

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYLENE GUILLEN,
Appellant,
vs.
TONY GUILLEN,
Respondent.

No. 48619

FILED

SEP 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion to modify a spousal support award. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Raylene Guillen appeals, contending that: (1) the district court erred by finding that she was competent in 2002, when she entered into the settlement agreement; (2) the district court improperly validated the settlement contract without determining Raylene's competency at the time of the hearing; and (3) the district court should have allowed Raylene's special guardian to assist her during the proceedings, or in the alternative, the district court should have appointed a guardian ad litem.

For the reasons stated below, we affirm the district court's order.

The district court properly determined that Raylene's mental deficiencies did not render her incompetent to enter into a settlement agreement

Raylene first argues that the district court erred in determining she was competent in 2002. Raylene asserts that she submitted sufficient evidence to establish with a reasonable degree of medical certainty that she

was not competent to enter into a settlement agreement so that the burden to demonstrate competency was shifted to Tony. We disagree.

Courts apply a presumption in favor of mental capacity to contract.¹ Contractual capacity is a question of fact and will be resolved in the light of the surrounding circumstances.² The party seeking to invalidate a contract bears the burden of showing incompetence at the time the contract was executed.³ If the attacking party meets its burden, the burden shifts to the party seeking to enforce the agreement.⁴ A district court decision on a person's capacity to contract will be upheld if there is substantial evidence supporting its decision.⁵ Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion."⁶

After hearing conflicting expert testimony offered by the respective parties, the district court found that Raylene enjoyed legal

¹Matter of Estate of Hendrickson, 805 P.2d 20, 24 (Kan. 1991).

²Heward v. Sutton, 75 Nev. 452, 455, 345 P.2d 772, 774 (1959) (citing Hawkins v. Randolph, 149 Ark. 124, 231 S.W. 556 (Ark. 1921)).

³Cannon v. Cannon, 865 A.2d 563, 573 (Md. Ct. App. 2005) (citing Dreisonstok v. Hoffman, 120 A.2d 373, 376 (1956) ("holding that the burden of proof lies upon party alleging fraud by 'clear and indubitable proof'")).

⁴Cannon v. Cannon, 865 A.2d 563, 573 (Md. Ct. App. 2005).

⁵General Motors v. Jackson, 111 Nev. 1026, 1030, 900 P.2d 345, 348 (1995).

⁶Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (internal quotations omitted).

capacity for over four and one-half years between the signing of the settlement agreement in 2002 and when she filed the motion to modify alimony in 2006. The district court noted that Raylene had traveled abroad to attend culinary school, managed her affairs, changed attorneys frequently, and gone through a bankruptcy proceeding. The district court also noted that Raylene knowingly accepted the alimony checks and failed to challenge the validity of the settlement agreement for four years. The district court concluded that Raylene had “failed to prove by any evidentiary standard, that she was legally incapacitated on April 19, 2002.” To the contrary, the district court found that Raylene “knew who she was, where she was, the nature of the conference, the nature of her actions, and the consequences of her actions.”

We conclude that substantial evidence supports the district court’s findings that Raylene was competent at the time of the execution of the settlement agreement.

Decision to validate the settlement agreement

Second, Raylene argues that the district court erred by validating the settlement agreement without a prior determination of Raylene’s competency at the time of the evidentiary hearing. We disagree.

A settlement agreement is a contract; therefore, its construction and enforcement are governed by principles of contract law.⁷ “The mental incapacity that affects the validity of a contract must be of the time in which the transaction occurs regardless of previous or

⁷May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

subsequent insanity.”⁸ With respect to questions of fact, this court will defer to the district court’s findings unless they are clearly erroneous or not based on substantial evidence.⁹

Because the subject matter of the evidentiary hearing was whether Raylene was competent in April 2002, at the time of the settlement conference, her competency at the time of the evidentiary hearing was not relevant.¹⁰ The district court concluded that Raylene “enjoyed contractual capacity at the time the settlement contract was executed.” Moreover, the court found that Raylene had waived her right to, and was estopped from, challenging the settlement’s validity because she knowingly failed to disaffirm the settlement and/or relinquished her right to assert her incapacity for more than four years. The district court further concluded that the settlement agreement was not ambiguous or void for violating public policy.

We conclude that the district court’s determination to confirm the validity of the settlement agreement was not clearly erroneous and was supported by substantial evidence.

⁸Heward v. Sutton, 75 Nev. 452, 455, 345 P.2d 772, 774 (1959) (citing 17 C.J.S., § 133a., n.22-24).

⁹James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996) (overruled on other grounds by Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 955 n.6, 35 P.3d 964, 969 n.6 (2001)).

¹⁰Baroudi v. Hales, 98 So.2d 515, 516 (Fla. Dist. Ct. App. 1957) (holding that when a person is competent at the time of entering into a contract, subsequent incompetency will not affect the validity of the contract).

The special guardian/guardian ad litem

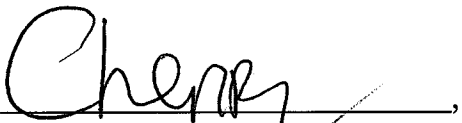
Lastly, Raylene contends that the district court acted inappropriately at the hearing by not allowing her special guardian to participate in her place during the proceedings or in the alternative to appoint her a guardian ad litem. We disagree.

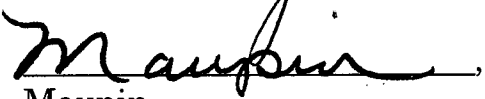
The district court ordered Raylene to participate in the hearing. However, the district court did not bar her special guardian from participating in the proceeding. Raylene did not object at the hearing.

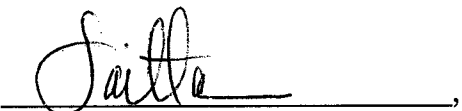
We conclude that because Raylene did not object at the hearing, this issue is unavailable for review on appeal.¹¹

Having reviewed the record, the parties' appellate briefs, and having considered the oral argument in this matter, we conclude that the district court did not abuse its discretion in validating the settlement agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Cherry, J.


Maupin, J.


Saitta, J.

¹¹Barrett v. Baird, 111 Nev. 1496, 1500, 908 P.2d 689, 693 (1995) (holding that a failure to object below bars review on appeal).

cc: Hon. David A. Hardy, District Judge
Carolyn Worrell, Settlement Judge
Norman Lee Allen
Kent B. Hanson
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Washoe District Court Clerk