IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TARA KELLOGG, A/K/A TARA KELLOGG-GHIBAUDO,
Appellant,
vs.
ALEX B. GHIBAUDO,
Respondent.

No. 84778-COA

ORDER OF AFFIRMANCE

Tara Kellogg appeals from a district court order granting injunctive relief in post-decree divorce proceedings. Eighth Judicial District Court, Family Division, Clark County; T. Arthur Ritchie, Jr., Judge.

In February 2017, the district court entered a decree of divorce between Kellogg and Alex B. Ghibaudo. Following entry of the decree, the parties litigated several post-decree issues, primarily relating to Ghibaudo's support obligations.[1] In October 2019, pursuant to Ghibaudo's ex parte request, the district court entered an order sealing file under NRS 125.110. A few months later, in March 2020, the parties entered into a Stipulated Confidentiality Agreement and Protective Order (Confidentiality Agreement) because the court case included sensitive issues involving their finances and Ghibaudo's business. The Confidentiality Agreement generally provided that certain documents, material, and information may be deemed confidential and could not be disclosed by either party.

Ghibaudo subsequently became aware that several videos of the court proceedings in his divorce case had been publicly posted on the internet in 2021. During civil discovery in an unrelated matter, Kellogg

[1]We recount the facts only as necessary for our disposition.

freely admitted under oath that she obtained the videos and disseminated them to Veterans in Politics International, friends and family, and a reporter with the Las Vegas Review-Journal. She further admitted to knowing that Veterans in Politics would post the videos publicly.

In February 2022, Ghibaudo moved for an order to show cause why Kellogg should not be held in contempt of court for violating the order sealing file, for sanctions pursuant to EDCR 7.60(b)(4), and for clarification of the court's order sealing file. In his motion, Ghibaudo identified 13 videos of court proceedings that were publicly available and included their URL links. Ghibaudo also attached as exhibits Kellogg's discovery responses and deposition testimony that contained her admissions to disseminating the videos.

The district court held a hearing in March 2022 and entered its findings of fact, conclusions of law, and order the next month. In its order, the district court found that the Confidentiality Agreement included videos of proceedings and that Kellogg's dissemination of the videos violated the Confidentiality Agreement as well as NRS 125.110 and EDCR 5.210. Although it did not order sanctions, the district court ordered Kellogg to immediately cease disseminating the videos and directed her to take "active measures to remove videos of hearings from these proceedings previously posted publicly." Kellogg now appeals.

On appeal, Kellogg contends the district court erred in (1) finding that Kellogg had disseminated videos of proceedings before and after the Confidentiality Agreement; (2) finding that Ghibaudo timely objected to the dissemination of the videos; and (3) finding that dissemination of the proceeding videos breached the Confidentiality Agreement. We address each argument in turn.

Substantial evidence supports the district court's finding that Kellogg disseminated videos before and after the Confidentiality Agreement

Kellogg first argues the district court had no basis for its factual finding that she disseminated proceeding videos before and after entry of the Confidentiality Agreement. Specifically, the district court found that "[Kellogg] has admitted that she has posted videos before and after the Confidentiality Agreement and Protective Order was executed or that she has facilitated the dissemination and posting of videos from these hearings before and after the Confidentiality Agreement was executed." Kellogg contends that this finding was erroneous because it made no findings "as to where these admissions were made (e.g., in a pleading or in open court), to whom these videos were allegedly disseminated to, when specifically these videos were disseminated (even a ballpark), or other components of who, what, when, where and why." While Kellogg takes issue with the degree of specificity in the court's order, she does not explain how she was prejudiced by the court's failure to make more detailed findings. *Cf. Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, 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.").

Findings of fact must be upheld if supported by substantial evidence and may not be set aside unless clearly erroneous. NRCP 52(a); *see also Trident Constr. Corp. v. W. Elec., Inc.*, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989). "Substantial evidence has been defined as that which a reasonable mind might accept as adequate to support a conclusion." *McClanahan v. Raley's, Inc.*, 117 Nev. 921, 924, 34 P.3d 573, 576 (2001) (internal quotation marks omitted). Moreover, "even in the absence of express findings, if the record is clear and will support the judgment,

findings may be implied." *Pease v. Taylor*, 86 Nev. 195, 197, 467 P.2d 109, 110 (1970).

Here, substantial evidence exists in the record to support the district court's finding that Kellogg either disseminated or facilitated the dissemination of videos that depict proceedings before and after execution of the Confidentiality Agreement. In his motion for an order to show cause, Ghibaudo identified 13 videos of the sealed proceedings, each of which were publicly posted on YouTube. He provided a chart that included the live URL link, hearing date, and upload date for each video. The videos included proceedings that occurred both before and after the parties entered their Confidentiality Agreement, though all videos were apparently uploaded after entry of the Confidentiality Agreement. Ghibaudo also provided the district court with Kellogg's discovery responses and deposition transcript. In her discovery responses, Kellogg admitted, "I have shared the material because I have a right to and I believe it is public knowledge and a matter of public concern." In her deposition, Kellogg further admitted, multiple times, that she disseminated videos of the proceedings because she believed it was a matter of public interest. Ghibaudo's evidence and Kellogg's own admissions constitute substantial evidence to support the district court's finding that Kellogg publicly disseminated or facilitated dissemination of videos of proceedings that occurred both before and after the parties entered the Confidentiality Agreement.

The district court did not clearly err in finding that Ghibaudo properly objected to the dissemination of the proceeding videos

Kellogg next argues that the district court erroneously found that Ghibaudo "timely objected" to dissemination of the proceeding videos when he waited "until 2022 to raise any issues about these postings." Specifically, Kellogg argues that "[p]arties to a contract are expected to

enforce their rights within a reasonable period of time or they run the risk of waiving their rights." In response, Ghibaudo argues that the Confidentiality Agreement expressly holds that failure to enforce a right is not a waiver.

When there are no facts in dispute, contract interpretation is a question of law subject to de novo review. *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011). "It has long been the policy in Nevada that absent some countervailing reason, contracts will be construed from the written language and enforced as written." *Ellison v. Cal. State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990); *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) (holding that if a document is facially clear, it will be construed according to its language).

In this case, an express provision in the Confidentiality Agreement permitted Ghibaudo to object at any point during the Agreement's duration. Specifically, paragraph 20 provides that "[n]either the failure of any Party at any time to enforce any of the provisions of this Stipulated Protective Order nor the granting at any time of any other indulgence shall be construed as a waiver of that provision or of the right of either Party afterwards to enforce that or any other provision." When a contract contains express terms, this court "[is] not free to modify or vary the terms of an unambiguous agreement." *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001). Kellogg does not challenge the validity of the Confidentiality Agreement or otherwise address this provision in her argument.

Therefore, based on the plain language of the Confidentiality Agreement, we reject Kellogg's contention that Ghibaudo failed to timely object to the dissemination of proceeding videos in this case.[2]

The district court did not clearly err in finding that Kellogg breached the Confidentiality Agreement by disseminating videos of the court proceedings

Kellogg next argues that the district court erroneously found that she breached the Confidentiality Agreement when she disseminated videos of the court proceedings. A district court's determination of whether a breach of contract occurred is reviewed for clear error. *See Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) ("[T]he district court's determination that the contract was or was not breached will be affirmed unless clearly erroneous . . . ."). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Unionamerica Mortg. & Equity Tr. v. McDonald*, 97 Nev. 210, 211-12, 626 P.2d 1272, 1273 (1981) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 396 (1948)). Therefore, the district court's determination that a party breached a contract will be upheld unless such determination was clearly erroneous in light of the evidence presented. *Sheehan*, 121 Nev. at 486, 117 P.3d at 223.

However, "we have also recognized that the [c]onstruction of a contractual term is a question of law and this court is obligated to make its own independent determination on this issue, and should not defer to the

---

[2]We note the district court found that Ghibaudo objected to the videos but did not make any findings with respect to the timeliness of Ghibaudo's objection. Nonetheless, because we conclude that Ghibaudo's objection was timely under the Confidentiality Agreement, the district court's finding is supported by substantial evidence.

district court's determination." *Id.* (alteration in original) (internal quotation marks omitted). Thus, "the district court's interpretation of the meaning of contractual terms is subject to independent appellate review." *Id.*

Kellogg contends that the Confidentiality Agreement did not include videos because it "in no way shape or form contemplated hearing videos or matters outside of discovery." Conversely, Ghibaudo responds that videos are protected under the Confidentiality Agreement because it defines "Confidential Material" as "information" and "all such documents and information received and/or issued in this matter prior to the entry of this agreement." Based on the express provisions of the Confidentiality Agreement as well as the intent of the parties, we agree with Ghibaudo and conclude that videos may be protected to the extent the videos contain or discuss Confidential Material.

In interpreting a contract, this court looks to the language of the contract and surrounding circumstances. *Redrock Valley Ranch*, 127 Nev. at 460, 254 P.3d at 647-48. When reviewing a contract, the objective "is to discern the intent of the contracting parties." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012) (internal quotation marks omitted). In doing so, we will enforce the contract as written, so long as it is clear and unambiguous. *Id.*; *see also Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) (noting that the appellate court interprets unambiguous contracts according to the plain language of their written terms).

Although Kellogg may have subjectively believed that the Agreement did not include videos, her belief does not override the contract's plain language. The Confidentiality Agreement expressly defined

"Confidential Material" to include documents, material and *information*. Similarly, in the examples given of Confidential Material, the contract lists "information, records and data" pertaining to discovery disclosures. The Confidentiality Agreement also contains a specific provision for marking items as confidential and provides that "[m]achine readable media and other non-documentary material shall be designated as Confidential Material by some suitable and conspicuous means, given the form of the particular embodiment."

"Contractual provisions should be harmonized whenever possible, and no provision should be rendered meaningless." *Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 459, 453 P.3d 1229, 1231-32 (2019) (internal quotation marks and citations omitted). Kellogg offered no factual or legal support for her belief that videos, as a medium, were not contemplated by the Confidentiality Agreement; further, her proffered interpretation could not be harmonized with an express contractual provision for marking "[m]achine readable media and other non-documentary materials" as Confidential Material. Excluding videos from the Confidentiality Agreement would render this provision meaningless. *Id.* Contrary to Kellogg's argument, the inclusion of "information" within the definition of Confidential Material, as well as a specific provision for marking "machine readable media" as confidential, indicates an intent for videos to be included as a medium that may potentially contain Confidential Material, or that may be marked as Confidential Material.

Kellogg acknowledged that the Confidentiality Agreement "was entered into 'to facilitate the disclosure of information'" during discovery. Based on the intent of the parties to facilitate the disclosure of information,

in conjunction with the contract's express terms, the purpose of the contract was to protect the *information* or *data* disclosed during discovery, not simply the paper documents. *Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 310, 301 P.3d 364, 367 (2013) ("Contract interpretation strives to discern and give effect to the parties' intended meaning."). Therefore, the Confidentiality Agreement protects from disclosure any videos that were themselves marked as Confidential Material or, alternatively, any portions of videos that contained or otherwise referenced information designated as Confidential Material.

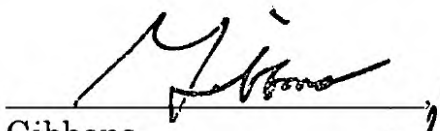
We turn next to whether the district court clearly erred in finding that Kellogg breached the Confidentiality Agreement. The district court's finding will be upheld unless clearly erroneous in light of the evidence presented. *Sheehan*, 121 Nev. at 486, 117 P.3d at 223.

It does not appear, from the parties' arguments on appeal that any of the videos were, themselves, marked as Confidential Material, such that the entirety of the videos would be protected from disclosure. However, Ghibaudo argues the shared videos showed proceedings "where information adduced from the documents disclosed by [Ghibaudo] were referenced and used in oral argument." He specifically identified three videos that "referenced and discussed [Ghibaudo]'s personal and business affairs; information that was obtained from the disclosures made through the discovery process." Although Kellogg argues that Ghibaudo failed to raise these facts in the district court, Ghibaudo included live URL links to the videos in his district court motion, and therefore the court had the ability to watch the videos in full. Additionally, where Kellogg failed to provide this court with a transcript of the hearing, we may presume the district court acted correctly, and therefore Kellogg cannot establish the district court

clearly erred in finding that her conduct breached the Confidentiality Agreement. *Hampton v. Washoe County*, 99 Nev. 819, 821 n.1, 672 P.2d 640, 641 n.1 (1983) ("If the record is insufficient to allow review of a lower court's decision, we will presume the lower court acted correctly."). Therefore, Kellogg is not entitled to relief on this claim.[3]

Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.[4]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

---

[3]Kellogg further contends that the district court erred by entering an order pursuant to NRS 125.110 and EDCR 5.210 and also by ordering her both to cease distributing videos of the court proceedings and to take active measures to remove videos that had already been posted. In light of the Nevada Supreme Court's recent opinion in *Falconi v. Eighth Judicial District Court*, 140 Nev., Adv. Op. 8, 543 P.3d 92 (2024), we agree that NRS 125.110 and EDCR 5.210 cannot support the district court's decision. However, parties are free to contractually agree that certain material is confidential. *See Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012). Because we affirm the district court's findings that the Confidentiality Agreement included videos of the proceedings and that Kellogg breached the Agreement by disseminating those videos, we also affirm the court's order requiring Kellogg to cease distributing videos and to take measures to remove the posted videos. *See generally Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("[We] will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.").

[4]Insofar as Kellogg raises additional arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. T. Arthur Ritchie, Jr., District Judge, Family Court Division
Schwab Law Firm PLLC
JK Nelson Law LLC
Alex B. Ghibaudo, PC.
Eighth District Court Clerk