IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRADFORD BRENNAN,
Appellant,
vs.
ELIZABETH BRENNAN,
Respondent.

No. 66067

ORDER OF REVERSAL

This is an appeal from a final district court order regarding child support. Eighth Judicial District Court, Family Court Division, Clark County; Cheryl B. Moss, Judge.

Elizabeth and Bradford ("Brad") Brennan divorced in 2004. The district court entered a Decree of Divorce following a trial. Brad appealed the Decree and Elizabeth cross-appealed. The parties participated in a settlement conference through the Nevada Supreme Court where they agreed to dismiss their appeals, with prejudice, under certain terms memorialized in an April 14, 2005 settlement agreement (the "2005 Settlement"). In the 2005 Settlement, Brad and Elizabeth agreed that Brad would satisfy the $357,154.36 judgment against him by, among other things, paying one-half of the children's private school tuition for five school years, beginning with the 2005-2006 school year. Neither party submitted the 2005 Settlement to the district court at that time to be confirmed by way of order or Amended Decree of Divorce, as should normally happen subsequent to a Nevada Supreme Court settlement conference if an agreement is reached that could modify a Decree of Divorce.

In 2013, three years after Brad's five school years' of tuition payments ceased, Elizabeth filed a "Motion to Show Cause" why Brad should not be held in contempt of court for failing to pay his half of the children's private school tuition pursuant to the Decree of Divorce; notably, she did not file a motion to modify the child support or tuition order. Brad opposed the Motion to Show Cause, contending that the Decree only required payments for one year and that he subsequently agreed to make payments for five years under the 2005 Settlement, which he did, and therefore he could not be in contempt of the Decree. The district court filed its "Amended Decision and Order RE: School Tuition" on June 27, 2014 finding that Paragraph 5 of the 2005 Settlement was clear and unambiguous, and in the absence of a motion by Brad to modify his obligation, he was required to continue paying half of the children's private school tuition after the end of the five year period. In its Order, the district court implicitly adopted the 2005 Settlement and awarded a $79,770.00 monetary judgment to Elizabeth. This appeal followed.[1]

On appeal, Brad asserts the district court erred in finding that the 2005 Settlement imposed a continuing duty on Brad to pay one-half of the private school tuition for the children after the expiration of the specified five year period; and that the district court erred in interpreting the 2005 Settlement as requiring Brad to file a motion to terminate his obligation after the specified five year period rather than Elizabeth being required to file a motion if she desired to extend the obligation beyond that period. We agree.

[1]Because the parties are familiar with the detailed facts relevant to this appeal, we do not recount them further except as necessary for our disposition.

We begin by noting that the district court's decision to treat the supplemental briefing concerning the 2005 Settlement as a "motion for summary judgment" creates an untenable procedural posture. This was a post-decree motion relating to the enforcement of a judgment already entered by the court in 2004, and NRCP 56 does not apply to post-judgment matters, only to pre-trial motions asserting that a trial is unnecessary for the court to enter final judgment in favor of one party. The premise of a "summary judgment" motion is that there is nothing for a jury or judge to decide at trial, and therefore the court should enter judgment as a matter of law without a trial. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). NRCP 56 simply does not apply to motions filed after judgment has already been entered in favor of one party or the other. The motion filed by Elizabeth was to enforce a judgment already entered by the court in the form of the Decree of Divorce. The court's characterization of the matter as "summary judgment" most closely resembles a decision to resolve the motion without conducting a formal evidentiary hearing. We review it as such.

Family law does not ignore contract law, and contractual language will generally be enforced in a divorce, custody, or support settlement if the agreement is not contrary to public policy. *Bluestein v. Bluestein*, 131 Nev. ___, ___, 345 P.3d 1044, 1049 (2015). Consequently, although parents can stipulate to an appropriate child support order, child support involves more than private contracts and stipulations must be reviewed under the statutory child support formula and guidelines in NRS 125B.070 and NRS 125B.080. *See Fernandez v. Fernandez*, 126 Nev. 28, 34 222 P.3d 1031, 1035 (2010). Thus, district courts must consider the best interest of the child and Nevada's statutory guidelines when

interpreting and approving of stipulated child support orders. Importantly, any payments of private school tuition or associated costs can be considered part of a child support obligation. *See* NRS 125B.020(1), NRS 125B.080(9)(c) and (k); *see also Fernandez*, 126 Nev. at 32, 222 P.3d at 1034.

Questions of contract interpretation are questions of law, and are reviewed on appeal de novo. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). The purpose of contract interpretation "is to discern the intent of the contracting parties." *Am. First Fed. Credit Union v. Soro*, 131 Nev. ___, ___, 359 P.3d 105, 106 (2015) (quoting *Davis v. Beling*, 128 Nev. ___, ___, 278 P.3d 501, 515 (2012)). If the language of a contract is clear and unambiguous, the contract will be enforced as written. *Id.* A contract is clear and unambiguous if its terms are not susceptible to more than one reasonable interpretation. *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215-16, 163 P.3d 405, 407 (2007).

Here, the district court erred in its interpretation of the contract's plain language. In particular, although the district court found the language of the 2005 Settlement was "clear and unambiguous," the court misread the plain language of the agreement. The second sentence in paragraph five states:

> Rather, it is specifically understood and agreed by Brad and Elizabeth that at the termination of the five year period, **if either party chooses not to continue to pay** for ½ of the children's private school tuition at the Meadows, **the other party** shall have the right to file a motion with the district court on that issue.

(Emphasis added).

Thus, the plain language of this provision states unequivocally that if either Brad or Elizabeth chose not to pay half the tuition at the end

of the five year period, the **other** party had the right to file a motion on that issue. Because Brad chose not to continue paying for half of the children's tuition after five years, the other party, Elizabeth, had the right to file a motion on that issue.[2] But the district court mistakenly placed the burden on Brad, the non-paying party, to file a motion to address the private school tuition. Requiring Brad to file a motion after he ceased payment ignores the plain language that states the "other party" (the party still paying) has the right to file a motion. Additionally, although paragraph five seems to anticipate that the parties might continue to share the cost of the children's private school tuition after the five year period expired, the 2005 Settlement does not contain any provision imposing an obligation to do so. Thus, the district court erred in interpreting the plain language of the contract.[3]

Based on the plain language of the 2005 Settlement, if Elizabeth wished to keep the children at Meadows and wanted Brad to continue sharing the cost, she had the right to file a motion regarding the tuition obligation upon Brad's terminating his one-half payments. The

---

[2]We note that even without this clause, Elizabeth had and still has a right to seek modification of the child support obligation pursuant to NRS 125B.145. *See also*, NRS 125.510(1)(b) (the district court may modify or vacate its custody order at any time); *Fernandez*, 126 Nev. at 35, 222 P.3d at 1035 ("The trial court has continuing jurisdiction over its child support orders."); *Jackson v. Jackson*, 111 Nev. 1551, 1552, 907 P.2d 990, 991 (1995) ("The statutory scheme provides no time-bar to a district court's review of a child support award upon a parent's filing of a request for review.").

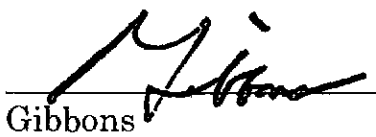
[3]Because the district court concluded that the contract was unambiguous, it did not consider any "parol evidence" relating to the intention of the parties and their subsequent conduct.

2005 Settlement further provides that the children would stay at Meadows pending a ruling by the court or an agreement of the parties, but their mere presence at Meadows does not necessarily equate to a 50 percent payment responsibility on Brad. Rather, the 2005 Settlement states that Elizabeth was not necessarily obligated to pay 100 percent if the children remained at Meadows.

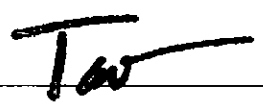
Therefore, under the 2005 Settlement, only upon Elizabeth's filing of a motion, and absent the parties negotiating an arrangement, was the district court to address, pursuant to Nevada law, the payment of private school tuition, if any, beyond the five years covered by the 2005 Settlement. Here, Elizabeth never filed a motion pursuant to the terms of the 2005 Settlement and it was improper for the district court to enter a judgment against Brad pursuant to those terms. Nevertheless, nothing in this decision restricts the ability of either party to file any motion or raise any defense related to child support or private school tuition costs.[4]

We therefore,

ORDER the judgment of the district court REVERSED.



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

[4]The issues of judicial estoppel and waiver are not properly before this court and we therefore decline to reach the same.

cc: Hon. Cheryl B. Moss, District Judge, Family Court Division
Paul H. Schofield, Settlement Judge
Throne & Hauser
Brennan Law Firm
Eighth District Court Clerk