IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES L. PETERSON,
Appellant,
vs.
SOCORRO CORONA, INDIVIDUALLY AND AS GUARDIAN OF A.C., J.C., D.C. AND E.C., MINOR CHILDREN,
Respondent.

No. 70999

FILED
DEC 28 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Peterson appeals from an order enforcing settlement and final judgment in a tort action.[1] Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Peterson was driving when he struck the vehicle carrying Respondent Socorro Corona and her four minor children.[2] Peterson pleaded guilty to a charge of driving under the influence and was sentenced, pertinent to this appeal, to pay Corona $11,953.40 in restitution. State Farm, Peterson's insurance company, paid the restitution. Corona later sued Peterson alleging negligence, negligence per se, and punitive damages. Corona served Peterson a written offer of judgment for a collective sum of

[1]Respondent argues in the answering brief that this court lacks jurisdiction over this appeal because Peterson's notice of appeal is defective as it appeals from an interlocutory order: the order enforcing settlement. However, the Nevada Supreme Court twice ordered Peterson to show cause why this appeal should not be dismissed, and allowed respondent to respond. Peterson submitted a copy of the final judgment, confirming that this court had jurisdiction. Respondent did not respond and only addressed this court's jurisdiction in the answering brief. Therefore, because Peterson submitted the final judgment to establish jurisdiction, we will address the case on its merits.

[2]We do not recount the facts except as necessary to our disposition.

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$76,000 "for damages for the injuries sustained in the accident referenced in Plaintiffs' complaint," and Peterson accepted. Several days later, Peterson sent a letter to Corona reminding her that State Farm had paid the restitution ordered. The letter also stated that, because the restitution reimbursed Corona for the family's medical bills, he was entitled to offset that amount against the parties' settlement. Corona responded that the offer of judgment and Peterson's acceptance did not contemplate an offset and that she did not agree to the new term.

Peterson then moved the district court to enforce the settlement, arguing that the $11,953.40 paid in restitution should be credited to the $76,000 settlement. The district court denied Peterson's request for an offset and enforced the stipulated judgment, exclusive of any restitution payment, finding a contract had been formed. The district court further concluded that although "Peterson may have subjectively believed that his acceptance was conditioned upon a credit for previous restitution, nothing about the parties' behavior would allow a reasonable observer to draw such a conclusion."

Peterson now appeals, arguing the district court abused its discretion by denying his request to credit the amount paid in criminal restitution to satisfy the stipulated civil judgment. We disagree.

As a preliminary matter, we agree with the district court that the parties entered into a valid contract. "When parties to pending litigation enter into a settlement, they enter into a contract." *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234 (2012). The settlement is subject to the general principles of contract law, requiring an offer and acceptance, meeting of the minds on the contract's essential terms, and consideration. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257

(2005). Whether a contract exists generally presents a question of fact, which requires this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence. *Id.* at 672-73, 119 P.3d at 1257.

Here, Corona unconditionally offered to settle her claims against Peterson for $76,000, and Peterson unconditionally accepted Corona's offer in his May 24, 2016 letter. Therefore, at the moment Peterson accepted, a contract was formed with judgment on the claims in exchange for $76,000 as the essential term. It was more than a week later when Peterson asserted that he should be credited for the restitution State Farm paid on his behalf. But because there had been an offer, acceptance, meeting of the minds on the terms, and consideration, the parties had already formed an enforceable contract. Thus, the district court's finding that a valid contract had been formed was based on substantial evidence, and this court will not disturb that finding.

Next, we consider whether, as Peterson argues, the contract was ambiguous and whether the district court erred in construing it in favor of Corona as the drafting party when the court found that the precise role of the restitution was not specified in the offer of judgment. We review de novo the interpretation of a settlement agreement. *The Power Co. v. Henry*, 130 Nev. 182, 189, 321 P.3d 858, 863 (2014). And we construe contracts from their written language and will enforce the contracts as written. *Id.* "Whether a contract is ambiguous [] presents a question of law." *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013). Ambiguity in a contract arises when a term may be reasonably interpreted in another way, "but ambiguity does not arise simply because the parties disagree on how to interpret their contract." *Id.* Instead, a contract may be

ambiguous if the agreement is obscure in its meaning, "through indefiniteness of expression, or having a double meaning." *Id.* (internal quotation marks omitted). If a contract may be subject to more than one reasonable interpretation, any ambiguity should be construed against the drafter. *Am. First Fed. Credit Union v. Soro*, 131 Nev. ___, ___, 359 P.3d 105, 106 (2015).

Here, the terms of the contract were clear and unambiguous. The offer was simple: judgment against Peterson in exchange for $76,000. The offer did not mention the restitution or detail the type of damages used to calculate the offer amount, and, most importantly, Peterson did not attempt to include a term regarding the restitution in the contract. The contract is not indefinite, nor are its terms susceptible to more than one meaning simply because the contract does not include a term that Peterson later claims was contemplated. *Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 401, 632 P.2d 1155, 1157 (1981) ("[T]he making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs, not on the parties' having meant the same thing but on their having said the same thing." (quoting Oliver W. Holmes, Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 464 (1897))). Furthermore, nothing in the record demonstrates that either party contemplated the effect of the restitution paid at the time the contract was formed. Therefore, the contract is unambiguous and it will be construed as written.

Last, Peterson contends that the judgment should be reduced by the amount of restitution paid because failing to do so would accord Corona double recovery for the family's medical expenses; he also argues that the restitution payment by State Farm is not a collateral source.

"Under the double recovery doctrine, there can be only one recovery of damages for one wrong or injury." *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 443, 245 P.3d 547, 549 (2010) (internal quotation marks omitted). The Nevada Supreme Court has previously applied this doctrine to "prohibit a plaintiff's further recovery for the same injury." *Id.* at 444, 245 P.3d at 549. The basis of the double recovery doctrine is to bar a plaintiff from receiving compensation under multiple theories of liability for one injury. *Id.*; *see also Major v. State*, 130 Nev. ___, ___, 333 P.3d 235, 237 (2014) (allowing the district court to order restitution to social services in a child abuse case "to the extent that the district court's order did not overlap with the existing [child] support obligation imposed by the family court").[3] This court reviews a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013).

Here, substantial evidence supports the district court's finding that enforcing the full settlement will not result in Corona receiving double recovery for the family's medical expenses. *See Wright v. State, Dep't of*

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[3]Peterson also argues that the restitution payment by his insurance company is not a collateral source. "The collateral source rule provides 'that if an injured party received some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor.'" *Proctor v. Castelletti*, 112 Nev. 88, 90 n.1, 911 P.2d 853, 854 n.1 (1996) (quoting *Hrnjak v. Graymar, Inc.*, 484 P.2d 599, 602 (Cal. 1971)). However, this argument is an extension of Peterson's double recovery argument, and Corona does not argue that the insurance payment is a collateral source. Therefore, we need not separately address this argument, as we conclude herein that there was no double recovery.

Motor Vehicles, 121 Nev. 122, 125, 110 P.3d 1066, 1068 (2005) (recognizing that substantial evidence may be inferentially shown by a lack of certain evidence). Peterson's judgment of conviction does not specify that the restitution amount of $11,953.40 was for the Coronas' medical expenses. *See Martinez v. State*, 120 Nev. 200, 202–03, 88 P.3d 825, 827 (2004) (stating that the purpose of restitution in the criminal law context is to compensate a victim for costs arising from a defendant's criminal act). Further, the record is devoid of any evidence that the restitution ordered was solely for the Coronas' medical expenses.[4] The district court acknowledged that the settlement agreement could have reasonably compensated Corona for different or additional damages, and found that "Corona necessarily sought damages in excess of the previously ordered restitution, including punitive damages." Moreover, when parties agree to a settlement, they enter into a contract and the plaintiff no longer has to prove damages or justify the amount of the offer of judgment unless contemplated by the parties in the contract. Therefore, the district court did not abuse its discretion by finding that the full settlement award would not result in a double recovery.

Finally, Peterson argues this case presents an issue of first impression regarding whether he is entitled to an offset as a matter of law. However, we conclude that this matter is a simple case involving contract interpretation; Peterson accepted Corona's offer of judgment and entered

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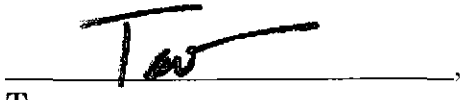
[4]The district court's Order Enforcing Settlement notes that the restitution amount appears to represent the Coronas' collective medical bills. But the order further states: "Despite Peterson's arguments, the court does not find that enforcing settlement amount of $76,000.00 will allow for a double recovery of medical expenses. Given the other damages sought, including pain and suffering, future damages, and punitive damages, it is plausible that the offer of $76,000.00 did not include medical damages."

into a contract, the terms of which were unambiguous, and the district court therefore lacked discretion to alter the agreed upon offer of judgment. *See, e.g.*, *Mallory v. Eyrich*, 922 F.2d 1273, 1279 (6th Cir. 1991) ("[T]he explicit language of the [federal offer of judgment] rule signifies that the district court possesses no discretion to alter or modify the parties' agreement."); *Van Cleave v. Osborne, Jenkins & Gamboa, Chtd.*, 108 Nev. 885, 888, 840 P.2d 589, 591 (1992) ("A consent judgment should be strictly construed to preserve the bargained for position of the parties." (internal quotation marks omitted)).

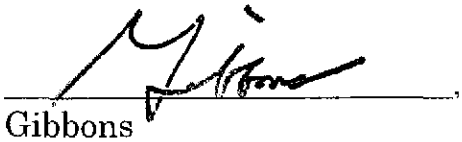
For the foregoing reasons, we conclude that the district court did not abuse its discretion in enforcing the settlement agreement as formed, exclusive of any credit for the restitution payment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Chief Judge, Second Judicial District Court
District Judge, Department Eight, Second Judicial District Court
Lansford W. Levitt, Settlement Judge
Glogovac & Pintar
Bradley Drendel & Jeanney
Washoe District Court Clerk