

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JASWINDER SINGH,

Appellant,

v.

RAJWANT KAUR,

Respondent

No. 83613

Electronically Filed
Nov 08 2021 07:37 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department X
County Clark Judge Heidi Almase
District Ct. Case No. 04D323977

2. Attorney filing this docketing statement:

Attorney F. Peter James Telephone 702-256-0087

Firm Law Office of F. Peter James, Esq.

Address 3821 West Charleston, Suite 250
Las Vegas, Nevada 89102

Client(s) Appellant, Jaswinder Singh

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Andrew Kynaston Telephone 702-823-4900

Firm Kainen Law Group, PLLC

Address 3303 Novat Street, Suite 200
Las Vegas, Nevada 89129

Client(s) Respondent, Rajwant Kaur

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>remand trial</u> |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Singh v. District Court (Kaur, Real Party in Interest), 79591
Kaur v. Singh, 80090

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Singh v. Kaur, 04D323977 in the Eighth Judicial District Court, Family Division

8. Nature of the action. Briefly describe the nature of the action and the result below:

Remand trial from appeal. Evidentiary hearing on judicial estoppel. District court found in favor of Respondent.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the district court erred in finding that judicial estoppel favored Respondent.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals as it is a decision out of family court that does not involve termination of parental rights or NRS 432B actions. See NRAP 17(b)(10). This matter was retained by the Supreme Court in the last appeal.

14. Trial. If this action proceeded to trial, how many days did the trial last? 1 _____

Was it a bench or jury trial? Bench _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Sep 14, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Sep 14, 2021

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed Oct 1, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is a special order after final judgment. NRAP 3A(b)(8).

The matter was remanded after an appeal.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant, Jaswinder Sing (Plaintiff in the district court)
Respondent, Rajwant Kaur (Defendant in the district court)

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

This was a remand from an appeal where the district court was directed to take evidence on judicial estoppel.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- m The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- m Any tolling motion(s) and order(s) resolving tolling motion(s)
- m Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- m Any other order challenged on appeal
- m Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jaswinder Singh
Name of appellant

F. Peter James
Name of counsel of record

November 8, 2021
Date

/s/ F. Peter James
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, _____, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this _____ day of _____, _____

Signature

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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

I certify that on this 8th day of November, 2021, 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:

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

By: */s/ F. Peter James*

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

Bo

152.00

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

FILED
 AUG 27 3 33 PM '04
Shirley E. Pirogione
 CLERK

In Proper Person

DISTRICT COURT
 CLARK COUNTY, NEVADA

10 In the Matter of the
 11 Joint Petition of
 12 (Name) Jaswinder Singh
 13 and (Name) Rajwant Kaur
 14
 15 Petitioners.

CASE NO. D323977
 DEPT. NO.: K

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.

COUNTY CLERK
 AUG 27 2004
 RECEIVED

1 4. That the Petitioners affirmatively state that they have no community property to be
2 adjudicated by this Court.

3 5. That the Petitioners affirmatively state that they have no community debts or
4 obligations to be adjudicated by this Court.

5 6. That both Petitioners hereby waive any right to spousal support.

6 7. That both Petitioners hereby waive their rights to written notice of the entry of the
7 Decree of Divorce, to appeal, to request findings of fact and conclusions of law and to move for a
8 new trial.

9 8. That the Petitioners state, that as of the date of filing, every condition set forth in
10 N.R.S. 125.181 has been met.

11 9. That the Petitioners expressly desire the Court to enter a Decree of Divorce.

12 10. That the Petitioners were married on (date of wedding) Nov. 11, 1989, in (city
13 and state) Punjab, India, and are now and have ever been husband and wife.

14 11. (CHECK ONLY ONE BOX)

15 That Petitioner _____ does not desire to have her
16 former or maiden name restored.

17 OR

18 That Petitioner _____ requests that her former or
19 maiden name of _____ be restored.

20 OR

21 That Petitioner Rajwant Kaur never changed her name,
22 and therefore does not request restoration of a former or maiden name.

23 12. That Petitioner, Jaswinder Singh's mailing address is (your address,
24 including city, state and zip code) 2916 Jansen Ave, Las Vegas NV 89101,

25 and Petitioner, Rajwant Kaur's mailing address is (spouse's address, including
26 city, state and zip code) 9969 Sepulveda Blvd #204, Mission Hills CA 91345.

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

Rejwot Kaur
(Spouse's Signature)
Petitioner

10
11 VERIFICATION

12 STATE OF NEVADA }
13 COUNTY OF CLARK } ss:

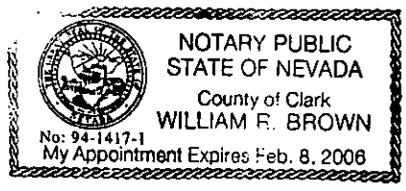
14 Jaswinder Singh, under penalties of perjury, being first duly sworn, deposes
15 and says:

16 That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint
17 Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of
18 my own knowledge, except for those matters therein contained stated upon information and belief,
19 and as to those matters, I believe them to be true.

20 DATED this 27 day of (month) Aug, (year) 2004.

21 By:
22 (Your signature) Jaswinder Singh
23 Jaswinder Singh

24 SUBSCRIBED and SWORN to before
25 me this 27 day of
26 (month) Aug, (year) 2004.
27 William R. Brown
NOTARY PUBLIC



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 Jaswinder Singh, 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/ [] she did so freely and voluntarily and for the uses and purposes therein mentioned.

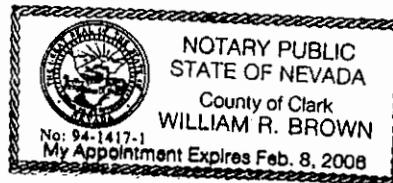
WITNESS my hand and official seal.

William R. Brown

NOTARY PUBLIC

VERIFICATION

STATE OF NEVADA)
COUNTY OF CLARK) ss:



Rajwant Kaur, under penalties of perjury, being first duly sworn, deposes and says:

That I am the Petitioner in the above-entitled action; that I have read the foregoing Joint Petition for Summary Decree of Divorce and know the contents thereof; that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 27 day of (month) Aug., (year) 2004.

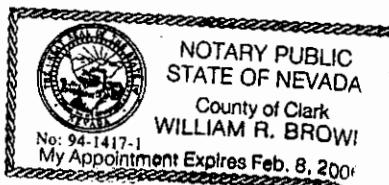
By:

(Spouse's signature) *Rajwant Kaur*
Rajwant Kaur

SUBSCRIBED and SWORN to before me this 27 day of (month) Aug, (year) 2004.

William R. Brown

NOTARY PUBLIC



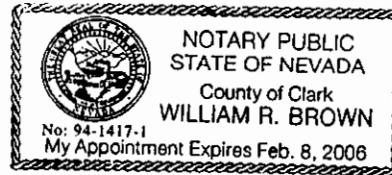
ACKNOWLEDGMENT

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



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1 FFCO
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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
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
28 On August 27, 2004, the parties filed a Joint Petition for Summary Decree of Divorce
(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.
26
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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 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
26
27
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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 at361. 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.*

11 **Governing Law**

12 In *Kaur*, the Nevada Supreme Court clarified the five-factor test for judicial estoppel as
13 follows:

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

16
17 Accordingly, the Court FINDS Rajwant was operating under ignorance where clear and
18 convincing evidence demonstrates Rajwant was not able to adequately read or understand
19 English sufficient to understand the nature of the 2004 Nevada divorce documents. The Court
20 also FINDS clear and convincing evidence demonstrated Rajwant executed the documents
21 based on Jaswinder’s fraudulent representations the proceeding was a “paper divorce” or
22 divorce in name only. Thus, the Court FINDS Rajwant was operating under ignorance or fraud.
23 Because this Court FINDS clear and convincing evidence credibly demonstrates Rajwant was
24 operating under ignorance, fraud or mistake, the Court DECLINES to apply the doctrine of
25 judicial estoppel.
26

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1 **ORDERS**

2 NOW THEREFORE, based on the foregoing *Findings of Fact and Conclusions of Law*
3 and, good cause appearing:

4 IT IS HEREBY ORDERED that this Court has complete jurisdiction to enter a final
5 Order in this matter.
6

7 IT IS FURTHER ORDERED that, having reviewed the five-factor test set forth In re
8 Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017), clear and
9 convincing evidence credibly demonstrates Defendant Rajwant Kaur was operating under
10 ignorance, fraud or mistake. Therefore, the Court DECLINES to apply the doctrine of judicial
11 estoppel.
12

13 IT IS FURTHER ORDERED that the September 8, 2004 Decree of Divorce is
14 VOIDABLE where neither party resided in Nevada for the requisite six weeks prior to filing of
15 the August 27, 2004 Joint Petition for Divorce. Therefore, this Court did not have jurisdiction
16 to enter the September 8, 2004 Decree of Divorce.
17

18 IT IS FURTHER ORDERED that Defendant Rajwant Kaur’s January 7, 2019 Motion
19 to Set Aside Decree of Divorce pursuant to NRCp 60(b) is GRANTED and the September 8,
20 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 Counter-motion for Award for Attorney Fees and Costs is DENIED.
3
4

5 Dated this 14th day of September, 2021

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7 HEIDI ALMASE
8 District Court Judge

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10 Heidi Almase
11 District Court Judge
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

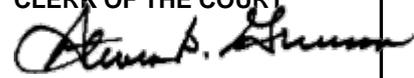
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6 In the Matter of the Joint Petition | CASE NO: 04D323977
for Divorce of: |
7 Jaswinder Singh and Rajwant | DEPT. NO. Department X
8 Kaur |
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10 **AUTOMATED CERTIFICATE OF SERVICE**

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
case as listed below:

14 Service Date: 9/14/2021

15 F Peter James peter@peterjameslaw.com
16 Service KLG service@kainenlawgroup.com
17 Hagen Anderson hagen@kainenlawgroup.com
18 Andrew Kynaston Service@KainenLawGroup.com
19 April Schultz April@PeterJamesLaw.com
20 Jaswinder Singh Singh2816@yahoo.com
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1 **NEOJ**
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 89129-8714
7 PH: (702) 823-4900
8 FX: (702) 823-4488
9 Service@KainenLawGroup.com
10 Attorney for Defendant

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

13 **JASWINDER SINGH,**

CASE NO. 04D323977

14 Plaintiff,

DEPT NO. X

15 vs.

16 **RAJWANT KAUR,**

17 Defendant.

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

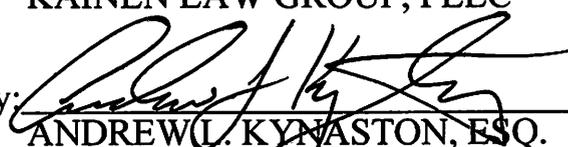
20 TO: JASWINDER SINGH, Plaintiff; and

21 TO: F. PETER JAMES, ESQ., Counsel for Plaintiff:

22 PLEASE TAKE NOTICE that on the 14th day of September, 2021, the
23 Honorable Heidi Almase entered a *Findings of Fact, Conclusions of Law and Order*, a
24 copy of which is attached hereto.

25 DATED this 15th day of September, 2021.

26 KAINEN LAW GROUP, PLLC

27 By: 

28 **ANDREW L. KYNASTON, ESQ.**

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



KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com



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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:

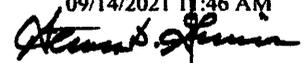
___ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

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*

Chandana

An Employee of
KAINEN LAW GROUP, PLLC

Electronically Filed
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

E-SERVED
SEP 14 2021

JASWINDER SINGH,
Plaintiff,

vs.

RAJWANT KAUR,
Defendant

Case No: 04-D-323977
Dept. No: X

DATE OF HEARING: 08/16/2021
TIME OF HEARING: 1:30PM

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came before the Court for non-jury bench trial in the above-captioned matter on August 16, 2021 following a December 19, 2020 Order of Reversal and Remand in Kaur v. Singh, 135 Nev. Adv. Op. 77, 477 P.3d 358 (2020), *reh'g denied* (January 13, 2021), *en banc reconsideration denied*, (March 18, 2021).

Jaswinder (Jaswinder) Singh was present in the courtroom and represented by F. Peter James, Law Offices of F. Peter James. Rajwant (Rajwant) Kaur was present in the courtroom and represented by Andrew L. Kynaston, Kainen Law Group PLLC. Each party had the use of court-certified interpreter during the proceedings.

Having reviewed the papers and pleadings on file herein and, after considering and weighing the credibility of the witnesses and exhibits admitted into evidence, this Court issues its *Findings of Fact, Conclusions of Law and Order*.

PROCEDURAL HISTORY

On August 27, 2004, the parties filed a Joint Petition for Summary Decree of Divorce (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 **FINDINGS OF FACT**

16 **JURISDICTION**

17 Both parties in this case reside in California. At issue in this case is the validity of the
18 September 8, 2004 Summary Decree of Divorce filed in this Court. This Court has the
19 appropriate subject matter and personal jurisdiction to enter a decision on the challenged issues.
20

21 **TESTIMONY**

22 The following witness offered testimony in this case:
23

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 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
12 In *Kaur*, the Nevada Supreme Court clarified the five-factor test for judicial estoppel as
13 follows:

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
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19
20 Jaswinder argues this Court is bound by its prior finding Rajwant understood the Nevada
21 divorce documents and was knowingly divorcing Jaswinder to assist his brother's immigration
22 application. See Jaswinder's Closing Brief at p.2, ll.19-20 and p.3, ll.1-10 (filed September 13,
23 2021). However, as noted herein, the Nevada Supreme Court concluded this Court's application
24 of judicial estoppel was erroneous. See Kaur, 137 Nev. Adv. Op at ___, 477 P.3d at 362-
25 63(noting duress and coercion are a *defense* to judicial estoppel and concluding the district court
26 failed to first consider whether the five-factor test favored application of judicial estoppel).
27 Contra Findings of Fact, Conclusions of Law and Order at pp.4-6 (filed October 22,
28

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.
25
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1 **ORDERS**

2 NOW THEREFORE, based on the foregoing *Findings of Fact and Conclusions of Law*
3 and, good cause appearing:

4 IT IS HEREBY ORDERED that this Court has complete jurisdiction to enter a final
5 Order in this matter.
6

7 IT IS FURTHER ORDERED that, having reviewed the five-factor test set forth In re
8 Frei Irrevocable Tr. Dated Oct. 29, 1996, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017), clear and
9 convincing evidence credibly demonstrates Defendant Rajwant Kaur was operating under
10 ignorance, fraud or mistake. Therefore, the Court DECLINES to apply the doctrine of judicial
11 estoppel.
12

13 IT IS FURTHER ORDERED that the September 8, 2004 Decree of Divorce is
14 VOIDABLE where neither party resided in Nevada for the requisite six weeks prior to filing of
15 the August 27, 2004 Joint Petition for Divorce. Therefore, this Court did not have jurisdiction
16 to enter the September 8, 2004 Decree of Divorce.
17

18 IT IS FURTHER ORDERED that Defendant Rajwant Kaur's January 7, 2019 Motion
19 to Set Aside Decree of Divorce pursuant to NRCp 60(b) is GRANTED and the September 8,
20 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

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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:

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- | | |
|-----------------|----------------------------|
| F Peter James | peter@peterjameslaw.com |
| Service KLG | service@kainenlawgroup.com |
| Hagen Anderson | hagen@kainenlawgroup.com |
| Andrew Kynaston | Service@KainenLawGroup.com |
| April Schultz | April@PeterJamesLaw.com |
| Jaswinder Singh | Singh2816@yahoo.com |