

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

CASE NO. 83613

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

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JASWINDER SINGH,

Appellant,

vs.

RAJWANT KAUR,

Respondent.

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

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**APPELLANT'S OPENING BRIEF**

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

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

6 The following persons / entities are disclosed:

- 7 • F. Peter James, Esq.;
- 8 • Law Offices of F. Peter James, Esq., PLLC.

9 As to the Appellant, there are no other parent corporations or publicly-held  
10 companies at issue. Appellant is not using a pseudonym.

11 Dated this 1<sup>st</sup> day of March, 2022

12 */s/ F. Peter James*

13 

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1 **JURISDICTIONAL STATEMENT**

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

4 The Order appealed from was filed by the district court on September 14,  
5 2021 (4 AA 778). Said Order was noticed by e-service on September 14, 2021.  
6 (4 AA 792).

7 The Notice of Appeal was filed on October 1, 2021. (4 AA 808). The  
8 jurisdictional deadline to file the Notice of Appeal was October 14, 2021. As  
9 such, the Notice of Appeal was timely filed.

10 The Order filed September 14, 2021 was a final order as it disposed of all  
11 issues as to all parties.

1 **STATEMENT OF THE ISSUES**

2 Whether the district court erred in finding that Appellant failed to satisfy  
3 the Frei element, which prompted the district court to grant the motion to set  
4 aside.

5 Whether credibility should be reviewed.

6 Whether the district court erred in denying attorney's fees.

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**STATEMENT OF THE CASE**

This is an appeal from a remand after appeal on a denial of a set aside of the Decree of Divorce. Eighth Judicial District Court, Clark County; Hon. Heide Almase, District Judge, Family Division.

**STATEMENT OF THE FACTS**

Appellant, Jaswinder Singh (hereinafter “Jaswinder”), and Respondent, Rajwant Kaur (hereinafter Rajwant”), were married on November 11, 1989 in Punjab, India. (1 AA 2). The parties filed a Joint Petition for Summary Decree of Divorce in Clark County, Nevada on August 27, 2004. (1 AA 1).

The parties submitted a Decree of Divorce to the district court, which was filed on September 8, 2004. (1 AA 8). Rajwant signed both the Joint Petition and the Decree of Divorce. (1 AA 4, 10). Rajwant admits to signing these documents. (1 AA 46, 48-49). This was never a contested issue in the entire litigation. Rajwant alleged under oath that Jaswinder was a resident of Nevada at all relevant times. (*See* 1 AA 1, 4).

Fourteen years later and after Rajwant married Jaswinder’s brother, Rajwant moved the district court to Set Aside the Decree of Divorce. (1 AA 42). Jaswinder, among other defenses, moved the district court to deny the Motion to Set Aside as untimely. (1 AA 55-69). The district court denied Jaswinder’s

1 request to dismiss. (1 AA 151-53). The district court set the matter for an  
2 Evidentiary Hearing. (1 AA 152).

3 At trial, Rajwant had to establish the *Vaile* standard that no party was a  
4 Nevada resident at any relevant time and that she was coerced into signing the  
5 divorce documents—both had to be established for Rajwant to prevail. (1 AA  
6 151-52). However, at trial, Rajwant presented no evidence at all (not even on  
7 direct examination) that she signed the documents under duress or due to  
8 coercion. (*See generally* 2 AA 248-334, 3 AA 335-567).

9 Jaswinder did not cross examine Rajwant, and instead moved for a directed  
10 verdict, which the district court called a motion for judgment on the evidence, as  
11 Rajwant failed to establish the mandatory element of coercion / duress. (3 AA  
12 434). After allowing Rajwant to argue and make a record, the district court  
13 granted the motion for judgment on the evidence. (3 AA 450).

14 Even though Rajwant failed to establish or even present any evidence of a  
15 mandatory element to advance her claims, the district court declined to award  
16 Jaswinder any attorney’s fees. (4 AA 575). The district court reasoned that  
17 Jaswinder did not have “clean hands”, though that was from the underlying  
18 divorce, not the present litigation. (4 AA 574-75).

19 Both sides appealed. (4 AA 589, 602). The Court rendered its decision  
20 and remanded the matter back to the district court for a determination of judicial

1 estoppel pursuant to *In re Frei Irrevocable Tr.*, 133 Nev. 50, 56, 390 P.3d 646,  
2 652 (2017). See *Kaur v. Singh*, 136 Nev. Adv. Op. No. 77 at 10, 477 P.3d 358,  
3 364 (2020). The five factors are as follows:

- 4 1. The same party has taken two positions;
- 5 2. The two positions were taken in judicial or quasi-judicial administrative  
6 proceedings;
- 7 3. The party was successful in asserting the first position (i.e., the tribunal  
8 adopted the position or accepted it as true);
- 9 4. The two positions are totally inconsistent; and
- 10 5. The first position was not taken as a result of ignorance, fraud, or mistake.

11 *In re Frei*, 133 Nev. at 56, 390 P.3d at 652.

12 On remand a further evidentiary hearing was held. (4 AA 656). Rajwant  
13 admitted at the hearing (as she did in the initial trial) that she came to Las Vegas  
14 in 2004 so she could divorce Jaswinder. (4 AA 699). Rajwant then admitted that  
15 she divorced Jaswinder so she could marry his brother. (*Id.*). Rajwant further  
16 testified that she knew she received a decree of divorce from Jaswinder in 2004—  
17 and that in November 2004 she married his brother. (4 AA 701). On further  
18 examination, Rajwant again confirmed that she knew in 2004 that she got a  
19 divorce from Jaswinder. (4 AA 702).



1 (8) times in just the section on the fifth *Frei* factor. The better public policy is to  
2 review credibility for an abuse of discretion.

3 Moreover, the district court erred in denying Jaswinder attorney's fees.  
4 The denial was based on the district court ruling against him, which as argued  
5 herein was reversible error.

6 The Court should reverse the district court as to the granting of the set aside  
7 of the Decree of Divorce and remand the matter for a determination on attorney's  
8 fees to Jaswinder.

9 **ARGUMENT**

10 The Court should find that the district court's finding that Jaswinder did  
11 not meet the last *Frei* element lacked support by substantial evidence—in fact,  
12 the clear, undeniable facts (from Rajwant's own testimony) show that Jaswinder  
13 did meet the last *Frei* element. As such, the district court erred in setting aside  
14 the Decree of Divorce. Further, the Court should review credibility as district  
15 courts are couching finding in credibility to avoid review. Moreover, the district  
16 court erred in not awarding Jaswinder attorney's fees.

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1 **I. THE DISTRICT COURT ERRED IN FINDING THAT THE LAST**  
2 **ELEMENT OF *FREI* WAS NOT MET AND IN GRANTING THE**  
3 **MOTION TO SET ASIDE**

4 **A. STANDARD OF REVIEW**

5 Questions of statutory interpretation are reviewed de novo. *Irving v.*  
6 *Irving*, 122 Nev. 494, 496, 134 P.3d 718, 720 (2006). “[A] district court’s factual  
7 determinations will be disturbed only when unsupported by substantial  
8 evidence.” *Jensen v. Jenson*, 104 Nev. 95, 99-100, 753 P.2d 342, 345 (1988).  
9 “[T]hat is, the evidence must be such that a reasonable person could deem it  
10 adequate to support the decision.” *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d  
11 213, 226 (2009). A trial court abuses its discretion when it makes a factual  
12 finding or order which is not supported by substantial evidence. *See Real Estate*  
13 *Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982). An abuse of discretion  
14 occurs when a district court makes an obvious error of law. *See Franklin v.*  
15 *Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979). A district court abuses  
16 its discretion when it relies on a misinterpretation of the law. *See State v. Eighth*  
17 *Judicial District Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780  
18 (2011). Conclusions of law based on a district court’s interpretation of a statute  
19 are reviewed de novo. *See Day v. Washoe Cty. Sch. Dist.*, 121 Nev. 387, 388,  
20 116 P.3d 68, 69 (2005). Questions of law are reviewed de novo. *See Waldman*

1 v. *Maini*, 124 Nev. 1121, 1128, 195 P.3d 850, 855 (2008). A question of law is  
2 present when the issue surrounds a trial court’s conclusions of law. *See Bopp v.*  
3 *Lino*, 110 Nev. 1246, 885 P.2d 559 (1994).

4 **B. ARGUMENT**

5 The district court would have the Court believe that Rajwant is some  
6 unintelligent puppet who does not understand what was happening and what she  
7 was affirmatively doing. The Court must understand that Rajwant was a willing  
8 participant in the purported fraud upon the court. Her claim that she did not  
9 understand that it was a real divorce and merely a paper divorce (read as not an  
10 actual divorce) is a claim of ignorance of the law.

11 Ignorance of the law is no excuse. *See Whitehead v. Nev. Com’n. on*  
12 *Judicial Discipline*, 111 Nev. 70, 245, 893 P.2d 866, 975 (1995) (Guy, Dist. J.,  
13 concurring) (Ignorance of the law is no more an excuse for a judge as it is a lay  
14 person), *superseded on other grounds by Mosley v. Nev. Com’n on Judicial*  
15 *Discipline*, 117 Nev. 371, 22 P.3d 655 (2001). “Every one [sic] is presumed to  
16 know the law and this presumption is not even rebuttable.” *Smith v. State*, 38  
17 Nev. 477, 151 P. 512, 513 (1915).

18 In contradiction of this crystal-clear law, the district court made a finding  
19 that Rajwant’s reliance on the “paper divorce” was “credible” and justified.  
20 (4 AA 787). The district court said Rajwant was “an unknowing victim”. (4 AA

1 787). This directly contradicts Rajwant’s own testimony that, at the time it was  
2 happening, she knew exactly what was going on (the divorce) and why (so she  
3 could marry Jaswinder’s brother). (4 AA 699-702).

4 Rajwant is not some unintelligible puppet who does not understand her  
5 actions. Rajwant was a willing participant in the purported fraud upon the court.  
6 The *in pari delicto* doctrine provides that a party who has participated in  
7 wrongdoing may not recover damages resulting from the wrongdoing. *See*  
8 BLACK’S LAW DICTIONARY 806-07 (8th ed. 2004). The *in pari delicto* doctrine  
9 precludes a party who has engaged in wrongdoing from recovering when they are  
10 at least partially at fault. *See Official Committee v. R. F. Lafferty & Co.*, 267,  
11 F.3d 340, 354 (3d Cir. 2001), *cited as to this doctrine in In re Amerco Derivative*  
12 *Litigation*, 127 Nev. 196, 207 n.2, 252 P.3d 681, 689 n.2 (2011).

13 The district court made a specific finding as follows: “Specifically, the  
14 Court FINDS Rajwant was an unknowing victim of a fraud perpetrated by  
15 Jaswinder in the Nevada courts.” (4 AA 787). Rajwant knowingly participated  
16 in the purported fraud—she signed the divorce papers knowing what she was  
17 doing and why. (4 AA 699-702). Consistent with Rajwant’s trial testimony, the  
18 initial trial judge (Judge Pomrenze) specifically found that Rajwant was a  
19 “competent adult and who knew there was a divorce in Nevada” and was “not a  
20 person with a mental defect or an inability to understand what was being told to

1 her". (4 AA 573).

2 Despite the prior findings, the current district court judge found to the  
3 contrary. A subsequent district court judge is not permitted to overrule the  
4 findings of the original district court judge. *See e.g.* DCR 18(1); *see also State v.*  
5 *Beaudion*, 131 Nev. 473, 352 P.3d 39 (2015). Yet, this is exactly what happened.

6 There is no defense of mistake as to what Rajwant knowingly did. There  
7 was no ignorance, which much be ignorance of fact as it is well-settled law that  
8 ignorance of the law is no excuse and that everyone is presumed to know the law,  
9 which is an irrebuttable presumption. There also was no fraud as to Rajwant.  
10 Rajwant herself admits that at the time she signed the divorce papers she knew  
11 she was getting a divorce from Jaswinder and that she did so to marry his brother.  
12 (4 AA 699-702). The purported fraud is what Rajwant and Jaswinder together  
13 did—not just Jaswinder. Rajwant was a knowing and willing participant in the  
14 divorce from the start. Rajwant admits this herself.

15 Rajwant changed her story when she became upset with Jaswinder for him  
16 purportedly marrying someone else—which, as Judge Pomrenze noted, ironically  
17 never actually happened. (4 AA 573). Hell hath no fury like a woman scorned.

18 Judge Pomrenze correctly found that Rajwant knew what was going on the  
19 entire time and why—this was based on what Rajwant herself said. It is beyond  
20 comprehension why the current district court judge would find to the contrary—

1 despite Rajwant repeating at the trial upon remand what she said at the initial  
2 trial.

3 As Rajwant's own testimony unequivocally provides that she knew what  
4 she was doing (as to the divorce), why she was doing it (to marry Jaswinder's  
5 brother), and that she was a willing participant, the Court should determine that  
6 the district court's finding as to the last factor of *Frei* (Rajwant's first position  
7 being a result of ignorance, mistake, or fraud) was without the support of  
8 substantial evidence. The Court should determine that substantial evidence  
9 supports the finding that Rajwant's first position was free from ignorance,  
10 mistake, and fraud.

11 As such a determination would then necessarily result in Jaswinder  
12 satisfying all of the *Frei* factors, the Court should then reverse the district court's  
13 order granting the motion to set aside the Decree of Divorce.

## 14 **II. THE COURT SHOULD REVIEW CREDIBILITY**

15 Credibility needs to be reviewed as a matter of public policy. Nevada law  
16 is unclear as to what review is given to a credibility determination.

17 Recent case law suggests credibility is reviewed for an abuse of discretion.  
18 *See Kaur v. Singh*, 136 Nev. \_\_\_, 477 P.3d 358, 362 (2020) (assessment of  
19 credibility is deferred to the district court in a bench trial), *citing Ybarra v. State*,  
20 127 Nev. 47, 58-59, 247 P.3d 269, 276-77 (2011) (credibility is within the

1 discretion of the district court). Discretion can be abused—hence the abuse of  
2 discretion standard. Yet, other case law says that credibility will not be reviewed.  
3 *See e.g. Nellis Motors v. Dept. of Motor Vehicles*, 124 Nev. 1263, 1269-70, 197  
4 P.3d 1061, 1066 (2008). The Court should determine that credibility should be  
5 reviewed for an abuse of discretion. *See Truax v. Truax*, 110 Nev. 437, 439, 874  
6 P.2d 10, 11 (1994).

7 Here, the district court said *ad nauseum* that Rajwant was credible as to  
8 even she was speaking Punjabi (a language the district court did not understand)  
9 through a failing interpreter and despite Rajwant’s own testimony which was  
10 contradictory to the district court’s findings. (*See e.g.* 4 AA 683-88, 699-702,  
11 787-88). The district court referenced Rajwant’s credibility no fewer than eight  
12 (8) times just in the section of her order as to the last *Frei* factor. (4 AA 787-88).  
13 That the district court said Rajwant was credible when her own testimony  
14 contradicts the district court’s findings is an abuse of discretion which needs to  
15 be reviewed and reversed.

16 District courts know that credibility is not reviewed and they couch  
17 findings as “credibility” to avoid review and reversal. If you give someone an  
18 out, they will take it. The “out” for the district court bullet-proofing their  
19 decisions is to couch it in credibility. This is bad public policy. California, for  
20 example, reviews credibility for an abuse of discretion. *See e.g. Kanno v. Marwit*

1 *Capital Partners II, L.P.*, 18 Cal.App.5<sup>th</sup> 987, 1007, 227 Cal.Rptr.3d 334, 350  
2 (Ct. App. 4th 2017).

3 The Court should review credibility for an abuse of discretion and find the  
4 district court abused its discretion. With that, the Court should reverse the  
5 findings the district court made which were based merely on “credibility”—  
6 which the district courts do to avoid review and to avoid being overturned.

7 **III. THE DISTRICT COURT ERRED IN NOT AWARDING**  
8 **JASWINDER ATTORNEY’S FEES**

9 **A. STANDARD OF REVIEW**

10 Attorney’s fees award will not be overturned absent an abuse of discretion.  
11 *See Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 452, 956 P.2d 1382, 1389 (1998).

12 **B. ARGUMENT**

13 Here, the denial of fees was predicated on the district court finding that  
14 Jaswinder was not even a prevailing party (which is directly at issue on appeal).  
15 (4 AA 789-90).

16 As the Court should reverse the district court, the denial of fees based upon  
17 Jaswinder not prevailing should also be reversed.

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1 CONCLUSION

2 Based upon the foregoing, the Court should find that there is not enough  
3 evidentiary support to uphold the district court’s findings that Jaswinder did not  
4 meet the last *Frei* element. The Court should also review credibility. With that,  
5 the Court should reverse the district court, deny the motion to set aside, and  
6 remand the matter for a determination on attorney’s fees for Jaswinder.

7 Dated this 1<sup>st</sup> day of March, 2022

8 /s/ *F. Peter James*

9 

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1 **ROUTING STATEMENT**

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

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

11 Dated this 1<sup>st</sup> day of March, 2022

12 */s/ F. Peter James*

---

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

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

5  This brief has been prepared in a proportionally spaced typeface  
6 using 14 point Times New Roman in MS Word 365; or

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

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

13  Proportionately spaced, has a typeface of 14 points or more and  
14 contains 3,405 words (limit is 14,000 words); or

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

17  Does not exceed 30 pages.

18 Dated this 1<sup>st</sup> day of March, 2022

19 /s/ *F. Peter James*

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1 **CERTIFICATE OF SERVICE**

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

4 Israel Kunin  
5 Settlement Conference Judge

6 I certify that on this 1<sup>st</sup> day of March, 2022, I caused the above and  
7 foregoing document to be served by placing same to be deposited for mailing in  
8 the United States Mail, in a sealed envelope upon which first class postage was  
9 prepaid in Las Vegas, Nevada to the attorney(s) / party(ies) listed below at the  
10 address(es) indicated below:

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13 Las Vegas, Nevada 89129  
14 Co-Counsel for Appellant

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

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