N THE COURT OF APPEALS OF THE STATE OF NEVADA

BERNADINE KING,
Appellant,
vs.
DESERT PALACE, INC., D/B/A CAESARS PALACE,
Respondent.

No. 71317

ORDER OF REVERSAL AND REMAND

Bernadine King appeals from a district court judgment in a personal injury action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.[1]

Appellant Bernadine King sued respondent Desert Palace for negligence after an employee spilled hot coffee onto her lap. King suffered first-degree burns and psychological injuries. She retained Craig P. Kenny & Associates ("the firm") to represent her. King's son, Zach, was present with King during discussions with her attorneys regarding the case.

Attorney Michael McOsker from the firm and Desert Palace negotiated a settlement offer of $140,000. Upon learning of Desert Palace's settlement offer, King indicated she was unhappy with the amount. A few days later, however, Zach contacted McOsker to inform him that King would accept the offer, but would like an additional $5,000. McOsker negotiated for the extra $5,000 with Desert Palace, and informed Zach of this success, but did not include King in the communication. The firm thereafter emailed the written settlement agreement to King for her signature. Zach later contacted McOsker regarding additional concerns King had with her medical providers'

[1]Judge Linda Marie Bell conducted the evidentiary hearing on the motion to enforce settlement.

claims on the settlement proceeds. The record does not demonstrate that King was actually aware of all of the communications between Zach and McOsker.

When King failed to return the signed settlement agreement, the firm sent her a follow-up email. King responded, apologizing for the delay in signing and returning the documents and stating that she had been unable to print and review the attachments because of a printer problem. King thereafter ceased communicating with the firm. She hired a new attorney to represent her, and contested the settlement agreement. Desert Palace moved to enforce the agreement and the district court granted the motion, concluding Desert Palace justifiably relied on McOsker's apparent authority to enter into the settlement agreement. This appeal followed.

The parties primarily contest whether McOsker had actual or apparent authority to settle King's case. We review the district court's decision to enforce the settlement agreement for an abuse of discretion. *Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012).

We first reject Desert Palace's argument that McOsker had actual authority. An agent has actual authority where, "at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 549, 331 P.3d 850, 856 (2014) (internal quotation marks omitted). Actual authority can be implied where "the agent reasonably believes himself to possess as a result of representations by the principal or of acts of the agent permitted by the principal over a course of time in which the principal has acquiesced." *Coblentz v. Riskin*, 74 Nev. 53, 57, 322 P.2d 905, 907 (1958). Here, however, McOsker acknowledged he needed King's express consent to settle the case, and the record does not

support that King actually authorized either McOsker to settle the case or Zach to speak on her behalf.

We next consider whether McOsker had apparent authority. An agent has apparent authority where (1) the principal holds the agent out as possessing that authority, or permits the agent to represent himself as possessing that authority or to exercise that authority, and (2) the circumstances prevent the principal from denying the existence of authority. *Simmons Self-Storage*, 130 Nev. at 550, 331 P.3d at 857. The agent's acts alone do not establish apparent authority;[2] there must also be evidence that the principal both knew of the agent's acts and acquiesced. *Id.; see also Ellis v. Nelson*, 68 Nev. 410, 419, 233 P.2d 1072, 1076 (1951) (noting that where inferences against the existence of apparent authority are as equally reasonable as those supporting it, a party may not rely on apparent authority).

After careful consideration, we conclude McOsker did not have apparent authority to settle the case. Specifically, the record does not demonstrate that King knew of McOsker's acts and acquiesced. Although the firm emailed King regarding the settlement and she initially did not question that message's content or protest the settlement agreement, the record ultimately demonstrates that King was unable to review the settlement documents until a later date, and that she may not have initially realized McOsker had settled the case. We therefore conclude the district

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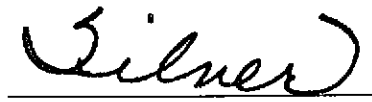
[2]The attorney-client relationship, alone, does not give the attorney apparent authority to settle the client's case. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 656, 218 P.3d 853, 860 (2009). On appeal, Desert Palace concedes the retainer agreement did not give McOsker authority to settle without King's permission, and the district court erred to the extent it relied on that agreement in its decision to enforce the settlement.

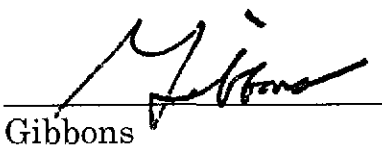
court abused its discretion by finding McOsker had apparent authority to settle the case and granting the motion to enforce the settlement.[3] Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Chief Judge, The Eighth Judicial District Court
Hon. Kathy A. Hardcastle, Senior Judge
Hon. Linda Marie Bell, District Judge
Ara H. Shirinian, Settlement Judge
Barry A. Cohen, P.A.
Gentile, Cristalli, Miller, Armeni & Savarese, PLLC
Hutchison & Steffen, LLC/Las Vegas
Eighth District Court Clerk

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[3]We decline to address Desert Palace's assertion that King ratified the agreement because Desert Palace failed to advance that argument below. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (noting "parties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below" (internal quotation marks omitted)); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").