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Summary of Grisham v. Grisham, 128 Nev. Adv. Op. 60

Timothy A. Wiseman
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Grisham v. Grisham, 128 Nev. Adv. Op. 60 (December 06, 2012)¹

CONTRACT LAW – ENFORCEMENT OF ORAL AGREEMENT

Summary

The court considered whether a written, but unsigned property settlement agreement draft, which had been entered into evidence, can be considered binding.

Disposition/Outcome

An agreement which is stipulated in open court, even if not reduced to a signed writing, is a binding contract. Having that agreement stipulated in open court satisfies the statute of frauds.

Additionally, consent, which can be implied, is a basis for a court to have jurisdiction over an attorney's lien.

Factual and Procedural History

During the divorce proceeding for Michael and Susie Grisham, the attorneys for the parties advised the court that they had negotiated a property settlement agreement (PSA). The draft presented in court at that time included interlineations and handwritten changes. The attorneys asked the court to put the settlement on record as part of an uncontested divorce prove-up hearing, with a clean copy to be prepared and signed later. The court accepted the PSA as an exhibit and the lawyers read the handwritten changes on the draft into the record, stipulating that it would be binding. Both Susie and Michael were questioned and stated that they had understood and agreed to the PSA. The court orally accepted the settlement.

When the clean copy was generated, Susie signed it but Michael first requested revisions and then later refused contact with his own lawyer. Michael's lawyer withdrew and asserted an attorney's lien, which the court placed into judgment. After several months, Susie moved for a divorce decree based on the PSA. Although Michael opposed her motion, the district court entered a final decree based on the PSA.

Discussion

I. A court can enforce an agreement to settle litigation if it is either in a signed writing or “entered in the court minutes following a stipulation.”

District Court Rule 16 permits a court, on motion, to enforce a settlement agreement in a divorce proceeding or any other civil proceeding when it has been entered into the minutes of the court under consent of the party as if it were in writing.² This rule is meant to provide “an

¹ Timothy A. Wiseman.

² Nev. D.C.R. 16.

efficient method for determining genuine settlements and enforcing them” and to “enhance the reliability of actual settlements.”³

II. An agreement read into the records and approved in an open court will satisfy the statute of frauds if it applies.

The rule that an agreement can be binding if read into a court’s record and accepted by the parties can be binding is accepted by other jurisdictions.⁴ In a similar situation, Justice Oliver Wendell Holmes stated regarding the statute of frauds “that the statute plainly is not intended to apply to an agreement like the present, made in open court, and acted on by the court.”⁵ The fact that these statements are made with the formality of court provides enough protection against rushing hastily into a settlement and the court record provides a transcript to memorialize the agreement.⁶ Thus, an agreement made in court can be enforced even if there is an objection about the lack of writing.⁷

III. The PSA at issue did satisfy District Court Rule 16 and the Statute of Frauds.

Michael asserted that the proceedings failed because the entire, lengthy, PSA was not read into the record of the court and was made into an exhibit instead. However, the transcript shows that Michael, while under oath, acknowledged the key terms which were read into the record. Additionally, he testified that he had reviewed the PSA, which had been entered into evidence, and agreed to it. His testimony incorporated the entire unsigned PSA by reference. This was sufficient to satisfy the court rule and thus the statute of frauds.⁸ Thus a contract was formed which was enforceable even if he later altered his position and disagreed with certain provisions.

Conclusion

The court found that, despite his later assertions to the contrary, Michael had manifestly assented to be bound by the PSA in open court. His assent on record was sufficient to satisfy both district court rules and the statute of frauds. Therefore the district court’s order of judgment based on the PSA was affirmed. Additionally in a single sentence the court found that there was sufficient implied consent to grant the district court jurisdiction to grant an attorney’s lien and again affirmed.

³ Resnick v. Valente, 97 Nev. 615, 616-617, 637 P.2d 1205, 1206 (1981).

⁴ E.g., In re Marriage of Assemi, 7 Cal. 4th 896, 904-905, 872 P.2d 1190, 1195 (Cal. 1994); Rubinfeld v. Rubinfeld, 279 A.D.2d 153, 158, 720 N.Y.S.2d 29, 32 (N.Y. App. Div. 2001).

⁵ Savage v. Blanchard, 19 N.E. 396, 396 (Mass. 1889).

⁶ In re. Dolgin Eldert Corp., 31 N.Y.2d 1, 10, 286 N.E.2d 228, 233 (N.Y. 1972)

⁷ *Id.* at 9, 286 N.E.2d at 232.

⁸ In coming to this conclusion the court distinguished factually from Casentini v. Hines, 79 Nev. 186, 625 P.2d 1174 (1981) where the parties did not specifically consent to have the agreement entered in the minutes and where the court specifically ordered the parties to create and submit a complete written agreement.