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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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RAJWANT KAUR,

Appellant/Cross-Respondent

vs.

JASWINDER SINGH,

Respondent/Cross-Appellant.

CASE NO. 80090

**APPELLANT'S OPENING BRIEF**

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**NRAP 26.1 DISCLOSURE**

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

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

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Law offices of F. Peter James, Esq.

...

...

...

...

...

...

1 3. If litigant is using a pseudonym, the litigant's true name: None.

2 Dated this 30 day of March, 2020.

3  
4  
5 By: 

6 RACHEAL H. MASTEL, ESQ.

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## JURISDICTION STATEMENT

This is an appeal from a final judgment pursuant to NRAP 3A(b)(1). The Order to be appealed is the Findings of Fact, Conclusions of Law, and Order, which was filed on October 22, 2019 (AA0281-0289), and for which Notice of Entry was done on October 22, 2019. AA0290-0301. The appeal from that Order was timely filed on November 19, 2019.

## ROUTING STATEMENT

Pursuant to NRAP 17(b)(10) this is an appeal from a family law decision which is presumptively assigned to the Court of Appeals. However, pursuant to NRAP 17(a)(11) and (12), there are issues within this appeal which should be heard by the Supreme Court.

Specifically, this case will involve: 1) whether the application of *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002) was appropriate, 2) whether the expansion of NRCP 60(b) allowed the Court to set aside the Decree of Divorce, and 3) whether NRCP 60(d)(3), permitted the Court to set aside the Decree. As this case will require interpretation of *Vaile*, NRCP 60(b)(6) (which has not been considered by this Court) and how the District

1 Court's interpretation of *Vaile* impacts its understanding of NRCP 60(d)(3), it is  
2 appropriate that this case be retained by the Nevada Supreme Court.  
3

#### 4 STATEMENT OF ISSUES

5 Appellant (hereinafter "Rajwant") has identified four (4) issues to be  
6 addressed within this opening brief, under which she believes the Court's Order  
7 was in error.  
8

9  
10 1. Whether the District Court erred in denying Rajwant's request to set  
11 aside the 2004 Decree of Divorce.  
12

13 2. Whether the Court erred in finding that *Vaile* was applicable to the  
14 facts of this case.  
15

16 3. Whether the application of *Vaile* to this matter creates an inequitable  
17 result under the facts of this case.  
18

19 4. Whether the Court erred in failing to consider whether Rajwant's  
20 request to set aside the 2004 Decree of Divorce was proper under NRCP 60(b)(6)  
21 or 60(d)(3).  
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## STATEMENT OF THE CASE

The parties were married in India in 1989. **AA009**. Rajwant was a resident of the United States. **AA00463**. In 1993, Respondent (hereinafter "Jaswinder") moved to the U.S. and the parties settled in Southern California. **AA0312; 0464-0467**. In August 2004, having never resided in Nevada, the parties traveled to Las Vegas for approximately 24 hours, where they signed a Joint Petition for Divorce, as well as a Decree of Divorce. **AA0468-0469; 0471**. Although Rajwant speaks and reads very little English, neither document was read to, nor fully explained to her. **AA0482**. She was simply directed by Jaswinder to sign, and did as he demanded. **AA0471**. Thereafter, Rajwant and Jaswinder returned to California, where they continued to reside together as husband and wife for the next 14 years. **AA0474-0475; 0487**.

In 2018, Rajwant filed for divorce in California, where the parties have continuously resided together since 1993. **AA0484**. Initially, Jaswinder filed an Answer which acknowledged the existence of a valid marriage. **AA0402-0403**. Nearly six months later, Jaswinder amended his Answer to claim that the parties had already been divorced in Nevada. **AA0408-0409**. Due to the fact that the parties had not been residents of Nevada at any time, and the fact that they had,

1 for the 14 years thereafter, remained in exactly the same circumstances as they  
2 had during the first 15 years of their "legal" marriage, Rajwant filed a Motion in  
3 Nevada to Set Aside the Decree of Divorce on the basis of fraud on the Court,  
4 due to the lack of jurisdiction. AA0041-0050. Jaswinder opposed the same  
5 (AA0057-0072) and the Court set a trial. AA0138-0140. After the trial, the Court  
6 determined that the fraud was committed, that Jaswinder was not a credible  
7 witness (AA0500), but that Rajwant had not met her burden to prove duress  
8 (AA0502-0504), and that *Vaile v. Eighth Judicial District Court*, 118 Nev. 262,  
9 44 P.3d 512 (2002) prohibited her from setting aside the Decree despite the fraud  
10 on the Court. AA0494; 0502; 0504-0505. This appeal followed.  
11  
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## 16 STATEMENT OF FACTS

17 Rajwant and Jaswinder entered into an arranged marriage in Punjab, India  
18 in 1989. AA0009. Rajwant spoke, and still speaks, very little English. AA0464.  
19 The parties continuously resided in California from 1993 through the present.  
20 AA0464. In all ways, the marriage was a traditional Indian marriage. Jaswinder  
21 very much dictated to, and controlled, Rajwant.  
22  
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1 In 2004, Jaswinder approached Rajwant and informed her that they would  
2 be getting a "paper divorce." **AA0464**. The purpose of that Divorce, he told her,  
3 would not change their marriage, but rather, simply allow her to enter into a  
4 marriage with his brother, so as to be the bridge by which this brother would be  
5 able to come to the United States. **AA0473**. As is considered proper in a  
6 "traditional Indian marriage," Rajwant did not question her husband. She was  
7 taken to Nevada, where they met with a man she did not know, who took them  
8 to an office where Rajwant was presented with papers she could not read, and  
9 told her to sign. **AA0471-0472**. She did as directed. **AA0471; 0475**. Thereafter,  
10 the parties drove back home to California together, where they continued to  
11 reside together for another 14 years. **AA0316; 0474-0475**.

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17 Later that same year, Jaswinder, his parents (who had resided with the  
18 parties since 2000), and Rajwant traveled back to India together, where Rajwant,  
19 at Jaswinder's direction, was to marry his brother. **AA0458; 0472; 0477**. They  
20 were there for approximately three weeks, before returning to California together.  
21 **AA0459; 0477**. The Court determined that marriage was a "sham marriage."  
22 **AA0503 - 0504**.



1 After their trip to India, the parties continued the life they had maintained  
2 together in California since 1993 (AA0474-0475), living together, sharing a  
3 marriage bed, and comingling their property. This lasted until 2018. AA0487. In  
4 2018, Rajwant discovered that Jaswinder had entered into an engagement with  
5 another woman in India. AA0473. Upon learning the same, Rajwant filed for  
6 divorce in California, where the parties had lived together since 1993. AA0467.  
7 Jaswinder filed an Answer admitting the existance of a valid marriage. It was not  
8 until six months later, after Jaswinder filed his *amended* Answer alleging that the  
9 parties were previously divorced, that Rajwant had any notion that the papers she  
10 was told to sign (but couldn't read), so many years before in Nevada, had any  
11 legal impact on her marriage. AA0487. She'd been repeatedly told by Jaswinder  
12 that it was a "paper divorce," and was meaningless.

### 19 SUMMARY OF THE ARGUMENT

20 The District Court, after holding a trial and taking evidence, found that the  
21 2004 Decree of Divorce, based upon a Joint Petition, constituted a fraud against  
22 the Court. The District Court found that Jaswinder was not a credible witness,  
23 and that neither party had ever been a resident of Nevada at any time. AA0500-  
24 0501. However, the Court also found that Rajwant had failed to meet her burden

1 to prove duress on her part in the entry of the Decree, and therefore found that  
2 *Vaile* prevented the Court from setting aside the Decree of Divorce  
3  
4 notwithstanding the clear evidence of fraud. AA0490; 0504 However, due to 1)  
5 the difference in the actions of the parties in this matter and the actions of the  
6 parties in *Vaile*, 2) the enactment of NRCP 60b(6), and 3) NRCP 60(d)(3), the  
7 Court erred in failing to set aside the Decree. The result is an untenable,  
8 inequitable result, which harms both Rajwant, and the Court's legitimacy.  
9  
10

## 11 ARGUMENT 12

### 13 I. The District Court Erred In Finding *Vaile* Prevented the Court from 14 Setting Aside the 2004 Decree of Divorce. 15

#### 16 A. Standard of Review 17

18 "The Court reviews district court decisions concerning divorce  
19 proceedings for an abuse of discretion. District Court rulings supported by  
20 substantial evidence will not be disturbed absent an abuse of discretion.  
21 However, the district Court must apply the correct legal standard." *Doan v.*  
22 *Wilkerson*, 130 Nev. 449, 327 P.3d 498, 501 (2014).  
23  
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1 Orders "denying [] NRCP 60(b) motion[s] for relief" are also subject to the  
2 Abuse of Discretion standard. *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790, 792  
3 (1992). "District judges are afforded broad discretion in ruling on NRCP 60(b)  
4 motions. *Id.*

5  
6  
7 B. *Vaile* Is Distinguishable and the Application of the Same Creates an  
8 Inequitable Result.

9  
10 The District Court erred in its finding that *Vaile* required the denial of  
11 Rajwant's request. The facts of this case are incredibly different from the facts of  
12 *Vaile*. To apply the decision in *Vaile* to this case is to create a grossly inequitable  
13 result, wherein one party benefits exclusively from the fraud he committed and  
14 he receives a windfall.  
15

16  
17 In *Vaile*, the parties jointly intended a Divorce and a separation of their  
18 persons and marital estate. There was litigation in three countries, all related to  
19 that separation. 44 P.3d at 506. In the litigation in the United Kingdom, the  
20 parties signed an independent separation agreement which agreed (in advance of  
21 any U.S. filing) that Husband would file the Divorce in Nevada. *Id* at 509-510.  
22 Wife (the party to request that the Decree be Set Aside), not only participated in  
23 the filing of the Divorce, she relied on both the validity of the underlying  
24  
25  
26



1 separation agreement and the Decree in relocating with the children and  
2 addressing custody in Norway, and when she remarried. *Id* at 514. It was only  
3 after Husband tried to "piggy-back," his desire for custody onto the Nevada  
4 Decree that she then objected to the validity of the Decree itself. In light of the  
5 fact that the parties in *Vaile* filed a Complaint and Answer (in contrast to the  
6 Joint Petition filed by the parties herein) it is clear in *Vaile* that the wife was well  
7 aware of the divorce and its impact. She was clearly a willing and able  
8 accomplice to the fraud, as the Court in *Vaile* determined. *Id*.

13 The facts of this matter could not be more dissimilar. Rajwant did not  
14 understand, nor consent to, the divorce. There was never any reliance on the  
15 "divorce," by Rajwant. In fact, all evidence, admitted by both parties, was that  
16 immediately after the so-called "divorce" was "finalized," the parties returned  
17 to California together and for more than 14 years continued to reside and act as  
18 they had throughout their marriage. **AA0474-0475**. Their assets remained  
19 co-mingled, they continued to reside in the same apartment - and for years they  
20 continued to sleep in the same bed and maintained intimate relations. **AA0475**.  
21 Jaswinder even purchased a residence in 2009, of which he took titled as "a  
22 married man." **AA0385-0386**. He continued to list Rajwant as his wife on



1 important documents. **AA0397-0398**. In all matters, the parties maintained their  
2 marriage. It was only clear that the parties' marriage had ended in-fact when  
3 Jaswinder became engaged to someone else. At that time, Rajwant filed for a  
4 divorce in California where the same was appropriate and Jaswinder Answered,  
5 admitting they were married. **AA0402**.

6  
7  
8 It is clear from the testimony that Jaswinder arranged and organized the  
9 fraudulent "divorce." Rajwant, conditioned to obey her husband without  
10 question, merely signed where she was told to sign. **AA0471**. She did not speak  
11 or read English. There was no agreement to the divorce. There was no hearing  
12 by which the Court ascertained the truth of the parties' "residency." This was a  
13 joint petition, filled out at a notary public. **AA0328-0330**. In fact, although not  
14 a credible witness, Jaswinder admitted that even he had not read the actual  
15 documents. **AA0363**. The difference, however, is that it is clear from the  
16 testimony, that the "scheme" (the "paper divorce," and the intended marriage  
17 between Rajwant and Jaswinder's brother), belonged exclusively to Jaswinder.  
18 Rajwant was not a willing participant in the fraud. Rather, she was equally  
19 victimized by the same. The most Rajwant did was abide by the instructions of  
20 her husband. It is clear that she did not know how the intended marriage to  
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1 Jaswinder's brother would have impacted her marriage to Jaswinder in America.

2 It is clear that she was not in control of those actions. She testified that Jaswinder  
3 and his parents took her to India for the marriage. **AA0476-0477**. She returned  
4 with them (Jaswinder and his parents, not his brother), a mere two to three weeks  
5 later, and everything remained "status quo." **AA0381-0382; 0474-0475**. This  
6 was by no means an action she took under her own volition.  
7  
8  
9

10 From 2004 until 2018, Rajwant had no idea that her marriage did not exist.  
11 Nothing had changed in her life to suggest it had. **AA0487**. Jaswinder's actions  
12 suggest that he didn't believe the divorce was valid either, until six months into  
13 his actual divorce, when he realized he could use his prior fraud to his advantage  
14 in the California litigation.  
15  
16

17 In *Vaile*, the Nevada Supreme Court determined that the insufficiency of  
18 a Decree for lack of jurisdiction did not make a Decree void, but rather voidable.  
19 44 P.3d at 512-513. Thereafter, the Court found that the Wife was judicially  
20 estopped from challenging the Decree. *Id.* at 514. The District Court rejected  
21 Wife's claims that she had been coerced or under duress. The Supreme Court  
22 determined the findings supported that conclusion and stated: "a party who has  
23 stated an oath in a prior proceeding, 'as in a pleading,' that a given fact is true,  
24  
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26



1 may not be allowed to deny the same fact in a subsequent action." *Id.* The Court  
2 then specifically looked to the facts which showed that Wife took advantage of  
3 the validity of the Decree in her later actions, specifically in custody and in her  
4 marriage. *Id.*

5  
6  
7 In contrast, Rajwant should not be estopped. She did not rely on the  
8 Decree at any point; rather, the evidence shows that her reliance was on the  
9 continuance of her marriage and the continue assurances of her husband that it  
10 was a "meaningless" "paper" divorce, which she had not been given an  
11 opportunity to read or understand. There is a distinct difference between filing  
12 an Answer (as happened in *Vaile*), even in proper person, and filing a Joint  
13 Petition. The District Court found that Rajwant was credible, and that her  
14 testimony was that she was not informed of what she was signing, only that she  
15 was required by her Husband to sign the document which she could not read.

16  
17  
18  
19  
20 **AA0471.**

21  
22 The District Court did find that Rajwant had not met her burden to prove  
23 that she had signed under duress. **AA0502-0503**, because she did not find  
24 evidence that Rajwant had been forced to sign under physical threat or with a  
25 proverbial "gun to the head." **AA0497**. However, the Supreme Court's review in  
26



1 *Vaile* did not rely solely on duress and coercion in determining the issue of  
2  
3 estoppel. As previously stated, Wife's reliance on the validity of the Decree was  
4 also part of the consideration in *Vaile*.

5  
6 The evidence in this matter supports that Rajwant was unaware of what she  
7 signed and what the documents meant. Although the district court found that she  
8 was not operating under duress, it is also true that she was not operating with  
9 reasonable knowledge regarding the matter. Further, there was no evidence to  
10 support the idea that the divorce was a divorce-in-fact.  
11  
12

13 Decrees of Divorce, particularly where a joint petition was entered, are  
14 separation agreements and therefore contracts, subject to contract law. *See* NRS  
15 123.080, and *Holyoak v. Holyoak*, Docket No. 67490 (Order of Affirmance, May  
16 12, 2016). As such, like any other contract, in order for there to have been an  
17 agreement, there must have been capacity and intent. *See In re Estate of Kern*,  
18 107 Nev. 988, 823 P.2d 275, 277 (1991). Rajwant could not have had the  
19 necessary capacity, given that she couldn't read the Decree, it was not translated  
20 into a language which she understood, she did not understand it, it contained  
21 false terms as to property, and was led to believe that it was not "real." *See*  
22 *General Motors v. Jackson*, 111 Nev. 1026, 1031 - 1032, 900 P.2d 345, 348 -349  
23  
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1 (1995). As *General Motors* makes clear, the issue is whether or not Rajwant was  
2 "capable" of understanding the contract. Clearly, in light of the fact that the  
3 document was in English, and not given to her to seek translation to be able to  
4 read (or discuss the ramifications with an attorney) and was not translated for her,  
5 Rajwant was wholly incapable of understanding. Furthermore, Jaswinder *knew*  
6 that Rajwant was under a gross mis-impression of the Decree, it was the  
7 impression he gave her and cultivated until it no longer suited him. *Id.* Finally,  
8 Rajwant had no intention of entering into a divorce, which is clear from the  
9 evidence presented at trial. 823 P.2d at 277.

14 As Justice Young's dissent in *Vaile* points out, the purpose of judicial  
15 estoppel is to "protect the integrity of the judicial process [by] prohibit[ing]  
16 parties from deliberately changing positions according to the exigencies of the  
17 moment." 44 P.3d at 522. It is "an equitable doctrine applied by the court at its  
18 discretion." *Id.* Amongst the basis for that discretion is where "a party's prior  
19 position was based on inadvertence or mistake." *Id.*

23 There is a lack of equity under the facts of this case created by the Court's  
24 reliance on *Vaile*. Rajwant's signature was clearly based on mistake and  
25 inadvertance. She was unaware of the purpose of the document she was signing.  
26

1 Rajwant speaks very little English and she was unable to read the document.  
2  
3 Further she had no legal advice or understanding of what the document said or  
4 its legal impact. She was not the initiating party, *and* she was unaware of  
5 Nevada's residency requirement. The document itself even contained mistakes  
6 of fact, or gross misrepresentations - which prevented Rajwant (even in 2004)  
7 from having an equitable "divorce." The document claimed there was no  
8 property, although both parties acknowledged that there was. **AA0364-0365;**  
9  
10 **0483.**

11  
12  
13 Perhaps most egregiously, for fourteen years after the "divorce," the parties  
14 continued to engage in a "putative marriage," continuing to commingle assets and  
15 operate as they had during their marriage. **AA0492.** See *Hay v. Hay*, 100 Nev.  
16 196, 678 P.2d 672 (1984). During that entire time, to the best of Rajwant's  
17 knowledge, she remained in a marriage, accruing community assets and the rights  
18 and obligations related to a long term marriage. The difference, in equity, is  
19 between a 15 year marriage (from which she received nothing) and a 29 year  
20 marriage.  
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1 If *Vaile* is strictly applied, Rajwant was married for 15 years, and has lost  
2 *half* of the rights (and perhaps all of the property) she may receive in separating  
3 from her husband, including property, retirement and alimony considerations. If  
4 that is the case, then Jaswinder has effectively been rewarded with a substantial  
5 windfall for committing a fraud on the Court; a fraud that has also caused serious  
6 harm to Rajwant. Validating this fraudulent divorce effectively allows Jaswinder  
7 to kick his wife of nearly 30 years to the curb.

11 The District Court was deeply troubled by this matter, and what it felt was  
12 the immobile road-block created by *Vaile*. The Court made it clear multiple times  
13 on the record that it was encouraging an Appeal and felt that *Vaile* created the  
14 wrong result in this matter and led to inequity. **AA0488; 0491; 0494-0495; 0498;**  
15 **0504.**

19 Among the Court's statements on the matter were:

21 I question the vi -- the Vaile case. It -- it seems to be  
22 illogical. It seems to say it's okay to pull a scam and  
23 get away with it. ... but the Vaile case is Nevada law.  
24 **AA0488.**



1           There is simply insufficient evidence that the Plain --  
2           Defendant acted under duress. So much as I find the  
3           facts of this case offensive -- and I do -- I can't rule on  
4           me being offended. I have to rule on what is law and  
5           precedent, and Vaile is still precedent in this state.

6   **AA0504.**

7   **II.   The District Court Erred In Failing to Consider Whether the Nevada**  
8   **Rules of Civil Procedure Allowed the Court to Set Aside the 2004 Decree of**  
9   **Divorce.**

10  
11       A.   Standard of Review

12  
13       Orders "denying [] NRCP 60(b) motion[s] for relief" are subject to the  
14       Abuse of Discretion standard. *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790, 792  
15       (1992). "District judges are afforded broad discretion in ruling on NRCP 60(b)  
16       motions. *Id.*

17  
18  
19       However, a district court's legal conclusions regarding court rules are  
20       reviewed *de novo*. *Fink v. Markowitz*, 132 Nev. 73, 367 P.3d 416, 418 (2016),  
21       quoting *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, —, 290 P.3d 265, 267  
22       (2012). "[T]he rules of statutory interpretation apply to Nevada's Rules of Civil  
23       Procedure." *Id.*, quoting *Webb ex rel. Webb v. Clark Cty. Sch. Dist.*, 125 Nev.  
24       611, 618, 218 P.3d 1239, 1244 (2009).

1 B. NRCP 60(b)(6) Permits the Court to Set Aside the Decree of Divorce

2 In March 2019, the newly updated Nevada Rules of Civil Procedure went  
3 into effect for all of the civil divisions in the state of Nevada, including Family  
4 Court. See ADKT 0522, filed December 31, 2018. The revised rules expanded  
5 NRCP60(b) to include subsection 6: "any other reason that justifies relief."  
6

7 The expansion occurred prior to the trial in this matter and several years  
8 after *Vaile* was decided. This subsection was intentionally not subjected to the  
9 six month deadline in place for "fraud (NRCP 60(b)(3))."  
10

11 The new subsection is identical to the Federal Rules of Civil Procedure  
12 60(b)(6), which has been in effect for several decades. Although this Court has  
13 not yet had cause to interpret this rule, the interpretation of the Federal Rule is  
14 instructive.  
15

16 [Federal] Rule 60(b)(6) ... empowers the courts to  
17 reopen a judgment even after one year has passed for  
18 "an other reason justifying relief from the operation of  
19 the judgment." ...to justify relief under subsection (6),  
20 a party must show "extraordinary circumstances"  
21 suggesting the party is faultless in the delay.  
22

23 *Pioneer Investment Services Co., v. Brunswick Associates Ltd. Partnership*, 507  
24 U.S. 380, 393 (1993).  
25  
26



1 Generally, the basis for seeking relief under FRCP 60(b)(6) must be one  
2 where relief could not have been sought under any other subsection of 60(b).  
3  
4 *Community Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002). In  
5 addition, there must have been "extraordinary circumstances which prevented or  
6 rendered him unable to prosecute his case." *Id.*, quoting *Martella v. Marine Cooks*  
7 & *Stewards Union*, 448 F.2d 729 (9th Cir. 1971).

10 "Fraud on the Court" is not a fraud covered by NRCP 60(b)(3).  
11 Specifically, NRCP 60(b)(3) covers "fraud (whether previously called intrinsic  
12 or extrinsic). This Court has noted that Fraud on the Court is a separate fraud.  
13 The fraud covered by NRCP 60(b)(3) is the the "fraud of an adverse party." *NC-*  
14 *DSH, INC., v. Garner*, 218 P.3d 853, 857 (Nev 2009). The Court quoted the  
15 holding from *Flowers v. Rigdon*, 101 Ohio App.3d 172, 655 N.E.2d 235, 236  
16 (1995), stating, "fraud, *inter partes*, without more, should not be fraud upon the  
17 court. **Emphasis added.**

21  
22 In *NC-DSH, Inc.*, this Court held that fraud upon the Court was, "that  
23 species of fraud which does, or attempts to, subvert the integrity of the court  
24 itself..." 218 P.2d at 858. Obviously, actions of a party, which constitute fraud,  
25 could be both fraud within the definition of NRCP 60(b)(3) and "fraud upon the  
26



1 court." The issue therefore, is, does the fraud committed by Jaswinder rise to the  
2 level of fraud upon the court, which would allow the Court to consider it under  
3 NRCP 60(b)(6), as a fraud not covered by 60(b)(3). The answer is yes.

4  
5 NRCP 60(b)(6) grants broad discretion to the Court and is clearly in line  
6 with Justice Young's dissent in *Vaile*. See *Klapprott v. United States*, 335 U.S.  
7 601, 614-615 (1949). Gross inequity, and use of perjury to circumvent such  
8 foundational requirements as subject matter and *in personum* jurisdiction, harms  
9 the integrity and the legitimacy of the judicial system. The Court needs a  
10 mechanism by which to address such inequity. The enactment of NRCP 60(b)(6)  
11 created that ability, through use of a Motion to Set Aside, rather than requiring  
12 an "independent action," as NCRP 60(d)(3) (which is not part of the requests for  
13 relief that operates to the exclusion of NRCP 90(b)(6)) does.

14  
15 That said, NRCP 60(b)(6) is also not limited to any specific type of  
16 "harm." It permits the Court to look at the equity of the outcome, rather than  
17 focusing on the means by which the parties get to that outcome. There are simply  
18 some cases that do not fit easily into the boxes set forth in NRCP (60)(b), but  
19 result in clear, substantial harm. This is one of those cases.



1 In addition to the specific "fraud upon the Court," if the 2004 Decree is  
2 permitted to stand, Jaswinder receives the benefit of having been a married man  
3 for 29 years, but only having the obligations of having been a married man for  
4 15 and with no further obligation to his spouse due to a fraudulent divorce 15  
5 years ago. Even if a "putative marriage," is found by California (where  
6 jurisdiction exists), Rajwant's potential rights to alimony, retirement and certain  
7 property become far less secure, all by virtue of Jaswinder's fraud. In addition,  
8 Jaswinder receives the benefits of having fraudulently claimed there was no  
9 community property when there clearly was and is, which may therefore leave  
10 him with the totality of the property. Any potential claim for alimony on  
11 Rajwant's behalf in the 2004 Decree, notwithstanding the 15 or 29 year marriage  
12 (at that time), was also removed without her consent. The windfall to Jaswinder,  
13 the party who willfully initiated and controlled the fraud, is astronomical.  
14  
15

16 It was an abuse of discretion for the Court to fail to consider NRCP  
17 60(b)(6) in deciding this case. It is abundantly clear that this is exactly the type  
18 of case which should be considered under this rule. The Court's failure to  
19 consider whether or not this rule permitted the Decree to be set aside was error.  
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1 This rule clearly does so; it was in effect before the trial; and use of this rule  
2 would have been reasonable.  
3

4 It is clear from the District Court's decision that it was only the application  
5 of *Vaile*, specifically the Court's reliance on the need to prove duress, which  
6 prevented the District Court from setting aside the Decree. Therefore it is clear  
7 that Rajwant suffered prejudice from the failure of the Court to consider NRCP  
8 60(b)(6), and that prejudice wholly prevented her from receiving appropriate  
9 relief.  
10  
11  
12

13 Rajwant agrees that NRCP 60(b)(6) should be subject to the same  
14 standards of reasonableness that all other Motions to Set Aside. Rajwant does not  
15 suggest that the lack of an "outer limit" as exists for several sections of NRCP  
16 60(b), should be a *carte blanche* to wait unreasonably to move to set aside a  
17 judgment. In fact, the cases which address FRCP 60(b)(6) support the notion that  
18 a party must work within a *reasonable* time frame. *See Liljeberg v. Health*  
19 *Services Aquisition Corp.*, 486 U.S. 847, 863-864 (1988). Therefore, the factors  
20 set forth in *Kahn*, should still be considered. The Court in *Kahn* determined that  
21 even where a NRCP 60(b) motion was filed within the time limits set by the rule,  
22 the Court should still consider whether there was 1) a prompt application to  
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24  
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1 remove the judgment; 2) an absence of intent to delay the proceedings; 3) a lack  
2 of knowledge of the procedural requirements; 4) good faith; 5) a meritorious  
3 defense (applicable outside of default cases, *see Epstein v. Epstein*, 113 Nev.  
4 1401, 950 P.2d 771 (1997); and 6) consideration of public policy to resolve cases  
5 on their merits. 835 P.2d at 792-793.  
6

7  
8 The factors set forth in *Kahn* clearly merit granting Rajwant's Motion. It  
9 would not have been realistic for Rajwant to move to set aside the 2004 Decree  
10 within six months of its entry. She could not read what she was told to sign and  
11 did not understand what had occurred (lack of procedural knowledge and  
12 requirements), and there was no impact on her life to suggest the existence of a  
13 legal issue. Rajwant acted within *weeks* of learning that the 2004 Decree of  
14 Divorce truly existed (prompt application and absence of intent to delay). She  
15 immediately hired counsel, and immediately proceeded to inform the Court of the  
16 fraud, and to move to set the same aside. Rajwant clearly acted in good faith; she  
17 had operated as if she were married without cessation since 1989, even after the  
18 entry of the 2004 Decree of Divorce. Rajwant is not "changing a prior position,"  
19 as discussed in *Vaile*. 44 P.3d at 514. She has always operated as if she were still  
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1 married to Jaswinder, and she is merely requesting that the court correct the error  
2 which was created by Jaswinder's fraud.  
3

4 With regard to public policy and the "meritorious defense," Rajwant  
5 clearly succeeds on both of those factors as well. The parties both acknowledged  
6 during the trial that there was property that existed at the time of the 2004  
7 "divorce," which was not adjudicated. **AA0364-0365; 0483**. In other words, the  
8 underlying case was never resolved on the merits at all, and even if the Decree  
9 weren't set aside, there was property which existed in 2004 that was never  
10 adjudicated pursuant to NRS 125.150.  
11  
12

13 It is clear that Rajwant's request to set aside was reasonable. It is clear that  
14 under the standard set forth in NRCP 60(b)(6), the failure to set aside the divorce  
15 was inequitable and even at odds with the Court's findings. Therefore, the Court's  
16 failure to take NRCP 60(b)(6) into consideration and make findings and  
17 conclusions based on the rule is an abuse of discretion.  
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19  
20  
21

22 D. NRCP 60 (d)(3) Permits the Court to Set Aside the Decree of Divorce

23 Pursuant to NRCP 60(d)(3), a Court may "set aside a judgment for fraud  
24 upon the court." A party seeking to vacate a final judgment based on fraud upon  
25  
26



1 the court must establish the fraud by clear and convincing evidence. The motion  
2 "is addressed to the sound discretion of the trial court." 218 P.3d at 860-861.  
3

4 NRCP 60(d)(3) is included within a section that allows the Court to  
5 consider independent actions (rather than Motions) for a set aside. This Court,  
6 however, has previously indicated that the Court may interpret a Motion as an  
7 "independent action" for the purpose of NRCP 60 where appropriate. 327 P.3d  
8 at 501.  
9

10  
11 *Vaile*, which affirms the District Court's discretion to deny a Motion to Set  
12 Aside, does not consider whether or not this rule would allow the Court to grant  
13 such a Motion based on fraud, regardless of the actions of either party. As *Vaile*  
14 indicates, both in setting the standard of review and within the analysis of the  
15 issues in the dissent, the District Court has broad discretion in its review of  
16 NRCP 60 motions.  
17  
18

19  
20 The District Court made it very clear in its findings that, but for *Vaile*, it  
21 would have granted the Motion to Set Aside, as it was abundantly apparent that  
22 a fraud had been committed on the Court. **AA0500-0506**. Ultimately, the District  
23 Court, in limiting its ruling based on its interpretation of *Vaile*, failed to consider  
24 NRCP 60(d)(3); rather the Court felt it had to rule against its primary findings on  
25  
26

1 a very narrow technical legal point set forth in *Vaile*. As stated, *Vaile* affirmed  
2 the findings of the District Court, based upon the District Court's discretion. The  
3 Court in *Vaile* therefore did not consider whether or not the use of NRCP  
4 60(d)(3) would have provided an avenue for the Court to set aside the Decree.  
5 Here it is clear from the Court's findings, that the District Court felt that setting  
6 aside the Decree would have been appropriate and therefore, the failure of the  
7 Court in this matter to use NRCP 60(d)(3) to make Orders which matched its  
8 findings was in error.

### 13 CONCLUSION

14 Based on the foregoing, Rajwant respectfully requests that the District  
15 Court's decision, denying her Motion to Set Aside the Decree be reversed.

17 Dated this 30 day of March, 2020.

19 By: 

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this appellate brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this appellate brief has been prepared in a proportionally spaced typeface using Word Perfect X5 in 14-point Times New Roman style;

2. I further certify that this appellate brief complies with the page- or type-volume limitations of NRAP 32(a)(7)(A) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5,433 words;

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to page and volume number, if any, of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not

1 in conformity with the requirements of the Nevada Rules of Appellate  
2 Procedure.  
3

4 Dated this 30 day of March, 2020.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2 day of APRIL, 2020,

I caused to be served the *Appellant's Opening Brief* to all interested parties as follows:


\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

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Racheal Mastel  
Andrew Kynaston

  
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