

IN THE SUPREME COURT OF THE STATE OF NEVADA

CATHERINE R. LADRIDO,
Appellant,
vs.
DARREN C. DENMAN,
Respondent.

No. 55669

FILED

SEP 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a tort and contract action. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

In June 2006, appellant was a passenger in a car that was involved in a collision with the car that respondent was driving. Appellant retained an attorney who pursued liability claims against both drivers and an underinsured motorist claim against appellant's insurer.¹ Appellant signed a power of attorney permitting her attorney, Adam S. Kutner, to "generally act for [her] in all matters pertaining to [her] claim against [the insurance company] arising out of the [car accident]."

Kutner filed the underlying district court action on appellant's behalf, alleging negligence against respondent and negligent entrustment against respondent's father, who owned the car and was the named insured. Kutner sent a copy of the complaint to the insurance adjuster

¹Appellant, the driver of the car in which she was a passenger, and respondent were all insured by the same company. The three claims were assigned different claim numbers by the insurance company.

and a letter indicating that settlement remained possible. In April 2008, the insurance company sent a letter to Kutner confirming a conversation regarding settlement, asking for the dismissal of the district court action in consideration for a settlement check and a release of liability as to respondent's father and "all other persons . . . who might be claimed to be liable." A representative of Kutner signed the release and negotiated the check, but none of the parties sought to dismiss the district court action.

In June 2008, through a newly retained attorney, appellant contacted the insurance adjuster, stating that she wanted to repudiate the release based on mistake.² Appellant stated that she did not authorize Kutner to settle her claim against respondent but instead only authorized him to settle her underinsured motorist claim under her own policy. She asserted that the power of attorney did not authorize Kutner to release respondent from liability, and regardless, the release was only as to respondent's father and it did not include respondent, so her claim against respondent remained actionable.

In the district court action, respondent's father was dismissed by stipulation. Respondent later moved to dismiss, or alternatively for summary judgment, on appellant's claim against respondent. The court granted the motion, finding that Kutner had express authority to enter into the settlement and release pursuant to a general power of attorney, the release operated to discharge all of appellant's claims and all persons liable therefor, and appellant admitted that the settlement and release intended to include respondent. This appeal followed.

²Appellant substituted in new counsel in June 2008, apparently after becoming aware of the release signed by Kutner's representative.

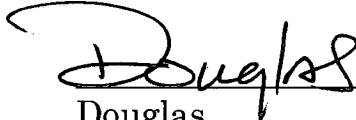
Having reviewed the briefs and appendices, we reverse the district court's summary judgment. Although we perceive no error in the district court's conclusion concerning the scope of the power of attorney, and thus Kutner's authority to act on appellant's behalf in settling claims against respondent, see Seigworth v. State, 91 Nev. 536, 538, 539 P.2d 464, 465 (1975) (noting that a power of attorney's scope must be determined its language, aided by the parties' situation and surrounding circumstances),³ appellant set forth sufficient evidence to establish a material factual issue regarding whether she intended to settle with and release respondent from liability for any damages related to the accident.⁴ Russ v. General Motors Corp., 111 Nev. 1431, 906 P.2d 718 (1995) (noting that when a release does not expressly name a defendant but instead releases another alleged tortfeasor and "all other persons" who might be liable, the release does not, in and of itself, release the defendant unless the injured party so intended); Wood v. Safeway, Inc., 121 Nev. 724, 729, 731, 121 P.3d 1026, 1029, 1030-31 (2005) (setting forth summary judgment standard); see also In re AMERCO Derivative Litigation, 127 Nev. ___, ___, 252 P.3d 681, 693 (2011) (explaining that the court's "ultimate goal is to effectuate the contracting parties' intent," and when that intent is not clearly expressed in the contractual language, courts

³Here, the power of attorney broadly allowed Kutner to act on appellant's behalf with regard to "all matters" pertaining to her claims, and the same power of attorney was used to settle her claim against the driver of the car in which she was a passenger.

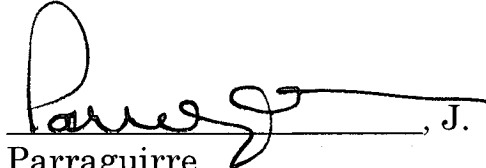
⁴Despite the district court's finding, nowhere in the record did appellant admit that the release was intended to apply to respondent.

may properly consider the circumstances surrounding the agreement).
Accordingly, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Carolyn Worrell, Settlement Judge
Hutchison & Steffen, LLC
Patton Shea & Kiraly
Eighth District Court Clerk