

1 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

2
3 JASWINDER SINGH,

4 Petitioner,

5 vs.

6 EIGHTH JUDICIAL DISTRICT
7 COURT, CLARK COUNTY,
8 NEVADA, AND THE HONORABLE
9 SANDRA POMRENZE, DISTRICT
10 JUDGE

11 Respondent,

12 and

13 RAJWANT KAUR,

14 Real Party in Interest.

No.: 79591-COA

**NOTICE THAT WRIT PETITION
WILL BE MOOT**

Electronically Filed
Oct 11 2019 12:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

15 Please take notice that the district court has rendered a decision in favor of
16 the Petitioner. A copy of the hearing minutes are attached hereto. The final order
17 is being circulated for signature by all counsel.

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1 Once the final order from the evidentiary hearing has been entered in the
2 district court, Petitioner will notify this Court that the Writ Petition issues are
3 moot.

4 Dated this 11th day of October, 2019

5 */s/ F. Peter James*

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04D323977 In the Matter of the Joint Petition for Divorce of:
Jaswinder Singh and Rajwant Kaur

September 13, 2019 09:30 AM Evidentiary Hearing

HEARD BY: Pomrenze, Sandra **COURTROOM:** Courtroom 10

COURT CLERK: Critchett, Carol

PARTIES PRESENT:

Jaswinder Singh, Petitioner, Present

F Peter James, ESQ, Attorney, Present

Rajwant Kaur, Petitioner, Present

Andrew Kynaston, Attorney, Present

JOURNAL ENTRIES

EVIDENTIARY HEARING: VOIDING DIVORCE

Petitioner Jaswinder Singh is referred to as Plaintiff herein.

Petitioner Rajwant Kaur is referred to as Defendant herein.

Nevada registered Punjabi interpreter Munir Qureshi, present with Plaintiff and Defendant.

Testimony and exhibits presented (see worksheets).

Argument and discussion regarding the relative issues for this hearing.

Testimony and exhibit presentation resumed (see worksheets).

Argument and discussion regarding the Court taking judicial notice that entry of a Decree Of Divorce ends a marriage and that being the issue before the Court in these proceedings. Court advised counsel it was taking judicial notice that a Decree Of Divorce was entered on September 04, 2004.

Testimony and exhibit presentation resumed (see worksheets).

Colloquy at the bench.

Testimony and exhibit presentation resumed (see worksheets).

MATTER TRAILED.

MATTER RECALLED. All present as before.

Court advised counsel it received documents in chambers and it conferred with the Presiding Judge and it was agreed the documents did not divest this Court of jurisdiction and the matters would proceed. Counsel concurred with the Court.

Testimony and exhibit presentation resumed (see worksheets).

Upon Court's inquiry both counsel agreed to conduct a conference with the Court.

MATTER TRAILED for the Court to conduct a conference with counsel off the record and outside of the courtroom.

MATTER RECALLED. All parties present as before.

Court stated for the record and advised the parties of the matters discussed in the conference with counsel.

Testimony and exhibit presentation resumed (see worksheets).

Counsel moved the Court for judgment on the evidence. Court observed it questioned the Vaile case as it seemed to be

illogical and it seemed to say it was okay to "pull a scam and get away with it" but it was Nevada law.

Court further observed the testimony of the Defendant is not a far distance from the facts of the Vaile case. Argument and discussion

regarding the fraudulent divorce, both parties' testimony about the divorce, the Vaile case decision, the facts of the Vaile case and counsel appealing this case to have the Supreme Court review of the Vaile case. Argument and discussion regarding neither party understanding what they were doing, Plaintiff's beliefs about getting a Nevada divorce, the California requirements for divorce and Nevada divorce law. Argument and discussion regarding the decision regarding the fraudulent divorce, Defendant not receiving any benefits after the last 15 years with Plaintiff, California making the decision and the Court's discretion under the Vaile case. Counsel requested the Court exercise its discretion and rule on the facts of the case. Discussion regarding the Court's obligation to rule on the facts of the law. Argument and discussion regarding the provisions of Rule 60b, the provisions of the Vaile case, Defendant's testimony and counsel appealing this case. Court advised counsel it would be exceeding its obligation if it did not rule on Plaintiff's motion (for judgment) based on the evidence presented and Defendant's deposition was not admitted or published so it could not review the deposition.

Argument and discussion regarding the facts presented today being on point with the Vaile case and Defendant not meeting her burden of proof.

COURT stated its FINDINGS:

The Court does not find that Plaintiff was credible in any portion of his testimony. Based on the evidence presented Defendant was more credible, therefore, the Court does find that the parties perpetrated a fraud on the State Of Nevada by

entering into a Decree Of Divorce without the requisite residency. Were that to be the end of the inquiry, because of the Vaile vs. Eighth Judicial District case, it was not the end of the inquiry. If sufficient time has passed the Court is

obligated to make a decision to the merits as to how the fraudulent divorce was implemented (and) what were the parties' roles. In the Vaile case both spouses were willing participants (and) they both knew that they didn't have residency. They both knew they wanted a divorce sooner rather than later. It is not uncommon, unfortunately because we have such generous divorce laws, that people take advantage of those divorce laws and they come here thinking they'll get a quick divorce and they pretend to be residents. The Courts see that on a regular basis. Sometimes they get away with it, sometimes they don't but certainly, in this instance, the presiding judge had no reason to question the validity of the documents that were submitted and, therefore, executed the Decree. What Vaile says is if they make a distinction where there is a very old divorce the party who seeks to set it aside based on fraud (that party) must prove they were free from fault and you have 2 parties at fault and the Court in Vaile applied an equitable standard that they were not going to reward a "wrong doer" and that is why there is a requirement of some equitable reason why a "co-wrong doer" should not be permitted relief even though they are equally (as much of) a wrong doer as the other party. So they set the standard that there has to be some threat or coercion or (an) equitable reason why that party is free from fault. In the instant case

the Court finds the Defendant to be very credible, unlike the Plaintiff. However, what is missing from her testimony is that she was forced to sign those papers and, in fact in this instance, she knew there was a divorce in Nevada whether Plaintiff told her it was a piece of paper or not. This is a person who is a competent adult and (who) knew there was a divorce in Nevada until such time as she became upset with the Plaintiff, upon his allegation he had married someone else, she was content to "let sleeping dogs lie" and live together (with the Plaintiff). Ironically, they are still living together

and, ironically,

Plaintiff has not remarried. But it requires, in this instance, evidence of an unequal bargaining position at a minimum.

There was nothing in Defendant's testimony that was evidence of an unequal bargaining position between the Plaintiff and Defendant. He said we're going to Nevada, we're going to sign some paperwork, it is going to be a divorce, it is going to be a "paper divorce", we're going to continue to live together (and) this was not a person with a mental defect or an inability to understand what was being told to her. She knew it, and in fact at his request and again it was a request not a demand according to her own testimony, she in fact went to India to marry his (Plaintiff's) brother. Was it a "sham" marriage? Of course it was. Did it assist the parties in their "end game"? No, because the brother never got a Visa and (did not) come to the U.S. But at the end of the day there is simply insufficient evidence that the Defendant acted under duress. So as much as I (the Court) find the facts of this case offensive, it cannot rule on what it finds offensive it has to rule on the law and precedent and Vaile is still precedent in this state.

Should the Supreme Court choose to take a second look on appeal and, if in fact, they say that Vaile is not good law then the Court is happy to have the parties come back and the Court will even set a second hearing but on the testimony and the evidence the Court is compelled to grant the motion on the evidence and it is compelled to deny the motion to set aside.

The COURT FURTHER FINDS because neither party comes to this court with clean hands neither party will receive an award of attorney's fees against the other.

The Plaintiff is not entitled to an award of attorney's fees. He is equally, if not greater, at fault so he may be the prevailing party, but the Court will not reward someone with extremely unclean hands with an award of attorney's fees.

The Defendant is not the prevailing party here and as much as there is some sympathy here, the Court does not rule on sympathy it must rule on the law and insofar as Defendant is not the prevailing party I (the Court) cannot award her any attorney's fees either.

The Court was surprised when Defendant rested but counsel did and did not get to the heart of the Vaile case. It is not a criticism of counsel. The Court believes Defendant was honest and candid with the Court and counsel was left with the case he had. She (Defendant) knew what her husband wanted her to do and she went ahead and did it. There is no evidence that she refused or that he demanded or that he threatened her or anything else just like the parties did in the Vaile case and because of that the Court is compelled to deny the motion to set aside.

There is an appealable issue there. The Court does not know what the Supreme Court will do. It is a question that has been answered in a way that most of us might not appreciate, but it is the question that has been answered and Defendant's testimony does not rise to the level for the Court to set aside the Decree Of Divorce. Counsel need to decide what they wish to do. This Court does not have the ability to "jump over" the Supreme Court and decide.

COURT ORDERED:

1. The MOTION for judgment on the EVIDENCE is GRANTED.
2. Defendant's MOTION TO SET ASIDE the Decree Of Divorce is DENIED.
3. As neither party is the prevailing party there shall be NO AWARDS of ATTORNEY'S FEES to either party.

Mr. James shall PREPARE the FINDINGS OF FACT, CONCLUSIONS OF LAW. Mr. Kynaston shall REVIEW the FINDINGS OF FACT, CONCLUSIONS OF LAW then COUNTERSIGN.

INTERIM CONDITIONS:

FUTURE HEARINGS: