IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLEN CRANE, AN INDIVIDUAL,
Appellant,
vs.
VICTOR MAROLF, AN INDIVIDUAL; AND LAS VEGAS PIZZA, LLC, D/B/A PIZZA HUT, A WASHINGTON LIMITED LIABILITY COMPANY,
Respondents.

No. 80591-COA

FILED

APR 28 2021

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

ORDER OF AFFIRMANCE

Allen Crane appeals from a post-judgment order on a motion for attorney fees and costs in a tort action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

While working as a pizza delivery driver, Victor Marolf backed into Crane's vehicle, injuring Crane.[1] Crane filed a complaint against Marolf and his employer, Las Vegas Pizza (LV Pizza), alleging various theories of negligence and negligent hiring and supervision. The case was placed into the court-annexed arbitration program. Prior to arbitration, Crane served a $15,000 offer of judgment on Marolf and LV Pizza that Marolf and LV Pizza rejected.

Crane prevailed at arbitration, and the arbitrator awarded him $15,055.47. Subsequently, Marolf requested a trial de novo, and Crane removed the case from the short trial program. The case was transferred to district court and set for trial. Before trial, however, the parties stipulated "that the trial can proceed under a one-day, [s]hort trial format before" the district court judge. The trial was conducted in accordance with the Nevada

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

Short Trial Rules (NSTR), and a four-person jury returned a verdict for Crane in the amount of $21,295.86.

Because the verdict exceeded his offer of judgment, Crane moved the district court for the full amount of his attorney fees and costs pursuant to NRCP 68, without NSTR 27's required caps. At the hearing on the motion, Crane argued that although the parties agreed to the short trial format, the stipulation was not intended to apply all the short trial rules, particularly any rule that would limit recovery of his attorney fees and expert witness fees. The district court ultimately determined that the parties intended to apply the short trial rules in whole, making the caps on fees and costs applicable. The district court awarded Crane his attorney fees pursuant to NRCP 68[2] and his costs pursuant to NRS 18.020, but reduced both pursuant to NSTR 27. Crane now appeals.

On appeal, Crane argues that the district court erred in interpreting the parties' stipulation. Specifically, he contends that the parties intended only to apply the procedural rules of NSTR, not the rules that would cap an award of attorney fees and expert witness fees.[3] Thus,

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[2]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. To Update & Revise the Nev. Rules of Civil Procedure*, ADKT 0522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018) ("[T]his amendment to the [NRCP] shall be effective prospectively on March 1, 2019, as to all pending cases and cases initiated after that date."). Here, the offer of judgment was served prior to March 1, 2019, and accordingly we apply the pre-amendment version of the rule—although we note that the result is the same under the current rule because the amendments did not substantively alter the rule.

[3]To the extent that Crane argues that this court should limit its review to only the "original" parties, we find this argument unpersuasive. Because the "subsequent" parties in this case acted under the stipulation,

Crane avers that the district court erred in not awarding the full amount of his attorney fees and costs. We disagree and therefore affirm.

"A written stipulation is a species of contract" and is generally interpreted under contract principles. *DeChambeau v. Balkenbush*, 134 Nev. 625, 628, 431 P.3d 359, 361 (Ct. App. 2018). "Contract interpretation is a question of law, which this court reviews de novo." *See Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1115, 197 P.3d 1032, 1041 (2008).

If a stipulation's terms are ambiguous, this court will utilize extrinsic evidence, parol evidence, and traditional rules of construction to resolve the ambiguity. *See generally M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913-14, 193 P.3d 536, 544-45 (2008). A contract is ambiguous only if its terms may reasonably be interpreted in more than one way. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007); *see also Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) ("[A]n ambiguous contract is an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." (internal citations and quotations omitted)).

When the court determines that a term or contract is ambiguous, parol evidence is admissible to determine the true intent of the parties. *State ex rel. List v. Courtesy Motors*, 95 Nev. 103, 106-07, 590 P.2d

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they ratified the agreement by performing under its terms, and were thereby bound to it in the same manner as the original parties. *See Merrill v. DeMott*, 113 Nev. 1390, 1397, 951 P.2d 1040, 1044 (1997) ("Generally, contract ratification is the adoption of a previously formed contract . . . and by the very act of ratification the party affirming becomes bound by it and entitled to all proper benefits from it." (internal citations and quotations omitted)). Therefore, we conclude that this argument lacks merit.

163, 165-66 (1979). Thus, the court may look to the circumstances surrounding the execution of the contract and the parties' subsequent acts or declarations to interpret unclear contract provisions. *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003). However, courts may not use parol evidence to "add to, subtract from, vary, or contradict" the words of the contract itself. *See M.C. Multi-Family Dev.*, 124 Nev. at 913-14, 193 P.3d at 544-45; *see also All Star Bonding v. State*, 119 Nev. 47, 49, 62 P.3d 1124, 1125 (2003) (providing that "[n]either a court of law nor a court of equity can interpolate in a contract what the contract does not contain").

Here, the parties disagree as to the meaning of the phrase "[s]hort trial format" as it relates to the provision "under a one day, [s]hort trial format before [the district court]." However, that the parties disagree as to the clause's meaning does not render it ambiguous. *Galardi*, 129 Nev. at 309, 301 P.3d at 366 (providing that "ambiguity does not arise simply because the parties disagree on how to interpret their contract"). Indeed, the most natural reading of the clause suggests that the parties agreed to a short trial, including the use of the NSTR, but with a district court judge presiding over the proceeding rather than a judge pro tempore. Thus, the clause does not appear susceptible to more than one *reasonable* interpretation.

Nevertheless, assuming without deciding that the provision is ambiguous, we detect no error in the district court's ruling. Here, the district court looked at the parties' pre- and post-stipulation conduct, including an informal meeting clarifying the application of the NSTR to the instant trial, and determined that the parties intended the short trial rules

to apply in whole.[4] This conclusion is further supported by the fact that, without objection by either party, the district court applied the short trial rules when resolving motions in limine, selecting a jury, and admitting expert evidence. Thus, the record on appeal supports the district court's conclusion that the parties intended to apply the short trial rules wholesale.

Moreover, Crane's preferred interpretation necessarily involves supplementing the written instrument, which the parol evidence rule and our jurisprudence prohibit. *M.C. Multi-Family Dev.*, 124 Nev. at 913-14, 193 P.3d at 544-45. This is so because the clause in question is silent as to attorney fees, expert fees, and costs; thus, to interpret the clause as Crane desires would require this court to "interpolate in [the] contract what the contract does not contain," and we decline to do so. *All Star Bonding*, 119 Nev. at 49, 62 P.3d at 1125. Further, such interpolation is especially problematic in this case because the short trial rules specifically authorize the parties to avoid its caps via stipulation. NSTR 27(b)(4)-(5) (permitting parties to stipulate to greater awards related to attorney fees and expert fees). That the parties failed to make such an agreement strongly indicates that they did not intend to circumvent the short trial caps for attorney fees and expert witness fees, especially where the rules expressly authorize such circumvention by stipulation. Therefore, we conclude that the district court did not err in concluding that the NSTR applied in their entirety, nor did

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[4]Apparently, the district court conducted an informal meeting with the parties in advance of trial where it printed out the NSTR and stated that it intended to clarify the application of the rules to the trial. During the meeting, neither party objected to the NSTR governing the proceedings, nor did the parties expressly exclude any of the rules.

the court err in imposing the caps related to attorney fees and costs pursuant to NSTR 27(b).[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]

Gibbons, C.J.

Tao, J.

Bulla, J.

cc: Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Department 32, Eighth Judicial District Court
Settlement Judge John Walter Boyer
Powers Law
The Galliher Law Firm
Grant & Associates
Winner & Sherrod
Eighth District Court Clerk

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[5]LV Pizza argues that the offer of judgment was invalid because it failed to comport with the requirements of NRCP 68(c). We conclude that this issue is not properly before this court for two reasons. First, because the district court ordered only Marolf to pay Crane's attorney fees, LV Pizza is not an aggrieved party and therefore lacks standing to challenge the validity of the attorney fees award. *See* NRAP 3A(a). Second, and more important, this court lacks jurisdiction to consider this contention because LV Pizza is the respondent and did not file a cross-appeal. *See Sierra Creek Ranch, Inc. v. J. I. Case*, 97 Nev. 457, 460, 634 P.2d 458, 460 (1981).

[6]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.