

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

2
3 JASWINDER SINGH,

4 Appellant,

5 vs.

6 RAJWANT KAUR,

7 Respondent.

No.: 83613

APPELLANT'S APPENDIX
Volume 4

Electronically Filed
Feb 15 2022 08:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

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10 Counsel for Plaintiff

11 **DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 JASWINDER SINGH,
14
15 Plaintiff,

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

16 vs.

17 **FINDINGS OF FACT,**
18 **CONCLUSIONS OF LAW, AND**
19 **ORDER**

20 RAJWANT KAUR,
21
22 Defendant.

23 This matter came before the Court on the 12th of September, 2019 and the
24 13th of September, 2019 for an Evidentiary Hearing on Defendant's Motion to
25 Set Aside Decree of Divorce, which was filed on January 7, 2019, and on
26 Plaintiff's Opposition thereto filed January 23, 2019. Also being heard was
27 Plaintiff's Motion in Limine, which was filed August 30, 2019, and on
28 Defendant's Opposition and Countermotion thereto, which was filed on
29 September 6, 2019. F. Peter James, Esq. appeared with Plaintiff, Jaswinder

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
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Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
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☐ By ADR
Trial Dispositions:
☐ Trial by Trial
☒ Judgment Reached by Trial

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OCT 18 2019

FAMILY COURT
DEPARTMENT P

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

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6 discussion regarding the relative issues for this hearing. Testimony and exhibit
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15 relief filed in the Nevada Supreme Court) in chambers and it conferred with the
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3 Defendant testified. Mr. Kynaston finished his examination and passed
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7 “pull a scam and get away with it” but it was Nevada law.

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

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

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

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

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

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

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

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

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

9 Therefore,

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

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

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

16 ///

17 ///

18 ///

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

4 **IT IS SO ORDERED.**

5 Dated this 21 day of October, 2019.

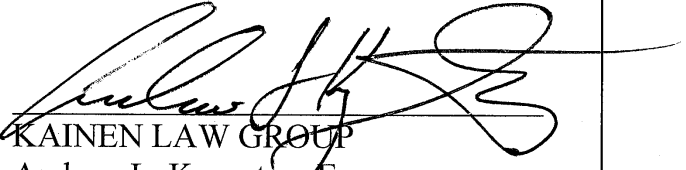


DISTRICT COURT JUDGE


SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:



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12 Las Vegas, Nevada 89102	Las Vegas, Nevada 89129
702-256-0087	702-823-4900
13 Counsel for Plaintiff	Counsel for Defendant



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9 702-256-0145 (fax)
10 Counsel for Plaintiff

11 **DISTRICT COURT, FAMILY DIVISION**
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13 JASWINDER SINGH,
14
15 Plaintiff,

16 vs.

17 RAJWANT KAUR,
18
19 Defendant.

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

20 **NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND ORDER**

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1 Please take notice that the attached Findings of Fact, Conclusions of Law,
2 and Order was entered on October 22, 2019.

3 Dated this 22 day of October 2019

4 

5 LAW OFFICES OF F. PETER JAMES

6 F. Peter James, Esq.

7 Nevada Bar No. 10091

8 3821 W. Charleston Blvd., Suite 250

9 Las Vegas, Nevada 89102

10 702-256-0087

11 Counsel for Plaintiff

12

13

14

15

16

17

18

19

20

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 22 day of October, 2019, I caused the above and
3 foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT,**
4 **CONCLUSIONS OF LAW, AND ORDER** to be served as follows:


5 ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D)
6 and Administrative Order 14-2 captioned "In the Administrative
7 Matter of Mandatory Electronic Service in the Eighth Judicial
8 District Court," by mandatory electronic service through the
9 Eighth Judicial District Court's electronic filing system;

8 [] by placing same to be deposited for mailing in the United States
9 Mail, in a sealed envelope upon which first class postage was
10 prepaid in Las Vegas, Nevada;

10 [] pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile /
11 email;

12 to the attorney(s) / party(ies) listed below at the address(es), email address(es),
13 and/or facsimile number(s) indicated below:

14 Andrew L. Kynaston, Esq.
15 Kainen Law Group
16 3303 Novat Street, Suite 200
17 Las Vegas, Nevada 89129
18 702-823-4488 (fax)
19 Service@KainenLawGroup.com
20 Counsel for Defendant

18 By: 
19 An employee of the Law Offices of F. Peter James, Esq., PLLC
20

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CLERK OF THE COURT

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6 **Las Vegas, Nevada 89102**
7 **Peter@PeterJamesLaw.com**
8 **702-256-0087**
9 **702-256-0145 (fax)**
10 **Counsel for Plaintiff**

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9 Therefore,

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

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

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

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

4 **IT IS SO ORDERED.**

5 Dated this 21 day of October, 2019.



DISTRICT COURT JUDGE

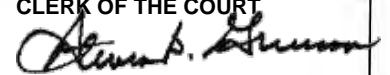
SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:



10 LAW OFFICES OF F. PETER JAMES	KAINEN LAW GROUP
11 F. Peter James, Esq.	Andrew L. Kynaston, Esq.
12 Nevada Bar No. 10091	Nevada Bar No. 8147
3821 W. Charleston Blvd., Suite 250	3303 Novat Street, Suite 200
12 Las Vegas, Nevada 89102	Las Vegas, Nevada 89129
702-256-0087	702-823-4900
13 Counsel for Plaintiff	Counsel for Defendant



1 **NTC**
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3 Nevada Bar No. 8147
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6 Las Vegas, Nevada 89129
7 Telephone: (702) 823-4900
8 Facsimile: (702) 823-4488
9 service@KainenLawGroup.com
10 Attorneys for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 JASWINDER SINGH,
10

11 Plaintiff,

CASE NO: 04D323977
DEPT NO: P

12 vs.

13 RAJWANT KAUR,
14

15 Defendant.
16

17 **NOTICE OF APPEAL**

18 Notice is hereby given that Defendant, RAJWANT KAUR, appeals to the
19 Nevada Supreme Court from the Findings of Fact, Conclusions of Law, and Order, filed
20 on October 22, 2019 (Notice of Entry of Findings of Fact, Conclusions of Law, and Order
21 was also filed on October 22, 2019) copy of which is attached hereto as **Exhibit "A"**.

22 Dated this 18 day of November, 2019.

23 KAINEN LAW GROUP, PLLC

24 By: 

25 RACHEAL H. MASTEL, ESQ.

26 Nevada Bar No. 11646

27 ANDREW L. KYNASTON, ESQ.

28 Nevada Bar No. 8147

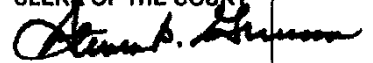
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Attorney for Defendant

KAINEN LAW GROUP, PLLC
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EXHIBIT “A”



E-SERVED
OCT 22 2019

1 **NEOJ**
2 LAW OFFICES OF F. PETER JAMES, ESQ.
3 F. Peter James, Esq.
4 Nevada Bar No. 10091
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10 Counsel for Plaintiff

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

11 JASWINDER SINGH,
12 Plaintiff,
13

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

14 vs.

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

15 RAJWANT KAUR,
16 Defendant.
17
18
19
20

///

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///

///


///

///

///

1 Please take notice that the attached Findings of Fact, Conclusions of Law,
2 and Order was entered on October 22, 2019.

3 Dated this 22 day of October 2019

4 

5 LAW OFFICES OF F. PETER JAMES

6 F. Peter James, Esq.

7 Nevada Bar No. 10091

8 3821 W. Charleston Blvd., Suite 250

9 Las Vegas, Nevada 89102

10 702-256-0087

11 Counsel for Plaintiff

12
13
14
15
16
17
18
19
20

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 22 day of October, 2019, I caused the above and
3 foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT,**
4 **CONCLUSIONS OF LAW, AND ORDER** to be served as follows:

5 ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D)
6 and Administrative Order 14-2 captioned "In the Administrative
7 Matter of Mandatory Electronic Service in the Eighth Judicial
8 District Court," by mandatory electronic service through the
9 Eighth Judicial District Court's electronic filing system;

8 ☐ by placing same to be deposited for mailing in the United States
9 Mail, in a sealed envelope upon which first class postage was
10 prepaid in Las Vegas, Nevada;

10 ☐ pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile /
11 email;

12 to the attorney(s) / party(ies) listed below at the address(es), email address(es),
13 and/or facsimile number(s) indicated below:

14 Andrew L. Kynaston, Esq.
15 Kainen Law Group
16 3303 Novat Street, Suite 200
17 Las Vegas, Nevada 89129
18 702-823-4488 (fax)
19 Service@KainenLawGroup.com
20 Counsel for Defendant

18
19 By:



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

ORIGINAL

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

Steven D. Grierson

1 **FFCL**
2 LAW OFFICES OF F. PETER JAMES, ESQ.
3 F. Peter James, Esq.
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9 702-256-0145 (fax)
10 Counsel for Plaintiff

11 **DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 JASWINDER SINGH,
14
15 Plaintiff,

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

16 vs.

17 **FINDINGS OF FACT,**
18 **CONCLUSIONS OF LAW, AND**
19 **ORDER**

20 RAJWANT KAUR,
21
22 Defendant.

23 This matter came before the Court on the 12th of September, 2019 and the
24 13th of September, 2019 for an Evidentiary Hearing on Defendant's Motion to
25 Set Aside Decree of Divorce, which was filed on January 7, 2019, and on
26 Plaintiff's Opposition thereto filed January 23, 2019. Also being heard was
27 Plaintiff's Motion in Limine, which was filed August 30, 2019, and on
28 Defendant's Opposition and Countermotion thereto, which was filed on
29 September 6, 2019. F. Peter James, Esq. appeared with Plaintiff, Jaswinder

RECEIVED

OCT 18 2019

FAMILY COURT
DEPARTMENT P

Not-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
Trial Dispositions:
☒ Judgment Rendered by Trial/J
☐ Judgment Rendered by Trial/J

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

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

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

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

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

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

20

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

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

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

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

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

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

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

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

9 Therefore,

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

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

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

16 ///

17 ///

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19 ///

20 ///

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


4 **IT IS SO ORDERED.**

5 Dated this 21 day of October, 2019.

6
7 
DISTRICT COURT JUDGE
SANDRA L. POMRENZE

8 Respectfully submitted by:

Approved as to form and content by:

9 
10 LAW OFFICES OF F. PETER JAMES KAINEN LAW GROUP
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Las Vegas, Nevada 89102 Las Vegas, Nevada 89129
702-256-0087 702-823-4900
13 Counsel for Plaintiff Counsel for Defendant



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7 Peter@PeterJamesLaw.com
8 702-256-0087
9 702-256-0145 (fax)
10 Counsel for Plaintiff

11 **DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 JASWINDER SINGH,
14
15 Plaintiff,

16 vs.

17 RAJWANT KAUR,
18
19 Defendant.

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

NOTICE OF CROSS APPEAL

20 Notice is hereby given that Plaintiff, Jaswinder Singh, hereby appeals to
the Supreme Court of Nevada from the Order entered on March 14, 2019 and

///

///

///

///

///

1 from the Findings of Fact, Conclusions of Law, and Order entered October 22,
2 2019.

3 Dated this 29th day of November, 2019

4 /s/ *F. Peter James*

5 LAW OFFICES OF F. PETER JAMES
6 F. Peter James, Esq.
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9 Las Vegas, Nevada 89102
10 702-256-0087
11 Counsel for Plaintiff
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CERTIFICATE OF SERVICE

I certify that on this 29th day of November, 2019, I caused the above and foregoing document entitled **NOTICE OF CROSS APPEAL** to be served as follows:

- ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile / email;

to the attorney(s) / party(ies) listed below at the address(es), email address(es), and/or facsimile number(s) indicated below:

Andrew L. Kynaston, Esq.
Kainen Law Group
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702-823-4488 (fax)
Service@KainenLawGroup.com
Counsel for Defendant

By: /s/ *F. Peter James*

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAJWANT KAUR,
Appellant/Cross-Respondent,
vs.
JASWINDER SINGH,
Respondent/Cross-Appellant..

Supreme Court No. 80090
District Court Case No. D323977

FILED

MAY 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

cc (without enclosures):

Sandra L. Pomrenze
Kainen Law Group
Law Offices of F. Peter James, Esq. \ F. Peter James

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 13 2021

[Signature]
Deputy District Court Clerk

RECEIVED
APPEALS
APR 13 2021
CLERK OF THE COURT



21-10365

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAJWANT KAUR,
Appellant/Cross-Respondent,
vs.
JASWINDER SINGH,
Respondent/Cross-Appellant..

Supreme Court No. 80090
District Court Case No. D323977

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Reversed and remanded."

Judgment, as quoted above, entered this 10 day of December, 2020.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 13 day of January, 2021.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the petition DENIED."

Judgment, as quoted above, entered this 18 day of March, 2021.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
April 12, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

FILED

DEC 21 2021

Debra D. Robinson
CLERK OF COURT

1 **TRANS**

2
3 **COPY**

4
5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **FAMILY DIVISION**

7 **CLARK COUNTY, NEVADA**

8
9 JASWINDER SINGH,)

10 Plaintiff,)

CASE NO. D-04-D323977

11 vs.)

DEPT. X

12 RAJWANT KAUR,)

APPEAL NO. 83613,80090

13 Defendant.)
14

15
16 BEFORE THE HONORABLE HEIDI ALMASE
17 DISTRICT COURT JUDGE

18 TRANSCRIPT RE: STATUS CHECK

19
20 MONDAY, MAY 10, 2021

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APPEARANCES:

(Participants appear virtually)

The Plaintiff:	JASWINDER SINGH
For the Plaintiff:	F. PETER JAMES, ESQ.
	3821 W. Charleston Blvd.,
	#250
	Las Vegas, Nevada 89102
	(702) 256-0087
 The Defendant:	 RAJWANT KAUR
For the Defendant:	ANDREW KYNASTON, ESQ.
	3303 Novat St., #200
	Las Vegas, Nevada 89129
	(702) 823-4900

1 LAS VEGAS, NEVADA

MONDAY, MAY 10, 2021

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 9:24:37)

4
5 THE COURT: Good morning. We're on the record in
6 the matter of Singh v. Kaur -- excuse me -- 04 D like David
7 323977. We are here on status check on the Nevada Supreme
8 Court's reversal and remand. For the parties, my name is
9 Judge Heidi Almase. This matter was reassigned to me on
10 January 4, 2021. May I have appearances, please, starting
11 with Plaintiff Singh?

12 MR. JAMES: Good morning, Your Honor. Peter James
13 10091, here with Jaswinder Singh.

14 THE COURT: Good morning, Mr. James.

15 MR. JAMES: Good morning.

16 THE COURT: For --

17 MR. KYNASTON: Good morning, Your Honor. Andrew
18 Kynaston. My bar number is 8147. Also present is my client,
19 Rajwant Kaur, who's appearing via BlueJeans.

20 THE COURT: Okay. For the purposes of this matter,
21 it having been a joint petition, Plaintiff shall be Singh, and
22 Defendant shall be Kaur. Folks, I have before me the reversal
23 and remand from the Nevada Supreme Court. It looks like we
24 need to come back and have an evidentiary hearing. Is that

1 everybody's understanding? Mr. James?

2 MR. JAMES: Yes, Your Honor. But it's my
3 anticipation is it won't be much of an evidentiary hearing.
4 We've already had testimony on many of these issues, and the
5 -- Judge Pomrenze had already made specific findings of fact
6 which were not disturbed on appeal. It was more of a
7 procedural thing saying we didn't go through all the hoops
8 that they intended by the Vaile case. So -- but I agree, yes,
9 I do think we have to have some evidence taken.

10 THE COURT: Okay. Mr. Kynaston, what's your
11 position?

12 MR. KYNASTON: Well, Your Honor, I briefed Mr. James
13 that obviously some of the evidence that's already been taken
14 I think is relevant to the issues. Obviously, from the
15 Supreme Court's decision, their -- their focus is that we
16 needed to look at the -- you know, the five judicial estoppel
17 factors. I think that some of the evidence taken already goes
18 to those points, but I think it probably does make sense to
19 have to, you know, take some additional evidence in --
20 strictly in relation to those factors, so the Court can make a
21 determination as to whether this decree should be declared
22 void.

23 And obviously, the -- the Vaile case said, you know,
24 the Supreme Court clarified that and made it clear that --

1 that that wasn't definitive, and -- and that was the reason
2 why Judge Pomrenze made the -- the decision she had. So I
3 think that that probably does make sense to -- I'm hoping
4 maybe just a half day or something like that, where we can
5 take a little bit of additional testimony, you know, in light
6 of the findings that were made previously.

7 THE COURT: Mr. James, half day sound appropriate?

8 MR. JAMES: Oh, yes, Your Honor. The -- I can't
9 imagine it even taking up a full half day with this.

10 THE COURT: All right. And so the parties are --
11 are -- I'll review the evidentiary hearing non-jury trial that
12 Judge Pomrenze did before we have our half day. I did read
13 through the Nevada Supreme Court's decision regarding Vaile
14 and coercion and duress, whatnot. So let me see what I can
15 find you for a half day. We might have to dig into our
16 reserve.

17 (COURT AND CLERK CONFER BRIEFLY)

18 THE COURT: Okay. I have Friday, August 13th.
19 Counsels, I can do 9:00 a.m. or I can do 1:00 in the
20 afternoon. Are both of you available on that date? Let's
21 start with that.

22 MR. JAMES: I'm free both times, Your Honor.

23 THE COURT: Mr. Kynaston?

24 MR. KYNASTON: I'm looking at my calendar. It looks

1 like I -- I can be -- I can be available either morning or
2 afternoon that day, as well.

3 THE COURT: All right. So let's do August 13th at
4 9:00 a.m., August 13th at 9:00 a.m. Folks, I am hereby making
5 a finding that in order to adhere to my constitutional duty to
6 set it, the Nevada Revised Statutes and the Nevada Revised
7 Cannons of Judicial Conduct that trial in this matter shall be
8 held in person. I find that this is a critical proceeding,
9 and that -- that in order for me to take evidence and make a
10 decision, parties need to be present. Do I have any objection
11 from Mr. James's office?

12 MR. JAMES: No, Your Honor.

13 THE COURT: Any from Mr. Kynaston?

14 MR. KYNASTON: No, Your Honor. I think that makes
15 sense. And I guess one thing to maybe have the Court
16 consider, as well, is when we did the prior evidentiary
17 hearing, we had a -- an interpreter present. I don't know if
18 with the language being Punjabi, there's probably not a -- a
19 large number of those interpreters that -- frankly, the
20 Interpreter that was used previously, he was -- he was okay.
21 I -- I don't know if Mr. James has an opinion about it, but it
22 was -- I know it was difficult for Judge Pomrenze because he
23 -- he -- he was a little bit unorthodox in his method.

24 So I don't know if maybe Mr. James and I can talk

1 and see if we can find a better interpreter. I think we're
2 okay probably using one person, considering the nature of the
3 language, but I guess I just want to put that on the Court's
4 radar.

5 THE COURT: Are both -- do both parties require a --
6 an interpreter?

7 MR. KYNASTON: I believe they do, Your Honor.

8 THE COURT: All right.

9 MR. JAMES: Mine does, Your Honor.

10 THE COURT: All right. So here's -- here's my
11 experience with bench trials, and -- when we have both parties
12 needing interpreters, we have to have two. A single
13 interpreter tends to get worn out. It will be easier because
14 we're in the courtroom. So I'm fine with Counsel working
15 together with the understanding that from my perspective, we
16 must have two at the -- the trial date, just to keep them from
17 getting worn out. And obviously, they should be certified
18 court interpreters, but to the extent that we've had some
19 issues with that, I do have leave, if we're in a shortage, to
20 do a canvass. But I would prefer court certified
21 interpreters.

22 MR. JAMES: Understood, Your Honor. And I think
23 that was the issue, is I think there's only one on the list
24 that does Punjabi Indian. There's plenty that -- that do

1 Hindu, but not Punjabi.

2 THE COURT: Okay. When I was down in Muni,
3 sometimes we had Amharic, which was kind of an unusual one.
4 We would sometimes reach out to the federal courts for their
5 certified interpreter when we ran into a shortage. Sometimes
6 it's helpful, sometimes not.

7 MR. JAMES: Okay.

8 THE COURT: But if there are any issues, if
9 Mr. James or Mr. Kynaston would contact chambers ahead of time
10 and let us know -- if it's one of you, make sure the other's
11 included, just so we have a heads up, and if there's anything
12 we can do to assist, we'll certainly try to do so.

13 MR. KYNASTON: All right.

14 THE COURT: Okay?

15 MR. KYNASTON: Thank you, Your Honor.

16 THE COURT: All right.

17 MR. JAMES: Thank you, Your Honor.

18 THE COURT: I don't think we need an order from
19 today. I'll get a -- a trial management order out that it's
20 kind of a continuation, and that we're scheduled for August
21 13, 9:00 a.m., in person. Okay?

22 MR. KYNASTON: All right. Thank you.

23 THE COURT: Thank you both.

24 MR. JAMES: Thank you, Your Honor.

1 THE COURT: Take care.
2 (COURT RECESSED AT 9:31:44 AND RESUMED AT 10:45:48)
3 THE COURT: We're back on the record in the matter
4 of Singh v. Kaur, 04-D-323977. The half day evidentiary
5 hearing was set in error. The matter will be set for half day
6 evidence -- continued evidentiary hearing on August 16th.
7 (COURT AND CLERK CONFER BRIEFLY)
8 THE COURT: August 16th at 1:30. Chambers will
9 notify Mr. James and Mr. Kynaston of the correct date for the
10 hearing, and a trial management order will issue.
11 (PROCEEDINGS CONCLUDED AT 10:46:26)
12
13
14 * * * * *
15 ATTEST: I do hereby certify that I have truly and
16 correctly transcribed the digital proceedings in the
17 above-entitled case to the best of my ability.
18
19
20 /s/ Nita Painter
Nita Painter
21
22
23
24

1 **OSEH**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 *****

7
8 IN THE MATTER OF THE JOINT
9 PETITION FOR DIVORCE OF:
10 JASWINDER SINGH AND RAJWANT
11 KAUR

CASE NO: 04D323977
DEPARTMENT X

12 **ORDER SETTING EVIDENTIARY HEARING**

13
14 **TRIAL DATE: AUGUST 16, 2021**
15 **TRIAL TIME: 1:30PM**
16 **PRE-TRIAL MEMO DUE: AUGUST 09, 2021**

17 **TO COUNSEL AND LITIGANTS IN PROPER PERSON:**

18 **IT IS HEREBY ORDERED** that the above-entitled case is set for an Evidentiary
19 Hearing in Department X beginning on **August 16, 2021 at the hour of 1:30 PM** for a period
20 of three (3) hours, in person, at the Regional Justice Center, 200 Lewis Avenue, Las Vegas,
21 NV.

22
23 **IT IS FURTHER ORDERED** that Exhibits are *not* filed and must be submitted
24 electronically pursuant to Administrative Order 20-10. See attached directions and form.
25 Exhibits must be submitted no later than **August 09, 2021**. Four (4) sets of hard-copy exhibits
26 must also be submitted prior to the hearing. This includes one set for the Court, one set for the
27 witness stand, one set for opposing counsel/party, and one set for the party's own use.

28 **IT IS FURTHER ORDERED** that Discovery shall be completed no later than **July**
16, 2021.

1 **IT IS FURTHER ORDERED** that the Pre-Trial Memorandum shall comply with
2 the attached form and be filed on or before **August 09, 2021**, and served on opposing counsel
3 or proper person litigant the same day.

4 **IT IS FURTHER ORDERED** that no continuances will be granted to either party
5 unless written application is made to the Court, served upon opposing counsel or proper
6 person litigant, and a hearing held at least three (3) days prior to the time of trial. *If this matter*
7 *settles, please advise the Court as soon as possible.*
8

9
10 DATED this 15th day of June, 2021

11
12 By: 

13 Heidi Almase
14 DISTRICT COURT JUDGE
15 Department X
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CERTIFICATE OF SERVICE

I hereby certify that I caused on the above file stamped date, a copy of the attached **Order Setting Evidentiary Hearing** to be e-served pursuant to NEFCR 9, and/or mailed postage prepaid to the following person or persons at their last known address:

Peter James
peter@peterjameslaw.com

Andrew Kynaston
Service@KainenLawGroup.com

By: /s/ Natalie Castro
Natalie Castro
Judicial Executive Assistant
Department X

DIRECTIONS FOR COMPLETING EXHIBIT LIST

****EXHIBITS ARE NOT FILED****

****FOR EVIDENTIARY HEARINGS AND TRIALS****

Please contact the Clerk's office at FCEvidence@clarkcountycourts.us to receive a link to download your Exhibits.

On the following form put either Plaintiff or Defendant on the line before the word EXHIBITS. Put your case number in the appropriate space.

If you are the Plaintiff, all of your exhibits will be identified by NUMBERS.
(Example: Exhibit 1, Exhibit 2, etc.)

If you are the Defendant, all of your exhibits will be identified by LETTERS OF THE ALPHABET. (Example: Exhibit A, Exhibit B, etc.)

You must identify each section of your exhibits and mark them with a divider which identifies the exhibit. Exhibits are not to be bunched together in one group of papers and are to be numbered in the lower right corner.

Example: Exhibit 1 or Exhibit A

3 pages of bank statements would be tabbed with the appropriate number or letter and submitted together.

2 pages of employment information would be tabbed with the appropriate number or letter and submitted together.

Exhibits must be downloaded and submitted to the opposing party by the Discovery cut-off date.

[illegible]

PRE-TRIAL MEMORANDUM

I.

STATEMENT OF ESSENTIAL FACTS

- Names and ages of the parties.
- Date of Marriage.
- Resolved issues, including agreed resolution.
- Statement of unresolved issues.

II.

CHILD CUSTODY

- Names, birth dates, and ages of the children.
- Statement of provisions setting forth your requested custody and visitation order. If some issues of legal and/or physical custody are resolved, note the resolution and define the disputed areas. Specific suggested order provisions are requested.

III.

CHILD SUPPORT

- Prepare and attach an Affidavit of Financial Condition/Financial Disclosure Form. If one has been previously prepared, an updated and current form is required only if there are changes to prior affidavits. However, the most current affidavit is required to be attached.
- Set forth with specificity the amount of support requested to be paid and a brief statement of any special factors which you believe impact the amount of support to be paid.

IV.

SPOUSAL SUPPORT

- State whether spousal support is requested and if so, whether the support requested is permanent or rehabilitative.
- If spousal support is requested, state the amount of support requested and if rehabilitative, the duration for which support is requested.
- Set forth the factors, in brief, that you request the Court to consider in establishing the amount of support or in denying or limiting the amount of support requested by the other party.
- If an Affidavit of Financial Condition/Financial Disclosure Form has not been submitted, and support is requested, each party must submit and attach a current Affidavit of Financial Condition/Financial Disclosure Form or attach a copy of any previously-filed Affidavit providing the previously-filed Affidavit is current.

V.

PROPERTY AND DEBTS

- Prepare a list of all substantial property in accordance with the property Exhibit attached hereto. This Exhibit is required to be complete to the best information of the parties.
- Prepare a list of all secured and unsecured indebtedness including the creditors' names, amount owed, and property secured by the obligation in accordance with the debt Exhibit attached hereto.
- Define all contested legal and factual issues intended to be presented to the Court at time of trial regarding property and debts.

VI.

ATTORNEY'S FEES

- If a request is made for payment of attorney's fees and costs, provide the amount of fees and costs incurred to date. Note additionally the amount of fees that have been paid and the amount remaining due and owing.

VII.

LIST OF WITNESSES

- Other than the parties and resident witness, list all witnesses intended to be called by you. Further provide a brief summary of the witnesses' anticipated testimony.

VIII.

LIST OF EXHIBITS

- List and identify specifically each item of evidence intended to be introduced by you at the time of trial.

IX.

UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED

- List all other unusual legal or factual issues that you anticipate will be raised at trial. Sufficiently explain the issues presented so that the Court may understand the issues presented clearly. Citations of authorities should also be provided.

X.

LENGTH OF TRIAL

- Length of Trial: _____

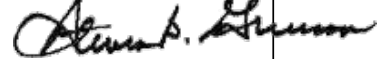
This Memorandum is a form only but should be followed where possible. Additional sections may be included at the discretion of the party. The intention is to provide the Court with a clear indication of the resolved and unresolved issues to expedite the trial time and to assist the Court in reaching a fair and speedy decision.

ASSET SCHEDULE

[illegible]

DEBT SCHEDULE

[illegible]



1 **PMEM**

2 LAW OFFICES OF F. PETER JAMES, ESQ.

3 F. Peter James, Esq.

4 Nevada Bar No. 10091

5 3821 West Charleston Boulevard, Suite 250

6 Las Vegas, Nevada 89102

7 Peter@PeterJamesLaw.com

8 702-256-0087

9 702-256-0145 (fax)

10 Counsel for Plaintiff

11 **DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 JASWINDER SINGH,

14 Plaintiff,

15 vs.

16 RAJWANT KAUR,

17 Defendant.

CASE NO. : 04D323977

DEPT. NO. : X

**PLAINTIFF'S PRE-TRIAL
MEMORANDUM**

18 **I.**

19 **STATEMENT OF ESSENTIAL FACTS**

20 **A. Name of Plaintiff:** Jaswinder Singh (58)

B. Name of Defendant: Rajwant Kaur (age ?)

C. Date of Marriage: November 11, 1989

D. Date of Divorce: September 8, 2004

E. Children: None.

1 **F. Resolved Issues:** None.

2 **G. Unresolved Issues:**

- 3 • Judicial Estoppel
- 4 • Attorney's fees award to Plaintiff

5 **II.**

6 **INSTRUCTIONS ON REMAND**

7 The remand instructions provide that the Court inquire as to the judicial
8 estoppel issue. Judicial estoppel elements are as follows:

- 9 1. The same party has taken two positions;
- 10 2. The positions were taken in judicial proceedings;
- 11 3. The party was successful in asserting the first position;
- 12 4. The two positions are totally inconsistent; and
- 13 5. The first position was not taken as a result of ignorance, fraud, or mistake.

14 *See In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56, 390 P,3d
15 646, 652 (2017). Rajwant fails the judicial estoppel test.

16 **Two Positions**

17 Rajwant has asserted two positions—that the parties (or at least Jaswinder)
18 lived in Nevada at all times relevant and then that he (or they) did not. This is
19 not a contested issue. The pleadings she signed (the Joint Petition and the
20 Decree) . The Motion to Set Aside clearly states she says no one lived in Nevada.

1 **Judicial Proceedings**

2 It is uncontested that both statements were made in judicial proceedings—
3 this very same case.

4 **Successful in the First Position**

5 Clearly, Rajwant was successful in stating that the parties (or at least one
6 of them) lived here as the Court (then a different judge) divorced her and
7 Jaswinder.

8 **Inconsistent positions**

9 To say now that no one lived in Nevada when she said at least that
10 Jaswinder did before is to have wholly inconsistent positions.

11 **First Position Not Due to Ignorance, Fraud, or Mistake**

12 When Rajwant stated that at least Jaswinder lived in Nevada at the time
13 the parties divorced, it was not due to ignorance, fraud, or mistake. The Court
14 (Judge Pomrenze) made specific findings as to this. (*See Findings of Fact,*
15 *Conclusions of Law, and Order at 5:19 – 6:14).*

16 * * *

17 As such, Rajwant is judicially estopped. As Rajwant is judicially estopped,
18 the Motion to Set Aside must be denied.

19 **III.**

20 **ATTORNEY'S FEES**

1 The Court should award Jaswinder attorney's fees. This matter has been
2 fully briefed. Should the Court be inclined to award Jaswinder fees, he will
3 submit a Memorandum of Fees and Costs along with a copy of the billing
4 statements.

5 **VII.**

6 **LIST OF WITNESSES**

7 **Dad intends on calling the following witnesses:**

8 The following witnesses are expected to testify as to the allegations
9 contained in the pleadings filed herein:

- 10 • The parties, specifically only Rajwant as Jaswinder's testimony is not
11 needed.

12 **VIII.**

13 **LIST OF EXHIBITS**

14 **Dad intends on introducing the following exhibits at Trial:**

15

#	Description	Bates No. J. SINGH
16 1.	Executed release for employment records	000001
17 2.	Letter from Bank of America regarding records being unavailable	000002
18 3.	Grant Bargain Sale Deed in the name of Balbinder Singh Pabla for Nevada property	000003- 000005
19 4.	Payment receipts for the Law Office of F. Peter James, Esq. dated 1/16/19 and 2/26/19	000006- 000007

20

5.	Invoice # 2621, 2588, and 2606 from the Law Office of F. Peter James, Esq. (redacted)	000008-000015
6.	Invoices from Constance Bessada, Esq. dated 6/13/18, 8/21/18, and 1/3/19 (redacted)	000016-000018
7.	Retainer Agreement for Law Offices of F. Peter James, Esq.	000019-000022
8.	Retainer Agreement for Constance Bessada, Esq.	000023-000027
9.	Passport of Jaswinder Singh	000028-000030
10.	Documents disclosed by Defendant's counsel at the August 19, 2019 deposition	000031-000039
11.	India Marriage Certificate Jasvir Singh Dhaliwal and Rajwant Kaur	000040
12.	India Divorce Ruling	000041-000045
13.	Defendant's Deposition Transcript	
14.	Plaintiff's Interrogatories to Defendant	
15.	Defendant's responses to the Interrogatories	
16.	Plaintiff's Requests for Production of Documents to Defendant	
17.	Defendant's responses to Requests for Production of Documents	

X.

LENGTH OF TRIAL

Plaintiff believes that trial in this matter will last one half-day, if things go smoothly.

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XI.

FINANCIAL DISCLOSURE FORM

Plaintiff's will submit an update FDF before trial.

Dated this 9th day of August, 2021

/s/ *F. Peter James*

LAW OFFICES OF F. PETER JAMES

F. Peter James, Esq.

Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

Las Vegas, Nevada 89102

702-256-0087

Counsel for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 9th day of August, 2021, I caused the above and
3 foregoing document entitled **PLAINTIFF'S PRE-TRIAL MEMORANDUM**
4 to be served as follows:

5 [X] pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D)
6 and Administrative Order 14-2 captioned "In the Administrative
7 Matter of Mandatory Electronic Service in the Eighth Judicial
8 District Court," by mandatory electronic service through the
9 Eighth Judicial District Court's electronic filing system;

8 [] by placing same to be deposited for mailing in the United States
9 Mail, in a sealed envelope upon which first class postage was
prepaid in Las Vegas, Nevada;

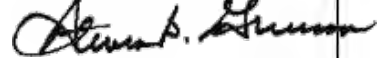
10 [] pursuant to EDCR 7.26 / NEFCR 9, to be sent via facsimile /
11 email;

12 to the attorney(s) / party(ies) listed below at the address(es), email address(es),
13 and/or facsimile number(s) indicated below:

14 Andrew L. Kynaston, Esq.
15 Kainen Law Group
16 3303 Novat Street, Suite 200
17 Las Vegas, Nevada 89129
Counsel for Defendant

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

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



1 **PTM**
2 ANDREW L. KYNASTON, ESQ.
3 Nevada Bar No. 8147
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129
7 PH: (702) 823-4900
8 Service@KainenLawGroup.com
9 Attorney for Defendant

6 DISTRICT COURT, FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8 JASWINDER SINGH,

9 Plaintiff,

10 vs.

11 RAJWANT KAUR,

12 Defendant.

CASE NO. 04D323977
DEPT NO. X

Date of Trial: 8/16/21
Time of Trial: 1:30 p.m.

13 **DEFENDANT'S PRE-TRIAL MEMORANDUM**

14
15 COMES NOW, Defendant, RAJWANT KAUR, by and through her attorney,
16 ANDREW L. KYNASTON, ESQ., of the law firm of KAINEN LAW GROUP, PLLC,
17 and hereby submits her Pre-Trial Memorandum to this Court.

18 DATED this 9th day of August, 2021.

19 KAINEN LAW GROUP, PLLC

20 By: 

21 ANDREW L. KYNASTON, ESQ.
22 Nevada Bar No. 8147
23 3303 Novat Street, Suite 200
24 Las Vegas, Nevada 89129
25 Attorneys for Defendant
26
27
28

I.

STATEMENT OF ESSENTIAL FACTS

A. NAMES/AGES OF PARTIES:

Plaintiff, JASWINDER SINGH (hereinafter "Husband"), born May 5, 1961, age 60, Defendant, RAJWANT KAUR (hereinafter "Wife"), born June 8, 1957, age 64. The parties have no children.

B. DATE OF MARRIAGE:

Husband and Wife were married either on November 11, 1989, or December 31, 1989, in Punjab, India.¹ A Decree of Divorce was erroneously filed on September 27, 2004 in Las Vegas, Nevada based upon a fraudulently filed joint petition filed August 27, 2004, instigated by Husband and supported by a false and fraudulent claim of Nevada residency.² Since August 2004, the parties continued to reside as husband and wife in their marital residence in California, and to this day are still jointly residing in the same residence in California.³ Wife initiated a divorce action in California in May of 2018 (Case No. 18STFL05676). Husband initially responded to the California divorce petition by filing an Answer, and even countersued Wife for dissolution of the parties' marriage in California. However, nearly six months into the California divorce action, Husband filed an amended response in the California case alleging the parties' were already divorced in 2004 in Nevada.⁴

Wife subsequently had to retain Nevada counsel and filed a *Motion to Set Aside Decree of Divorce* before this Court on January 7, 2019, which Motion was initially heard by the Court on February 13, 2019. In response to Wife's Motion, Husband argued

¹ There is some discrepancy regarding the actual date of the parties' marriage.

² This fraud was part of a larger scheme concocted by Husband to engage in immigration fraud.

³ The parties have even continued to jointly reside in the same residence throughout the ongoing litigation in California and Nevada over the past 3+ years.

⁴ Six months after the California divorce action was initiated, Husband apparently remembered that the parties were already divorced in Nevada.

1 that Wife's Motion was untimely (an argument rejected by both the district court and the
2 Supreme Court)⁵, and that Wife was judicially estopped from challenging the Nevada
3 divorce decree under *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506
4 (2002).⁶ The Court later held a two day evidentiary hearing regarding the disputed issues
5 on September 12th and 13th, 2019.

6 **C. RESOLVED ISSUES, INCLUDING AGREED RESOLUTIONS:**

7 As the result of the first evidentiary hearing held September 12-13, 2019,
8 several key issues in this case have already been addressed and resolved by the Court,
9 which do not need to be re-litigated at the second evidentiary hearing.⁷ The resolved and
10 adjudicated issues and related findings from the prior evidentiary hearing are as follows:

11 The Court found in relevant part:

- 12 1) That Husband "was not a credible witness in any portion of his testimony."
13 (*Findings of Fact, Conclusions of Law, and Order* (hereinafter FFCL), page
14 4, lines 14-15).
- 15 2) That "based upon the evidence presented [Wife] was more credible." (FFCL
16 page 4, lines 15-16).
- 17 3) That "the parties perpetuated a fraud on the State of Nevada by entering into
18 a Decree of Divorce without the requisite residency." (FFCL page 4,
19 lines 16-18).

20 . . .

22 ⁵ "[T]he district court rejected [Husband's] argument that [Wife's] motion was untimely, finding
23 'the injured party is the State of Nevada,' and '[u]ntil the parties bring this in front of the Court, the
24 Court doesn't know there might be fraud.'" (Opinion Page 3). "Based upon [Wife's] testimony,
25 which the district court found credible, we conclude the district court did not abuse its discretion
when it determined that [Wife's] motion was timely." (Opinion Page 5).

26 ⁶ "While we are not persuaded that *Vaile* is distinguishable, we agree the district court erroneously
applied *Vaile* in concluding judicial estoppel precluded [Wife's] motion." (Opinion Page 5).

27 ⁷ The limited scope for this second evidentiary proceeding has been outlined by the Nevada Supreme
28 Court's Opinion issued December 10, 2020.

- 1 4) That “the Court is obligated to make a decision on the merits as to how the
2 fraudulent divorce was implemented and what the parties’ roles were.”
3 (FFCL page 4, line 20 and page 5, line 1).
- 4 5) That “the Court finds the [Wife] to be very credible, unlike [Husband].”
5 (FFCL page 5, lines 18-19).
- 6 6) That “there is simply insufficient evidence that [Wife] acted under duress.”
7 (FFLC page 6, lines 17-18).
- 8 7) That “so much as the Court finds the facts of this case offensive, it cannot
9 rule on what it finds offensive – it has to rule on the law and precedent and
10 *Vaile* is still precedent in this state.” (FFCL, page 6, lines 18-20).
- 11 8) That “should the Supreme Court choose to take a second look on appeal,
12 they are free to do so, and, if in fact, they say that *Vaile* is not good law then
13 the Court is happy to have the parties come back and the Court will even set
14 a second hearing.” (FFCL, page 6, line 20, and page 7, lines 1-3).
- 15 9) That “on the testimony and the evidence, the Court is compelled to grant the
16 motion for judgment on the evidence and it is compelled to deny the motion
17 to set aside.” (FFCL, page 7, lines 3-5).
- 18 10) That “because neither party comes to this court with clean hands, neither
19 party shall receive an award of attorney’s fees against the other. The
20 [Husband] is not entitled to an award of attorney’s fees. He is equally, if not
21 greater, at fault than the [Wife], so he may be the prevailing party, but the
22 Court will not reward someone with extremely unclean hands with an award
23 of attorney’s fees.” (FFLC, page 7, lines 6-11).
- 24 11) That “the Court is compelled to deny the motion to set aside. There is an
25 appealable issue there. The Court does not know what the Supreme Court
26 will do. It is a question that has been answered in a way that most of us
27 might not appreciate, but it is the question that has been answered and
28 [Wife’s] testimony does not rise to the level for the Court to set aside the

Decree of Divorce.” (FFCL, page 8, lines 1-6).

Base upon these findings the Court Ordered:

- 1) That Husband’s Motion for Judgment on the Evidence is granted.
- 2) That Wife’s Motion to Set Aside the Decree is Denied.⁸
- 3) That neither party is the prevailing party and no award of attorney’s fees is to either party. (FFLC, page 8, lines 10-15).

D. STATEMENT OF UNRESOLVED ISSUES:

Following the District Court’s decision after the evidentiary hearing held September 12-13, 2019, Wife filed a timely Notice of Appeal. After a full briefing of the issues by both parties, and oral argument was presented to the Nevada Supreme Court, a written Opinion (hereinafter “Opinion”) was issued by the Nevada Supreme Court on December 10, 2020. This Opinion *reversed and remanded* the District Court’s Order. In rendering its Opinion the Supreme Court held and clarified that “*before* considering whether a party sufficiently raised a defense to the application of the doctrine of judicial estoppel, district courts should consider whether judicial estoppel applies to the situation under the traditional judicial estoppel factors.” (Opinion, page 2, emphasis in the original). The Nevada Supreme Court further stated,

In this appeal, we clarify that *before* considering whether a party sufficiently raised a defense to the application of the doctrine of judicial estoppel, district courts should consider whether judicial estoppel applies to the situation under the traditional judicial-estoppel factors. Misguided by our holding in *Vaile*, the district court here did not consider the traditional judicial estoppel factors before considering appellant/cross respondent Rajwant Kaur’s defense of duress and coercion. We therefore conclude the district court erred when it applied judicial estoppel solely based upon Rajwant’s failure to provide evidence of duress or coercion and remand for the district court to consider the traditional judicial-estoppel factors. (Opinion, page 2, emphasis in original)

In analyzing the *Vaile* case, the Nevada Supreme Court noted that one of the distinguishing facts was that the wife in that case had “admitted to Nevada residency

⁸ “[T]he district court found [Wife] failed to prove she was operating under duress or coercion when she signed the decree of divorce, so she was judicially estopped from challenging the decree.” (Opinion page 3).

1 when seeking the divorce.” (Opinion Page 6) Further, in the *Vaile* case the Supreme
2 Court had “concluded that *under the circumstances of the case*, judicial estoppel applied”
3 and the *defenses* raised by the wife of signing under duress or coercion were rejected.
4 (Opinion Page 6, emphasis added).⁹ As such the Court in *Vaile* affirmed the district
5 court’s application of judicial estoppel. (Opinion Page 8).

6 Accordingly, based upon the Nevada Supreme Court’s Opinion, on remand
7 this Court needs to analyze (1) whether *under the circumstances of this case*, judicial
8 estoppel should apply, and (2) whether the Court may void and set aside the fraudulently
9 obtained 2004 Nevada Decree of Divorce.¹⁰ In this case, the Nevada Supreme Court
10 determined that the district court’s application of judicial estoppel as the basis for
11 refusing to set aside the fraudulently obtained Nevada decree was erroneous. (See
12 Opinion Page 7). The Supreme Court clarified:

13 Judicial estoppel prevents a party from stating a position in one proceeding
14 that is contrary to his or her position in a previous proceeding. *Vaile*, 118
15 Nev. at 273, 44 P.3d at 514. Well-established caselaw sets forth a five-
16 factor test for courts to consider when determining whether judicial estoppel
17 applies: whether “(1) the same party has taken two positions; (2) the
18 positions were taken in a judicial or quasi-judicial administrative
19 proceedings; (3) the party was successful in asserting the first position (i.e.,
20 the tribunal adopted the position or accepted it as true); (4) the two positions
21 are totally inconsistent; and (5) the first position was not taken as a result of
22 ignorance, fraud, or mistake.” *In re Frei Irrevocable Tr. Dated Oct. 29,*
23 *1996*, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017) (internal quotation marks
24 omitted). (Opinion Page 7)

25 The Nevada Supreme Court acknowledged that in the *Vaile* case they did not
26 specifically focus on the five-factor judicial estoppel test. However, as clarified in
27 footnote 2, the five-factors were still considered in rendering their decision, finding that
28 under the facts and circumstances of that case that the wife’s claims were barred by

24 ⁹ “We conclude that because the district court determined that the former wife ‘was not coerced or
25 operating under duress,’ it correctly rejected her defense.” *Vaile* 118 Nev. at 273, 44 P.3d at 514.
(Opinion Page 8).

26 ¹⁰ “By presenting an affidavit of a resident witness, the parties here made a colorable case for
27 jurisdiction at the time the district court entered the divorce decree. The divorce decree was therefor
28 not void. However, it could still be *voidable* if [Wife] demonstrated that the district court did not
have jurisdiction at the time it entered the divorce decree.” (Opinion Page 6).

1 judicial estoppel. The court found that because the wife had “successfully asserted that
2 her husband was a resident of Nevada in her answer but asserted a contrary position in
3 her motion to set aside, [that this] cover[ed] the first four factors in the test for judicial
4 estoppel.” (Opinion Page 7, footnote 2, citing *Vaile*, 118 Nev. at 273-74, 44 P.3d at 514).
5 Regarding the fifth factor, the Court found that the wife “knew that [her husband] had not
6 resided in Nevada for six weeks when she signed the [A]nswer,” thus determining that
7 her “actions were not the result of ignorance, fraud, or mistake under the fifth factor.”
8 (Opinion Page 7-8, footnote 2).

9 The facts and circumstances in the case at bar are quite different and distinct
10 and the evidence already in the record and to be presented will show that judicial estoppel
11 should not apply in this case, nor prohibit the Court from setting aside the voidable
12 Nevada Decree of Divorce. First, in the case at bar, unlike the wife in *Vaile*, Wife never
13 filed an Answer to a Complaint wherein she could have asserted a contrary position to
14 the one she took in her *Motion to Set Aside*. Rather, she was brought to Las Vegas by
15 Husband with virtually no explanation and directed by Husband to sign a joint petition
16 for divorce. This was a document that she played no roll in drafting, that she was given
17 no reasonable opportunity to read before signing, and one written in a language in which
18 she had very limited proficiency.¹¹ It was more than 14 years later that she was given any
19 understanding about the content of the document she signed. As such, the first four
20 judicial estoppel factors are inapplicable in this case, and should not be a basis for
21 preventing the Nevada Decree of Divorce from being set aside. Similarly, because Wife
22 never signed an Answer wherein she could have acknowledged Husband’s claimed
23 Nevada residency, the evidence already in the record and to be presented will
24 overwhelming prove that her actions in signing the joint petition and associated decree
25 were done in ignorance of their true implications, and were part of a larger pattern of

26
27 ¹¹ Wife’s English proficiency has improved somewhat over the last 16-17 years since the Nevada
28 divorce decree, but was even more limited in 2004. Even if she’d been given an actual opportunity
to read the documents (which she wasn’t), she would have understood virtually nothing.

1 fraud perpetuated by Husband. As such, the fifth factor should also not apply as a basis
2 for imposing judicial estoppel in relation to Wife's request to set aside the fraudulently
3 obtained decree of divorce.

4 II.

5 **BACKGROUND & FURTHER LEGAL ARGUMENTS**

6 As this Court is not the original Court to hear this matter at the initial
7 evidentiary hearing in September 2019, a brief recounting of the relevant background
8 facts and history of this matter is warranted.¹² Husband and Wife were married by
9 arranged marriage in either November or December 1989, in Punjab, India. Prior to their
10 marriage, Wife, had immigrated from India to Southern California in the United States
11 and started working as a certified nurse assistant (CNA) in a California hospital. After
12 the parties' marriage in India, Husband also immigrated to the United States in Southern
13 California, where the parties have resided together as husband and wife since that time
14 for a period of more than 30 years, including up to and through the present time.¹³ Wife
15 has worked as a CNA for the duration of the parties' nearly 32 years together.¹⁴ Husband
16 worked as a cashier at a 7-Eleven in Southern California between 1989 and 1993, when
17 he was shot at work, and was disabled for several years after that while recovering from
18 his injuries. Thereafter, in 1998, he started working for Interamerican Motor
19 Corporation, where he has been employed consistently since that time and presently
20 works as a forklift operator.

21 . . .

22 _____
23 ¹² Judge Sandra Pomrenze (now retired), was the judicial officer who presided over the first
24 evidentiary hearing.

25 ¹³ Notwithstanding this extended period of litigation and the appeal, as well as ongoing litigation in
26 California, the parties have continued to jointly reside in the same residence. Despite Husband
27 trying to maintain that he divorced Wife nearly 17 years ago, the party's behaviors of continual
28 cohabitation over the last 17 years remain wholly inconsistent with being divorced.

¹⁴ This is a position that does not require much English proficiency, as it is primarily physically
performed work and minimal interactions with patients.

1 The evidence presented at the initial trial in September 2019,
2 overwhelmingly established that Husband was not (and never has been) a bona-fide
3 resident of the State of Nevada. Furthermore, the evidence at trial unequivocally
4 demonstrated that during the period prior to the filing of the Joint Petition for Divorce on
5 August 27, 2004, Husband's claims of Nevada residency were fraudulent. Upon hearing
6 the evidence, the Court found that Husband completely lacked credibility in this regard.
7 Comparing the record from Husband's written discovery responses, his deposition
8 testimony, and the court record of his sworn testimony at trial, it is clear that Husband
9 was unable to keep his own story straight and any claims regarding Nevada residency by
10 him were a complete fabrication. He was repeatedly caught in blatant lies and
11 misrepresentations, which wholly destroyed his credibility with the Court and led the
12 Court to make a specific finding that Husband "was not credible in any portion of his
13 testimony." (FFCL page 4, lines 14-15).

14 It was clear from the evidence presented at the initial trial, that Husband had
15 absolutely no proof or evidence of actual physical presence and domicile in the State of
16 Nevada for the requisite six-week period prior to filing the Joint Petition, and additionally
17 no credible evidence to support a claim that he possessed the requisite intent to be a
18 Nevada resident at the time the Nevada Divorce Decree was filed. As such, the fact of
19 Husband's fraud upon the State of Nevada in filing and obtaining a Nevada divorce in
20 2004, when it was clear that the Nevada Court lacked the requisite personal and subject
21 matter jurisdiction, is undisputable and firmly established by the prior ruling of the Court.
22 As such there is no basis, under principles of res judicata for the Court to consider or
23 reconsider any further evidence that the Nevada divorce was fraudulently obtained by
24 Husband and is a *voidable* order.

25 In short, the evidence clearly established that Husband did not meet either
26 the actual physical presence requirement nor the requisite intent requirement to establish
27 Nevada bona-fide residency. Rather, he clearly committed a fraud upon the Court and
28 the State of Nevada in claiming Nevada residency when the Nevada divorce action was

1 filed. As established by the Court's prior ruling, the 2004 Nevada Decree of Divorce was
2 fraudulently obtained, and therefore *voidable* by this Court to the extent the Court finds
3 that Wife's request to set aside the decree is not now barred by principles of judicial
4 estoppel as analyzed herein, and upon such additional evidence as may be presented to
5 the Court at the time of the upcoming evidentiary hearing. Accordingly, there is no need
6 for this Court to take any further evidence regarding the fraudulent residency and
7 jurisdictional claims, and the 2004 Nevada Decree of Divorce is *voidable* by the Court
8 so long as Wife's claims are not barred by principles of judicial estoppel.

9 **A. Analysis of Factor 1: The Same Party has Taken Two Positions**

10 The evidence already in the record, along with Wife's anticipated
11 supplemental testimony at the upcoming evidentiary hearing, establishes that Wife has
12 not taken two contrary positions in this action. Unlike the wife in the *Vaile* case, Wife
13 never filed an Answer to a Complaint which asserted Husband was a Nevada resident,
14 which is the reason that the Court in *Vaile* determined that the wife had taken two
15 positions, after claiming otherwise in her Motion to Set Aside. In the case at bar, Wife
16 was directed by Husband to sign a joint petition that she never read nor understood. Even
17 if she had been given an opportunity to read the documents (which she wasn't), they were
18 written in a language that was not her primary tongue, and no one interpreted or even
19 explained the content of the documents. She was directed to sign them and was
20 accustomed to obey her husband.

21 While Wife's proficiency in English has certainly improved over the past 16
22 years as she's continued to live and work in the United States, her English abilities are
23 remain limited, particularly as to written English (let alone legalize). More than 16 years
24 ago when she initially signed the Nevada divorce papers, her English language
25 proficiency was even more limited than it is now, and there is simply no way that she
26 could have understood the documents that she was directed to sign without an interpreter,
27 had she even been allowed to review them by Husband. In short, as supported by Wife's
28 testimony already in the record, and her anticipated supplemental testimony, there is no

1 possible way that Wife could have taken two positions in this action; having no
2 knowledge at the time that Husband directed her to sign the Nevada divorce papers that
3 they contained any stated position regarding Husband's residency. She clearly took no
4 position at all being in complete ignorance of the claims or requirements under Nevada
5 law. Accordingly, when Wife later took the position of disputing Husband's Nevada
6 residency claims in her Motion to Set Aside filed in January 2019, such was the first time
7 that she affirmatively asserted any position on this matter having been completely
8 ignorant of it back in 2004 when she signed by papers. Clearly, the evidence shows and
9 will show that Wife has not taken two positions in this matter.

10 Contrasting Wife's actions in the case at bar (as described above), with those
11 of the wife in *Vaile*, it clear that Wife's request has been brought before the Court in good
12 faith, her motion should be granted and should not be barred under principles of judicial
13 estoppel. The wife in *Vaile* was served with a Complaint for Divorce by her husband.
14 She had an opportunity to review the document and see the false Nevada residency claim
15 contained therein. She then took the affirmative steps of preparing (or having prepared)
16 a formal Answer to the Complaint in which she *admitted* her husband's false residency
17 claims. As such, when she then years later sought to set the divorce decree aside in
18 Nevada, by claiming that the former husband was not actually a resident at the time of the
19 divorce action, she was taking a completely opposite position to the one she took at the
20 time of the divorce. As such, the Court was justified an determining that she was
21 judicially estopped on the basis of taking two positions. The facts in the case at bar, as
22 described above, are markedly different and easily distinguished from the facts in *Vaile*.

23 **B. Analysis of Factors 2-4: (2) the positions were taken in a judicial or quasi-**
24 **judicial administrative proceedings; (3) the party was successful in asserting**
25 **the first position (i.e., the tribunal adopted the position or accepted it as true);**
26 **(4) the two positions are totally inconsistent**

27 Due to the evidence supporting the fact that Wife has not taken two contrary
28 positions in this matter (as set forth above), a further detailed analysis of the next three

1 judicial estoppel factors is not warranted or necessary. As such, there is no basis for
2 applying judicial estoppel to Wife's Motion to Set Aside the fraudulent Nevada Decree
3 of Divorce under any of these next three factors.

4 **C. Analysis of Factor 5: the first position was not taken as a result of ignorance,**
5 **fraud, or mistake**

6 This factor was a key factor that was focused on by the Nevada Supreme
7 Court in its Opinion stating in relevant part:

8 Significantly, the district court failed to make findings regarding whether
9 [Wife] was operating under ignorance, fraud, or mistake when she signed
10 the divorce decree, in light of her claims that she could not read or
11 understand the decree. Had the district court made findings concerning this
12 factor and determined that [Wife] was operating under ignorance, fraud, or
13 mistake, it could have declined to apply the doctrine of judicial estoppel
14 without ever reaching the issue of whether [Wife's] defense of duress and
15 coercion was proven. (Opinion Pages 8-9).

16 As discussed in detail above, Wife maintains that she has never taken two opposing
17 positions in this matter. Certainly to the extent the Court were to determine that Wife did
18 in fact take an opposing position by virtue of signing the Nevada joint petition and decree
19 which included language indicating Husband was a Nevada resident, the evidence already
20 in the record and to be presented will demonstrate that such position was clearly the result
21 of ignorance, fraud, and mistake.

22 Wife testified at the prior trial that on or about August 27, 2004, Husband
23 directed her to get into the car and drove her to Las Vegas from their home in California.
24 Prior to that date, the parties had continued to jointly reside in their marital home, pay the
25 joint bills, and both parties continue to work at their jobs in California. Wife testified at
26 the initial trial that, "[Husband] brought [her] here, saying that we need to divorce so that
27 he could get his brother here." (Trial Transcript from September 13, 2019, page 82, line
28 24, and page 83, line 1). She further testified, that Husband's plan was to get his brother
to the United States by divorcing her and having her marry his brother. (See Trial
Transcript from September 13, 2019, page 83, lines 2-4).

...

1 With regard to the execution and filing of the Nevada divorce papers, Wife
2 testified that she came to Nevada with Husband and signed papers. However, she did not
3 have an opportunity to read the papers or know what they were or what they said before
4 signing. She testified, “[Husband] asked me to sign, so I signed it.” Upon further inquiry
5 about whether she signed anything he asked her to sign, she testified, “Yes, I did....He
6 was my husband. He would say it, and will do it.” (Trial Transcript from September 13,
7 2019, page 83, lines 8-22) Wife never received a copy of the divorce papers. She further
8 testified, that her English skills were minimal, that noone was present to translate the
9 documents she signed into her native Punjabi, and she had no idea what they said. (Trial
10 Transcript from September 13, 2019, page 84, lines 2-7).¹⁵ Indeed, she never saw a copy
11 of the Nevada Decree of Divorce or had any notion of the contents of the same until more
12 than 14 years later in 2018. (Trial Transcript from September 13, 2019, page 84, lines
13 10-14). She further testified that she understood from the representations of Husband at
14 the time that the Nevada divorce “was not a complete divorce, it was just a paper
15 divorce.” (Trial Transcript from September 13, 2019, page 85, lines 1-3). Wife only
16 realized that the Nevada divorce might actually be a real thing 14 years later in 2018,
17 after Husband went to India to get married to someone else. She was then told by his
18 relatives that they were divorced. (Trial Transcript from September 13, 2019, page 85,
19 lines 10-15).

20 Prior to 2018, Wife had no reason to believe that there was anything
21 legitimate about what she signed in Nevada 14 years prior. She testified that after she
22 signed the papers in Nevada, that the parties returned home to California and “lived in
23 same house like husband and wife.” (Trial Transcript from September 13, 2019, page 86,
24 lines 19-24). Nothing changed in their day-to-day living. They continued to share a
25 bedroom, continued to have sexual relations, and continued to share finances as before.

27 ¹⁵ Even Husband testified in his deposition that he cannot read or write in English, so apparently
28 neither party knew what they were signing.

1 (Trial Transcript from September 13, 2019, page 87, lines 1-14). Husband continued to
2 tell Wife that it was a “*paper divorce*, but we will stay together.” (Trial Transcript from
3 September 13, 2019, page 87, lines 15-21(emphasis added)).

4 At the time Husband took Wife to Nevada and had her sign the Nevada
5 divorce papers, he informed her that it was his intention to do this so that he could take
6 her back to India and have her marry his brother in an effort to get his brother to the
7 United States. In her testimony, Wife confirmed that Husband did take her to India and
8 forced her to marry his brother sometime in 2004.¹⁶ (Trial Transcript from September 13,
9 2019, page 88, lines 16-24, and page 89, line 1). Husband, and his mother and father
10 accompanied Wife on the trip, a ceremony was performed, they stayed in India a few
11 weeks and then both returned home to California continuing to live as husband and wife.
12 Wife never lived with Husband’s brother or engaged in any sexual relations with him.¹⁷
13 (Trial Transcript from September 13, 2019, page 89, lines 2-22). In fact, Husband’s
14 brother (who is 12 years younger than Wife) was already married to someone else to the
15 best of Wife’s knowledge. (Trial Transcript from September 13, 2019, page 90, lines 9-
16 15). In fact, Husband and Wife had previously traveled to India to attend his brother’s
17 wedding. (Trial Transcript from September 13, 2019, page 90, lines 16-24) At the time
18 of the initial trial, the Court made a finding that this was a “sham marriage.” (See FFCL
19 page 6, lines 14-15). Wife certainly never understood that it was intended to be a real
20 marriage. She was simply following instructions from Husband, whose word is law in
21 their relationship.

22 The evidence already in the record from the first trial, and the anticipated
23 supplemental testimony by Wife at the second trial, establishes that Wife was wholly

24
25 ¹⁶ Wife’s present recollection is that at the same time, Husband went through a wedding ceremony
26 with his brother’s wife, because the plan was to try to get them both to the United States, so they
could stay together.

27 ¹⁷ When this sham marriage did not end up in Husband’s brother and his wife being able to
28 immigrate to the US, it was dissolved in 2008. (Trial Transcript from September 13, 2019, page 89,
lines 23-24)

1 ignorant in regard to Husband's Nevada residency claims, which were fraudulently
2 included in the joint petition and decree. Wife was ignorant of the legal requirements for
3 establishing residency in Nevada. She was ignorant of any such language being included
4 in the divorce papers she was directed to sign. She never read the papers. All she was
5 told was that they were getting a "paper divorce" so he could take her to India to marry
6 his brother. She understood, and believed based upon the maintaining of the status quo
7 thereafter for another 14 years that the paper divorce was meaningless.

8 The record is also already replete with evidence that Husband's actions in
9 getting a divorce in Nevada was a perpetuation of a fraud on multiple levels. It was part
10 of a larger scheme to commit immigration fraud. It was a fraud on the State of Nevada.
11 It was a fraud upon Wife, who was kept in the dark as to Husband's nefarious intentions.
12 She was repeatedly told that it was meaningless, and nothing would change. Wife had
13 no reason not to believe Husband or trust his representations, because nothing did change
14 for the next 14 years. They continued to live as husband and wife, maintained joint
15 finances, and the evidence at the first trial even showed that Husband purchased real
16 property in 2009 as "a married man." They continued to be listed as spouses on medical
17 records and the like.

18 Based upon the established fact that when Wife filed for divorce in
19 California in 2018, served Husband and he timely Answered, apparently only later
20 remembering as an afterthought six months into the California divorce action, that he'd
21 already procured a divorce in Nevada 14 years earlier. This too is evidence that Husband
22 was acting in bad faith in 2004. Having had an epiphany in recollecting the prior
23 fraudulent Nevada divorce, he was clearly trying to use the Nevada Divorce as both a
24 sword and a shield in the California divorce case to prevent Wife from receiving her due
25 rights notwithstanding their more than 30 years of marriage. It would be a gross
26 miscarriage of justice, to the great detriment of Wife who will be irreparable harmed, if
27 Husband is allowed to benefit from his fraud.

28 . . .

1 Furthermore, the Nevada Decree of Divorce (even if weren't fraudulently
2 obtained) wholly failed to properly adjudicate any issues in the parties' divorce relating
3 to their community property, rights to spousal support, and the like. Its enforcement
4 would deprive Wife of substantial community property accumulated over the many years
5 of the parties' relationship, or an ability to seek alimony after a relationship lasting more
6 than 30 years.

7 Based upon the foregoing, the evidence already on the record, and after
8 hearing the supplemental evidence that will be presented at the time of the second
9 evidentiary hearing, Wife respectfully requests that the Court exercise its rightful
10 discretion and declare the 2004 Nevada Decree of Divorce void and set aside, so that the
11 pending California divorce action may proceed and each party can receive justice. As
12 was highlighted in the Nevada Supreme Court's Opinion, "although a district court's
13 decision to apply judicial estoppel is discretionary, 'judicial estoppel should be applied
14 only when a party's inconsistent position arises from intentional wrongdoing or an
15 attempt to obtain an unfair advantage.'" (Opinion Page 8, citing *NOLM, LLC v. Cty. of*
16 *Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004)). If there were ever a case where the
17 Court should exercise its discretion in not applying judicial estoppel, this is the one.
18 There is simply no evidence that Wife was complicit in the wrongdoing that occurred in
19 this action. The "wrongdoer" in this case was Husband and Wife was the unwitting
20 victim of his fraud and wrongdoing. If the Court does not exercise its discretion to
21 declare the 2004 Nevada Decree of Divorce void, and set it aside, Husband will
22 absolutely receive an unfair advantage over Wife resulting in a gross miscarriage of
23 justice.

24 **III.**

25 **ATTORNEY'S FEES**

26 Wife requests that she be awarded attorney's fees and costs and that other
27 appropriate sanctions be imposed based upon Husband's fraudulent behaviors. Wife has
28 had to incur substantial attorney's fees to bring this matter to the Court's attention,

1 completing discovery, preparing for the initial evidentiary proceedings, filing and
2 prosecuting her appeal, and defending against Husband's post-appeal efforts to change
3 the Supreme Court's decision. She has now had to prepare for a second evidentiary
4 proceeding. Throughout this process now exceeding three years since its inception with
5 the divorce filing in California in 2018, Wife has incurred tens of thousands of dollars in
6 attorney's fees and costs. She has extremely limited resources and has had to borrow for
7 friends and family to pursue her rights accumulating debts she may never be able to
8 repay.

9 It is clear that Husband has not acted in good faith, either at the time of the
10 fraudulently obtained divorce, nor in the present case, when his repeated lies have caused
11 this matter to be extended and the costs to be exponentially increased.

12 The Nevada Supreme Court addressed the issue of attorney's fees in the case
13 of Miller v. Wilfong, 121 Nev. 619, 119 P.3d 727 (2005). The Court stated:

14 [W]hile it is within the trial court's discretion to determine the reasonable
15 amount of attorney fees under a statute or rule, in exercising that discretion,
16 the court must evaluate the factors set forth in Brunzell v. Golden Gate
National Bank [85 Nev. 345, 455 P.2d 31 (1969)]. Under Brunzell, when
17 courts determine the appropriate fee to award in civil cases, they must
18 consider various factors, including the qualities of the advocate, the
19 character and difficulty of the work performed, the work actually performed
20 by the attorney, and the results obtained. We take this opportunity to clarify
21 our jurisprudence in family law cases to require trial courts to evaluate the
22 Brunzell factors when deciding attorney fee awards. Additionally, the
23 Wright v. Osburn [114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)], this
24 court stated that family law trial courts must also consider the disparity in
25 income of the parties when awarding fees. Therefore, parties seeking
26 attorney fees in family law cases must support their fee request with
27 affidavits or other evidence that meets the factors in Brunzell and Wright.

28 The Brunzell factors adopted by the Nevada Supreme Court were derived from an
Arizona case, Schartz v. Schwerin, 336 P.2d 144, 146 (Ariz. 1959). Schartz classified
the factors into four general areas:

"(1) *the qualities of the advocate*: his ability, his training, education,
experience, professional standing and skill; (2) *the character of the work to
be done*: its difficulty, its intricacy, its importance, time and skill required,
the responsibility imposed and the prominence and character of the parties
where they affect the importance of the litigation; (3) *the work actually
performed by the lawyer*: the skill, time and attention given to the work; (4)
the result: whether the attorney was successful and what benefits were

1 derived. Furthermore, good judgment would dictate that each of these
2 factors be given consideration by the trier of fact and that no one element
should predominate or be given undue weight. (citations omitted).

3 In the case at bar, the Court should consider the following in applying the factors set forth

4 **1. Qualities of Wife's Advocate**

5 Andrew Kynaston, has excellent credentials. He is an AV rated attorney, a
6 Fellow of the American Academy of Matrimonial Lawyers, a Nevada Board Certified
7 Family Law Specialist, and Board Certified in Family Trial Law by the National Board
8 of Trial Advocacy (NBTA). He has been engaged in the exclusive practice of family law
9 for more than nineteen years. For the past twelve years he has been named a Mountain
10 States "Super Lawyer" (2014 -2021) or a "Rising Star" (2010-2013) by Super Lawyers
11 magazine. He served on the publications development board of the ABA Section of
12 Family Law from 2002 -2010. He has been a presenter at various CLE conferences.

13 Clearly, Wife's attorney is well trained and qualified in relation to the fees
14 charged for his services in this matter. Mr. Kynaston's billable rate is \$550 per hour.

15 **2. The Character of the Work Done**

16 Under the circumstances of this case the character of the work completed
17 and yet to be completed certainly justifies the fees incurred.

18 **3. The Work Actually Performed**

19 Wife's attorney has made every effort to be as efficient as possible in
20 completing the necessary work to obtain favorable results for Wife in this case.

21 **4. The Results**

22 The final factor adopted in Brunzell, is whether the attorney was successful
23 and what benefits were derived. Wife is confident that the results in this case will be
24 favorable to her. Wife has not taken any unreasonable positions in the case but has
25 simply sought for fairness and justice.

26 ...

27 ...

28 ...

IV.

LIST OF WITNESSES

1. Jaswinder Singh, Plaintiff;
2. Rajwant Kaur, Defendant;
3. Any and all other witnesses listed by Plaintiff; and
4. Rebuttal witnesses as necessary.

V.

LIST OF EXHIBITS

1. Decree of Divorce, filed September 8,
2004 in Clark County, Nevada **DEF018 - DEF020**
2. Joint Petition For Summary Decree of
Divorce, filed August 27, 2004 in
Clark County, Nevada **DEF013 - DEF017**
3. Affidavit of Resident Witness, filed
August 27, 2004 in Clark County, Nevada **DEF021 - DEF022**
4. Petition for Dissolution of Marriage,
filed May 7, 2018 in Los Angeles County,
California **DEF001 - DEF003**
5. Plaintiff's Response and Request for
Dissolution of Marriage **DEF004 - DEF006**
6. Plaintiff's Amended Response to Petition **DEF010- DEF012**
7. Order from Hearing Held February 13,
2019, filed March 14, 2019 in Clark County,
Nevada
8. Minutes from Hearing Held February
13, 2019
9. Plaintiff's Response to Defendant's First

- 1 Set of Interrogatories to Plaintiff, e-served
- 2 May 13, 2019
- 3 10. Plaintiff’s Response to Defendant’s First
- 4 Request for Production of Documents to
- 5 Plaintiff, e-served May 13, 2019
- 6 11. Grant Deed showing listing property to
- 7 Jaswinder Singh as a married man **DEF0024**
- 8 12. Experian and TransUnion Credit Report in
- 9 the name of Rajwant Kaur, showing
- 10 Jaswinder as spouse or co-applicant. **DEF0025 - DEF0043**
- 11 13. Aftercare instruction from Gastroenterology
- 12 Department for Jaswinder Singh, signed by
- 13 “Accompanying Adult” Rajwant Kaur, Wife. **DEF0044**
- 14 14. Plaintiff’s Deposition Transcript,
- 15 dated August 19, 2019
- 16 15. Defendant’s Deposition Transcript,
- 17 dated August 19, 2019
- 18 16. Transcript re: Evidentiary Hearing, dated
- 19 September 12, 2019
- 20 17. Transcript re: Evidentiary Hearing, dated
- 21 September 13, 2019
- 22 18. Supreme Court Opinion filed December 19,
- 23 2020, in Appellate Case No. 80090
- 24 19. Findings of Fact, Conclusions of Law, and
- 25 Order filed October 22, 2019 in Clark County,
- 26 Nevada

27 . . .

28 VI.

UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED

Any unusual legal or factual issues have been briefed in the above Statement of Facts and Legal Arguments.

VII.


LENGTH OF TRIAL

Length of trial: One-half day.

Respectfully submitted,

KAINEN LAW GROUP, PLLC

By:


ANDREW L. KYNASTON, ESQ.
Nevada Bar No. 8147
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of August, 2021, I caused to be served ***Defendant's Pretrial Memorandum*** filed, 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@peterjameslaw.com

April@peterjameslaw.com

Singh2816@yahoo.com



An Employee of
KAINEN LAW GROUP, PLLC

FILED

DEC 21 2021

Heidi Almase
CLERK OF COURT

1 TRANS

2
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4
5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 JASWINDER SINGH,)

10 Plaintiff,)

CASE NO. D-04-D323977

11 vs.)

DEPT. X

12 RAJWANT KAUR,)

APPEAL NO. 83613,80090

13 Defendant.)
14

15
16 BEFORE THE HONORABLE HEIDI ALMASE
17 DISTRICT COURT JUDGE

18 TRANSCRIPT RE: EVIDENTIARY HEARING

19
20 MONDAY, AUGUST 16, 2021
21
22
23
24

1 APPEARANCES:

2 The Plaintiff: JASWINDER SINGH
3 For the Plaintiff: F. PETER JAMES, ESQ.
4 3821 W. Charleston Blvd.,
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7 (702) 256-0087

8 The Defendant: RAJWANT KAUR
9 For the Defendant: ANDREW KYNASTON, ESQ.
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11 Las Vegas, Nevada 89129
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13 Also Present: MONI KORESHI (ph)
14 Court Interpreter

15 REZA SALIMIN
16 Court Interpreter

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I N D E X O F W I T N E S S E S

<u>PLAINTIFF'S</u> <u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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(None presented)

DEFENDANT'S
WITNESSES:

RAJWANT KAUR	9	41	--	--
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I N D E X O F E X H I B I T S

<u>PLAINTIFF'S</u> <u>EXHIBITS:</u>	<u>ADMITTED</u>
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(None presented)

DEFENDANT'S
EXHIBITS:

(None presented)

1 LAS VEGAS, NEVADA

MONDAY, AUGUST 16, 2021

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 01:27:54)

4
5 THE COURT: We're on the record in the matter of
6 Singh v. Kaur, 04D323977. This is time and date for continued
7 non-jury bench trial, following remand in the Nevada Supreme
8 Court case 136 Nev. Advanced Opinion 77. We are here on the
9 issues of whether or not the judicial estoppel factors apply,
10 following the Vaile decision. And I just wanted to go through
11 the Nevada Supreme Court opinion with Counsel and see if
12 everybody was on the same page as to what the Nevada Supreme
13 Court had agreed to. Do we have an interpreter for Ms. Singh?

14 MR. JAMES: We understood there were going to be
15 two, so --

16 THE COURT: Okay. I apologize. I didn't -- I can't
17 see over here. So we'll need to wait until we have an
18 interpreter for Ms. Singh. We did -- two were requested,
19 correct? Okay.

20 (COURT RECESSED AT 1:28:18 AND RESUMED AT 1:32:40)

21 THE COURT: Back on the record in the matter of Kaur
22 v. Singh, D323977. Can I get appearances, please, starting
23 with Mr. James?

24 MR. JAMES: Good afternoon, Your Honor. Peter James

1 10091, here with Jaswinder Singh, who's present in court with
2 the Punjabi Interpreter.

3 THE COURT: Okay. And may I get the Interpreter's
4 identification and number, please?

5 THE INTERPRETER: Reza --

6 THE INTERPRETER: My name is Moni Koreshi --

7 MR. JAMES: There's -- there's two --

8 THE INTERPRETER: Reza R-e-z-a Salimin S-a-l-I-m-i-
9 n.

10 THE COURT: Thank you. Mr. Kynaston?

11 MR. KYNASTON: Good afternoon, Your Honor. Andrew
12 Kynaston, my bar number's 8147, here with the Defendant,
13 Rajwant Kaur. Also, the Interpreter is present.

14 THE COURT: And may I get the Interpreter's
15 identification?

16 THE INTERPRETER: Moni Koreshi.

17 THE COURT: Thank you. All right. So, folks, as I
18 was saying, I was hoping we might, with Counsel, agree as to
19 what the Nevada Supreme Court found following their reversal
20 and remand. And I'll try and go slow for the Interpreters.
21 The Nevada Supreme Court concluded that the application of the
22 Vaile case was appropriate; that Ms. Singh's NRCP 60(b)(4)
23 motion was timely, that the 2004 decree may be voidable under
24 the Vaile decision, but that the district court had failed to

1 apply the judicial estoppel five factor test. Mr. James, are
2 you in agreement those are the -- that was the decision, and
3 those were the findings, leaving us only with the review of
4 the five judicial estoppel factors, testimony related to that?

5 MR. JAMES: I agree that that is what they decided,
6 yes.

7 THE COURT: Okay. All right. Mr. Kynaston, are you
8 in agreement that those are -- that's where we're starting?

9 MR. KYNASTON: Yes, Your Honor.

10 THE COURT: Okay. My next inquiry of Counsel was
11 there are five factors set forth on page 7 of the Nevada
12 Supreme Court decision. Factor 2 is that the positions were
13 taken in a judicial or quasi judicial administrative
14 proceeding. I was wondering if Counsel were inclined to
15 stipulate that that factor was met by virtue of the fact that
16 the proceedings took place in a court of record, which is the
17 Eighth Judicial District Court.

18 MR. JAMES: Yes, Your Honor.

19 THE COURT: Mr. Kynaston?

20 MR. KYNASTON: I mean, I -- I -- I -- I would
21 stipulate that that happened. I mean, to the extent that
22 Factor 1's met. I mean, that -- I don't want to -- like I
23 said, I think they're tied together, so.

24 THE COURT: Mr. James?

1 MR. KYNASTON: But I -- I certainly stipulate that
2 it happened in a -- in a court.

3 THE COURT: Okay. Mr. James?

4 MR. JAMES: Yes, Your Honor. Yes.

5 THE COURT: Do you agree with Mr. Kynaston's
6 assessment?

7 MR. JAMES: Yes, but I don't put any qualifications
8 on it.

9 THE COURT: Okay. All right. Understood. All
10 right. So, folks, my name is Judge Heidi Almase. Your case
11 was reassigned on January 4th from Department P to Department
12 X. We have until 4:30 today. This was originally Ms. Kaur's
13 motion to set aside, I believe

14 MR. JAMES: That's correct, Your Honor.

15 THE COURT: So, Mr. Kynaston, would you like to
16 start today?

17 MR. KYNASTON: Yeah. Your Honor, I would call my
18 client, Rajwant Kaur, to the stand.

19 THE COURT: Okay. For our purposes today, Mr. Singh
20 is Plaintiff and Ms. Kaur is Defendant, this initially being a
21 joint petition. Are we going to put a chair up for the --
22 before we swear in Ms. Kaur, we have until 4:30 today.

23 MR. KYNASTON: Okay.

24 THE COURT: If we do not finish today, my next date

1 is April 25th.

2 MR. KYNASTON: Okay. I hope we'll finish

3 THE CLERK: You do solemnly swear the testimony

4 you're about to give in this action shall be the truth, the

5 whole truth, and nothing but the truth, so help you, God?

6 THE DEFENDANT: Yes.

7 THE CLERK: Thank you.

8 THE COURT: Ma'am, would you stated your name and

9 spell it for the record, please?

10 THE DEFENDANT: Rajwant Kaur R-a-j-w-a-n-t K-a-u-r

11 --

12 THE COURT: Mr. Kynaston?

13 THE DEFENDANT: -- last name.

14 MR. KYNASTON: Thank you, Your Honor. Just by way

15 of housekeeping before I begin, I'm assuming that the -- any

16 exhibits that were admitted at the first trial are still

17 admitted, if we need to reference any of those, that we don't

18 need to re-admit any exhibits?

19 MR. JAMES: That's --

20 THE COURT: Mr. James?

21 MR. JAMES: Yes, Your Honor. We agreed to that

22 prior to trial.

23 THE COURT: Okay.

24 MR. KYNASTON: And then obviously the prior

1 proceedings are relevant to this Court's decision to the
2 extent that they apply, as I made in my pretrial memorandum, I
3 referenced some of those. So obviously, I --

4 THE COURT: So I think everything underlying is
5 relevant. My inquiry related to the Nevada Supreme Court was
6 what we were dealing with today.

7 MR. KYNASTON: Right. And that's my intention. I
8 just wanted to clarify that the record is the record.

9 THE COURT: The -- the record is the record,
10 including the findings made by the Nevada Supreme Court.

11 MR. KYNASTON: Got it. Thank you. All right.

12 RAJWANT KAUR
13 called as a witness on her own behalf, having been first duly
14 sworn, did testify upon her oath as follows on:

15 DIRECT EXAMINATION

16 BY MR. KYNASTON:

17 Q Ms. Kaur, you're the Defendant in this action?

18 A Yes.

19 Q And how old are you?

20 A Sixty-four years.

21 Q Okay. And when were you and the Plaintiff,
22 Jaswinder, married?

23 A In 1989.

24 Q Okay. And where were you married?

1 A In India.

2 Q Okay. And was this an arranged marriage?

3 A Yes, it was arranged marriage.

4 Q Okay. And --

5 THE COURT: Mr. Kynaston --

6 MR. KYNASTON: Yes?

7 THE COURT: -- I apologize. Are any of these going

8 to be witnesses?

9 MR. KYNASTON: No.

10 THE COURT: Mr. James, any of your folks going to be

11 witnesses?

12 MR. JAMES: No, Your Honor. Mr. Kynaston and I

13 actually forgot to mention this to you. We discussed outside

14 that that would be okay. Forgot to mention it, Your Honor.

15 THE COURT: I apologize. I just -- I forgot to ask.

16 Sorry. Thanks.

17 MR. KYNASTON: Yes, thank you, Your Honor. Okay.

18 BY MR. KYNASTON:

19 Q And -- and you and Mr. Singh have no children; is

20 that correct.

21 A No children.

22 Q Okay. Where do you currently reside?

23 A I live currently at 15138 Havate (ph) Street, Zip

24 code 91345.

1 Q And that's in California, correct?
2 A Yes.
3 Q Okay. And how long have you lived at that address?
4 A About 12, 13 years.
5 Q Okay. And to this day, you and the Plaintiff still
6 live at that address together?
7 A Yes.
8 Q And who else lives at that address?
9 A Jaswinder and some relatives, meaning sister,
10 sister's daughter, and others live there.
11 Q All right. Ms. Kaur, what is your level of
12 education?
13 A Until high school.
14 Q Okay. And where did -- where did you go to high
15 school?
16 A India.
17 Q Okay. And what is your native tongue?
18 A Punjabi.
19 Q Okay. What language do you speak at home?
20 A Punjabi.
21 Q Okay. Do you speak English?
22 A No.
23 Q You don't speak English at all?
24 A I understand a little bit.

1 Q Okay. How would you describe your level of
2 proficiency in English?
3 A Very little.
4 Q Okay. Did you study any English in school?
5 A It was very rudimentary, not high level.
6 Q Okay. Do -- how do you -- how do you -- how would
7 you describe your ability to speak in English?
8 A I can find my way.
9 Q Okay. And what about reading in English?
10 A Very little.
11 Q Okay. And what about writing in English?
12 A Not much.
13 Q Okay. When did you first immigrate to the United
14 States?
15 A In 1989.
16 Q Okay. And at the time you immigrated to the United
17 States, how was your English?
18 A At that time, it was negligible.
19 Q Okay. How would you describe your English skills
20 today, compared to how they were when you came to the United
21 States in 1989?
22 A I -- I can do job with instructions.
23 Q Sorry?
24 A I -- I have improved. I can do some jobs with

1 instructions. If somebody instructs me, I can perform that
2 job.

3 Q Okay. Where do you work?

4 A Sherman Oaks Hospital.

5 Q Okay. And how long have you worked there?

6 A Thirty years.

7 Q Okay. What is your job title at the hospital?

8 A I'm a certified nurse assistant.

9 Q Okay. And what if any education did you have to
10 complete to become a certified nurse assistant?

11 A They trained me in the nursing home. It was just a
12 practical training.

13 Q So on the job training? Okay.

14 A Yes.

15 Q And did you have to take any tests to become -- to
16 get your -- your job?

17 A I -- I showed them what I can perform, my skills,
18 practically. There was no exam.

19 Q Okay. And briefly describe for the Court what your
20 duties are in your position at the hospital.

21 A It's -- the basic nursing job of help cleaning the
22 patient, feeding them, taking them to the bathroom.

23 Q Okay. Do you have to speak English at work?

24 A A little bit, just a --

1 Q Okay Are you required to have any level of English
2 proficiency to have your job?
3 A No.
4 Q Okay. All right. Did you file a divorce in
5 California?
6 A Yes.
7 Q And when did you do that?
8 A 2018.
9 Q In 2018?
10 A Yeah.
11 Q Okay. And did you serve your -- your husband with
12 those divorce filings?
13 A Yes
14 Q Okay. And did he respond to the California divorce
15 filing?
16 A He responded that he had already been divorced in
17 2004.
18 Q But did he respond that way initially, or how did he
19 respond initially to the divorce?
20 A He countersued me in response to my divorce filing.
21 Q He countersued you for divorce?
22 A Yes.
23 Q Okay. And how long after that did he file something
24 in California to amend his pleadings?

1 A Yes.

2 Q No, how -- how long after?

3 A After six weeks.

4 Q Okay. And what is the status of the California case

5 right now?

6 A It's still pending. The decision has not come.

7 Q Okay. Is there anything that's holding up that

8 case?

9 A They've said that you have to settle the Nevada

10 court case first.

11 Q Okay. All right. Did you and your husband visit

12 Las Vegas in 2004, around August of 2004?

13 MR. JAMES: Objection, characterization, Your Honor.

14 He's not her husband, he's her ex-husband.

15 THE COURT: Okay.

16 MR. KYNASTON: The --

17 THE COURT: Rephrase.

18 MR. KYNASTON: I'll rephrase the question.

19 BY MR. KYNASTON:

20 Q Did you and Mr. Singh visit Las Vegas in 2004?

21 A Yes.

22 Q And what was the purpose of the visit to Las Vegas?

23 A Just come and sit with me in the car, we are going

24 to Las Vegas and there will be a divorce filing for my

1 brother.

2 Q Okay Can you restate the answer? I'm not sure if
3 that was clear.

4 THE INTERPRETER: Restating again, she was asked by
5 Mr. Singh to sit in the car, and said that we are going to Las
6 Vegas to get divorce in order to accommodate my brother.

7 BY MR. KYNASTON:

8 Q And how -- how were that -- how was that going to
9 accommodate his brother?

10 A He had said we'll go through a paper divorce, by
11 dint of that, we'll be able to bring my brother here in United
12 States.

13 Q When -- when you say my brother, who do you mean?

14 A It's Mr. Singh's brother.

15 Q Okay. What did you do when you arrived in Las Vegas
16 that day?

17 A We went to a friend of Mr. Singh's house, and we had
18 some food there, and then Mr. Singh said, okay, let's go to
19 the court. We have to go through a paper divorce. It will
20 not be a permanent divorce.

21 Q Okay. So when you went to the courthouse, what did
22 you do when you got to the courthouse?

23 A I signed some papers, whatever I was asked to.

24 Q Okay. Who prepared those papers?

1 A I -- I don't know who made those papers.
2 Q Okay. But they were already prepared when you got
3 to the court?
4 A Yes.
5 Q And did you know what the papers were for at that
6 time?
7 A No, I didn't.
8 Q Okay. What did you understand -- when he said a
9 paper divorce, what did you understand that to mean?
10 A I -- I don't understand as to what he meant by that.
11 Q Okay. Did you play any role in drafting those
12 papers?
13 A No. There is no on my part.
14 Q Okay. And did you read the paperwork before you
15 signed it?
16 A No.
17 Q Were you given an opportunity to read the paperwork
18 before you signed it?
19 A No.
20 Q Okay. Did you have any idea what the paperwork
21 said?
22 A No.
23 Q What language was the paperwork written in?
24 A It was in English.

1 Q Okay. And in 2004, how would you have described
2 your proficiency in English?

3 A I -- I couldn't read much.

4 Q Okay. Do you believe if you had had an opportunity
5 to read the paperwork that you would have understood it?

6 MR. JAMES: Objection, calls for speculation, Your
7 Honor.

8 THE COURT: Overruled. I think she can state her
9 own personal experience, and you can let it out on cross, and
10 she can state what she knows.

11 MR. JAMES: The -- Your Honor, the question called
12 it if she could have read English, could she have read it?
13 That -- it's pure speculation.

14 THE COURT: You don't think she knows whether she
15 can read English?

16 MR. JAMES: She just said she can't, but that wasn't
17 the question, Your Honor.

18 THE COURT: Well, I would say that she's answered
19 that she can't, so it might be a redundant question. But I
20 think she can certainly give an opinion as to what her level
21 of proficiency is. Mr. Kynaston's established that there's
22 been some improvement, so I'll allow it.

23 MR. KYNASTON: I'll restate the question.

24 BY MR. KYNASTON:

1 Q Do you believe you would have understood the
2 paperwork if you'd had a chance to read it?

3 A No, I couldn't.

4 Q And why -- why not?

5 A Neither was I given an opportunity, nor could I read
6 at that time.

7 Q Okay. Have you had any education or training in
8 understanding legal language in the English language?

9 A No.

10 Q Okay. How would you describe your level of comfort
11 in reading a legal document in English?

12 A I -- I wouldn't understand anything.

13 Q Okay. And were you given an opportunity to have the
14 documents translated or interpreted for you?

15 A No.

16 Q Okay. And do you believe you -- if you had been
17 given the chance to read the papers that you would have been
18 able to understand them without the help of an interpreter?

19 A Yes.

20 Q Okay. Were you given the opportunity to consult
21 with an attorney before you signed the paperwork?

22 A No.

23 Q Were you aware that you had a right to consult with
24 an attorney?

1 A No.

2 Q Did you receive a copy of the documents that you
3 signed that day?

4 A No.

5 Q Okay. Were you ever served with any paperwork from
6 that Nevada divorce case?

7 A No.

8 Q Okay. Were you aware at the time that you signed
9 the documents that it claimed language that the Plaintiff was
10 claiming to be a Nevada resident?

11 A No, I didn't know.

12 Q Okay. Did the Plaintiff ever tell you that there
13 was language in the document that said that he was a Nevada
14 resident?

15 A No, I didn't know.

16 Q Okay. Were you aware at the time that an affidavit
17 of resident witness had been executed by Balvinder --
18 Balvinder Singh Pabla (ph)?

19 THE INTERPRETER: I -- should I repeat the question?

20 MR. KYNASTON: Yeah, if she didn't understand, let
21 me repeat it.

22 BY MR. KYNASTON:

23 Q Were you aware that at the time of the -- that you
24 signed the paperwork that an affidavit of resident witness had

1 been executed by Balvinder Singh Pabla?

2 A I didn't know that.

3 Q Okay. And did you know Mr. Pabla?

4 A No.

5 Q Okay. In the exhibit book in front of you, if you
6 go to Exhibit A, the third -- page 3 of Exhibit A, do you see
7 that document?

8 THE INTERPRETER: What was the question?

9 BY MR. KYNASTON:

10 Q Is that your signature on page 3 of that document?

11 A Yes.

12 Q Okay. Now I want you to flip over to Exhibit B and
13 go to page 3 of that document. Is your signature on page 3 of
14 that document?

15 A Yes.

16 Q Okay. And if you flip back, what -- what is that
17 document that's Exhibit B? What is that, can you identify it?

18 THE INTERPRETER: Would you kindly bring the purse
19 of the lady?

20 MR. KYNASTON: What -- what does she need her purse
21 for?

22 THE INTERPRETER: For glasses.

23 MR. KYNASTON: Oh, for glasses. Okay.

24 MR. JAMES: Your Honor, if it please the Court, we

1 stipulate that's the joint petition for summary decree of
2 divorce.

3 THE COURT: Mr. Kynaston?

4 MR. KYNASTON: Okay. All right. Well, I'll go to
5 my next question then, that we've stipulated that that's the
6 joint petition. The prior document A is the decree, which has
7 already been admitted, as well.

8 MR. JAMES: So stipulated, Your Honor.

9 MR. KYNASTON: Okay.

10 THE COURT: Thank you.

11 BY MR. KYNASTON:

12 Q Ms. Kaur, what is your understanding about what a
13 joint petition is?

14 A I -- I don't know what's that.

15 Q Okay. But you signed that document?

16 A Yes.

17 Q And why did you sign it?

18 A I -- I was asked by Mr. Singh to sign it, so
19 whatever he said, I just did it.

20 Q Okay. Did you always do everything he told you?

21 A Yes, I did.

22 Q Okay. Were you aware at that time that if you
23 didn't sign that joint petition, that Mr. Singh would have had
24 to serve you with a complaint for divorce?

1 A Could you repeat the question, please?

2 Q Sure. Were you aware at that time that you signed
3 the joint petition that if you did not sign it, that Mr. Singh
4 would have had to serve you with a complaint for divorce?

5 A I didn't know that.

6 Q Okay. And if you had been served with a complaint
7 for divorce, do you know what your obligations would have
8 been?

9 A I can't say.

10 Q You never personally filed any kind of response or
11 answer to any of the pleadings filed in the Nevada divorce
12 case; is that true?

13 A No.

14 Q Okay. Do you recall ever signing something
15 affirming that Mr. Singh was a Nevada resident?

16 A No.

17 Q Okay. And you weren't aware at that time that the
18 documents that you signed made a claim that he was a Nevada
19 resident?

20 MR. JAMES: Objection, leading.

21 THE COURT: Sustained.

22 MR. KYNASTON: I'll re-ask the question.

23 BY MR. KYNASTON:

24 Q Did -- did you know what the contents of the

1 document that you signed said?

2 A I -- I didn't read it. I don't know.

3 Q Okay. And do you know if it said -- made any claims
4 about residency?

5 A No, I didn't.

6 Q Okay. When did you first become aware of language
7 in the decree of divorce stating that Mr. Singh was a Nevada
8 resident?

9 A I -- I didn't know about that.

10 Q Right. But when did you become aware of that? You
11 know that now, correct?

12 A In 2018, I came to know that.

13 Q And why did you come to know that in 2018?

14 THE INTERPRETER: I misstated something. Could you
15 ask the question again?

16 MR. KYNASTON: Sure.

17 BY MR. KYNASTON:

18 Q When did you -- when did you first become aware of
19 language in the Nevada decree of divorce that stated that
20 Mr. Singh was a Nevada resident?

21 A No, I didn't know that.

22 Q I -- let me ask it again, because I don't think
23 you're understanding my question. When did you -- let me say
24 -- do -- are you aware now that Mr. Singh claimed to be a

1 Nevada resident in 2004?

2 A Now I do.

3 Q Okay. And when did you learn that?

4 A I -- I came to know when the case started that we
5 had to stay here for more than six weeks.

6 Q Okay. But when -- when did you first become aware
7 that the Nevada decree of divorce claimed that Mr. Singh was a
8 Nevada resident?

9 A No, I didn't know that. We -- we didn't stay here.

10 Q Okay. You -- you previously testified that you
11 filed for divorce in 2018 in California, correct?

12 A Yes, yes.

13 Q And at some point in that divorce -- California
14 divorce litigation, Mr. Singh filed something indicating that
15 he was already divorced in Nevada; is that correct?

16 A Yes.

17 Q And prior to that time, were you aware that he
18 claimed to be a Nevada resident in 2004?

19 A No, I don't know.

20 Q Okay. When did you first receive a copy of the
21 Nevada decree of divorce?

22 A I -- I never received it.

23 Q Okay. But have you seen a copy of it now?

24 A No, I haven't seen it.

1 Q Prior to 2018, were you aware of what the Nevada
2 decree of divorce said?

3 A No, I didn't know anything.

4 Q Okay. Were you aware that it stated there was no
5 community property?

6 MR. JAMES: Objection. That actually misstates what
7 the decree says.

8 MR. KYNASTON: All right.

9 MR. JAMES: In paragraph 10, it says there was no
10 community property for the Court to divide.

11 THE COURT: Mr. Kynaston, do you want to restate?

12 MR. KYNASTON: I'll restate the question.

13 THE COURT: Okay.

14 BY MR. KYNASTON:

15 Q All right. Were you aware that the decree of
16 divorce stated that there's no community property for the
17 Court to divide?

18 A Everything was joint, our bank accounts, and
19 everything else. Nothing changed after 2004.

20 Q Okay.

21 MR. JAMES: Objection, non-responsive.

22 MR. KYNASTON: I'll re-ask the question.

23 BY MR. KYNASTON:

24 Q So were you -- were you aware prior to 2018 that the

1 decree of divorce stated that there's no community property
2 for the Court to divide. Yes or no question.

3 A No.

4 Q Okay. And prior to 2018, did you know that the
5 decree of divorce stated there was no community debt for the
6 Court to divide?

7 A No, there was no debt.

8 Q And prior to 2018, were you aware that the decree of
9 divorce in Nevada said that both parties have waived any right
10 to spousal support?

11 A We had a joint account that we both operated, and
12 paid all the bills through that.

13 Q Okay. Well, my question is, were you aware that the
14 decree of divorce said that neither party would receive
15 spousal support?

16 A Yes, that's right. There was no child support on
17 any part.

18 Q Okay. Let -- let me just ask you one more time,
19 because I -- I think we're getting -- getting a little off
20 base. So were you aware that in -- that the Nevada decree of
21 divorce provided that neither party would -- each -- both
22 parties were waiving the right to receive spousal support?
23 It's just a yes or no question.

24 A Yes. We waive the right to have any child support.

1 Q Okay.

2 THE COURT: Could I speak to Counsel?

3 MR. KYNASTON: Sure.

4 THE COURT: Privately. Can we go off record so I
5 can speak to Counsel?

6 (COURT RECESSED AT 2:21:50 AND RESUMED AT 2:25:54)

7 THE COURT: We're back on the record in the matter
8 of Singh v. Kaur, D323977. I had a colloquy with Counsel.
9 Mr. Interpreter, we're going to reserve and use one
10 Interpreter. We thank you for your participation today.
11 We're going to take a quick five minute break, and if you need
12 us to sign anything, let us know.

13 THE INTERPRETER: The other Interpreter just
14 requested me that if need be, I would translate in Punjabi
15 because he's not --

16 THE INTERPRETER: Your Honor, he speak -- he
17 understands Urdu, but he's comfortable to speak Punjabi, which
18 I understand, but he is more from different country. But I
19 spent 10 years on that country in college, and I speak Urdu.
20 So -- but the main language is Urdu, but basically, he
21 understand that, but he's comfortable to have Punjabi. So
22 he's the expert on Punjabi.

23 THE COURT: Okay. So you're an expert in Punjabi?

24 THE INTERPRETER: Yes, I do.

1 THE COURT: And you're not?

2 THE INTERPRETER: I'm Urdu, which is -- he
3 understood. I called him a few months ago, because the
4 attorney called me, says, speak with -- communicate, because
5 we don't have two Punjabis in town. So I spoke with him, he
6 was comfortable, and he understand me. But he'd rather have a
7 -- to speak (indiscernible) slightly different.

8 THE COURT: Okay. So if I understand you correctly,
9 sir, you would like to swap interpreters; is that correct?

10 MR. JAMES: We can do that.

11 THE COURT: All right. So I'm going to have
12 Mr. James and Mr. Kynaston talk and I'm going to go ahead and
13 make a phone call to my office. We're going to take a quick
14 five minute break. If you two just want to come back after
15 you speak and let me know?

16 MR. JAMES: Okay.

17 THE COURT: Just confer, and I'll -- I'll be right
18 back. We'll take a five minute break. If anybody needs to go
19 to the restroom, they're out in the hall.

20 (COURT RECESSED AT 2:27:41 AND RESUMED AT 2:40:52)

21 THE COURT: Back on record in the matter of Singh v.
22 Kaur, D323977. For the Interpreters, I -- you've made a
23 request related to a dialect, and I've spoken to Counsel. So
24 I'm going to go ahead and grant the request to have the

1 Plaintiff's Interpreter sit with the Defendant.

2 I am going to request for both Interpreters, please
3 -- please repeat what you've heard pursuant to your
4 interpreter rules. I know sometimes you guys are placed in a
5 position where a -- a -- someone you're interpreting for might
6 ask for a clarification. Obviously, we can't do that. If you
7 don't understand one of the questions from Counsel, please let
8 us know so that we can restate and -- and we'll certainly take
9 the time to make a record and accommodate your interpreting
10 skills. Okay?

11 THE INTERPRETER: Okay.

12 THE COURT: So, sir, I'm going to have you interpret
13 for Mr. James and his client --

14 THE INTERPRETER: Okay.

15 THE COURT: -- and, sir, you'll come up with the
16 Defendant. Thank you so much.

17 MR. JAMES: No, no, no. She wants you up there.

18 THE INTERPRETER: She doesn't want me to sit.

19 THE COURT: So, Counsel, Ms. Kaur has indicated she
20 does not wish to switch interpreters.

21 MR. JAMES: I'll defer to Mr. Kynaston, Your Honor.
22 That --

23 MR. KYNASTON: Well --

24 MR. JAMES: -- it's his witness's --

1 MR. KYNASTON: -- why don't -- I guess let's go
2 forward with the way it is, and I'll try -- if mister -- you
3 know, if the Interpreter would obviously, you know, listen to
4 the Court's instruction, just interpret the question. If you
5 don't -- it's not understood, direct it back to me, and I'll
6 try to restate it, and -- and then just interpret whatever she
7 says back.

8 THE INTERPRETER: Yes, I do.

9 THE COURT: Okay. So for the record, we did call to
10 inquire if we had other dialects available, and the -- it's --
11 these are our two gentlemen who interpret.

12 MR. JAMES: We understand (indiscernible).

13 THE INTERPRETER: Let me explain as to what the
14 situation is. This gentleman is from Iran, his basic language
15 is Farsi. And he has lived in Pakistan, and he understands
16 Urdu a little bit. And when -- when I was not here, he would
17 interpret for all the cases of Urdu. And Urdu and Hindi are
18 most similar. Most of the people in India and Pakistan
19 understand each other.

20 I am born in Punjab, so my basic language is
21 Punjabi. In the previous court, there was another case after
22 2004, another case here in the family court, and I interpreted
23 for both of them at that occasion. And I think after that, it
24 went to the Supreme Court, and then it came back here again.

1 THE COURT: Okay.

2 THE INTERPRETER: So this is the situation.

3 THE COURT: And just so the record's clear, both

4 Mr. Singh and Ms. Kaur speak Punjabi?

5 THE INTERPRETER: Yes.

6 MR. JAMES: Yes, Your Honor.

7 THE COURT: And that's correct?

8 MR. KYNASTON: Yes, Your Honor.

9 MR. JAMES: Yes, Your Honor.

10 THE COURT: And, Mr. James, that's correct for your

11 client, as well?

12 MR. JAMES: Yes, Your Honor.

13 THE COURT: Okay. So I've had Mr. Interpreter in

14 municipal court. He's kindly interpreted for us down there

15 before. So I just -- in terms of if there's a question that's

16 not understood, please let Mr. Kynaston know.

17 THE INTERPRETER: Sure.

18 THE COURT: My concern is with the question related

19 to spousal support, which I heard interpreted as child

20 support. And spousal support is different from child support.

21 THE INTERPRETER: Oh, I totally misunderstood.

22 THE COURT: Okay.

23 THE INTERPRETER: Yeah.

24 THE COURT: Yeah, just ask Mr. Kynaston --

1 THE INTERPRETER: Spousal --
2 THE COURT: -- or Mr. James.
3 THE INTERPRETER: -- as he said, spousal --
4 MR. KYNASTON: Right.
5 THE INTERPRETER: -- I -- I totally -- I'm so sorry
6 --
7 THE COURT: That's okay.
8 THE INTERPRETER: -- about that.
9 THE COURT: Just if you have a question --
10 THE INTERPRETER: (Indiscernible) --
11 THE COURT: -- please ask the attorneys, and they'll
12 repeat.
13 THE INTERPRETER: Sure, sure.
14 THE COURT: Thank you.
15 THE INTERPRETER: Sure.
16 THE COURT: Ma'am, have a seat. I remind you that
17 you're under oath. Mr. Kynaston?
18 MR. KYNASTON: All right.
19 BY MR. KYNASTON:
20 Q So just to kind of go back to where we left off.
21 Okay. So prior to 2018 when you filed the California divorce
22 action, you had no knowledge of the contents of the Nevada
23 decree of divorce.
24 A No, I didn't know that.

1 Q Okay. Ms. Kaur, do you have any understanding of
2 what is required to establish residency in the state of Nevada
3 for divorce purposes?

4 MR. JAMES: Your Honor, I'm going to object as to
5 relevance, Your Honor. What -- what she knows or not is not
6 relevant to these proceedings, to any of the five factors
7 before us.

8 MR. KYNASTON: Okay.

9 THE COURT: Any response?

10 MR. KYNASTON: I think it's relevant to the factor
11 of ignorance, under factor 5.

12 THE COURT: I'll allow it. She can answer.

13 THE DEFENDANT: No, I don't know.

14 BY MR. KYNASTON:

15 Q Okay. And at the time you signed the Nevada divorce
16 papers, were you aware of any language in those papers
17 regarding residency?

18 A No, I didn't.

19 Q Do you recall testimony from the prior trial
20 establishing that neither yourself nor Mr. Singh were
21 residents of Nevada at the time the divorce papers were filed
22 in Las -- in Nevada?

23 A No, I don't know.

24 Q Okay. Ms. Kaur, ultimately, why did you sign the

1 Nevada divorce papers in 2004?

2 MR. JAMES: Objection, asked and answered.

3 THE COURT: She has answered.

4 MR. KYNASTON: Okay.

5 THE COURT: She said she did what her husband told
6 her to.

7 MR. KYNASTON: Okay.

8 BY MR. KYNASTON:

9 Q Ms. Kaur, after -- after you signed the Nevada
10 divorce papers, what did you do next?

11 A Nothing happened. We were just living in the same
12 condition.

13 Q So you returned back home to California?

14 A Yes.

15 Q And you continued to live with Mr. Singh in the same
16 house?

17 MR. JAMES: Objection, leading.

18 BY MR. KYNASTON:

19 Q Who did you live with after --

20 THE COURT: I'll -- I'll allow it.

21 MR. JAMES: Okay.

22 THE COURT: I'll allow it, just to expedite a little
23 bit.

24 THE DEFENDANT: Same -- in the same house.

1 BY MR. KYNASTON:

2 Q Okay. And to this date, are you still living in the
3 same house as Mr. Singh?

4 A Yes.

5 Q When you returned home to California after the
6 Nevada divorce, did anything change in the household?

7 A No.

8 Q Okay. You continued to maintain joint finances?

9 A Yes.

10 Q Did you have any joint credit cards?

11 A Yes.

12 Q When you received a paycheck, where did your
13 paycheck go?

14 A It was a direct deposit in Bank of America.

15 Q And was --

16 A Our joint account.

17 Q Okay. You previously testified that you understood
18 that when Mr. Singh wanted you to sign the Nevada divorce
19 papers, that it was so he could take you to India to marry his
20 brother; is that correct?

21 A No, not yet.

22 Q Okay.

23 MR. JAMES: Your Honor, sidebar?

24 THE COURT: Sure. Ma'am, would you step down to the

1 table? At the bench, or?

2 MR. JAMES: I think behind would be better.

3 THE COURT: All right. Off record.

4 (COURT RECESSED AT 2:51:43 AND RESUMED AT 3:00:55)

5 THE COURT: We're back on the record. Mr. Kynaston?

6 BY MR. KYNASTON:

7 Q All right. Ms. Kaur, I just want to clarify my last
8 question. I'm not sure that you fully understood it. So let
9 me ask -- ask it again. Okay. You testified that you
10 understood that the reason Mr. Singh wanted you to get a paper
11 divorce in Nevada was so that you -- he could take you to
12 India to marry his brother; is that correct?

13 A Yes.

14 Q Okay. And did you actually marry his brother?

15 A Yes.

16 Q After you married his brother, did you stay with his
17 brother in India?

18 A No.

19 Q What -- what did you do after you married his
20 brother?

21 A We came here.

22 Q You came back to the United States?

23 A Yes.

24 Q And when you say we, you mean you and Mr. Singh?

1 A Myself, Mr Singh, Mr. Singh's mother and father.
2 Q Okay. Did you ever have sexual relations with
3 Mr. Singh's brother?
4 A No.
5 Q Okay. And at the time you married Mr. Singh's
6 brother, was he already married to someone else?
7 A Yes, he was married before.
8 Q Okay. And how do you know he was married?
9 A We had gone there to attend his marriage ceremony.
10 Q And when did that happen?
11 A In 2004.
12 Q Okay. Is there an age difference between you and
13 Mr. Singh's brother?
14 A Yes.
15 Q And what's that age difference?
16 A Twelve years.
17 Q Okay. And when you went on that trip to India to
18 marry his brother, did Mr. Singh marry anybody?
19 A Yes, he did.
20 Q And who did he marry?
21 A He married the wife of his brother.
22 Q Are you still married to Mr. Singh's brother?
23 A No.
24 Q Okay. And why was that marriage dissolved?

1 A He couldn't get the visa, so he sent the divorce
2 paper in 2008.

3 Q Prior to 2018 when you filed the California divorce
4 action, did you and Mr. Singh ever talk about the Nevada
5 divorce?

6 A No.

7 Q What was your understanding as to why Mr. Singh
8 needed to get a paper divorce so you could get -- so he could
9 get his brother to the United States?

10 A Yes. They wanted to be together, all of them.

11 Q Ms. Kaur, what is your understanding as to what will
12 happen in the California divorce if the Court -- if the Nevada
13 Court doesn't set aside the decree of divorce in 2004?

14 A I have no idea what will happen, and I have no
15 money, and it looks like he'll kick me out of the house.
16 Everything is in his name. I have nothing in my name.

17 Q Ms. Kaur, has Mr. Singh tried to kick you out of the
18 house before?

19 MR. JAMES: Objection, relevance. This has
20 absolutely nothing to do with the factors as to what's
21 happening now.

22 THE COURT: Mr. Kynaston, any record you want to
23 make?

24 MR. KYNASTON: I'll withdraw the question.

1 THE COURT: Withdrawn.

2 BY MR. KYNASTON:

3 Q Ms. Kaur, do you know how much you've incurred in
4 attorney's fees since the -- in the -- in this Nevada case,
5 since it started in 2019?

6 THE INTERPRETER: How much money was incurred in the
7 --

8 MR. KYNASTON: In attorney's fees.

9 THE INTERPRETER: -- attorney's fees --

10 MR. KYNASTON: In --

11 THE INTERPRETER: -- in 2009?

12 MR. KYNASTON: Since -- since 2019, in the Nevada
13 case. Do you want me to ask it again?

14 BY MR. KYNASTON:

15 Q Do -- do you know how much you have incurred in
16 attorney's fees since the commencement of the Nevada case to
17 set aside this divorce?

18 A About 100,000. I don't know.

19 Q And how have you paid those attorney's fees?

20 A I -- I paid out of the work that I do, and I get
21 help from my family friends.

22 Q All right.

23 MR. KYNASTON: I have no further questions at this
24 time, Your Honor.

1 THE COURT: Thank you, Mr. Kynaston. Mr. James,
2 cross?

3 MR. JAMES: Yes, Your Honor. Now, I believe we have
4 a stipulation as to the admission and publication of the
5 deposition of Rajwant Kaur from the original trial?

6 THE COURT: Mr. Kynaston?

7 MR. KYNASTON: That is correct, Your Honor.

8 THE COURT: All right. So by stipulation of the
9 parties, Ms. Kaur's deposition, which was admitted, will be
10 published.

11 MR. KYNASTON: And that's, for the record, Exhibit O
12 in my trial exhibit book.

13 THE COURT: Exhibit O.

14 MR. JAMES: So I would like the witness to turn to
15 Exhibit O in her own trial book. Is there a copy up there of
16 the Defendant's exhibit book?

17 MR. KYNASTON: There should be, yes.

18 MR. JAMES: All right.

19 THE INTERPRETER: Yes.

20 MR. JAMES: Are you at Exhibit O?

21 THE INTERPRETER: Yeah.

22 CROSS EXAMINATION

23 BY MR. JAMES:

24 Q Okay. It would be page 16 of that deposition.

1 Starting at line 13, my question to you was, to your
2 knowledge, after you divorced Jaswinder in 2004, did he ever
3 remarry. Your answer was no, he didn't marry. Do -- do you
4 see that? Do -- do you see that there in the transcript?

5 A At that time, I understood --

6 MR. JAMES: I'm going to object as non-responsive,
7 Your Honor. It was a yes or no question, does she see that in
8 the transcript.

9 THE INTERPRETER: I only got to translate what --
10 whatever she says.

11 THE COURT: I'll direct the witness to answer the
12 question, please.

13 THE DEFENDANT: I don't remember that.

14 BY MR. JAMES:

15 Q Okay. But my question was, do you see that in the
16 transcript?

17 MR. JAMES: Or if I could just have the Court take
18 judicial notice of that, that's what it says.

19 MR. KYNASTON: I'll stipulate.

20 THE COURT: He'll stipulate.

21 MR. JAMES: Thank you. Now, may it please the
22 Court, I've got copies of the transcript from the hearing
23 where Ms. Kaur was testifying, as well. If I may approach the
24 witness with a copy? I have a copy for the Court, if the

1 Court would like one.

2 THE COURT: Please.

3 MR. KYNASTON: There's a copy in my trial book

4 already, if we want to use that --

5 THE COURT: Is it Q?

6 MR. KYNASTON: -- since it's already marked.

7 MR. JAMES: Oh.

8 THE COURT: Is it P or Q?

9 MR. JAMES: It's going to be --

10 THE COURT: P --

11 MR. KYNASTON: It looks like it's the one from the

12 13th.

13 MR. JAMES: It's going to be Q, Your Honor.

14 THE COURT: Okay.

15 MR. JAMES: We'll use that one.

16 BY MR. JAMES:

17 Q If you'd turn to page 8-2?

18 THE COURT: 82, Mr. James?

19 MR. JAMES: 82.

20 BY MR. JAMES:

21 Q Is the witness there? Are you on page 82?

22 A Yes.

23 Q So if you see at line 15, this is Mr. Kynaston, I

24 believe, asking the questions. Okay. What were the

1 circumstances that brought you to Las Vegas in 2004? Answer,
2 we -- we need to call your (sic) brother, so therefore, we
3 need to divorce each other.

4 Then the Court said it didn't understand, Counsel
5 said he didn't understand, rephrase the question. Why did you
6 come to Las Vegas in 2004? Answer, Jaswinder brought me here
7 saying we needed to divorce so that we could get his brother
8 here. Do you see that in the transcript, or can I have the --

9 MR. KYNASTON: Stipulate.

10 THE COURT: Stipulated.

11 MR. JAMES: Thank you. And just for the record,
12 this is the transcript from the September 13th, 2019, hearing
13 with Ms. Kaur testifying,

14 BY MR. JAMES:

15 Q And if you turn to page 84? Page -- again, line 15,
16 there's another question from Mr. Kynaston. And what happened
17 in 2000 -- 2018 that caused you to find out what these papers
18 said? Answer, in -- in 2004, he took me to India and got me
19 married to his brother, and said that between us, there is a
20 divorce.

21 MR. JAMES: Do I have your stipulation that's what
22 it says on that page?

23 MR. KYNASTON: Yep, stipulated.

24 THE COURT: Stipulate? Stipulated.

1 BY MR. JAMES:

2 Q Okay. And if you turn to the deposition transcript

3 once again --

4 MR. JAMES: I believe that was Exhibit O, Your

5 Honor.

6 BY MR. JAMES:

7 Q And page 14 of Exhibit O, down at line 20, and this

8 is me deposing Ms. Kaur. Question, now, you were aware that

9 in 2004, you received a decree of divorce --

10 THE INTERPRETER: Excuse me. Is it page 14?

11 MR. JAMES: Page 14, yes. Line 20.

12 THE INTERPRETER: Line 20. Line 20 starts with a

13 question that is already coming down, and the end is

14 dissolution of the marriage, correct? That's -- that's what

15 this --

16 MR. JAMES: Are you at Exhibit O, page 14?

17 THE INTERPRETER: Yeah. Exhibit O, page 14 --

18 MR. JAMES: Line 20.

19 THE INTERPRETER: -- line 20.

20 MR. JAMES: It should say, now, you were aware that

21 in 2004. Does that -- is that what your copy says?

22 THE INTERPRETER: No. It doesn't say that. It is

23 starting --

24 MR. JAMES: May I approach to see, Your Honor?

1 THE INTERPRETER: -- with the question from line 17.

2 Okay. And then if you --

3 MR. JAMES: May I see?

4 THE INTERPRETER: Yes, yes.

5 MR. JAMES: Oh, you're on Q. Here we go.

6 BY MR. JAMES:

7 Q Okay. Do you see at line 20 it says, now, you were
8 aware that in 2004, you received a decree of divorce from
9 Mr. Singh? Ms. Kaur's answer was, yes, I am. Question, after
10 the divorce was filed on September 8th, 2004, did you marry
11 someone else? I married his brother in India. What was the
12 date of that? In November of 2004. Is that a correct
13 statement?

14 MR. KYNASTON: That's what it says.

15 MR. JAMES: Stipulate?

16 MR. KYNASTON: Stipulate.

17 THE COURT: Stipulated.

18 BY MR. JAMES:

19 Q And if you go to page 17 of the same exhibit,
20 starting with -- and this is mainly for context, answer on
21 line 3, he had divorced me to get his brother here. He had
22 told me that this will not be a permanent divorce, it would
23 just be a divorce on papers. Question, but you knew the judge
24 had signed the decree of divorce? Answer, he never showed me

1 any papers that the judge signed or not signed.

2 Question, but you were aware you were divorced?

3 Answer, I just told you that it was just to get his brother.

4 In reality, we were not divorced from each other. Question,
5 that was not my question. My question was, you were aware you
6 were divorced, correct? Yes, I do. Yes, I know. Is that a
7 correct statement?

8 MR. KYNASTON: It's what it says. I'll stipulate.

9 THE COURT: Stipulated.

10 MR. JAMES: And if the Court could take judicial
11 notice of what the joint petition says at paragraph 7? It
12 waives notice of entry, and the decree at paragraph 14 waives
13 notice of entry. Those are exhibits I believe A and E.

14 THE COURT: Mr. Kynaston?

15 MR. JAMES: A is the decree. Paragraph 14, it says
16 the parties waive their rights to written notice of entry of
17 decree of divorce to appeal the findings of fact, conclusions
18 of law, and to move for a new trial.

19 MR. KYNASTON: I'll stipulate that's what it says,
20 but I'm not stipulating that my client knew that it said that.

21 MR. JAMES: Merely that the document says it.
22 That's all I'm --

23 MR. KYNASTON: Yeah. That's what the document says,
24 and I'll stipulate to that.

1 MR. JAMES: And the same thing with the joint
2 petition at paragraph 7.
3 MR. KYNASTON: Stipulate with the same caveat.
4 THE COURT: Understood.
5 MR. KYNASTON: Your Honor, that's all I have.
6 THE COURT: Redirect?
7 MR. KYNASTON: I don't have any redirect.
8 THE COURT: Okay. Ma'am, you want to sit with your
9 attorney, please? Mr. Kynaston?
10 MR. KYNASTON: No further witnesses, Your Honor.
11 THE COURT: Rest?
12 MR. KYNASTON: I rest.
13 THE COURT: Okay. Defendant rests.
14 MR. JAMES: I have no witnesses, Your Honor. Rest.
15 THE COURT: All right. Are we doing argument or
16 closing briefs, folks? What's your preference?
17 MR. JAMES: I would like briefs, Your Honor. On
18 this, it's a very distinct legal issue I think we would need
19 proper authorities on, because this has a high likelihood of
20 being appealed again, and I would like a very good record on
21 this, rather than just oral representations of what law says.
22 THE COURT: Mr. Kynaston, what's your pleasure?
23 MR. KYNASTON: I -- I'm fine with briefing. I mean,
24 I think -- you know, obviously, I -- I feel like I briefed it

1 already, and -- but I can supplement my brief as necessary.
2 Mr. James's pretrial memo was pretty bare bones, obviously,
3 and so it -- you know, it puts me in a little bit of a
4 disadvantage because I briefed it and he knows my arguments,
5 and I don't know his because he didn't brief it before the --
6 the hearing. That's my only concern, is the -- the fairness
7 of the -- of the process that, you know, he gets to see my
8 hand before I see his. But I don't know what we can do about
9 it, because it is what it is, so.

10 THE COURT: Okay

11 MR. KYNASTON: I --

12 THE COURT: Well --

13 MR. KYNASTON: I don't know if -- I mean, my -- my
14 suggestion might be is maybe he'll allow -- you know, might
15 allow my pretrial memo to stand as my initial brief, and
16 perhaps give me an opportunity to respond to Mr. James's
17 brief.

18 THE COURT: Okay.

19 MR. JAMES: I can say right now what I'm going to
20 put in my -- in my closing. I'm going to argue contract law,
21 understanding of contracts, the fact that it doesn't matter if
22 you don't understand it, the law says, you sign it, you're
23 done, basically. Doesn't matter if it's written in a foreign
24 language. If you don't, you know, take the care to -- to read

1 it and sign it, it's still binding.

2 THE COURT: Okay. So as I told the attorneys, I
3 feel like in this particular case, I'm bound by certain
4 findings. One, we have a findings of fact, conclusions of
5 law, an order from Judge Pomrenze and then the Nevada Supreme
6 Court's reversal and remand, which I feel gives me some very
7 specific marching orders.

8 I've indicated to both Counsel I intend to review
9 the underlying record, to include the exhibits that were
10 admitted, within the constraints of what the Nevada Supreme
11 Court says the reversal remand is appropriate for, which is
12 not a de novo review of the entire record, but within that
13 sandbox that the Nevada Supreme Court put me in. So I just
14 think that a full review of the record is what the litigants
15 deserve because I'm a new judge to the case, so I will do
16 that. But I'm mindful of what the reversal and remand directs
17 me to review.

18 So let's go ahead and do closing briefs. I don't
19 think either of you is prejudiced just because I'm going to
20 look at everything, just so I have a full understanding.

21 MR. KYNASTON: Okay.

22 THE COURT: No, Mr. James?

23 MR. JAMES: Correct. We're not prejudiced.

24 THE COURT: Sorry?

1 MR. JAMES: I'm agreeing with you.
2 THE COURT: Oh, okay. Okay.
3 MR. JAMES: It was -- the way it was phrased, a -- a
4 negative response was an affirmation.
5 THE COURT: Okay. Got it. Okay. So I guess the
6 next thing is how long would you like, and do you guys want a
7 page limit? How long do you think you'd be? Let's start with
8 that.
9 MR. KYNASTON: I -- maybe a couple of weeks?
10 MR. JAMES: Yeah.
11 THE COURT: A couple weeks being two weeks, three
12 weeks?
13 MR. KYNASTON: Whatever Mr. James thinks, because I
14 --
15 THE COURT: Okay.
16 MR. KYNASTON: -- I think a lot of my briefing's --
17 THE COURT: Mr. James, what do --
18 MR. KYNASTON: -- my briefing's done.
19 THE COURT: -- you think?
20 MR. JAMES: If I can take a look at my calendar --
21 THE COURT: Today's the 16th, three weeks would be
22 Labor Day, Monday the 6th.
23 MR. KYNASTON: I'm going to be out of town that day,
24 so not --

1 THE COURT: Okay.

2 MR. KYNASTON: -- that day, but --

3 MR. JAMES: I'm going to see how many trials I have
4 between now and then. Just motions hearings, actually, and
5 settlement conference. So we could do it the 7th.

6 THE COURT: Why don't we do the 13th, which is a
7 Monday, by close of business?

8 MR. JAMES: Sure.

9 THE COURT: With filed and served. And 20 pages,
10 gentlemen, or?

11 MR. JAMES: And to be fair to Mr. Kynaston, should
12 we be able to do one week later responses to each?

13 THE COURT: These are closing briefs, so it's not
14 responsive pleading. So I would anticipate whatever you might
15 say today in the courtroom, I guess if one of you wanted to
16 reserve rebuttal, then that would be fair game, but --

17 MR. KYNASTON: That's fine. Let's just do closing
18 briefs by the 13th.

19 THE COURT: Okay. By close of business on Monday
20 the 13th.

21 MR. KYNASTON: Can we do 25 pages?

22 THE COURT: Twenty-five pages, Mr. James?

23 MR. JAMES: I'm fine with that. I tend to be
24 briefer, but if Mr. Kynaston wants to do more, I have no

1 objection.

2 THE COURT: Okay. So, folks, closing briefs will be
3 due by close of business, which for our electronic filing is
4 11:59 p.m., with service on the other side. Page limit's 25
5 pages, and I've made a record that I intend to review
6 everything, just so that I have a full understanding of the
7 record. My practice is to do a written decision. I don't do
8 them from the bench. So far, I've been able to hold to
9 getting them out within about seven days of our final date.
10 So far.

11 MR. JAMES: Wow.

12 THE COURT: Yeah, I've been trying to do that.

13 MR. JAMES: Very good.

14 THE COURT: So we'll see. For better or worse.
15 Okay?

16 MR. KYNASTON: All right. Thank you, Your Honor.

17 THE COURT: All right. I thank any Interpreters for
18 their service today.

19 MR. JAMES: Thank you so much.

20 THE COURT: And I look forward to the briefs,
21 gentlemen.

22 MR. JAMES: Thank you, Your Honor.

23 THE COURT: Thank you. Thank you, Mr. Kynaston.

24 MR. KYNASTON: Thank you, Your Honor.

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(PROCEEDINGS CONCLUDED AT 3:29:54)

* * * * *

ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.

/s/ Nita Painter
Nita Painter

CASE NO. 04D323977

DEPT. P

Jaswinder Singh

Vs PLAINTIFF

Rajwant Kaur

DEFENDANT,

TRIAL DATE: SEP 12 2019 / SEP 13 2019

JUDGE: SANDRA POMRENZE

CLERK: CAROL CRITCHETT

REPORTER: VIDEO

F. Peter James

COUNSEL FOR PLAINTIFF

Andrew Kynaston

COUNSEL FOR DEFENDANT

TRIAL BEFORE THE COURT

PLAINTIFF'S WITNESSES:

- | | |
|----------|-----------|
| 1. _____ | 7. _____ |
| 2. _____ | 8. _____ |
| 3. _____ | 9. _____ |
| 4. _____ | 10. _____ |
| 5. _____ | 11. _____ |
| 6. _____ | 12. _____ |

DEFENDANT'S WITNESSES:

- | | | |
|---------------------------|-----------------|-----------|
| 1. <u>Jaswinder Singh</u> | <u>1:39:30</u> | 7. _____ |
| | <u>9-12-19</u> | |
| 2. <u>Jaswinder Singh</u> | <u>9:42:57</u> | 8. _____ |
| | <u>9-13-19</u> | |
| 3. <u>Rajwant Kaur</u> | <u>09:30:00</u> | 9. _____ |
| | <u>9-13-19</u> | |
| 4. _____ | | 10. _____ |
| 5. _____ | | 11. _____ |
| 6. _____ | | 12. _____ |

REBUTTAL WITNESSES:

- | | |
|----------|----------|
| 1. _____ | 1. _____ |
| 2. _____ | 2. _____ |

SUR-REBUTTAL WITNESSES:

04D323977

Jaswinder Singh vs. Rajwant Kaur 04323977

PLAINTIFF'S TRIAL EXHIBITS

TRIAL DATE: 9/12 & 9/13

Exhibit	Description	Objected	Offered	Accepted
✓ 1	Executed release for employment records	no	Stipulated 9-12-19 ✓	admitted 9-12-19 ✓
✓ 2	Letter from Bank of America regarding records being unavailable	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✗	Grant Bargain Sale Deed in the name of Balbinder Singh Pabla for Nevada property			
✓ 4	Payment receipts for the Law Office of F. Peter James, Esq. dated 1/16/19 and 2/26/19	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✓ 5	Invoice # 2621, 2588, and 2606 from the Law Office of F. Peter James, Esq. (redacted)	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✗	Invoices from Constance Bessada, Esq. dated 6/13/18, 8/21/18, and 1/3/19 (redacted)			
✓ 7	Retainer Agreement for Law Offices of F. Peter James, Esq.	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✗	Retainer Agreement for Constance Bessada, Esq.			
✗	Passport of Jaswinder Singh			
✓ 10	Documents disclosed by Defendant's counsel at the August 19, 2019 deposition	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✓ 11	India Marriage Certificate Jasvir Singh Dhaliwal and Rajwant Kaur	yes	✓ 9-13-19	no
✗	India Divorce Ruling			
✓ 13	Defendant's Deposition Transcript	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✓ 14	Plaintiff's Interrogatories to Defendant			
✓ 15	Defendant's responses to the Interrogatories	no	Stipulated 9-12-19 ✓	9-12-19 ✓
✗	Plaintiff's Requests for Production of Documents to Defendant			
✗	Defendant's responses to Requests for Production of Documents			

Jaswinder Singh v. Rajwant Kaur
CASE NO. 04D323977

DEFENDANT'S EXHIBITS		OFFERED	ADMITTED	Objected
✓A	Decree of Divorce, filed September 8, 2004 in Clark County [DEF018 - DEF020]	Stipulated ✓9-12-19	9-12-19	NO
✓B	Joint Petition for Summary Decree of Divorce, filed August 27, 2004 in Clark County [DEF013 - DEF017]	↑	↑	
✓C	Affidavit of Resident Witness, filed August 27, 2004 in Clark County [DEF021 - DEF022]	↑	↑	
✓D	Petition for Dissolution of Marriage, filed May 7, 2018 in Los Angeles County [DEF001 - DEF003]	↑	↑	
✓E	Plaintiff's Response and Request for Dissolution of Marriage [DEF004 - DEF006]	↑	↑	
✓F	Plaintiff's Amended Response to Petition [DEF010 - DEF012]	↓	↓	
✓G	Order from Hearing Held February 13, 2019, filed March 14, 2019 in Clark County	Stipulated ✓9-12-19	9-12-19	NO
✗H	Minutes from Hearing Held February 13, 2019			
✓I	Plaintiff's Response to Defendant's First Set of Interrogatories to Plaintiff, e-served May 13, 2019	Stipulated ✓9-12-19	9-12-19	NO
✓J	Plaintiff's Response to Defendant's First Request for Production of Documents to Plaintiff, e-served May 13, 2019]	↑	↑	
✓K	Copy of Plaintiff's Costco Membership Card [DEF0065]	↑	↑	
✓L	Copy of Defendant's Costco Membership Card [DEF0067]	↑	↑	
✓M	Costco Receipt showing that Store No. 48 is located in Van Nuys, CA [DEF0066]	↓	↓	
✓N	Copy of Costco Membership Activity for card ending in 50001, from January 3, 2004 through December 19, 2004 [DEF0371 - DEF0376_3]	Stipulated ✓9-12-19	9-12-19	NO

Jaswinder Singh v. Rajwant Kaur
CASE NO. 04D323977

DEFENDANT'S EXHIBITS		OFFERED	ADMITTED	objected
✓O	Contention Interrogatories Set No. One from California case no. 18STFL05676 [DEF0379 - DEF0386_3]	Stipulated ✓ 9-12-19	9-12-19 ✓	NO
✓P	Plaintiff's Response to Contention Interrogatories Set No. One, from California case no. 18STFL05676 [DEF0387 - DEF0390_3]			
✓Q	Sales Deed showing listing property to Jaswinder Singh as a married man [DEF0024]			
✓R	Experian and TransUnion Credit Report in the name of Rajwant Kaur, showing Jaswinder as spouse or co-applicant [DEF0025 - DEF0043]			
✓S	Aftercare instruction from Gastroenterology Department for Jaswinder Singh, signed by "Accompanying Adult" Rajwant Kaur, Wife [DEF0044]	Stipulated ✓ 9-12-19	9-12-19 ✓	NO
✗	Verification of employment letter from Defendant's employer dated August 21, 2019 [DEF0377_3]			
✗	Letter from SoCal Gas regarding service dates at the Sepulveda Apartment [DEF0064]			
✓V	Interinsurance Exchange of the Automobile Club Renewal Declarations from July 2004 [DEF0362 - DEF0364_2]	Stipulated ✓ 9-12-19	9-12-19 ✓	NO
✓W	Interinsurance Exchange of the Automobile Club Truth in Lending Information Billing Statement for Automobile Policy from July 2004 [DEF0365 - DEF0366_2]			
✓X	Plaintiff's Deposition Transcript			
✓Y	Defendant's Deposition Transcript	Stipulated ✓ 9-12-19	9-12-19 ✓	NO

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

JASWINDER SINGH,)
)
Plaintiff,)
)
vs.) No. 04D323977
) Dept. No. P
RAJWANT KAUR,)
)
Defendant.)
-----)

DEPOSITION OF **RAJWANT KAUR**

Taken on Monday, August 19, 2019
By a Certified Court Reporter
At 9:12 a.m.
At Kainen Law Group
3303 Novat Street
Suite 200
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

MARK IDENT EXHIB CASE #

PLAINTIFF'S EXHIBIT 13

9-12-77

SED 7

PENGAD 800-631-6989

4433070

APPEARANCES:

For the Plaintiffs:

F. PETER JAMES, ESQ.

Law Offices of F. Peter James, Esq.
3821 West Charleston Boulevard
Suite 250
Las Vegas, NV 89102

For the Defendants:

ANDREW L. KYNASTON, ESQ.

Kainen Law Group
3303 Novat Street
Suite 200
Las Vegas, NV 89129

ALSO PRESENT:

MUNIR QURESHI, Punjabi interpreter
JASWINDER SINGH

INDEX OF EXAMINATIONS

EXAMINATIONS	PAGE
BY MR. JAMES	4

INDEX OF EXHIBITS

(Exhibits attached as PDF bookmark.)

NO.	DESCRIPTION	PAGE
<u>Exhibit 1.</u>	Decree of Divorce, 9/8/04	11

INFORMATION TO BE PROVIDED

None

1 (Court reporter's opening statement waived.)

2 (Interpreter sworn.)

3 (Witness sworn.)

4 WHEREUPON:

5 RAJWANT KAUR

6 having been first duly sworn, was
7 examined and testified as follows:

8

9 EXAMINATION

10 BY MR. JAMES:

11 Q. Please state your name.

12 A. Rajwant Kaur. R-A-J-W-A-N-T, K-A-U-R.

13 Q. Now, you do understand that your
14 testimony is under oath?

15 A. Yes, I do understand.

16 Q. And this is the same oath that you
17 would take if we were in a court of law in front
18 of a judge.

19 A. Okay.

20 Q. And you have an interpreter here with
21 you. So if you would please even if you
22 understand what I am saying in English, because
23 you have an interpreter, please use the
24 interpreter for the questions and your answers.

25 A. Okay.

1 Q. Now, the court reporter is taking
2 everything down for us today. Now, she is typing
3 as well on her special typewriter that she uses,
4 so the responses have to be verbal.

5 If you nod your head or shake your
6 head, I will understand you and so will everyone
7 else here in the room, but on the transcript, it
8 won't translate very well.

9 A. Okay.

10 Q. So please wait until the interpreter is
11 done with the translation of the question before
12 you answer.

13 A. Okay.

14 Q. And I will wait for the translator to
15 finish your response before I ask another
16 question.

17 A. Okay.

18 Q. Now, if you don't understand one of my
19 questions, please say so before you answer.

20 A. Okay.

21 Q. And if you do answer a question, I will
22 assume that you understood the question.

23 A. Okay.

24 Q. Now, from time to time, you may want to
25 take a break, and that's okay. I don't think we

1 will be here very long, so I don't think a break
2 will be necessary.

3 A. Okay.

4 Q. However, if you choose to take a break,
5 I reserve the right to finish my line of
6 questioning before we take a break.

7 A. Okay.

8 Q. Now, from time to time, your attorney
9 might object. If he is telling you not to
10 answer, he will specifically say, "Do not
11 answer," and then we will talk, the attorneys
12 will talk to talk about that issue.

13 A. Okay.

14 Q. But if he objects and he does not tell
15 you, "Do not answer," then you have to answer.

16 A. Okay.

17 Q. Now, I have to ask this question. Are
18 you under the influence of any medication,
19 alcohol, or drugs that would impair your ability
20 to give your best testimony today?

21 A. No.

22 Q. How many times have you been married?

23 A. Just once.

24 Q. And to whom was that?

25 A. Jaswinder Singh.

1 Q. When was that?

2 A. 1989.

3 Q. And where were you married?

4 A. India.

5 Q. Now, when did you move to the United
6 States?

7 A. In 1989.

8 Q. Now, why did you move to the United
9 States?

10 A. My brother and -- the word is my
11 brother had applied for me for a visa.

12 Q. And I imagine your husband came along
13 with you?

14 A. I was not married at that time.

15 Q. So you moved to the United States and
16 then you went back to India to marry?

17 A. Yes.

18 Q. And please use the interpreter because
19 it will be too confusing if you don't.

20 A. Yes.

21 Q. Even though you might understand me in
22 English, it's still necessary to use the
23 translator.

24 A. Okay.

25 Q. So when did Mr. Singh move to the

1 United States?

2 A. He came in 1993.

3 Q. With you?

4 A. I had come by myself and he came
5 afterwards.

6 Q. Do you have any children with
7 Mr. Singh?

8 A. No, no children.

9 Q. Where did you live in the United
10 States?

11 A. In California.

12 Q. In which city?

13 A. Missionary.

14 Q. Is that in Mission Hills?

15 A. Mission Hills.

16 Q. So now, do you know how much money you
17 were worth when you married Mr. Singh?

18 INTERPRETER: Could you rephrase that
19 question? How much what?

20 BY MR. JAMES:

21 Q. How much money in either the bank or
22 assets that they had when they married.

23 A. I didn't work in the initial status and
24 I had very little money.

25 Q. When you say you, do you mean you and

1 your husband or just you?

2 A. I alone had very little money. He came
3 later.

4 Q. But my question was when you were
5 married to him, how much money did you both have
6 together?

7 A. I have no idea of his worth, but I had
8 very little money.

9 Q. Are you claiming that -- strike that.
10 I will get to that later.

11 When did you understand that Mr. Singh
12 wanted a divorce?

13 A. I didn't know.

14 THE INTERPRETER: That is the answer.
15 I am not adding or subtracting anything.

16 BY MR. JAMES:

17 Q. So when you signed the Decree of
18 Divorce, you didn't know that Mr. Singh wanted a
19 divorce?

20 A. No, I didn't.

21 THE INTERPRETER: Strange things
22 happened.

23 MR. JAMES: If that's her answer.

24 BY MR. JAMES:

25 Q. Did you sign the Decree of Divorce?

1 A. Yes, I did.

2 Q. And where did you sign it, in what
3 city?

4 A. In Nevada.

5 Q. Was anyone there with you when you
6 signed?

7 A. Jaswinder's father was there that day.

8 Q. Was Jaswinder there?

9 A. Yes.

10 Q. Do you know who Balbinder Singh Pabla
11 is?

12 A. I don't know. Some friend of his.

13 Q. Was he present when you signed the
14 Decree of Divorce?

15 A. Yes.

16 Q. So we have Jaswinder, you, Jaswinder's
17 father, and the Balbinder Singh Pabla. Was
18 anyone else present?

19 A. Those are the four people.

20 Q. Did you sign this before a notary
21 public?

22 A. No.

23 Q. I didn't have this marked as an
24 exhibit, but I am showing the Decree of Divorce.
25 I want you to take a look at it.

1 MR. KYNASTON: It looks like it's the
2 decree, the affidavit of resident witness, the
3 joint petition.

4 BY MR. JAMES:

5 Q. Did you sign a joint petition for a
6 Decree of Divorce?

7 THE INTERPRETER: Joint petition, what
8 does that mean?

9 MR. JAMES: That's the name of the
10 document.

11 THE WITNESS: I don't remember.

12 BY MR. JAMES:

13 Q. I am going to mark this as Exhibit 1,
14 and I will proffer that this is when we
15 downloaded the Decree of Divorce, this is how it
16 came out, with everything attached.

17 (Deposition Exhibit 1 marked.)

18 THE WITNESS: I haven't done it in
19 front of a notary. I do recall that much.

20 BY MR. JAMES:

21 Q. But she signed this -- you signed this?

22 I am still waiting for an answer.

23 A. That appears to be my signature, but I
24 don't recall having signed it in front of a
25 notary.

1 Q. But that is your signature?

2 A. Yes. Not in front of a notary.

3 Q. Do you claim that Jaswinder never lived
4 in Nevada?

5 A. No.

6 Q. Do you claim that he never spent
7 approximately six weeks living in Nevada?

8 A. Yes, I claim that.

9 Q. Do you claim that he did not spend six
10 weeks in Nevada, living or not living, but six
11 weeks in Nevada before the filing of the divorce?

12 INTERPRETER: Living or not living?
13 With her?

14 MR. JAMES: No, no. I am trying to get
15 around the question of he didn't actually move
16 here. I am trying to get to the question that he
17 was actually present in Nevada.

18 THE INTERPRETER: Got it.

19 THE WITNESS: No, he didn't spend six
20 weeks here.

21 BY MR. JAMES:

22 Q. Do you have any documentary proof that
23 Jaswinder actually was in California when he said
24 he was in Nevada? And just so we have our time
25 frames correct, the joint petition was filed on

1 August 27, 2004. In there, Mr. Singh claims that
2 he lived in Nevada for at least six weeks prior
3 to that date.

4 A. No.

5 Q. Now, you claim that Mr. Singh forced
6 you to sign the divorce paperwork?

7 A. Yes, he did. His purpose was to bring
8 his brother here.

9 Q. How did he threaten you?

10 A. He threatened to kill me.

11 Q. Any other ways?

12 A. No.

13 Q. How many times did he make that threat?

14 A. Besides that, he would force in other
15 verbal ways, too.

16 Q. How so? But I want an answer to the
17 first question first. How many times did he
18 threaten to kill you?

19 A. Twice.

20 Q. Now, are you claiming that he
21 threatened you in other ways?

22 A. He would call names.

23 Q. What kind of names?

24 A. Like a dog.

25 Q. Okay. How is that forcing you to sign

1 the decree?

2 A. In Indian culture, we have to abide by
3 whatever our husband says, so I was supposed to
4 sign the document.

5 Q. Based upon culture?

6 A. Yes.

7 Q. And that's why you signed?

8 A. Yes.

9 Q. Because of your cultural beliefs?

10 A. Yes.

11 Q. Do you have any documentary proof of
12 the threats you say that Mr. Singh made?

13 A. No, I don't have any paper for that.

14 Q. Did you ever go to the doctor because
15 of any harm that Mr. Singh may have caused you?

16 A. No.

17 Q. Did you ever report Mr. Singh to any
18 authorities, the police, anyone?

19 A. No.

20 Q. Now, you were aware that in 2004, you
21 received a Decree of Divorce from Mr. Singh?

22 A. Yes, I am.

23 Q. After the divorce was filed on
24 September 8, 2004, did you marry someone else?

25 A. I married his brother in India.

1 Q. What date was that?

2 A. In November of 2004.

3 Q. And where was the divorce? Was it in
4 California, in India? Where was the divorce
5 filed from the brother?

6 A. In India.

7 Q. Your testimony is you did receive a
8 divorce from Jaswinder's brother?

9 A. Yes.

10 Q. And what is Jaswinder's brother's name?

11 A. Jasweer Singh.

12 Q. Can you spell that?

13 INTERPRETER: J-A-S-W-E-E-R, last name
14 S-I-N-G-H.

15 BY MR. JAMES:

16 Q. Now, did Jaswinder's brother after you
17 married ever move to the United States?

18 A. No, he didn't.

19 Q. How long were you married to
20 Jaswinder's brother?

21 A. We divorced in 2008.

22 Q. And when was the marriage again?

23 A. In November of 2004.

24 Q. Why did Jaswinder's brother, if you
25 know, not move to the United States?

1 A. I have no idea why he didn't move.
2 Probably a visa was applied for him but he
3 didn't.

4 Q. Do you know for sure that he applied
5 for a visa or are you guessing?

6 A. I know it for sure.

7 Q. Do you know if it was granted?

8 A. I don't know. Perhaps he didn't get
9 it.

10 Q. After you divorced Jaswinder's brother,
11 did you re-marry after that?

12 A. No.

13 Q. To your knowledge after you divorced
14 Jaswinder in 2004, did he ever re-marry?

15 A. No, he didn't marry.

16 Q. Why did you file for a divorce in
17 California from Jaswinder?

18 A. I was living in California. I had to
19 file over there.

20 Q. But you were already divorced from
21 Jaswinder.

22 A. I don't know about that. We were
23 living together in the same house.

24 Q. But you just testified that you did not
25 re-marry after you divorced Jaswinder's brother

1 and you just testified you knew you divorced
2 Jaswinder.

3 A. He had divorced me to get his brother
4 here, and he had told me that this will not be a
5 permanent divorce, it would just be a divorce on
6 papers.

7 Q. But you knew the judge had signed the
8 Decree of Divorce?

9 A. He never showed me any papers that the
10 judge signed or not signed.

11 Q. But you were aware you were divorced?

12 A. I just told you that it was just to get
13 his brother. In reality, we were not divorced
14 from each other.

15 Q. That was not my question. My question
16 was you were aware that you were divorced,
17 correct?

18 A. Yes, I do. Yes, I know.

19 Q. What are you asking for in the
20 California divorce action?

21 A. We had a joint account and all my
22 jewelry was with him. I'm claiming that.

23 Q. Anything else?

24 A. We had bought the house together and
25 that also. That's it.

1 Q. How much money?

2 A. We had a joint account and I'm asking
3 for my share of that.

4 Q. Which was about how much,
5 approximately?

6 A. About \$400,000.

7 Q. When did you buy your house?

8 A. In 2009.

9 Q. Do you know how much money you had in
10 the bank on or about September 8, 2004?

11 A. I don't quite recall exactly how much
12 money there was at that time.

13 Q. 100 million?

14 A. I don't know. I didn't check. My
15 husband did.

16 Q. My question is did you have 100
17 million?

18 A. I don't remember that. I don't know.

19 Q. When did you build your bank account up
20 to at least \$400,000?

21 A. I used to work.

22 Q. The question is calling for a date or a
23 time frame.

24 A. I used to work two jobs.

25 Q. Once again, the question is asking for

1 a time frame because you are claiming that he
2 took at least \$400,000 of your money out of the
3 bank.

4 MR. KYNASTON: Objection. Assumes
5 facts not in evidence.

6 You can answer.

7 THE WITNESS: He would also work and we
8 had a joint account.

9 BY MR. JAMES:

10 Q. So when did he take the money out?
11 Because you answered in your interrogatories he
12 took \$400,000 from your joint account. When did
13 that happen, approximately?

14 A. I realized in 2016 that this has
15 happened.

16 Q. When did you start looking at how much
17 money was in your bank account?

18 A. In 2015 when we came back from India,
19 at that time, he separated the account and took
20 that money.

21 Q. My question was when did you start
22 looking at your bank accounts? Because you
23 testified in or around September of 2004, you
24 weren't looking at your bank accounts. Yet, you
25 are testifying that he took \$400,000 from your

1 joint account. So at some point, you started
2 looking at bank accounts. I would like to know
3 approximately when that was.

4 A. In 2016.

5 Q. What caused you to look at your bank
6 accounts at that time?

7 A. In 2016.

8 Q. That wasn't my question. My question
9 was why, what caused you to look.

10 A. We went in in 2015 and at that time,
11 his behavior with me was not good and he didn't
12 give me money for the ticket to India. And at
13 that time, I came to know that there was so much
14 money in the bank and it was no more.

15 Q. And that was in 2016?

16 A. Yes.

17 MR. JAMES: Go off the record.

18 (Recess taken from 10:05 a.m. to
19 10:08 a.m.)

20 MR. JAMES: I have nothing further.

21 MR. KYNASTON: I have no questions for
22 this witness.

23 (Proceedings concluded at
24 10:08 a.m.)
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned Certified Court Reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me; that the testimony of the witness and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing is a true record of the testimony and of all objections made at the time of the proceedings.

There being no request by the deponent or party to read and sign the deposition transcript, under Rule 30(e), signature is deemed waived. The original transcript will be forwarded to Peter James, Esq.

I further certify that I am a disinterested person and am in no way interested in the outcome of said action or connected with or related to any of the parties in said action or to their respective counsel.

The dismantling, unsealing or unbinding of the original transcript will render the reporter's certificate null and void.

In witness whereof, I have subscribed my name on this date, August 30, 2019.

_____/s/ Cindy Huebner_____
Cindy Huebner
CCR No. 806

ORIGINAL

55

1 DECD
 2 (Your name) Jaswinder Singh
 3 (Address) 2916 Jansen Ave
 4 Las Vegas NV 89101
 5 (Telephone) (702)281-2373
 6 In Proper Person

FILED

SEP 8 8 42 AM '04

Shirley S. Paragiani
CLERK

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

9 In the Matter of the
 10 Joint Petition of
 11 (Name) Jaswinder Singh
 12 and (Name) Rajwant Kaur
 13 Petitioners.

14 CASE NO.: D323977
 15 DEPT. NO.: K

16 DECREE OF DIVORCE

17 The above-entitled cause having been submitted to the above-entitled Court for decision
 18 pursuant to Chapter 125 of the Nevada Revised Statutes, and based upon the Joint Petition by
 19 Petitioner Jaswinder Singh and Petitioner Rajwant Kaur
 20 and all of the papers and pleadings on file, finds as follows:

- 21 1. That all of the allegations contained in the documents on file are true;
 22 2. That all of the requirements of NRS 125.181 and NRS 125.182 have been met;
 23 3. That this Court has complete jurisdiction as to the parties and the subject matter
 24 thereto;
 25 4. That Petitioner Jaswinder Singh has been and is now an actual
 26 bona fide resident Clark County, Nevada, and has actually been domiciled in Clark County for
 27

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 January 2, 2001
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1

JPNOKPD.6DE (#9)
 Use only most current version
 Please call the Self-Help Center to confirm most current version.

COUNTY CLERK

SEP 08 2004

RECEIVED

CE100

EXHIBIT	1
WITNESS	<u>Rajwant Kaur</u>
DATE:	<u>8/19/04</u>
CINDY HUEBNER, CCR	

1 more than six (6) weeks immediately prior to the commencement of this action;

2 5. That the parties were married on (date of wedding) Nov. 11, 1989 in (city
3 and state) Punjab, India;

4 6. That the parties are incompatible in marriage and are entitled to a Decree of
5 Divorce on the grounds of incompatibility;

6 7. That there are no minor children the issue of this marriage;

7 8. That there are no minor children adopted by the parties;

8 9. That Petitioner Rajwant Kaur is not now pregnant;

9 10. That there is no community property for the Court to divide;

10 11. That there is no community debt for the Court to divide;

11 12. (CHECK ONLY ONE BOX)

12 ☐ That Petitioner _____ does not desire to have her
13 former or maiden name restored.

14 OR

15 ☐ That Petitioner _____ requests that her former or
16 maiden name of _____ be restored.

17 OR

18 ☒ That Petitioner Rajwant Kaur never changed her name, and
19 therefore does not request restoration of a former or maiden name.

20 13. That both parties have waived any right to spousal support;

21 14. That the parties waive their rights to written Notice of Entry of Decree of Divorce,
22 to appeal, to Findings of Fact and Conclusions of Law, and to move for a new trial;

23 Therefore, **IT IS ORDERED, ADJUDGED AND DECREED** that the bonds of matrimony
24 now and heretofore existing between the Petitioners are hereby wholly dissolved, set aside and forever
25 held for naught, and an absolute Decree of Divorce is hereby granted to the parties, and each of the
26 parties are hereby restored to the status of a single, unmarried person.

27 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner
2 Raiwant Kaur [] does/ [x] does not desire to have her former name restored and
3 her name shall [] change to/ [x] stay as name of Raiwant Kaur.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that both parties are required
5 to provide their social security numbers on a separate form to the Court and to the Welfare Division
6 of the Department of Human Resources pursuant to NRS 125.130. Such information shall be
7 maintained by the Clerk in a confidential manner and not part of the public record.

8 DATED this 7th day of (month) September, (year) 2004

10
11 Respectfully Submitted:

M. A. O.
DISTRICT COURT JUDGE

12 (Your signature)

Jaswinder Singh

Jaswinder Singh

2916 Jansen Ave

Las Vegas NV 89101

(702) 281-2773

Petitioner in Proper Person

17 (Spouse's signature)

Raiwant Kaur

Raiwant Kaur

19 (Address)

9969 Sepulveda Blvd #204

Mission Hills CA 91345

20 (Telephone)

(818) 895-7302

Petitioner in Proper Person

22 ///

23 ///

24 ///

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Shirley L. Hargrave
CLERK

1 AFFR

2 (Your name) Jaswinder Singh

3 (Address) 2916 Jansen Ave

Las Vegas NV 89101

4 (Telephone) (702)281-2373

In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

9 In the Matter of the
10 Joint Petition of

11 (Name) Jaswinder Singh

12 and (Name) Rajwant Kaur

13 Co-Petitioners.

0323977

CASE NO.: _____

DEPT. NO.: 12

AFFIDAVIT OF RESIDENT WITNESS

16 STATE OF NEVADA

17 COUNTY OF CLARK

} ss:

19 1. I, (name of Resident Witness) Balbinder Singh Pabla, do solemnly swear to
20 testify herein to the truth, the whole truth and nothing but the truth.

21 2. That I live at (Resident Witness' address) 2916 Jansen Ave

22 (city) Las Vegas, Nevada, (zip code) 89101.

23 3. That I first moved to Clark County, Nevada on (approximate date Resident Witness
24 moved to Clark County) 1992. It is my intention to live in Clark County for
25 the foreseeable future.

26 4. That I first saw Petitioner (Petitioner's name) Jaswinder Singh
27 in Clark County, Nevada on (approximate date) June 17, 2004.

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1 5. That since that date, I have seen (Petitioner's name) Jaswinder Singh
2 in Clark County, Nevada approximately 5 times per week.

3 6. That I know of my own personal knowledge that Petitioner (Petitioner's name)
4 Jaswinder Singh is a bona fide resident of Clark County, Nevada.

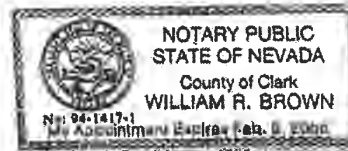
5
6
7 Dated this 27 day of (month) Aug, 2004.

8
9
10 (Witness' signature) Balbinder Singh Pabla

11 Balbinder Singh Pabla

12
13 SUBSCRIBED and SWORN to before
14 me this 27 day of
15 (month) Aug (year) 2004.

16 William R. Brown
17 NOTARY PUBLIC



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Shirley L. Rungione
CLERK

1 PSDD

2 (Your name) Jaswinder Singh

3 (Address) 2916 Jansen Ave

4 Las Vegas NV 89101

5 (Telephone) (702)281-2373

6 In Proper Person

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of the
11 Joint Petition of

12 (Name) Jaswinder Singh

13 and (Name) Rajwant Kaur

14 Petitioners.

CASE NO.

D323977

DEPT. NO.:

K

15
16 **JOINT PETITION FOR SUMMARY DECREE OF DIVORCE**

17 Petitioners, Jaswinder Singh and Rajwant Kaur hereby petition this
18 Court, pursuant to the terms of Chapter 125 of the Nevada Revised Statutes, to grant them a
19 divorce. Petitioners respectfully show, and under oath, state to the Court as follows:

20 1. That Petitioner, Jaswinder Singh, is now, and for more than six
21 weeks preceding the commencement of this action has been, an actual, bona fide resident of the
22 County of Clark, State of Nevada, and during all said period of time has been actually, physically
23 and corporeally present, residing and domiciled in the State of Nevada.

24 2. That the Petitioners are incompatible in marriage.

25 3. That the Petitioners have no minor children who are the issue of this marriage, have
26 no adopted minor children, and Petitioner Rajwant Kaur is not now pregnant.

27
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1 WHEREFORE, Petitioners pray that the Court enter a Decree of Divorce restoring them to
2 the status of single, unmarried persons.

3
4 DATED this (day) 27 day of
5 (month) August (year) 2004.

DATED this (day) 27 day of
(month) August (year) 2004.

6
7 Jaswinder Singh
8 (Your Signature)
9 Petitioner

Refwet Kaur
(Spouse's Signature)
Petitioner

10
11 VERIFICATION

12 STATE OF NEVADA }
13 COUNTY OF CLARK } ss:
14

15 Jaswinder Singh, under penalties of perjury, being first duly sworn, deposes
16 and says:

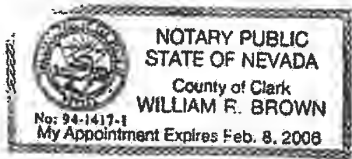
17 That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint
18 Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of
19 my own knowledge, except for those matters therein contained stated upon information and belief,
20 and as to those matters, I believe them to be true.

21 DATED this 27 day of (month) Aug, (year) 2004

22 By:
23 (Your signature) Jaswinder Singh
24 Jaswinder Singh

25 SUBSCRIBED and SWORN to before
26 me this 27 day of
(month) Aug, (year) 2004.

27 William F. Brown
28 NOTARY PUBLIC



1 **ACKNOWLEDGMENT**

2 STATE OF NEVADA }
3 COUNTY OF CLARK } ss:

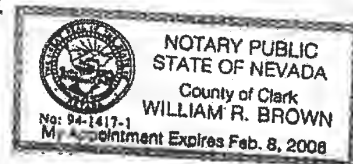
4 On this 27 day of (month) August, (year) 2004, before me, the undersigned
5 Notary Public in and for the said County and State, personally appeared Jaswinder Singh,
6 known to me to be the person described in and who executed the foregoing Joint Petition for
7 Summary Decree of Divorce, and who acknowledged to me that (check one) [x] he/ [] she did
8 so freely and voluntarily and for the uses and purposes therein mentioned.

9 WITNESS my hand and official seal.

10 William R. Brown
11 NOTARY PUBLIC

12 **VERIFICATION**

13 STATE OF NEVADA }
14 COUNTY OF CLARK } ss:



15 Raiwant Kaur, under penalties of perjury, being first duly sworn, deposes
16 and says:

17 That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint
18 Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of
19 my own knowledge, except for those matters therein contained stated upon information and belief,
20 and as to those matters, I believe them to be true.

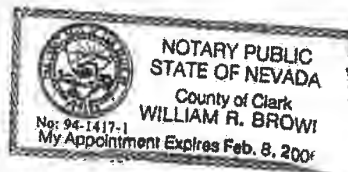
21 DATED this 27 day of (month) Aug. (year) 2004.

22 By:

23 (Spouse's signature) Raiwant Kaur
24 Raiwant Kaur

25 SUBSCRIBED and SWORN to before
26 me this 27 day of
(month) Aug., (year) 2004.

27 William R. Brown
NOTARY PUBLIC



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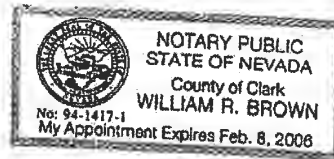
ACKNOWLEDGMENT

STATE OF NEVADA }
COUNTY OF CLARK } ss:

On this 27 day of (month) August, (year) 2004, before me, the undersigned
Notary Public in and for the said County and State, personally appeared Rajwant Kaur,
known to me to be the person described in and who executed the foregoing Joint Petition for
Summary Decree of Divorce, and who acknowledged to me that (check one) [] he/ [x] she did
so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

William R. Brown
NOTARY PUBLIC





BREF

LAW OFFICES OF F. PETER JAMES, ESQ.

F. Peter James, Esq.

Nevada Bar No. 10091

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Las Vegas, Nevada 89102

Peter@PeterJamesLaw.com

702-256-0087

702-256-0145 (fax)

Counsel for Plaintiff

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

JASWINDER SINGH,

Plaintiff,

vs.

RAJWANT KAUR,

Defendant.

CASE NO. : 04D323977

DEPT. NO. : X

PLAINTIFF'S CLOSING BRIEF

Plaintiff, by and through his counsel, F. Peter James, Esq., hereby submits
his Closing Brief as to the Evidentiary Hearing held on August 16, 2021 and the
prior case happenings.

///

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POINTS AND AUTHORITIES

Estoppel Issues

The remand instructions provide that the Court inquire as to the judicial estoppel issue. Once the Court finds in favor of judicial estoppel, the Court (Judge Pomrenze) already found that the remaining *Vaile* factors were not met.

Judicial estoppel elements are as follows:

1. The same party has taken two positions;
2. The positions were taken in judicial proceedings;
3. The party was successful in asserting the first position;
4. The two positions are totally inconsistent; and
5. The first position was not taken as a result of ignorance, fraud, or mistake.

See In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P,3d 646, 652 (2017). Rajwant fails the judicial estoppel test.

Two Positions

Rajwant has asserted two positions—that the parties (or at least Jaswinder) lived in Nevada at all times relevant and then that he (or they) did not. This is not a contested issue. The pleadings she signed (the Joint Petition and the Decree) . The Motion to Set Aside clearly states she says no one lived in Nevada.

Rajwant asserts that she did not understand the proceedings—that she did not understand the divorce documents. The Court has already found that Rajwant

1 understood the documents and that she was divorcing Jaswinder to marry his
2 brother. *See* Findings of Fact, Conclusions of Law, and Order at 5:19 – 6:14).
3 The Court may not overrule the findings of the original district court judge. *See*
4 *e.g.* DCR 18(1); *see also State v. Beaudion*, 131 Nev. 473, 352 P.3d 39 (2015).

5 Rajwant will assert, as she has in the appeal, that she did not have an
6 understanding of the divorce. This is factual and legal rubbish. First, Rajwant
7 admitted in the first trial that she knew she was going to Vegas to divorce
8 Jaswinder so she could marry his brother. The Court made findings as to this.
9 Rajwant changed her tune and contradicted her own sworn testimony at the
10 subsequent Evidentiary Hearing. Moreover, blackletter law contradicts
11 Rajwant's assertions that she did not understand the divorce documents.

12 Settlement agreements in divorce cases are in the nature of contract law.
13 *See Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). A person
14 who signs a contract is presumed to know and understand its contents; the failure
15 to read a contract, or to apprehend the rights and obligations under it, will not
16 prevent a waiver of its terms or conditions. 13 WILLISTON ON CONTRACTS §
17 39.22 (4th ed. 2020); *accord* 7AP1 AM.JUR. PL. & PR. FORMS CONTRACTS § 126
18 (March 2020) (if a person fails or refuses to read a contract, she cannot then
19 complain of its provisions, nor claim that it contained provisions she knew
20 nothing about); *see also* E. Allen Farnsworth, CONTRACTS § 3.7 at 116 (1982)

1 (provisions written in a foreign language are binding even if the person did not
2 understand the language).

3 On appeal, Rajwant cited to *General Motors v. Jackson*, 111 Nev. 1026,
4 1031-32, 900 P.2d 345, 348-49 (1995) in support of her claim that she did not
5 understand the decree when she signed it. This reliance is misplaced. Firstly,
6 this was never properly raised in the district court. That aside, the case does not
7 actually support her position. *General Motors* deals with capacity to enter into a
8 contract in the context of being under a guardianship, being an infant, having a
9 mental illness or mental defect, or being intoxicated—nothing about not speaking
10 the language. Well-settled law provides that contract provisions being in a
11 different language does not prevent being bound to the terms—the same applies
12 to blind and illiterate people. See e.g. *Paper Exp., Ltd. V. Pfankuch Maschinen*
13 *GmbH*, 972 F.2d 753, 757 (7th Cir. 1992).

14 Rajwant’s own actions and admissions at the initial trial contradict her
15 position on remand. “Every one [sic] is presumed to know the law and this
16 presumption is not even rebuttable.” *Smith v. State*, 38 Nev. 477, 151 P. 512, 513
17 (1915). Bigamy is illegal. See NRS 201.160; see also Cal.Penal Code § 281. It
18 is uncontested that Rajwant remarried after divorcing Jaswinder. Rajwant merely
19 wants the Court to believe she did not know. In doing so, Rajwant would admit
20 to bigamy. The real truth is that Rajwant knew she was divorced.

1 Rajwant would have the Court believe that she did not know until 2018
2 that she was divorced from Jaswinder. This assertion on appeal **directly**
3 **contradicts** Rajwant's deposition transcript.

4 Rajwant testified in her deposition that she married another man
5 (Jaswinder's brother) in November 2004. (Deposition Tr. of Rajwant Kaur at
6 14-15). This was in response to being asked:

7 Q. After the divorce [from Jaswinder] was filed on September 8, 2004,
8 did you marry someone else?

9 (*Id.* at 19). Further, Rajwant admitted that Jaswinder did not remarry after they
10 divorced, which was asked and answered as follows:

11 Q. To your knowledge after you divorced Jaswinder in 2004, did he
12 ever remarry?

13 A. No, he didn't remarry.

14 (*Id.* at 21). So, Rajwant admits to the knowledge of the divorce in 2004 and as
15 to the status of the marriage / the parties remarrying or not. But, there is much
16 more.

17 Rajwant attempted to deny knowing being divorced from Jaswinder after
18 admitting she knew she was divorced. (Deposition Tr. of Rajwant Kaur at 16-
19 17). Upon being asked why she filed for divorce from Jaswinder in California
20

1 [just before filing the Motion to Set Aside], the questions and answers were as
2 follows:

3 A. I was living in California. I had to file over there.

4 Q. But you were already divorced from Jaswinder.

5 A. I don't know about that. We were living together in the same house.

6 Q. But you just testified that you did not re-marry after you divorced
7 Jaswinder's brother and you just testified that you knew you
8 divorced Jaswinder.

9 A. He had divorced me to get his brother here, and he had told me that
10 this will not be a permanent divorce, it would just be a divorce on
11 papers.

12 Q. But you knew the judge had signed the Decree of Divorce?

13 A. He never showed me any papers that the judge signed or not signed.

14 Q. But you were aware you were divorced?

15 A. I just told you that it was just to get his brother. In reality, we were
16 not divorced from each other.

17 Q. That was not my question, My question was you were aware that
18 you were divorced, correct?

19 A. Yes, I do. Yes, I know.

20 (*Id.*).

1 So, Rajwant admits that at the time she married Jaswinder's brother she
2 knew she was divorced from Jaswinder. This directly contradicts the assertions
3 made at the recent Evidentiary Hearing. Moreover, this was not a contested issue
4 as referenced in the initial Motion to Set Aside that Rajwant remarried after
5 divorcing Jaswinder. (Motion to Set Aside filed January 7, 2019 at 5:22-23).

6 Rajwant desperately wants the Court to think that there were not
7 inconsistent statements. Rajwant is tapdancing her way through these impossible
8 legal gymnastics.

9 Further, these whole fake claims of "paper divorce" and her marriage to
10 Jaswinder's brother was "not a real marriage" are hogwash. As stated, everyone
11 is presumed to know the law—and it is an irrebuttable presumption. *See Smith*,
12 38 Nev. at 477, 151 P. at 513. A divorce is a divorce. A marriage is a marriage.
13 Ignorance of the law is no excuse. *See Whitehead v. Nev. Com'n. on Judicial*
14 *Discipline*, 111 Nev. 70, 245, 893 P.2d 866, 975 (1995) (Guy, Dist. J.,
15 concurring), *superseded on other grounds by Mosley v. Nev. Com'n on Judicial*
16 *Discipline*, 117 Nev. 371, 22 P.3d 655 (2001).

17 Rajwant knew what she was doing and why she was doing it when she
18 signed the divorce papers in 2004. The Court findings and Rajwant's own
19 testimony support this. As such, there can be no fraud in the inducement.
20 Moreover, Rajwant had to show that she was coerced into signing the divorce

1 papers as part of the *Vaile* standard. This is due to Rajwant being a participant
2 in the purported fraud upon the court.

3 The *in pari delicto* doctrine provides that a party who has participated in
4 wrongdoing may not recover damages resulting from the wrongdoing. See
5 BLACK'S LAW DICTIONARY 806-07 (8th ed. 2004). The *in pari delicto* doctrine
6 precludes a party who has engaged in wrongdoing from recovering when they are
7 at least partially at fault. See *Official Committee v. R. F. Lafferty & Co.*, 267,
8 F.3d 340, 354 (3d Cir. 2001), cited as to this doctrine in *In re Amerco Derivative*
9 *Litigation*, 127 Nev. 196, 207 n.2, 252 P.3d 681, 689 n.2 (2011).

10 This is the underpinnings of the Vaile standard and is why Rajwant had to
11 establish that she was coerced into signing the divorce papers. The Court already
12 found that she was not coerced—by Rajwant's own admission. (See Findings of
13 Fact, Conclusions of Law at 4-7). This is why the Court granted Jaswinder's oral
14 motion for judgment on the evidence.

15 **Judicial Proceedings**

16 It is incontrovertible that both and all relevant statements were made in
17 judicial proceedings—this very same case. Oddly, Rajwant wants to contest this
18 factor using the aforementioned legal gymnastics. Rajwant's assertions to the
19 contrary are meritless. Rajwant is not even being intellectually honest, which
20 impacts her credibility. Oddly, the Court found that Rajwant testified credibly at

1 the first trial. Rajwant contradicted her initial trial testimony at the subsequent
2 evidentiary hearing.

3 **Successful in the First Position**

4 Clearly, Rajwant was successful in stating that the parties (or at least one
5 of them) lived here as the Court (then a different judge) divorced her and
6 Jaswinder.

7 **Inconsistent positions**

8 To say now that no one lived in Nevada when she said at least that
9 Jaswinder did before is to have wholly inconsistent positions. Rajwant can dance
10 around this issue all she wants. She can obfuscate the issues all day long. The
11 bottom line is that Rajwant made two inconsistent statements.

12 **First Position Not Due to Ignorance, Fraud, or Mistake**

13 When Rajwant stated that at least Jaswinder lived in Nevada at the time
14 the parties divorced, it was not due to ignorance, fraud, or mistake. The Court
15 (Judge Pomrenze) made specific findings as to this. (*See Findings of Fact,*
16 *Conclusions of Law, and Order at 5:19 – 6:14*). As stated, the Court cannot
17 overrule the prior court on this.

18 Moreover, as stated herein and as admitted at trial, Rajwant knew full well
19 what she was doing in getting divorced—that it was happening and why. Rajwant
20 takes no personal responsibility for her actions—not even in marrying

1 Jaswinder's brother. The law simply does not support what Rajwant is
2 claiming—that ignorance of the law is an excuse.

3 * * *

4 As such, Rajwant is judicially estopped. As Rajwant is judicially estopped,
5 the Motion to Set Aside must be denied.

6 **Attorney's Fees**

7 Rajwant's motion was fatally flawed, and it took many judicial
8 proceedings to get to where the case is now—further denial of Rajwant's
9 requests. The Supreme Court reversed the district court, which included the
10 attorney's fees.

11 Jaswinder prevailed on a motion for judgment on the evidence as Rajwant
12 failed to even present evidence of the mandatory element of coercion on direct
13 examination. Failing to even offer evidence as to a mandatory element makes
14 the claim per se frivolous. *See e.g. Woods-Gaston v. Sequoyah Enterprises, Inc.*,
15 340 Fed.Appx 450, 452 (10th Cir. 2009); *see also Cormier v. P.P.G. Industries,*
16 *Inc.*, 519 F. Supp. 211, 272 (W.D. Louisiana 1981); *State ex rel. Cephas v. Boles*,
17 142 S.E.2d 463, 465 (W.Va. 1965).

18 Jaswinder requested attorney's fees under NRS 18.010 (frivolous position)
19 and EDCR 7.60 (unnecessarily protracting the litigation). As shown failure to
20 present any evidence at all as to a mandatory element of a claim makes bringing

1 the claim per se frivolous.

2 Rajwant furthered the proceedings by appealing. On remand, Rajwant
3 utterly failed to meet counter the estoppel factors. Clearly, judicial estoppel
4 applies. Rajwant's own testimony establishes this. Rajwant has wasted the
5 Court's precious resources and has needlessly caused Jaswinder to expend well
6 in excess of \$20,000.00 in attorney's fees.

7 The Court should award Jaswinder all of his attorney's fees from the
8 Opposition to the Motion to Set aside to the present. NRS 18.010 allows the
9 Court to liberally award fees when a party maintains a frivolous position. EDCR
10 7.60 permits an award of fees when a party unnecessarily protracts the litigation.

11 In determining the reasonableness of the fees to be awarded, the Court
12 must analyze the following factors:

- 13 • The qualities of the advocate: his ability, training, education, experience,
14 professional standing, and skill;
- 15 • The character of the work to be done: its difficulty, intricacy, importance,
16 the time and skill required, the responsibility imposed, and the prominence
17 and character of the parties where they affect the importance of the
18 litigation;
- 19 • The work actually performed by the lawyer: the skill, time, and attention
20 given to the work; and

- 1 • The result: whether the attorney was successful and what benefits were
2 derived.

3 *See Brunzell v. Golden State Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969);
4 *see also Miller v. Wilfong*, 121 Nev. 619, 623-24, 119 P.3d 727, 730 (2005). The
5 Court must also consider the relative income of the parties as this is a domestic
6 case. *Miller*, 121 Nev. at 623-24, 119 P.3d at 730. No one element should
7 predominate or be given undue weight. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

8 As to the *Brunzell* factors, Counsel has successfully litigated countless
9 cases in the Family Division of this district court. Counsel has successfully
10 litigated numerous appeals and writ petitions at the Nevada Supreme Court.
11 Numerous Family Court judges have confirmed that Counsel's legal acumen
12 warranted charging \$400 per hour—with none disagreeing. Counsel is in his
13 fifteenth year of practice. Counsel is an AV Preeminent Rated Family Law
14 attorney by Martindale Hubbell, which is a career achievement award. In
15 addition to numerous other accolades, Counsel has been named one of the top
16 family law attorneys in the state—and received a hand-signed letter from former
17 Sen. Harry Reid regarding the same. Counsel is a court-approved Settlement
18 Master whom the Family Courts appoints cases for him to mediate on a pro bono
19 basis. All of the substantive work in this matter was performed by Counsel, not
20 any junior associate or paralegal. What work was done by a paralegal was billed

1 at a lower rate and supervised / amended by Counsel. The legal work did require
2 review of the complex factual history and of several key Nevada cases as to the
3 issues presented. To satisfy *Miller*, the filed Financial Disclosure Forms should
4 evidence their respective income. As to the result, that is up to the Court.

5 Should the Court be so inclined to award Jaswinder attorney's fees, he will
6 file a Memorandum of Fees and Costs with the redacted billing statements to
7 comply with *Love v. Love*.

8 Dated this 13th day of September, 2021

9 /s/ *F. Peter James*

10
11

LAW OFFICES OF F. PETER JAMES
12 F. Peter James, Esq.
13 Nevada Bar No. 10091
14 3821 W. Charleston Blvd., Suite 250
15 Las Vegas, Nevada 89102
16 702-256-0087
17 Counsel for Plaintiff
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CERTIFICATE OF SERVICE

I certify that on this 13th day of September, 2021, I caused the above and foregoing document entitled **PLAINTIFF’S CLOSING BRIEF** to be served as follows:

☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;

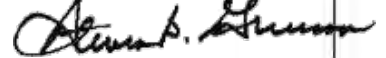
☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

to the attorney(s) / party(ies) listed below at the address(es), email address(es), and/or facsimile number(s) indicated below:

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DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

JASWINDER SINGH,

Plaintiff,

vs.

RAJWANT KAUR,

Defendant.

CASE NO. 04D323977
DEPT NO. X

Date of Hearing: 8/16/2021
Time of Hearing: 1:30 p.m.

DEFENDANT'S CLOSING BRIEF

COMES NOW, Defendant, RAJWANT KAUR, by and through her attorney,
ANDREW L. KYNASTON, ESQ., of the law firm of KAINEN LAW GROUP, PLLC,
and hereby submits her written closing arguments to the Evidentiary Hearing held August
16, 2021.

DATED this 13th day of September, 2021.

KAINEN LAW GROUP, LLC

By:



ANDREW L. KYNASTON, ESQ.

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I.

Case History

Plaintiff, JASWINDER SINGH (hereinafter "Husband"), and Defendant, RAJWANT KAUR (hereinafter "Wife"), were married in either November or December, 1989, in Punjab, India. There were no children born of the marriage, and the parties adopted no children. The parties have historically resided together in Southern California, where they continue to reside together to this day.

On September 8, 2004, a Decree of Divorce was entered in Clark County, Nevada based upon Husband's false claims of Nevada residency – claims found to be fraudulent by the Court at the initial trial in September 2019. As confirmed by trial testimony at both evidentiary proceedings, at Husband's direction, both parties drove from their home in California to Las Vegas, Nevada and signed documents for a divorce. The Affidavit of Resident Witness was fraudulently obtained from a man that neither party knew well, and have not kept in contact with since 2004. Afterwards, the parties drove back to California and resumed their marital life together.

In May of 2018, Wife filed for divorce in Los Angeles County, California. Husband retained counsel and filed his response, joining in Wife's request that the Court dissolve their marriage. However, months later in October of 2018, Husband filed an *Amended* response claiming that the parties had already been divorced in 2004.

Thereafter, Wife retained the undersigned counsel in Clark County, Nevada and filed her Motion to Set Aside Decree of Divorce on January 7th, 2019. Wife's Motion was heard on February 13, 2019, wherein the Court ruled that an Evidentiary Hearing was necessary to decide the matter, and that the injured party in this case was likely the State of Nevada. The first Evidentiary Hearing on this matter was held on September 12 and 13, 2019 before the Honorable Judge Pomrenze.

Following the presentation of evidence at the initial evidentiary hearing in September 2019, the Court denied Wife's Motion to Set Aside, and the Findings of Fact, Conclusions of Law, and Order was filed on October 22, 2019. Although Judge Pomrenze



1 denied Wife's Motion, citing *Vaile*, multiple findings were put on the record regarding
2 Defendant's credibility (and Plaintiff's lack thereof) and the fraud that was committed on
3 the State of Nevada, due to the parties' lack of Nevada residency, despite the claim by
4 Husband. Wife timely appealed this matter, and on December 10, 2020, the Supreme
5 Court issued an Opinion, further discussed herein below, which directed this Court to
6 take additional evidence and reconsider the initial decision, which the Nevada Supreme
7 Court reversed and remanded. The Evidentiary Hearing held August 16, 2021 before this
8 Court followed the reversal and remand.

9 II.

10 Legal Argument

11 The Nevada Supreme Court's written Opinion (hereinafter "Opinion") was
12 issued on December 10, 2020, now becomes the law of this case for purpose of the
13 reversal and remand. In rendering its Opinion the Supreme Court held and clarified that
14 "*before* considering whether a party sufficiently raised a defense to the application of the
15 doctrine of judicial estoppel, district courts should consider whether judicial estoppel
16 applies to the situation under the traditional judicial estoppel factors." (Opinion, page 2,
17 emphasis in the original). The Nevada Supreme Court further stated,

18 In this appeal, we clarify that *before* considering whether a party sufficiently
19 raised a defense to the application of the doctrine of judicial estoppel,
20 district courts should consider whether judicial estoppel applies to the
21 situation under the traditional judicial-estoppel factors. Misguided by our
22 holding in *Vaile*, the district court here did not consider the traditional
23 judicial estoppel factors before considering appellant/cross respondent
24 Rajwant Kaur's defense of duress and coercion. We therefore conclude the
25 district court erred when it applied judicial estoppel solely based upon
26 Rajwant's failure to provide evidence of duress or coercion and remand for
27 the district court to consider the traditional judicial-estoppel factors.
28 (Opinion, page 2, emphasis in original)

29 In analyzing the *Vaile* case, the Nevada Supreme Court noted that one of the
30 distinguishing facts was that the wife in that case had "admitted to Nevada residency
31 when seeking the divorce." (Opinion Page 6) Further, in the *Vaile* case the Supreme
32 Court had "concluded that *under the circumstances of the case*, judicial estoppel applied"
33 and the *defenses* raised by the wife of signing under duress or coercion were rejected.



(Opinion Page 6, emphasis added).¹ As such the Court in *Vaile* affirmed the district court's application of judicial estoppel. (Opinion Page 8).

Accordingly, based upon the Nevada Supreme Court's Opinion, on remand this Court needs to analyze the evidence presented at both evidentiary hearings to determine (1) whether *under the circumstances of this case*, judicial estoppel should apply, and (2) whether the Court may void and set aside the fraudulently obtained 2004 Nevada Decree of Divorce.² In the case at bar, the Nevada Supreme Court determined that the district court's application of judicial estoppel as the basis for refusing to set aside the fraudulently obtained Nevada decree was erroneous. (See Opinion Page 7). The Supreme Court clarified:

Judicial estoppel prevents a party from stating a position in one proceeding that is contrary to his or her position in a previous proceeding. *Vaile*, 118 Nev. at 273, 44 P.3d at 514. Well-established caselaw sets forth a five-factor test for courts to consider when determining whether judicial estoppel applies: whether "(1) the same party has taken two positions; (2) the positions were taken in a judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." *In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017) (internal quotation marks omitted). (Opinion Page 7)

The Nevada Supreme Court acknowledged that in the *Vaile* case they did not specifically focus on the five-factor judicial estoppel test. However, as clarified in footnote 2, the five-factors were still considered in rendering their decision, finding that under the facts and circumstances of that case that the wife's claims were barred by judicial estoppel. The court in *Vaile* found that because the wife had "successfully asserted that her husband was a resident of Nevada in her answer but asserted a contrary

¹ "We conclude that because the district court determined that the former wife 'was not coerced or operating under duress,' it correctly rejected her defense." *Vaile* 118 Nev. at 273, 44 P.3d at 514. (Opinion Page 8).

² "By presenting an affidavit of a resident witness, the parties here made a colorable case for jurisdiction at the time the district court entered the divorce decree. The divorce decree was therefore not void. However, it could still be *voidable* if [Wife] demonstrated that the district court did not have jurisdiction at the time it entered the divorce decree." (Opinion Page 6).



1 position in her motion to set aside, [that this] cover[ed] the first four factors in the test for
2 judicial estoppel.” (Opinion Page 7, footnote 2, citing *Vaile*, 118 Nev. at 273-74, 44 P.3d
3 at 514). Regarding the fifth factor, the Court found that the wife “knew that [her husband]
4 had not resided in Nevada for six weeks when she signed the [A]nswer,” thus determining
5 that her “actions were not the result of ignorance, fraud, or mistake under the fifth factor.”
6 (Opinion Page 7-8, footnote 2).

7 The facts and circumstances in the case at bar are quite different and distinct
8 and the evidence and testimony of Wife at trial clearly shows that judicial estoppel should
9 not apply in this case. As a result this Court should exercise its judicial discretion to set
10 aside the voidable Nevada Decree of Divorce. First, in the case at bar, unlike the wife
11 in *Vaile*, Wife testified that she never filed an Answer to a Complaint wherein she could
12 have asserted a contrary position to the one she took in her *Motion to Set Aside*. Rather,
13 she testified that she was brought to Las Vegas by Husband with virtually no explanation
14 and directed by Husband to sign paperwork for divorce. She testified that this was a
15 document that she played no role in drafting, that she was given no reasonable
16 opportunity to read before signing, and was written in a language in which she had very
17 limited proficiency.³ Wife further testified that it was more than 14 years later that she
18 was given any understanding about the contents of the document she signed. As such,
19 the first four judicial estoppel factors are inapplicable in this case, and should not be a
20 basis for preventing the Nevada Decree of Divorce from being set aside.

21 Because Wife never signed an Answer wherein she could have
22 acknowledged Husband’s false claim of Nevada residency, Wife’s testimony at trial
23 proved that her actions in signing the joint petition and associated decree were done in
24 complete ignorance of their true implications, and were part of a larger pattern of fraud
25 perpetuated by Husband. As such, the evidence shows that fifth factor should also not
26

27 ³ Wife’s English proficiency has improved somewhat over the last 16-17 years since the Nevada
28 divorce decree, but was even more limited in 2004. Even if she’d been given an actual opportunity
to read the documents (which she wasn’t), she would have understood virtually nothing.



1 apply as a basis for imposing judicial estoppel in relation to Wife's request to set aside
2 the fraudulently obtained decree of divorce.

3 **III.**

4 **Analysis of Judicial Estoppel Factors**

5 **A. Factor 1: The Same Party has Taken Two Positions**

6 The evidence already in the record, along with Wife's supplemental
7 testimony at the evidentiary hearing on August 16, 2021, clearly establishes that Wife has
8 not taken two contrary positions in this action. Unlike the wife in the *Vaile* case, Wife
9 never filed an Answer to a Complaint which asserted Husband was a Nevada resident. In
10 *Vaile*, Wife's filing of an Answer was the primary reason that the Nevada Supreme Court
11 determined that the wife had taken two positions, when she thereafter claimed otherwise
12 in her Motion to Set Aside. In the case at bar, Wife testified that she was directed by
13 Husband to sign paperwork, which she later found out to be a joint petition, that she never
14 read nor understood. She further testified that even if she had been given an opportunity
15 to read the documents (which she wasn't), they were written in a language that was not
16 her primary tongue, and that no one interpreted or even explained the content of the
17 documents. She testified that she was directed to sign them and was accustomed (even
18 required) to obey her husband. This testimony was not refuted by Husband who did not
19 testify at the second trial.

20 Wife further testified that while her proficiency in English has certainly
21 improved over the past 16 years as she's continued to live and work in the United States,
22 her English abilities remain limited, particularly as to written English (let alone legal
23 terminology). More than 16 years ago when she initially signed the Nevada divorce
24 papers, her English language proficiency was even more limited than it is now, and there
25 is simply no way that she could have understood the documents that she was directed to
26 sign without an interpreter, had she even been allowed to review them by Husband.
27 Again, Husband offered no testimony to refute these facts.

28 . . .



1 In short, as supported by Wife's testimony, there is no possible way that
2 Wife could have taken two positions in this action; having no knowledge at the time that
3 Husband directed her to sign the Nevada divorce papers that they contained any stated
4 position regarding Husband's residency. She clearly took no position at all, being in
5 complete ignorance of the claims or requirements under Nevada law, as confirmed by her
6 testimony. Accordingly, when Wife subsequently took a position of disputing Husband's
7 Nevada residency claims in her Motion to Set Aside filed in January 2019, such was the
8 first time that she affirmatively asserted any position on Husband's residency having been
9 completely ignorant of the claims back in 2004 when she was directed to signed papers
10 by Husband that she'd never read, nor was even given an opportunity to understand.
11 Clearly, the evidence in the record demonstrates that Wife has not taken two positions in
12 this matter and lacked sufficient information and knowledge to even be capable of taking
13 two positions.

14 Again, contrasting Wife's actions as set forth in her testimony, with those
15 of the wife in *Vaile*, it clear that Wife's request to set aside was brought before the Court
16 in good faith, and her motion should be granted and not be barred under principles of
17 judicial estoppel. The wife in *Vaile* was served with a Complaint for Divorce by her
18 husband. She had an opportunity to review the document and see the false Nevada
19 residency claim contained therein. She then took the affirmative steps of preparing (or
20 having prepared) a formal Answer to the Complaint in which she *admitted* her husband's
21 false residency claims. As such, when she then years later sought to set the divorce
22 decree aside in Nevada, by claiming that the former husband was not actually a resident
23 at the time of the divorce action, she was taking a completely opposite position to the one
24 she took at the time of the divorce – the inference being that she benefitted from the fraud
25 at the time of divorce and it would be improper for her to now benefit from taking an
26 opposite position. As such, the Court in *Vaile* was justified an determining that the wife
27 was judicially estopped on the basis of taking two positions. The facts in the case at bar,
28 as confirmed by Wife's testimony, are markedly different and easily distinguished from



1 the facts in *Vaile*. Wife was an unwitting victim of Husband's fraud, receiving no
2 benefits from his actions at the time she was directed to sign the divorce papers, and will
3 furthermore be irreparably harmed now if Husband is permitted to get away with his
4 fraudulent actions.

5 **B. Factors 2-4: (2) the positions were taken in a judicial or quasi-judicial**
6 **administrative proceedings; (3) the party was successful in asserting the first**
7 **position (i.e., the tribunal adopted the position or accepted it as true); (4) the**
8 **two positions are totally inconsistent**

9 Due to the evidence and Wife's testimony supporting the fact that Wife has
10 not taken two contrary positions in this matter (as set forth above), a further detailed
11 analysis of the next three judicial estoppel factors is not warranted or necessary. Again,
12 Husband offered no evidence to contradict Wife's testimony in this regard. As such, there
13 is no basis for applying judicial estoppel to Wife's Motion to Set Aside the fraudulent
14 Nevada Decree of Divorce under any of these next three factors.⁴

15 **C. Factor 5: the first position was not taken as a result of ignorance, fraud, or**
16 **mistake**

17 This factor was a key factor that was focused on by the Nevada Supreme
18 Court in its Opinion stating in relevant part:

19 Significantly, the district court failed to make findings regarding whether
20 [Wife] was operating under ignorance, fraud, or mistake when she signed
21 the divorce decree, in light of her claims that she could not read or
22 understand the decree. *Had the district court made findings concerning this*
23 *factor and determined that [Wife] was operating under ignorance, fraud, or*
24 *mistake, it could have declined to apply the doctrine of judicial estoppel*
25 *without ever reaching the issue of whether [Wife's] defense of duress and*
26 *coercion was proven. (Opinion Pages 8-9). (Emphasis added)*

27 This above-cited language from the Nevada Supreme Court's Opinion is the
28 key for the Court in making a determination in this case. As confirmed by Wife's trial
testimony, Wife maintains that she has never taken two opposing positions in this matter.

⁴ To the extent necessary Wife already stipulated at trial that there were judicial proceedings under the second factor.



1 Certainly to the extent the Court were to determine that Wife did in fact take an opposing
2 position by virtue of signing the Nevada joint petition and decree, which included
3 language indicating Husband was a Nevada resident, the evidence presented to the Court
4 at trial definitively demonstrates that any such position was clearly the result of
5 ignorance, fraud, and/or mistake. Husband offered no testimony or other evidence to
6 refute Wife's assertions in this regard.

7 Wife testified at the first trial that, on or about August 27, 2004, Husband
8 directed her to get into the car and drove her to Las Vegas from their home in California.
9 She testified that subsequent to that date, the parties had continued to jointly reside in
10 their marital home, pay the joint bills, and both parties continue to work at their jobs in
11 California. Wife testified at the initial trial that, "[Husband] brought [her] here, saying
12 that we need to divorce so that he could get his brother here." (Trial Transcript from
13 September 13, 2019, page 82, line 24, and page 83, line 1). She further testified, that
14 Husband's plan was to get his brother to the United States by divorcing her and having
15 her marry his brother. (See Trial Transcript from September 13, 2019, page 83, lines 2-
16 4). Husband explained the same to Wife as a "paper divorce" and indicated it had no
17 effect on their marriage.

18 With regard to the execution and filing of the Nevada divorce papers, Wife
19 testified that she came to Nevada with Husband and signed papers. However, her
20 testimony confirmed she did not have an opportunity to read the papers or know what
21 they were or what they said before signing. She testified, "[Husband] asked me to sign,
22 so I signed it." Upon further inquiry about whether she signed anything he asked her to
23 sign, she testified, "Yes, I did....He was my husband. He would say it, and I will do it."
24 (Trial Transcript from September 13, 2019, page 83, lines 8-22) Wife testified that she
25 never received a copy of the divorce papers. She further testified, that her English skills
26 were minimal, that no one was present to translate the documents she signed into her
27 native Punjabi, and she had no idea what they said. (Trial Transcript from September 13,
28 2019, page 84, lines 2-7). Indeed, she testified that never saw a copy of the Nevada



1 Decree of Divorce or had any notion of the contents of the same until more than 14 years
2 later in 2018. (Trial Transcript from September 13, 2019, page 84, lines 10-14). She
3 further testified that she understood from the representations of Husband at the time that
4 the Nevada divorce “was not a complete divorce, it was just a paper divorce.” (Trial
5 Transcript from September 13, 2019, page 85, lines 1-3). Wife only realized that the
6 Nevada divorce might actually be a real thing 14 years later in 2018. She was then told
7 by his relatives that they were divorced. (Trial Transcript from September 13, 2019, page
8 85, lines 10-15).

9 Prior to 2018, Wife had no reason to believe that there was anything
10 legitimate or legal about what she signed in Nevada 14 years prior. She testified that after
11 she signed the papers in Nevada, that the parties returned home to California and “lived
12 in same house like husband and wife.” (Trial Transcript from September 13, 2019, page
13 86, lines 19-24). Nothing changed in their day-to-day living. They continued to share
14 a bedroom, continued to have sexual relations, and continued to share finances as before.
15 (Trial Transcript from September 13, 2019, page 87, lines 1-14). Husband continued to
16 tell Wife that it was a “*paper divorce*, but we will stay together.” (Trial Transcript from
17 September 13, 2019, page 87, lines 15-21(emphasis added)). Wife testified that she
18 understood that a “paper divorce” meant that it was not intended to be a real divorce.
19 Certainly nothing in the parties behaviors would lead one to believe that they were
20 divorced. Years later, Husband took title to a property in California “as a married man,”
21 suggesting that he too didn’t really believe the parties were divorced. As supported by
22 documentary evidence admitted into the record and Wife’s testimony, when the
23 California divorce action was filed in 2018, it was approximately six months into the
24 California divorce case when Husband appears to have remembered that the parties
25 already divorced 14 years earlier in Nevada.

26 At the time Husband took Wife to Nevada and had her sign the Nevada
27 divorce papers, he informed her that it was his intention to do this so that he could take
28 her back to India and have her marry his brother in an effort to get his brother to the



1 United States. In her testimony, Wife confirmed that Husband did take her to India and
2 forced her to marry his brother sometime in 2004.⁵ (Trial Transcript from September 13,
3 2019, page 88, lines 16-24, and page 89, line 1). Husband, and his mother and father
4 accompanied Wife on the trip, a ceremony was performed, they stayed in India a few
5 weeks and then both returned home to California continuing to live as husband and wife.
6 Wife never lived with Husband's brother or engaged in any sexual relations with him.⁶
7 (Trial Transcript from September 13, 2019, page 89, lines 2-22). In fact, Husband's
8 brother (who is 12 years younger than Wife) was already married to someone else. (Trial
9 Transcript from September 13, 2019, page 90, lines 9-15). Wife testified at the second
10 trial that she and Husband had attended his brother's wedding ceremony the day before
11 she was compelled to marry him as part of Husband's immigration fraud. At the time of
12 the initial trial, the Court made a finding that this was a "sham marriage." (See FFCL
13 page 6, lines 14-15). Wife certainly never understood that it was intended to be a real
14 marriage. She was simply following instructions from Husband, whose word is law in
15 their relationship.

16 As such, the evidence presented establishes that Wife was wholly ignorant
17 in regard to Husband's Nevada residency claims, which were fraudulently included in the
18 joint petition and decree and unbeknownst to her at the time she signed. Wife also
19 testified that she was ignorant of the legal requirements for establishing residency in
20 Nevada. She was ignorant of any such language being included in the divorce papers she
21 was directed to sign. She never read the papers. All she was told was that they were
22 getting a "paper divorce" so he could take her to India to marry his brother. She
23 understood, and believed based upon the maintaining of the status quo thereafter for
24 _____

25 ⁵ Wife's present recollection is that at the same time, Husband went through a wedding ceremony
26 with his brother's wife, because the plan was to try to get them both to the United States, so they
could stay together.

27 ⁶ When this sham marriage did not end up in Husband's brother and his wife being able to immigrate
28 to the US, it was dissolved in 2008. (Trial Transcript from September 13, 2019, page 89, lines 23-
24)



1 another 14 years that the “paper divorce” was meaningless.

2 The record is replete with evidence that Husband’s actions in getting a
3 divorce in Nevada was a perpetuation of a fraud on multiple levels. It was part of a larger
4 scheme to commit immigration fraud. It was a fraud on the State of Nevada. It was a
5 fraud upon Wife, who was generally kept in the dark as to Husband’s nefarious
6 intentions. She was repeatedly told that it was meaningless, and nothing would change.
7 Wife had no reason not to believe Husband or trust his representations, because nothing
8 did change for the next 14 years. They continued to live as husband and wife, maintained
9 joint finances, and the evidence at the first trial even showed that Husband purchased real
10 property in 2009 as “a married man.” They continued to be listed as spouses on medical
11 records and held themselves out as married to third parties.

12 Again, based upon the established and unrefuted fact that when Wife filed
13 for divorce in California in 2018, and served Husband, he timely Answered – apparently
14 only *remembering* as an afterthought *six months* into the California divorce action, that
15 he’d already procured a divorce in Nevada 14 years earlier. This too is evidence that
16 Husband was acting in bad faith in 2004. Having had an epiphany in recollecting the
17 prior fraudulent Nevada divorce and seeing a new potential benefit to himself in the
18 divorce case (as compared to his initial intention to perpetuate immigration fraud), he was
19 clearly trying to use the Nevada Divorce as both a sword and a shield in the California
20 divorce case to prevent Wife from receiving her due rights and an equal share of the
21 community property notwithstanding their more than 30 years of marriage (defacto or
22 otherwise). It would be a gross miscarriage of justice, to the great detriment of Wife who
23 will be irreparable harmed, if Husband is allowed to benefit from his clear fraud and
24 immoral acts.

25 . . .

26 . . .

27 . . .

28 . . .



Furthermore, as confirmed by the documentary evidence and Wife's supporting testimony at both trials, the Nevada Decree of Divorce (even if weren't fraudulently obtained) wholly failed to properly adjudicate any of the property and financial issues in the parties' divorce relating to community property, rights to spousal support, and the like. Its enforcement now would deprive Wife of her rights to substantial community property accumulated over the many years of the parties' relationship, and of her ability to seek alimony after a relationship lasting more than 30 years.

D. Refutation of Husband's Anticipated Legal Arguments

At the second trial Husband did not testify. Perhaps this is because the Court had already made a clear finding at the first trial that he was not a credible witness, having been caught repeatedly in blatant lies during the first trial. Husband and his counsel, based upon Husband's counsel's cross-examination of Wife, and his related arguments, appear to be relying on the notion that "a contract is a contract" whether Wife understood what she signing or not.⁷ Husband's counsel points to a few incidents in the record (from Wife's deposition testimony and trial testimony from the first trial), where Wife acknowledged that she understood that there was a divorce in Nevada and was aware of Husband's planned immigration fraud – arguing therefore that Wife is bound by that understanding and that this demonstrates that she has taken two inconsistent positions. This is a grossly inaccurate oversimplification of the facts and is ultimately contrary to the unrefuted evidence presented to the Court at both trials, which clearly demonstrated Wife's ignorance and Husband's fraud, warranting this Court the discretion to not apply principles of judicial estoppel in this case and to set aside the voidable Nevada Decree of Divorce.

⁷ Husband's approach throughout this litigation has been to primarily focus on various novel legal arguments and theories (which have been rejected at both the district and appellate court levels), rather than the facts and the unconscionable outcome that will result if he prevails. Husband's "contract is a contract" legal theory is just the next in a long line of such legal theories.



Husband's arguments in this regard miss the mark. The fraud perpetuated on the State of Nevada was the false claim of Nevada residency, which allowed Husband to obtain a Nevada divorce under false pretenses when it is clear the Court did not have the requisite subject matter jurisdiction to grant it. The evidence overwhelmingly demonstrates that Wife was wholly unaware of the residency requirements or the inclusion of residency claims in the Nevada divorce filings. Whether Wife understood that there was a "paper divorce" or Husband's plans to engage in immigration fraud, are secondary to the fraudulent representations he made to the Court about residency that resulted in the Nevada divorce being wrongfully entered. Husband wants to obtain an improper benefit from his wrongful acts to the direct detriment of Wife.

Furthermore, any argument by Husband that Wife is bound by the Nevada Decree because "a contract is a contract" and she admits to signing it and may have been aware of its purported purpose whether she understood it or not, is without legal merit. Neither is such relevant to the legal analysis as clearly set forth by the Nevada Supreme Court in its Opinion as cited extensively herein-above. Notwithstanding Husband's arguments that Wife is bound by the "contract" because she signed it, contracts in Nevada are always susceptible to being set aside or voided under various contract principles set forth in common law, statutory law and case law, including but not limited to evidence demonstrating there was no meeting of the minds, there was fraudulent misrepresentation,⁸ and there was fraud in the inducement, just to name a few which would be applicable in this case.⁹ Nevada law in this regard is clear. "Fraud in the

⁸ See *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (Nev. 2007). With respect to the false representation element, the suppression or omission "of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since it constitutes an indirect representation that such fact does not exist," citing *Midwest Supply, Inc. v. Waters*, 89 Nev. 210, 212-13, 510 P.2d 876, 878 (1973).

⁹ For example, "[u]nder Nevada law, a claim of fraud in the inducement requires the plaintiff to establish each of the following elements: (1) a false representation; (2) knowledge or belief that the representation was false (or knowledge that the defendant's basis for making the representation was insufficient); (3) intent to induce the plaintiff to consent to the contract's formation; (4) justifiable



1 inducement renders the contract voidable." *Bishop v. Stewart*, 13 Nev. 25, 42 (1878);
2 *Friendly Irishman v. Ronnow*, 74 Nev. 316, 330 P.2d 497 (1958); *Lovato v. Catron*, 20
3 N.M. 168, 148 P. 490 (1915); *C.I.T. Corp. v. Panac*, 25 Cal. 2d 547, 154 P.2d 710
4 (1944). The long established policy of the State of Nevada with respect to contracts
5 procured through fraud has been made clear. *See, e.g., Halvas v. Alger*, 461 P.2d 857
6 (Nev. 1969) (citing *McCausland v. Ralston*, 12 Nev. 195, 216 (1877) ("[T]he courts can
7 never be called upon to legalize a fraud, or enable any man upon an executory contract
8 to realize a profit from his own immoral conduct. The very moment the fraud is clearly
9 proven the court refuses to grant any relief. Whenever, in this manner, an executory
10 contract is tainted with fraud, the court refuses to enforce it, and it makes no difference
11 whether the fraud is shown by the plaintiff or defendant.")). "[W]e know that there are
12 instances in which a written contract will be canceled because of fraud inhering in its
13 execution. A contract obtained by duress or from an incompetent or by some fraudulent
14 practice in inducing its execution is, among others, an instance of fraud inhering in the
15 obtaining of the contract." *See Exploration Co. v. Rae*, 47 Nev. 173, 193, 223 P. 825, 828
16 (1923).

17 In this case there is ample evidence to demonstrate that there was no meeting
18 of the minds between the parties. First, Wife testified she had no understanding as to what
19 was included in the Nevada Decree of Divorce, no opportunity to read it, and no ability
20 to understand it without an interpreter which was not provided or offered. She did not
21 have the benefit of independent legal counsel to advise her of the ramifications of the
22 documents she was directed to sign. Furthermore, Wife repeatedly testified that she was
23 repeatedly told by Husband that it was a meaningless "paper divorce." The parties'
24 actions for the next 14 years gave her no reason to believe otherwise, as the parties
25 continued to cohabit, have sexual relations, continued to share finances, and continued
26 to represent themselves publicly as husband and wife. Neither party acted in a manner

27
28 reliance upon the misrepresentation; and (5) damage resulting from such reliance." *J.A. Jones
Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 89 P.3d 1009, 1087 (Nev. 2004)



1 that would suggest that they legitimately believed or considered themselves to be
2 divorced. Husband, whom the evidence suggests himself may not have believed the
3 divorce was valid based upon his own contradictory actions, clearly now sees an
4 opportunity to use his fraud upon Wife and this State for his own personal gain, and
5 deprive his partner of more than 30 years of a fair and equitable resolution. Again, to
6 allow him to use the Nevada Divorce as both a sword and a shield to the extreme
7 detriment of Wife would be a gross miscarriage of justice and set a legal precedent that
8 it is okay to commit fraud upon the State of Nevada because in the end you'll get away
9 it, and there's nothing that can be done about it. The net result would be Husband
10 directly "profiting from his own immoral conduct," as described in the *McCausland* case
11 cited above. Public policy considerations alone dictate that such behavior should not be
12 condoned, let alone endorsed by our legal system.

13 Accordingly, Wife maintains that there is no valid legal basis to deny her the
14 relief sought based upon Husband's next legal theory.

15 IV.

16 Conclusion

17 Based upon the foregoing and the evidence presented, Wife respectfully
18 requests that the Court exercise its rightful discretion and declare the 2004 Nevada
19 Decree of Divorce voidable and set it aside, so that the pending California divorce action
20 may proceed and each party can receive justice. As was highlighted in the Nevada
21 Supreme Court's Opinion, "although a district court's decision to apply judicial estoppel
22 is discretionary, 'judicial estoppel should be applied only when a party's inconsistent
23 position arises from intentional wrongdoing or an attempt to obtain an unfair advantage.'" (Opinion Page 8, citing *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004)). If there were ever a case where the Court should exercise its discretion in
24 not applying judicial estoppel, this is the one. There is simply no evidence that Wife was
25 complicit in the wrongdoing that occurred in this action. The "wrongdoer" in this case
26 was Husband, and Wife was the unwitting victim of his fraud and wrongdoing. If the
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1 Court does not exercise its discretion to declare the 2004 Nevada Decree of Divorce
2 voidable, and set it aside, Husband will absolutely receive an unfair advantage over Wife
3 resulting in a gross miscarriage of justice potentially leaving her destitute after a more
4 than 30 year relationship with Husband..

5 Dated this 13th day of September, 2021.

6 KAINEN LAW GROUP, PLLC

7
8 By: 

ANDREW L. KYNASTON, ESQ.

Nevada Bar No. 8147

3303 Novat Street, Ste. 200

Las Vegas, Nevada 89129

Attorney for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of September, 2021, I caused to be served ***Defendant's Closing Brief*** filed, 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@peterjameslaw.com
April@peterjameslaw.com
Singh2816@yahoo.com


An Employee of
KAINEN LAW GROUP, PLLC

1 FFCO

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 JASWINDER SINGH,
7 Plaintiff,

Case No: 04-D-323977
Dept. No: X

8 vs.

DATE OF HEARING: 08/16/2021
TIME OF HEARING: 1:30PM

9 RAJWANT KAUR,
10 Defendant

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

12
13 This matter came before the Court for non-jury bench trial in the above-captioned matter
14 on August 16, 2021 following a December 19, 2020 Order of Reversal and Remand in Kaur v.
15 Singh, 135 Nev. Adv. Op. 77, 477 P.3d 358 (2020), *reh'g denied* (January 13, 2021), *en banc*
16 *reconsideration denied*, (March 18, 2021).

17 Jaswinder (Jaswinder) Singh was present in the courtroom and represented by F. Peter
18 James, Law Offices of F. Peter James. Rajwant (Rajwant) Kaur was present in the courtroom
19 and represented by Andrew L. Kynaston, Kainen Law Group PLLC. Each party had the use of
20 court-certified interpreter during the proceedings.

21
22 Having reviewed the papers and pleadings on file herein and, after considering and
23 weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues
24 its *Findings of Fact, Conclusions of Law and Order*.

25
26 **PROCEDURAL HISTORY**

27 On August 27, 2004, the parties filed a Joint Petition for Summary Decree of Divorce
28 (Joint Petition). Both parties were self-represented. The Joint Petition indicated the parties

1 married on November 11, 1989 in Punjab, India. Both parties signed the Joint Petition which
2 included Verifications. Also on August 27, 2004, the parties filed an Affidavit of Resident
3 Witness wherein Balbinder Singh Pabla averred Jaswinder was a resident of Clark County,
4 Nevada. On September 8, 2004, a Summary Decree of Divorce (Decree) was filed. Though the
5 parties had then been married for a period of eighteen (18) years, no community property or
6 debt was divided and neither party received an award for spousal support.
7

8 On January 7, 2019, Rajwant filed a Motion to Set Aside Decree of Divorce. In her
9 motion, Rajwant requested the Decree be set aside pursuant to NRCP 60(b) and, further, alleged
10 the Decree was void due to neither Rajwant nor Jaswinder being a resident of Nevada at the
11 time the Decree was filed. On January 23, 2019, Jaswinder filed his Opposition and
12 Countermotion for Award for Attorney Fees and Costs. Rajwant timely replied. Following
13 hearing on the pleadings, the Court determined a bench trial was warranted. See Order (filed
14 March 14, 2019).
15

16 On September 12 and 13, 2019 bench trial was held. On October 22, 2019, the Court
17 issued its Findings of Fact, Conclusions of Law and Order (Order). Specifically, relying on
18 Vaile v. Eighth Jud. Dist. Ct., 118 Nev. 262, 44 P.3d 512 (2002), the Court denied Rajwant's
19 motion to set aside the September 8, 2004 Decree of Divorce. In the nine-page order, the Court
20 found Jaswinder "not credible in any portion of his testimony." See Order at p.4, ll.14-15 (filed
21 October 22, 2019). With respect to Rajwant's testimony, the Court found her "more credible".
22 Id. The Court's conclusion Rajwant failed to demonstrate threat, duress or coercion, is tied to
23 its application of the Vaile case which included its finding Rajwant knew she was executing
24 divorce documents in Nevada. Id. at p.4, ll.14-20, p.5, ll.1-20, p.6, ll.1-20 and p.7, ll.1-5. Last,
25 the Court additionally ordered both parties to bear his/her own attorney fees and costs.
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1 On November 19, 2019, Rajwant filed her Notice of Appeal followed, on November 29,
2 2019, with Jaswinder's Notice of Appeal. On November 12, 2020, oral argument was held on
3 the appeal and cross-appeal. As noted above, on December 19, 2020, the Nevada Supreme
4 Court issued an Opinion wherein the matter was ordered reversed and remanded. On January
5 13, 2021, Jaswinder's December 28, 2020 Petition for Rehearing was denied. On March 18,
6 2021, Jaswinder's January 27, 2021 Petition for En Banc Rehearing was denied. On April 13,
7 2021, Remittitur issued.
8

9 On January 4, 2021, this case was administratively reassigned from Department P to
10 Department X.
11

12 Following testimony and admission of exhibits, the parties stipulated to filing closing
13 briefs. Accordingly, on September 13, 2021, the parties filed and served their written closing
14 briefs. This decision follows.
15

16 **FINDINGS OF FACT**

17 **JURISDICTION**

18 Both parties in this case reside in California. At issue in this case is the validity of the
19 September 8, 2004 Summary Decree of Divorce filed in this Court. This Court has the
20 appropriate subject matter and personal jurisdiction to enter a decision on the challenged issues.
21

22 **TESTIMONY**

23 The following witness offered testimony in this case:

24 Rajwant Kaur (Defendant).

25 Rajwant testified she is currently 64 years of age. Rajwant testified her marriage was an
26 arranged marriage taking place in 1989 in India. Rajwant testified she has the equivalent of a
27 high school education and her native language is Punjabi. Rajwant testified she immigrated to
28

1 the United States in 1989 and her English language abilities at that time were negligible.

2 Currently, Rajwant testified she does not speak much English and can understand the
3 English language to a limited extent. Specifically, Rajwant testified she can read some English,
4 is not able to write very much English but can find her way around. Rajwant testified she has
5 been employed at Sherman Oaks Hospital as a certified nursing assistant, a job she has held for
6 twenty years. Rajwant testified she was not required to take a written test to obtain her
7 employment and is only required to speak some English in order to engage in basic nursing,
8 cleaning, feeding and hygiene assistance duties.
9

10 Rajwant testified she currently resides with Jaswinder in their California residence.
11 Rajwant testified other family members co-reside with her and Jaswinder at the residence.
12

13 Rajwant testified she traveled with Jaswinder to Las Vegas in 2004. Rajwant testified
14 Jaswinder told her they were going to obtain a “paper divorce” in order to assist bringing his
15 brother to the United States from India. Rajwant testified, on arrival in Las Vegas, she and
16 Jaswinder when to a friend of Jaswinder’s, had some food and signed divorce paperwork which
17 had already been prepared. Rajwant testified she did not know what the papers were at the time
18 and did not understand what the papers meant. Specifically, Rajwant testified she did not assist
19 in the preparation of the papers she signed, was not given the opportunity to read the documents
20 but did not understand or was able to read the documents in any event. Rajwant testified that, in
21 2004, her ability to read and understand English was more limited than presently and even if she
22 had been given additional time to read the Nevada divorce documents, she would not have been
23 able to understand the documents. In particular, Rajwant testified she had no additional
24 expertise understanding legal documents. Rajwant denied being given the opportunity to have
25 the documents translated to her native language. Rajwant additionally testified she was not told
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1 by Jaswinder or any other person she had the right to consult with any attorney related to the
2 Nevada divorce documents.

3 Rajwant testified she was never given a copy of the Joint Petition or Decree. Rajwant
4 additionally testified she was never notified of any Nevada residency requirement or the need
5 for an Affidavit of Resident Witness in support of the Decree. When asked if she knew what a
6 Joint Petition for Divorce was, Rajwant testified she did not know what kind of document it was.
7 Rajwant testified she signed the Nevada divorce documents because her husband, Jaswinder,
8 told her to sign and she always did as he told her. Rajwant testified she and Jaswinder left Las
9 Vegas in 2004 after their visit and returned to California. Rajwant testified, upon return to their
10 California home, she and Jaswinder continued to live as husband and wife. Specifically,
11 Rajwant testified "nothing changed". Rajwant testified the parties continue to live together,
12 have combined finances and that her paycheck continues to be a direct deposit to the parties'
13 joint bank account.

14 Rajwant testified she believed the Nevada proceeding was, as Jaswinder told her, a
15 "paper divorce" which would allow her to marry his brother. To that end, Rajwant testified she
16 traveled to India and married Jaswinder's brother. Afterwards, Rajwant testified she returned to
17 the United States with Jaswinder and her in-laws. Rajwant denied consummating the marriage
18 to Jaswinder's brother and testified the brother was, in fact, married to someone else in India.
19 Additionally, Rajwant testified Jaswinder married his brother's wife. Rajwant testified
20 Jaswinder's brother was not able to obtain a US VISA, despite her marriage to him, resulting in
21 the brother remaining in India. Rajwant testified she ultimately obtained a 2008 Indian divorce
22 from Jaswinder's brother. Rajwant testified she complied with the request to marry Jaswinder's
23 brother because Jaswinder's family wanted to be together in the United States.

1 Rajwant testified she became aware of the 2004 Nevada Decree of Divorce in 2018
2 when she filed for divorce in California. Rajwant testified she had service of the California
3 divorce documents effectuated on Jaswinder. Rajwant testified she became aware of the 2004
4 Nevada divorce when Jaswinder filed responsive pleadings alleging the parties were already
5 divorced. Rajwant testified the California divorce proceeding remains on hold pending the
6 outcome of the instant case. Rajwant testified she did not fully understand what would happen
7 to the California divorce proceedings if the 2004 Nevada Decree was not set aside. However,
8 Rajwant testified she has no money of her own and was afraid Jaswinder would lock her out of
9 the home. Rajwant testified she is twelve years older than Jaswinder and that “everything is in
10 his name”.

13 CONCLUSIONS OF LAW

14 In its December 10, 2020 Opinion, the Nevada Supreme Court made specific findings
15 and orders which govern the ambit of this Court’s bench trial on remand. First, the Court
16 concluded Rajwant’s Motion to Set Aside the Decree was timely under NRCP 60(b)(3) and (4)
17 and this Court did not abuse its discretion in making that determination. Kaur, 136 Adv. Op at
18 ___, 477 P.3d at 361. Second, the Court concluded this court erroneously applied Vaile v.
19 Eighth Jud. Dist. Ct., 118 Nev. 262, 44 P.3d 506 (2002). Id. at ___, 477 P.3d at 362. Next, the
20 Supreme Court concluded this Court’s determination the 2004 divorce decree was voidable
21 under Vaile was not erroneous. Id. Specifically, while the Supreme Court concluded the 2004
22 Decree was not void, it could nonetheless be voidable if Rajwant demonstrated this Court did
23 not have jurisdiction at the time it entered the Decree. Id. As such, the Nevada Supreme Court
24 concluded this Court did not err when is concluded neither Rajwant or Jaswinder resided in
25 Nevada for the requisite six weeks and the Decree was, therefore, voidable. Id. Last, the
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1 Supreme Court concluded this Court erroneously applied the doctrine of judicial estoppel. Id. at
2 ___, 477 P.3d at 363 (citing Vaile, 118 Nev. at 273, 44 P.3d at 514). In particular, the Supreme
3 Court concluded this Court improperly applied Vaile by concluding judicial estoppel applied
4 where Rajwant failed to prove she was operating under duress or coercion. Specifically, the
5 Nevada Supreme Court concluded this Court failed to first determine if judicial estoppel applied
6 under the In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652
7 (2017) five-factor test and, if so, to then determine if duress or coercion – defenses to judicial
8 estoppel – applied. Id.

10 **Governing Law**

11 In Kaur, the Nevada Supreme Court clarified the five-factor test for judicial estoppel as
12 follows:
13

14 “Well-established caselaw sets forth a five-factor test for courts to consider when
15 determining whether judicial estoppel applies: whether “(1) the same party has taken two
16 positions; (2) the positions were taken in judicial or quasi-judicial administrative
17 proceedings; (3) the party was successful in asserting the first position (i.e., the
18 tribunal adopted the position or accepted it as true); (4) the two positions are totally
19 inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or
20 mistake.” In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646,
652 (2017) (internal quotation marks omitted).”

21 Kaur v. Singh, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362–63 (2020).

22 The Supreme Court went on to clarify that, while application of judicial estoppel is
23 discretionary with the trial court, “judicial estoppel should be applied only when a party’s
24 inconsistent position arises from *intentional* wrongdoing or an attempt to obtain unfair
25 advantage.” Id. at ___, 477 P.3d at 363 (emphasis in original)(quoting NOLM, LLC v. Cty. of
26 Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004)). Thus, a party seeking application of
27 judicial estoppel must show “the first position was not taken as a result of ignorance, fraud, or
28 mistake.” Id. Put another way, in order for Jaswinder to prevail on his assertion Rajwant is

1 judicially estopped from challenging the 2004 Decree, he must demonstrate Rajwant did not
2 take her initial, first position – executing the summary divorce documents – as a result of
3 ignorance, fraud or mistake. To that end, the Nevada Supreme Court concluded as follows:

4
5 “Significantly, the district court failed to make findings regarding whether Rajwant was
6 operating under ignorance, fraud, or mistake when she signed the divorce decree, in light
7 of her claims that she could not read or understand the decree. Had the district court
8 made findings concerning this factor and determined that Rajwant *was* operating under
9 ignorance, fraud, or mistake, it could have declined to apply the doctrine of judicial
10 estoppel without ever reaching the issue of whether Rajwant's defense of duress and
11 coercion was proven.”

12 Kaur v. Singh, 136 Nev. Adv. Op. 77, 477 P.3d 358, 363 (2020).

13 Accordingly, on remand, this Court must consider and apply the five-factor test set forth
14 in In re Frei Irrevocable Trust in order to determine if the doctrine of judicial estoppel applies
15 and, if so, whether Rajwant has met her burden demonstrating duress or coercion is a defense.

16 **IN RE FREI IRREVOCABLE TRUST FIVE-FACTOR ANALYSIS**

17 **Has Rajwant Taken Two Positions?**

18 In the first instance, the underlying record indicates Rajwant signed and verified both the
19 August 27, 2004 Joint Petition for Divorce and the September 8, 2004 Summary Decree of
20 Divorce (the First Position). The Court FINDS, on January 7, 2019, Rajwant filed her Motion
21 to Set Aside the Decree of Divorce on the grounds Nevada did not have jurisdiction rendering
22 the Decree void and that she was forced to execute the Nevada divorce documents (the Second
23 Position). Accordingly, the Court FINDS Rajwant has taken a position in one proceeding that is
24 contrary to her position in a previous position. Kaur, 136 Adv. Op. at ___, 477 P.3d at 362
25 (citing Vaile, 118 Nev. at 273, 44 P.3d at 514).

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1 **Were Rajwant's Positions Taken in a Judicial or Quasi-Judicial Administrative**
2 **Proceeding?**

3 This Court FINDS it is a court of record in the Eighth Judicial District Court and that the
4 2004 Decree of Divorce was duly executed and filed by this Court. Accordingly, this Court
5 FINDS Rajwant's positions were taken in a judicial proceeding.

6 **Was Rajwant Successful in Asserting the First Position (Did the Tribunal Adopt**
7 **the Position as True)?**

8 The Court FINDS, within the context of a summary divorce proceeding, the Court
9 accepted as true the contents of the August 27, 2004 Joint Petition for Divorce and supporting
10 August 27, 2004 Affidavit of Resident Witness. Thus, to the extent the parties sought and
11 obtained a summary divorce, the parties were successful in asserting the jurisdiction of this
12 Court in order to obtain the divorce. Accordingly, the Court FINDS Rajwant was successful in
13 asserting her First Position.
14

15 **Are the Two Positions Totally Inconsistent?**

16 The Court FINDS clear and convincing evidence has credibly established Rajwant's
17 First Position and Second Position are totally inconsistent. In particular, the Court FINDS it
18 clearly illogical Rajwant would be cognizant she was divorced in Nevada and, nonetheless, file
19 for divorce in California fourteen years later. This course of conduct, filing for divorce in
20 California in 2018, is directly opposed and inconsistent with Rajwant knowingly obtaining a
21 2004 Nevada divorce. The Court FINDS no evidence suggesting Rajwant's first position was
22 the result of *intentional* wrong-doing or an attempt to gain unfair advantage. Kaur, 136 Nev.
23 Adv. Op at ___, 477 P.3d at 363 (quoting NOLM, LLC v. Cty. of Clark, 120 Nev. 736, 743, 100
24 P.3d 658, 663 (2004)).
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1 **Was Rajwant’s First Position NOT Taken as a result of Ignorance, Fraud or**
2 **Mistake?**

3 The Court FINDS Rajwant credibly testified her ability to read and understand English is
4 currently limited. The Court further FINDS Rajwant credibly testified her ability to read and
5 understand English is better currently than it was in 2004 at the time the Nevada divorce papers
6 were filed and executed by this Court. The Court FINDS credible Rajwant’s testimony she
7 relied on Jaswinder’s assertion the 2004 Nevada divorce was a “paper divorce” only, that
8 Rajwant was unable to read or understand the Nevada divorce documents Jaswinder gave her to
9 sign and that Rajwant was not given a copy of the 2004 Nevada Decree. The Court FINDS
10 credible Rajwant’s testimony she believed the Nevada proceeding was in name only where
11 testimony clearly and convincingly demonstrated the parties returned to California and
12 continued to cohabitate with combined property and finances. The Court FINDS Rajwant
13 credibly testified she routinely did what Jaswinder told her to do throughout the marriage to
14 include obeying his mandate she engage in a sham marriage with his brother in order to bolster
15 the brother’s attempts to immigrate to the United States. Specifically, the Court FINDS
16 Rajwant was an unknowing victim of a fraud perpetrated by Jaswinder in the Nevada courts.
17

18 Jaswinder argues this Court is bound by its prior finding Rajwant understood the Nevada
19 divorce documents and was knowingly divorcing Jaswinder to assist his brother’s immigration
20 application. See Jaswinder’s Closing Brief at p.2, ll.19-20 and p.3, ll.1-10 (filed September 13,
21 2021). However, as noted herein, the Nevada Supreme Court concluded this Court’s application
22 of judicial estoppel was erroneous. See Kaur, 137 Nev. Adv. Op at ___, 477 P.3d at 362-
23 63(noting duress and coercion are a *defense* to judicial estoppel and concluding the district court
24 failed to first consider whether the five-factor test favored application of judicial estoppel).
25 Contra Findings of Fact, Conclusions of Law and Order at pp.4-6 (filed October 22,
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1 2019)(concluding Rajwant knew there was a divorce in Nevada and failed to demonstrate
2 sufficient evidence she acted under duress in executing the Nevada divorce documents). Thus,
3 as directed by the Nevada Supreme Court, this Court must make findings “regarding whether
4 Rajwant was operating under ignorance, fraud, or mistake when she signed the divorce decree. .
5 .” Id. at ___, 477 P.3d 363. Further, the Nevada Supreme Court concluded this Court did not
6 abuse its discretion where it concluded Rajwant credibly testified she believed the 2004 divorce
7 “was merely a paper divorce as Jaswinder told her” and where “she did not believe she and
8 Jaswinder were divorced where they continued living together”. Id. at ___, 477 P.3d at
9 362(addressing the timeliness of Rajwant’s motion for NRCp 60(b) relief). It is implausible the
10 Supreme Court would find this Court did not abuse its discretion in finding Rajwant credible
11 related to her testimony about the 2004 Nevada Decree in one instance but not credible as to the
12 same testimony in a second instance. Therefore, this Court finds no support for Jaswinder’s
13 assertion it is bound by the prior finding.

14
15 Accordingly, the Court FINDS Rajwant was operating under ignorance where clear and
16 convincing evidence demonstrates Rajwant was not able to adequately read or understand
17 English sufficient to understand the nature of the 2004 Nevada divorce documents. The Court
18 also FINDS clear and convincing evidence demonstrated Rajwant executed the documents
19 based on Jaswinder’s fraudulent representations the proceeding was a “paper divorce” or
20 divorce in name only. Thus, the Court FINDS Rajwant was operating under ignorance or fraud.
21 Because this Court FINDS clear and convincing evidence credibly demonstrates Rajwant was
22 operating under ignorance, fraud or mistake, the Court DECLINES to apply the doctrine of
23 judicial estoppel.

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ORDERS

NOW THEREFORE, based on the foregoing *Findings of Fact and Conclusions of Law* and, good cause appearing:

IT IS HEREBY ORDERED that this Court has complete jurisdiction to enter a final Order in this matter.

IT IS FURTHER ORDERED that, having reviewed the five-factor test set forth In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017), clear and convincing evidence credibly demonstrates Defendant Rajwant Kaur was operating under ignorance, fraud or mistake. Therefore, the Court DECLINES to apply the doctrine of judicial estoppel.

IT IS FURTHER ORDERED that the September 8, 2004 Decree of Divorce is VOIDABLE where neither party resided in Nevada for the requisite six weeks prior to filing of the August 27, 2004 Joint Petition for Divorce. Therefore, this Court did not have jurisdiction to enter the September 8, 2004 Decree of Divorce.

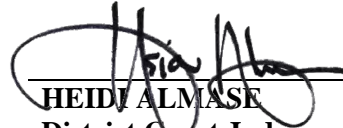
IT IS FURTHER ORDERED that Defendant Rajwant Kaur's January 7, 2019 Motion to Set Aside Decree of Divorce pursuant to NRCP 60(b) is GRANTED and the September 8, 2004 Decree of Divorce is found VOIDABLE and ORDERED SET ASIDE.

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IT IS FURTHER ORDERED that Plaintiff Jaswinder Singh's January 23, 2019
Counter-motion for Award for Attorney Fees and Costs is DENIED.

Dated this 14th day of September, 2021


HEIDI ALMASE
District Court Judge

7B8 E22 7449 FA70
Heidi Almase
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 In the Matter of the Joint Petition
7 for Divorce of:

8 Jaswinder Singh and Rajwant
9 Kaur

CASE NO: 04D323977

DEPT. NO. Department X

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
14 case as listed below:

15 Service Date: 9/14/2021

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19 Andrew Kynaston

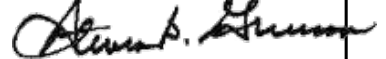
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10 Attorney for Defendant

6 **DISTRICT COURT, FAMILY DIVISION**
7 **CLARK COUNTY, NEVADA**

9 **JASWINDER SINGH,**

10 **Plaintiff,**

11 **vs.**

12 **RAJWANT KAUR,**

13 **Defendant.**

CASE NO. 04D323977

DEPT NO. X

14 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**
15 **AND ORDER**

16 **TO: JASWINDER SINGH, Plaintiff; and**


17 **TO: F. PETER JAMES, ESQ., Counsel for Plaintiff:**

18 **PLEASE TAKE NOTICE** that on the 14th day of September, 2021, the
19 **Honorable Heidi Almase** entered a *Findings of Fact, Conclusions of Law and Order*, a
20 **copy of which is attached hereto.**

21 **DATED this** 15th **day of September, 2021.**

22 **KAINEN LAW GROUP, PLLC**

23 **By:**

24 
25 **ANDREW L. KYNASTON, ESQ.**

26 Nevada Bar No. 8147

27 3303 Novat Street, Suite 200

28 Las Vegas, Nevada 89129

Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of September, 2021, I caused to be served the *Notice of Entry of Findings of Fact and Conclusions of Law and Order* 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:

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Chandren

An Employee of
KAINEN LAW GROUP, PLLC

1 FFCO

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

E-SERVED
SEP 14 2021

5
6 JASWINDER SINGH,
7 Plaintiff,

Case No: 04-D-323977
Dept. No: X

8 vs.

DATE OF HEARING: 08/16/2021
TIME OF HEARING: 1:30PM

9 RAJWANT KAUR,
10 Defendant

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

12
13 This matter came before the Court for non-jury bench trial in the above-captioned matter
14 on August 16, 2021 following a December 19, 2020 Order of Reversal and Remand in Kaur v.
15 Singh, 135 Nev. Adv. Op. 77, 477 P.3d 358 (2020), *reh'g denied* (January 13, 2021), *en banc*
16 *reconsideration denied*, (March 18, 2021).

17
18 Jaswinder (Jaswinder) Singh was present in the courtroom and represented by F. Peter
19 James, Law Offices of F. Peter James. Rajwant (Rajwant) Kaur was present in the courtroom
20 and represented by Andrew L. Kynaston, Kainen Law Group PLLC. Each party had the use of
21 court-certified interpreter during the proceedings.

22
23 Having reviewed the papers and pleadings on file herein and, after considering and
24 weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues
25 its *Findings of Fact, Conclusions of Law and Order*.

26 **PROCEDURAL HISTORY**

27 On August 27, 2004, the parties filed a Joint Petition for Summary Decree of Divorce
28 (Joint Petition). Both parties were self-represented. The Joint Petition indicated the parties

1 married on November 11, 1989 in Punjab, India. Both parties signed the Joint Petition which
2 included Verifications. Also on August 27, 2004, the parties filed an Affidavit of Resident
3 Witness wherein Balbinder Singh Pabla averred Jaswinder was a resident of Clark County,
4 Nevada. On September 8, 2004, a Summary Decree of Divorce (Decree) was filed. Though the
5 parties had then been married for a period of eighteen (18) years, no community property or
6 debt was divided and neither party received an award for spousal support.
7

8 On January 7, 2019, Rajwant filed a Motion to Set Aside Decree of Divorce. In her
9 motion, Rajwant requested the Decree be set aside pursuant to NRCP 60(b) and, further, alleged
10 the Decree was void due to neither Rajwant nor Jaswinder being a resident of Nevada at the
11 time the Decree was filed. On January 23, 2019, Jaswinder filed his Opposition and
12 Countermotion for Award for Attorney Fees and Costs. Rajwant timely replied. Following
13 hearing on the pleadings, the Court determined a bench trial was warranted. See Order (filed
14 March 14, 2019).
15

16 On September 12 and 13, 2019 bench trial was held. On October 22, 2019, the Court
17 issued its Findings of Fact, Conclusions of Law and Order (Order). Specifically, relying on
18 Vaile v. Eighth Jud. Dist. Ct., 118 Nev. 262, 44 P.3d 512 (2002), the Court denied Rajwant's
19 motion to set aside the September 8, 2004 Decree of Divorce. In the nine-page order, the Court
20 found Jaswinder "not credible in any portion of his testimony." See Order at p.4, ll.14-15 (filed
21 October 22, 2019). With respect to Rajwant's testimony, the Court found her "more credible".
22 Id. The Court's conclusion Rajwant failed to demonstrate threat, duress or coercion, is tied to
23 its application of the Vaile case which included its finding Rajwant knew she was executing
24 divorce documents in Nevada. Id. at p.4, ll.14-20, p.5, ll.1-20, p.6, ll.1-20 and p.7, ll.1-5. Last,
25 the Court additionally ordered both parties to bear his/her own attorney fees and costs.
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1 On November 19, 2019, Rajwant filed her Notice of Appeal followed, on November 29,
2 2019, with Jaswinder's Notice of Appeal. On November 12, 2020, oral argument was held on
3 the appeal and cross-appeal. As noted above, on December 19, 2020, the Nevada Supreme
4 Court issued an Opinion wherein the matter was ordered reversed and remanded. On January
5 13, 2021, Jaswinder's December 28, 2020 Petition for Rehearing was denied. On March 18,
6 2021, Jaswinder's January 27, 2021 Petition for En Banc Rehearing was denied. On April 13,
7 2021, Remittitur issued.
8

9 On January 4, 2021, this case was administratively reassigned from Department P to
10 Department X.
11

12 Following testimony and admission of exhibits, the parties stipulated to filing closing
13 briefs. Accordingly, on September 13, 2021, the parties filed and served their written closing
14 briefs. This decision follows.
15

16 **FINDINGS OF FACT**

17 **JURISDICTION**

18 Both parties in this case reside in California. At issue in this case is the validity of the
19 September 8, 2004 Summary Decree of Divorce filed in this Court. This Court has the
20 appropriate subject matter and personal jurisdiction to enter a decision on the challenged issues.
21

22 **TESTIMONY**

23 The following witness offered testimony in this case:

24 Rajwant Kaur (Defendant).

25 Rajwant testified she is currently 64 years of age. Rajwant testified her marriage was an
26 arranged marriage taking place in 1989 in India. Rajwant testified she has the equivalent of a
27 high school education and her native language is Punjabi. Rajwant testified she immigrated to
28

1 the United States in 1989 and her English language abilities at that time were negligible.

2 Currently, Rajwant testified she does not speak much English and can understand the
3 English language to a limited extent. Specifically, Rajwant testified she can read some English,
4 is not able to write very much English but can find her way around. Rajwant testified she has
5 been employed at Sherman Oaks Hospital as a certified nursing assistant, a job she has held for
6 twenty years. Rajwant testified she was not required to take a written test to obtain her
7 employment and is only required to speak some English in order to engage in basic nursing,
8 cleaning, feeding and hygiene assistance duties.
9

10 Rajwant testified she currently resides with Jaswinder in their California residence.
11
12 Rajwant testified other family members co-reside with her and Jaswinder at the residence.

13 Rajwant testified she traveled with Jaswinder to Las Vegas in 2004. Rajwant testified
14 Jaswinder told her they were going to obtain a "paper divorce" in order to assist bringing his
15 brother to the United States from India. Rajwant testified, on arrival in Las Vegas, she and
16 Jaswinder went to a friend of Jaswinder's, had some food and signed divorce paperwork which
17 had already been prepared. Rajwant testified she did not know what the papers were at the time
18 and did not understand what the papers meant. Specifically, Rajwant testified she did not assist
19 in the preparation of the papers she signed, was not given the opportunity to read the documents
20 but did not understand or was able to read the documents in any event. Rajwant testified that, in
21 2004, her ability to read and understand English was more limited than presently and even if she
22 had been given additional time to read the Nevada divorce documents, she would not have been
23 able to understand the documents. In particular, Rajwant testified she had no additional
24 expertise understanding legal documents. Rajwant denied being given the opportunity to have
25 the documents translated to her native language. Rajwant additionally testified she was not told
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1 by Jaswinder or any other person she had the right to consult with any attorney related to the
2 Nevada divorce documents.

3 Rajwant testified she was never given a copy of the Joint Petition or Decree. Rajwant
4 additionally testified she was never notified of any Nevada residency requirement or the need
5 for an Affidavit of Resident Witness in support of the Decree. When asked if she knew what a
6 Joint Petition for Divorce was, Rajwant testified she did not know what kind of document it was.
7 Rajwant testified she signed the Nevada divorce documents because her husband, Jaswinder,
8 told her to sign and she always did as he told her. Rajwant testified she and Jaswinder left Las
9 Vegas in 2004 after their visit and returned to California. Rajwant testified, upon return to their
10 California home, she and Jaswinder continued to live as husband and wife. Specifically,
11 Rajwant testified "nothing changed". Rajwant testified the parties continue to live together,
12 have combined finances and that her paycheck continues to be a direct deposit to the parties'
13 joint bank account.
14

15
16 Rajwant testified she believed the Nevada proceeding was, as Jaswinder told her, a
17 "paper divorce" which would allow her to marry his brother. To that end, Rajwant testified she
18 traveled to India and married Jaswinder's brother. Afterwards, Rajwant testified she returned to
19 the United States with Jaswinder and her in-laws. Rajwant denied consummating the marriage
20 to Jaswinder's brother and testified the brother was, in fact, married to someone else in India.
21 Additionally, Rajwant testified Jaswinder married his brother's wife. Rajwant testified
22 Jaswinder's brother was not able to obtain a US VISA, despite her marriage to him, resulting in
23 the brother remaining in India. Rajwant testified she ultimately obtained a 2008 Indian divorce
24 from Jaswinder's brother. Rajwant testified she complied with the request to marry Jaswinder's
25 brother because Jaswinder's family wanted to be together in the United States.
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1 Rajwant testified she became aware of the 2004 Nevada Decree of Divorce in 2018
2 when she filed for divorce in California. Rajwant testified she had service of the California
3 divorce documents effectuated on Jaswinder. Rajwant testified she became aware of the 2004
4 Nevada divorce when Jaswinder filed responsive pleadings alleging the parties were already
5 divorced. Rajwant testified the California divorce proceeding remains on hold pending the
6 outcome of the instant case. Rajwant testified she did not fully understand what would happen
7 to the California divorce proceedings if the 2004 Nevada Decree was not set aside. However,
8 Rajwant testified she has no money of her own and was afraid Jaswinder would lock her out of
9 the home. Rajwant testified she is twelve years older than Jaswinder and that "everything is in
10 his name".
11

12 **CONCLUSIONS OF LAW**

13
14 In its December 10, 2020 Opinion, the Nevada Supreme Court made specific findings
15 and orders which govern the ambit of this Court's bench trial on remand. First, the Court
16 concluded Rajwant's Motion to Set Aside the Decree was timely under NRCP 60(b)(3) and (4)
17 and this Court did not abuse its discretion in making that determination. Kaur, 136 Adv. Op at
18 ___, 477 P.3d at 361. Second, the Court concluded this court erroneously applied Vaile v.
19 Eighth Jud. Dist. Ct., 118 Nev. 262, 44 P.3d 506 (2002). Id. at ___, 477 P.3d at 362. Next, the
20 Supreme Court concluded this Court's determination the 2004 divorce decree was voidable
21 under Vaile was not erroneous. Id. Specifically, while the Supreme Court concluded the 2004
22 Decree was not void, it could nonetheless be voidable if Rajwant demonstrated this Court did
23 not have jurisdiction at the time it entered the Decree. Id. As such, the Nevada Supreme Court
24 concluded this Court did not err when is concluded neither Rajwant or Jaswinder resided in
25 Nevada for the requisite six weeks and the Decree was, therefore, voidable. Id. Last, the
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1 Supreme Court concluded this Court erroneously applied the doctrine of judicial estoppel. *Id.* at
2 ___, 477 P.3d at 363 (citing *Vaile*, 118 Nev. at 273, 44 P.3d at 514). In particular, the Supreme
3 Court concluded this Court improperly applied *Vaile* by concluding judicial estoppel applied
4 where Rajwant failed to prove she was operating under duress or coercion. Specifically, the
5 Nevada Supreme Court concluded this Court failed to first determine if judicial estoppel applied
6 under the *In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56, 390 P.3d 646, 652
7 (2017) five-factor test and, if so, to then determine if duress or coercion – defenses to judicial
8 estoppel – applied. *Id.*

10 **Governing Law**

11 In *Kaur*, the Nevada Supreme Court clarified the five-factor test for judicial estoppel as
12 follows:
13

14 “Well-established caselaw sets forth a five-factor test for courts to consider when
15 determining whether judicial estoppel applies: whether “(1) the same party has taken two
16 positions; (2) the positions were taken in judicial or quasi-judicial administrative
17 proceedings; (3) the party was successful in asserting the first position (i.e., the
18 tribunal adopted the position or accepted it as true); (4) the two positions are totally
19 inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or
20 mistake.” *In re Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56, 390 P.3d 646,
652 (2017) (internal quotation marks omitted).”

21 *Kaur v. Singh*, 136 Nev. Adv. Op. 77, 477 P.3d 358, 362–63 (2020).

22 The Supreme Court went on to clarify that, while application of judicial estoppel is
23 discretionary with the trial court, “judicial estoppel should be applied only when a party’s
24 inconsistent position arises from *intentional* wrongdoing or an attempt to obtain unfair
25 advantage.” *Id.* at ___, 477 P.3d at 363 (emphasis in original)(quoting *NOLM, LLC v. Cty. of*
26 *Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004)). Thus, a party seeking application of
27 judicial estoppel must show “the first position was not taken as a result of ignorance, fraud, or
28 mistake.” *Id.* Put another way, in order for Jaswinder to prevail on his assertion Rajwant is

1 judicially estopped from challenging the 2004 Decree, he must demonstrate Rajwant did not
2 take her initial, first position – executing the summary divorce documents – as a result of
3 ignorance, fraud or mistake. To that end, the Nevada Supreme Court concluded as follows:

4 “Significantly, the district court failed to make findings regarding whether Rajwant was
5 operating under ignorance, fraud, or mistake when she signed the divorce decree, in light
6 of her claims that she could not read or understand the decree. Had the district court
7 made findings concerning this factor and determined that Rajwant was operating under
8 ignorance, fraud, or mistake, it could have declined to apply the doctrine of judicial
9 estoppel without ever reaching the issue of whether Rajwant's defense of duress and
10 coercion was proven.”

11 Kaur v. Singh, 136 Nev. Adv. Op. 77, 477 P.3d 358, 363 (2020).

12 Accordingly, on remand, this Court must consider and apply the five-factor test set forth
13 in In re Frei Irrevocable Trust in order to determine if the doctrine of judicial estoppel applies
14 and, if so, whether Rajwant has met her burden demonstrating duress or coercion is a defense.

15 **IN RE FREI IRREVOCABLE TRUST FIVE-FACTOR ANALYSIS**

16 **Has Rajwant Taken Two Positions?**

17 In the first instance, the underlying record indicates Rajwant signed and verified both the
18 August 27, 2004 Joint Petition for Divorce and the September 8, 2004 Summary Decree of
19 Divorce (the First Position). The Court FINDS, on January 7, 2019, Rajwant filed her Motion
20 to Set Aside the Decree of Divorce on the grounds Nevada did not have jurisdiction rendering
21 the Decree void and that she was forced to execute the Nevada divorce documents (the Second
22 Position). Accordingly, the Court FINDS Rajwant has taken a position in one proceeding that is
23 contrary to her position in a previous position. Kaur, 136 Adv. Op. at ___, 477 P.3d at 362
24 (citing Vaile, 118 Nev. at 273, 44 P.3d at 514).

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1 **Were Rajwant's Positions Taken in a Judicial or Quasi-Judicial Administrative**
2 **Proceeding?**

3 This Court FINDS it is a court of record in the Eighth Judicial District Court and that the
4 2004 Decree of Divorce was duly executed and filed by this Court. Accordingly, this Court
5 FINDS Rajwant's positions were taken in a judicial proceeding.

6 **Was Rajwant Successful in Asserting the First Position (Did the Tribunal Adopt**
7 **the Position as True)?**

8 The Court FINDS, within the context of a summary divorce proceeding, the Court
9 accepted as true the contents of the August 27, 2004 Joint Petition for Divorce and supporting
10 August 27, 2004 Affidavit of Resident Witness. Thus, to the extent the parties sought and
11 obtained a summary divorce, the parties were successful in asserting the jurisdiction of this
12 Court in order to obtain the divorce. Accordingly, the Court FINDS Rajwant was successful in
13 asserting her First Position.
14

15 **Are the Two Positions Totally Inconsistent?**

16 The Court FINDS clear and convincing evidence has credibly established Rajwant's
17 First Position and Second Position are totally inconsistent. In particular, the Court FINDS it
18 clearly illogical Rajwant would be cognizant she was divorced in Nevada and, nonetheless, file
19 for divorce in California fourteen years later. This course of conduct, filing for divorce in
20 California in 2018, is directly opposed and inconsistent with Rajwant knowingly obtaining a
21 2004 Nevada divorce. The Court FINDS no evidence suggesting Rajwant's first position was
22 the result of *intentional* wrong-doing or an attempt to gain unfair advantage. Kaur, 136 Nev.
23 Adv. Op at ___, 477 P.3d at 363 (quoting NOLM, LLC v. Cty. of Clark, 120 Nev. 736, 743, 100
24 P.3d 658, 663 (2004)).
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1 **Was Rajwant's First Position NOT Taken as a result of Ignorance, Fraud or**
2 **Mistake?**

3 The Court FINDS Rajwant credibly testified her ability to read and understand English is
4 currently limited. The Court further FINDS Rajwant credibly testified her ability to read and
5 understand English is better currently than it was in 2004 at the time the Nevada divorce papers
6 were filed and executed by this Court. The Court FINDS credible Rajwant's testimony she
7 relied on Jaswinder's assertion the 2004 Nevada divorce was a "paper divorce" only, that
8 Rajwant was unable to read or understand the Nevada divorce documents Jaswinder gave her to
9 sign and that Rajwant was not given a copy of the 2004 Nevada Decree. The Court FINDS
10 credible Rajwant's testimony she believed the Nevada proceeding was in name only where
11 testimony clearly and convincingly demonstrated the parties returned to California and
12 continued to cohabitate with combined property and finances. The Court FINDS Rajwant
13 credibly testified she routinely did what Jaswinder told her to do throughout the marriage to
14 include obeying his mandate she engage in a sham marriage with his brother in order to bolster
15 the brother's attempts to immigrate to the United States. Specifically, the Court FINDS
16 Rajwant was an unknowing victim of a fraud perpetrated by Jaswinder in the Nevada courts.

17 Jaswinder argues this Court is bound by its prior finding Rajwant understood the Nevada
18 divorce documents and was knowingly divorcing Jaswinder to assist his brother's immigration
19 application. See Jaswinder's Closing Brief at p.2, ll.19-20 and p.3, ll.1-10 (filed September 13,
20 2021). However, as noted herein, the Nevada Supreme Court concluded this Court's application
21 of judicial estoppel was erroneous. See Kaur, 137 Nev. Adv. Op at ___, 477 P.3d at 362-
22 63(noting duress and coercion are a *defense* to judicial estoppel and concluding the district court
23 failed to first consider whether the five-factor test favored application of judicial estoppel).
24 Contra Findings of Fact, Conclusions of Law and Order at pp.4-6 (filed October 22,
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1 2019)(concluding Rajwant knew there was a divorce in Nevada and failed to demonstrate
2 sufficient evidence she acted under duress in executing the Nevada divorce documents). Thus,
3 as directed by the Nevada Supreme Court, this Court must make findings “regarding whether
4 Rajwant was operating under ignorance, fraud, or mistake when she signed the divorce decree. .
5 .” *Id.* at ___, 477 P.3d 363. Further, the Nevada Supreme Court concluded this Court did not
6 abuse its discretion where it concluded Rajwant credibly testified she believed the 2004 divorce
7 “was merely a paper divorce as Jaswinder told her” and where “she did not believe she and
8 Jaswinder were divorced where they continued living together”. *Id.* at ___, 477 P.3d at
9 362(addressing the timeliness of Rajwant’s motion for NRCP 60(b) relief). It is implausible the
10 Supreme Court would find this Court did not abuse its discretion in finding Rajwant credible
11 related to her testimony about the 2004 Nevada Decree in one instance but not credible as to the
12 same testimony in a second instance. Therefore, this Court finds no support for Jaswinder’s
13 assertion it is bound by the prior finding.
14

15
16 Accordingly, the Court FINDS Rajwant was operating under ignorance where clear and
17 convincing evidence demonstrates Rajwant was not able to adequately read or understand
18 English sufficient to understand the nature of the 2004 Nevada divorce documents. The Court
19 also FINDS clear and convincing evidence demonstrated Rajwant executed the documents
20 based on Jaswinder’s fraudulent representations the proceeding was a “paper divorce” or
21 divorce in name only. Thus, the Court FINDS Rajwant was operating under ignorance or fraud.
22 Because this Court FINDS clear and convincing evidence credibly demonstrates Rajwant was
23 operating under ignorance, fraud or mistake, the Court DECLINES to apply the doctrine of
24 judicial estoppel.
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ORDERS

NOW THEREFORE, based on the foregoing *Findings of Fact and Conclusions of Law* and, good cause appearing:

IT IS HEREBY ORDERED that this Court has complete jurisdiction to enter a final Order in this matter.

IT IS FURTHER ORDERED that, having reviewed the five-factor test set forth In re Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017), clear and convincing evidence credibly demonstrates Defendant Rajwant Kaur was operating under ignorance, fraud or mistake. Therefore, the Court DECLINES to apply the doctrine of judicial estoppel.

IT IS FURTHER ORDERED that the September 8, 2004 Decree of Divorce is VOIDABLE where neither party resided in Nevada for the requisite six weeks prior to filing of the August 27, 2004 Joint Petition for Divorce. Therefore, this Court did not have jurisdiction to enter the September 8, 2004 Decree of Divorce.

IT IS FURTHER ORDERED that Defendant Rajwant Kaur's January 7, 2019 Motion to Set Aside Decree of Divorce pursuant to NRCP 60(b) is GRANTED and the September 8, 2004 Decree of Divorce is found VOIDABLE and ORDERED SET ASIDE.

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1 IT IS FURTHER ORDERED that Plaintiff Jaswinder Singh's January 23, 2019
2 Countermotion for Award for Attorney Fees and Costs is DENIED.
3
4

5 Dated this 14th day of September, 2021

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8 HEIDI ALMASE
District Court Judge

9 7B8 E22 7449 FA70
10 Heidi Almase
District Court Judge
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Joint Petition for Divorce of: Jaswinder Singh and Rajwant Kaur	CASE NO: 04D323977 DEPT. NO. Department X
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AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 9/14/2021

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Counsel for Plaintiff

6
7 **DISTRICT COURT, FAMILY DIVISION**
CLARK COUNTY, NEVADA

8 JASWINDER SINGH,
9 Plaintiff,

CASE NO. : 04D323977
DEPT. NO. : X

NOTICE OF APPEAL

10 vs.

11 RAJWANT KAUR,
12 Defendant.

13
14 Notice is hereby given that Plaintiff, Jaswinder Singh, by and through his
15 counsel, F. Peter James, Esq. hereby appeals to the Supreme Court of Nevada

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1 from the Findings of Fact, Conclusions of Law and Order entered on September
2 14, 2021.

3 Dated this 1st day of October, 2021

4 /s/ *F. Peter James*

5 LAW OFFICES OF F. PETER JAMES
6 F. Peter James, Esq.
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11 Counsel for Plaintiff
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CERTIFICATE OF SERVICE

I certify that on this 1st day of October, 2021, I caused the above and foregoing document entitled **NOTICE OF APPEAL** to be served as follows:

- ☒ pursuant to EDCR 8.05(A), EDCR 8.05(F), NRCp 5(b)(2)(D) and Administrative Order 14-2 captioned “In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court,” by mandatory electronic service through the Eighth Judicial District Court’s electronic filing system;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

to the attorney(s) / party(ies) listed below at the address(es), email address(es), and/or facsimile number(s) indicated below:

Andrew L. Kynaston, Esq.
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Counsel for Defendant

By: /s/ F. Peter James

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