

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW HOUSTON,  
Appellant,  
vs.  
MANDALAY BAY CORP, D/B/A  
MANDALAY BAY RESORT AND  
CASINO,  
Respondent.

No. 80562-COA

**FILED**

**OCT 26 2021**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Matthew Houston challenges a district court order granting respondent's motion to compel settlement and dismissing his complaint with prejudice. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

On September 30, 2016, Houston suffered a serious workplace injury while working as a high rigger for Encore Productions, Inc., in the Mandalay Bay Ballroom. Although Houston ultimately survived the fall, he suffered from multiple fractures and severe brain trauma, and is considered permanently disabled from the incident. Thereafter, Houston, with the assistance of counsel, filed a complaint against respondent Mandalay Bay Corp., asserting causes of action for negligence, premises liability, and negligent hiring and supervision.

During the course of litigation, the parties attended mediation and reached a settlement. Mandalay Bay then satisfied its contingency in

the mediation settlement and informed the district court that the case had settled. Likewise, Houston executed a “Release of All Claims and Agreement to Indemnify.” Roughly 28 days after signing the release, Houston filed a “Motion to Withdraw Counsel + Bar Complaint,” alleging that his retainer agreement with his counsel was void and that his counsel was not authorized to settle the case on his behalf.

Subsequently, Mandalay Bay filed a motion to compel settlement arguing that the district court should enforce the settlement agreement and dismiss the action with prejudice. Mandalay Bay’s motion indicates that it submitted several in camera documents in support of its motion including (1) the mediation settlement agreement; (2) documentation demonstrating that it satisfied the contingencies set forth in the mediation agreement; (3) the copy of the release of all claims signed by Houston; and (4) proof that the release was sent back to Houston for proper notarization.<sup>1</sup>

After receiving this filing, the district court issued an order to show cause directing Houston to appear in person to explain why “he should

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<sup>1</sup>Although the record indicates that these documents were received and considered by the district court in camera, it appears that these documents were never filed with the district court, and are therefore not included for our review in the record on appeal. See *Houston v. Mandalay Bay Corp.*, Docket No. 80562-COA (Order Directing Transmission of Exhibits, October 8, 2021); *Houston v. Mandalay Bay Corp.*, Docket No. 80562-COA (District Court’s Notice, October 14, 2021) (indicating that the Eighth Judicial District court is “unable to locate any documentary exhibits filed . . . that have not already been submitted as part of the Record on Appeal”).

not be compelled to dismiss his action following settlement.” Further, because the court was unclear when Houston terminated his prior counsel, it also ordered him to file a written opposition. After considering the briefing and conducting a hearing where both parties were present, the district court entered an order dismissing the case, which granted Mandalay Bay’s motion to compel settlement. Houston now appeals.


A district court’s finding that a valid settlement exists represents a finding of fact to which a reviewing court will defer, unless the district court’s finding is clearly erroneous or not supported by substantial evidence. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). A district court can grant a party’s motion to enforce a settlement agreement by entering judgment on the instrument if the agreement is either reduced to a signed writing or entered in the court minutes in the form of an order, *see Resnick v. Valente*, 97 Nev. 615, 616, 637 P.2d 1205, 1206 (1981); *see also* EDCR 7.50; DCR 16, so long as the settlement agreement’s material terms are certain, *May*, 121 Nev. at 672, 119 P.3d at 1257.


Here, however, we are unable to assess the material terms of the settlement agreement as the agreement and related documents were never filed in the district court and are not contained within the record on appeal. It is the appellant’s responsibility to ensure an adequate record is made for appellate review, and when the “appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.” *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). As

a result, given the absence of the settlement agreement and associated materials in the record before us, we must presume that the missing documents support the district court's order compelling settlement and dismissing Houston's complaint with prejudice. *Id.* Therefore, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. David M. Jones, District Judge  
Matthew Houston  
Clark McCourt, LLC  
Eighth District Court Clerk

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<sup>2</sup>Insofar as Houston's arguments are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.