IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIOS ISAAC,
Appellant/Cross-Respondent,
vs.
RANDA ISAAC,
Respondent/Cross-Appellant.

No. 83055

ORDER OF AFFIRMANCE

This is an appeal and cross-appeal from various district court orders in a divorce action. Eighth Judicial District Court, Family Division, Clark County; Mary D. Perry, Judge.[1]

Appellant/cross-respondent Antonios Isaac (Tony) challenges the district court's Findings of Fact, Conclusions of Law and Order regarding enforcement of the parties' divorce agreement—the Memorandum of Understanding (MOU)—as well as post-judgment orders denying his requests for attorney fees and costs, reimbursements, and spousal support modification.

Respondent/cross-appellant Randa Isaac challenges enforcement of the MOU, the district court's divorce decree, and a post-judgment order granting in part and denying in part Randa's motion to alter or amend the divorce decree and denying her motion for a new trial.

In 2019, Randa filed for divorce. Tony, Randa, and their son, Jon Isaac, met for a settlement conference and following two days of negotiations, the parties executed the MOU resolving distribution of the community assets and debts, including debts owed to Jon. Both parties were represented by counsel at the settlement conference, and six

[1]The Honorable Patricia Lee, Justice, voluntarily recused herself from participation in the decision of this matter.

individuals signed the MOU: Randa, Tony, Jon, Randa's counsel, Denise Gallagher and Rhonda Mushkin, and Tony's counsel, Jennifer Abrams. Randa repudiated the agreement hours after it was executed through an email to Mushkin stating she did not want to go through with the deal. Thereafter, Tony filed a motion to enforce the MOU and requested a decree of divorce.

The district court held a bench trial on enforcement of the MOU. At trial, the district court heard testimony from all six individuals that were present during the execution of the MOU, as well as from Randa's therapist. On December 1, 2020, the district court entered its written Findings of Fact, Conclusions of Law and Order granting Tony's motion to enforce the MOU.[2] At that time, the district court declined to enter a divorce decree pending an affidavit from Tony that he resided in Nevada. The district court also denied Tony's request for attorney fees and costs as the prevailing party in enforcing the MOU.

Tony filed a motion for additional findings and reconsideration of the portion of the December 1, 2020, order denying his request for attorney fees and costs. The same day, Randa filed a motion to alter and/or amend, clarify or reconsider the December 1, 2020, order. At a subsequent hearing, the district court found the only outstanding issue was the status of the marriage, which was cured by Tony's filing of an affidavit of residency that day. Accordingly, the district court entered the decree of divorce in February 2021, which incorporated and merged the MOU into the decree. In addition, the district court entered four other bench orders, which included three orders on matters that were outstanding: Order After

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[2]We note that the Honorable Sandra Pomrenze, District Judge, presided over this dispute until her retirement in December 2020, after which the Honorable Mary D. Perry, District Judge, took over the case.

Hearing March 7, 2019; Order After Hearing January 28, 2020; and Order After Hearing February 4, 2021.

In March 2021, Randa filed a motion to alter and/or amend the decree of divorce, the Order After Hearing March 7, 2019, and the Order After Hearing January 28, 2020, as well as a motion for a new trial. Tony filed a countermotion to enforce the decree and MOU, and sought a reduction in spousal support, as well as reimbursement of expenses paid prior to the decree. In June 2021, the district court entered a written order granting in part, and denying in part, the motions. This appeal and cross-appeal followed.

The district court did not err by enforcing the MOU

Randa asserts that the MOU was unconscionable and against the law because it omitted marital assets.[3] Tony, however, argues that the district court correctly found the MOU to be a complete, valid, and enforceable agreement.

Settlement agreements are interpreted under contract principles and are reviewed de novo. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Whether a contract exists is a question of fact, and this court will defer to the lower court's findings if they are supported by substantial evidence. *Id.* at 672-73, 119 P.3d at 1257. An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." *Id.* at 672, 119 P.3d at 1257. "Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

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[3]We have considered Randa's alternative arguments regarding enforcement of the MOU and are not persuaded.

We conclude that the district court's factual findings regarding the MOU's validity are supported by substantial evidence, particularly where all six individuals who signed the MOU testified at trial. We further conclude that the assets Randa alleges were omitted from the MOU were disclosed on tax returns that were produced by Tony during discovery. Therefore, we affirm the district court's Findings of Fact, Conclusions of Law and Order with respect to enforcement of the MOU.

The district court did not abuse its discretion by denying Tony's request for attorney fees and costs incurred in enforcing the MOU

Tony argues the district court erred by summarily denying his request for $217,787.56 in attorney fees and costs incurred following execution of the MOU, claiming he is entitled to attorney fees under NRS 18.010(2)(b). This court reviews a decision to award or deny attorney fees in divorce proceedings for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). Attorney fees and costs are not recoverable unless authorized by statute, rule, or contractual provision. *Id.* at 623, 119 P.3d at 730. NRS 18.010(2)(b) permits a court to award attorney fees to a prevailing party where an opposing party's claim "was brought or maintained without reasonable ground or to harass the prevailing party."

This court has further recognized that when considering an award of attorney fees in a family law matter, a district court must evaluate (1) the *Brunzell* factors,[4] and (2) "the disparity in income of the parties." *Miller*, 121 Nev. at 623, 119 P.3d at 730; *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

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[4]As recognized in *Miller*, the various *Brunzell* factors include "the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and the result obtained." 121 Nev. at 623, 119 P.3d at 730.

Though Tony prevailed in enforcing the MOU, the district court did not make a finding that Randa's claims regarding the MOU's enforceability were brought without reasonable ground or to harass Tony. Furthermore, the district court discussed the parties' disparity in income and concluded this factor weighed against awarding attorney fees.[5] Because there are adequate grounds upon which the district court based its decision, we cannot say the court abused its discretion in denying Tony's motion. Therefore, we affirm the district court's denial of attorney fees and costs.

The district court did not err by entering the divorce decree based upon the MOU

Randa argues that the district court erred in entering the divorce decree for several reasons. First, Randa asserts that the district court erred by entering the divorce decree because the MOU was incomplete as to spousal support. We disagree. Indeed, the MOU contained handwritten interlineations explaining that the precise terms of spousal support were unresolved and reserved for future discussion and negotiation. But the district court resolved any issues with the interlineations in the spousal support provision by noting in the divorce decree that spousal support would be subject to modification in accordance with Nevada law. Therefore, we conclude that the district court did not err in entering the divorce decree based upon the MOU.

Second, Randa claims the district court erred by failing to address the appreciation of community property assets under *Kogod v. Cioffi-Kogod*, 135 Nev. 64, 79, 439 P.3d 397, 409 (2019). Tony responds that

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[5]Though the district court did not issue findings addressing the *Brunzell* factors, those factors are a guide for calculating a reasonable *amount* of attorney fees to award. *See Miller*, 121 Nev. at 623, 119 P.3d at 730 (stating the *Brunzell* factors must be evaluated in determining the reasonable amount of attorney fees).

Kogod does not apply here because the MOU terminated community property interests prior to the entry of the divorce decree. We agree with Tony and conclude that *Kogod* is distinguishable from the instant case where the parties stipulated to a division of community assets. This is because *Kogod* addressed asset appreciation during an intermediary period between the district court's "oral *pronouncement* of the termination of [the] community property and the *actual* termination when the written divorce decree was entered." *Id.* (emphases added). Here, by contrast, the parties agreed to divide the community assets via the terms of the MOU, which was effective upon execution. Thus, Tony and Randa's community property interests had long been terminated by the time the district court entered the divorce decree. Therefore, we conclude that the district court did not err by failing to address any community asset appreciation post-execution of the MOU.[6]

The district court did not abuse its discretion by granting in part, and denying in part, Randa's request to alter or modify the divorce decree

Tony claims the district court erred in changing the terms of the MOU by requiring Tony to pay Randa $120,000 in cash rather than as a down payment for a home in California as required by the MOU. We review a denial of a motion to alter or amend a judgment pursuant to NRCP 59(e) for an abuse of discretion. *Panorama Towers Condo. Unit Owners' Ass'n v. Hallier*, 137 Nev. 660, 662, 498 P.3d 222, 224 (2021). This court has observed that "[a]n NRCP 59(e) motion to alter or amend a judgment may be appropriate to correct manifest errors of law or fact, address newly discovered or previously unavailable evidence, prevent manifest injustice, or address a change in controlling law." *Id.* (internal quotation marks

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[6]We have considered Randa's other challenges to the divorce decree and determine that they are unpersuasive.

omitted). "[I]n the absence of express findings of fact by the district court, [we] will imply findings where the evidence clearly supports the judgment." *Trident Constr. Corp. v. W. Elec., Inc.*, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989).

The district court below expressed sua sponte that Randa had a right to interstate migration and, therefore, the payment could not be conditioned upon her purchasing a home in California. We view this as an implicit finding that the terms of the payment must be altered to prevent manifest injustice. Tony failed to raise an objection to the court's reasoning below. Therefore, we conclude that the district court did not abuse its discretion by modifying the term regarding the payment of $120,000.

Randa argues that the district court abused its discretion by denying her motion to alter or amend the divorce decree on various grounds.

First, Randa contends that the district court erred by failing to join Jon and his business entities as necessary parties to the divorce action. Tony maintains that Randa's contentions regarding the parties are barred by the invited error doctrine. We agree that the invited error doctrine bars such a contention. Under the invited error doctrine, "a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (internal quotation marks omitted). The district court gave Randa the choice to either (1) join Jon and his business entities in the divorce action, or (2) file an action in the civil division separately from the divorce. In response, Randa chose to file civil claims against Jon, his business entities, and Tony separate from the divorce action. Consequently, we conclude that the invited error doctrine precludes

Randa's argument that Jon and his business entities were necessary parties to the divorce action.[7]

Additionally, Randa asserts that the district court erred in refusing to alter or amend the divorce decree based on damage to her couture collection allegedly caused by Tony. Tony responds that Randa waived this claim via the MOU's release provision. We agree and conclude that any claim for damages to Randa's personal property that pre-dated the MOU's execution was waived.

The district court did not abuse its discretion by denying Tony's motion to enforce the divorce decree

Tony contends that the district court erred by denying his motion to enforce the divorce decree, wherein he sought reimbursement for approximately $18,000 in expenses Randa was obligated to pay per the MOU. Randa maintains that the district court properly denied Tony's request for reimbursement because Tony did not make this request at the hearing prior to entry of the decree and the parties waived all claims in the MOU. We agree and conclude that Tony's claims for reimbursement of expenses paid by the community post-execution of the MOU were waived.

The district court did not abuse its discretion by denying Tony's request to modify spousal support

Lastly, Tony argues that the district court erred by denying his post-decree request to modify spousal support as a result of Randa living in Las Vegas rather than California, and Randa's cohabitation with a new partner. Randa claims that the district court correctly denied Tony's modification request because Tony failed to demonstrate a substantial

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[7]We decline to reach Randa's argument that the Isaac Family Trust was a necessary party to the divorce action as premature, because the district court ordered supplemental briefing on that issue after this appeal and the cross-appeal were filed.

change in circumstances one month after entry of the divorce decree. Randa further notes that Tony failed to raise these issues at the February hearing prior to entry of the decree.

Under NRS 125.150(11)(b), "[t]he spouse who is ordered to pay the alimony may, upon changed circumstances, file a motion to modify the order." Here, Tony successfully sought to enforce the MOU and, shortly thereafter, sought to modify the express terms of the MOU based on information known prior to entry of the decree—that Randa was residing in Las Vegas with a new partner. Therefore, we conclude that the district court did not abuse its discretion by denying Tony's request to modify spousal support because Tony failed to show a change in circumstances.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]

Stiglich, C.J.

Herndon, J.

Parraguirre, J.

[8]In light of this disposition, the temporary stay imposed by the district court concerning the $120,000 payment pending resolution of this appeal is lifted.

cc: Hon. Mary D. Perry, District Judge, Family Division
Israel Kunin, Settlement Judge
The Abrams & Mayo Law Firm
Law Office of Daniel Marks
Eighth District Court Clerk