

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 80090

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~~Elizabeth A. Brown~~
Clerk of Supreme Court

RAJWANT KAUR,
Appellant / Cross-Respondent,

vs.

JASWINDER SINGH,
Respondent / Cross-Appellant.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CASE NO. 04D323977

**RESPONDENT / CROSS-APPELLANT'S
ANSWERING BRIEF / CROSS-OPENING BRIEF**

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

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 Respondent / Cross-Appellant there are no other parent
10 corporations or publicly-held companies at issue. Appellant is not using a
11 pseudonym.

12 Dated this 18th day of May, 2020

13 /s/ *F. Peter James*

14

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1 **JURISDICTIONAL STATEMENT**

2 The Nevada Supreme Court has jurisdiction over this matter pursuant to
3 NRAP 3A(b)(1), NRAP 3A(b)(8), and NRS 2.090.

4 The Order appealed from was filed by present counsel on October 22,
5 2019. (2 AA at 281). Said Order was noticed by e-service on the same date. (2
6 AA at 292). The Notice of Appeal was filed on November 19, 2019. (RA at 1).

7 The jurisdictional deadline to file the Notice of Appeal was November
8 21, 2019. As such, the Notice of Appeal was timely filed.

9 Respondent filed a cross appeal on November 29, 2019. (RA at 15). The
10 jurisdictional deadline for the Notice of Cross-Appeal was December 3, 2019.
11 As such, the Notice of Cross-Appeal was timely filed.

12 The Order filed October 22, 2019 was a final order as it disposed of all
13 issues as to all parties.

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1 **STATEMENT OF THE ISSUES**

2 The district court allowed a motion to set aside a Decree of Divorce more
3 than fourteen (14) years after the Decree was filed. The deadline to file to set
4 aside a fraud claim is six months under the Rules of Civil Procedure and most
5 generously six years under, but more realistically three years, under the
6 statutory limitations periods. The deadline for setting aside a Decree as to it
7 being void is less than two years. Yet, the district court allowed the action to
8 move forward when it was filed more than fourteen (14) years after the Decree
9 was entered. Did the district court err in allowing the matter to proceed past the
10 motion hearing when the requests were time barred under Nevada law?

11 The district court denied Respondent's request for attorney's fees even
12 though the district court ruled against Appellant on a Motion for Judgment on
13 the Evidence after Appellant concluded her testimony and without Respondent
14 even presenting a case. The district court found that Appellant failed to meet
15 the standard under the controlling authority by not establishing that she was
16 coerced into signing the divorce documents. Yet, the district court denied
17 Respondent's request for attorney's fees. Did the district court err?

1 The Decree of Divorce contained a standard provision in joint petitions to
2 waive Notice of Entry of Decree of Divorce, among other things. (1 AA 0:21-
3 22). Rajwant alleged under oath that Jaswinder was a resident of Nevada at all
4 relevant times. (*See* 1 AA 1, 4).

5 Fourteen years later and after Rajwant married Jaswinder’s brother,
6 Rajwant moved the district court to Set Aside the Decree of Divorce. (1 AA
7 41). Oddly, Rajwant did not cite to *Vaile v. Eighth Judicial District Court*, 118
8 Nev. 262, 44 P.3d 512 (2002), in her motion. (*See generally* 1 AA 41-50).
9 *Vaile* is controlling authority. (*See e.g.* 1 AA 147-149, 150-155; 1 AA 143-
10 144¹). Jaswinder cited to *Vaile*, however. (1 AA 64, 66). Rajwant finally cites
11 to the controlling authority in her Reply Brief, but only to state “that it [the
12 *Vaile* standard] is a facts-driven analysis.” (1 AA 79:4-12).

13 Rajwant cited only fraud and that the Decree of Divorce is void as her
14 bases to set aside the Decree of Divorce. (1 AA 46).

15 Jaswinder, among other defenses, moved the district court to deny the
16 Motion to Set Aside as untimely. (1 AA 61-62). The district court denied
17

18 ¹ The district court ordered that the elements that had to be established
19 were that no party actually ever was a valid Nevada resident at any relevant
20 time and that Rajwant was coerced by Jaswinder into signing the divorce
documents. This is the standard in *Vaile*.

1 Jaswinder's request to dismiss the Motion as untimely, stating that Nevada was
2 the injured party, not Rajwant, and that the State of Nevada had no notice of the
3 purported fraud. (1 AA 149-151). The district court set the matter for an
4 Evidentiary Hearing. (1 AA 144).

5 Each side filed pre-trial memoranda. (1 AA 229, 2 AA 236). Rajwant
6 never argued that *Vaile* was law that needed to be overturned or modified—
7 Rajwant only argued the factual application of *Vaile* to the present case and
8 tried to distinguish those facts from the present case. (2 AA 236-256). *Vaile*
9 kept the divorce in place as the moving party failed to establish coercion in
10 signing the divorce documents. 118 Nev. at 273-74, 44 P.3d at 514.

11 At trial, Rajwant had to establish the *Vaile* standard that no party was a
12 Nevada resident at any relevant time and that she was coerced into signing the
13 divorce documents—both had to be established for Rajwant to prevail. (1 AA
14 143-144). However, at trial, Rajwant presented no evidence at all (not even on
15 direct examination) that she signed the documents under duress or due to
16 coercion. On direct examination, the following question and answer took place
17 as to why Rajwant signed the divorce documents:

18 Q: Okay. So you – when you came here [to Las Vegas in 2004], did you
19 sign some [divorce] papers?

20 A: Yes.

1 . . .

2 Q: Okay, so why did you sign them?

3 A: Jaswinder asked me to sign, so I signed it.

4 Q: Do you sign anything he asks you to sign?

5 A: Yes, I did.

6 Q: And why would you do that?

7 A: He was my husband. He would say it, and I will do it.

8 (3 AA 471). There were no further inquiries as to why Rajwant signed the
9 documents. (*See generally* 3 AA 463-487).

10 Jaswinder did not cross examine Rajwant, and instead moved for a
11 directed verdict, which the district court called a motion for judgment on the
12 evidence, as Rajwant failed to establish the mandatory element of coercion /
13 duress. (3 AA 488). After allowing Rajwant to argue and make a record, the
14 district court granted the motion for judgment on the evidence. (3 AA 504, 2
15 AA 288).

16 Even though Rajwant failed to establish or even present any evidence of
17 a mandatory element to advance her claims, the district court declined to award
18 Jaswinder any attorney's fees. (2 AA 288). The district court reasoned that
19 Jaswinder did not have "clean hands", though that was from the underlying
20 divorce, not the present litigation. (2 AA 287).

1 This appeal and cross-appeal followed.

2 **SUMMARY OF THE ARGUMENT**

3 The district court erred when it did not deny the Motion to Set Aside as
4 untimely. There is no law in support of Rajwant waiting over fourteen years to
5 file to set aside a Decree of Divorce she knew was entered in 2004. Fraud has a
6 three year limitations period. The limitations period for claiming a decree is
7 void is under two years—as waiting two years was too long to wait to file.

8 The district court erred when it denied Jaswinder attorney’s fees. That
9 Rajwant did not provide any evidence of coercion or duress when she was on
10 actual notice of the standard to be argued made her continuing to maintain the
11 case per se frivolous.

12 Rajwant argues in her Opening Brief positions that were never argued in
13 the district court. Almost all of Rajwant’s arguments fall into this category.
14 Further, Rajwant cites to law that does not support her position, she makes
15 factual assertions that are not accurate, and she continues to argue things never
16 raised in the district court. Moreover, Rajwant argues that *Vaile* should be
17 overturned when she did not even initially cite to *Vaile*, and when she did, she
18 merely said the facts of her case were different—she did not state that *Vaile* was
19 bad law or that it should be overturned.

20

1 **ARGUMENT**

2 As to the Cross-Appeal, the Court should find that district court erred in
3 permitting the present matter to proceed to evidentiary hearing as the limitations
4 periods had already run. The Court should further find that the district court
5 erred in not awarding Respondent attorney's fees and costs and remand the
6 matter for a determination as to how much in attorney's fees Respondent should
7 be awarded.

8 As to the Appeal, the Court should find that Appellant failed to argue at
9 the district court level most of her arguments on appeal. As such, the Court
10 should not consider them. Appellant did not even cite to controlling authority
11 in her initial Motion, let alone in her Reply Brief. Appellant did not argue in
12 the lower court that the controlling authority should be reversed / modified.

13 To the extent that the Court entertains the arguments, Appellant has
14 failed to meet her burden as to any of the arguments presented. Appellant
15 wholly failed to establish that she was coerced in to signing the divorce
16 documents, which is mandatory under *Vaile* and which the district court
17 specifically stated Appellant needed to prove. (1 AA 144:1-2).

18 As such, the Court should reverse the lower court as to the denial of the
19 request to dismiss the Motion to Set Aside as time barred. The Court should
20 also reverse as to the denial of Respondent's request for attorney's fees.

1 Moreover, the Court should affirm the district court as to it granting the Motion
2 for Judgment on the Evidence.

3 **I. THE DISTRICT COURT ERRED DENYING JASWINDER’S**
4 **REQUEST TO DISMISS THE MOTION AS TIME BARRED**

5 **A. STANDARD OF REVIEW**

6 Questions of statutory interpretation are reviewed de novo. *Irving v.*
7 *Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). The rules of statutory
8 interpretation apply to Nevada’s Rules of Civil Procedure. *See Dornbach v.*
9 *Tenth Judicial District Court*, 130 Nev. 305, 310, 324 P.3d 369, 372 (2014). A
10 district court’s interpretation of the court rules is reviewed de novo. *Id.*

11 **B. ARGUMENT**

12 The district court erred when it did not grant Jaswinder’s request to
13 dismiss the Motion to Set Aside as time barred. Rajwant gave two bases for
14 setting aside the Decree of Divorce, to wit: fraud and void. (1 AA 46).
15 Rajwant cites to Rule 60(b) as the vehicle for these bases. (*Id.*).

16 As to being purportedly void, NRCP 60(c)(1) provides the limitation
17 period of “a reasonable time”. Nevada has further defined how long a
18 reasonable time is to claim an order is void—two years from the time the
19 person knew the order existed is too long of a time to wat to request a set aside.
20 *See Deal v. Baines*, 110 Nev. 509, 512-13, 874 P.2d 775, 777-78 (1994).

1 As stated, Rajwant knew that the Decree was entered as she subsequently
2 married another man. (1 AA 45:22-23). Rajwant, however, waited over
3 fourteen (14) years to request a set aside. Nevada law provides that two years is
4 too long to wait to request a set aside as to a purportedly void order—let alone
5 fourteen.

6 As to fraud, NRCP 60(b) is subject to a six-month time limit. *See* NRCP
7 60(c)(1). If you go outside of the set aside rule (which Rajwant did not),
8 Nevada law provides for a three-year limitation period for an independent
9 action for fraud. *See* NRS 11.190(3)(d). Either way, a fourteen-year delay in
10 filing is not permitted under Nevada law.

11 Still, the district court created a fiction saying that Nevada was the
12 injured party, not the litigants, and, thus, the limitations period never began to
13 run. (1 AA 144:8-11, 150-153). The district court provided no legal authority
14 for this fiction.

15 Public policy favors finality of judgments. *See e.g. Bonnell v. Lawrence*,
16 128 Nev. 394, 401, 282 P.3d 712, 716 (2012). This is especially true after a
17 final Decree of Divorce has been in place for fourteen years and after a party
18 remarried. Setting aside a decree after so long would have made a party a
19 retroactive bigamist. Further, there are evidence issues—trying to obtain
20 documents, trying to find witnesses, and memory issues after fourteen years

1 makes these things problematic, at best. Documents are often destroyed by
2 record keepers after seven years. Witnesses move. After so long, people forget
3 things. Oddly, the district court recognized Jaswinder’s arguments as to these,
4 yet sent the matter to an evidentiary hearing anyway. (1 AA 157-58).

5 Still, fraud does not apply in this case as *Vaile* is controlling authority.
6 The issue in *Vaile* is if the Decree of Divorce is void as to no proper residency
7 and if so, the moving party must establish coercion or duress as that party was a
8 party to the fraud. This is where estoppel comes into play as the courts will not
9 reward a party to fraud with relief from the court. *Vaile*, 118 Nev. at 273-74, 44
10 P.3d at 514.

11 The district court erred in not dismissing the Motion to Set Aside as
12 being time-barred. The longest limitations period that could apply ran more
13 than a decade before the Motion to Set Aside was filed—and that limitations
14 period does not even apply as a shorter one for void applies.

15 As such, the Court should reverse the district court and deny the Motion
16 to Set Aside as time barred.

17 **II. THE DISTRICT COURT ERRED IN DENYING JASWINDER’S**
18 **REQUEST FOR ATTORNEY’S FEES AND COSTS**

19 **A. STANDARD OF REVIEW**

20 The denial of attorney’s fees by a district court is reviewed for an abuse

1 of discretion. *See Jones v. Jones*, 86 Nev. 879, 885, 478 P.2d 148, 152 (1970).

2 “[A] district court’s factual determinations will be disturbed only when
3 unsupported by substantial evidence.” *Jensen v. Jenson*, 104 Nev. 95, 99-100,
4 753 P.2d 342, 345 (1988).

5 **B. ARGUMENT**

6 The district court abused its discretion when it denied Jaswinder
7 attorney’s fees. Jaswinder prevailed on a motion for judgment on the evidence
8 as Rajwant failed to even present evidence of the mandatory element of
9 coercion on direct examination. (*See generally* 3 AA 463-487; 3 AA 504; 2 AA
10 288). Failing to even offer evidence as to a mandatory element makes the claim
11 per se frivolous. *See e.g. Woods-Gaston v. Sequoyah Enterprises, Inc.*, 340
12 Fed.Appx 450, 452 (10th Cir. 2009); *see also Cormier v. P.P.G. Industries,*
13 *Inc.*, 519 F. Supp. 211, 272 (W.D. Louisiana 1981); *State ex rel. Cephas v.*
14 *Boles*, 142 S.E.2d 463, 465 (W.Va. 1965).

15 Jaswinder requested attorney’s fees under NRS 18.010 (frivolous
16 position) and EDCR 7.60 (unnecessarily protracting the litigation). (1 AA 67).
17 As shown failure to present any evidence at all as to a mandatory element of a
18 claim makes bringing the claim per se frivolous.

19 Still, the district court denied Jaswinder attorney’s fees. (2 AA 288:14-
20 15). Specifically, the district court found that Jaswinder was not a prevailing

1 party. (*Id.*). So, Jaswinder won outright and had the Decree of Divorce
2 affirmed as Rajwant failed to provide any evidence at all as to a mandatory
3 element of her claim, but Jaswinder was not a prevailing party. This reasoning
4 defies all logic.

5 The district court also made a finding that Jaswinder did not have clean
6 hands. (2 AA 287). This is not supported by any facts. The present round of
7 litigation was instigated by Rajwant. The underlying divorce was fourteen
8 years ago. Rajwant knew that she could not make out a mandatory element of
9 the claim, and the district court even commended Rajwant on her honesty as to
10 there being no coercion. (2 AA 287:16-20).

11 There can be no proper finding that Jaswinder had unclean hands during
12 this round of litigation. Rajwant waited fourteen years to file her motion,
13 brought the matter to a motion hearing, discovery, and an evidentiary hearing
14 and did not even present evidence as to a mandatory element of her claim—and
15 did not even cite to controlling authority nonetheless. Yet, Jaswinder has
16 unclean hands?

17 As such, the district court abused its discretion when it denied Jaswinder
18 attorney's fees. The Court should reverse the district court and remand the
19 matter to the district court for a determination of attorney's fees and costs to
20 Jaswinder.

1 **III. THE DISTRICT COURT PROPERLY DENIED RAJWANT’S**
2 **MOTION TO SET ASIDE; HOWEVER, RAJWANT FAILED TO**
3 **ARGUE MANY ARGUMENTS IN THE DISTRICT COURT;**
4 **THUS, THIS COURT SHOULD BAR SUCH ARGUMENTS**

5 **A. STANDARD OF REVIEW**

6 Determinations on a set aside request are reviewed for an abuse of
7 discretion. *See Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704
8 (2009). A decision to grant or deny a motion for judgment on the evidence is
9 reviewed for an abuse of discretion. *See S.E. Johnson Companies, Inc. v. Jack*,
10 752 N.E.2d 72, 76 (Indiana App. 2001).²

11 “A point not urged in the trial court, unless it goes to the jurisdiction of
12 that court, is deemed to have been waived and **will not be considered on**
13 **appeal.**” *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52-53, 623 P.2d 981, 983-
14 84 (1981) (emphasis added); *see also Nadler v. Eighth Judicial District Court*,
15 136 Nev. ___, n.3, ___ P.3d ___, n.3, 136 Nev. Adv. Op. 24, at *4 n.3, 2020
16 WL 2111859, n.3 (2020).

17 **B. ARGUMENT**

18 **The Vaile Section**

19 Rajwant fails to argue the actual issue on appeal, but instead argues

20 ² Nevada law is scant on this issue.

1 things she never argued before.

2 The issue on appeal is whether or not the district court erred in granting
3 the motion for judgment on the evidence / directed verdict which resulted in the
4 denial of the Motion to Set Aside. In the district court, Rajwant cited only fraud
5 and that the Decree of Divorce is void as her bases to set aside the Decree of
6 Divorce. (1 AA 46). Rajwant did not cite to *Vaile* in her motion. (*See*
7 *generally* 1 AA 41-50). *Vaile* is controlling authority. (*See e.g.* 1 AA 147-149,
8 150-155; 1 AA 143-144³). Jaswinder cited to *Vaile*, however. (1 AA 64, 66).
9 Rajwant finally cites to the controlling authority in her Reply Brief, but only to
10 state “that it [the *Vaile* standard] is a facts-driven analysis.” (1 AA 79:4-12).

11 In her Opening Brief, however, Rajwant raises numerous arguments for
12 the first time. Additionally, Rajwant puts the cart before the proverbial horse
13 numerous times. *Vaile* is controlling authority, and Rajwant had to meet the
14 standard in *Vaile*, but utterly failed to.

15 *Vaile’s* factual history and the resulting standard are key to this case.
16 *Vaile’s* factual history is remarkably similar to the present case—even the

17 _____
18 ³ The district court ordered that the elements that had to be established
19 were that no party actually ever was a valid Nevada resident at any relevant
20 time and that Rajwant was coerced by Jaswinder into signing the divorce
documents. This is the standard in *Vaile*.

1 district court noted this. (3 AA 488:17-21). In *Vaile*, though no party resided
2 here, both parties stipulated to a divorce in Clark County, Nevada. 118 Nev. at
3 266-67, 118 Nev. at 509-10. The same occurred in the present case. (1 AA 1-
4 10). After one party evidently grew dissatisfied with agreement, that party
5 moved to set aside the “fraudulent” decree of divorce. *Id.*, 118 Nev. at 268, 44
6 P.3d at 511. The same occurred in the present case. (1 AA 41).

7 *Vaile* held that when both parties enter into a stipulation for a divorce in
8 Nevada, but no one actually ever had proper residency, the moving party must
9 also establish duress or coercion as to signing the divorce documents. 118 Nev.
10 at 273-74, 44 P.3d at 514. The basis for having to show coercion is due to
11 judicial estoppel—a party who has stated an oath in a prior proceeding, “as in a
12 pleading,” that a given fact is true, may not be allowed to deny the same fact in
13 a subsequent action. *Id.* Thus, the two-prong test under *Vaile*—no party had
14 proper residency and the moving party signed the divorce documents under
15 duress or due to coercion.

16 Rajwant now wants this Court to address numerous arguments in support
17 of her legal claims on appeal that were never properly raised in the district
18 court, to wit:

- 19 • She did not understand the decree;
 - 20 o Opening Brief at 9:13-14

- 1 • She had no reliance on the divorce;⁴
 - 2 o Opening Brief at 9:14-16
- 3 • There was no intent to form an agreement as she could not read the
4 Decree
 - 5 o Opening Brief at 13-14.
- 6 • She was not operating with reasonable knowledge regarding the Decree
7 as she did not know what it meant
 - 8 o Opening Brief at 13:6-11

9 Rajwant further states several matters as fact, when they are not.
10 Rajwant states that Jaswinder took title to real property as a “married man”.
11 (Opening Brief at 9:25-26). However, Jaswinder never signed the deed. (3 AA
12 424-425).⁵ Rajwant claims it was a “paper divorce”. (Opening Brief at 10:20).
13 Yet, she married another man after the divorce. (1 AA 45:22-25). Even
14 assuming *arguendo* that Rajwant was coerced into the other marriage, that she

15
16 ⁴ This appears to be a significant misrepresentation. Rajwant, knowing she
17 was divorced, married someone else. (1 AA 45:22-24).

18 ⁵ Rajwant did not include any of the trial exhibits in her appendix. When
19 an appellant fails to include necessary documentation in the record, it is
20 presumed that the missing portion supports the district court’s decision. *See*
Cuzze v. Univ. and Community College Sys. of Nev., 123 Nev. 598, 603, 172
P.3d 131, 134-35 (2007).

1 remarried verifies that the divorce was not a paper divorce—the divorce had a
2 significant legal effect of permitting Rajwant to remarry.

3 Rajwant claims she had no idea her marriage did not exist from 2004-
4 2018. (Opening Brief at 11:10-11). This is legal rubbish. Blackletter law
5 contradicts Rajwant’s claim. Settlement agreements in divorce cases are in the
6 nature of contract law. *See Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d
7 98, 108 (2009). A person who signs a contract is presumed to know and
8 understand its contents; the failure to read a contract, or to apprehend the rights
9 and obligations under it, will not prevent a waiver of its terms or conditions.
10 13 WILLISTON ON CONTRACTS § 39.22 (4th ed. 2020); *accord* 7AP1 AM.JUR.
11 PL. & PR. FORMS CONTRACTS § 126 (March 2020) (if a person fails or refuses to
12 read a contract, she cannot then complain of its provisions, nor claim that it
13 contained provisions she knew nothing about); *see also* E. Allen Farnsworth,
14 CONTRACTS § 3.7 at 116 (1982) (provisions written in a foreign language are
15 binding even if the person did not understand the language).

16 Rajwant cites to *General Motors v. Jackson*, 111 Nev. 1026, 1031-32,
17 900 P.2d 345, 348-49 (1995) in support of her claim that she did not understand
18 the decree when she signed it. This reliance is misplaced. Firstly, this was
19 never properly raised in the district court. That aside, the case does not actually
20 support her position. *General Motors* deals with capacity to enter into a

1 contract in the context of being under a guardianship, being an infant, having a
2 mental illness or mental defect, or being intoxicated—nothing about not
3 speaking the language. Well-settled law provides that contract provisions being
4 in a different language does not prevent being bound to the terms—the same
5 applies to blind and illiterate people. *See e.g. Paper Exp., Ltd. V. Pfankuch*
6 *Maschinen GmbH*, 972 F.2d 753, 757 (7th Cir. 1992).

7 Rajwant argues that the district court though *Vaile* was bad law and
8 should be overturned. (Opening Brief at 16-17). Rajwant never made these
9 arguments until her appeal.

10 Rajwant fails to address that she simply did not present any evidence of
11 coercion or duress at trial. Rajwant was on notice that the *Vaile* standard was
12 going to apply, yet she failed to present evidence as to coercion or duress.
13 Now, she is making up new arguments in an attempt to confuse the Court and
14 cloud the real issues.

15 As Rajwant never made most of the claims with the district court, the
16 same should be considered waived. Rajwant makes several assertions that are
17 not factually or legally supports—these should be discounted. Rajwant is
18 purposefully not addressing the *Vaile* standard as she clearly and undeniably
19 failed to meet the second prong of proving she signed under duress or due to
20 coercion. Rajwant is putting the cart before the horse and is hoping the Court

1 will not see that she is failing to address the actual issues on appeal that were
2 preserved for appeal.

3 As Rajwant never presented any evidence as to coercion or duress, she
4 cannot show that the district court abused its discretion in denying the Motion
5 to Set Aside.

6 **The Rule 60(b) Arguments**

7 Rajwant asserts that the district court erred as it did not consider that
8 Rule 60(b) could be used to set aside the Decree of Divorce. This assertion is
9 absurd.

10 NRCP 60(b) is the set aside rule. In *Vaile*, the mother moved to set aside
11 the Decree as to it being void, which is the current NRCP 60(b)(4). As the
12 district court applied *Vaile*, it applied NRCP 60(b)(4) for the first part of its
13 argument (the residency issue and the decree being void). However, as to the
14 second prong, judicial estoppel applies under *Vaile*. So, what Rajwant is
15 arguing is that judicial estoppel should not apply—or rather that *Vaile* should be
16 overruled. Rajwant also now wants NRCP 60(b)(6) (any other reason that
17 justifies relief) to give her relief. Rajwant failed to argue these in the district
18 court, so the argument should be deemed waived.

19 Rajwant's argument fails aside from *Vaile* and aside from not being
20 properly raised in the district court, which they were not. The time limit for an

1 action for fraud 3 years. *See* NRS 11.190(3)(d). As stated, Rajwant waited
2 over fourteen years to file her motion to set aside, which is more than a decade
3 over the limitations period. Even if the Rule 60(b)(6) savings clause applied, it
4 is subject to being filed within a reasonable time. Assuming this argument were
5 properly raised in the district court, which it was not, surely waiting over 14
6 years to set aside a decree is unreasonable. To say that waiting 14 years to file
7 to set aside a decree is to wholly vitiate the policy of finality of judgments. *See*
8 *e.g. Bonnell*, 128 Nev. at 401, 282 P.3d at 716.

9 Rajwant makes other arguments, which were not addressed in the district
10 court. Rajwant cites to *Kahn v. Orme*, 108 Nev. 510, 835 P.2d 790 (1992), and
11 says she meets the standard therein. (Opening Brief at 22-26). Rajwant never
12 made these arguments before the district court—same as almost all of her
13 arguments on appeal. The Court should consider these arguments waived.

14 In her last section in the Opening Brief, Rajwant outright calls for the
15 reversal of *Vaile*. As Rajwant failed to even initially cite to *Vaile*, let alone ever
16 argue in the district court that *Vaile* did not apply or that it was bad law, these
17 arguments should be considered waived.

18 As Rajwant failed to raise these claims in the district court, they should
19 be considered waived. Moreover, the claims are time-barred.

20

1 **CONCLUSION**

2 The Court should reverse the district court as to the denial of the request
3 to dismiss the motion as time barred. The Court should reverse the district
4 court as to the denial of attorney’s fees and costs to Jaswinder and remand the
5 matter for a determination of the award of fees to Jaswinder.

6 As to Rajwant’s claims, the Court should deem most of her arguments
7 barred as never argued in the district court. Moreover, the Court should affirm
8 the district court’s denial of the Motion to Set Aside as Rajwant utterly failed to
9 establish the mandatory element that she was coerced into signing the divorce
10 documents.

11 Dated this 18th day of May, 2020

12 /s/ *F. Peter James*

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1 **ROUTING STATEMENT**

2 Pursuant to NRAP 3E(d)(1)(H), Appellant submits the following routing
3 statement:

- 4 • This appeal is not presumptively retained by the Supreme Court pursuant
5 to NRAP 17(a);
- 6 • This appeal is presumptively assigned to the Court of Appeals pursuant
7 to NRAP 17(b)(5) as it is a family law matter not involving termination
8 of parental rights or NRS Chapter 432B proceedings; and
- 9 • Appellant asserts that the matters should be routed to the Court of
10 Appeals as there are no issues that would keep the matter with the
11 Supreme Court.

12 Dated this 18th day of May, 2020

13 /s/ *F. Peter James*

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1 **CERTIFICATE OF COMPLIANCE (Rule 28.2)**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any
4 improper purpose. I further certify that this brief complies with all applicable
5 Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which
6 requires every assertion in the brief regarding matters in the record to be
7 supported by a page reference to the page of the transcript or appendix where
8 the matter relied on is to be found. I understand that I may be subject to
9 sanctions in the event that the accompanying brief is not in conformity with the
10 requirements of the Nevada Rules of Appellate Procedure.

11 Dated this 18th day of May, 2020

12 */s/ F. Peter James*

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1 **CERTIFICATE OF COMPLIANCE (Rule 32)**

2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the
4 type style requirements of NRAP 32(a)(6) because:

5 This brief has been prepared in a proportionally spaced typeface
6 using 14 point Times New Roman in MS Word 2013; or

7 This brief has been prepared in a monospaced typeface using [state
8 name and version of word processing program] with [state number
9 of characters per inch and name of type style].

10 2. I further certify that this brief complies with the page-or type-volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
12 exempted by NRAP 32(a)(7)(C), it is either:

13 Proportionately spaced, has a typeface of 14 points or more and
14 contains 4,847 words (limit is 14,000 words); or

15 Monospaced, has 10.5 or fewer characters per inch, and contains
16 ___ words or ___ lines of text; or

17 Does not exceed 30 pages.

18 Dated this 18th day of May, 2020

19 /s/ *F. Peter James*

20

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1 **CERTIFICATE OF SERVICE**

2 The following are listed on the Master Service List and are served via the
3 Court's electronic filing and service system (eFlex):

4 Racheal H. Mastel, Esq.
5 Co-Counsel for Appellant

6 I certify that on this 18th day of May, 2020, I caused the above and
7 foregoing document to be served by placing same to be deposited for mailing in
8 the United States Mail, in a sealed envelope upon which first class postage was
9 prepaid in Las Vegas, Nevada to the attorney(s) / party(ies) listed below at the
10 address(es) indicated below:

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15 _____
16 An employee of the Law Offices of F. Peter James, Esq., PLLC
17
18
19
20