IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASWINDER SINGH,
Appellant,
vs.
RAJWANT KAUR,
Respondent.

No. 83613-COA

FILED
JAN 27 2023
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jaswinder Singh appeals from a district court order setting aside a divorce decree and denying a motion for attorney fees and costs. Eighth Judicial District Court, Family Division, Clark County; Heidi Almase, Judge.

The relevant facts of this case are set forth in detail in our supreme court's 2020 published opinion reversing the district court's prior order declining to set aside the parties' 2004 divorce decree, the latter of which was entered at the request of the parties and without jurisdiction.[1] *See Kaur v. Singh*, 136 Nev. 653, 654-55, 477 P.3d 358, 360-61 (2020). In its opinion, the supreme court held that, although the district court properly determined that the decree was voidable under *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002), *abrogated on other grounds*

[1]Former Eighth Judicial District Court Judge (now Senior Judge) Sandra L. Pomrenze entered the order declining to set the decree aside, but the case was administratively reassigned to Judge Almase's department following remand from the supreme court.

23-02678

by Senjab v. Alhulaibi, 137 Nev., Adv. Op. 64, 497 P.3d 618, 620 (2021), on grounds that neither party resided in Nevada for six weeks prior to the divorce as required under NRS 125.020, it misapplied *Vaile* in determining that respondent Rajwant Kaur was required and failed to produce evidence of duress or coercion in order to avoid being judicially estopped from challenging the 2004 decree. *Kaur*, 136 Nev. at 656-58, 477 P.3d at 362-63. The supreme court clarified that duress and coercion are defenses to judicial estoppel, and district courts must first apply the five-factor test set forth in *In re Frei Irrevocable Trust Dated Oct. 29, 1996*, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017), for determining whether judicial estoppel applies before then considering whether defenses like duress or coercion preclude application of the doctrine.[2] *Kaur*, 136 Nev. at 657-58, 477 P.3d at 362-63.

Of particular relevance to the instant appeal, the supreme court proceeded to note that,

> [s]ignificantly, the district court failed to make findings regarding whether Rajwant was operating under ignorance, fraud, or mistake when she signed the divorce decree, in light of her claims that she could not read or understand the decree. Had the district court made findings concerning this factor and determined that Rajwant was operating under ignorance, fraud, or mistake, it could have declined

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[2]This test is "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 (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.'" *Kaur*, 136 Nev. at 657, 477 P.3d at 362-63 (quoting *Frei Irrevocable Tr.*, 133 Nev. at 56, 390 P.3d at 652).

> to apply the doctrine of judicial estoppel without ever reaching the issue of whether Rajwant's defense of duress and coercion was proven.

Id. at 658, 477 P.3d at 363. The supreme court therefore reversed the district court's order denying Rajwant's motion to set the 2004 decree aside and remanded for application of the appropriate test. *Id.* at 659, 477 P.3d at 364.

On remand, the district court conducted an evidentiary hearing and thereafter entered an order granting Rajwant's motion to set the 2004 decree aside. The court declined to apply judicial estoppel, concluding that although the first four *Frei* factors favored applying the doctrine, the last factor—that the position taken in the prior proceeding was not taken as a result of ignorance, fraud, or mistake—did not. The court found that Rajwant's ability to read or understand English was so limited in 2004 that she was ignorant of the nature and content of the documents she signed, especially in light of Jaswinder's assurances to her that they were not actually getting divorced and were instead obtaining a mere "paper divorce," such that "Rajwant was an unknowing victim of a fraud perpetrated by Jaswinder in the Nevada courts." The court further relied on the fact that Jaswinder and Rajwant continued to cohabitate in California as if they were still married following the Nevada divorce. Accordingly, the court set the 2004 decree aside on grounds that it was entered without jurisdiction, and it denied Jaswinder's motion for attorney fees and costs. This appeal followed.

On appeal, Jaswinder primarily contends that the district court erred in declining to apply judicial estoppel, as its finding that Rajwant was

operating under ignorance at the time of the 2004 divorce proceeding was not supported by substantial evidence. Specifically, Jaswinder argues that Rajwant admitted she knew that she was getting divorced in order to marry Jaswinder's brother for immigration purposes, and he contends that she was therefore complicit in the purported fraud on the court. He also argues that, to the extent Rajwant was ignorant of the legal effect signing the divorce decree would have, ignorance of the law is not the type of ignorance required to avoid the application of judicial estoppel, as "[e]very one is presumed to know the law and this presumption is not even rebuttable." *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 513 (1915). Further, Jaswinder contends that this court should remand this matter for the district court to reevaluate his request for attorney fees and costs in the event that the order setting aside the decree is reversed. Rajwant counters that the district court adequately supported its decision by finding that Rajwant was operating under factual ignorance—namely, ignorance of the terms set forth in the decree—and that this court should therefore affirm the district court's order in its entirety.

We review an order setting aside a divorce decree under NRCP 60(b) for an abuse of discretion. *Kaur*, 136 Nev. at 655, 477 P.3d at 361; *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255, 257 (2018). And we will uphold a district court's factual findings so long as they are not clearly erroneous and they are supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). But the application of judicial estoppel is a question of law that we review de novo. *Kaur*, 136 Nev. at 656, 477 P.3d at 362. "And although a district court's decision to apply judicial estoppel is discretionary, judicial estoppel should

be applied only when a party's inconsistent position arises from *intentional* wrongdoing or an attempt to obtain an unfair advantage," meaning the proponent of judicial estoppel "must . . . show that the first position was not taken as a result of ignorance, fraud, or mistake." *Id.* at 658, 477 P.3d at 363 (internal quotation marks omitted).

Initially, we note that Jaswinder's argument concerning Rajwant's supposed ignorance of the law is compelling, especially in light of Rajwant's awareness that she was essentially obtaining a sham divorce in Nevada in order to then obtain a sham marriage to Jaswinder's brother for immigration purposes. *See Frei Irrevocable Tr.*, 133 Nev. at 56, 390 P.3d at 652 (noting that even "[a] client who relies on bad legal advice from otherwise competent counsel does not satisfy the burden of demonstrating a mistake to defeat an estoppel claim"); *Smith*, 38 Nev. at 481, 151 P. at 513 (providing that everyone is conclusively presumed to know the law); *see also Mowrey v. Chevron Pipe Line Co.*, 315 P.3d 817, 822 (Idaho 2013) (providing that "ignorance of the law . . . do[es] not negate the knowledge chargeable to the [parties]" when determining whether to apply judicial estoppel). But we need not address that issue, as the district court complied with the supreme court's mandate in *Kaur* that it "make findings regarding whether Rajwant was operating under ignorance, fraud, or mistake when she signed the divorce decree, *in light of her claims that she could not read or understand the decree*." 136 Nev. at 658, 477 P.3d at 363 (emphasis added). Thus, it was not Rajwant's supposed ignorance of the law that the district court was focused on but rather her ignorance of the specific terms of the decree itself, including the provision falsely reciting Jaswinder's compliance with the six-week residency requirement under NRS 125.020, as well as a

provision stating that the parties had no community property for the court to divide.

Despite this, the only argument Jaswinder sets forth in his appellate briefing with respect to Rajwant's ignorance of the specific terms of the decree is that, under general contract principles, a person who willingly signs an agreement is bound by its contents regardless of whether she read the document or understood the language it was written in. But Jaswinder failed to raise this issue in his opening brief and instead raised it for the first time in his reply brief. The issue is therefore waived, and we do not consider it. *See Khoury v. Seastrand*, 132 Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (providing that issues raised for the first time in a reply brief are deemed waived); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

Jaswinder further argues that, because Judge Pomrenze originally found that Rajwant understood in 2004 that she and Jaswinder were getting divorced in Nevada, Judge Almase was not permitted to find otherwise following remand from the supreme court. *See State v. Beaudion*, 131 Nev. 473, 477, 352 P.3d 39, 42 (2015) (providing that "one district judge may not directly overrule the decision of another district judge on the same matter in the same case"). But, as Judge Almase correctly noted, the supreme court pointed to the lack of any findings from the district court concerning whether Rajwant was operating under ignorance, fraud, or mistake when she signed the decree in light of her claim that she could not read or understand it, and it directed the court to make such findings on remand. *Kaur*, 136 Nev. at 658-59, 477 P.3d at 363-64; *see State Eng'r v.*

Eureka County, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) ("When an appellate court remands a case, the district court must proceed in accordance with the mandate and the law of the case as established on appeal." (internal quotation marks omitted)).

Moreover, the question of whether Rajwant understood that a divorce was taking place in a general sense is analytically distinct from the question of whether she understood the specific terms of the decree she signed, which the district court found she did not. Thus, although Judge Almase's findings were closely related to Judge Pomrenze's earlier findings, they did not actually conflict with them, and we discern no basis for relief on this point. *See Beaudion*, 131 Nev. at 477, 352 P.3d at 42 ("[A] second district judge who is assigned to a matter by operation of administrative court rules [is not prohibited] from deciding a matter related but not identical to another regularly assigned judge's earlier rulings.").

Because the district court determined that Rajwant credibly testified that she was operating under ignorance of the specific terms of the 2004 decree when she signed it, and because Jaswinder has failed to set forth any valid basis for reversal in this appeal,[3] we affirm the district

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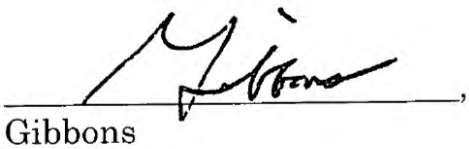
[3]We decline Jaswinder's request that we review the district court's credibility determination, as "we leave witness credibility determinations to the district court and will not reweigh credibility on appeal." *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007). We also reject Jaswinder's summary contention that Rajwant is estopped from challenging the decree under the doctrine of *in pari delicto*. *See In re AMERCO Derivative Litig.*, 127 Nev. 196, 213-14, 252 P.3d 681, 694 (2011) ("When a party suffers injury from wrongdoing in which he engaged, the doctrine of *in pari delicto* often prevents him from recovering for his injury."). Although

court's order granting Rajwant's motion to set aside the 2004 decree and denying Jaswinder's motion for attorney fees and costs.

It is so ORDERED.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Heidi Almase, District Judge, Family Division
Israel Kunin, Settlement Judge
Law Offices of F. Peter James, Esq.
Kainen Law Group
Eighth District Court Clerk

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he cites to the *AMERCO* decision in support of this argument, Jaswinder fails to argue the factors set forth therein that courts must consider when applying the doctrine, *id.* at 216-17, 252 P.3d at 696, and he fails to cite any authority in support of the notion that the doctrine even applies to divorce proceedings like those at issue here where no party is seeking damages. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument or relevant authority).