

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JANE DOE,
Appellant,
vs.
RICHARD ROE,
Respondent.

No. 80002-COA

FILED

SEP 16 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jane Doe appeals a district court order granting respondent's Motion to Enforce Settlement Agreement.¹ Eighth Judicial District Court, Clark County; James Crockett, Judge.

In November 2017, appellant Jane Doe filed a complaint against respondent Richard Roe, alleging that he knowingly transmitted an incurable sexually transmitted disease to her. Doe asserted several causes of action relating to this allegation (the Tort Litigation).² Doe and Roe are also involved in an ongoing family court case regarding custody of their young daughter (the Custody Litigation). The family court has entered an order requiring both parties to equally share their daughter's medical expenses.

In December 2018, Doe and Roe participated in a judicial settlement conference in which they reached an agreement to settle the Tort Litigation (the Agreement). The following terms were agreed upon and stated on the record in open court at the settlement conference: (1) Roe would pay Doe a certain sum of money; (2) Doe would deposit a portion of that sum into

¹The Honorable Bonnie Bulla, Judge, voluntarily recused herself from participation in the decision of this matter.

²This case has been filed under seal, apparently due to the nature of the underlying litigation. However, we do not recount the facts except as necessary for our disposition.

a college savings account for their daughter; and (3) there would be a global release of all known and unknown claims that accrued to date.

Soon after the settlement conference, Roe's counsel sent Doe's counsel a draft of the settlement agreement (the Release). The Release contained the terms agreed to at the settlement conference. It also contained language that expressly excluded the custody litigation from the released claims. Doe's counsel responded that pending Doe's approval, her only recommended change to the Release was to allow Doe 15 days to deposit the funds into the child's college savings account. Roe's counsel confirmed this change and thereafter did not hear from Doe's counsel. After about a month had passed, Doe's counsel responded that there had been no meeting of the minds as to the Agreement and the contract was therefore void as a matter of law.

Roe thereafter filed a Motion to Enforce Settlement, to which Doe responded with her own Motion to Vacate Settlement Agreement. Roe argued that despite Doe's refusal to execute the Release, the material terms of the Agreement were enforceable. Conversely, Doe argued that there was no meeting of the minds because Roe's words and conduct after the conference demonstrated that he was unilaterally imposing an additional essential term—that the Agreement relieved him from other financial obligations owed to Doe and their daughter.

In support of her Motion to Vacate Settlement Agreement, Doe submitted a declaration, describing three subsequent incidents that she claimed proved there was no meeting of the minds at the settlement conference. First, Doe alleges that at a custody exchange at a Target store, their daughter asked Roe to buy her a toy, which Roe refused. Roe allegedly stated that Doe should buy it instead because of the settlement. Second, Doe alleges that Roe informed her that he wanted to go out of town, so Doe would

have to watch their daughter. Doe asked Roe for money to cover childcare costs for the unexpected trip and Roe refused. In that instance, Roe texted Doe, saying "In 3 days, you are getting \$[AMOUNT] from the settlement."³ Third, Doe requested that Roe pay her \$30 for vitamins and medicine for their daughter pursuant to the family court order that they equally share the costs of medical expenses. Doe alleges that Roe refused, and that he said, "You're going to be getting a big check from me soon anyway. Take it out of that." The only evidence submitted to support her allegation about this statement related to medical expenses is Doe's declaration. In Roe's opposition, he submitted his own declaration, generally denying all of Doe's allegations.

The district court held a hearing and granted Roe's Motion to Enforce Settlement, but denied his request for attorney fees.⁴ The district court found that the parties agreed to all material terms of the Agreement at the settlement conference and that those terms were reduced to a writing that was substantively agreed to by counsel, although not signed. The court considered the express carve-outs of the custody litigation in the Release. During the hearing, the court noted that the tort settlement would not abrogate Roe's obligations under the family court order. The court found that, considering the parties' competing declarations and the undisputed material terms agreed upon at the settlement conference, there was substantial evidence to find an enforceable contract and Doe failed to prove there was no meeting of the minds.

³Doe redacted the text message in her court filings.

⁴The motion was heard and ruled on by Judge Rob Bare, who also served as the settlement judge in this case. Doe's motion to vacate was also denied.

On appeal, Doe contends that the district court's ruling was clearly erroneous. She does not argue anything related to the nature of the conference, the placement of the settlement on the record, or the written but unsigned agreement. Instead, she argues that Roe's words and conduct after the settlement conference prove that he imposed a new essential term that was not agreed upon. She asserts that the Agreement is therefore unenforceable for lack of meeting of the minds and should be treated as if it never legally existed. We disagree.

A settlement agreement is a contract. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Whether a contract exists presents a question of fact, which requires the reviewing 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. "A finding is clearly erroneous when although there is substantial evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). Furthermore, "when the evidence conflicts, we will not disturb the factual findings of the trial court." *Sutherland v. Gross*, 105 Nev. 192, 196, 772 P.2d 1287, 1289-90 (1989).

An enforceable contract requires an offer and acceptance, meeting of the minds, and consideration. *May*, 121 Nev. at 672, 119 P.3d at 1257. A contract may be formed "when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later." *Id.* Once the material terms are agreed upon and placed on the

record, those terms are valid and enforceable. See DCR 16 (stating an agreement entered into during proceedings is enforceable only if it is in the minutes or in a signed writing); EDCR 7.50 (same); *Grisham v. Grisham*, 128 Nev. 679, 683, 289 P.3d 230, 233 (2012).

“A meeting of the minds exists when the parties have agreed upon the contract’s essential terms.” *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378, 23 P.3d 250, 255 (2012). “Which terms are essential ‘depends on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought.” *Id.* (quoting Restatement (Second) of Contracts § 131cmt. g (1981)).

Doe argues that the district court’s factual finding was clearly erroneous because there was no meeting of the minds to the Agreement. The parties did not agree to the purported term that Roe was relieved of other financial obligations and his subsequent conduct proved the existence of the term. She claims that Roe withheld money that he would otherwise be obligated to pay on the explicit basis that Doe would receive the settlement check.

The district court based its finding on the following evidence: (1) statements made at the settlement conference; (2) the drafted but unsigned Release; (3) the declarations of the parties; and (4) argument at the hearing which demonstrated that the only dispute was as to the alleged subsequent conduct.

At the settlement conference, the parties agreed that Roe would pay a sum of money to Doe, Doe would then deposit a portion of that into a college savings account for their daughter, and the parties would release claims against each other. There was no mention of the custody litigation on the record at the settlement conference; but, at the hearing, the court noted that it was always a term that the Agreement would not relieve Roe of

financial obligations owed to his daughter because of the family court order and policy that parents are obligated to support their children. *See* NRS 125B.020. Additionally, the drafted but unsigned Release contained the material terms agreed upon at the settlement conference. It also contained provisions that explicitly excluded the custody litigation from the release of claims. The parties substantially agreed to the language of the draft Agreement. Furthermore, in their motions below, at the hearing, and in their briefing, both parties argue that there is no term of the Agreement that relieves Roe of financial obligations owed to Doe and their daughter. Therefore, the district court had substantial evidence to support the finding of a valid and enforceable Agreement and the finding was not clearly erroneous.

The district court also considered the declarations submitted by both parties. Of particular importance in Doe's declaration is her allegation that Roe refused to pay his share of their daughter's healthcare expenses when Doe asked, which violated the family court order, and he specifically told Doe to take the funds out of the settlement. This allegation is supported only by Doe's declaration. Roe submitted his own declaration in which he denied the allegation and stated that he did not believe the Agreement excused him from his child support obligations.⁵ Roe repeated this belief, through counsel, at the hearing on the motions. The district court considered Doe's allegations and found that Doe did not present sufficient evidence to prove that Roe was unilaterally imposing an additional term to the Agreement. This decision was based on substantial evidence.

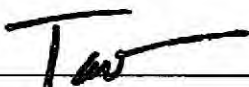
⁵The district court correctly noted at the hearing that if Roe was not complying with the family court order, then the family court would have jurisdiction to resolve the issue and the Agreement would not affect the family court order.

Doe also argues that the district court's factual finding was clearly erroneous because Nevada law provides that the subsequent addition of a material term by one party prevents a meeting of the minds. For this argument, Doe relies solely on *Posner v. Tassely*, Docket No. 63326, (Order of Affirmance, January 9, 2015).⁶ The argument, however, is a challenge to the district court's factual finding that there was no subsequent additional material term. The court's finding was supported by substantial evidence, and therefore, we will defer to it. See *May*, 121 Nev. at 672-73, 119 P.3d at 1257.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao

cc: Hon. James Crockett, District Judge
Hon. Rob Bare, District Judge
Sharp Law Center
Bighorn Law/Las Vegas
Holley Driggs/Las Vegas
Eighth District Court Clerk

⁶NRAP 36(c)(3) provides that "[a] party may cite for its persuasive value, if any, an unpublished disposition issued by the Supreme Court on or after January 1, 2016." If the disposition was issued before January 1, 2016, it cannot be relied upon in arguments, and therefore, we do not consider it. See *id.* Roe requested that Doe be sanctioned or reprimanded for her citation to *Posner* in violation of NRAP 36(c)(3). Counsel is reminded to cite to only mandatory or persuasive authority as allowed by the rule. We decline, however, to impose sanctions in this instance.