IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES WALKER, SPECIAL ADMINISTRATOR FOR THE ESTATE OF EVELYN MACKIE,
Appellant,
vs.
ALBERTSON'S LLC, D/B/A ALBERTSON'S HOLDINGS, A DELAWARE CORPORATION,
Respondent.

No. 71290

ORDER OF AFFIRMANCE

Charles Walker appeals a district court order dismissing a tort action and a subsequent order denying reconsideration. Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Evelyn Mackie slipped and fell at an Albertsons grocery store. After filing her complaint, Mackie died from causes unrelated to the slip-and-fall. The probate court appointed Charles Walker, the appellant, as the special administrator of Mackie's estate. The district court gave Walker multiple extensions to allow him to file Letters of Special Administration and an oath to support a motion to substitute parties, but ultimately denied the motion and dismissed the case with prejudice after Walker failed to meet the final deadline extension.[1] Walker argues on appeal that the district court erred in denying his subsequent motion for

[1]We do not recount the facts except as necessary to our disposition.

reconsideration in light of the district court's factual errors and his own excusable neglect.[2]

We first address Walker's factual error arguments. A party may file an NRCP 59 motion for relief to correct "manifest errors of law or fact," *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010) (internal quotation marks omitted), and this court reviews denials for an abuse of discretion, *Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996).[3] Factual findings will not be set aside unless they are clearly erroneous or unsupported by substantial evidence. *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004). Moreover, an appellant must show that a complained-of error was prejudicial, or impacted the outcome of the case. *See Khoury v. Seastrand*, 132 Nev. ___, ___, 377 P.3d 81, 94

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[2]Walker also argues that the district court erred in denying the motion for substitution after previously granting it, but he failed to raise this argument in his motion for reconsideration and fails to cogently argue it on appeal and we will not consider it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims not cogently argued).

[3]Walker asks us to apply the standard of review for case-ending discovery sanctions, but NRCP 25 is not a discovery rule. Rather, NRCP 25 regulates substitution of proper parties, and the rule specifically requires dismissal if a motion to substitute for a deceased party is not timely filed. NRCP 25(a)(1) ("Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record . . . , the action shall be dismissed as to the deceased party."). Thus, Walker must demonstrate that dismissal was not warranted under NRCP 25 because the court factually erred in finding that he did not timely file.

(2016) (holding that "[t]o be reversible, an error must be prejudicial and not harmless," meaning that "but for the alleged error, a different result might reasonably have been reached" (internal quotation marks omitted)).

Walker argues below and on appeal that the district court dismissed the case based on two erroneous factual findings: the court's finding that, as of June 22, the letters and oath had not been filed, and its finding that as of May 2, Mackie's estate had not yet been set up. As to the first alleged error, Walker is correct that the court's factual finding that "[n]one [of the documents] were filed" as of June 22 is not literally true—he did file Letters of Special Administration and an oath on June 20. However, it appears that Walker filed these documents in the *probate* matter, not in Department 29 where the civil case was pending. Therefore, the district court did not clearly err in saying that they were not "on file" for the instant case. More importantly, Walker conceded below that he filed the documents late, and thus the essence of the court's factual finding—that he failed to timely file—is not clearly erroneous. And even if he could prove error, Walker fails to demonstrate that the error prejudiced him because regardless of whether the district court found that the documents were not filed as of June 20 or June 22, he admits that he missed the June 15 deadline and therefore cannot establish that this particular finding impacted the outcome.[4]

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[4]Walker argues, for the first time on appeal, that the district court's deadline was ambiguous and that he may not have missed the deadline. Because Walker failed to raise this argument below and it contradicts a position he adopted below, we ignore it. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983; *Nev. Power Co. v. 3 Kids, LLC*, 129 Nev. 436, 444, 302 P.3d 1155, 1160 (2013), *as modified* (July 24, 2013) (explaining that a party on appeal cannot assume a position inconsistent with one taken below).

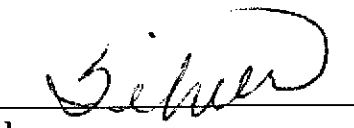
As to the second alleged error, Walker misstates the court's findings. The order dismissing the case says "on April 11, 2016, [Walker] stated that the estate was not yet set up," and "on May 2, 2016, [Walker] advised that he still had yet to establish the estate." These findings are factually supported in the record, as it was Walker himself who made numerous representations throughout the litigation that the estate had not been set up. Thus, the court did not err in its findings on this point. Moreover, to the extent to which the district court may have erred by relying on these findings to support its decisions, Walker cannot complain of any related errors on appeal as he is the one who provoked them. *See Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 388-89, 168 P.3d 87, 91-92 (2007) (explaining that the invited error doctrine precludes a party from raising errors on appeal that the party induced the court to commit).

We now turn to Walker's excusable neglect arguments. A court may set aside an order under NRCP 60(b)(1) on the grounds of "excusable neglect," and this court reviews denials of such relief for an abuse of discretion. *Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 662, 98 P.3d 691, 693 (2004). A court may abuse its discretion in refusing to set aside a judgment for excusable neglect if no significant policy interest is served by doing so and if the consequences are "unduly harsh." *Adams v. Lawson*, 84 Nev. 687, 689, 448 P.2d 695, 696 (1968). Generally, this court prefers to hear cases on the merits; however, departures from this preference may be justified by preserving the integrity of rules of procedure. *See id.* at 688, 448 P.2d at 695-96.

Below, the district court extended its deadlines on four separate occasions for Walker, and he failed to meet them all. After

carefully reviewing the record and balancing this court's preference for hearing cases on the merits with the interest in preserving the integrity of the rules of procedure, we conclude the district court did not abuse its discretion by holding that Walker failed to establish excusable neglect.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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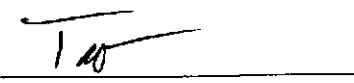

_____, J.
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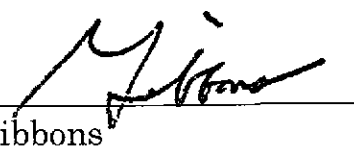

_____, J.
Gibbons

cc: Chief Judge, The Eighth Judicial District Court
Hon. J. Charles Thompson, Senior Judge
Thomas J. Tanksley, Settlement Judge
David Lee Phillips & Associates
Backus, Carranza & Burden
Eighth District Court Clerk

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[5]We have also considered Walker's argument that the district court abused its discretion by failing to make factual findings regarding whether his neglect was excusable but reject it because the record supports the district court's decision. *See Luciano v. Diercks*, 97 Nev. 637, 639, 637 P.2d 1219, 1220 (1981) (explaining that this court will imply findings of fact if the record is clear and supports the judgment).