

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

2  
3 RAJWANT KAUR,

4 Appellant / Cross-Respondent

5 vs.

6 JASWINDER SINGH,

7 Respondent / Cross-Appellant

No.: 80090

Electronically Filed  
Dec 28 2020 09:59 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION FOR REHEARING**

8 Respondent / Cross-Appellant, Jaswinder Singh, by and through his  
9 counsel, F. Peter James, Esq., hereby respectfully requests a rehearing of the  
10 Order entered December 10, 2020 as to the limitations period and related matters.

11 Dated this 28<sup>th</sup> day of December, 2020

*/s/ F. Peter James, Esq.*

12  
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15 702-256-0087  
16 Counsel for Respondent/Cross-Appellant

17 **POINTS AND AUTHORITIES**

18 Respondent / Cross-Appellant, Jaswinder Singh (hereinafter “Jaswinder”),  
19 respectfully requests a rehearing of the Order filed December 10, 2020  
20 (hereinafter the “Order”).

1           Petitions for rehearing are warranted where the Court has overlooked or  
2 misapprehended a material matter and a rehearing would promote substantial  
3 justice. *See* NRAP 40(a)(2); *see also Calloway v. City of Reno*, 114 Nev. 1157,  
4 1158, 971 P.2d 1250 (1998); *see also Matter of Estate of Herrmann*, 100 Nev.  
5 149, 151, 679 P.2d 246, 247 (1984).

6           With all due respect to the Court, Jaswinder asserts that the Court has  
7 overlooked / misapprehended material matters and has misapprehended material  
8 questions of law, specifically as to the timeliness issue of Appellant’s Motion that  
9 reopened the case.

10           **Timeliness**

11           This Petition for Rehearing is timely. Petitions for rehearing must be filed  
12 within eighteen (18) days of the decision being entered. *See* NRAP 40(a)(1). The  
13 decision at issue was entered on December 10, 2020. Eighteen days from that  
14 date is December 28, 2020, which is today. As such, the Petition is timely.

15           **Argument**

16           With all due respect to the Court, the Court misapprehended several key  
17 matters in this appeal—matters upon which the Court based its ruling. The Court  
18 ignored clear Nevada law on the reasonable time period to file a motion claiming  
19 an order is void and as to many purported facts and a procedural history that never  
20 existed. Further, the Court determined that the underlying action is not bound by

1 the six-month limitations for fraud in NRCP 60(b). While this is true, the Court  
2 ignored the statute of limitations on a fraud matter.

### 3 **Void Limitations Period**

4 There were two issues argued as to the set aside request—void and fraud.  
5 (1 AA 41-50).<sup>1</sup> Under Rule 60(b)(4), a claim that a decree is void is not subject  
6 to the six-month limitations period, but is rather subject to a reasonable time  
7 standard.<sup>2</sup> *See* NRCP 60(c)(1). Nevada case law provides that, when seeking to  
8 have a judgment / decree / order declared void, **two years** from the knowledge of  
9 the order is too long to wait and is per se unreasonable. *See Deal v. Baines*, 110  
10 Nev. 509, 512-13, 874 P.2d 775, 777-78 (1994).

11 Rajwant testified in her deposition that she knew she was divorced from  
12 Jaswinder when she married another man (which was very close in time to the  
13 divorce at issue). (Reply Appendix at 19-22). So, that is when the clock began  
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16 <sup>1</sup> Rajwant argued on appeal for the first time that the new NRCP 60(b)(6)  
17 applied. This was not discussed by the Court in its opinion.

18 <sup>2</sup> The Court incorrectly stated that Jaswinder seemingly ignored Rajwant’s  
19 60(b)(4) argument—as to the decree being void. (*See* Order at 5). Jaswinder  
20 specifically and artfully argued this in his Answering / Cross-Opening Brief at  
7:12 – 8:5). In fact, the timeliness issue as to the void issue was the main reason  
Jaswinder file his cross-appeal in the first place.

1 to run for Rajwant—she knew when she signed the divorce papers that she was  
2 divorced.

3 The Court determined that the district court did not abuse its discretion in  
4 permitting Rajwant to file a set aside motion 14.5 years later as that was a  
5 reasonable time to file to set aside the decree. (*See Order at 5*). With all due  
6 respect to the Court, this ruling contradicts clear Nevada law—*Deal v. Baines*.

7 As such, the Court must do one of two things—reverse its ruling and  
8 determine that 14.5 years after knowledge of an order is too long to file to request  
9 a set aside or it must explicitly overrule *Deal v. Baines*. As the present published  
10 decision stands, there is a contradiction in Nevada law.

11 The Court erred in stating that the district court found that Rajwant filed  
12 her motion in a reasonable time. (*See Order at 5*). The district court never made  
13 such a ruling. (1 AA 143-45). The district court did make a ruling as to the fraud  
14 time period, which it said did not begin to run as Nevada was the injured party  
15 and no notice was given to Nevada. (1 AA 144:8-12).

16 The Court also erred in determining that Rajwant moved to set aside the  
17 decree two months after she discovered Jaswinder married another person. (*See*  
18 *Order at 5*). Jaswinder never married someone else—it was never even alleged  
19 that he did. (*See generally AA, Respondent’s Appendix, and Reply Appendix*).  
20 In fact, Rajwant confirmed in her deposition that Jaswinder never remarried.

1 (Reply Appendix at 21:13-15). So, Rajwant could not have filed to set aside the  
2 decree two months after she discovered Jaswinder remarried because Jaswinder  
3 never remarried—never mind that the district court never made any  
4 determination whatsoever as to the timeliness of Rajwant’s motion to set aside.

5 The issue of a paper divorce is also extremely problematic and horrible  
6 public policy. The Court determined that Rajwant believed she had a paper  
7 divorce. (Order at 5). As stated, the district court never made findings or  
8 determinations as to this. In fact, the district court made specific findings that  
9 Rajwant knew she was divorced and that she knew what the divorce papers said.  
10 (Respondent’s Appendix at 11). As such, the Court’s determinations directly  
11 contradict the district court’s explicit findings.

12 As to the paper divorce issue being bad policy, keeping this standard  
13 contradicts long-standing law that everyone is presumed to know the law and that  
14 this presumption is not rebuttable. *See e.g. Smith v. State*, 38 Nev. 477, 151 P.  
15 512, 512 (1915). To state that a party not believing in the legal effect of papers  
16 they sign is cause to effectively nullify the papers is excruciatingly poor public  
17 policy that will open the floodgates. Parties will flood the courts with motion to  
18 set aside decrees and to nullify contracts stating they did not believe they were  
19 really in effect. This should not be Nevada’s public policy.

1 Rajwant knew she was divorced at the time the divorce documents were  
2 signed. She said so herself as she married another man shortly thereafter. (Reply  
3 Appendix at 19-22). The district court made express findings that Rajwant did  
4 know and understand that she was divorced at the time the papers were signed.  
5 (Reply Appendix at 11).

6 The entire underlying factual and procedural bases for the Court's  
7 determination that the timeliness issue as to the void issue is misplaced. As such,  
8 the Court should rehear the matter and determine that Rajwant waiting 14.5 years  
9 to request a set aside was unreasonable and that the same is time barred. With  
10 that, the Court should reverse the Order and affirm the district court's ultimate  
11 decision, albeit for the timeliness issue and not on the merits.

### 12 **Fraud Limitations Period**

13 Under Rule 60(b), fraud has a six-month limitations period. *See* NRCP  
14 60(b)(c)(1). Fraud upon the Court is not subject to the six-month limitation  
15 period in NRCP 60(b). *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 659, 218  
16 P.3d 853, 861-62 (2009). Any action upon a judgment or decree of a Nevada  
17 court must be commenced within 6 years. *See* NRS 11.190(1)(a). This is the  
18 longest limitations period in Nevada for a civil action. Fraud is subject to a three-  
19 year limitations period, but this is from discovery of the fraud. *See* NRS  
20 11.190(3)(d). Filing a motion to set aside and filing an independent action for

1 fraud are now considered the same thing. *See NC-DSH, Inc.*, 125 Nev. at 652-  
2 53, 218 P.3d at 857-58. In a divorce setting, filing to set aside a decree of divorce  
3 due to fraud upon the court is subject not to the six-month limitation in Rule  
4 60(b), but rather the statute of limitations. *See Manville v. Manville*, 79 Nev. 487,  
5 490, 387 P.2d 661, 662 (1963), *superseded by Rule on other grounds as stated in*  
6 *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 218 P.3d 853 (2009).<sup>3</sup>

7 At the longest, the statute of limitations is 6 years. *See* NRS 11.190(1)(a).  
8 Rajwant filed her request to set aside 14.5 years after she knew she was divorced.  
9 (*Compare* 1 AA 8 *with* 1 AA 41). As stated herein (confirmed by both Rajwant  
10 and the district court), Rajwant knew she was divorced at the time she signed the  
11 divorce papers and she understood what they meant.

12 As such, the limitations period for fraud had long expired before Rajwant  
13 filed her motion to set aside. As such, her action should be deemed untimely and  
14 barred.

15 The fraud limitations period argument is an academic discussion as the  
16 Court specifically upheld *Vaile*. (*See* Order at 9 n. 3). *Vaile* specifically provides

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19 <sup>3</sup> *NC-DSH, Inc. v. Garner* specifically confirms this holding in *Manville* as  
20 the Court specifically cited to *Manville* with a parenthetical citation to this exact  
holding. *See* 125 Nev. at 659, 218 P.3d at 861.

1 that the basis to set aside a decree is void where no party lived in Nevada but all  
2 parties said at the time that someone did. *See Vaile v. Eighth Judicial District*  
3 *Court*, 118 Nev. 262, 44 P.3d 506 (2002).

4 Still, under the longest limitations period possible, Rajwant missed her  
5 deadline by 8.5 years. As such, the Court should deem Rajwant's motion  
6 untimely. With that, the Court should reverse the Order and affirm the district  
7 court's ultimate decision, albeit for the timeliness issue and not on the merits.

### 8 CONCLUSION

9 The Court should rehear this matter and reverse the Order. The underlying  
10 facts and procedural history upon which the Court relied are misplaced.  
11 Jaswinder never remarried. The district court found and Rajwant herself  
12 confirmed that she knew and understood she was divorced at the time the divorce  
13 papers were filed. As such, she could not have only waited two months from  
14 knowledge of the divorce to file the motion to set aside—she waited 14.5 years  
15 to do so.

16 The limitations period to file to set aside an order for being void is two  
17 years from the knowledge of the order. As Rajwant knew at the time (2004) that  
18 she was divorced, 2006 was the latest she could file—not 2019. Even with the  
19 longest limitations period under Nevada law (6 years), Rajwant still filed her  
20 motion 8.5 years late.



1 The policy the Court set in this matter of being able to claim lack of  
2 knowledge of the papers a litigant signs and being able to void out the same is  
3 extremely poor public policy.

4 With all due respect to the Court, the reliance on “facts” and procedural  
5 history upon which the Court relief in its determinations as stated herein were  
6 severely misplaced. So many “facts” simply do not exist—and the Court based  
7 its decisions on these “facts”. The same goes for the procedural history as to  
8 what the district court determined—the Court’s determinations contradict what  
9 the district court expressly found.

10 As such, the Court should reverse its Order and should determine that  
11 Rajwant’s motion to set aside was untimely. In that the Court should affirm the  
12 ultimate decision by the district court, albeit for different reasons.

13 Dated this 28<sup>th</sup> day of December, 2020

14 /s/ *F. Peter James, Esq.*

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1 **VERIFICATION**

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

5  This Petition has been prepared in a proportionally spaced typeface  
6 using Times New Roman in 14 point.

7 2. I further certify that this Petition complies with the page- or type-volume  
8 limitations of NRAP 40(b)(3) because it is either:

9  Proportionately spaced, has a typeface of 14 points or more, and  
10 contains 2,109 words (4,667 is the maximum); or

11  Does not exceed 10 pages.

12 Dated this 28<sup>th</sup> day of December, 2020

13 /s/ *F. Peter James, Esq.*

14 

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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 28<sup>th</sup> day of December, 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:

11 Andrew Kynaston, Esq.  
12 3303 Novat Street, Suite 200  
13 Las Vegas, Nevada 89129  
14 Co-Counsel for Appellant

14 By: /s/ *F. Peter James*

15 \_\_\_\_\_  
16 An employee of the Law Offices of F. Peter James, Esq., PLLC  
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18  
19  
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