheless, the record is extensive in the litigation, which may have contributed to many relevant facts being mis-stated or omitted by the Court. Furthermore, Petitioner submits, with all respect due to the Appellate Court, that the Court erred as to the law on a number of key issues. Petitioner outlines the relevant errors of both fact and law below.

II. ERRORS OF FACT

The misstatement of a number of material facts in the Court's decision are determinative to the result of the rehearing of the matter before the Court. Additionally, the omission of other key facts provides an inaccurate representation of events which may materially affect the outcome of this appeal. Petitioner respectfully request the Court to consider the following corrections.

A. PORSBOLL SOUGHT THE CHILD SUPPORT ORDER IN NORWAY

On page 5 of its decision, the Court stated that "Porsboll insists she did not seek a child support order in Norway. . . . No statement under oath by any participant in the Norway proceedings explains how the Norwegian order came into existence." These statements are incorrect. Porsboll has never insisted that she did not seek a child support order in Norway. And she did indeed make a statement under oath explaining how the Norwegian child support order came into existence.

During a hearing in the Nevada lower court on September 18, 2008, Mr. Vaile questioned Ms. Porsboll about her previous statement that she would only seek child support through the Norwegian system. When Mr. Vaile

asked, "Had you actually contacted the Norwegian system?" Ms. Porsboll answered unequivocally, "Yes, I did"! When asked, "Did Norway issue child support orders to your knowledge?" Porsboll answered, "Yes." Without being prompted, Porsboll then volunteered, "They [the Norwegian child support authorities] ... made a ... court decision as far as child support goes. But ... since I didn't get any, I ... contacted the Norwegian child support authorities ... because I thought if ... as long as you are not paying it through Nevada ... sort of agreement, or ... whatever, then I would see what the Norwegian authorities could ... manage to do." See Exhibit 1. Clearly Porsboll's sworn testimony is undisputed evidence that she sought the order.

If Porsboll's testimony were not evidence enough, the Norwegian order that was issued at Porsboll's request, and each of the subsequent modifications also, recites that Porsboll specifically sought each order from the Norwegian court. Porsboll's counsel's[1] insistence that Porsboll did not seek the order was a clear fabrication intended to mislead the Court. Apparently taken with counsel's theory, the Court quoted his untruthful argument in its opinion as if it were fact. Petitioner respectfully requests that the Court correct the errors.

The Court also seemed dismissive[2] of Vaile's repeated assertions that Porsboll intentionally concealed the Norwegian order from him, based on the Norwegian tribunal's request for information from him before it

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1. Porsboll's counsel here was the same counsel that objected to the relevance of Porsboll's testimony during the hearing transcribed in Exhibit 1. Obviously counsel witnessed first-hand Porsboll's admission that she had sought the order before he vigorously argued that she did not. There can be no clearer intent to mislead the Court than is evident here. Petitioner requests relevant sanctions.

2. Court's decision, footnote 6.

produced that order. Vaile has not denied that information was requested[3] of him, only that Porsboll never provided him with the resultant order. The hearing transcript also resolves this matter. Vaile's several requests to the Nevada court to take notice that a Norwegian order existed, so that the court would require its production, supports Vaile's assertions. Furthermore, the fact that when Vaile finally obtained the Norwegian orders, he filed them in every court, supports his assertions that Porsboll had not provided him with those orders. Petitioner requests the Court to remove its statement which is contrary to the evidence on that matter.

The corrected facts are particularly relevant to the disposition of the case. Petitioner previously argued that the principles of *estoppel*, which prohibit a party from challenging her own judicial actions in another forum, applied to Porsboll here. The doctrine of judicial estoppel, or doctrine of "preclusion of inconsistent positions," is intended to prevent a person from abusing the judicial process by first advocating one position, and then later, if it becomes beneficial, to assert the opposite position. Jackson v. County of Los Angeles, 60 Cal.App.4th 171, 181 (1997). After requesting child support from Norway in order to bind Mr. Vaile, the principle of estoppel should prevent Porsboll from claiming in another judicial forum that the old forum lacked the jurisdiction to grant her request. Being barred in the California forum from challenging her own legal actions in Norway resolves this matter definitively. Petitioner respectfully requests that the Court address this legal position.

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3. Paradoxically, Porsboll argues on appeal that the Norwegian child support order should be flatly ignored by everyone outside Norway, yet at the same time derides Vaile for ignoring the Norwegian tribunal's requests.

B. Errors of Fact Relative to Vaile's Character

The Court included a number of statements of facts in its decision which appear to be taken directly from Appellant's account of events rather than from the record of the finders of fact where the matter was litigated. In other instances, the assertion of fact is presented without the context of additional associated facts. These statements, when corrected, may be material to the determination of the matters on appeal. Furthermore, the errors stated by the Court work to present a false portrayal and bias against Mr. Vaile. Petitioner requests that these statements of facts be corrected as outlined below.

1. The Parties' Separation Agreement was the Product of Lengthy Mediation

On page 2 of the Courts decision, the Court stated:

> On the day before the scheduled hearing, Vaile presented Porsboll with a 23-page separation agreement that covered, among other things, child custody, support and visitation, and also stipulated to their getting a divorce in Nevada, where Vaile's mother and stepfather were then living.

This false statement gives the impression that Vaile prepared the separation agreement himself and then foisted it on an unwilling Porsboll who saw it for the first time the day before a scheduled hearing. This is untrue.

In actuality, between the first hearing in the English court and the final hearing (a period of several weeks), Vaile and Porsboll agreed to attend mediation with a neutral third party recommended to them by their church congregation leader in London. After meeting with both parties several times, both together and individually, the third party crafted the mediated separation agreement to which both parties consented and signed. That

agreement included every tenet that Porsboll requested of the mediator, including a one-year visit to Norway.[4]

It should also be understood that during the first hearing in London (which included an informal meeting with a Barrister), the parties were told that the English court would send them back to the US for divorce proceedings, since the parties were only temporarily in England, if they did not come to agreement. The parties actually signed their completed agreement on the morning of the second hearing in the English courts. It was because of that signed agreement that the court permitted Porsboll to remove the children from the country. None of these facts have ever been disputed by the parties. However, the factual statements by this Court tell a very different story than the actual events, and Petitioner requests that the statements be corrected.

2. The Parties' Affirmations Relative to Nevada Physical Presence Were True

The Court's statement discussed above that asserts that the parties "stipulated to their getting a divorce in Nevada, where Vaile's mother and stepfather were then living", together with the Court's statement below, creates a false impression by omitting additional relevant facts. The Court stated:

> On July 14, 1998, five days after returning to the United States, Vaile signed a verified complaint asserting that he was "a resident of Nevada and that he had been physically present in Nevada for more than six weeks prior to the filing of the complaint." None of this was true.

Taken together, these statements imply that 1) the only connection with the parties and Nevada was the presence of Vaile's parents there; 2) that Vaile spent only five days in Nevada; and 3) that the parties knowingly falsified legal documents in that forum. This is wholly inaccurate.

[4] Porsboll would later assert that she never intended to abide by this agreement.

In 1997, when the parties relocated to England, the parties took all legal steps they knew to establish their US residence in Nevada, because they were required under the terms of their temporary assignment abroad to maintain a US residence. For example, household goods were moved to Nevada and US mail was forwarded to their Nevada address which they shared with Vaile's parents. Furthermore the only place they called home when they visited the US (Vaile from England, and Porsboll from Norway) was Nevada. What other steps does one take to maintain a residence in a state while on temporary assignment abroad?

When Vaile signed the complaint prepared by his attorney in 1998, and Porsboll signed the answer, both parties believed that they had established Nevada residency. It was not until Porsboll's Nevada attorney challenged Vaile's residency that either party learned that the efforts they took to establish residency many months before their uncontested divorce papers were filed, were legally insufficient. Neither party had the ability to know this prior to that litigation. These facts were presented in the Nevada litigation, and for this reason, the Nevada lower court, the finder of fact in the matter, held that neither party intended a fraud on the Court. See Exhibit 2. Petitioner requests that these facts be corrected.

3. The Nevada Lower Court Did Not State that Its Custody Order Had Been Based on Misrepresentations

On page 4 of the Court's decision, it stated that "The Nevada family court acknowledged that its earlier custody order favoring Vaile had been based on misrepresentations but, exercising emergency custody jurisdiction, it left custody temporarily with Vaile." This is an inaccurate statement of fact. The Nevada lower court made no such assertion. A review of the actual order of that court will reveal none. See Exhibit 2. Contrary to the statement of this Court, the lower court actually affirmed that its previous

custody order issued to Vaile was a "pick-up order" and that neither party intended a fraud on the court. Those findings of fact have not been overturned by any court. Petitioner requests that the Court correct the inaccurate statement asserted as fact in this case.

4. *Factual Assertions Regarding Events Taking Place in November 1999 Are Inaccurate*

On page 3 of its decision, the Court stated that:

> In November 1999, Porsboll informed Vaile that she planned to remarry. Vaile told her he was moving from London back to the United States and demanded that she and the children also relocate. Porsboll refused and initiated legal steps to be allowed to remain in Norway with the children.

This statement is factually inaccurate and creates the false impression that Vaile requested Porsboll to return to the US *because* she planned to remarry. This statement appears to enforce the earlier misstatements of fact that Vaile was somehow interested in exerting control over Porsboll. This is untrue. The lower court perhaps said it best in stating that "both parties just wanted to be anywhere, without the other." Exhibit 2.

The parties separation agreement contains the relevant dates, specifically that Porsboll was to return the children to the United States by *July 1999*. In accordance with that agreement, Mr. Vaile made all preparations for the return of the children and Porsboll to the US, including lodging and transportation of household goods.[5] Porsboll initially communicated to Vaile an intent to return, but delayed continuously starting July 1999 while Vaile attempted to accommodate her with all patience. Finally in October 1999, Porsboll informed Vaile that she had no intention of returning the children to the US. Although Porsboll may have made plans to remarry in November 1999, it was many months after she was required to return to the US under the parties' separation agreement.

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5. See Exhibit 3, page 9.

Regarding the Court's statement that Porsboll "initiated legal steps to be allowed to remain in Norway with the children," this is also false. In the hearing in October 2000 after the children were returned to the US, Porsboll presented a Norwegian document into evidence that she asserted was a Norwegian "filing" that initiated legal action in Norway. On appeal, the Nevada Supreme Court relied on that timing of the initiation of legal proceedings in Norway as a determinative factor in deciding that Norway was the proper forum to determine custody. It appeared to that court that Porsboll took legal action in Norway prior to Vaile's action in Nevada seeking to require Porsboll to return his children to the US.

However, when the Norwegian court issued its decision in November of 2000, it actually stated that Porsboll filed her petition with the Norwegian court on March 27, 2000,[6] three days ***after*** Vaile initiated legal action in Nevada. In deposition in subsequent litigation, questioning of Porsboll revealed that the Norwegian "filing" in November of 1999 was a request for mediation which Porsboll made to a reconciliation-related agency in Norway. Porsboll justified her previous false statements under oath because the mediation was "sort of legal." Exhibit 4.[7] Petitioner requests that the Court correct the inaccurate assertions of fact in its decision.

5. Mr. Vaile's Statement to the Nevada Court Was Not Malicious

On page 3, the Court states that "The Nevada court's ruling was based on an in-court statement by Vaile that the children had lived "here" "all their lives." Vaile's lawyer also falsely told the Nevada family court the

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6. "Attorney Elisabeth Hagen filed a petition with the Oslo District Court on behalf of Cisilie Vaile on March 27, 2000." Attached as Exhibit 3.

7. Ms. Porsboll was attending law school in Norway at the time that the parties met. Prior to 2004, she was the only party of the two who had any legal training.

children "lived in Las Vegas prior to leaving." It is true that Vaile answered "all their lives" to the Court's question of how long the children lived "here," however, the Court omitted the fact that the question asked of Vaile implied "here in the US," to which he answered with truthful candor.

Furthermore, the Court's statements together imply that Vaile and his attorney somehow conspired to mislead the Nevada lower court. However, that very court, the finder of fact on the matter, actually found otherwise. While Vaile cannot answer for the inaccurate statement of counsel during the hearing, he has provided testimony that he corrected his counsel regarding the inaccurate statement immediately after the hearing, and was told that it was immaterial to the Court's decision.

The malicious intent that the Court seems to attach to Vaile in its fact pattern would have required a deep understanding of jurisdictional legal concepts, as well as foresight of future events, neither of which he possessed at that time. Petitioner requests that the Courts statements be corrected accordingly.

6. Norway Did Not Have a "Registration" Mechanism in 2000

On page 3 of the Court's decision, the Court stated that Vaile "did not file the [Nevada lower court's custody and pick-up] order with any government body in Norway to have it enforced, however." The implication is that Vaile should have registered the US order with the Norwegian tribunal in a manner similar to UIFSA procedures. However, in the year 2000, Norway did not have any mechanism to register a US order with any agency of that government. The Norwegian court's decision of November 9, 2000, (attached as Exhibit 3) states that:

> First of all, it should be noted that foreign judgments regarding parental rights, custody, and visitation rights are only recognized in Norway pursuant to the agreement with foreign states, entered with the justification in the Civil Procedures Act, Section 167 and 168. Norway joined the Convention of the Council of Europe of May 20, 1980 regarding recognition and acknowledgement of decisions of parental rights and of restoration of parental rights. Norway has no such convention obligation with respect to the USA.
>
> Exhibit 3, page 8.

As the Court noted, Norway did not enter an agreement with the US and become a Foreign Reciprocating Country even for child support matters until 2002. Petitioner requests that the Court correct its statement that implies that he should have followed a procedure that did not exist in Norway at the time.

7. Vaile Paid Child Support in Full

On page 5 of the Court's decision, the Court stated that "While it appears that Vaile never paid child support in accordance with the formula in the separation agreement, he did pay $1,300 per month from the time of the divorce until approximately April 2000" and on page 6 "There is no evidence that Vaile ever made support payments under the Norwegian orders." These statements are inaccurate, and strongly imply that Vaile resisted efforts to pay support of his children.

Key facts that the Court omitted that paint a very different picture of the situation are: 1) Vaile paid child support in excess of that required under the agreement while the children were visiting Norway until April 2000. 2) Vaile ceased paying support in April 2000 because the Nevada court granted him full custody, and because the children lived with him full-time. 3) Vaile did not make child support payments "in accordance with the formula in the separation agreement" because that formula required Porsboll's income information, which she admitted during testimony that

she refused to provide to Vaile. 4) The Kansas decision shows that Vaile paid Norway directly in accordance with the Norwegian orders. Kamilla Vaile's affidavit reflects that she received these child support funds, unintercepted by Porsboll and Porsboll's Nevada counsel for the first time when payments were made directly to Norway. Petitioner requests that the Court correct its inaccurate statements of fact on this matter.

8. Vaile is Has Not Taken Legal Action Maliciously

On page 6 of the Court's decision, the Court stated that "Vaile sued his employer in San Francisco City and County Superior Court for abuse of process and conversion, also naming Porsboll and her lawyers as defendants." The obvious implication is that Vaile was malicious in taking legal action against Porsboll in a forum unknown to her. The Court omitted the key facts that 1) the basis of Vaile's legal action against his employer was simply to effect due process to attachment of his wages (such as a hearing) that California law requires, and which his employer bypassed. 2) The Court omitted the fact that the Superior Court ***required*** that Vaile name Porsboll in the matter. Inclusion of these facts paint a completely different view of the situation, and Petitioner requests that the Court update the statement of facts accordingly.

9. Vaile Submitted the Original Nevada Order to the Tribunal in Norway

On page 18 in footnote 13, the Court stated that "there is no evidence to suggest that Porsboll registered the 1998 Nevada support order in Norway before the Norwegian agency rendered its support order, as would have been required under UIFSA for a valid modification." The implication here is that the Norwegian tribunal did not have the Nevada order before it. This is incorrect. The separation agreement incorporated into the parties' decree of divorce contained the child support provisions. Mr. Vaile filed this

document with the Norwegian court early on to counter Porsboll's claims there that she intended to remain in Norway when she went to visit for one-year, and that she was not obligated to return the children to the US. The court's decision, in Exhibit 3, contains a thorough discussion of the Nevada agreement. Because Vaile provided this agreement to the Norwegian tribunal, in strict adherence to UIFSA, the Court's statement to the contrary must be corrected.

10. Vaile Did Not Kidnap His Children

On page 3 of the Court's decision, it states as fact that Mr. Vaile "left the order with a desk clerk at a hotel where the children were staying with their mother[8] and kidnapped them from the hotel." The effect of the Court's wording in describing the return of the children to the US is to label Vaile a criminal. This is perhaps the most egregious error in the Court's opinion.

Vaile could have returned the children to the US during any of his regular visits to Norway after July 1999, according to the parties' agreement. Instead, he continued to try to convince Porsboll to adhere to their agreement. When that failed, he went to the Nevada lower court and obtained full custody of the children before taking any action. On his return of the children to the US, and after Porsboll's challenge in the Nevada lower court, that court reiterated that the order it provided to Vaile was indeed a "pick-up" order. These key facts were omitted from the Court's opinion.

Neither the Nevada lower court, nor the Nevada Supreme Court referred to Vaile's return of the children to the US as "kidnapping." Nor has any other court decision in the US that could be found referred to the exercise

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8. Vaile left Norway with the children from *his* hotel in Oslo, not Porsboll's (she lived there).

of custody in accordance with a custody order which is eventually overturned, as "kidnapping."

Shortly after the Nevada Supreme Court issued its decision in 2002, Porsboll sued Vaile and his entire extended family family in federal court in Nevada. Among the many claims for relief was "child abduction." When the federal court dismissed Vaile's parents from the action, it also cataloged the actions that it had dismissed relative to all defendant's including Vaile:

> [T]he Court sua sponte dismissed all defendants from the following causes of action: First Claim for Relief-Intentional Interference with Child Custody; Second Claim for Relief-Violation of International Treaty; Eighth Claim for Relief-Child Abduction; Ninth Claimfor Relief-Wrongful Concealment; Twelfth Claim for Relief-Aiding and Abetting; and Thirteenth Claim for Relief-Abuse of Process.
>
> Exhibit 5, page 4.

Despite the fact that the kidnapping claim had been dismissed by the federal court, Porsboll's counsel inserted a judgment for "kidnapping" in the default judgment he authored and submitted to the federal court; the court heedlessly signed it. As such, the federal default that Porsboll's counsel authored and deviously secured against Vaile is the only court order which labeled Vaile's acts as "kidnapping."[9]

The criminal label affects more than just Mr. Vaile. The two children whose interests Porsboll's counsel has purported to represent have both been adversely affected by the federal decision asserting they were kidnapped. Both children, now adults, have filed affidavits in the litigation claiming that this counsel has been working against their interests, and that they were not kidnapped. Because Porsboll's counsel has made the federal default judgment a platform on which to grandstand, publishing it broadly

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9. Porsboll's counsel, Marshal Willick, sent this default to Vaile's law school purporting to be evidence of his criminal behavior. A federal district court in Virginia adjudged this act to be *defamation per se*.

on his website and other locations, the older of the two children has sought a legal change to her first and middle names in order to offset the false victimization that the accusation has brought. Petitioner requests that the Court not become a party to counsel's attempt to lynch Vaile, and shame the children through judicial fiat, by forcing them to become victims of a kidnapping that never happened.

11. The Children Never Lived in West Texas

On page 4 of the Court's decision, the Court stated that "Vaile took the children back to the United States, where they settled on a farm in West Texas." Neither the children nor Vaile have ever lived in West Texas. The implication of the Court's statement is that Vaile intended to sequester the children from others, compound-style, in a remote location. In actuality, Vaile moved in with his sister – the aunt to whom the children were closest – in Denton County Texas, immediately north of Dallas county. Also, the Court omits that immediately upon their arrival, Vaile established regular calls between the children and their mother, arranged for her to speak to the children's teachers at school as well as their congregational leader. Vaile made arrangements for Porsboll to visit as soon as possible, offered to help her fiancée find work in the US if she decided to relocate, and continued to communicate a willingness to adhere to the parties' agreement. This story is very different than that communicated through the statements selected by the Court to report the facts in the case.

Conclusion on Errors of Fact Relative to Vaile's Character

Petitioner recognizes that it is easier to craft an opinion where one party can be clearly identified as the party in the wrong. However, it should be important to the integrity of the Court that it not villianize a party in order to justify a legal decision with such profound consequences. Although Porsboll's counsel has been very selective in revealing only those portions

of the record that support the fictional story he would like this Court to repeat, Petitioner respectfully requests that the Court not become a party to this deception.

C. OTHER ERRORS OF FACT

On page 1 of the Court's decision, the Court asserts that the child support dispute spawned litigation in Virginia and Michigan. The only litigation in Virginia was between Porsboll's counsel and Vaile, and there has never been any litigation in Michigan.

On page 11 of the Court's decision, the Court refers to Solano County DCSS. Only Sonoma County DCSS has been involved in this action.

On page 23, the Court stated that "Porsboll never traveled to California, and never had any other contacts with this state." This is contrary to fact, and not based on any record. Prior to taking the job that sent Mr. Vaile to England for the temporary assignment, Vaile and Porsboll made a long trip to California to visit Vaile's family there. During that trip, the differences between the parties was made evident to each, and they actually agreed to separate upon their return to Ohio. Ironically, California may have been an acceptable venue for the parties' divorce. Although it may not be determinative here, the Court's statement of fact is inaccurate.

III. ERRORS OF LAW

Although the Court's decision includes a discussion of many aspects of the case and of the relevant law, the Court based its decision to reverse the lower court on two key holdings, that 1) requires a party who is registering a foreign order, and specifically requests that the court make a determination of controlling order, to provide personal service to any potential adverse party instead of the notice provisions provided for under UIFSA and 2) holds that an individual who submits a registration statement

and child support order to the California Department of Child Support Services does not submit to the specific jurisdiction of the court for the purposes of litigating that child support dispute. In so holding, Petitioner respectfully submits that the Court has made errors of law that require rehearing. The Court's holdings represent substantial departures from the law as written, and have implications not fully considered.

A. THE COURT'S HOLDING THAT MR. VAILE WAS REQUIRED TO PERSONALLY SERVE PORSBOLL UNDER UIFSA IS AN ERROR OF LAW

The Court's determination that Vaile was required to provide personal service under the Hague Convention to the non-registering party in order for the Superior Court to make a controlling order determination is contrary to both UIFSA and the California statutes that implement UIFSA. The Court has overlooked three aspects of UIFSA and California law that make this so. Firstly, the tribunals of the State are required to provide notice to the non-registering party. Secondly, the tribunal is required under UIFSA to make a controlling order determination. Thirdly, Porsboll's rights were not affected by the determination.

1. THE TRIBUNALS OF THE STATE ARE REQUIRED TO PROVIDE NOTICE TO THE NON-REGISTERING PARTY

Although the Court concluded that Vaile was required to serve Porsboll, a party registering a foreign order in a tribunal under UIFSA is not required to provide notice to non-registering parties at all. In an intentional departure from standard civil procedure, UIFSA requires that the *tribunal* provide this notice to non-registering parties:

> When a support order or income-withholding order issued in another state is registered, ***the registering tribunal*** shall notify the non-registering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
>
> Family Code § 4954(a) (emphasis added).

This code section continues outlining the specific information that the notice to the non-registering party shall include. The 2002 amendments[10] clarify in section (c) what the notification to the non-registering party should contain *relative to a controlling order determination*:

> If the registering party asserts that two or more orders are in effect, a notice shall also do all of the following:
>
> (1) Identify the two or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any.
>
> (2) Notify the nonregistering party of the right to a determination of which is the controlling order.
>
> (3) State that the procedures provided in subdivision (b) apply to the determination of which is the controlling order.
>
> (4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

By transferring the responsibility of the tribunal clearly laid out in statute to the registering party, the Court makes a significant departure from the statutory scheme where the tribunal in each state is intended to fulfill this uniform mandate. Petitioner asserts that this is an error of law, and in conflict with the clear intent of the statute.

If the Uniform Law Commission and the California legislature intended for the registering party to provide the notice, it could have required that. Reading an unwritten requirement into the law for the registering party to provide the same notice that the tribunal is required to provide makes no sense either since the notice would be redundant. And courts must avoid statutory constructions that render statutory provisions unnecessary. Dix v. Superior Court, 53 Cal.3d 442, 459 (1991).

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10. As the Court observed, the not-yet-operative 2002 amendments to UIFSA merely clarified requirements already existing in the then-current version.

In addition to transferring responsibility for notice, the Court has increased the statutory notice provisions to the non-registering party, and expanded them to require affirmative service in accordance with the Hague Convention of a foreign non-registering party. If a requirement for personal service is added to the statute via court fiat, the result is that all UIFSA tribunals across the State must begin to effect personal service of potentially adverse parties, and employ procedures to service foreign parties in accordance with Hague Convention procedures instead of providing the "notice" that the statute requires. Applying these additional elevated notice requirements to the Superior Courts and to registering parties was never intended by this legislation and represent a significant departure for UIFSA practice in California.

2. *The Tribunal is Required under UIFSA to Make a Controlling Order Determination*

A UIFSA tribunal is required to follow the tenets of section 207 in order to preserve the one-order system regardless of whether the registering party requests it. The court appears to have overlooked this requirement.

The Court states, on page 22:

> But even if Vaile were correct that compliance with the Hague Service Convention is not required in the case of a simple registration and enforcement action, his motion to make a controlling order determination was more: it was a new request for relief that carried with it the prospect of adversely affecting Porsboll's rights.

The implication in the statement of the Court is that if Vaile had not asked the Court to make a controlling order determination, then only the notice provisions outlined in UIFSA would apply. This theory falls apart based on the fact that a UIFSA tribunal is *required* to make a controlling order determination whenever two or more orders exist. Vaile's motion

simply requested the Superior Court to do what it was already obligated to do under the statute.

The statute would be completely ineffective if the Court's interpretation was correct – that different service provisions applied based on whether the registering party specifically requests a controlling order determination. Registering parties could simply avoid the elevated service requirements by either 1) disclosing the potentially competing orders but not requesting a controlling order determination, or 2) by waiting for the non-registering party to identify the potentially competing order. In the first case, the tribunal would still be required to make the controlling order determination, but no elevated service would be required. In the second scenario, the non-registering party's appearance to submit the competing order would bring the non-registering party properly before the tribunal voluntarily, again avoiding the elevated service requirements. Surely neither the Uniform Law Commission, nor the State's legislators intended for registering parties to be able to game the UIFSA system to reach different results. Requiring lower courts to impose unwritten requirements on registering parties in UIFSA cases where multiple orders existed is an error of law.

3. Porsboll's Rights Were Not Affected by the Controlling Order Determination

The Court appears to confuse a request to make a controlling order determination with a request to modify a child support order because, in this case, Mr. Vaile's "request for a controlling order determination sought to reduce the past-due child support owed to Porsboll." Page 18.

A controlling order determination should be conducted in every registration action to ensure that the proper controlling order is being registered. That controlling order determination is governed by section 207 of UIFSA. A request to modify a child support order is governed by section

205 of UIFSA, and only applies when a party seeks to change the previous controlling order. The two scenarios are addressed very differently under UIFSA, and should not be confused here. Vaile did not request to modify any aspect of either of the two competing orders.

In every UIFSA case where more than one order exists, there will be a difference in the competing orders, usually the amount of the support obligations. Presumably, obligors will favor the order which minimizes his obligations. That fact does not transform the controlling order determination in every case into a motion to modify. If the intent of UIFSA was to handle every controlling order determination as a modification, both sections of UIFSA would be wholly unnecessary – an unacceptable conclusion.

On page, 22, the Court acknowledges the *Gingold* Court's instruction that "When enforcement of an out-of-state support order is the only remedy sought, the parties have already had their day in court when the order was issued."[11] This statement is most relevant in this case because Porsboll sought the order in Norway. Even if the Court were to read a requirement to service non-registering parties, who are normally the obligor in each action, that requirement would not apply in this case. Porsboll had no obligations under the order that she sought in Norway, which obliged Vaile only.

Furthermore, the Court erred in proposing that the California tribunal should have scrutinized the Norwegian court's modification jurisdiction, at a time in the proceedings when no party had disputed the validity of the Norwegian order. The Court's proposition is not to be found in case law, and is directly contrary to UIFSA, the Full Faith and Credit of Child Support Orders Act, and the State Department's direction regarding Foreign

---

[11] Gingold v. Gingold, 161 Cal. App. 3d 1177 (Cal. App. 1 Dist., 1984).

Reciprocating Countries' orders. UIFSA carefully enumerates the bases by which a foreign child support order may be challenged,[12] and an inquiry into whether that court had modification jurisdiction is glaringly absent from that statute.

For the reasons set forth above, the Court's determination that Vaile was required to personally serve Porsboll under UIFSA is an error of law, and now drastically diverges from the requirements of UIFSA in 49 states.

B. THE COURTS HOLDING THAT AN INDIVIDUAL WHO SUBMITS A REGISTRATION STATEMENT AND CHILD SUPPORT ORDER TO THE CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES DOES NOT SUBMIT TO THE SPECIFIC JURISDICTION OF THE COURT FOR THE PURPOSES OF LITIGATING THAT CHILD SUPPORT DISPUTE IS AN ERROR OF LAW

The Court inaccurately frames Petitioner's argument as to why personal jurisdiction over Porsboll is proper. The Court asserted that Vaile argued that jurisdiction was proper because Porsboll "sought the assistance" of the Department of Child Support Services. Actually, Vaile asserted that jurisdiction over Porsboll was proper for the purposes of resolving the child support dispute because she *initiated the legal action* in California by seeking to register the Nevada child support order in the jurisdiction. Additionally, Porsboll knew at the time that she filed her "Registration Statement" and attached the Nevada order, that she had already sought and was granted a child support order in Norway.

---

12. Family Code § 4956. (a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses: . . . (c) If the contesting party does not establish a defense under subdivision (a) to the validity or enforcement of the order, the registering tribunal ***shall issue*** an order confirming the order.

It appears that the Court decided that regardless of whether Porsboll's counsel sent the registration statement directly to the California Department of Child Support Services ("DCSS"), Porsboll's registration attempt was insufficient to confer personal jurisdiction over Porsboll on the UIFSA tribunal. Petitioner asserts that this holding is an error of law.

A request of an out-of-state party to take advantage of a forum's benefits and protection of it's laws has been a basis for a court taking jurisdiction of the person for decades. See Hanson v. Denkla, 357 U.S. 235, 253 (1958). This is particularly apt when the litigation is directly related to the request. The US Supreme Court has upheld what it called "constructive consent" to the personal jurisdiction of a state court when a party voluntarily uses state procedures. Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704 (1982). When a person initiates legal action, no debate as to personal submission to the jurisdiction exists in case law.

The Court observed that Porsboll did not technically "register" the Nevada order under UIFSA because Porsboll submitted the foreign order to DCSS and not to the Superior Court. However, as the *Hanson* court observed, a party's contacts with the forum as a whole, not specifically with one tribunal is the relevant factor in the minimum contacts analysis.

Furthermore, whether or not the registering party submits the order to DCSS or to a tribunal of the State cannot be the determining factor in whether or not the registering party falls under the personal jurisdiction of the State's tribunal. UIFSA provides that a party may submit an order to a support enforcement agency like DCSS without registration. See Fam. Code § 4946(a). In the event that the obligor contests the enforcement, the agency registers the order in the tribunal. Fam. Code § 4946(b). None would dispute that once the order is registered in the tribunal in this scenario, the submitting party is properly before the court for purposes of

resolving child support. Yet if personal jurisdiction of the submitting parties differs before and after registration, then personal jurisdiction of a foreign party is wholly dependent on the actions of a third party – either the agency registering the order, or the obligor contesting the order. This cannot be according to binding precedent. The "unilateral activity of another party or a third person" cannot form the basis of whether a court has personal jurisdiction of a person. See Burger King v. Rudzewicz, 471 U.S. 462, 475 (1985). As such, the party's own purposeful actions in submitting the foreign order to the agency must be the basis for the exercise of specific jurisdiction over her, as in this case.

Because Porsboll submitted the Nevada child support order to the DCSS, she submitted to the jurisdiction of the Superior court for purposes of resolving the child support, and determining whether the order that Porsboll submitted was, in fact, the controlling order. The Court holding to the contrary stands in opposition to the US Supreme Court jurisprudence on the matter.

C. THE COURT OMITTED HOLDINGS ON KEY LEGAL MATTERS DISPOSITIVE OF THE APPEAL

The following matters were not addressed by the Court in its decision and are dispositive issues on appeal.

1. APPELLANT DID NOT APPEAL THE DENIAL OF HER MOTION TO SET ASIDE

In it decision, the Court overturned the Sonoma County court's denial of her Motion to Set Aside. However, Appellant did not appeal that order from the lower court. Neither the notice of appeal, nor Appellant's Case Information Sheet on appeal noted this order as one being challenged. As such, Appellant did not request, and was not entitled to the relief requested.

2. *REGISTRATION OF THE NORWEGIAN ORDER WAS STILL PROPER*

The Court appears to agree that personal jurisdiction over Appellant was proper for the purposes of registration and enforcement of the Norwegian order – but not a determination of the controlling nature of that order. Nevertheless, the Court ordered the tribunal to overturn its November 1, 2012 order which included confirmation of the registration of the Norwegian order, as well as the controlling order determination. If the registration was proper, then the November 1, 2012 order should be affirmed as to that registration. Petitioner requests that the Court make the adjustments accordingly.

IV. CONCLUSION

Had the Court had the full set of accurate facts before it, the Court would have resolved the matter differently. Petitioner respectfully requests that the Court 1) take into account Petitioner's exhibits and corrections of fact, and incorporate a complete and accurate history in its decision, despite statements to the contrary by those who either had incomplete information, or who were motivated to misrepresent them, 2) apply UIFSA as intended by the drafters and as written into California statute. As is often the case, the application of the law in an unbiased manner will actually result in a just resolution of this case.

In order to provide the facts necessary for the Court to correct errors, the exhibits exceed the 10 page limit provided for under Rules 8.204(d). Petitioner respectfully requests the Court consider the additional pages for good cause. Alternatively, the petition stands without consideration of the additional pages.

Respectfully submitted this 4th day of June, 2015.

/s/ R.S. Vaile

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

CERTIFICATE OF COMPLIANCE WITH RULE 8.204(c)(1)

In accordance with California Rules of Court, Rule 8.204(c)(1), Respondent declares that this brief, including all tables and footnotes, consists of 7,931 words as reported by LibreOffice 3.5.7.2.

/s/ R.S. Vaile

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RESPONDENT'S PETITION FOR REHEARING

EXHIBIT 1

PORTION OF HEARING TRANSCRIPT
FOR HEARING HELD SEPTEMBER 18, 2008

FILED

JUL 0 3 2009

CLERK OF THE COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT S. VAILE, Plaintiff, v. CISILIE A. VAILE, Defendant.	)	CASE NO. 98D230385 DEPT. I

BEFORE THE HONORABLE CHERYL B. MOSS, DISTRICT COURT JUDGE

TRANSCRIPT RE: EVIDENTIARY HEARING - VOL. I

THURSDAY, SEPTEMBER 18, 2008

APPEARANCES:

For the Plaintiff:	ROBERT S. VAILE Pro Se
For the Defendant:	MARSHAL S. WILLICK, ESQ. JOSEPH W. RICCIO, ESQ.
Also present:	LEONARD FOWLER

any paperwork under our agreement?

A No, I -- I can't remember if -- if Marshal has asked me to provide it, I -- I'm sure I would have provided it. And -- but I -- I can't remember if I provided anything to you without Marshal asking me to -- to provide it.

Q Okay. Do you remember us talking about the -- the Norwegian child support system?

A I can't remember exactly if we talked about it on -- on that deposition, but of course there has been communication back and forth with -- with that system, yes.

Q Okay. I'd like to -- I'd like to refresh your memory.

THE COURT: Thank you.

Q I'm going to read you a section of -- of the deposition. And you can let me know if you remember this. The question was -- this is on line 16 of page 297 for the court's benefit. Have you spoken with the child support office in Norway about having me pay child support. Do you remember that, Cisilie?

A I'm -- I'm sorry, I can't -- I can't remember it, you know. I'm -- I'm not in, you know, I'm not dealing with legal papers everyday, so I can't remember exactly what you asked me, but that might be reasonable that you can -- could of asked me a question like that.

Q Had you actually contacted the Norwegian system?

A Yes, I did.

Q Is there a Norwegian child support order?

A There -- it -- there existed an order like if -- if you were not to pay child support through -- through Mr. Willick, then -- then the Norwegian government would try to get it, you know, from you otherwise. There will be years that -- that you did not pay child support, I know that -- that they have some officials in -- in the U.S. looking for you,.but haven't succeeded finding you.

Q Did Norway issue child support orders to your knowledge?

A Yes.

MR. VAILE: Your Honor, at this point --

THE COURT: Yes?

MR. VAILE: -- I'd -- I would like the court to please take judicial notice that Cisilie has testified that there is a child support order in Norway. Under NRS 130.207, this court would be required to make a determination of which order is controlling.

MR. WILLICK: It's already been fully briefed.

THE COURT: But controlling order has only to do with modification. We're not hearing modification. We're hearing -- we're here on an initial order for child support, unless you're arguing that it -- it was. I mean, this -- Nevada came first.

MR. VAILE: I'll -- I'll continue, but I just wanted you to take judicial notice of -- of the order if you would be willing.

THE COURT: The request is denied at this time. I don't see any basis to right now. Okay. Proceed.

MR. VAILE: Okay.

Q I wanted to ask you a quick question along a tangent with regard to the -- the United States District Court and the district in Nevada the -- the findings of fact that were issued from that court. Have you --

A Okay.

Q -- have you read those, Cisilie?

A I -- I didn't understand the question. I'm sorry.

Q Have you -- have you read the -- the order that -- that was issued by the -- the federal district court?

A Well, which order? Or when?

Q The -- the findings of fact specifically that were issued on March 13th of 2006.

A I have probably read it a long time ago as -- as I do with all the other legal documents, but you know, the -- the leg -- the American legal language is -- takes a long time for me to understand. So I just --

Q I was just asking if you read --

A -- probably briefly read it through, just -- you know,

just so I sort of understand the scope of it. But I can't remember reading specifically that. I can't remember specifically that document.

Q Okay. I'm going to read you a statement from -- from the -- the order or the findings of fact dated March 13th, on page -- page 5 of the findings of fact, paragraph 20. Cisilie, the language says after the recovery of the children, Norway independently issued temporary custody, support and visitation orders effective as of April 2002. Is that to your knowledge correct?

A Yeah, they -- they issued a custody. That wasn't in the -- the -- I think they gave me temporary custody shortly after I returned home and the children. And probably almost half a year after that, they gave me like permanent, you know, custody. They didn't give me -- or I can't remember. They -- they made a -- a court decision as far as child support goes. But -- but since I didn't get any, I -- I contacted the Norwegian child support authorities --

Q So are you -- are you saying that --

A Because I thought if -- if -- as long as you are not paying it through Nevada --

Q Cisilia?

A -- sort of agreement or -- or whatever, then I would see what the Norwegian authorities --

Q Cisilia, my question was --

A -- could -- could manage to do.

Q -- my question was if that statement is true, did Norway independently issue support orders?

A Yes, they -- they issued support orders, yes. Since you were not paying child support, I -- I thought that the Norwegian authorities could try to -- to find you.

Q Okay. I'd like to go back to our -- our discussion of the -- of the deposition.

MR. VAILE: And Your Honor, I'd just renew my request for judicial notice that Norway has entered the support orders for the record.

THE COURT: The response from opposing counsel?

MR. WILLICK: It's -- it's totally irrelevant. It's -- anything currently before this court and certainly doesn't have anything to do with the alleged reason for the calling of this witness.

THE COURT: Is it -- it says temporary. Is it a temporary order? Does it have any impact?

MR. VAILE: It's temporary custody.

THE COURT: Temporary custody and temporary child support and temporary visitation orders, paragraph 20.

MR. VAILE: I'm not sure --

THE COURT: The question is if it's temporary, is it

RESPONDENT'S PETITION FOR REHEARING

EXHIBIT 2

ORDER FROM HEARING HELD OCTOBER 17, 2000
BY CLARK COUNTY DISTRICT COURT
IN CASE D230385
DATED OCTOBER 25, 2000

FILED

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CLERK

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant.

CASE NO: D 230385
DEPT. NO: G

DATE OF HEARING: 10-17-2000
TIME OF HEARING: 3:30 p.m.

ORDER

The DEFENDANT'S *MOTION FOR IMMEDIATE RETURN OF INTERNATIONALLY ABDUCTED CHILDREN AND MOTION TO SET ASIDE FRAUDULENTLY OBTAINED DIVORCE, OR IN THE ALTERNATIVE, SET ASIDE ORDERS ENTERED ON APRIL 12, 2000, AND REHEAR THE MATTER, AND FOR ATTORNEY'S FEES AND COSTS* having come on for hearing on the above indicated date, the Plaintiff present and represented by his attorney, JOSEPH F. DEMPSEY, ESQ., of the law firm of DEMPSEY, ROBERTS & SMITH, LTD., and the Defendant present and represented by her attorneys, LAW OFFICE OF MARSHAL S. WILLICK, P.C., appearing before the **HONORABLE CYNTHIA DIANNE STEEL** and the Court having reviewed al the papers, pleadings and records on file herein, together with the oral argument of counsel and good cause appearing; **the Court finds:**

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1. This Court finds no support restricting it from looking at other issues first before making a Hague Convention decision. This Court makes no Hague Convention determination, but if it did make such a determination, the Court would find that the habitual residence and contracting state for the children would be the State of Nevada pursuant to the Decree of Divorce and that the Plaintiff, Scotlund Vaile, did not wrongfully take the children, but instead, Defendant, Cisilie Vaile, was wrongfully retaining the children in Norway beyond those agreements which were in place between the parties at that time. Those agreements had not been objected to by anyone at that point in time when Mr. Vaile resecured his children.

2. There is no case that says "If you are living out of country and you want to move from one place to another, that moving your address was not enough." That based upon testimony of the witnesses, that these parties both wanted a divorce and didn't want to wait another year to achieve it. That Mr. Vaile took sufficient steps to change his residence from the State of Virginia to the State of Nevada prior to May 12, 1998. If a billing statement from a credit card company was mailed May 12, 1998, it is absolutely imperative that Mr. Vaile write them a letter long before that time to make certain that the address change is made. Just because a billing statement does not state May 12, 1998, it does not mean that there was no prior conduct by Mr. Vaile to change his address from the State of Virginia to the State of Nevada. Therefore, the Court believes it was Mr. Vaile's intention to remove his residence from the State of Virginia, and move it to the State of Nevada. Since Mr. Vaile's body was neither in Virginia nor Nevada, and because he was restrained by the British authorities in London, he could not be physically present in Nevada. But for those things, Mr. Vaile would have been physically present in Nevada sooner than he was actually present in Nevada. Therefore, the Court believes that it was Mr. Vaile's intent to be physically present in Nevada and the Court relies on Mr. Vaile's changing of address of his legal residence from one place to another.

3. That the Court does not find that Mr. Vaile has intentionally tried to defraud the Court, as the Court does not find Ms. Vaile intentionally trying to defraud the Court. The Court believes that both parties just wanted to be anywhere, without the other. Therefore, the Court finds that there was both personal jurisdiction and subject matter jurisdiction in order to achieve the Decree of Divorce and the separating of whatever properties were separated.

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4. That the Court also finds merit in the argument of Judicial Estoppel. The Court does not believe that Ms. Vaile signed the Decree of Divorce under duress. The timing is not appropriate for Ms. Vaile to claim duress. The Court does not believe Ms. Vaile felt that Mr. Vaile would take the children from her under some American Law. Ms. Vaile already had forces under British law preventing Mr. Vaile from taking the children and Ms. Vaile had the Decree of Divorce domesticated in Norway as soon as she received a copy of it. The Court believes that Ms. Vaile was pretty comfortable with her legal surroundings in Europe. Therefore, the Court does not believe that Ms. Vaile had any feelings of duress at the time she signed the admissions in the Answer. Further, if Ms. Vaile felt that she had been under duress, or that there was a lack of jurisdiction, at that time, her redress would have been to immediately file something in Norway, England or elsewhere to try to correct it. Ms. Vaile did nothing in this regard. The Court simply does not believe Ms. Vaile was coerced or under any duress whatsoever.

5. That when the Court considers the full faith and credit with regard to the residency laws, the Court believes that the Court does not want citizens of the United States forum shopping. This Court does not want somebody who actually lives in Virginia and who could run to the courthouse there, flying to Las Vegas and in a half an hour obtaining a divorce, and flying back to Virginia saying "I beat the rap!" That is the full faith and credit this Court is trying to achieve by adhering to the residency statutes. However, in this case, the Court finds that these parties had left Virginia and neither of them had any intention of ever returning to Virginia. Therefore, the Court believes it was the intent of the parties to relocate to Nevada, be it for tax purposes, or any other purpose. Because Mr. Vaile's mother lived here and he needed some time to "catch his breath," whatever the reason is, they came here and Mr. Vaile had no idea when he was going to leave when he signed the Decree.

6. That the Court finds that Ms. Vaile took advantage of the Decree of Divorce, immediately moved to Norway with the children for a year, then decided after a year that she didn't want to live up to the agreement. The appropriate thing for the parties would be to file a motion.

7. The Court further finds that the Court never had jurisdiction over the Children, because the children were never present in this state. The Court had jurisdiction over the parties' conduct toward each other with regard to the agreement under a contract theory. He (Mr. Vaile) promised to do

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certain things and she (Ms. Vaile) promised to do certain things and they did not do those things. When the parties came back to Court the Court, after Ms. Vaile was properly served and the Court gave her extra time to respond, the Court issued the Order that Mr. Vaile could retrieve the children. That Order is a "Pick Up" Order, which are normally followed by another hearing. That didn't happen. The Court had jurisdiction over the conduct of the parties, but it did not have jurisdiction over the children.

8. The Court is going to keep emergency jurisdiction over the children until some other court says "I have jurisdiction over the children and I will relinquish you of that responsibility." The two judges from the State of Texas and Norway need to talk to each other and decide who has jurisdiction. The victor court will call this Court and advise of the jurisdictional decision. This Court will then relinquish jurisdiction. This Court will return the children to the State of Texas until it receives the call from Texas or Norway. The court with jurisdiction needs to sign an order, cosigned by the other court, and this Court must receive the countersigned order before it releases jurisdiction. This Court will retain the children's passports and will return Mr. and Ms. Vaile's individual passports. The children are not to be shuttled continually back and forth between Texas and Norway. Whatever visitation Ms. Vaile wants, she can have while the children reside in Texas with Mr. Vaile. This subject matter jurisdiction on behalf of the children is not waivable. The parties have to start a custody and visitation decision "from scratch." What they have now is a contract, but this Court cannot say what to do with the children.

The Court having been fully advised in the premises, and good cause appearing therefore:

IT IS HEREBY ORDERED the Defendant's *MOTION TO SET ASIDE FRAUDULENTLY OBTAINED DIVORCE, OR IN THE ALTERNATIVE, SET ASIDE ORDERS ENTERED ON APRIL 12, 2000, AND REHEAR THE MATTER, AND FOR ATTORNEY'S FEES AND COSTS* is DENIED and the Court makes no Hague Convention determination on the Defendant's *MOTION FOR IMMEDIATE RETURN OF INTERNATIONALLY ABDUCTED CHILDREN.*

IT IS FURTHER ORDERED that the children are to be returned to Texas in the custody of Plaintiff, Scotlund Vaile, on October 25, 2000. That the children's passports will remain in the Custody of this Court until a court of competent jurisdiction issues an order regarding custody of the

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children. The passports of the Plaintiff and the Defendant, Cisilie Vaile, will be immediately returned by the Court.

IT IS FURTHER ORDERED that Defendant, Cisilie Vaile, is awarded liberal visitation with the children while Defendant is in Las Vegas, until October 25, 2000, and then later in Texas while this Court awaits word from another court that will assert jurisdiction over the children.

IT IS FURTHER ORDERED that the children shall remain in Plaintiff's temporary custody in Texas until this Court receives and Order from whichever court is deemed to have jurisdiction over the children.

DATED and DONE this 25th day of October 2000.

CYNTHIA N. STEEL

District Court Judge

Respectfully Submitted By:

DEMPSEY, ROBERTS & SMITH, LTD.

By: _____
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Nevada Bar No. 4585
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Attorney for Plaintiff
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Approved as to Form and Content by:

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By: _____
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RESPONDENT'S PETITION FOR REHEARING

EXHIBIT 3

ORDER FROM OSLO DISTRICT COURT
IN CASE 00-03031 A/66
DATED NOVEMBER 9, 2000

[Norwegian
coat of
arms]

THE OSLO DISTRICT COURT

On November 9, 2000, a court session was held in the Oslo Courthouse for the pronouncement of an

ORDER

Judge:	Assistant Judge Liv Dahl
Case Number:	00-03031 A/66
Plaintiff:	Cisilie Vaile, Gøteborggt. 1, 0566 Oslo
Counsel for Plaintiff:	Attorney Elisabeth Hagen, Nedre Storgt. 11b, 3015 Drammen
Defendant:	Robert Scotlund Vaile, Pb 2845, Denton Texas 76202, USA
Counsel for Defendant:	Attorney Elisabeth Bergsland, pb 471 Sentrum, 0105 Oslo

The following

order

was pronounced:

The case concerns the physical custody of and visitation with the parties' joint children, Kaia Louise Vaile, born May 30, 1991 and Kamilla Jane Vaile, born February 13, 1995. The Plaintiff has also petitioned for the granting of divorce. The Defendant has pleaded for the case to be dismissed. This court will decide whether the case can be heard before the Oslo District Court.

Background of the case:

Cisilie Vaile, a Norwegian citizen, and Robert Scotlund Vaile, an American citizen, entered into matrimony in Utah, USA on June 6, 1990. They lived in Ohio and Virginia before they moved to London in August of 1997. Both the children were born in the USA, and have both Norwegian and American citizenship.

The parties were divorced through a decree from the District Court, Clark County, Nevada dated August 10, 1998. At that same time, an order was made regarding the physical custody of the children based on an agreement between the parties dated July 9, 1998. According to that agreement/decree, Cisilie Vaile would have physical custody of the children until they were 10 years old. She was further required as residential parent to take up her residence within 20 miles of the Defendant's residence in the USA (see agreement's Art IV, point 4), however, she was not obliged to move to the USA before July 1, 1999. According to the agreement's Article IV, point 5, she had right to reside with the children in Norway until July 1, 1999.

On July 9, 1998, the parties also entered into a Norwegian agreement concerning custody. According to that agreement, the parties were to have joint custody, while the Plaintiff was to have physical custody of both children. This agreement refers to the English agreement "...which is completely valid in its totality."

The Plaintiff and children have lived on Gøteborggt in Oslo since July 1998. The Defendant appears to have resided partly in London and partly in Switzerland. He has reportedly had visitation with his daughters 1-2 times per month.

Before July 1999, Robert Scotlund Vaile stated that he was going to move back to the USA and wanted Cisilie Vaile and the children to move to the USA as well. The Plaintiff was opposed to this.

A mediation certificate from the Sentrum Family Counseling Services, Oslo, dated January 17, 2000 is included.

On February 18, 2000, Robert Scotlund Vaile filed a motion with the District Court, Clark County, Nevada requesting the "return" of the children and also physical custody.

Attorney Elisabeth Hagen filed a petition with the Oslo District Court on behalf of Cisilie Vaile on March 27, 2000. In this petition, it is requested that the mother be given physical custody of the children and that the father should have visitation according to the court's discretion, and under supervision, and a temporary decision in this regard was also requested.

In accordance with pleading, and before proper answer was filed, the Oslo District Court issued an injunction on the children leaving the country.

Proper answer was filed May 22, 2000. This answer showed, among other things, that the District Court, Clark County, Nevada issued an order on April 12, 2000 and granted the father physical custody of the children. The answer primarily argues for dismissal, alternatively that the Oslo District Court cannot make a decision in the case until the application for return according to the Hague convention is finally decided. With respect to the case's validity, it was further submitted that the father should have physical custody and the mother have visitation according to the court's discretion.

It was later clarified that the Defendant, likely in the course of his visitation with the children on May 17, 2000, had taken the children out of Norway and to the USA.

On May 29, 2000, the Norwegian Justice Department sent an application on Cisilie Vaile's behalf for the return of the children under the Hague convention of October 25, 1980.

The Oslo District Court decided on August 28, 2000 to stop the case until the application for return was finally decided, see Norwegian Parental Kidnapping Prevention Act, Section 19, Number 1.

Responding to a motion from Cisilie Vaile, the District Court, Clark County, Nevada reached a decision on October 25, 2000 with the following findings:

"It is hereby ordered that the Defendant's *MOTION TO SET ASIDE FRAUDULENTLY OBTAINED DIVORCE, OR IN THE ALTERNATIVE, SET ASIDE ORDERS ENTERED ON APRIL 12,2000 AND REHEAR THE MATTER, AND FOR ATTORNEY'S FEES AND COSTS* is DENIED and the Court makes no Hague Convention determination on the Defendant's *MOTION FOR IMMEDIATE RETURN OF INTERNATIONALLY ABDUCTED CHILDREN.*

It is further ordered that the children are to be returned to Texas in the custody of Plaintiff, Scotlund Vaile, on October 25, 2000. The children's passports will remain in the custody of this Court until a court of competent jurisdiction issues an order regarding custody of the children. The passports of the Plaintiff and Defendant, Cisilie Vaile, will be immediately returned by the Court.

It is further ordered that Defendant, Cisilie Vaile, is awarded liberal visitation with the children while Defendant is in Las Vegas, until October 25, 2000, and then later in Texas while this Court awaits word from another court that will assert jurisdiction over the children.

It is further ordered that the children shall remain in the Plaintiff's temporary custody in Texas until the Court receives an Order from whichever court is deemed to have jurisdiction over the children."

It is declared in the order that the court "never had jurisdiction over the Children, because the children were never present in this state." Point 8 of the order is quoted:

"This Court is going to keep emergency jurisdiction over the children until some other court says "I have jurisdiction over the children and I will relinquish you of that responsibility." The two judges from the State of Texas and Norway need to talk to each other and decide who has jurisdiction. The victor court will call this Court and advise of the jurisdictional decision. This Court will then relinquish jurisdiction. This Court will return the children to the State of Texas until it receives the call from Texas or Norway. The court with jurisdiction needs to sign an order, cosigned by the other court, and this Court must receive the countersigned order before it releases jurisdiction...."

With respect to the issue of dismissal, the Defendant presents the following:

A plea has been made to dismiss the case since neither the Defendant nor the children are resident in Norway (cf. Section 64, Paragraph 1, litra b of the Children Act).

The children have lived in Norway since July 14, 1998 according to a contract between the parties. This dwelling place was only to be temporary, according to the pleading's exhibit 2, page 11, point 5. After July 1, 1999, Cisilie Vaile was required to move to the USA.

In communications regarding their divorce, the parties spent much time discussing the situation of the children. The Defendant's account was that it would be the best for the children to move back to the USA, where they had lived most of their lives. Out of consideration for the Plaintiff, however, he accepted that she could live one year in Norway with the children.

After Cisilie Vaile and the children moved to Norway, Robert Scotlund Vaile investigated job possibilities in the USA, and sought residence for all the parties from the summer of 1999. He pursued a job in Chicago. Cisilie Vaile initially accepted this as a city of residence, but later, in the spring of 1999, she changed her mind and in October of 1999, she admitted that she had no intention of moving back to the USA.

Cisilie Vaile's stance of not being willing to move back to the USA is contrary to the agreement. Her unlawful attitude cannot result in the assumption that the children have domicile in Norway. Consequently, the case must be dismissed from the Oslo District Court. Reference is given to page 402 of the Norwegian Legal Gazette of 1984, which must be construed to mean that an extended stay is not sufficient foundation for a party or children to be considered "residents" in the country. It is necessary for there to be an "intention" for the stay to be permanent. This intention has never existed between the parties. Further reference is given to page 1144 of the Legal Gazette of 1993 where it is established that moving the children by self-help[1], as a general rule, is not sufficient proof that the children have changed residence. Cisilie Vaile has in reality exercised self-help by retaining the children in Norway past the agreed time period.

Additionally, the court should arguably dismiss the case based on the fact that the disagreements presented in the petition have already been decided by the American courts (cf. Norwegian Children and Parents Act, Section 64, paragraph 1c).

[1]Although no good direct English translation for self-help, the English expression "taking the law into your own hands" is consistent.

The <u>Plaintiff</u> has essentially presented the following:

The Plaintiff understands that the Defendant asserts that Las Vegas should be the correct location of jurisdiction given the precedence of the divorce decree. The Plaintiff contends that the parties at the time of the divorce resided in London. The domicile principle suggests that London was, at the outset, the correct jurisdiction, and it would have been the English law that would have been applicable.

The Defendant chose the jurisdiction of Las Vegas, Nevada because he wanted a quick divorce. The Defendant misrepresented that he had lived in Nevada for more than 6 weeks before the case was filed on July 14, 1998, in order to have the case handled in Las Vegas. The Defendant stayed in Las Vegas only from July 9 until July 22, 1998.

Las Vegas has never had jurisdiction. The District Court, Clark County, Nevada has issued judgments in July 1998 and April 2000 based on incorrect information from the Defendant. According to Norwegian law, this should have the effect of setting aside the decision (cf. Norwegian Civil Procedures Act, Section 384, paragraph 2 and Section 385). There are corresponding American laws. According to American attorneys with whom the Plaintiff has had contact, the Defendant risks the decision being set aside and penalties in this case.

It is argued that at the time the case was brought, the children were resident in Norway (cf. Children Act, Section 64, first paragraph, litra b). The Defendant's unlawful self-help does not change this. The Oslo District Court is the correct jurisdiction.

From the preliminary commentary for the Act (cf. Norwegian Government Reports 1977:35), it is understood that the foundation of a child's place of residence being the judicial district is that the decisions shall be made where the decision-making authority can make a reasonable assessment of the child's condition. According to theory and legal practice, the question of the "child's residence" pursuant to Section 64 of the Children Act should be answered based on a concrete and complete overall assessment.

Residence in Norway was established according to agreement between the parties. Norway was established as the country of residence starting in July 1998. There is no unlawful self-help on the part of the Plaintiff. Residence in Norway was not of a purely short-term or temporary nature. She has not undertaken the move to influence selection of jurisdiction.

The conflict between the parties arose at Christmastime 1999, at a point when none of them lived in the USA.

The Defendant must have understood as soon as 1998 that the Plaintiff's move to Norway was not temporary. She could not move to the USA because she had neither job, income, nor right to residency.

Reason and appropriateness indicate that at the time the case was brought, the children should be considered resident in Norway.

The practice of law shows that those cases where the courts have not considered the child to be a resident in the country where they physically resided are cases where the actual residence was established unlawfully after the conflict in question arose.

This case must be heard by the Oslo District Court.

After the decision dated October 25, 2000 from the court in Nevada was reached, it was asserted that none of the parties have any connection to Texas, but that this residence was established in June of last year. The kidnapping on May 17 changed the children's physical place of dwelling through unlawful self-help, contrary to the Oslo District Court's injunction against leaving the country, and contrary to the Hague convention and the Parental Kidnapping Prevention Act. The Defendant has, using self-help, prevented a legal trial of potential order for return. He has sought to influence the jurisdictional question by creating an illegal facade of establishing Texas as the actual residence for the children. Physical residence founded on unlawful self-help can not lead to the assumption that the children have changed their "residence" according to the Children Act, Section 64, see Karnov's note 153.

The Court is encouraged to propose to solve the case in line with the decision from the District Court in Nevada by contacting the judge in Denton, Texas. A hearing is scheduled there November 8, 2000. The Defendant has put forward a case there to impose restrictions on the Plaintiff's visitation with the children. Meanwhile, the Court is also encouraged to issue a decision to hear the case before the Oslo District Court.

Divorce

The Plaintiff has also requested in the pleading dated July 7, 2000 pronouncement of a divorce. The Plaintiff asserts that the American divorce decree is based on misrepresentation from the Defendant, an error that would unconditionally lead to the decree being set aside (cf. Civil Procedures Act, Section 384, paragraph 2, point 2, and Section 385). According to American attorneys, the likely result in the USA will also be that the divorce decree is set aside. The Plaintiff had planned to remarry on July 2, 2000. She had to cancel this because, according to American attorneys, in the event that the divorce decree is set aside, she would risk being accused of bigamy. Therefore, there is need for a decree of divorce (cf. Norwegian Marriage Act, Section 22, and Section 27, paragraph 2).

Discussion by the Court

This court decided on August 28, 2000 to stop handling the case until the Plaintiff's application for return of the children according to the Hague convention was finally decided (cf. Parental Kidnapping Prevention Act, Section 19, point 1). There was no mention of formal estoppel based on the Marriage Act, Section 107. Likewise, a separate decision is not necessary to bring the case before the Court again. It is stated in the Parental Kidnapping Prevention Act, Section 19, number 1, that the court can not come to a *decision on the merits of the case* in custody or visitation rights cases that have arisen in this country based on the Children Act, if the child has already been requested returned in accordance with the Hague convention. See the Justice Department's administrative directive G-136/91, page 73. This Court finds, especially given this latest development in the case, that a determination should now be made about whether the case should proceed to the Oslo District Court. The Court has not found it necessary to receive additional evidence from the parties.

The Court will take a position as to whether the children have domicile in the country according to the Children Act, Section 64, first paragraph, litra b. This will be decisive for Norwegian court's authority.

First of all, it should be noted that foreign judgments regarding parental rights, custody, and visitation rights are only recognized in Norway pursuant to the agreement with foreign states, entered with the justification in the Civil Procedures Act, Section 167 and 168. Norway joined the Convention of the Council of Europeof May 20, 1980 regarding recognition and acknowledgement of decisions of parental rights and of restoration of parental rights. Norway has no such convention obligation with respect to the USA. Both Norway and the USA are signatories to the Hague Convention of October 25, 1980 on civil aspects of International Child Abduction.

The question of domicile according to Section 64, first paragraph, litra b, of the Children Act can not be solved through agreement between courts in another state, as the decision from the District Court in Nevada on October 25, 2000 seems to suggest.

The parties' Norwegian agreement of July 9, 1998 contains a clause that states that suit cannot be raised in Norway and that the parties accept the jurisdiction of Nevada, USA. The Court rejects this portion of that agreement in the following. The parties do not have dispositive rights over the matter. Reference is also given to Backer's commentary on the Children Act, page 392 where it states that an agreement to restrict Norwegian jurisdiction can certainly not be accepted as valid.

The Court takes the situation in July 1998 as the basis. At that time, the parties entered into a detailed agreement concerning custody of the children. According to the agreement, the parties were to have joint custody, while the mother would have physical custody of the children until they were 10 years old. She further pledged, as residential parent, to take up her residence within 20 miles from the Defendant's residence in the USA (Agreement's article IV, point 4), but as such was not obliged to move to the USA before July 1, 1999. According to article IV, point 5, she had a right to live with the children in Norway until July 1, 1999. The District Court, Clark County, Nevada issued a decree regarding custody in keeping with this agreement. In that respect, the Court understands thatthe American judgment applies as the equivalent of an in-court compromise concerning the relationship to the children.

Consistent with the parties' agreement and the American court order, Cisilie Vaile moved to Oslo with the children in July 1998 and has lived here since. The Court understands that in July 1998, she had plans to make her stay in Norway permanent. As a point of departure, this supports the assumption that the children should be considered to reside in Norway. At the same time, it must be acknowledged that Robert Scotlund Vaile was at no time in agreement with this, but was adhering to the agreement/court decree wherein Cisilie Vaile and the children's stay in Norway would be temporary. It was disclosed that he, from the summer of 1999, looked for work and residence in the USA, with the expectation that the agreement would be followed. He also gave notice to Cisilie Vaile that the agreement should be carried out, and later filed a motion with the District Court, Clark County, Nevada.

This Court's view is that decisive emphasis must be given to the parties' agreement from July 1998 and the August 10, 1998 decree from the district Court, Clark County, Nevada. According to this, Cisilie Vaile's stay in Norway was to be temporary. The Court points out that a planned,

temporary stay of approximately one year is not the basis for the children to have domicile in Norway (see Backer's Commentary to Children Act, page 390).

Residence that occurs through self-help of one of the parents should not be weighed in deciding where the children shall be considered residents in relation to Section 64 of the Children Act, first paragraph, litra b, and Norwegian Government Reports 1977:35, page 105. This Court finds that Cisilie Vaile's residential intent and actual carrying out of this intent – contrary to the parties' agreement and against the will of Robert Scotlund Vaile – is also a form of self-help that should not have significance in the domicile question.

In this case, this Court cannot see that there exists any reason to deviate from the view that self-help does not change the child's residential status. At the time the case was initiated in Norway, the children had already stayed in Norway approximately 9 months longer than the planned temporary stay. This time period should not, in this Court's view, cause Norwegian courts to now have jurisdictional authority in the case. The length of children's stay in Norway must be compared to the time that they resided in the USA, where the lived until they were 6 and 2 1/2 respectively. As such, they have lived longer in the USA than in Norway. The Court also observes that a Norwegian court will now have a poorer foundation for assessing the situation of the children than would a court near the residence of the children in the USA.

The Court has considered the actions of the father who during visitation in May took the children from Norway to the USA without the mother's knowledge. Although at that point, he had been given physical custody by the American court (District Court in Nevada April 12, 2000), this was an unlawful course of action (cf. Parental Kidnapping Prevention Act, chap IV). However, this Court does not consider this as an argument in favor of the children being considered to have domicile in Norway, when they did not have it in the first place.

The Court finds no reason to address the Plaintiff's assertions in terms of the Defendant's residence that affect the validity of the American court rulings. The Court understands that these motions have been dismissed (denied) by the last decision from Nevada. Regardless, Cisilie Vaile has not contested that she entered into an agreement between the parties wherein her stay in Norway would be temporary.

Consequently, the Court has determined that the children do not have domicile in Norway.

The Court has also considered whether there exists so-called emergency jurisdiction for Norwegian courts to hear the case. Section 64 of the Children Act must be supplemented with emergency jurisdiction in specific instances where reasonable and appropriate considerations exist that create jurisdiction that would bring clarity to a child's legal situation (cf. Legal Gazette of 1993, page 1144). The Court finds that the conditions do not exist for emergency jurisdiction. As the case stands today, a court in Nevada has already exercised "emergency jurisdiction" while its waits to find out if the case can be heard in Texas. There is no doubt that the case will be given completely satisfactory treatment in the USA.

As a result, the Court's conclusion is that this child custody case is dismissed from the Oslo District Court.

Judgment for Divorce

The Plaintiff has also requested a judgment for divorce according to the Marriage Law, Section 22 and 27, paragraph 2. According to the Civil Procedures Act, Section 419, paragraph 1, point 2, the Plaintiff can initiate marriage cases before the Norwegian Court. However, the Court does not recognize that it has jurisdiction in this actual case.

Section 27, second paragraph of the Marriage Law indicates that a divorce case can be decided by the court in connection with a case regarding "... Children Act questions on joint children, that include a requirement for separation or divorce." The Court finds that it is not necessary to take a position on whether the request for divorce can be heard once the Children Act case has been dismissed. The parties are already divorced by an American court ruling dated August 12, 1998. The Court understands that the divorce decree was tried in the District Court in Nevada October 25, 2000, and that Cisilie Vaile's motion was "denied."

There is no reason to believe that the divorce would not be honored in Norway. The authority to recognize foreign divorces is delegated to the county governors.

Refer to Skoghøi for the lawsuit demands: Civil Procedure page 304-305. It is this Court's view that there is no real legal uncertainty in the relationship between the parties with regard to their divorce and a Norwegian decree for divorce would, therefore, be without practical meaning. The Plaintiff's concern of being accused of bigamy in the USA is purportedly no longer an issue given the decision of October 25, 2000 from Nevada.

Accordingly, the Court finds that since the case now deals with a request for a judgment of divorce, it must be dismissed based on Section 54 of the Civil Procedures Act, since the requirement for legal applicability is not fulfilled.

Case Costs

The Defendant has requested a judgment that the Plaintiff pay the case costs.

The case is dismissed. According to the main rules in Section 175, first paragraph of the Civil Procedures Act, the Plaintiff should then be required to reimburse the Defendant for case costs. However, the Court has discretion in the reimbursement obligation if it finds reason "due to legal questions of uncertainty." The Court finds that there is sufficient legal doubt as to whether it was advisable to file a child custody case before the Norwegian courts that case costs will not be ordered against this party.

The Court has not received any comments from the Defendant concerning the request for divorce. Therefore, the Court reasons that the Defendant does not have costs in connection with this portion of the case.

Accordingly, each of the parties must bear their own costs.

Conclusion:

Case number 00-03031 A/66 is dismissed.

Each of the parties will bear their own costs.

Court dismissed

Liv Dahl [signature]

Liv Dahl
Assistant Judge

The order can be appealed to the Norwegian District Appeals Court.

The interlocutory appeal must be submitted in writing to the Oslo District Court within 1 – one – month from the time the order is given. The appellant can also apply by the deadline to the office of the court and have the statement of appeal recorded there. The appellant must pay the appeal fee, which is 6 times the court charge, at the time that the statement of appeal is submitted. As of January 1, 2000, this fee is NOK 3,600.

RESPONDENT'S PETITION FOR REHEARING

EXHIBIT 4

PORTION OF DEPOSITION TRANSCRIPT
IN CASE CV-S-02-0706-RLH-(RJJ)
DATED NOVEMBER 7, 2003

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CISILIE VAILE PORSBOLL, fna CISILIE A. VAILE, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. CV-S-02-0706-RLH-(RJJ)
ROBERT SCOTLUND VAILE, ET AL.,	)	
Defendants.	)	

DEPOSITION OF CISILIE ANNE PORSBOLL

Taken on Friday, November 7, 2003

At 8:10 o'clock a.m.

At 300 South Fourth Street, Suite 1410

Las Vegas, Nevada

Reported by: Ann Salisbury, RPR, CCR 185

Q. Do you remember if the fracture was in the same location?

A. No.

Q. Do you have any documentation of any kind that would evidence that that event happened?

A. We kept all sorts of documents and it was all in storage. And Scotlund has all the storage, and I -- if anyone would have it, it would be him.

Q. My question was whether you had any documentation of any kind that would substantiate that that event occurred.

A. No.

Q. Do you remember the dates of the mediated sessions?

A. Not exactly, but I believe one was in January of 2000.

Q. Okay. Had any legal action been filed against Scotlund in Norway before March 1st, 2000?

A. I can't remember, but it was around that time, I believe, that some legal action was filed.

Q. Did you file your legal action in Norway after you learned that Scotlund had filed a motion in Nevada?

A. I -- in November of '99, when we went to -- when we started having mediation, that was sort of

the first -- first of the legal action.

Q. I'm not talking about mediation. I'm talking about a formal court filing.

MR. WILLICK: To the degree it requires a legal conclusion from the client, I object.

Q. (BY MS. JENSEN) Had any formal legal action been filed in a court before you found out Scotlund had filed a motion in Nevada?

A. I'm not sure when it was filed in the Norwegian court, but the dating goes back to November because it's sort of legal that the mediation starts. So that's -- that's the beginning of the legal action in one way.

Q. Isn't it true that you didn't file your claim with the court until March 24th of 2000?

A. That could be true. I don't have all the dates straight.

Q. When you filed your legal action on March 24th, did you advise the Norway court that Nevada was already looking at the situation?

A. I believe I did. I can't remember exactly what's in the document, but I'm honest and I tell my attorneys, you know, what's going on to the best of my knowledge.

Q. As of March 1st, 2000, are you aware of any

RESPONDENT'S PETITION FOR REHEARING

EXHIBIT 5

ORDER FROM US DISTRICT COURT
DISTRICT OF NEVADA
IN CASE CV-S-02-0706-RLH-(RJJ)
DATED MARCH 2, 2004

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

CISILIE VAILE PORSBOLL, *et al.*,

Plaintiffs,

vs.

ROBERT SCOTLUND VAILE, *et al.*,

Defendants.

Case No.: CV-S-02-0706-RLH (RJJ)

ORDER

(Motion to Dismiss–#181 and #185)

Before the Court is Defendant Jane D. Fiori's and Frank A. Fiori's **Motion to Dismiss** (#181), filed November 26, 2003. The Court has also considered Plaintiff's Opposition (#186), filed December 18, 2003, and Defendants' Reply (# 190), filed January 16, 2004.

Also before the Court is Plaintiffs' **Motion for Dismissal of Second Amended Complaint as to Specific Defendants** (#185), filed December 15, 2004. No opposition has been filed.

Taking the Motions in reverse order, the Court would like to first address Plaintiffs' Motion to Dismiss. Plaintiff explains that after a thorough review of the discovery and evidence, that they are unable to meet their burden of establishing, by a preponderance of the evidence, the involvement of Defendants Kristin James Vaile, Amanda Vaile, Avanza Vaile, and Craig James in the claims alleged in the Second Amended Complaint.

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No opposition has been filed and pursuant to Local Rule 7-2(d), Plaintiffs' motion will be granted.

BACKGROUND

This case arises from a custody dispute between Plaintiff Cisilie Vaile ("Cisilie") and her former husband Scotlund Vaile ("Scotlund") regarding their two young daughters. The background of this case is completely set forth in the Nevada Supreme Court case, The Eighth Judicial District Court v. Vaile, 44 P.3d 506 (Nev. 2002). For the purposes of this motion, the Court will rely on the background previously set forth in prior orders and summarily state that Plaintiff claims that there was a conspiracy designed to deprive her of her parental rights and that Scotlund's former girlfriend, and various member of Scotlund's extended family, assisted in the planning and implementation of the kidnap and concealment, both before and after the children were removed from Norway.

Defendants Jane and Frank Fiori ("Fioris") are members of Scotlund's extended family, specifically, Jane Fiori is Scotlund's mother and Frank Fiori is Scotlund's former step-father. The Fioris move to dismiss arguing that the Plaintiff is maintaining this suit against these two Defendants without conducting any investigation and without gathering any evidence against these two Defendants. Defendants attach affidavits declaring that they were not involved in the activities Plaintiff's alleges in her Complaint.

DISCUSSION

Fioris failed to identify the rule or state the standard under which they seek dismissal; however, because the Fioris have attached affidavits to their motion to dismiss, the Court will treat this motion as a motion for summary judgment. Rule 12(b) states that

> [i]f on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper only "where the record before the court on the motion reveals the absence of any material issue of fact and [where] the moving party is entitled to judgment as a matter of law." Zoslaw v. MCA Distrib. Corp., 693 F.2d 870, 883 (9th Cir. 1982) (quoting Portland Retail Druggists Ass'n v. Kaiser Found. Health Plan, 662 F.2d 641, 645 (9th Cir. 1981)), cert. denied, 460 U.S. 1085 (1983). "A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing version of the truth." Sec. & Exch. Comm'n v. Seaboard Corp., 677 F.2d 1289, 1293 (9th Cir. 1982) (citation omitted).

The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact, and the court must view all facts and draw all inferences in the light most favorable to the responding party. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). See also Zoslaw v. MCA Distrib. Corp., 693 F.2d 870, 883 (9th Cir. 1982), cert. denied, 460 U.S. 1085 (1983). Once this burden has been met, "[t]he opposing party must then present specific facts demonstrating that there is a factual dispute about a material issue." Zoslaw, 693 F.2d at 883 (citation and internal quotes omitted).

Defendant Fioris argue that the Plaintiff falsely assumes that because the Fioris are members of an "extended family" that they assisted in the planning and implementation of the alleged kidnaping and concealment. Fioris contend that this is purely "guilt by association" and the facts and testimony presented to date do not bear this assumption out.

Plaintiff argues that the Fioris' motion should be denied because there is evidence of wrongdoing on their part from which a jury could infer a causal link to the conspiracy leading to the kidnap of the children. Specifically, Plaintiff argues that she can show that the Fioris aided and abetted Scotlund in abducting and concealing the Plaintiff children by aiding Scotlund in the filing of a fraudulent Complaint for Divorce, participating in finding a Nevada attorney to represent Scotlund in the custody proceedings, knowing of Scotlund's plans to remove the children from Norway, and concealing the children following their kidnaping.

Before the Court addresses Defendants' motion for summary judgment, the Court would like to outline which causes of action are before it. The Court previously granted summary judgment on several claims on the basis that Nevada does not recognize those causes of action. See order dated March 1, 2004, addressing Defendant Joseph F. Dempsey, Esq.'s and Dempsey, Roberts & Smith, Ltd.'s Motion for Summary Judgment. Accordingly, the Court sua sponte dismissed all defendants from the following causes of action: First Claim for Relief–Intentional Interference with Child Custody; Second Claim for Relief–Violation of International Treaty; Eighth Claim for Relief–Child Abduction; Ninth Claim for Relief–Wrongful Concealment; Twelfth Claim for Relief–Aiding and Abetting; and Thirteenth Claim for Relief–Abuse of Process.

Thus, the following are the remaining causes of action against the Fioris: Sixth Claim for Relief–Intentional Infliction of Emotional Distress; Seventh Claim for Relief–Negligent Infliction of Emotional Distress; Tenth Claim for Relief–False Imprisonment; Eleventh Claim for Relief–Civil Conspiracy; Fourteenth Claim for Relief–Federal RICO; Fifteenth Claim for Relief–Negligence; and Sixteenth Claim for Relief–State RICO. The Court will look at each of the claims individually.

Intentional Infliction of Emotional Distress

The Fioris will be granted summary judgment as to Plaintiff's claim for intentional infliction of emotional distress.

> Generally, the elements of [intentional infliction of emotional distress] are (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiffs having suffered severe or extreme emotional distress and (3) actual or proximate causation.

Star v. Robello, 625 P.2d 90, 91 (Nev. 1981). In addition to these elements when the party seeking recovery is a third party witness to an outrageous act, recovery is only permitted if that "third party is a close relative of the person against whom the outrage was directed. Restatement of Torts 2d § 46(2). Most plaintiffs who have been permitted recovery as bystanders, however, have witnessed

acts which were not only outrageous but unquestionably violent and shocking." Star, 625 P.2d at 91.

The Court does not find that the alleged actions of the Fioris are sufficient to sustain a claim for intentional infliction of emotional distress. Plaintiff alleges in her Complaint that the actions of the defendants to remove her children from Norway were extreme and outrageous. Supporting these allegations Plaintiff submits that the Fioris aided Scotlund in the filing of a fraudulent complaint for divorce, participated in the choice of a Nevada attorney to help Scotlund in the custody proceedings, and knew of Scotlund's plans to remove the children from Norway. The Court does not find that there is sufficient evidence to support the element of proximate causation. The Defendants alleged actions were not the proximate cause of Plaintiff's or her daughter's alleged injuries and the Fioris will be dismissed from Plaintiff's sixth cause of action.

Negligent Infliction of Emotional Distress

The Fioris will be granted summary judgment as to Plaintiff's claim for negligent infliction of emotional distress.

> A claim of negligent infliction of emotional distress requires the plaintiff to show that the defendant acted negligently (i.e. breached a duty owed to plaintiff) and "either a physical impact...or, in the absence of physical impact, proof of 'serious emotional distress causing physical injury or illness."

Switzer v. Rivera, 174 F. Supp. 2d 1097, 1108 (2001) citing Barmettler v. Reno Air, Inc., 956 P.2d 1382, 137 (Nev. 1998).

While the Court is unclear on the duty Fioris owed Plaintiff, equally as questionable is the evidence suggesting that Cisilie sustained a physical injury. Plaintiff failed to proffer any such evidence in their opposition to Defendants' motion for summary judgment. The only evidence offered was alleged actions taken by the Fioris that goes to whether or not they had knowledge of Scotlund's acts. Accordingly, the Fioris will be dismissed as to Plaintiff's seventh cause of action.

False Imprisonment

The Fioris will be granted summary judgment on Plaintiff's claim for false imprisonment.

As summarized by the American Law Institute, an actor is subject to liability to another for false imprisonment "if (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it." Restatement (Second) of Torts s 35 (1965).

Again, the evidence offered by Plaintiff is not sufficient to establish that material facts exists regarding their claim for false imprisonment. Even looking at the facts in the light most favorable to the Plaintiff that Scotlund visited the Fioris in Las Vegas for a "week or so" following the alleged kidnaping and prior to Scotlund moving with the Plaintiff children to Texas, there is no evidence that the Fioris intended to confine the children within their home, or that any of their acts resulted in confinement of the children, or that the children were conscious of a confinement or harmed by a confinement. Accordingly, the Fiories will be dismissed as to Plaintiff's tenth cause of action.

Civil Conspiracy

The Fioris will be granted summary judgment on Plaintiff's claim for civil conspiracy.

To prove civil conspiracy in Nevada, Plaintiff must show an agreement between two or more parties to commit an unlawful objective for the purpose of harming another person. See Dow Chemical Co. v. Mahlum, 970 P.2d 98 (Nev. 1998); see also, Restatement (Second) Torts § 876(b).

Plaintiff contends that the Fioris had knowledge of Scotlund's plans to remove the children from Norway based on the statements Scotlund made to them after obtaining the custody order. Namely, Mrs. Fiori testified that Scotlund told her that the Order told him he had "the right

to take the children,: and that he had "the legal right to pick up the children." Plaintiff contends that these statements alone would generally put a rational person on notice that Scotlund would act in accordance with his stated belief of entitlement to physically remove the children from Norway.

Regardless of these alleged facts, Plaintiff fails to prove the necessary elements that establishes a civil conspiracy. There is no evidence of an agreement between Scotlund and the Fioris to kidnap the children, nor is there evidence of any such agreement for the purpose of harming Cisilie or the children. Whether or not the Fioris had the knowledge that Scotlund intended to take the children without Cisilie's consent is not sufficient to establish the elements as explained above. Thus, the Fiories will be dismissed as to Plaintiff's eleventh cause of action.

Federal RICO

The Fioris will be granted summary judgment on Plaintiff's claim for Federal RICO.

RICO is codified at 18 U.S.C. §§ 1961-1968. To state a civil RICO claim, the plaintiff must allege that it suffered (1) injury in its business or property because the defendant, (2) while involved in one or more enumerated relationships with an enterprise, (3) engaged in a pattern of racketeering activity or collected an unlawful debt.

Section 1961 defines the relevant terms used in establishing the elements of a RICO claim. An "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4). An "associated-in-fact" enterprise requires proof "(1) of an ongoing organization, formal or informal, and (2) that the various associates function as a continuing unit." Chang v. Chen, 80 F.3d 1293, 1297 (9th Cir. 1996). The "associated-in-fact" enterprise must also be an organization, formal or informal, "separate and apart from the pattern of [racketeering] activity in which it engages." Id. at 1298 (adopting the restrictive interpretation of "enterprise" consistent with the language of U.S. v. Turkette, 452 U.S. 576, 583 (1981), and consistent with the majority of other circuits).

The Court will stop here in defining the various terms involved in a RICO claim because the Court does not find that Plaintiff has put forth evidence that would defeat Defendants' motion for summary judgment as to this claim. While Plaintiff may argue that she has been injured in her property and lists a number of activities that are indictable crimes under the relevant titles and sections of the United States Code, she fails to provide evidence of the Fioris' involvement. It is alleged that the Fioris were involved in all of Scotlund's allegedly illegal activities, however, in Plaintiff's opposition, the material presented merely states that they knew of Scotlund's intent to remove the children from Norway and that they Fioris concealed the children once Scotlund returned with them from Norway. These specific facts are insufficient to maintain the allegations that the Fioris engaged in a pattern of racketeering activity. Further, Plaintiff fails to make allegations or provide evidence regarding an enterprise. The Court assumes the Plaintiff are alleging that the Defendants participated as an associated-in-fact enterprise; there is no evidence that the Fioris, themselves, or in association with others, were an ongoing organization, formal or informal, or that they functioned as a continuing unit in regards to the alleged racketeering activity. Thus, Defendants will be dismissed from Plaintiff's fourteenth cause of action.

Negligence

The Fioris will be granted summary judgment on Plaintiff's claim for negligence.

To prevail on a negligence theory, plaintiff must generally show that defendant owed a duty of care to plaintiff, defendant breached that duty, breach was legal cause of plaintiff's injury, and plaintiff suffered damages. See Scialabba v. Brandise Const. Co., Inc., 921 P.2d 928 (Nev.1996).

Plaintiff has alleged that Defendants had a duty not to violate the law, give false testimony to the court, abuse process, abduct the children, conceal the children, and withhold the children from Cisilie's custody.

Plaintiff's allegations fail to state a duty owed by the defendants under a negligence standard.

> Negligence is an unintentional tort, a failure to exercise the degree of care in a given situation that a reasonable man under similar circumstances would exercise to protect others from harm. Rest. Torts, §§ 282, 283, 284; Prosser, Torts, § 30, et seq. A negligent person has no desire to cause the harm that results from his carelessness, Rest. Torts, sec. 282(c), and he must be distinguished from a person guilty of willful misconduct, such as assault and battery, who intends to cause harm. Prosser, Torts, p. 261. Willfulness and negligence are contradictory terms. Kelly v. Malott, 135 F. 74 (7th Cir. 1905); Neary v. Northern Pac. R.R. Co., 110 P. 226 (Mont. 1910); Michels v. Boruta, 122 S.W.2d 216 (Tex.Civ.App. 1938). If conduct is negligent, it is not willful; if it is willful, it is not negligent.

Donnelly v. Southern Pac. Co., 118 P.2d 463, 465 (Cal. 1941).

Plaintiff fails to understand negligence and the standard of care a defendant owes a Plaintiff. Each of Plaintiff's allegations regarding Defendants' violated duties requires an intentional choice by the Defendant to violate that duty. Thus, in essence, Plaintiff alleges Defendants willfully choose not to fulfill the duty owed to her. Accordingly, the Court does not find that Plaintiff has alleged a duty of care owed to them by the Fioris and the Fioris will be granted summary judgment as to Plaintiff's fifteenth claim for relief.

State RICO

The Fioris will be granted summary judgment on Plaintiff's claim for State RICO.

The Nevada courts have explained that for a plaintiff to recover under Nevada RICO, three conditions must be met: (1) the plaintiff's injury must flow from the defendant's violation of a predicate Nevada RICO act; (2) the injury must be proximately caused by the defendant's violation of the predicate act; and (3) the plaintiff must not have participated in the commission of the predicate act. Allum v. Valley Bank of Nev., 849 P.2d 297 (Nev.1993).

Plaintiff's second amended complaint alleges that the Fioris:

> engaged in racketeering activity when they committed, conspired to commit, or aided and abetted the acts specified above and the commission of kidnapping [sic] the children, committing perjury

> and/or the subornation of perjury, and offering false evidence, which constituted at least two crimes related to racketeering having the same or a similar pattern, intent result, accomplices, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, which were not isolated incidents, and which occurred between February 2000 and April 2002...

At the summary judgment stage, Plaintiff must present the court with specific facts demonstrating that there is a factual dispute about a material issue. As previously stated, in Plaintiff's opposition to the Fioris' motion, Plaintiff submit that there is evidence that the Fioris aided Scotlund in the filing of a fraudulent Complaint for divorce, participated in the choice of a Nevada attorney to help Scotlund in the custody proceedings, knew of Scotlund's plans to remove the children from Norway, and allowed Scotlund to visit them with his children following his return from Norway. None of these "specific facts" establishes a violation of a predicate Nevada RICO act Accordingly, the Fioris will be granted summary judgment as to Plaintiff's sixteenth claim for relief.

CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants Jane D. Fiori's and Frank A. Fiori's Motion to Dismiss (#181) is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Dismissal of Second Amended Complaint as to Defendants Kristin James Vaile, Amanda Vaile, Avanza Vaile, and Craig James (#185) is GRANTED.

Dated: March 1, 2004.

ROGER L. HUNT
United States District Judge