

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARYN HOPKINS,
Appellant/Cross-Respondent,
vs.
JAY K. SELZNICK, D.M.D., M.D.,
Respondent/Cross-Appellant.

No. 49387

FILED

SEP 28 2009

ORDER OF AFFIRMANCE

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

This is an appeal and cross-appeal from a post-judgment district court order that granted a motion to seal the underlying action and denied motions for, among other things, attorney fees and costs. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

On appeal, appellant/cross-respondent Karyn Hopkins argues that the district court erred by failing to hold an evidentiary hearing to determine whether respondent/cross-appellant Dr. Jay Selznick violated the parties' confidentiality agreement. On cross-appeal, Dr. Selznick argues that the district court should have sanctioned Hopkins for filing her motion for an evidentiary hearing. For the following reasons, we conclude that both Hopkins' and Dr. Selznick's arguments fail and therefore affirm the district court's order. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

The confidentiality agreement and Hopkins' motion for an evidentiary hearing¹

Seizing upon the confidentiality agreement's language prohibiting any party from "publi[shing] . . . the existence" of the case to "any . . . entity or individual," Hopkins argues that the district court erred by failing to hold an evidentiary hearing to determine if Dr. Selznick may have breached the confidentiality agreement when he attached documents obtained in the underlying dental malpractice action to his motion for summary judgment in the defamation case.² We disagree.

The interpretation of an integrated written contract normally presents a question of law, which we review de novo. See May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

The confidentiality agreement's language prohibiting the disclosure of the existence of the dental malpractice case to any individual or entity is fairly broad. However, as discussed below, the district court's ruling that Dr. Selznick had not violated the confidentiality agreement by attaching Hopkins' personal documents that were obtained in the dental

¹As an initial matter, Dr. Selznick argues that the district court's order is not appealable because it is not a special order after final judgment. Having reviewed this argument, we conclude that it is without merit.

²Hopkins also contends that Dr. Selznick breached the parties' confidentiality agreement when he submitted a deposition transcript that was taken in the dental malpractice action to the Nevada Board of Dental Examiners (BDE). Because the parties did not memorialize their confidentiality agreement in writing until March 16, 2006, more than a week after Dr. Selznick submitted the deposition to the BDE on March 7, 2006, this argument is without merit.

malpractice action to his motion for summary judgment in the defamation case was appropriate.

The clause in question focuses primarily on prohibiting any disclosure of information about the dental malpractice action to “any representatives of radio or television stations, newspapers, magazines, or other media outlet or publication.” The intent of the parties seems to have been to prevent any public disclosures about the underlying action to media outlets. See 11 Richard A. Lord, Williston on Contracts § 32:9 (4th ed. 1999) (stating that it is important to interpret the agreement in order to effectuate the principle or main purpose of the parties). Accordingly, while the last part of that clause, “and/or any other entity or individual,” could be construed to cover separate legal proceedings, it would be unreasonable to interpret this phrase to preclude either party from defending itself in the pending defamation case with information or documents obtained in the dental malpractice action. See id. § 32:10 (“[S]pecific words will limit the meaning of general words if it appears from the whole agreement that the parties’ purpose was directed solely toward the matter to which the specific words or clause relate. Thus, it is an accepted principle that the general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given.”). Therefore, we uphold the district court’s interpretation of the parties’ confidentiality agreement. Id. § 32:11 (stating that contract interpretation should be reasonable and not unduly harsh).

Moreover, since the resolution of the dispute depended upon interpreting the terms of the confidentiality agreement, and the district court did precisely that, an evidentiary hearing on the matter would have

been unnecessary. Cf. Wisconsin Auto Title Loans, Inc. v. Jones, 714 N.W.2d 155, 167-68 (Wis. 2006) (stating that an evidentiary hearing is not required so long as the record is reasonably sufficient to support a finding). Accordingly, we conclude that the district court did not abuse its discretion in denying Hopkins' motion for an evidentiary hearing. See Johnson v. State, 118 Nev. 787, 799, 59 P.3d 450, 458 (2002).³

Selznick's motion for sanctions

On cross-appeal, Dr. Selznick alleges that the district court should have sanctioned Hopkins because her motions were filed merely to harass and cause unnecessary delay. While sanctions may be imposed if the court finds that a motion was presented for an improper purpose, such as to harass or cause unnecessary delay or a needless increase in the cost of litigation, see NRCP 11(b)(1); NRCP 11(c), Hopkins raised a legitimate argument that Dr. Selznick violated the confidentiality agreement, which depended closely on an interpretation of the agreement's terms. Accordingly, since Hopkins' motion was not brought for an improper purpose, we conclude that the district court did not abuse its discretion in

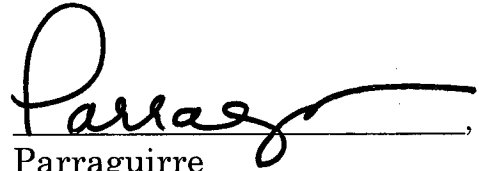
³Hopkins also contends that the district court erred by (1) violating two court orders, NRS 630.3065, and 45 CFR § 164.508 (HIPAA privacy law) by disclosing the documents obtained in the dental malpractice case; (2) denying her motion for damages, attorney fees and costs as a result of Dr. Selznick's breach of the confidentiality agreement; and (3) refusing to sanction Dr. Selznick for personally serving Hopkins with a court document. Having reviewed these arguments, we conclude that they are without merit.

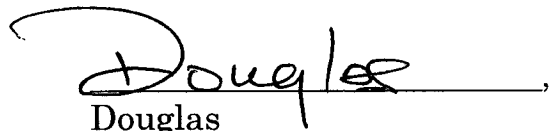
Separately, Hopkins contends that the district court erred by sealing the underlying dental malpractice case. Hopkins' request to unseal the case should be directed to the district court. See SRCR 4(2).

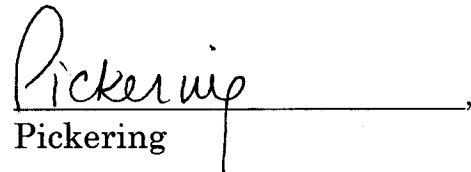
denying Dr. Selznick's request for sanctions. See Lehrer McGovern Bovis v. Bullock Insulation, 124 Nev. ___, ___, 197 P.3d 1032, 1043 (2008).⁴

For the reasons set forth above, we conclude that Hopkins' arguments on appeal and Dr. Selznick's arguments on cross-appeal fail. Accordingly, we

AFFIRM the order of the district court.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Allan R. Earl, District Judge
Leonard I. Gang, Settlement Judge
Benjamin B. Childs
Alverson Taylor Mortensen & Sanders
World Market Center Las Vegas
Eighth District Court Clerk

⁴Based on this conclusion, Dr. Selznick's request for damages and attorney fees is without merit.