IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CONRAD ROBERSON,
Appellant,
vs.
HEIDI ROBERSON, N/K/A HEIDI CORRALES,
Respondent.

No. 85635-COA

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Conrad Roberson appeals from a post-divorce-decree district court order denying a motion to modify a divorce decree and a motion to modify custody in a family matter. Second Judicial District Court, Washoe County; Robert E. Estes, Senior Judge.

Conrad and respondent Heidi Roberson, n/k/a Heidi Corrales, have two minor children together, G.R., born in 2006, and J.R., born in 2010. Heidi filed for divorce in 2018 and extensive litigation between the parties ensued. The case ultimately proceeded to trial in 2021. On the fourth day of trial, the parties informed the court that they had reached a "full and final" settlement agreement and placed the terms on the record. With regard to relocation, Conrad's attorney stated that Heidi was expected to relocate and that was agreed upon, "so long as the children are okay with it and they sit down and decide as a family." But later in the hearing, the parties agreed that Heidi would relocate to Arizona and that they would sit down with the children and "let them know they reached an agreement that

is going to involve relocation," that they "mutually" came to this agreement, and that they agreed relocation was in the children's best interest. The parties further agreed to share joint legal custody and joint physical custody until Heidi relocated with the children, at which point she would have primary physical custody subject to Conrad's parenting time. The parties agreed that Heidi's attorney would draft the proposed decree, Conrad's attorney would redline it, and then the court could "put in it or take out what [it] want[s]."

Following the settlement hearing, Heidi's attorney drafted a proposed decree. In pertinent part, Heidi's proposed decree provided that "[p]ending [Heidi's] relocation to Arizona with the children expected in December 2021 . . . the parties shall continue to share joint physical custody of the minor children." The proposed decree further provided that, "[Conrad] hereby consents to [Heidi] relocating with the children to the State of Arizona . . . . It is expected for [Heidi's] relocation to occur during the children's school break in December 2021."

Prior to submitting the proposed decree to the court, Conrad's counsel suggested the following revisions to the aforementioned provisions: "[p]ending [Heidi's] relocation to Arizona with the children expected in December 2021 *or at the end of the current school year in 2022, depending upon the discussion of the parents with the children,*" and "[Conrad] hereby consents to [Heidi] relocating with the children to the State of Arizona . . . . It is expected for [Heidi's] relocation to occur during the children's school break in December 2021 *or at the end of the school year based on the children's preferences.*" (Emphasis added).

Because the parties could not agree on the italicized language set forth above, Heidi submitted her proposed decree to the district court, and Conrad submitted a letter with suggested edits. Conrad's letter noted Heidi's proposed decree stated "[p]ending [Heidi's] relocation to Arizona with the children expected in December 2021" and suggested adding "or at the end of the current school year in June 2022, upon consultation and consideration of the children's desires." Conrad did not, however, suggest adding language to the relocation section of the proposed decree providing that the children's consent was a condition precedent to relocation.

In October 2021, the district court entered a divorce decree based on the parties' agreed-upon terms. The decree provided both that Heidi was expected to relocate during the children's school break in December 2021, and that the parties stipulated that the custody agreement was in the children's best interest. It did not include Conrad's suggested language regarding the children's preferences for when the relocation would occur during the school year. Conrad did not appeal from the divorce decree or raise any initial concerns following the decree's entry.

In December 2021, several days prior to Heidi's scheduled move to Arizona with the children, Conrad filed a motion to stay relocation until the teen children were interviewed and to modify the divorce decree, contending that G.R. did not wish to relocate, the children's consent to relocation was a condition precedent to the relocation, and that the decree omitted a material term regarding the consent requirement. Conrad also asserted that the decree was facially insufficient because, among other things, it failed to analyze the statutory best interest factors and the

relocation factors. Heidi opposed the motion and relocated to Arizona with J.R. on the scheduled date, but G.R. refused to get in the car to go to Arizona. The parties later agreed that G.R. could finish the school year in Nevada.

Conrad subsequently filed a motion to recognize de facto custody, asserting that his prior motion was intended as a motion to modify child custody. He alleged that there had been a substantial change in circumstances warranting a modification of child custody and that modification was in G.R.'s best interest. He asserted that the changed circumstances included, among other things, that G.R. had refused to relocate to Arizona and there was no plan in place for summer parenting time or enrollment in school in Nevada for G.R.'s remaining high school years. Heidi opposed the motion and filed several additional motions, including an ex parte emergency motion for return of G.R., alleging that Conrad refused to send G.R. to Arizona after finishing the school year in Nevada and took G.R. out of state without her consent. The district court later granted Heidi's emergency motion, and G.R. was sent to live with Heidi in Arizona.

The district court held a hearing on the pending motions after which it denied Conrad's motion to stay relocation and modify the decree and his request to modify child custody. The court concluded there was no basis to modify the divorce decree because it did not omit an essential term of the parties' agreement and it was not required to analyze the best interest factors because the parties had stipulated that their agreement was in the children's best interest. The district court further determined that Conrad failed to set forth a prima facie case for modification of custody with regard

to G.R. because the facts provided did not demonstrate a substantial change in circumstances affecting the welfare of G.R. This appeal followed.

On appeal, Conrad first argues the district court erred by disregarding an essential term of the parties' stipulated agreement.

Settlement agreements in family law cases are valid and generally enforceable as long as they are not unconscionable, illegal or in violation of public policy. *Mizrachi v. Mizrachi*, 132 Nev. 666, 671, 385 P.3d 982, 985 (Ct. App. 2016). "When parties to pending litigation enter into a settlement, they enter into a contract. Such a contract is subject to general principles of contract law." *Grisham v. Grisham*, 128 Nev. 679, 685, 289 P.3d 230, 234 (2012) (citing *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009)) (internal citations omitted). A settlement agreement requires mutual assent, *see Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1042, 1042 (2008), to "the contract's essential terms." *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 378, 283 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 § 131 cmt. g (1981)).

When a district court's interpretation of a divorce decree presents a question of law, we review its interpretation de novo. *Henson v. Henson*, 130 Nev. 814, 818, 334 P.3d 933, 936 (2014). "[A] court that is called upon to clarify the meaning of a disputed term in an agreement-based decree must consider the intent of the parties in entering into the

agreement." *Mizrachi*, 132 Nev. at 677, 385 P.3d at 989; *see also Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) (refusing to construe a provision in a stipulated parenting agreement in a manner that would restrict the meaning of the provision because doing so would "risk[ ] trampling the parties' intent" as demonstrated by the language of the written agreement). In conducting this analysis, the court may look to the record as a whole and the surrounding circumstances to interpret the parties' intent. *Mizrachi*, 132 Nev. at 677, 385 P.3d at 989.

Conrad does not dispute that the parties came to an agreement with respect to their divorce and custodial arrangement. He instead argues that the children's consent to relocation was a condition precedent to allowing Heidi to relocate and that the final divorce decree erroneously omitted that term. Heidi asserts that the district court properly declined to alter the parties' agreement because the record supported that there was no condition precedent to her relocating with the children.

Here, the district court concluded that Conrad took a sentence from the settlement hearing out of context, which did not represent the parties' intent. In particular, Conrad relies on a sentence from that hearing where his attorney stated that Heidi was expected to relocate, and the parties agreed upon relocation "as long as the children are okay with it . . . ." But the record reflects that the parties later unambiguously agreed, on the record, that Heidi would relocate to Arizona with the children without making any reservation regarding the consent of the children. The parties also agreed to sit down with the children and "let them know they reached an agreement that is going to involve relocation . . . that they both think is

in the children's best interests." Despite placing these terms on the record, the alleged condition precedent was not mentioned after the initial purported reference, which supports the district court's conclusion that Conrad took that sentence—from his attorney—out of context, and that it did not reflect the parties' intent to include such a condition in their agreement. *See Mizrachi*, 132 Nev. at 677, 385 P.3d at 989 (explaining that a court interpreting a disputed term in a parties' agreement-based decree must consider the intent of the parties and may look to the record as whole and surrounding circumstances).

Although Conrad attempts to frame the issue as the district court disregarding the terms of the parties' agreement, the record reveals that Conrad himself did not attempt to include the subject term in the decree until after the decree had been entered. Indeed, Conrad waited until only a few days remained before Heidi's planned relocation to bring this issue to the district court's attention. Notably, at the September 2021 hearing where the agreement was placed on the record, the parties agreed that Heidi's attorney would draft the proposed decree, Conrad's attorney would suggest edits, and the court would resolve any disputes over the language. Critically, while the parties collaborated on the proposed decree, at no point does the record reveal that Conrad proposed adding language providing that the children's consent was a condition precedent for the relocation to occur. And while the parties ultimately did not agree on some of the final language of the decree, their submissions to the district court (Heidi's proposed decree and Conrad's letter with suggested edits to certain terms) evinced an agreement that the relocation was going to happen, with

the only disputed issue being the timing of the relocation. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (providing that 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"). Taken together, this sequence of events further supports the district court's conclusion that the relocation consent term Conrad sought to add did not represent the intent of the parties. *See Harrison*, 132 Nev. at 570, 376 P.3d at 177 ("It is the contracting parties' duty to agree to what they intend."); *cf. Lehrer McGovern Bovis, Inc.*, 124 Nev. at 1118-19, 197 P.3d at 1042-43 (explaining that when parties mutually agree to a settlement and the settlement is entered into before the court without any objections from the parties, and reduced to writing in an order, the settlement is enforceable).

Thus, the record demonstrates that the children's consent to the relocation was not a condition precedent or a material term to the parties' agreement, and we conclude that the district court did not err in determining that this term did not reflect the parties' intent and declining to modify the decree to include that term. *See Mizrachi,* 132 Nev. at 677, 385 P.3d at 989. Accordingly, we affirm the district court's refusal to modify the divorce decree to incorporate the alleged missing term.

Next, Conrad challenges the district court's denial of his request to modify child custody. Specifically, Conrad argues the district court abused its discretion by failing to (1) hold an evidentiary hearing, (2) properly analyze the statutory best interest factors, and (3) permit G.R. to testify to his wishes regarding relocation.

We review a district court's denial of a motion to modify custody without holding an evidentiary hearing for an abuse of discretion. *Myers v. Haskins*, 138 Nev., Adv. Op. 51, 513 P.3d 527, 531 (Ct. App. 2022). A district court abuses its discretion only when "no reasonable judge could reach a similar conclusion under the same circumstances." *Id.* (quoting *Matter of Guardianship of Rubin*, 137 Nev. 288, 294, 491 P.3d 1, 6 (2021)).

A district court has discretion to deny a motion to modify physical custody without conducting an evidentiary hearing unless the movant has demonstrated "adequate cause." *Myers*, 137 Nev., Adv. Op. 51, 513 P.3d at 531. "Adequate cause" arises if the movant demonstrates a prima facie case for modification within the movant's affidavit and pleadings. *Id.* at 531-32. To modify custody, the movant must show that "(1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the child's best interest is served by the modification." *Romano v. Romano*, 138 Nev. 1, 3, 501 P.3d 980, 982 (2022) (quoting *Ellis v. Carucci*, 123 Nev. 145, 150, 161 P.3d 239, 242 (2007)), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, ___ P.3d ___, ___ (2023).

Here, the district court denied Conrad's request to modify custody without conducting an evidentiary hearing. In resolving this issue, the district court conducted a hearing, but did not substantively address the modification issue at the hearing. Nonetheless, in its written order, the district court concluded that Conrad failed to present a prima facie case for modification because he did not demonstrate a substantial change in

circumstances affecting G.R.'s welfare. We conclude the district court abused its direction in making this determination.

In *Myers*, 138 Nev., Adv. Op. 51, 513 P.3d 527, this court provided guidance concerning the proper application of the prima-facie-case prong of the adequate cause standard. *Myers* explained that the district court may generally only consider "the properly alleged facts in the movant's verified pleadings, affidavits, or declarations" and "must accept the movant's specific allegations as true" when determining whether a movant has established a prima facie case for modification requiring an evidentiary hearing. *Id.* at 529-30, 532.

Here, Conrad alleged that, on the day Heidi was relocating to Arizona, G.R. refused to get into her car and called Conrad to pick him up. He further alleged that G.R. wished to remain in Nevada until he graduated high school. Conrad supported his allegations with a declaration incorporating the facts set forth in his motion. Despite these allegations, the district court concluded there was no substantial change in circumstances and declined to have G.R., then age 15, testify, although he was available to do so at the time of the hearing. *See* NRCP 16.215(a) (stating that the court must use the procedures in this rule to achieve, among other things, its statutory duty to consider the wishes of the child); *see also* NRS 125C.0035(4)(a) (the best interest of the child determination includes consideration of the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to physical custody). Given these circumstances, we conclude that, under *Myers*, Conrad alleged facts that, if proven at an evidentiary hearing, could demonstrate a

substantial change in circumstances affecting G.R.'s welfare and support a conclusion that it is in G.R.'s best interest to modify custody. *See id.* at 534 (concluding that, among other facts, the minor child's wishes to live with a particular parent could have constituted a substantial change in circumstances warranting an evidentiary hearing). Thus, we conclude that Conrad's pleadings were sufficient to demonstrate a prima facie case for modification and that the district court therefore abused its discretion by denying his request to modify custody without first holding an evidentiary hearing.

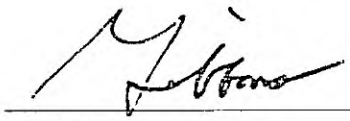
In reaching this result, we express no opinion with respect to the merits of Conrad's motion to modify custody. To the contrary, we recognize that Heidi opposed Conrad's motion and that her challenges to Conrad's allegations may eventually be proven correct or found more credible. But given that no evidence has been taken at this stage of the proceeding, and the district court declined to hear testimony from G.R., the district court could not properly deny Conrad's motion without an evidentiary hearing. Pending further proceedings on remand, we leave in place the current custody arrangement, subject to modification by the district court to comport with the current circumstances.[1] *See Davis v. Ewalefo*, 131 Nev 445, 455, 352 P.3d 1139, 1146 (2015) (leaving certain

[1]Insofar as the parties have raised 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.

provisions of a custody order in place pending further proceedings on remand).

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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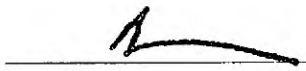

_____, J.
Bulla

_____, J.
Westbrook

cc: Chief Judge, Second Judicial District Court
Presiding Judge, Family Division, Second Judicial District Court
Hon. Robert E. Estes, Senior Judge
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