

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN GEORGIS AND KALIOPI GEORGIS,
Appellants,
vs.
SHARON MARCHIOL, AS TRUSTEE OF
THE UNIFIED CREDIT TRUST,
Respondent.

No. 51190

FILED

APR 02 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment enforcing a settlement agreement in a real property action. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On appeal, appellants primarily argue that the parties' settlement agreement is invalid, and thus, unenforceable, because appellant Kaliopi Georgis did not sign it. Having reviewed appellants' proper person appeal statement, respondent's response, and the record, we conclude that substantial evidence supports the district court's determination that a valid settlement agreement between the parties exists. See May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005) (noting that whether a contract exists is a question of fact, "requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence").

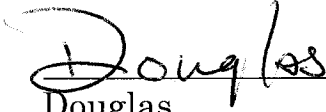
Record evidence demonstrates that Kaliopi's attorney signed the settlement agreement on her behalf and had apparent authority to do

so. See Dixon v. Thatcher, 103 Nev. 414, 417, 742 P.2d 1029, 1031 (1987) (stating that apparent authority is “that authority which a principal . . . permits [his agent] to exercise or to represent himself as possessing, under such circumstances as to estop the principal from denying its existence” (quoting Myers v. Jones, 99 Nev. 91, 93, 657 P.2d 1163, 1164 (1983))); Great American Ins. v. General Builders, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) (noting that “[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”); cf. RPC 1.2(a) (providing that “[a] lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation”); Samland v. J. White Transp. Co., Inc., 675 S.W.2d 92, 96 (Mo. Ct. App. 1984) (noting that “the compromise of a pending suit by an attorney having apparent authority, will be binding upon his client, unless it be so unfair as to put the other party upon inquiry as to the authority, or imply fraud” (quoting Kahn v. Brunswick-Balke-Collender Co., 156 S.W.2d 40, 43 (Mo. Ct. App. 1941))); Arizona Title Insurance and Trust Co. v. Pace, 445 P.2d 471, 473-74 (Ariz. Ct. App. 1968) (stating that a client is bound by the acts of her attorney if she places the attorney in a position for third parties to reasonably assume that the attorney is acting within his authority). Correspondingly, the district court did not err when it entered judgment enforcing the agreement’s clear terms. See May, 121 Nev. at 672, 119 P.3d at 1257 (providing that this court reviews a district court’s interpretation of a contract de novo).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Hardesty


_____, J.
Douglas

PICKERING, J., concurring:

Kaliopi Georgis did not sign the settlement agreement in this case, yet the district court found it was enforceable. It did not specify the basis for its finding. While I agree that this court deferentially reviews a district court finding that a settlement agreement exists and that Ms. Georgis loses on appeal because she has failed to demonstrate clear error, I would end the discussion there. Where I part company from my colleagues is in their resort to apparent authority as the appropriate basis for upholding the district court's decision.

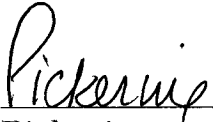
¹Having considered all of the issues raised by appellants, we conclude that their other contentions lack merit and thus do not warrant reversal of the district court's judgment.

The district court made no finding of apparent authority. All it held was that “the parties submitted the matter to mediation and resolved the lawsuit, reducing their settlement to written agreement.” There could be a number of bases for the district court’s finding of an enforceable settlement—ratification, actual authority, implied authority, or apparent authority, to name a few. Of these, apparent authority is the most problematic.

Merely retaining a lawyer does not create apparent authority in the lawyer to settle a client’s case. Restatement (Third) of the Law Governing Lawyers § 27 cmt. d (2000); see id. § 22. Furthermore, “apparent authority can arise only where the third person reasonably relies on the client’s—not the lawyer’s—manifestation that the lawyer’s action is authorized.” 1 Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyering § 5.7, p. 5-22.1 (3d ed. 2010) (emphasis in original). Here, the evidence relied on to support the settlement agreement—the lawyer’s stated belief that he had authority to settle and the client’s statement afterward that she knew about the mediation but did nothing—may establish implied authority or ratification but they do not, without more, establish apparent authority. The problem is that this evidence does not tie back to things Kaliopi Georgis said or did in the opposing parties’ presence to establish a reasonable belief in her lawyer’s authority to settle, which is key to apparent authority. Without that tie, we have only the fact that Ms. Georgis didn’t attend the mediation conference while her lawyer did. This isn’t enough for apparent authority: “Comments c and d to § 27 [of the Restatement], however, together make

the important point that sending a lawyer into settlement negotiations should not be interpreted—without more—as assent to be bound.” *Id.* (emphasis in original).

Although inadequate to sustain this court’s de novo finding of apparent authority, the evidence does support a finding that Ms. Georgis knew through her husband and her lawyer that the mediation produced a binding settlement and that she acquiesced in it, justifying its enforcement by the district court either on a theory of implied authority (the lawyer understood she was sending her husband and lawyer in her stead and told her the mediation would produce a binding settlement) or ratification. On these bases and for the reasons stated by my colleagues in the opening paragraph of the order, I concur in the order of affirmance in this case.


_____, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
John F. Mendoza, Settlement Judge
John Georgis
Kaliopi Georgis
Goodman Law Group
Marquis & Aurbach
Eighth District Court Clerk