IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF JOYCE D. WALKER, DECEASED.

KRISTIE PERKINS,
Appellant,
vs.
KENT PERKINS; AND HEATHER LACRAE PERKINS,
Respondents.

No. 78745-COA

ORDER AFFIRMING IN PART AND REVERSING IN PART

Kristie Perkins appeals a district court order in a probate action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Joyce Walker died in 2012.[1] Walker owned interests in two properties, one in Las Vegas and the other in Searchlight. Her daughter, Kristie Perkins, owned 50% of the Las Vegas home, and Walker owned the other 50%. Walker, Kristie, and Walker's son, Kent Perkins, owned varying shares of the Searchlight property: Kristie owned 50%, Walker owned 25%, and Kent owned 25%. After Walker died, Kent and his daughter, Heather Lacrae Perkins, were appointed to be co-representatives of the estate.[2] Kent and Kristie's relationship was problematic, prolonging the administration of the estate. This conflict was also partially responsible for the mortgage on

[1]We do not recount the facts except as necessary for our disposition.

[2]We note that while Heather is a co-representative and a party to this action, her involvement with the probate proceedings was very limited in recent years, and both Heather and Kent are represented by the same attorney. Thus, we refer only to Kent throughout this appeal.

Walker's 50% interest in the Las Vegas property going unpaid and the lender threatening foreclosure.

Eventually, the parties reached a settlement during a judicial settlement conference and placed their agreement, containing a detailed description of the settlement terms, on the record in the form of a minute order. The minutes from the settlement hearing specifically reflect that the "both Kristi and Kent confirmed they had heard all terms of the negotiation as stated and agrees with them."[3] Under the agreement, Kristie was to list

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[3]The dissent challenges the validity of the settlement agreement by concluding that the agreement in the minute order is not an official record of the parties' agreement. As a preliminary matter, court minutes are part of all official court records, and the minute order setting forth the terms of the settlement as read into the record by the senior judge, and consented to by the parties, was included in the official court record on appeal. DCR 16, which EDCR 7.50 substantially mirrors, allows parties, by *consent*, to place agreements on the record, including settlements, and be memorialized in the minutes, in addition to signing written agreements. It must be emphasized that neither party argues on appeal that the terms of the settlement as reflected in the minutes is invalid because it is in the form of a minute order. Our dissenting colleague raises this concern sua sponte and without any briefing by the parties. *See In re Amerco Derivative Litigation*, 127 Nev. 196, 227 n.12, 252 P.3d 681, 702 n.12 (2011) ("[T]he parties did not brief this argument on appeal, and it is thus not properly before this court."). "Generally, courts should not raise sua sponte nonjurisdictional defenses not raised by the parties." *Acosta v. Artuz*, 221 F.3d 117, 122 (2d Cir. 2000). In doing so, the dissent overlooks the fact that for over 45 years, Nevada courts have approved the use of minute orders to satisfy the settlement provisions in EDCR 7.50, DCR 16, and DCR 24. *See Casentini v. Hines*, 97 Nev. 186, 187, 625 P.2d 1174, 1175 (1981) (noting that for the settlement to be valid, it needed to be reduced to writing subscribed by the party challenging the agreement *or* "made subject of a *minute order*") (emphasis added); *Engelstad v. Matheson*, 90 Nev. 204, 205, 522 P.2d 1018, 1019 (1974) (holding that the settlement agreement was not valid because it was neither in writing nor "was it set forth in a minute order"). Finally, our colleague may be unwittingly undermining the senior judge settlement program, and

the Las Vegas property for sale within 60 days of the agreement's effective date, and the parties would equally split the proceeds subject to certain offsets. The parties agreed that Kent would receive $20,000 for his costs in administering the estate. Also, Kristie and Kent would equally share responsibility for the $5,000 forbearance payment that Kent made to delay foreclosure on the Las Vegas property and for any subsequent payments. The agreement further gave Kent the Searchlight property[4] and set its value at $50,000; Kristie would receive $25,000 at the final distribution to account for her 50% share because the property was not going to be sold.

After the settlement conference, Kristie borrowed $24,255 in a hard money loan to pay off the mortgage on the Las Vegas property. However, she did not list the Las Vegas property for sale as the agreement required. Instead, she tried to reopen the settlement agreement, arguing that the Searchlight property value was too low. At the hearing, the district court and Kristie discussed the delay that would result by unwinding the agreement. Kristie chose not to pursue her request to reopen the settlement agreement.

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settlement conferences in general, by unnecessarily challenging the enforceability of the settlement reached in this case, which was specifically consented to by the parties. We should be encouraging attempts to settle cases, particularly those in a structured judicial program. *See Resnick v. Valente*, 97 Nev. 615, 616-17, 637 P.2d 1205, 1206 (1981) (explaining that compliance with the rule at issue here enhances reliability of settlements and does not thwart the policy favoring dispute settlement). We should also note that we are not persuaded by the older caselaw cited in the dissent that does not directly apply to memorializing settlement agreements in Nevada under current DCR 16 (former DCR 24) and EDCR 7.50.

[4]Walker bequeathed her 25% in the Searchlight property to Kent through her will.

Eventually, the Las Vegas home was sold. The hard money lender was repaid a total of $28,362. In dividing the sale proceeds, the district court reimbursed Kristie $14,181, only half of the amount of the hard money loan. The district court also required Kristie to reimburse half of the $5,000 forbearance payment that Kent made. Finally, the district court awarded Kent attorney fees because Kristie did not list, sell or purchase the estate's share of the Las Vegas home and thus breached the settlement agreement, which Kent had to enforce by court action.

On appeal, Kristie argues that (1) the district court committed misconduct by becoming an advocate and persuading Kristie to withdraw her motion to reopen or modify the settlement agreement, (2) the district court's factual findings and asset allocations were not supported by substantial evidence, and (3) the district court erred by awarding attorney fees because there was no applicable rule, statute or contract provision that authorized the court to make the award. Kent disputes all of these points.

The district court did not become an advocate and did not commit judicial misconduct

Kristie argues that the district court's conduct at the hearing to reopen or modify the settlement agreement transformed the court into an advocate and that the court thus committed judicial misconduct.[5] We disagree.

"A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." NCJC Canon 2, Rule 2.2. "When applying and interpreting the law, a judge sometimes may make good-

[5]Kristie relies on caselaw from outside of Nevada to support her theory. We find the caselaw unpersuasive as it pertains to these facts.

faith errors of fact or law. Errors of this kind do not violate this Rule." *Id.* at cmt. 3.

Here, the district court inquired into why Kristie, acting pro se, wanted to reopen the settlement agreement. District courts may ask parties and their attorneys questions. *Cf.* NRS 50.145(2) ("The judge may interrogate witnesses."). Kristie told the district court that the value set for the Searchlight property was too low, but she was also concerned about the lengthy probate process.[6] Upon discovering that Kristie was concerned about delaying the probate action further, the district court explained that reopening the settlement would cause further delay. Kristie then chose not to pursue reopening the settlement. Under these facts, the district court's questions did not taint the court's impartiality and no misconduct occurred.

The district court's asset allocations are supported by substantial evidence

Kristie contends that the district court made six factual determinations and asset allocations, collectively, that were not supported by the record. Specifically, Kristie argues that the district court abused its discretion when it found (1) the original mortgage balance was $12,000 when Walker died, (2) the principal for the mortgage was $17,642 when she took over the property in February 2015, (3) that an additional $6,375 was

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[6]At this hearing, the district court told Kristie that the value of the Searchlight property did not matter because Kristie would receive 50% of the proceeds of the sale. However, the district court misunderstood the situation because the property was not being sold; rather it was being awarded to Kent, and the value of Kristie's 50% share was set at $25,000 to be paid to her upon sale of the Las Vegas property. Upon our review of the record, the district court's misapprehension of the facts occurred in good faith and was not done in an effort to advocate for Kent. Thus, no misconduct occurred regarding these statements.

incurred from interest and late fees before the loan was satisfied,[7] (4) Kristie responsible for half of the $28,362 hard money loan, (5) there was evidence to show that the parties agreed to split the $5,000 forbearance payment,[8] and (6) its prior order awarded attorney fees to Kent because Kristie had not listed the home for sale or purchased the estate's share.[9] Kent argues that

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[7]These first three contentions relate to the mortgage Walker took on the Las Vegas property. Even if these findings are incorrect, Kristie has not shown how these findings prejudiced her substantial rights. *Cf.* NRCP 61; *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (noting that an error is not harmless if the movant shows "that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"). Thus, any error is harmless.

[8]Kristie delineates two factual issues regarding the forbearance amount, however, the potential error is only shown when both are read together. Thus, we consider both potential issues as one issue.

Kristie argues that substantial evidence does not support the district court's finding that she had agreed to pay 50% of the $5,000 forbearance payment that Kent made. The district court relied on the settlement conference minutes to make this determination, which stated the parties would each pay half of any forbearance payments. While the minutes could be interpreted differently to not include the initial $5,000, the district court's interpretation is also supported by the minutes. Thus, there is evidence that a reasonable mind might accept as adequate to support the district court's decision. *See* EDCR 7.50 ("No agreement or stipulation between the parties or their attorneys will be effective unless the same shall, by consent, be entered in the minutes in the form of an order . . . .").

[9]Kristie argues that the district court abused its discretion when it found in the final order that its prior order awarded attorney fees to Kent because Kristie had not listed the home for sale or purchased the estate's share. The district court initially awarded attorney fees in an order issued in June 2018. The June 2018 order stated that fees were being awarded to the estate for its efforts to enforce the settlement agreement because Kristie reneged on it. The final order repeated that statement but clarified that Kristie had breached the agreement by not listing the home for sale. Thus,

the record supports the district court's allocations and any findings not supported by the record are harmless error. We disagree with Kristie.

"In a matter concerning probate, we defer to a district court's findings of fact and will only disturb them if they are not supported by substantial evidence." *Waldman v. Maini*, 124 Nev. 1121, 1129, 195 P.3d 850, 856 (2008). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *In re Estate of Bethurem*, 129 Nev. 869, 876, 313 P.3d 237, 242 (2013) (quoting *Winchell v. Schiff*, 124 Nev. 938, 944, 193 P.3d 946, 950 (2008)).

Here, the district court determined that Kristie and the estate should each be responsible for 50% of the hard money loan that Kristie borrowed to pay off Walker's mortgage on the Las Vegas property. Kristie recites the facts and challenges that decision, but she does not do so cogently because she provides no analysis or legal authority. Therefore, we do not consider her argument on this point. *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 that are not cogently argued).

The district court did not have authority to grant attorney fees

Kristie argues the narrow ground that the district court did not have authority to award attorney fees. Kent argues that the district court's award is supported by a number of statutes. However, the district court did not identify any statutes or their operative provisions in its final order and instead focused solely on Kristie's breach of the settlement agreement.

"Nevada follows the American rule that attorney fees may not be awarded absent a statute, rule, or contract authorizing such award." *Thomas*

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there is substantial evidence to support the district court's conclusion that the prior order (not the hearing transcript) authorized attorney fees.

v. City of N. Las Vegas, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). "[W]hen the attorney fees matter implicates questions of law, the proper review is de novo." *Id.*

A question of law is presented here to determine if the district court had the legal authority to award attorney fees pursuant to statute, rule or contract. The district court in its final order cited no legal authority but nevertheless awarded attorney fees due to Kristie's breach of the settlement agreement and the resulting enforcement action. Settlement agreements are contracts. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). However, the settlement agreement in this case did not include a provision that authorized such an award if a party breached the agreement. In fact, the only statement regarding attorney fees was that each party would bear their own fees and costs. Thus, the settlement agreement in this case did not give the district court authority to award attorney fees, and additionally, the statutes cited by Kent on appeal are inapplicable.[10] Therefore, we conclude

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[10]Kent lists NRS 150.030, NRS 150.060(1), SCR 155(1), and NRS 18.010 as possible bases for the award, even though the district court did not identify any of these statutes or invoke their operative provisions as a basis for the award. NRS 150.030 authorizes fees to a personal representative, not an attorney, and the payment would come from the estate. NRS 150.060(1) allows an attorney to obtain fees against an estate, but here the fees are being shifted to Kristie, a party. Kent cites to SCR 155(1), which is now Rule 1.5 in the Nevada Rules of Professional Conduct. We do not see how this rule authorizes the award of attorney fees in this case. Finally, Kent only mentioned NRS 18.010 in passing and did not cogently argue the point. NRS 18.010 allows attorney fees to a prevailing party if the party recovers less than $20,000 or if the losing party brought or maintained the claim with unreasonable grounds or in an effort to harass and the court makes findings to that effect. The estate recovered more than $20,000, and the court made no findings under this statute.

the district court erred,[11] and we reverse the award of attorney fees. Accordingly, we

ORDER the district court's order AFFIRMED IN PART and REVERSED IN PART.

_____, C.J.
Gibbons

_____, J.
Bulla

TAO, J., dissenting:

The majority concludes that the underlying matter was settled during a judicial settlement conference, and that the settlement was "entered into the record." But if it was, we don't have a copy of it before us to review. Based upon the record we do have, we don't know if there was a settlement agreement or not, and if there was, we don't know what its terms were (including any terms relating to awarding attorney fees). Without knowing those things, we have no way of reaching the merits of this appeal, and the proper outcome is simply to affirm, because when the "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). We

[11]We note that a written settlement agreement was prepared following the settlement conference, which contained an attorney fee provision, but the agreement was not signed by the parties and is not argued on appeal.

"cannot properly consider matters not appearing in th[e] record" and thus we have no way of determining whether a settlement was reached or what its terms might have been. *Johnson v. State*, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997).

The majority nonetheless bulldozes its way to its quite different conclusion by conflating two different things: it interprets the district court clerk's "minute order" of the settlement proceedings as the written settlement agreement itself. It even quotes from that "minute order" as if it were a formal written contract signed by the parties. But this is simply wrong. The governing local rule, EDCR 7.50, states that:

> **Rule 7.50. Stipulations to be in writing or to be entered in court minutes.** No agreement or stipulation between the parties or their attorneys will be effective unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same is in writing subscribed by the party against whom the same shall be alleged, or by the party's attorney.

See Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008) ("[t]o be valid, a stipulation requires mutual assent to its terms and either a signed writing by the party against whom the stipulation is offered or an entry into the court minutes in the form of an order.").

EDCR 7.50 encompasses some common-law terms. *Cf. Samantar v. Yousuf*, 560 U.S. 305, 320 n.13 (2010) ("Congress 'is understood to legislate against a back-ground of common-law . . . principles' "). "Minutes of the court" is a term of art, once common but rarely used today, that means: the official record of court proceedings. Things like trial transcripts and

written orders signed by the judge are not valid until officially "entered into the minutes of the court." *See Fox v. Fox*, 84 Nev. 368, 370, 441 P.2d 678, 679 (1968); *Elsman v. Elsman*, 54 Nev. 20, 2 P.2d 139, 141 (1931). The term goes all the way back before the founding of the state and it means that nothing becomes part of the official record unless so ordered "by the authority of the court." *See Gregory v. Frothington*, 1 Nev. 253, 1865 WL 1044 (1865) (analyzing whether hand-written reporters' notes were "minutes of the court" or not, and concluding that to be included within the "minutes of the court" it must have been ordered to be part of the record "by the authority of the court").

EDCR 7.50 adopts this age-old terminology and simply states that no settlement is effective until and unless it is entered into the official judicial record. It also adds two additional conditions before such a settlement is effective: it must be entered into the record "by consent" and further "in the form of an order." The majority assumes that all of this means to refer to a "minute order" prepared by the clerk's office. But that ignores the words of the rule, because a clerk's "minute order" meets none of these requirements: it is not reviewed, approved, or signed by the parties, and therefore it is not prepared or filed "by consent." Further, NRCP 77 delineates the powers of the county clerk, and clerks can only act on "matter[s] that do[] not require the court's action. " NRCP 77(c)(2)(D). That means that clerks do not possess the "authority of the court" to enter anything into the official judicial record, i.e., the minutes of the court.

More, a "minute order" prepared by the clerk is not "in the form of an order." The form and content of "orders" filed with the court are governed by a host of other rules, such as EDCR 7.21 (titled "Preparation of Orders"); EDCR 7.24 (titled "Filing Orders") which requires that "orders" must be "signed by a judge"; EDCR 7.26 (titled "Serving Orders and Other

Papers") which requires that orders must be served on opposing parties; and EDCR 7.14 (titled "Applications for Orders in Chambers") which also refers to orders being "signed by the judge." None of these rules relate to "minute orders" which are in a very different form than "orders" and which are prepared by the Office of the County Clerk and not signed by any judge. Indeed, the Nevada Supreme Court has stated, repeatedly, that "minute orders" prepared by the county clerk are not official records of proceedings which can be taken as either final or accurate. *See, e.g., Keene v. Santos*, 2017 WL 2558491, at *1 (unpublished); *Rust v. Clark Cty. School Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987); *Eggleston v. Stuart*, 2019 WL 245297, at*1 (unpublished), among many other citations. Numerous obvious and simple reasons lie behind this conclusion: first, a "minute order" is not, and does not even purport to be, a verbatim transcription of the proceedings; second, it is not written by either the presiding judge or by the parties, only by the county clerk who usually a non-lawyer; third, the "minute order" is not signed by the judge or by any party to the action; fourth, the local rules do not provide for any method of amending or revising the "minute order" in the event it contains inaccuracies, even gross inaccuracies; fifth, the clerk's "minute order" is not officially certified in the way that an official transcript is (see NRCP 80); and finally, the "minute order" is not prepared until after the proceedings have concluded and the parties and their attorneys have left the courtroom, so that the parties have no opportunity to review, edit, or even comment on it before the clerk files it.

By nonetheless interpreting EDCR 7.50 to refer to a "minute order" prepared by the county clerk rather than an "order" signed by a judge, the majority ignores not only the text of EDCR 7.50 itself, but the text of all of these other rules that clearly differentiate a judicial "order" from a clerk's

"minute order." And it does more beyond that: it ignores principles of contract law as well.

A settlement agreement is a form of contract recognized under Nevada law. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Like other contracts, the construction and enforcement of a settlement agreement are "governed by principles of contract law." *Id.* The majority treats the "minute order" as the "writing" embodying the terms of the settlement otherwise orally negotiated on the figurative courthouse steps (but more realistically, probably in the hallway outside of the courtroom). But minute orders prepared by the clerk have so little legal importance that NRCP 77(c) expressly permits judges to "suspend, alter, or rescind" them. NRCP 77(c). This rule is totally incompatible with the idea that "minute orders" prepared by the clerk can serve as contractual writings under EDCR 7.50. The words "suspend" or "alter" make no sense as applied to contracts, because courts have no power to do either thing with a binding contractual writing. "The court has no authority to alter the terms of an unambiguous contract." *Canfora v. Coast Hotels and Casinos Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). "Rescission" is a term of art in contract law that refers to judicial invalidation of the contract such that "there is no longer any contract to enforce." *Awada v. Shuffle Master Inc.*, 123 Nev. 613, 623, 173 P.3d 707, 713 (2007). The words of NRCP 77(c)(2)(D) make no sense at all when applied to contractual writings, which alone demonstrates that "minute orders" prepared by the clerk were never designed to serve as such writings under EDCR 7.50 or any other local rule.

And there's more. Under contract law, a "writing" that supposedly embodies the terms of the contract is invalid unless "subscribed or endorsed" by the contracting parties, meaning that it must be signed by the party being charged. *See* John D. Calamari & Joseph D. Perillo,

Contracts, §19–31 at 822 (West 3d ed. 1987). But neither party signs a clerk's "minute order," which means that if it is a "writing" at all, it is an unsigned and unendorsed one with no legal validity.

Moreover, in the event that a dispute arises over the contract's meaning, the writing must be admitted into evidence to be considered by the finder of fact, which means that it must be properly authenticated under the rules of evidence. *See* NRS 52.015 (rule of authentication).

> In order to lay the foundation for receipt of a document in evidence, the party offering the exhibit must provide the "testimony of a witness with personal knowledge of the facts who attests to the identity and due execution of the document and, where appropriate, its delivery." In other words, the affiant must state specific facts from which the court could infer the affiant could identify correctly the document and knows the attachment is a true and correct copy of the genuine document.

Garcia v. Fannie Mae, 794 F.Supp.2d 1155, 1162 (D.Or. 2011), quoting *United States v. Dibble*, 429 F.2d 598, 602 (9th Cir. 1970). But what witness could possibly have personal knowledge regarding the execution and delivery of a clerk's "minute order"? I can think of nobody other than the county clerk who drafted the minutes. If the majority is correct that a clerk's "minute order" is a contractual writing, then in every breach of contract suit, the county clerk must be available to testify in person to authenticate it. That's nonsense. By contrast, actual "orders" signed by a judge need not be authenticated via a live witness, because officially signed judicial decrees are self-authenticating. *See* NRS 52.125; *see also* 31 Charles Alan Wright & Victor James Gold, *Federal Practice and Procedure: Federal Rules of Evidence* § 7142, at 259 (1st ed. 2000) (discussing Fed.R.Evid. 902(8), an

earlier draft of which Nevada adopted, with slight modifications, as NRS 52.165). EDCR 7.50 makes perfect sense when applied to judicial orders signed by a judge, but much less sense when applied to the county clerk's "minute orders." That says a lot about what EDCR 7.50 actually means.

Further, beyond authentication, in such a suit for breach, in the event of an ambiguity in any term contained in the writing the court must consider "parol evidence" regarding its meaning. *See Galardi v. Naples Polaris LLC*, 129 Nev. 306, 301 P.3d 364 (2013); *Anvui LLC v. G.L. Dragon LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007). So the county clerk must not only authenticate the writing, but be able to testify to its substantive meaning as well. Then, if the parol evidence does not dispose of the ambiguity, the court turns to rules of construction, including the rule that ambiguities must be construed against the "drafter" of the document. *See Anvui LLC v. G.L. Dragon LLC*, 123 Nev. at 215, 163 P.3d at 407. But the "drafter" of the "minute order" was the clerk, not either one of the parties — and what does it mean to construe the ambiguity against the clerk? By contrast, there is a mechanism by which a judicial order signed by a judge can be interpreted without needing to subpoena odd witnesses like the county clerk: "[a] district court of the state has inherent power to construe its judgments and decrees for the purposes of removing any ambiguity." *Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977). If the judge who signed it is the judge presiding over the action, that judge certainly knows the meaning of what he signed; and if the action is pending before another judge, the parties may file a motion with the signing judge seeking clarification of the judicial order. *Id.*

From all of this, the logical conclusion is clear: a clerk's "minute order" cannot serve as a contractual writing evidencing a settlement agreement under EDCR 7.50. But the appellant has not provided any other

writing that evidences the terms of such an agreement as required by that rule. Without any such writing, we cannot conclude that the matter was ever properly settled. And without being able to reach that conclusion, we cannot reach any other question in this appeal based upon an incomplete record missing perhaps the most critical documents of all. The only possible outcome of this appeal is affirmance, simply because we "cannot properly consider matters not appearing in th[e] record." *Johnson v. State*, 113 Nev. at 776, 942 P.2d at 170. I respectfully dissent and would simply affirm without reaching the merits.

_____, J.
Tao

cc: Hon. Gloria Sturman, District Judge
Accolade Law
Cary Colt Payne
Eighth District Court Clerk