

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUDITH SALTER, INDIVIDUALLY;
JOSHUA KANER, INDIVIDUALLY;
AND JOSHUA KANER AS GUARDIAN
AND NATURAL PARENT OF SYDNEY
KANER, A MINOR,
Appellants,
vs.
EDWARD RODRIGUEZ MOYA, AN
INDIVIDUAL; AND BERENICE
DOMENZAIN-RODRIGUEZ, AN
INDIVIDUAL,
Respondents.

No. 83239-COA

FILED

MAY 18 2022

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

ORDER OF REVERSAL AND REMAND

Judith Salter and Joshua Kaner, individually and as guardian of Sydney Kaner, a minor, (collectively appellants) appeal from a district court order granting reconsideration of an order denying a motion to enforce a settlement agreement, granting the motion to enforce the settlement agreement, and dismissing their case. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

In July 2020, respondent Edward Rodriguez Moya was driving in Las Vegas when he allegedly rear-ended a vehicle that was stopped at an intersection.¹ Appellants were in the vehicle that Moya rear-ended, and all alleged injuries as a result of the accident. Moya and respondent Berenice Domenzain-Rodriguez, the owner of the vehicle, were insured through GEICO Advantage Insurance Company. Moya and Domenzain-Rodriguez

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

carried one auto insurance policy with liability coverage limits of \$25,000 per individual and \$50,000 per incident.

On October 22, 2020, during the prelitigation phase, appellants through their attorneys extended a written settlement offer to GEICO. The terms of the offer expressly required acceptance by performance only. The settlement offer stated in relevant part the following:

This offer expires on November 23, 2020 at 1:00 p.m., Pacific Time. *This offer can only be accepted by the following performance, accomplished prior to the expiration of this offer: 1) Receipt of \$50,000 (the global policy limits of this policy) in my office, payable to "Price Beckstrom, PLLC, Judith Salter, Joshua Kaner, and Sydney Kaner."*

(Emphasis added.) The offer also indicated that "all funds attributable to minor Sydney Kaner will be held in trust until an order is issued from the appropriate court compromising the minor's claim, and at such time the funds will be distributed as ordered by the court."

On November 12, 2020, GEICO sent the following letter—which did not reference the October 22 settlement offer—to appellants' counsel:

At this time, we are extending an offer of the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.

Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.

Please note that all parties must agree to settlement before we can issue payments. We will coordinate with all parties to assist in the

agreement and anticipated resolution to include the utilization of a mediator if necessary.

(Emphasis added.)

On December 1, 2020, after the November 23 deadline for accepting appellants' offer passed, appellants responded to GEICO, indicating that they were declining what they perceived to be a counteroffer set forth in the November 12 letter. Appellants then filed suit, and Moya brought a motion to enforce the settlement agreement and to dismiss appellants' case, arguing that GEICO's November 12 letter was a valid acceptance of appellants' offer. Appellants filed an opposition to the motion, arguing that their settlement offer could only be accepted by performance, which did not occur. Further, appellants asserted that GEICO's November 12 letter included additional terms beyond those contained in their initial offer and therefore was a counteroffer, which appellants rejected. Thus, appellants reasoned, the parties did not have a settlement agreement to enforce.

The district court issued an order denying the motion to enforce, finding that appellants "served an unambiguous pre-litigation settlement offer to [GEICO] on October 22, 2020, requiring acceptance by performance" and that it was "undisputed that [respondents] did not provide payment in the manner specified prior to the deadline." Accordingly, the district court determined that "the essential element of acceptance [was] not present to form an enforceable contract."

Subsequently, respondents filed a motion for reconsideration arguing that the district court's initial order was clearly erroneous. Specifically, they argued that the district court failed to consider that GEICO's November 12 letter was not a renunciation of the material terms of the offered contract, but rather a manifestation of its assent to the

material terms—settlement of all three claims for \$50,000—with a request for information regarding the distribution, purportedly to comply with Nevada law (specifically, NRS 485.185 and NRS 41.200). Appellants filed an opposition to the motion for reconsideration, once again contending that the settlement offer specified acceptance by performance and that respondents failed to perform. The district court held a hearing and granted the motion for reconsideration, finding its initial order to be clearly erroneous. The district court found that GEICO’s November 12 letter “expressed an acceptance of plaintiffs’ material terms as articulated in the Plaintiff[s] Settlement Offer dated October 22.” The district court further determined that performance in accordance with appellants’ offer was impossible. The district court reasoned that the November 12 letter “requested guidance on the distribution of settlement funds and issuance of settlement drafts such that without response and guidance from the plaintiffs’ counsel, it was impossible for Defendants to perform under the Agreement.” The district court ultimately enforced the settlement and dismissed appellants’ case. This appeal followed.

On appeal, appellants contend that the district court erred in finding that a settlement agreement was formed, given that there was no valid acceptance by performance and the additional information requested by GEICO in its November 12 letter constituted a counteroffer, which was rejected. Conversely, respondents argue that the district court properly determined that a valid and enforceable contract was formed because the parties agreed to the essential or material terms for a settlement and that GEICO’s November 12 correspondence was not a counteroffer but rather a request for additional information to facilitate the settlement and comply with Nevada law. In turn, appellants argue that GEICO was able to

perform in the manner required by their offer and that the district court erred in deciding otherwise.

We review a district court order granting a motion to enforce a settlement agreement for an abuse of discretion. *See Grisham v. Grisham*, 128 Nev. 679, 686, 289 P.3d 230, 235 (2012). A district court abuses its discretion when its decision rests on a clearly erroneous interpretation of law. *See State v. Eighth Judicial Dist. Court*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (providing that “[a] manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule” (alteration and internal quotation marks omitted)); *In re Guardianship of B.A.A.R.*, 136 Nev. 494, 496, 474 P.3d 838, 841 (Ct. App. 2020) (noting that, even under an abuse-of-discretion standard, “we owe no deference to legal error”).

Here, in granting respondents’ motion to enforce the settlement agreement, the district court determined that it was impossible for respondents to comply with the mode of acceptance set forth in appellants’ settlement offer (i.e., tendering a check for \$50,000, payable to appellants and their counsel, by the specified date and without any of the assurances regarding the distribution of the funds requested by GEICO). *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (providing that, in order to form a settlement contract, the parties must agree to all material terms). But the only legal authorities that respondents offer in support of the district court’s decision on this point—NRS 485.185 and NRS 41.200—do not support the court’s decision and having found neither additional support in the record nor any other persuasive authority, we therefore reverse.

Although respondents contend that NRS 485.185 prevented GEICO from accepting the settlement as specified by delivering a single check, we disagree. NRS 485.185 requires mandatory insurance coverage for owners of motor vehicles in Nevada, but does not address the settlement of claims, nor does it prohibit settlement with multiple plaintiffs by delivering a single settlement check.²

Further, to the extent respondents contend that NRS 41.200 prevented GEICO from accepting the settlement offer in the specified manner and executing a single check, we also disagree. NRS 41.200 sets forth the requirements for a parent or guardian to petition the court to approve a minor's claim against a third party by establishing a blocked financial investment account to hold the proceeds of the compromise until

²NRS 485.185 states

1. Except as otherwise provided in subsection 2, every owner of a motor vehicle which is registered or required to be registered in this State shall continuously provide, while the motor vehicle is present or registered in this State, insurance provided by an insurance company licensed by the Division of Insurance of the Department of Business and Industry and approved to do business in this State:

(a) In the amount of \$25,000 for bodily injury to or death of one person in any one crash;

(b) Subject to the limit for one person, in the amount of \$50,000 for bodily injury to or death of two or more persons in any one crash; and

(c) In the amount of \$20,000 for injury to or destruction of property of others in any one crash, for the payment of tort liabilities arising from the maintenance or use of the motor vehicle.

the minor reaches majority.³ See *Haley v. Eighth Judicial Dist. Court*, 128 Nev. 171, 177, 273 P.3d 855, 860 (2012) (noting that “NRS 41.200 allows the district court to assess the reasonableness of a petition to approve the compromise of a minor’s claim and to ensure that approval of the proposed compromise is in the minor’s best interest”). The district court’s review of a petition to approve the compromise of a minor’s claim “necessarily entails the authority to review each portion of the proposed compromise for reasonableness and to adjust the terms of the settlement accordingly, including the fees and costs to be taken from the minor’s recovery.” *Id.* Thus, this statute does not require that a separate settlement check be payable to the minor, only that the petitioner seeking approval of a minor’s compromise designate a settlement amount for the court to consider. Importantly, the statute does not prohibit the mode of acceptance specified in appellants’ global offer—delivery of one settlement check to resolve all three claims. Thus, the district court’s reliance on respondents’ arguments related to NRS 485.185 and NRS 41.200 in determining that the performance requirement was impossible was clearly erroneous.

Because the district court’s decision to grant the motion to enforce the settlement agreement and dismiss the case relied in part upon this clearly erroneous interpretation of law, we cannot determine whether the district court would have reconsidered its initial order in the absence of such error. We therefore reverse the dismissal and remand for further consideration of whether the parties had agreed to all material terms of the settlement such that reconsideration of the original order would be

³Under Nevada law, a parent or guardian must seek the court’s approval to compromise a disputed claim held by a minor by filing a verified petition in writing. NRS 41.200.

warranted. *Cf. B.A.A.R.*, 136 Nev. at 500, 474 P.3d at 844 (reversing and remanding because it was “not clear that the district court would have reached the same conclusion on [a motion] had it [correctly] applied the [law]”). Accordingly, we take no position as to whether the district court correctly denied the motion to enforce before granting it, or whether the parties entered into an enforceable settlement agreement.

Quite apart from the impossibility determination discussed above, with respect to the district court’s finding that the parties had agreed to all material terms of the settlement, we note that it failed to adequately explain why it believed each of the non-agreed-upon items in the correspondence between appellants and GEICO were immaterial to the settlement. This frustrates our review of the issue, especially because “the question of whether a contract exists is one of fact,” *May*, 121 Nev. at 672, 119 P.3d at 1257, as is the question of materiality if reasonable minds may differ. *See Powers v. United Servs. Auto. Ass’n*, 115 Nev. 38, 44, 979 P.2d 1286, 1289 (1999); *see also Ryan’s Express Transp. Servs. Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well-suited to make factual determinations in the first instance.”).


Thus, on remand, we remind the district court that the party asserting the defense of settlement “bear[s] the burden of proof [to] clearly establish that there was a meeting of the minds of the parties,” *Pederson v. First Nat’l Bank of Nev.*, 93 Nev. 388, 392, 566 P.2d 89, 92 (1977), and to the extent there is a question of fact as to whether the parties entered into an enforceable settlement agreement, the district court may wish to conduct an evidentiary hearing on this issue. *See State, Dep’t of Transp. v. Eighth Judicial Dist. Court*, No. 69238, 2017 WL 962445, at *1 (Nev. Mar. 10, 2017)

(Order Granting Petition in Part and Denying Petition in Part) (noting that “[c]ourts should not summarily enforce [or disregard] a settlement agreement, in the absence of an evidentiary hearing, where material facts concerning the existence or terms of an agreement to settle are in dispute,” and instructing the district court to conduct an evidentiary hearing to determine whether additional terms in a settlement agreement were material and therefore constituted a counteroffer (second alteration in original) (quoting *Maya Swimwear Corp. v. Maya Swimwear, LLC*, 855 F. Supp. 2d 229, 234 (D. Del. 2012))).

In light of the foregoing, 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.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Kristine M. Kuzemka, Settlement Judge
Price Beckstrom, PLLC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk