

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONYA'N MOLICA LABEAUX,
INDIVIDUALLY, AND AS EXECUTRIX
OF THE ESTATE OF FRANK
CHARLES MOLICA, SR.,
Appellant,
vs.
ALVARO DEVIA, M.D.,
Respondent.

No. 44795

FILED

JUL 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss in a medical malpractice case. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Tonya'n LaBeaux argues that the district court erred in concluding that her attorney, Lawrence Davidson, had authority to enter into a settlement agreement with respondent Dr. Alvaro Devia. The parties are familiar with the facts, and we do not recount them except as necessary to our discussion.

The district court dismissed Labeaux's suit after concluding that a valid settlement agreement existed between the parties. In reviewing this determination, we defer to the district court's findings unless they are clearly erroneous or not based upon substantial evidence.¹ Substantial evidence is evidence that a reasonable mind might accept as

¹See May v. Anderson, 121 Nev. ____, ____, 119 P.3d 1254, 1257 (2005); see also Callie v Near, 829 F.2d 888, 890 (9th Cir. 1987) (trial court order enforcing settlement reviewed for abuse of discretion on appeal).

adequate to support a conclusion.² “Questions of law are reviewed de novo.”³

An attorney is considered the agent of his client; thus, the law of agency governs the attorney-client relationship.⁴ Under agency law, an agent “must have actual authority, express or implied, or apparent authority” to bind the principal.⁵

We initially note that Davidson did not have actual authority to bind LaBeaux. Actual authority is the “power of the agent to affect the legal relations of the principal by acts done in accordance with the principal’s manifestations of consent to him.”⁶ When LaBeaux signed the September 2000 agreement, she merely retained Davidson as counsel. It is clear that she did not intend to grant Davidson the authority to settle her claim without her consent.

However, even absent actual authority, an agent may still possess apparent authority to bind the principal. Apparent authority is “that authority which a principal holds his agent out as possessing or permits him to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence.”⁷

²*Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998).

³*SIIS v. United Exposition Services Co.*, 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

⁴See *Blanton v. Womancare*, 696 P.2d 645, 649 (Cal. 1985).

⁵*Dixon v. Thatcher*, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987).

⁶Restatement (Second) of Agency § 7 (1958).

⁷*Myers v. Jones*, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983).

Apparent authority is created when the principal places an agent in such a position that the agent appears to have the authority claimed or exercised.⁸ “A party claiming apparent authority of an agent as a basis for contract formation must prove (1) that he subjectively believed that the agent had authority to act for the principal and (2) that his subjective belief in the agent's authority was objectively reasonable.”⁹

In light of these principles, we conclude that Davidson possessed apparent authority to bind LaBeaux to the settlement agreement. Specifically, the power of attorney document Davidson sent to Devia's counsel with his settlement offers appeared to authorize Davidson to sign authorizations, checks, drafts, and releases on LaBeaux's behalf. Devia's counsel, relying on this signed document, honestly believed that Davidson had authority to settle LaBeaux's claim. This belief was objectively reasonable, as customary legal practice permits attorneys to rely upon the representations made by other attorneys with respect to the scope of their authority.¹⁰ No evidence indicates that Devia's counsel ignored any “red flags” that might have alerted him to Davidson's malfeasance. As a result, the district court did not err in concluding that Davidson possessed apparent authority to settle LaBeaux's malpractice claim.¹¹

⁸Blanton, 696 P.2d at 651.

⁹Great American Ins. v. General Builders, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997).

¹⁰Blanton, 696 P.2d at 651.

¹¹Obviously, LaBeaux may have the right to sue Davidson for fraud or malpractice to recover the stolen settlement proceeds as well as any additional damages caused by his behavior.

Conclusion

We recognize that Davidson's unforeseeable, criminal, and wrongful conduct deprived LaBeaux of her day in court. However, given the narrow facts of this case, we must conclude that Davidson had apparent authority to bind Labeaux to this settlement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
John L. Hilts
Robert M. Tessier
Leslie Hayes Wolf
Lemons Grundy & Eisenberg
Washoe District Court Clerk