

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

Electronically Filed  
Oct 24 2019 10:45 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court

**NOTICE THAT WRIT PETITION  
IS MOOT; REQUEST TO DISMISS  
WRIT PETITION**

15           Please take notice that the present Writ Petition is now moot as Petitioner  
16           prevailed in the district court on other grounds. (*See* Findings of Fact,  
17           Conclusions of Law, and Order, attached hereto).

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As such, Petitioner request to withdraw this Writ Petition as moot. The Court has yet to direct a responsive brief from Respondent / Real Party in Interest.

Dated this 24<sup>th</sup> day of October, 2019

/s/ *F. Peter James*

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Counsel for Petitioner

### **CERTIFICATE OF SERVICE**

I certify that on this 24<sup>th</sup> day of October, 2019, I caused the above and foregoing document to be served by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada to the attorney(s) / party(ies) listed below at the address(es) indicated below:

Hon. Sandra Pomrenze

District Court Judge, Family Division

601 North Pecos Road

Las Vegas, Nevada 89101

Andrew L. Kynaston, Esq.

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Counsel for Real Party in Interest

By: /s/ *F. Peter James*

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An employee of the Law Offices of F. Peter James, Esq., PLLC

ORIGINAL

Electronically Filed  
10/22/2019 10:51 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

**FFCL**  
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**DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA**

JASWINDER SINGH,  
  
Plaintiff,

CASE NO. : 04D323977  
DEPT. NO. : P

vs.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

RAJWANT KAUR,  
  
Defendant.

This matter came before the Court on the 12<sup>th</sup> of September, 2019 and the 13<sup>th</sup> of September, 2019 for an Evidentiary Hearing on Defendant's Motion to Set Aside Decree of Divorce, which was filed on January 7, 2019, and on Plaintiff's Opposition thereto filed January 23, 2019. Also being heard was Plaintiff's Motion in Limine, which was filed August 30, 2019, and on Defendant's Opposition and Countermotion thereto, which was filed on September 6, 2019. F. Peter James, Esq. appeared with Plaintiff, Jaswinder

Non-Trial Dispositions:  
☐ Other  
☐ Dismissed - Want of Prosecution  
☐ Involuntary (Statutory) Dismissal  
☐ Default Judgment  
☐ Transferred  
☐ Disposed After Trial  
☐ Settled/Withdrawn:  
☐ Without Judicial Conf/Hrg  
☒ With Judicial Conf/Hrg  
☐ By ADR  
Trial Dispositions:  
☒ Judgment Rendered  
☐ Judgment by Trial  
☐ Judgment by Trial

1 Singh. Andrew L. Kynaston, Esq. appeared with Defendant, Rajwant Kaur.  
2 Nevada registered Punjabi interpreter, Muir Qureshi, was also present to interpret  
3 for Plaintiff and Defendant. The Honorable Sandra Pomrenze presided over the  
4 matter.

5 Testimony and exhibits were presented. There was argument and  
6 discussion regarding the relative issues for this hearing. Testimony and exhibit  
7 presentation resumed. There was argument and discussion regarding the Court  
8 taking judicial notice that entry of a Decree of Divorce ends a marriage and that  
9 being the issue before the Court in these proceedings. Court advised counsel it  
10 was taking judicial notice that a Decree of Divorce was entered on September 04,  
11 2004. Testimony and exhibit presentation resumed. There was colloquy at the  
12 bench. Testimony and exhibit presentation resumed. The matter was trialed and  
13 then recalled with all present as before.

14 Court advised counsel it received documents (Plaintiff's Petition for writ  
15 relief filed in the Nevada Supreme Court) in chambers and it conferred with the  
16 Presiding Judge and it was agreed the documents did not divest this Court of  
17 jurisdiction and the matters would proceed. Counsel concurred with the Court.  
18 Testimony and exhibit presentation resumed. Upon Court's inquiry both counsel  
19 agreed to conduct a conference with the Court. The matter was trailed for the  
20 Court to conduct a conference with counsel off the record and outside of the

1 courtroom. The matter was recalled with all present as before. Testimony and  
2 exhibit presentation resumed.

3 Defendant testified. Mr. Kynaston finished his examination and passed  
4 the witness. Mr. James moved the Court for Judgment on the Evidence. Court  
5 observed it questioned *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44  
6 P.3d 512 (2002), as it seemed to be illogical and it seemed to say it was okay to  
7 “pull a scam and get away with it” but it was Nevada law.

8 The Court further observed the testimony of the Defendant is not a far  
9 distance from the facts of the *Vaile* case. There was argument and discussion  
10 regarding the fraudulent divorce, both parties’ testimony about the divorce, the  
11 *Vaile* case decision, the facts of the *Vaile* case, and Mr. Kynaston appealing this  
12 case to have the Supreme Court review of the *Vaile* case. There was argument  
13 and discussion regarding neither party understanding what they were doing,  
14 Plaintiff's beliefs about getting a Nevada divorce, the California requirements for  
15 divorce, and Nevada divorce law. There was argument and discussion regarding  
16 the decision regarding the fraudulent divorce, Defendant not receiving any  
17 benefits after the last 15 years with Plaintiff, California making the decision, and  
18 the Court's discretion under the *Vaile* case. Mr. Kynaston requested the Court  
19 exercise its discretion and rule on the facts of the case.

1       There was discussion regarding the Court's obligation to rule on the facts  
2 and the law. There was argument and discussion regarding the provisions of Rule  
3 60(b), the provisions of the *Vaile* case, Defendant's testimony, and counsel  
4 appealing this case. Court advised counsel it would be exceeding its obligation  
5 if it did not rule on Plaintiff's motion for judgment based on the evidence  
6 presented, and Defendant's deposition was not published so it could not review  
7 the deposition. There was argument and discussion regarding the facts presented  
8 today being on point with the *Vaile* case and Defendant not meeting her burden  
9 of proof.

10       The Court, having read the papers and pleadings on file herein, being well  
11 advised in the premises, having heard the testimony, having considered the  
12 evidence, being well advised in the premises, and for sufficient cause shown,  
13 hereby finds and orders as follows:

14       **THE COURT HEREBY FINDS** that Plaintiff was not credible in any  
15 portion of his testimony. Based on the evidence presented Defendant was more  
16 credible; therefore, the Court does find that the parties perpetrated a fraud on the  
17 State of Nevada by entering into a Decree of Divorce without the requisite  
18 residency. Were that to be the end of the inquiry, but because of the *Vaile vs.*  
19 *Eighth Judicial District* case, it was not the end of the inquiry. If sufficient time  
20 has passed, the Court is obligated to make a decision on the merits as to how the

1 fraudulent divorce was implemented and what the parties' roles were. In the  
2 *Vaile* case, both spouses were willing participants and they both knew that they  
3 did not have residency. They both knew they wanted a divorce sooner rather than  
4 later. It is not uncommon, unfortunately, because we have such generous divorce  
5 laws, that people take advantage of those divorce laws and they come here  
6 thinking they will get a quick divorce and they pretend to be residents. The  
7 Courts see that on a regular basis. Sometimes they get away with it, sometimes  
8 they do not, but certainly, in this instance, the presiding judge had no reason to  
9 question the validity of the documents that were submitted and, therefore,  
10 executed the Decree. What *Vaile* says is, if they make a distinction where there  
11 is a very old divorce and one party seeks to set it aside based on fraud, that party  
12 must prove they were free from fault. You have 2 parties at fault and the Court  
13 in *Vaile* applied an equitable standard that they were not going to reward a  
14 "wrong doer" and that is why there is a requirement of some equitable reason  
15 why a "co-wrong doer" should be permitted relief even though they are equally  
16 as much of a wrong doer as the other party. So, they set the standard that there  
17 has to be some threat, duress, or coercion or an equitable reason why that party  
18 is free from fault. In the instant case the Court finds the Defendant to be very  
19 credible, unlike the Plaintiff. However, what is missing from Defendant's  
20 testimony is that she was forced to sign those papers and, in fact in this instance,

1 she knew there was a divorce in Nevada whether Plaintiff told her it was a piece  
2 of paper or not. This is a person who is a competent adult and who knew there  
3 was a divorce in Nevada until such time as she became upset with the Plaintiff,  
4 upon his allegation he had married someone else. She was content to “let  
5 sleeping dogs lie” and live together with the Plaintiff. Ironically, they are still  
6 living together and, ironically, Plaintiff has not remarried. But it requires, in this  
7 instance, evidence of an unequal bargaining position at a minimum. There was  
8 nothing in Defendant’s testimony that was evidence of an unequal bargaining  
9 position between the Plaintiff and Defendant. Plaintiff said, “we’re going to  
10 Nevada, we’re going to sign some paperwork, it is going to be a divorce, it is  
11 going to be a paper divorce, we’re going to continue to live together.” This was  
12 not a person with a mental defect or an inability to understand what was being  
13 told to her. Defendant knew it, and in fact at his request, not a demand according  
14 to her own testimony, she in fact went to India to marry Plaintiff’s brother. Was  
15 it a “sham” marriage? Of course it was. Did it assist the parties in their “end  
16 game”? No, because Plaintiff’s brother never got a Visa and did not come to the  
17 U.S. But at the end of the day, there is simply insufficient evidence that the  
18 Defendant acted under duress. So as much as the Court finds the facts of this  
19 case offensive, it cannot rule on what it finds offensive—it has to rule on the law  
20 and precedent and *Vaile* is still precedent in this state. Should the Supreme Court



1 choose to take a second look on appeal, they are free to do so, and, if in fact, they  
2 say that *Vaile* is not good law then the Court is happy to have the parties come  
3 back and the Court will even set a second hearing. On the testimony and the  
4 evidence, the Court is compelled to grant the motion for judgment on the  
5 evidence and it is compelled to deny the motion to set aside.

6 **THE COURT FURTHER FINDS** that, because neither party comes to  
7 this court with clean hands, neither party shall receive an award of attorney's fees  
8 against the other. The Plaintiff is not entitled to an award of attorney's fees. He  
9 is equally, if not greater, at fault than the Defendant, so he may be the prevailing  
10 party, but the Court will not reward someone with extremely unclean hands with  
11 an award of attorney's fees. The Defendant is not the prevailing party here and  
12 as much as there is some sympathy here, the Court does not rule on sympathy. It  
13 must rule on the law and insofar as Defendant is not the prevailing party the Court  
14 cannot award her any attorney's fees either. The Court was surprised when  
15 Defendant rested, but counsel did, and did not get to the heart of the *Vaile* case  
16 standard. It is not a criticism of counsel. The Court believes that Defendant was  
17 honest and candid with the Court, and counsel was left with the case he had.  
18 Defendant knew what her husband wanted her to do, and she went ahead and did  
19 it. There is no evidence that she refused or that he demanded or that he threatened  
20 her or anything else, just like the parties did in the *Vaile* case. Because of that,

1 and the *Vaile* precedent, the Court is compelled to deny the motion to set aside.  
2 There is an appealable issue there. The Court does not know what the Supreme  
3 Court will do. It is a question that has been answered in a way that most of us  
4 might not appreciate, but it is the question that has been answered and  
5 Defendant's testimony does not rise to the level for the Court to set aside the  
6 Decree of Divorce. Counsel need to decide what they wish to do, because the  
7 Court does believe there is an issue here. This Court does not have the ability to  
8 "jump over" the Supreme Court and decide.

9 Therefore,

10 **IT IS HEREBY ORDERED** that the Motion for Judgment on the  
11 Evidence is GRANTED.

12 **IT IS FURTHER ORDERED** that Defendant's Motion to Set Aside the  
13 Decree of Divorce is DENIED.

14 **IT IS FURTHER ORDERED** that, as neither party is the prevailing  
15 party, there shall be no award of attorney's fees to either party.

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1       **IT IS FURTHER ORDERED** that Mr. James shall prepare the Findings  
2 of Fact, Conclusions of Law with Mr. Kynaston to review the same and  
3 countersign.

4       **IT IS SO ORDERED.**

5 Dated this 21 day of October, 2019.

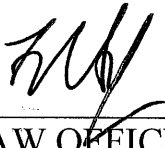


7       DISTRICT COURT JUDGE

SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:



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