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

4
5 RAJWANT KAUR,

6 Appellant/Cross-Respondent,

7 vs.

8 JASWINDER SINGH,

9 Respondent/Cross-Appellant.
10

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 80090

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12 **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR**
13 **EN BANC REHEARING**
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ARGUMENT

I. Jaswinder's Petition for *En Banc* Reconsideration Fundamentally Misapprehends the Court's Decision.

Jaswinder would like this Court to believe that a conflict in Nevada Law, related to the timeliness of Rajwant's Motion to Set Aside, and related to the *conflicting testimony* of the parties as to what Rajwant knew and understood, was created by this Court in issuing its decision. That is simply not accurate.

There are no issues with the uniformity of decisions, nor are there public policy issues. In fact, this Court's decision in this matter provides clarification which *increases* the uniformity of decisional case law.

A. Timeliness

Jaswinder would like this Court to believe that the existing case law on actions to have a Decree declared void has been well settled and that "two years," is the outside time limit. Jaswinder's assertion relies on misapprehension of the case law.

Jaswinder cites to *Deal v. Baines*, 110 Nev. 509, 874 P.2d 775 (1994), to support his position that this Court has affirmatively stated that two years from knowledge of an order is too long to wait in requesting to set an Order

1 aside. (*Petition for En Banc Rehearing* Page 3, line 15 - Page 4, line 3).¹ In that
2 case, Baines actually waited five years to file his Motion to Set Aside, however
3 he argued that he had been unaware of the judgment until approximately three
4 years after it was entered. Baines then waited *nearly* two years from when he
5 knew of the judgment to file. The Court specifically noted that during that time,
6 Deal had been engaged in active efforts to collect on the judgment. In its
7 decision, this Court did not issue a rule that there was a two year moratorium on
8 Motions to Set Aside. Rather, the Court stated, "we hold that under the
9 circumstances of *this case*, it was unreasonable to wait nearly two years..." *Id* at
10 778 (emphasis added). The concept of an "unreasonable delay" was further
11 expounded upon in the case of *In the Matter of Harrison Living Trust*, 121 Nev.
12 217, 112 P.3d 1058 (2005). There too, the Court found an unreasonable delay
13 after Teriano waited more than a year after *receiving* the benefits under the
14 probate Order to seek to set it aside. *Id* at 1062.² Ultimately, the consideration in
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23 It should be noted that Jaswinder raised this argument within his answering
24 brief and the Court did not find it dispositive.

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26 It is also worth noting that in *Harrison Living Trust*, with regard to orders
which are void under NRCP 60(b)(4), the Court held that there is no deadline
for seeking to set aside, although the Court may use its discretion in
considering due diligence. *Id* at 1061.

1 both cases was whether the delay had been reasonable, and the Court looked to
2 the knowledge of the parties and what actions had occurred between the time of
3 that knowledge and the time the Set Aside was sought. *See Harrison Living Trust*
4 at 1062; *Deal* at 777 -778. Two years is not, and has never been made, a bright
5 line rule. Nor would such a bright line rule be good public policy. Cases exactly
6 like this one make it clear why such a bright line rule would only cause inequity.
7 Further, even the legislature has recognized that (particularly in cases of fraud),
8 the statute of limitations should only run from the date of actual knowledge. *E.g.*
9 **NRS 11.190(3)(d)**. To construct a bright line rule, one that does not take into
10 account knowledge of the alleged fraud, would be to run afoul of the clear
11 intentions of the legislature, in addition to creating gross inequity and harm to the
12 perception of the integrity of the Courts.

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14 Jaswinder argues to this Court that error was committed because
15 Rajwant clearly knew she was divorced "when she married another man."
16 (*Petition for En Banc Rehearing*, Page 4, lines 4-5). Jaswinder cites to the
17 deposition transcript, which he provided in his Reply Appendix, but which was
18 never utilized during the trial. **AA VIII 0499**. Frankly, Jaswinder elected not to
19 examine Rajwant at all, and therefore left her testimony unchallenged by

1 anything except his own testimony.³ **AA VIII: 0488.** Rajwant's testimony is that
2 she learned of the divorce when she was told by Jaswinder's relatives that he had
3 married someone else. **AA VIII: 0473.** It is well settled that this Court reviews
4 the evidence provided to the Court (not information which a party failed to
5 provide), and will not reweigh evidence. *Yamaha Motor Co., U.S.A., v. Arnoult*,
6 114 Nev. 233, 955 P.2d 661 (1998).
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10 This Court correctly determined that the District Court found that
11 Rajwant's Motion was timely. There is no conflict with *Deal* based on the
12 evidence presented at the time of the trial. Further, although the District Court did
13 not specifically rule that Rajwant's Motion was timely, by virtue of finding that
14 *Vaile* applied, rather than by denying Rajwant's Motion for untimeliness, it is
15 apparent that the District Court determined that Rajwant's Motion was timely.
16 The implication is clear from the decision made by the District Court. "This
17 Court will imply findings of fact and conclusions of law so long as the record is
18 clear and will support the judgment." *Luciano v. Diercks*, 97 Nev. 637, 637 P.2d
19 1219, 1220 (1981).
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26 As this Court noted in its decision, the District Court found Jaswinder to be not
credible. 136 Nev. Ad. Op. 77, Page 6-7 (2020).

1 B. "Paper Divorce."

2 Jaswinder contends that this Court created bad public policy by
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4 finding that Rajwant believed that the divorce was a "paper divorce." But this
5 Court did not find that Rajwant's belief created a legal concept under which any
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7 other party could seek to "nullify" a Decree. Rather, this Court merely found that
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9 Rajwant had testified as to her belief, and that because the District Court found
10 her general testimony to be credible, the District Court's determination that the
11 Motion was timely was not an abuse of discretion. 136 Nev. Ad. Op. 77, Page 5
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13 (2020).

14 This Court's statements do not contradict the findings of the District
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16 Court, because the District Court's determination as to Rajwant's "knowledge"
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18 was in the nature of determining duress and coercion (with relation to the validity
19 of the divorce). The inquiry as to whether Rajwant's "knowledge," was not in
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21 relation to whether or not she had knowledge of the fraud for the purpose of the
22 timeliness of her Motion. **AA VII: 0286** (lines 1 - 18). Further, the District Court
23
24 acknowledged that Rajwant had been told it was "a piece of paper." **AA**
25 **VII:0286.**

1 Nothing in this Court's decision, that Rajwant's knowledge
2 (according to her uncontroverted testimony), provided sufficient basis for the
3 Court's decision that the Motion was timely creates a precedent or presumption
4 (effective or otherwise) that a contract or decree could be nullified by a failure
5 to believe the same was in effect.
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8 Further, Jaswinder's reliance on *Smith v. State*, 38 Nev. 477, 151 P.
9 512 (1915), is misplaced. At best, *Smith* provides an argument that the public
10 (which should be presumed to be the public bound by the statutes) should be
11 attributed constructive knowledge that six weeks residence is required for a
12 divorce, and that a Decree of Divorce, is the final document which dissolves a
13 marriage and addresses the property of the parties.⁴
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16 However, although the entry of a Decree destroys the contractual
17 nature of the parties agreement (and therefore impacts *how* a settlement
18 agreement is enforced), in that contract considerations do not apply to
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22 ⁴ Arguably, because marriage and divorce laws vary, sometimes
23 dramatically, from state to state, it is illogical to presume constructive
24 knowledge to "outsiders." This is not a case with a corporation or persons
25 who had even long arm connections to the state itself prior to appearing to
26 sign the Joint Petition, where constructive knowledge could have been
presumed in advance of the signing itself. Therefore the presumption of
constructive knowledge as to the implication of the decree as it relates to the
state of mind and ability to contract, would be inequitable in this case.

1 consideration of a set aside or modification, contract formation principles are still
2 appropriate to determine *if* there was an actual agreement underpinning the
3 Decree. *See e.g. Day v. Day*, 80 Nev. 386, 390, 395 P.2d 321, 323 (1964),
4 *Hildahl v. Hildahl*, 95 Nev. 657, 663, 601 P.2d 58, 62 (1979), *Renshaw v.*
5 *Renshaw*, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980), *Mack v. Estate of*
6 *Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). As a settlement agreement is
7 a contract, "[b]asic contract principles require, for an enforceable contract, an
8 offer and acceptance, meeting of the minds, and consideration." *May v.*
9 *Anderson*, 119 P.3d 1254, 121 Nev. 668 (Nev. 2005). Rajwant's belief as to the
10 viability of the "contract," is relevant therefore (although not dispositive), as to
11 its existence. Such is simply basic contract law, about which the district court
12 has substantial discretion. *Id* (stating that the question of whether a contract
13 exists is one of fact, and the Court defers to the district court's findings unless
14 they are clearly erroneous or not based on substantial evidence).
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1 *Smith* is not applicable to the this Court's determination that
2 Rajwant's belief was appropriate evidence as to the timeliness of the Motion, or
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4 frankly, as to the validity of the Decree.⁵

5 This Court's decision that the district court found that Rajwant's
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7 Motion was timely, and that the Court did not abuse its discretion in doing so,
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9 was appropriate. It is not in conflict with Nevada law, as Jaswinder's reliance on
10 *Deal* and *Smith* are misplaced, and his argument misapprehends this Court's
11 decision.

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13 C. Statute of Limitations

14 Jaswinder's claim that NRS 11.190(3)(d), barred Rajwant's Motion
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16 more than eight years prior to its filing is inaccurate. There is no conflict within
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18 the law. Jaswinder relies on *Manville v. Manville*, 79 Nev. 487, 387 P.2d 661
19 (1963). He attempts to claim that the *Manville* case is directly on point for this
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21 matter, and that *NC-DSH, Inc., v. Garner*, 218 P.3d 853 (Nev. 2009), affirmed

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23 ⁵

24 This Court's holding was that the Court should determine whether or not
25 judicial estoppel should apply *prior* to considering duress or coercion. It is
26 therefore possible, should the district court, on remand determine that judicial
estoppel is *not* applicable, that the Court will need to consider the validity of
the parties' underlying agreement, although it is likely that will be a
consideration for the California Court, rather than the Nevada Court.

1 that portion of *Manville* which is allegedly on point. Jaswinder's reliance is
2 misplaced.

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4 The *Manville* case predates the last *two* versions of NRCP 60(b). It
5 specifically identifies and addresses two separate kinds of fraud - intrinsic and
6 extrinsic.⁶ The Court therein recognized extrinsic fraud as fraud on the Court in
7 that matter. The Court did find that appellant waited too long (past the statute of
8 limitations) to file her Motion. *However*, in that case, the application of the
9 Statute of Limitations was specifically tied to the appellant's *knowledge* of the
10 fraud as well as her receipt of benefits under the fraudulent Decree. *Manville*, 387
11 P.2d at 662.

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16 Further, Nevada case law has *not* created an outer limit for seeking
17 relief pursuant to Fraud on the Court .⁷ In fact, Nevada law has been consistent
18 and the opinion in this case is consistent with long standing Nevada law. *NC-*
19 *DSH*, 218 P.3d at 861-862; *see also*, *Howard v. Howard*, 69 Nev. 12, 23, 239

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22 ⁶
23 It is on this point that the later revisions of NRCP 60(b) supercede the rule as
24 applied in *Manville*.

25 ⁷
26 The holding of *Manville* affirmed by the Court in *NC-DSH*, was in support of
the holding that "due diligence" is required. *NC-DSH*, 218 P.3d at 861; and is
set forth with the acknowledgment that Nevada law has no time limitation for
seeking relief for Fraud on the Court. *Id* at 861-862.

1 P.2d 584, 589 (1952). This Court should note that the Court in *Howard*,
2 specifically noted:

3
4 It is not necessary for us to determine whether or not
5 the court, in order to purge its record of the fraud,
6 might not have had the authority so to do despite the
7 fact that Louise's action was barred by the statute. In
8 *Smith v. Smith*, 68 Nev. ----, 226 P.2d 279, we
9 approved the action of the same district court in
10 purging its record of an order, fraudulently obtained,
11 setting aside a prior divorce decree, although the
12 matter was brought to the court's attention by
13 complaint of a plaintiff whose actions were likewise
14 tainted with fraud.

15 69 Nev. at 23.

16 In this matter, Judge Pomerence found that the injured party was the
17 State of Nevada. AA VI: 150; VIII:0500. This finding is in line with Nevada law
18 and further indicates that the statute of limitations should run from the state's
19 discovery - even if the District Court determined that Rajwant had earlier
20 knowledge.
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23 That said, NRS 11.190(1) is inapplicable to a Motion to Set Aside
24 for fraud. NRS 11.190(1) applies to "action[s] upon a judgment..." and "action[s]
25 upon a contract..." Nevada law makes it clear that, as used in the statute, such
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1 actions are those which start from the basis of the judgment or contract, e.g., for
2 enforcement or damages related to breach. *See Davidson v. Davidson*, 132 Nev.
3 Ad. Op. 71, 382 P.3d 880 (2016); *Schwartz v. Wasserburger*, 117 Nev. 703, 30
4 P.3d 1114 (2001); *McClandon v. Eighth Judicial Dist. Court of Nev.*, Docket No.
5 66949 (Order Denying Petition for Writ of Mandamus November 29, 2016)
6 (civil judgments are only *enforceable* for a period of six years pursuant to NRS
7 11.190(1)). *Compare with*, NRS 11.190(2)-(5).

11 There is no conflict between NRS 11.190, Nevada case law, and the
12 decision in this matter. NRS 11.190(3)(d) runs from the discovery of the fraud.
13 Nevada law has indicated that for the purposes of fraud on the court, the
14 discovery of that fraud should run from when the Court discovers it. However,
15 even if it runs from when Rajwant discovered it, the credible testimony supports
16 the Court's determination that the motion was timely. NRS 11.190(1) is
17 inapplicable, because the issue is not a action based *upon* the judgment (or
18 contract), but rather as to the actual validity of the judgment itself.

23 It is unclear what Jaswinder is alleging on Page 8, line 14 - Page 9,
24 line 2 of his *Petition for En Banc Rehearing*, but to the extent that he is
25 attempting to claim that *Vaile v. Eighth Judicial Dist. Ct.*, 118 Nev. 262, 44 P.3d
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1 506 (2002), determines that there is no valid basis to set aside a Decree where the
2 parties fraudulently alleged residency, that is neither the holding of *Vaile*, nor a
3 holding that would be in line with Nevada case law.
4

5 **CONCLUSION**

6
7 There is no conflict within the law. This Court did not ignore the
8 law, nor did it misrepresent the findings of the District Court. There is no reason
9 for rehearing this matter. Jaswinder's belief as to the "outer limit" of two years
10 for Setting Aside an Order relies on a fundamental misreading of the case law.
11 His reliance on NRS 11.190(1) relies on a fundamental misunderstanding of the
12 statute. His reliance on NRS 11.190(3)(d) relies on a misunderstanding of the
13 decision issued in this case - as does his "factual" arguments regarding the basis
14 for this Court's decision.
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16
17 This Court's decision properly and accurately takes note of the
18 Findings and Orders of the District Court, and the decision does not conflict with
19 any existing Nevada law. In fact, as this Court noted in its decision, clarification
20 of *Vaile* was needed to ensure that the District Court properly read it in line with
21 well settled Nevada Law on judicial estoppel.
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This Court should affirm its prior decision on this matter.


By: _____
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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this Answer to the Petition for *En*
3
4 *Banc* Rehearing complies with the formatting requirements of NRAP 32(a)(4),
5
6 the typeface requirements of NRAP 32(a)(5) and the type style requirements of
7
8 NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced
9
10 typeface using Word Perfect X9 in 14-point Times New Roman style;

11 2. I further certify that this brief complies with the page- or type-volume
12
13 limitations of NRAP 40 or 40A because it is proportionately spaced, has a
14
15 typeface of 14 points or more, and contains 2,701 words;

16 Dated this 22 day of February, 2021.

17 By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2021, I caused to be served the *Appellant's Answer to Respondent's Petition for En Banc Rehearing* 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:

___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Peter F. James


An Employee of
KAINEN LAW GROUP, PLLC