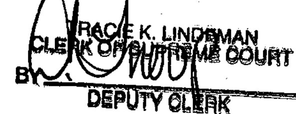
IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED B. EDWARDS,
Appellant,
vs.
LEWIS BABCOCK, INDIVIDUALLY; AND NEVADA CHECKER CAB CORPORATION, INC.,
Respondents.

No. 49468



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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment enforcing a settlement in a tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Proper person appellant Alfred B. Edwards was injured in 2003 when a taxi allegedly driven by respondent Lewis Babcock for respondent Nevada Checker Cab Corporation drove into the back of appellant's taxi while he was unloading a passenger's bags from the trunk. Appellant, through his then attorney Robert J. Walsh, subsequently filed a district court complaint against respondents.

Following mediation, appellant, through his counsel, served respondents with an $85,000 offer of judgment on December 1, 2006, which respondents accepted. When appellant refused to execute the settlement documents, respondents filed a motion to enforce the settlement, compel full release, and to interplead the settlement amount and deposit the funds with the court. They also sought attorney fees for having to file a motion to enforce the settlement.

Walsh filed a joinder to respondents' motion to enforce the settlement. In his affidavit attached thereto, Walsh averred that he had obtained verbal approval from appellant on September 1, 2006, before

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forwarding a $90,000 offer of judgment to respondents. Walsh further averred that on December 1, 2006, he forwarded a second offer of judgment for $85,000, which was initialed by appellant to acknowledge his agreement. The offer of judgment attached to Walsh's affidavit had a typed amount of $90,000, with a handwritten notation of "85K offer of judgment" and what appear to be the initials "ABE" in a box below it. Also attached to the affidavit was a subsequent typewritten offer of judgment for $85,000 that was signed by Walsh on December 1, 2006, and offered to allow judgment to be entered in favor of appellant and against respondents under NRS 17.115 for $85,000, inclusive of costs. Walsh also attached a January 19, 2007, notice from appellant that purportedly revoked his power of attorney and appears to allege that Walsh had gotten him to initial the $85,000 offer of judgment, despite knowing that appellant did not want to settle.

On March 13, 2007, appellant filed a proper person motion to amend the offer of judgment and for relief from the judgment under NRCP 60(b). Attached to appellant's motion was his opposition to the offer of judgment and an affidavit in which he claimed to have never agreed to accept $85,000 in settlement. The affidavit stated that appellant insisted on going to trial, but that he initialed the offer of judgment after being told by Walsh that the respondents would not agree to settle for that amount and that once respondents rejected the offer, they would potentially have to pay appellant's legal fees.

On March 15, 2007, the district court heard respondents' motion to enforce the settlement, which was attended by both parties' counsel. Although the court granted the motion, it rescinded its order when appellant personally appeared after the hearing and requested a

continuance. A new hearing was rescheduled for April 5, 2007. In the meantime, appellant filed oppositions to respondents' motion and Walsh's joinder. Walsh filed an opposition to appellant's motion to amend and included another affidavit, averring that he had discussed the legal effect and ramifications of the $85,000 offer of judgment with appellant and obtained appellant's initials on the draft before the offer was sent out. Walsh further averred that after the offer was accepted, appellant informed him that he no longer wanted to settle for $85,000 and wanted to go to trial. Walsh attested that he believed the offer was fair and reasonable as it was over three times the amount of appellant's medical bills and there was a chance that appellant would receive nothing at trial if workers' compensation benefits were deemed to be his exclusive remedy.

The district court subsequently entered an April 16, 2007, order granting the motion to enforce the settlement and entering judgment in favor of appellant while dismissing the action in its entirety with prejudice. The court also granted respondents $1,800 in attorney fees for having to file and defend the motion to enforce the settlement, which was to be deducted from the settlement amount, and the remaining $83,200 of the judgment was interplead for distribution by the court. This order appears to have resolved all issues with respect to the case, including the various motions filed by appellant and therefore, operated as the final judgment.[1] Appellant filed a timely appeal from this order.

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[1]See Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (defining a final judgment as "one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs").

This court applies a de novo standard in reviewing a district court's conclusions of law,[2] such as the interpretation of a settlement agreement.[3] We will, however, defer to the district court's factual findings as to whether an agreement exists, unless such findings are clearly erroneous or not based on substantial evidence.[4] Substantial evidence is "that quantity and quality of evidence which a reasonable [person] could accept as adequate to support a conclusion."[5] Having reviewed the documents before us,[6] we conclude that substantial evidence supports the district court's express finding that respondents accepted appellant's offer of judgment in good faith, which implicitly recognized that Walsh was authorized to make the offer and that a settlement agreement exists.

Nevada law presumes that an attorney has authority to settle his client's claim, but that presumption can be overcome by proof that the

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[2]Bedore v. Familian, 122 Nev. 5, 10, 125 P.3d 1168, 1171 (2006).

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

[4]Id. at 672-73, 119 P.3d at 1257.

[5]Installation & Dismantle v. SIIS, 110 Nev. 930, 932, 879 P.2d 58, 59 (1994), quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, n.1, 729 P.2d 497, 498 n.1 (1986).

[6]We grant appellant's three motions filed on March 18, 2008, seeking to enlarge the time to file his opening brief. We direct the clerk of this court to separate appellant's opening brief from the proof of service filed by him on March 20, 2008, and file it separately as his opening brief. We further direct the clerk to file respondents' answering brief and appendix provisionally received on April 23, 2008, and to file appellant's notice provisionally received on April 2, 2008. Because appellant's reply brief was already filed on July 9, 2008, we deny as moot his May 30, 2008, motion to enlarge the time for him to file his reply brief.

attorney did not have authority to do so.[7] Notwithstanding appellant's arguments, there was substantial evidence to support the district court's implicit factual finding that Walsh was authorized to make the offer of judgment. Appellant's belated attempt to revoke Walsh's authority in January 2007, made after the offer of judgment had been made and accepted, shows that Walsh had authority to settle the case before then. Although appellant contends on appeal that he never initialed the offer of judgment, he provided an affidavit to the district court stating that he had initialed the document and Walsh's affidavit confirms that Walsh obtained verbal approval on the initial offer as well as appellant's initials on the $85,000 offer. Further, although appellant contends that he was misled by Walsh as to the effect of the offer of judgment, Walsh's affidavit indicates that he had discussed the legal effect and ramification of the offer of judgment with appellant. Consequently, we conclude that substantial evidence supports the district court's factual finding that a settlement agreement exists, as Walsh was authorized to make the offer, which was accepted by respondents.

We further conclude that, as a matter of law, the offer of judgment contains the essential terms for an enforceable settlement agreement, because it unambiguously allowed judgment to be entered against respondents and in appellant's favor in exchange for $85,000,

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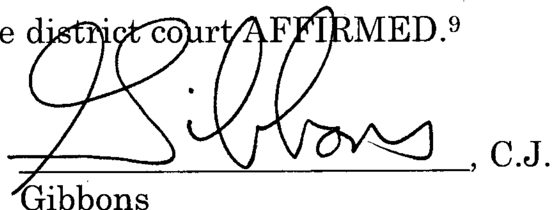
[7]State of Nevada v. Cal. M. Co., 15 Nev. 234, 243-44 (1880) (holding, however, that the district attorney in that case had no authority to enter a settlement waiving penalties for delinquent taxes paid by a mining company); see Waits v. Weller, 653 F.2d 1288, 1290 n.2 (9th Cir. 1981) (stating that under Nevada law, an attorney is presumed to have authority to settle his client's claim).

inclusive of costs.[8] As the district court was able to determine what was required of the respective parties under the offer of judgment's terms and properly compelled compliance, we

ORDER the judgment of the district court AFFIRMED.[9]



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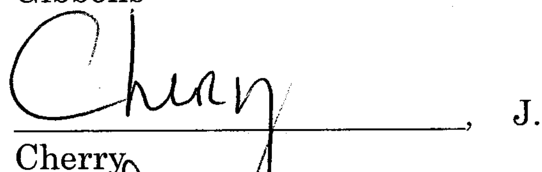
Gibbons



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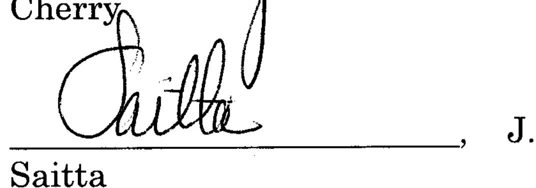
Cherry



_______________________, J.
Saitta

cc: Hon. Timothy C. Williams, District Judge
Alfred B. Edwards
Lewis Brisbois Bisgaard & Smith, LLP
Eighth District Court Clerk

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[8]See May, 121 Nev. at 674, 119 P.3d at 1259 (holding that an enforceable settlement agreement existed since the parties agreed upon its essential terms, even if they did not agree on the proposed draft release document's language). We note that appellant does not dispute the scope or terms of the release and apparently concedes that the offer of judgment was for a dismissal with prejudice of his suit as it prevented him from continuing to trial.

[9]We deny as meritless appellant's motion for costs filed on May 29, 2008, and all other requests for relief made by appellant as part of this appeal. We further deny respondents' request for attorney fees that was made in their answering brief. We also note that appellant has not challenged the district court's award of $1,800 in attorney fees to respondents for having to file a motion to enforce the settlement, so we will not address that issue on appeal.