

IN THE SUPREME COURT OF THE STATE OF NEVADA

GINA PEPE,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEWART L. BELL, DISTRICT JUDGE,
Respondents,
and
KARL RICHARD SPENCER,
Real Party in Interest.

No. 51239

FILED

SEP 05 2008

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus or prohibition challenges a district court order denying a motion to dismiss a personal injury action and declaring that real party in interest can maintain a cause of action against petitioner's insurance company.

On March 11, 2004, real party in interest Karl Richard Spencer was involved in a motor vehicle accident with petitioner Gina Pepe, who was driving an Avis rental car at the time of the accident. Following the accident, Avis and Pepe negotiated a settlement with Spencer. All parties were represented by counsel during the negotiations. Under the settlement, Spencer signed a release which expressly released Avis and Pepe from liability with respect to the accident in exchange for \$15,000. Specifically, the release stated

That the Undersigned being of lawful age for sole consideration of Fifteen Thousand Dollars (\$15,000), to the undersigned in hand paid, receipt of which is hereby acknowledged, do/does hereby and for my/our/its heirs, executors,

administrators, successors and assigns release, acquit and forever discharge Avis Rent A Car and Gina Pepe his, her, their or its agents, servants, successor, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from . . . any and all claims, actions, cause of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, . . . or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequence thereof resulting or to result from the accident, casualty or event which occurred on or about the 11th day of March, 2004, at or near Las Vegas NV.

Despite the release, Spencer subsequently filed a complaint against Pepe, individually, for injuries arising out of the March 11, 2004, accident. Citing the terms of the release, however, Pepe filed a motion to dismiss and to enforce the settlement, arguing that, under the settlement's terms, Spencer fully released her from any liability to him in connection with the March 11 accident.

Spencer opposed the motion, stating in an affidavit that he had only intended to release his claims with respect to Avis and Pepe as it related to Avis's policy limits. He averred that Allstate Insurance Company was Pepe's excess insurance carrier and that settlement negotiations were ongoing with Allstate at the time he signed the release with Avis and Pepe. Spencer maintained that the instant lawsuit against Pepe was initiated because he and Allstate could not reach a settlement agreement. Spencer added that he was unilaterally mistaken at the time the release was formed as to its terms and that he never intended to fully release Pepe's liability.

The district court agreed with Pepe that the release, as it pertained to her, was valid, “and that it clearly and unequivocally release[ed] [Pepe], personally, as a matter of law, from any and all liability stemming from the subject accident of March 11, 2004.” The court, however, denied Pepe’s motion to dismiss, reasoning that Spencer could maintain a cause of action and collect any judgment from Pepe’s insurance company, Allstate. This writ petition followed. Spencer timely filed an answer, as directed.

Pepe contends that the district court manifestly abused its discretion by concluding that, although Pepe is released from any liability, the matter should proceed in order to collect any prospective judgment from Allstate. She asserts that the terms of the release between her and Spencer unambiguously released her from any and all liability for damages stemming from the accident. She further maintains that Spencer was represented by counsel at the time the release was signed and that his attorney’s failure to protect his client’s interests is not a valid reason to set aside the release.

In opposing the petition, Spencer asserts that it was never the intent of the parties to release Pepe individually or that the release would include her excess insurance carrier, Allstate. Spencer asserts that Allstate “contributed nothing to the settlement amount provided by [Avis]” and that they should not “receive the benefit of a bargain where they provided no consideration and were not parties to the bargain for exchange itself.” Spencer appears to maintain that Allstate’s lack of contribution in the Avis negotiations and settlement demonstrates a unilateral mistake on his part as to the release’s terms.

Both mandamus and prohibition are extraordinary remedies, and it is within our discretion to determine if a petition will be considered.¹ Writ relief generally is not available unless the district court manifestly abused its discretion.² We generally will not exercise our discretion to consider petitions for extraordinary writ relief that challenge district court orders refusing to dismiss an action, unless dismissal is clearly required by a statute or rule, or an important issue of law requires clarification.³

In the present case, the release contains clear and unambiguous language releasing all of Spencer's claims against Pepe. Spencer's contention that he intended for the release to apply only to Avis and Pepe's liability as it related to Avis's policy limits is directly contradicted by the language of the release.⁴ Additionally, Spencer's disagreement in the interpretation of the release does not per se imply that its terms are ambiguous.⁵

¹See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

²See State of Nevada v. Dist. Ct. (Anzalone), 118 Nev. 140, 147, 42 P.3d 233, 237-38 (2002).

³Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997).

⁴Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (providing that, "absent some countervailing reason, contracts will be construed from the written language and enforced as written").

⁵See Jake C. Byers, Inc. v. J.B.C. Investments, 834 S.W.2d 806, 816 (Mo. Ct. App. 1992).

Spencer also attempts to avoid the release of his claims against Pepe by claiming that Allstate provided no consideration and was not a party to the release. Indeed, a release may be rescinded if it was obtained by inadequate consideration or mutual mistake.⁶ But Allstate's lack of involvement in the negotiations or settlement for the release is of no moment to the instant case. Spencer negotiated the settlement agreement with Avis and Pepe, he received \$15,000 to release those parties from any liability, and his underlying complaint is against a party released from all liability—Pepe, not Allstate. Whatever Allstate did or did not do during Spencer's negotiations with Avis and Pepe is wholly irrelevant to the instant matter because any potential recovery from Allstate hinges on Pepe's liability, which Spencer released according to the terms of the agreement.

Further, Spencer's unilateral-mistake argument is without merit. Unilateral mistake gives rise to rescission of a contract only if the other party had reason to know of or caused the mistake.⁷ Under the limited circumstances when we have recognized unilateral mistake, the fact pattern involves misrepresentation or fraud by a party with unequal knowledge or bargaining skills.⁸ In the instant case, the record contains no evidence of fraud, misrepresentation, or unequal bargaining strength of

⁶Chwialkowski v. Sachs, 108 Nev. 404, 834 P.2d 405 (1992).

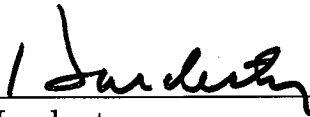
⁷Oh v. Wilson, 112 Nev. 38, 40, 910 P.2d 276, 278 (1996).

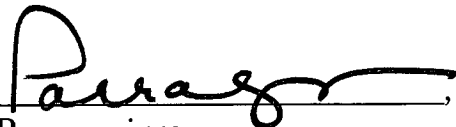
⁸See e.g., id. at 39, 910 P.2d at 277; Graber v. Comstock Bank, 111 Nev. 1421, 1428, 905 P.2d 1112, 1116 (1995); Home Savers v. United Security Co., 103 Nev. 357, 359, 741 P.2d 1355, 1357 (1987); Pacific Maxon, Inc. v. Wilson, 96 Nev. 867, 871, 619 P.2d 816, 818 (1980).

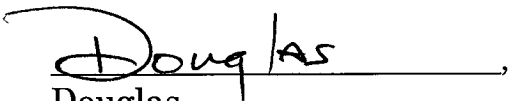
the parties. Both parties who negotiated the agreement were represented by attorneys. Hence, no unilateral mistake bars enforcement of the release.

Based on the above discussion, we conclude that the district court was required to dismiss Spencer's complaint. Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to dismiss with prejudice Spencer's complaint against Pepe.

It is so ORDERED.⁹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Gentile Law Group
Fassett & Cardoza
Eighth District Court Clerk

⁹We deny Pepe's "motion to strike unsupported factual contentions in answering brief, and for appropriate sanctions."