

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASWINDER SINGH,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT
COURT, CLARK COUNTY,
NEVADA, AND THE HONORABLE
SANDRA POMRENZE, DISTRICT
JUDGE

Respondent,

and

RAJWANT KAUR,

Real Party in Interest.

No.:

Electronically Filed
Sep 12 2019 11:57 a.m.

Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR A WRIT OF
MANDAMUS OR, IN THE
ALTERNATIVE, PROHIBITION

FILED

OCT 01 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

Pursuant to NRAP 21 and NRS 34.160, Petitioner, Jaswinder Singh, by and through his counsel, F. Peter James, Esq., hereby petitions this Honorable Court for a Writ of Mandamus or, in the alternative, Prohibition directing the district court to reverse its orders and findings, as discussed herein, concerning the Order issued on March 14, 2019 which denied the motion to set aside.

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1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons
3 and entities as described in NRAP 26.1(a) and must be disclosed. These
4 representations are made in order that the judges of this court may evaluate
5 possible disqualification or recusal.

6 The following persons / entities are disclosed:

- 7 • F. Peter James, Esq.;
- 8 • Law Offices of F. Peter James, Esq., PLLC.

9 As to the Petitioner, there are no other parent corporations or publicly-held
10 companies at issue. Petitioner is not using a pseudonym.

11 Dated this 12th day of September, 2019

12 /s/ *F. Peter James*

13 LAW OFFICES OF F. PETER JAMES
14 F. Peter James, Esq.
14 Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
15 Las Vegas, Nevada 89102
702-256-0087
16 Counsel for Petitioner

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1 **PROCEDURAL POSTURE / BACKGROUND**

2 On August 27, 2004, Petitioner (Jaswinder Singh, the Plaintiff in the
3 district court) and Real Party in Interest (Rajwant Kaur, the Defendant in the
4 district court), filed a Joint Petition for Summary Decree of Divorce. (PA at 1).
5 Petitioner and Real Party in Interest attested under oath that Petitioner was at the
6 time a bona fide resident of Nevada for more than six weeks preceding the filing
7 of the Joint Petition. (PA at 1-5). A resident witness (Balbinder Singh Pabla)
8 attested that Petitioner was a bona fide resident of Nevada for at least six weeks
9 prior to the filing of the Joint Petition. (PA at 6-7). On September 8, 2004, a
10 Decree of Divorce was entered. (PA at 8). The Decree of Divorce (signed by
11 both Petitioner and Real Party in Interest) waived notice of entry of the Decree
12 of Divorce. (PA at 9, 10).

13 Real Party in Interest had knowledge of the Decree of Divorce, as
14 evidenced by her subsequent marriage to another person, which later also ended
15 in divorce. (PA at 15). Real Party in Interest never asserts she did not know of
16 the Decree of Divorce being entered. (*See generally* PA at 11-20, 92-102, 156-
17 170).

18 Fourteen years later in 2018, Real Party in Interest files for divorce from
19 Petitioner in California. (PA at 14). All the while, Real Party in Interest knew
20 she was divorced from Respondent in Nevada in 2004.

1 Almost 14 ½ years later, Real Party in Interest filed a motion to set aside
2 the Decree of Divorce based on it being purportedly void and due to fraud. (PA
3 at 11-20). Specifically, Real Party in Interest claimed that neither party lived in
4 Nevada as attested to under oath in the Joint Petition and that she (Real Party in
5 Interest) was forced by Petitioner to sign the divorce paperwork. (PA at 11-20).

6 Among other bases, Petitioner opposed the motion as untimely. (PA at
7 62). Nevada law is crystal clear that filing a motion to set aside two years after
8 acquiring knowledge of an order / judgment / decree that is that is purportedly
9 void is too long and is unreasonable. *See* NRCP 60(b); *see also Deal v. Baines*,
10 110 Nev. 509, 512, 874 P.2d 775, 777-78 (1994). As for the fraud claim, that is
11 barred by the six month limitation. *See* NRCP 60(b).

12 The district court's response to the untimeliness argument was that the time
13 period had not yet begun to run as Nevada was the injured party, not Real Party
14 in Interest. (PA at 159:22 – 161:8; 172:8-14). The district court gave no authority
15 for this position. This position was not briefed by Real Party in Interest—even
16 after Petitioner raised the issue in his Opposition. (PA at 11-20, 92-102).

17 The district court set an evidentiary hearing on the merits of the request to
18 set aside. (PA at 172). This was later continued. (PA at 179).

19 Petitioner files this Petition and requests a stay of entry of judgment in the
20 district court pending the outcome of this Petition.

1 **STATEMENT OF ISSUE PRESENTED AND RELIEF SOUGHT**

2 **A. ISSUE**

3 Whether the case law created two-year limitation for a set aside of a decree
4 of divorce due to it purportedly being void applies to when the district court was
5 unaware of the issue that the decree might be void.

6 The district court declined to follow well-settled precedent, stating that
7 Nevada was the injured party, not Defendant.

8 **B. RELIEF SOUGHT**

9 Petitioner is requesting a writ of mandamus / prohibition directing the
10 district court to deny the motion to set aside.

11 **STATEMENT OF IMPORTANCE OF SUBJECT MATTER**

12 If the motion to set aside is granted, a divorce that is nearly 14 ½ years old
13 will disappear, the parties will be retroactively re-married, and both parties will
14 become retroactive bigamists.

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1 **POINTS AND AUTHORITIES**

2 **DISCUSSION**

3 **Standard of Review**

4 Errors of law are reviewed *de novo*. *See Mosley v. Dist. Ct.*, 124 Nev. 654,
5 188 P.3d 1136 (2008); *see also Settlemyer & Sons v. Smith & Harmer*, 124 Nev.
6 1206, 197 P.3d 1051 (2008). Questions of construction of a statute / rule are also
7 reviewed *de novo*. *See Irving v. Irving*, 122 Nev. 494, 134 P.3d 718 (2006); *see*
8 *also Carson City District Attorney v. Ryder*, 116 Nev. 502, 998 P.2d 1186 (2000).

9 Upon review, no deference is given to a trial court's reading of the rule / statute,
10 but instead considers the question *de novo*. *Id.*

11 **Writ Petition Standard**

12 A writ of mandamus is to compel performance of an act which the law
13 requires or to control an arbitrary or capricious abuse of discretion. *See NRS*
14 *34.160; see also Borger v. Dist. Ct.*, 120 Nev. 1021, 1025, 102 P.3d 600, 603
15 (2004). A writ of prohibition is available when proceedings are without or in
16 excess of the jurisdiction of the tribunal. *See NRS 34.320; see also State v. Dist.*
17 *Ct.*, 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002).

18 A district court's failure to apply or adhere to controlling legal authority
19 "is a classic example of a manifest abuse of discretion that may be controlled
20 through a writ of mandamus." *See Gonzalez v. Dist. Ct.*, 129 Nev. 215, 217-18,

1 298 P.3d 448, 450 (2013). A manifest abuse of discretion can consist of “a clearly
2 erroneous interpretation of the law or a clearly erroneous application of a law or
3 rule” for which mandamus relief is appropriate. *Id.*

4 Writ relief is proper only when there is no plain, adequate, and speedy legal
5 remedy. *See* NRS 34.170; *see also Pan v. Dist. Ct.*, 120 Nev. 222, 224, 88 P.3d
6 840, 841 (2004). Ability to appeal generally precludes writ relief. *See Pan*, 120
7 Nev. at 225, 88 P.3d at 841. Petitioner bears the burden that extraordinary writ
8 relief is warranted. *Id.*, 120 Nev. at 228, 88 P.3d at 844.

9 Petitioner asserts that the district court clearly erred in its interpretation of
10 Rule 60(b) in saying that the district court was the injured party and, thus, the
11 limitations period had not yet begun to run. (PA at 159:22 – 161:8; 172:8-14).
12 Clear Nevada law provides that two years is too long a period to wait after
13 knowledge of an order to request a set aside due to it being purportedly void. *See*
14 *Deal*, 110 Nev. at 512, 874 P.2d at 777-78. The district court ignored this well-
15 settled law, created a fiction that Nevada was the injured party, and stated that
16 the time limitations had not yet begun to run. (PA at 159:22 – 161:8; 172:8-14).
17 Thus, the motion to set aside a decree entered almost 14 ½ years prior was set for
18 an evidentiary hearing. (PA at 172).

19 This is exactly the kind of manifest abuse of discretion that is properly
20 addressed in writ relief. *See Gonzalez*, 129 Nev. at 217-18, 298 P.3d at 450. The

1 district court failed to apply controlling authority with the relevant facts not being
2 in dispute.

3 As for availability of appeal, granting of an evidentiary hearing and even
4 granting a motion to set aside is not appealable—let alone denial of an opposition
5 to the same. *See* NRAP 3A(8). Further, the denial was not a final judgment that
6 disposed of all issues presented in the case. *See e.g. Brown v. MHC Stagecoach*,
7 129 Nev. 343, 301 P.3d 850 (2013). Moreover, if final judgment is entered the
8 parties would be made retroactive bigamists.¹ This would create a whirlwind of
9 issues until the set aside would be resolved by an appeal. As such, there is no
10 adequate alternative remedy, and an appeal will not be sufficient.

11 **The Court Should Issue the Writ**

12 As stated herein, the Court should issue a writ directing the district court
13 to deny the motion to set aside. The district court ignored well-settled law as to
14 the timeliness of a motion to set aside due to an order being purportedly void.
15 Real Party in Interest filed a motion to set aside the decree as to it being
16 purportedly void nearly 14 ½ years after she knew it was entered. Nevada law
17 clearly says waiting two years to file to set aside due to an order being purportedly

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19 ¹ Counsel for Real Party in Interest concedes both parties have remarried.
20 (PA at 164:2).

1 void is unreasonable, this precluding relief under Rule 60(b). *See Deal*, 110 Nev.
2 at 512, 874 P.2d at 777-78. In the present case, Real Party in Interest took seven
3 (7) times longer than the unreasonable time in *Deal*, yet the district court ignored
4 this, stating that Nevada was the injured party—thus the time limits had not yet
5 begun to run.² Oddly, Nevada is not a party to the underlying action.

6 The district court's argument that Nevada is the injured party and had no
7 notice does not follow related Nevada law / custom. In writ petitions, it is
8 Petitioner v. Respondent (District Court), yet the Real Party in Interest generally
9 responds for the Respondent, though the Respondent is permitted to be ordered
10 to respond. *See* NRAP 21(b)(1). Clearly, the request for relief is against the
11 district court in such writ petitions, yet the real party in interest defends the
12 district court respondent—not the district court itself.

13 With clear Nevada law and clear, undisputed facts, the district court
14 manifestly abused its discretion in denying the opposition to the motion to set
15 aside (as to the motion being untimely). The Court should issue a writ directing
16 the district court to deny the motion to set aside as untimely.

18 ² Petitioner could find no law supporting the district court's position that
19 Nevada was the injured party and that the time limitations do not begin to run
20 until the State receives notice of the deficiency.

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CONCLUSION

Based on the foregoing, the Court should issue a writ directing the district court to deny the motion to set aside as untimely.

Dated this 12th day of September, 2019

/s/ F. Peter James

LAW OFFICES OF F. PETER JAMES
F. Peter James, Esq.
Nevada Bar No. 10091
3821 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89102
702-256-0087
Counsel for Petitioner

NRAP 21(a)(5) VERIFICATION

1. I am F. Peter James, Esq., counsel for Petitioner.
2. I am a member in good standing of the State Bar of Nevada.
3. I am competent and willing to testify in a court of law as to the facts contained herein.
4. The facts contained in this Petition are within my knowledge. The facts stated herein are supported by the record. The facts contained herein are true and correct to the best of my knowledge, information, and belief.

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1 5. I declare under penalty of perjury under the law of the State of Nevada that
2 the foregoing is true and correct to the best of my knowledge, information,
3 and belief.

4 /s/ F. Peter James

September 12, 2019

NAME

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