

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASE NO. 83613

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

JASWINDER SINGH,

Appellant,

vs.

RAJWANT KAUR,

Respondent.

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

APPELLANT'S REPLY 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 27th day of May, 2022

12 */s/ F. Peter James*

13

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1 **ARGUMENT**

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

7 **I. THE DISTRICT COURT ERRED IN FINDING THAT THE LAST**
8 **ELEMENT OF *FREI* WAS NOT MET AND IN GRANTING THE**
9 **MOTION TO SET ASIDE**

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

16 In her Answering Brief, Rajwant also wants the Court to believe the same
17 things about her—that she is some unintelligent puppet.

18 Ignorance of the law is no excuse. *See Whitehead v. Nev. Com’n. on*
19 *Judicial Discipline*, 111 Nev. 70, 245, 893 P.2d 866, 975 (1995) (Guy, Dist. J.,
20 concurring) (Ignorance of the law is no more an excuse for a judge as it is a lay

1 person), *superseded on other grounds by Mosley v. Nev. Com'n on Judicial*
2 *Discipline*, 117 Nev. 371, 22 P.3d 655 (2001). “Every one [sic] is presumed to
3 know the law and this presumption is not even rebuttable.” *Smith v. State*, 38
4 Nev. 477, 151 P. 512, 513 (1915).

5 In contradiction of this crystal-clear law, the district court made a finding
6 that Rajwant’s reliance on the “paper divorce” was “credible” and justified.
7 (4 AA 787). The district court said Rajwant was “an unknowing victim”. (4 AA
8 787). This directly contradicts Rajwant’s own testimony that, at the time it was
9 happening, she knew exactly what was going on (the divorce) and why (so she
10 could marry Jaswinder’s brother). (4 AA 699-702).

11 Rajwant is not some unintelligible puppet who does not understand her
12 actions. Rajwant was a willing participant in the purported fraud upon the court.
13 The *in pari delicto* doctrine provides that a party who has participated in
14 wrongdoing may not recover damages in court resulting from the wrongdoing.
15 See BLACK’S LAW DICTIONARY 806-07 (8th ed. 2004). The *in pari delicto*
16 doctrine precludes a party who has engaged in wrongdoing from recovering when
17 they are at least partially at fault. See *Official Committee v. R. F. Lafferty & Co.*,
18 267, F.3d 340, 354 (3d Cir. 2001), *cited as to this doctrine in In re Amerco*
19 *Derivative Litigation*, 127 Nev. 196, 207 n.2, 252 P.3d 681, 689 n.2 (2011).

1 In her Answering Brief, Rajwant presents very little to contradict her own
2 testimony (her deposition, the first trial, and the second trial, though that was
3 mostly confirmation of the deposition and the first trial) as to the last *Frei* factor.
4 Rajwant basically tap-dances around the issues. Rajwant’s actions confirm that
5 she knew she was getting a divorce and that she wanted it as well. Rajwant admits
6 she knew she was divorce from Jaswinder so she could marry someone else. (4
7 AA 699-702).

8 If the Court upholds the district court finding that Rajwant was an
9 unknowing victim of her own actions, then the Court must overrule and vitiate
10 many well-settled legal principles, to wit:

- 11 • “Every one [sic] is presumed to know the law and this presumption is not
12 even rebuttable.” *Smith v. State*, 38 Nev. 477, 151 P. 512, 513 (1915);
- 13 • A person who signs a contract is presumed to know and understand its
14 contents; the failure to read a contract, or to apprehend the rights and
15 obligations under it, is no defense.¹ 13 WILLISTON ON CONTRACTS
16 § 39.22 (4th ed. 2020); *accord* 7AP1 AM.JUR. PL. & PR. FORMS
17 CONTRACTS § 126 (March 2020) (if a person fails or refuses to read a
18

19
20 ¹ Settlement agreements in divorce cases are in the nature of contract law.
See Mack v. Estate of Mack, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009).

1 contract, she cannot then complain of its provisions, nor claim that it
2 contained provisions she knew nothing about); *see also* E. Allen
3 Farnsworth, CONTRACTS § 3.7 at 116 (1982) (provisions written in a
4 foreign language are binding even if the person did not understand the
5 language);

- 6 • The *in pari delicto* doctrine, as stated herein.

7 To vitiate such sound legal principles would be extremely bad public
8 policy. These legal presumptions are bedrock, black-letter law. To overturn
9 them would be to invite chaos in the legal system. Should the Court not rule in
10 Jaswinder’s favor, the case needs to be published so the reversal of all of these
11 bedrock, black-letter law legal principles is clear and becomes the law of the State
12 of Nevada.

13 As stated, Rajwant was a willing participant in this purported fraud upon
14 the court who benefitted from the divorce—by being able to marry another
15 person. Now she wants to retain the benefits of her first marriage after she
16 participated in the purported fraud upon the court. The *in pari delicto* doctrine
17 precludes a party who has engaged in wrongdoing from recovering in court when
18 they are at least partially at fault. *See Official Committee*, 267 F.3d at 354, *cited*
19 *as to this doctrine in In re Amerco Derivative Litigation*, 127 Nev. at 207 n.2,
20 252 P.3d at 689 n.2. Rajwant was complicit and benefitted from the divorce.

1 As Rajwant’s own testimony unequivocally provides that she knew what
2 she was doing (as to the divorce), why she was doing it (to marry Jaswinder’s
3 brother), and that she was a willing participant, the Court should determine that
4 the district court’s finding as to the last factor of *Frei* (Rajwant’s first position
5 being a result of ignorance, mistake, or fraud) was without the support of
6 substantial evidence. The Court should determine that substantial evidence
7 supports the finding that Rajwant’s first position was free from ignorance,
8 mistake, and fraud. Black-letter law demands this result, else, as stated, many
9 well-settle bedrock legal principles must be overturned.

10 As such a determination would then necessarily result in Jaswinder
11 satisfying all of the *Frei* factors, the Court should then reverse the district court’s
12 order granting the motion to set aside the Decree of Divorce. This would result
13 in reinstatement of the initial denial of the Motion to Set Aside with the initial
14 Decree of Divorce left standing.

15 **II. THE COURT SHOULD REVIEW CREDIBILITY**

16 Credibility needs to be reviewed as a matter of public policy. Sound public
17 policy warrants reviewing credibility for an abuse of discretion.

18 Rajwant misunderstands the concepts of substantial evidence and trial
19 judges bullet-proofing their orders. Yes, substantial evidence must support a
20 finding. “[A] district court’s factual determinations will be disturbed only when

1 unsupported by substantial evidence.” *Jensen v. Jenson*, 104 Nev. 95, 99-100,
2 753 P.2d 342, 345 (1988). Testimony is evidence. *See e.g. Gatlin v. State*, 96
3 Nev. 303, 304, 608 P.2d 1100 (1980). If the trial court couches a finding in the
4 credibility of a witness, then that evidence is currently not subject to review and
5 the finding will not be disturbed. This is problem. It is logical and axiomatic
6 that discretion can be abused. When Nevada puts credibility in the trial court’s
7 discretion, such discretion can be abused and should be reviewable on appeal /
8 writ petition.

9 Rajwant testified that Jaswinder remarried. (3 AA 433, line 12). Rajwant
10 also testified that Jaswinder never remarried. (3 AA 552, line 15). Both
11 statements cannot be true as they are contradictory. Rajwant cannot be credible
12 with contradictory statements (as to a purported key issue in this case’s history),
13 yet this is something that is not reviewable under Nevada law when a trial court
14 finds her credible. This is an absurd result. Absurd results are properly avoided.
15 *Cf. Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) (statutes should
16 not be read to produce absurd results).

17 The Court should review credibility for an abuse of discretion and find the
18 district court abused its discretion as to Rajwant. With that, the Court should
19 reverse the findings the district court made which were based merely on
20

1 “credibility”—which the district courts do to avoid review and to avoid being
2 overturned.

3 **III. THE DISTRICT COURT ERRED IN NOT AWARDING**
4 **JASWINDER ATTORNEY’S FEES**

5 Jaswinder requested attorney’s fees in the Opposition to the Motion to Set
6 Aside. (1 AA 65). The legal bases cited were NRS 18.010 and EDCR 7.60.
7 (*Id.*). Jaswinder prevailed after the initial evidentiary hearing, but the district
8 court denied him an award of fees. (4 AA 574 -75). Jaswinder appealed this.
9 (4 AA 603). This Court remanded the matter for further proceedings as to
10 judicial estoppel. (*See* Decision and Order filed on December 10, 2020 in Case
11 No. 80090, *Kaur v. Singh*, 136 Nev. Adv. No. 77). On remand, the district court
12 found in favor of Rajwant on promissory estoppel and, thus, denied fees to
13 Jaswinder. (4 AA 789-90). Jaswinder appealed this decision as to judicial
14 estoppel and attorney’s fees, as well as to credibility.

15 Rajwant seems to misunderstand the procedural history and why Jaswinder
16 is appealing this issue. Jaswinder asserts he should have been awarded fees after
17 the initial evidentiary hearing as he prevailed on a motion for judgment on the
18 evidence. (4 AA 575).

19 When the Court remands the matter to the district court to deny the Motion
20 to Set Aside, the Court should also remand the matter for a determination of fees

1 to Jaswinder.

2 **CONCLUSION**

3 Law is reason free from passion. ARISTOTLE.

4 Based upon the foregoing and the Opening Brief, the Court should find
5 that there is not enough evidentiary support to uphold the district court's findings
6 that Jaswinder did not meet the last *Frei* element. In other words, the Court
7 should determine that Jaswinder did meet the last *Frei* element and, thus, met the
8 judicial estoppel test. The Court should also review credibility. With that, the
9 Court should reverse the district court, deny the motion to set aside, and remand
10 the matter for a determination on attorney's fees for Jaswinder.

11 Dated this 27th day of May, 2022

12 */s/ F. Peter James*

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1 **ROUTING STATEMENT**

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

- 4 • This appeal is not presumptively retained by the Supreme Court pursuant
5 to NRAP 17(a);
- 6 • This appeal is presumptively assigned to the Court of Appeals pursuant to
7 NRAP 17(b)(5) 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 27th day of May, 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 2013; or

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

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

13 Proportionately spaced, has a typeface of 14 points or more and
14 contains 2,318 words (limit is 7,000 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 15 pages.

18 Dated this 27th day of May, 2022

19 */s/ F. Peter James*

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CERTIFICATE OF SERVICE

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

Israel Kunin
Settlement Conference Judge

Racheal H. Mastel, Esq.
Counsel for Respondent

I certify that on this 27th day of May, 2022, I caused the above and foregoing document to be served 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) indicated below:

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By: */s/ F. Peter James*

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