IN THE SUPREME COURT OF THE STATE OF NEVADA

DUSTIN OKELBERRY, INDIVIDUALLY, AND AS PARENT AND NATURAL GUARDIAN OF LAUREN OKELBERRY, A MINOR, AND ANTHONY R. OKELBERRY, A MINOR,
Appellant,
vs.
ROY JORGENSEN, INDIVIDUALLY,
Respondent.

No. 49063

FILED

JUL 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award.[1] Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Dustin Okelberry instituted the underlying action after he sustained injuries in a motor vehicle accident involving respondent Roy Jorgensen. Jorgensen admitted liability and the parties entered a stipulation to arbitrate Okelberry's damages under a "high/low" agreement, which generally provided that the maximum recovery would be $2.1 million and the minimum was $750,000. The arbitrator was selected on condition that he disclose, among other things, whether he had an existing or past relationship with the parties or their attorneys, under

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

NRS 38.227. The arbitrator did not make any related disclosures and the matter was arbitrated.

Following notice of the arbitrator's award, Jorgensen filed a motion in the district court to have the award confirmed. Okelberry opposed the motion to confirm the arbitrator's award and filed a motion to have the arbitrator's award vacated on the basis that evident partiality existed. Specifically, Okelberry argued that the district court was required to vacate the arbitrator's award under NRS 38.241(1)(b)(1) because the arbitrator failed to disclose that he had a prior business relationship with Jorgensen's counsel. Okelberry also asserted that his attorney did not have actual knowledge of the past relationship and that Okelberry would have objected to the arbitrator's continued service if he had known.

Jorgensen opposed Okelberry's countermotion to have the award vacated by asserting that Okelberry's attorney and the attorney's law partner had actual knowledge of the prior relationship. Jorgensen also argued that vacating the award was improper because there was no evident partiality, given that his counsel's business relationship with the arbitrator ended 22 years ago. The district court denied Okelberry's motion, finding that Okelberry's counsel knew of the past relationship, Okelberry waived his right to object, and evident partiality was not established. Thus, the district court confirmed the arbitrator's award. This appeal followed.

We review de novo a district court order confirming an arbitration award when evident partiality is claimed to have existed.[2] In nondisclosure cases, the party challenging the award must prove evident partiality by demonstrating that the arbitrator had a duty to disclose a past relationship, but failed to make the disclosure.[3] An arbitrator's duty to disclose a past relationship arises when the past relationship gives rise to a "reasonable impression of partiality."[4]

Having considered the parties' arguments and supporting documentation in light of those principles, we conclude that the district court did not err in denying Okelberry's motion to vacate the arbitrator's award because the undisclosed business relationship did not invoke the arbitrator's duty to disclose. Specifically, the fact that Jorgensen's counsel and the arbitrator were law partners 22 years ago, without more, does not give rise to a reasonable impression of partiality.[5] Because we have

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[2]Thomas v. City of North Las Vegas, 122 Nev. 82, 97, 127 P.3d 1057, 1067 (2006) (interpreting a former NRS provision, analogous to NRS 38.241(1)(b)(1), which allows a court to vacate an arbitration award based on evident partiality).

[3]Id. at 97-99, 127 P.3d at 1068-69.

[4]Id.; see also NRS 38.227(1) (providing, in part, that an arbitrator shall disclose "any facts that a reasonable person would consider likely to affect the arbitrator's impartiality").

[5]Cf. Health Services Management Corp. v. Hughes, 975 F.2d 1253, 1255, 1264 (7th Cir. 1992) (concluding that the relationship was "minimal" and insufficient to warrant vacating the arbitration award when the arbitrator knew one of the parties, had worked with him 20 years prior, and saw him once a year); Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 680 (7th Cir. 1983) (concluding that vacating the arbitration award was unwarranted when the arbitrator had worked directly under the

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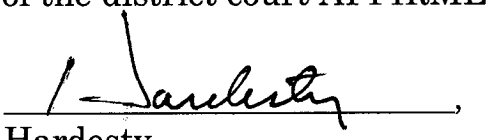
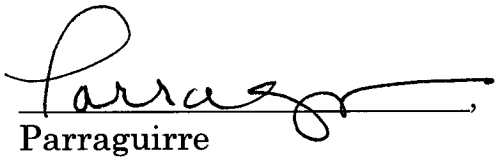
determined that the arbitrator did not have a duty to disclose the past relationship, which existed more than 20 years ago, we also conclude that the arbitrator's failure to disclose in this case does not amount to evident partiality, and we

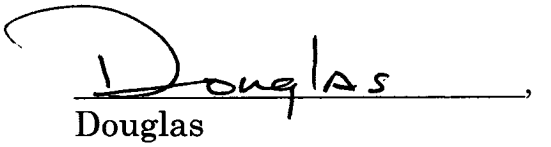
ORDER the judgment of the district court AFFIRMED.[6]



_____, J.
Hardesty



_____, J.
Parraguirre



_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Janet Trost, Settlement Judge
Mainor Eglet Cottle, LLP
Selman Breitman, LLP
Eighth District Court Clerk

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principal stockholder and president of one of the parties for 3 years, ending 14 years before the arbitration).

[6]Having considered Okelberry's remaining arguments, we conclude that his other contentions lack merit and do not warrant reversal of the district court's order.