

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DENISE MEDINA, INDIVIDUALLY;  
DENISE MEDINA, AS THE NATURAL  
PARENT AND GUARDIAN OF  
MICHAEL MEDINA, A MINOR; AND  
ARTURO ALCALDE,  
Appellants,  
vs.  
MOISES MEDINA; AND  
PROGRESSIVE NORTHERN  
INSURANCE COMPANY,  
Respondents.

No. 67008

**FILED**

**MAR 31 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from three district court orders granting Respondent Progressive Northern Insurance Company's (Progressive) motion to dismiss a third-party bad faith claim, Progressive's motion to intervene, and Progressive's motion to enforce settlement. Eighth Judicial District Court, Clark County; Nancy L. Alf, Judge.

This case arises out of a single-car rollover accident caused by a tire blowout.<sup>1</sup> On appeal, appellants argue the district court abused its discretion by granting Progressive's motion to intervene, motion to enforce settlement, and motion to dismiss Denise and Arturo's bad faith claim. The district court concluded that a settlement agreement was reached on

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.



all material terms, and as appellants are unable to identify a single material term that is unresolved, the district court did not err.<sup>2</sup>

We review contract interpretation de novo. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). However, determining if a contract exists is a factual inquiry and we will not reverse a district court's finding unless it is clearly erroneous or not based on substantial evidence. *Id.* at 672-73, 119 P.3d at 1257. "Because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law." *Id.* at 672, 119 P.3d at 1257. Unless the parties agree to all material terms, preliminary negotiations cannot constitute a binding contract. *Id.* However, a contract is formed "when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later." *Id.* "In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain." *Id.*

To satisfy District Court Rule 16, an agreement to settle can be enforced by motion if "the agreement is either . . . reduced to a signed writing or . . . entered in the court minutes following a stipulation." *Grisham v. Grisham*, 128 Nev. \_\_\_, \_\_\_, 289 P.3d 230, 233 (2012) (internal quotations omitted) (citation omitted). Where the parties consent to the material terms of a contract and announce their intent to reduce the

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<sup>2</sup>Where a valid settlement agreement exists, all other alleged errors that occurred prior to the settlement agreement are moot. This court does not render opinions on moot questions. *See Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010) (explaining appellate courts decide actual controversies and do not render opinions on moot questions). As the settlement agreement is valid, appellants' other arguments regarding alleged errors are moot.

contract to a final agreed-upon writing, the contract will not be prevented from operation by "the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof." *Id.* at \_\_\_, 289 P.3d at 236 (affirming a motion to enforce despite the parties' announced intent to prepare a final written agreement and their failure to do so) (quoting Restatement (Second) of Contracts § 27 (1965)). Further, "placing the agreement on the record in open court ensures that there is a formal record." *Id.* at \_\_\_, 289 P.3d at 234.

Here, the district court did not abuse its discretion in granting the motion to enforce the settlement agreement as the parties stated in open court that an agreement had been reached and all parties read the material terms into the record.<sup>3</sup> Further, the district court canvassed all parties as to their understanding of the agreement and ensured they consented to the terms.<sup>4</sup> On appeal, although appellants complain that the settlement was never formally recorded in a separate writing signed by the parties, they are unable to identify a single material term that they


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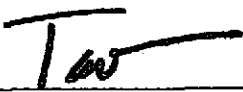
<sup>3</sup>Although appellants now claim that the settlement agreement was only a tentative agreement pending reduction to writing, a review of the record reveals that all parties reviewed the terms, consented to be bound by the terms, and agreed to later submit a writing memorializing these terms. As discussed in *Grisham*, the fact the parties intended to adopt a written memorial does not defeat enforcement of a valid contract.


<sup>4</sup>The agreement stated in part: all parties would enter into a stipulation that provided a value of the claims of each plaintiff; all claims against Moises would be completely released; the judgment would not be executed against Moises; Moises reserved all rights against Progressive; Progressive reserved all defenses against future complaints against it; and Progressive would pay the \$30,000.00 policy limit to plaintiffs as directed by Denise.

believe was not already included in the court's record. Finally, the district court satisfied DCR 16 by entering the agreement in the court minutes following the stipulation read into the record and agreed to by all parties. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Nancy L. Alf, District Judge  
William C. Turner, Settlement Judge  
Christensen Law Offices, LLC  
Stephens, Gourley & Bywater  
Eglet Prince  
Keating Law Group  
Dennett Winspear, LLP  
Eighth District Court Clerk