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### Kaur v. Singh, 136 Nev. Adv. Op. 77 (Dec. 10, 2020)

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FAMILY LAW: JUDICIAL ESTOPPEL

**SUMMARY**

The Court clarified that district courts should determine whether judicial estoppel applies to a situation, using the judicial estoppel factors, *before* considering whether a party sufficiently raised a defense to the application of the doctrine.

**BACKGROUND**

In 2004, the Nevada district court entered a divorce decree for Rajwant and Jaswinder Singh. They falsely claimed to be Nevada citizens while actually residing in California. Rajwant claims that Jaswinder ordered her to marry his brother in India for immigration purposes. However, after the marriage, Rajwant and Jaswinder continued to live together in California.

In 2018, Rajwant filed for divorce in California after discovering Jaswinder had remarried. Jaswinder claimed they were already divorced under the 2004 Nevada divorce decree. Rajwant moved to have that divorce decree set aside under NRCPC 60(b) claiming (1) the divorce decree was void since the district court did not have jurisdiction because the parties never resided in Nevada and (2) she was forced to sign the decree through fraud since she did not read English and therefore could not read the divorce decree and claimed she did not understand what she was signing. Jaswinder claimed Rajwant's motion was untimely and that judicial estoppel barred her challenge to the divorce decree under *Vaile*.<sup>2</sup>

The district court found Rajwant's motion was not untimely since the State of Nevada, as the injured party, was not aware of the possible fraud until the suit was brought. However, the district court relied on *Vaile* to find Rajwant was judicially estopped from challenging the divorce decree based on her failure to prove she signed while under duress or coercion.

**DISCUSSION**

*Rajwant's NRCPC 60(b) motion was timely*

The district court did not abuse its discretion when it concluded Rajwant's motion was timely. She needed only to file her motion "within a reasonable time."<sup>3</sup> The court found her testimony credible that she believed they were still married, since they continued living together for many years after the 2004 divorce. Her motion to set aside the divorce decree two months after her discovery of Jaswinder's marriage was timely.

*The district court erred in its application of Vaile*

The district court erred in concluding that judicial estoppel precluded Rajwant's motion, based on *Vaile*. In *Vaile*, because neither party resided in Nevada, the court lacked jurisdiction,

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<sup>1</sup> By Allison Mann.

<sup>2</sup> *Vaile v. Dist. Ct.*, 118 Nev. 262, 44 P.3d 506 (2002).

<sup>3</sup> Nev. R. Civ. P. 60(c).

making their divorce decree voidable. Here, the Court stated the divorce decree could be voidable if Rajwant proved the Nevada district court did not have jurisdiction to enter the divorce decree.

Judicial estoppel prevents a party from asserting a position in one proceeding that is contrary to her position in a prior proceeding.<sup>4</sup> Courts use a five-factor test to determine whether judicial estoppel applies: whether “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position . . . ; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud or mistake.”<sup>5</sup> The court’s use of judicial estoppel is discretionary and should only be applied when a party’s inconsistent position is the result of intentional wrongdoing or an attempt to gain an unfair advantage.<sup>6</sup>

The *Vaile* Court, after establishing the applicability of judicial estoppel, focused on the party’s defense to the doctrine. Here, the district court erred in applying *Vaile* to establish the sufficiency of Rajwant’s defense to judicial estoppel of duress and coercion without first applying the five factor test to establish whether the doctrine of judicial estoppel should apply at all.

## **CONCLUSION**

The Court found that the district court must make findings as to whether Rajwant was operating under ignorance, fraud, or mistake when signing the divorce decree under the five factor test to determine the applicability of judicial estoppel. Therefore, the Court reversed the district court’s order and remanded for the district court to first consider whether judicial estoppel applies.

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<sup>4</sup> *Vaile*, 44 P.3d at 514.

<sup>5</sup> *In re Frei Irrevocable Tr.*, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017).

<sup>6</sup> *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004).