IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALLISON R. SCHMIDT,
Appellant,
vs.
ERLAND ALAN FAY,
Respondent.

No. 87592-COA

ORDER OF AFFIRMANCE

Allison R. Schmidt appeals from a stipulated divorce decree. Eighth Judicial District Court, Clark County; Gregory G. Gordon, Judge.

Schmidt and respondent Erland Alan Fay were married in 2019 and share a minor child, born in 2018. Schmidt filed the operative complaint for divorce in August 2022, requesting, in relevant part, back child support, reimbursement for the child's health insurance premiums, and costs associated with her pregnancy and "subsequent confinement" under NRS 126.161. The case proceeded to trial, and both parties testified. Eventually, the parties began resolving their issues, including child custody and various financial disputes, by stipulating to the resolution of those issues on the record.

As the parties' effort to resolve the case progressed, Schmidt stated she was satisfied with the parties' agreement with regard to the majority of the issues, including child support and custody, but indicated she did not want to waive her claims to pursue reimbursement of her in vitro fertilization (IVF) expenses and past child support for when she took care of the child when the parties were not cohabitating. Following a colloquy regarding whether Schmidt would be able to collect on a monetary

judgment against Fay, the court noted they were "stuck" and told Schmidt to decide what she wanted to do with respect to resolving the case. Fay interjected that he had a proposed solution, which Schmidt indicated she was interested in hearing. Fay stated that Schmidt loaned him $6,000 and he repaid her $4,500. Fay offered to pay her an additional $2,000. The court asked Schmidt whether $2,000 would "resolve it" and she agreed. In discussing this proposal, the court described the $2,000 payment as a "settlement payment to resolve any other outstanding claims," and Schmidt responded, "[t]hat sounds good." The court then asked whether the parties were in full agreement with the terms placed on the record and both agreed that they were. The court explained it would draft the decree based on the parties' stipulation on the record and informed the parties the case was settled.

The district court thereafter entered the divorce decree based on the parties' "global settlement of all pending issues and having placed the terms and conditions of their settlement on the record." The decree provided, in relevant part, that Fay would pay Schmidt $2,000, which would "serve as full and final settlement of all past claims for child support arrears, labor/delivery charges, etc."

Schmidt subsequently filed a motion for relief from the decree pursuant to NRCP 59, requesting a new trial on financial issues and that the decree be amended to accurately reflect the proceedings, which Fay opposed. She thereafter filed an emergency ex parte motion to continue the hearing on her post-decree motion based on a Facebook friend request she received from the district court judge several months after the decree was entered. Based on advice from the State Bar, Schmidt disclosed the friend request to Fay and attempted to hire counsel to appear at the upcoming

hearing but was unable to find an attorney on such short notice. Fay opposed the motion.

The district court denied Schmidt's emergency motion and, following a hearing, also denied her NRCP 59 motion. This appeal followed.

On appeal, Schmidt challenges the divorce decree, arguing that parts of the decree do not conform to the parties' agreement that was entered on the record at trial.

When parties to pending litigation enter into a settlement, they enter into a contract. *Mack v. Est. of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). Such a contract is subject to general principles of contract law. *Id.* To that end, a stipulated settlement agreement requires mutual assent, *see Lehrer McGovern Bovis v. Bullock Insulation, Inc.*, 124 Nev. 1102, 1118, 197 P.3d 1032, 1042 (2008), also referred to as a "meeting of the minds," *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005), on "the contract's essential terms." *Certified Fire Prot. v. Precision Constr.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012). EDCR 5.601(b) allows stipulations in family law proceedings to be placed on the record in court. Under that rule, "[a] stipulation adopted by the court shall be binding on the parties immediately, and shall become an enforceable order once written, signed by the court, and filed." EDCR 5.601(d).

"Contract interpretation is subject to a de novo standard of review." *May*, 121 Nev. at 672, 119 P.3d at 1257. The question of whether a contract exists, however, is one of fact and requires the appellate court "to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence." *Id.* at 672-73, 119 P.3d at 1257. Substantial evidence is that which "a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242

(2007). Under the previous version of NRAP 3A,[1] an order denying an NRCP 59 motion is not separately appealable as a special order after judgment but is reviewable for abuse of discretion on appeal from the underlying judgment. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

Here, Schmidt does not dispute that the parties came to an agreement with respect to their divorce, the custodial arrangement, and certain financial matters. Rather, she argues that the terms of the decree related to the $2,000 payment did not conform to what the parties' actually agreed to. We disagree.

Based on our review of the record, we conclude substantial evidence supports the conclusion that Schmidt agreed that the $2,000 settlement payment resolved the parties' remaining financial issues and that the decree accurately represented the agreement. *See May*, 121 Nev. at 672, 119 P.3d at 1257. The transcript of the trial reveals that, although Schmidt initially stated she did not want to waive her claims for reimbursement under NRS 125B.020 and for past child support, she nonetheless stated she was interested in hearing Fay's potential solution to resolve these claims. After Fay made his proposal—offering to pay her $2,000—she stated "that's fine" and agreed when the district court asked her if this payment would "resolve it." The district court subsequently described the $2,000 payment as a "settlement payment to resolve any other outstanding claims," to which Schmidt responded, "[t]hat sounds good."

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[1]NRAP 3A was amended effective August 15, 2024. We refer to the prior version of the rule in effect in November 2023 when Schmidt filed her notice of appeal.

Thereafter, the district court explicitly asked Schmidt whether she was in full agreement with the terms that were placed on the record, and she responded, "Yes." The court then explained it would draft the decree based on the parties' stipulation on the record and informed the parties the case was settled. This colloquy indicates not only that the parties were in agreement but had also resolved all of their issues. *See id.* (providing that a contract may be formed "when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later").

Following this discussion, Schmidt asked the court a follow-up question about a different agreed-upon term, but she did not object to the court's clear declaration that the $2,000 payment would resolve the outstanding claims or give any indication that she had any other concerns regarding the agreement or believed there were any issues outstanding. *Cf. Lehrer McGovern Bovis, Inc.*, 124 Nev. at 1118-19, 197 P.3d at 1042-43 (explaining that when parties mutually agree to a settlement and the settlement is entered into before the court without any objections from the parties, and reduced to writing in an order, the settlement is enforceable).

Thus, the record demonstrates that Schmidt understood the agreed-upon terms and that she was reaching a settlement with Fay as to all of the issues. *See id.* at 1118, 197 P.3d at 1042 ("In construing a stipulation, a reviewing court may look to the language of the agreement along with the surrounding circumstances." (quoting *Taylor v. State Indus. Ins. Sys.*, 107 Nev. 595, 598, 816 P.2d 1086, 1088 (1991))); *see also Harrison v. Harrison*, 132 Nev. 564, 570, 376 P.3d 173, 177 (2016) ("It is the contracting parties' duty to agree to what they intend."). Accordingly,

Schmidt's arguments do not provide a basis for reversing the divorce decree or the denial of her post-decree motion to amend that document.

Next, Schmidt contends that the district court erred by failing to grant her a continuance to obtain counsel before resolving her NRCP 59 motion following her receipt of the Facebook friend request. Having reviewed the record, we conclude relief is unwarranted based on this argument because Schmidt has failed to show that she was harmed by the court's refusal to grant her a continuance or that a different outcome would have been reached, given that the incident occurred months after entry of the decree and, as discussed above, substantial evidence in the record demonstrates that the parties agreed to its terms. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached").

Moreover, to the extent Schmidt's cursory argument can be construed as a claim of bias, she has not demonstrated that any alleged bias was based on knowledge acquired outside of the proceedings, and the challenged decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *See Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings, which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988)

(providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (noting that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022).

Accordingly, for the reasons set forth above, we affirm the district court divorce decree and the subsequent denial of Schmidt's motion to amend the decree.

It is so ORDERED.[2]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Gregory G. Gordon, District Judge
Black & Wadhams
Michael R. Pontoni
Eighth District Court Clerk

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[2]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief or need not be reached given our disposition.