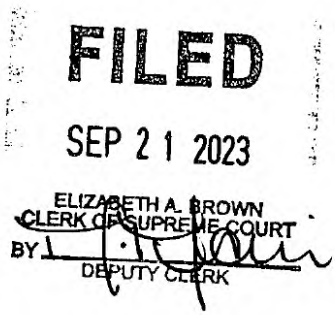
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TOICHI TSUNODA; MASARU TSUNODA; NORIKO NIKURA; NAOKA SHIMAZAKI; AND SUEKO TAKAYANAGI, INDIVIDUALLY AND AS CREDITORS OF THE ESTATE,
Appellants,
vs.
LINDA OYLER, INDIVIDUALLY, SURVIVING SPOUSE OF TAKESHI TSUNODA, AND AS REPRESENTATIVE (CTA) OF THE ESTATE OF TAKESHI TSUNODA,
Respondent.

No. 85110-COA



ORDER OF AFFIRMANCE

Toichi Tsunoda, Masaru Tsunoda, Noriko Nikura, Naoka Shimazaki, and Sueko Takayanagi appeal from the district court's findings of fact, conclusions of law, and judgment.[1] Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Takeshi Tsunoda was born and raised in Japan. As the oldest son in the family, Takeshi was the heir to his family's agricultural business and the family farmland was titled in his name when he was about 12 years old.[2] After the land was titled in Takeshi's name, Takeshi's father agreed to rent the land to a cemetery operator. At some unspecified point in time, a Japanese bank account in Takeshi's name was opened. The rental income

[1]The Honorable Bonnie A. Bulla, Judge, did not participate in the decision of this matter.

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

23-31060

from the former farmland was deposited in this account. By 1997, the rental income from the land was $10,000 per month.

Takeshi moved to the United States in the 1970's and married Oyler in 1994 in Colorado. Prior to marrying Takeshi, Oyler had purchased six properties in Colorado. Takeshi was never added to the title of these properties. After Takeshi and Oyler married, they purchased a home in California. They eventually sold the home in 2004 and permanently resided in Las Vegas. Between 2000 and 2002, Oyler acquired five properties in Las Vegas. Takeshi was a joint tenant of one of the properties, but the remaining four properties were Oyler's sole property, acquired in 1031 exchanges when she sold her Colorado properties.[3]

Beginning in 1993, Takeshi wrote several letters to his relatives in Japan requesting that they wire him money in amounts ranging from $10,000 to $50,000 at a time. While no bank records were ever produced at trial proving that the money was wired or received, Takeshi's relatives (collectively referred to as Tsunoda) allege that they sent $1.6 million to Takeshi.

Takeshi died intestate in Las Vegas in 2013. Within two months of his death, Oyler filed a petition to set aside Takeshi's estate for her. At the time of his death, Takeshi had $24,130.57 in assets and $163,169.39 in debts. Oyler did not notify Tsunoda of Takeshi's death or the petition. Tsunoda only became aware of Takeshi's death after a bank manager informed them that Takeshi's Japanese bank account had been

[3]A 1031 exchange allows a seller to avoid or defer capital gain taxes by selling an investment property then reinvesting the proceeds into another investment property of equal or greater value.

frozen because of probate proceedings in Japan.[4] The petition to set aside in Nevada was granted in 2013, closing the case, however, the case was reopened in 2016 at Tsunoda's request.

In September 2015, Tsunoda filed a civil complaint against Oyler and Takeshi's estate raising nine causes of action including declaratory relief; quiet title; breach of contract; breach of covenant of good faith and fair dealing; unjust enrichment/conversion; construction and/or actual fraud, conversion; interference with an economic relationship; breach of fiduciary duty; and negligence, abuse/neglect, failure to aid, etc.[5] Tsunoda served Oyler in an individual capacity and listed Oyler as the alleged representative of Takeshi's estate. Tsunoda theorized that Oyler and Takeshi had used funds that were intended as either a loan or an investment opportunity for Tsunoda and then failed to either pay back the money or used the money to purchase property in Las Vegas. They argued that this gave Tsunoda an interest in the Las Vegas properties. In June 2016, a special administrator was appointed for Takeshi's estate. The special administrator was never served with the complaint.

In December 2021, during a pre-trial conference, Tsunoda informed the court that they had obtained a certified Japanese interpreter for the trial. A five-day bench trial was held in December 2021 (a brief appearance occurred in July 2021 to toll the five-year rule). During trial, Oyler, Toichi Tsunoda (Takeshi's younger brother), and a CPA, Tsunoda's expert witness, testified. Toichi does not speak English, so the interpreter

---

[4]It appears that there are separate probate proceedings occurring in Japan to disperse Takeshi's Japanese assets.

[5]Tsunoda's ninth cause of action was not pursued at trial.

was used to allow Toichi to testify. The interpreter was sworn in, but the record does not indicate if the interpreter swore an oath pursuant to NRS 50.054.[6]

Oyler and Toichi both testified that the farmland in Japan and bank account were titled in Takeshi's name. Toichi also testified that while the property was titled in Takeshi's name, it really belonged to the Tsunoda family as an inheritance from their father. Further, he testified that substantial funds were wired to Takeshi for the benefit of all the siblings. Notably, however, no records of sent wire transfers were ever produced. The district court excluded letters written by Takeshi to Tsunoda on the grounds that they were inadmissible hearsay, finding that Takeshi's estate was not a party because it had never been properly served.

At the conclusion of trial, the district court found in favor of Oyler on all counts. The court found that the money sent to Takeshi was his own money and that the Las Vegas properties were Oyler's sole property. The district court also found that there was no evidence of a contract between Tsunoda and Takeshi or between Tsunoda and Oyler.

Tsunoda appeals and raises seven arguments. First, that Takeshi's estate was properly served. Second, the district court failed to properly apply Japanese law to evaluate if the land and the money in Takeshi's bank accounts were really Takeshi's own property or if it was Tsunoda family property. Third, that the district court abused its discretion by excluding Takeshi's letters because they were statements of the party

---

[6]NRS 50.054 provides that an interpreter shall swear or affirm that they will interpret accurately and "repeat the statements of the person with limited English proficiency to the best of" their ability. NRS 50.054(2)(a)-(c).

opponent and dealt with an interest in property. Fourth, that the district court abused its discretion in finding that there was no contract between Tsunoda and Takeshi. Fifth, that the district court abused its discretion by finding that the money sent to Takeshi was his separate property in Japan. Sixth, that the district court erred by not independently verifying that the interpreter was certified and by failing to administer an oath pursuant to NRS 50.054. Finally, Tsunoda argues that the above-described errors were cumulative and that this court should apply the cumulative error doctrine to civil cases and reverse the district court and remand the matter for a new trial. We disagree.

Takeshi's estate was properly dismissed as a party

Tsunoda argues that the district court erred in dismissing Takeshi's estate as a party because the estate waived any defense for insufficient service of process and because the district court appointment of the special administrator made service moot, since the district court retained jurisdiction over the case. Oyler responds that Tsunoda failed to serve the Takeshi estate which means that the estate was properly dismissed from the lawsuit.

This court reviews a dismissal for a failure to effect service of process for abuse of discretion. *Saavedra-Sandoval v. Wal-Mart Stores*, 126 Nev. 592, 595, 245 P.3d 1198, 1200 (2010). A district court abuses its discretion when it makes an obvious error of law. *See Franklin v. Bartsas Reality, Inc.*, 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979). A plaintiff is required to serve the summons and complaint "upon a defendant no later than 120 days after the complaint is filed." NRCP 4(e)(1).

Tsunoda argues that because the estate never moved to dismiss itself as a party that the Takeshi estate waived the defense of insufficient

service. However, Tsunoda raises this argument for the first time on appeal, despite having an opportunity to raise it below. Tsunoda failed to raise this argument the first time Oyler argued that the Takeshi estate had not been properly served and was thus not a party to the lawsuit. Tsunoda failed to raise the argument during their closing argument even after knowing that the district court did not think the Takeshi estate had been properly served. And Tsunoda did not raise the argument in the proposed findings of fact, conclusions of law and judgment. Accordingly, we conclude that Tsunoda waived this argument. *See Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (stating "that arguments raised for the first time on appeal need not be considered"); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (explaining that issues not argued below are "deemed to have been waived and will not be considered on appeal").[7]

Tsunoda also argues that the Takeshi estate had already been set aside in Oyler's favor when the lawsuit began; therefore, when they served Oyler they also served the Takeshi estate. Tsunoda goes on to argue that this gave the district court jurisdiction over the Takeshi estate which the district court, in probate proceedings, retained because it appointed a special administrator for the estate, even though it is undisputed that the special administrator was not served. Oyler responds that serving her was

---

[7]Even if we consider the merits of Tsunoda's argument, a district court is permitted to sua sponte dismiss a case for failure to effect proper service. NRCP 4(e)(2); *see also Turner v. State*, No. 72634, 2017 WL 6547669, at *1 (Nev. Dec. 18, 2017) (Order of Reversal and Remand) (stating that a court may sua sponte dismiss a case for failure to effect proper service). Therefore, while the Takeshi Estate could have affirmatively moved to dismiss the lawsuit against it for lack of service, it was not required to.

not the same as serving the Takeshi estate; therefore, the Takeshi estate was never served.

Tsunoda fails to provide any authority that Oyler became the representative of the Takeshi estate when the estate was set aside in her favor. As Oyler argues, Tsunoda merely asserting that Oyler was the representative of the estate when serving her does not make her the representative of the estate. Moreover, she was never appointed as an administrator or personal representative; she was only a petitioner and beneficiary. Since Tsunoda has failed to provide authority to support the argument, we need not consider it. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Additionally, NRS 146.070 (addressing estates not exceeding $100,000) does not state that setting aside the estate makes the petitioner or recipient an administrator. *See* NRS 146.070. We also note that none of the properties at issue in this case were set aside to Oyler in the probate action. Accordingly, we conclude that the district court did not err or abuse its discretion in dismissing the Takeshi estate.

The district court did not err in failing to apply Japanese law

Tsunoda argues that the district court erred because it did not apply Japanese law when it considered if the money Tsunoda sent to Takeshi was Tsunoda family funds. Oyler responds that Tsunoda's NRCP 44.1 notice was untimely, that the district court properly considered the testimony of Toichi Tsunoda when evaluating Japanese law, that Tsunoda failed to show they had a legal claim to Oyler's property, and that there was

never a creditor claim filed against the Takeshi estate.[8] Tsunoda replies that the NRCP 44.1 notice was timely, the Tsunoda family had a legal interest in the funds wired from Japan, and that Oyler did not provide notice to the Tsunoda family that Takeshi died so any argument that the family needed to file a creditor claim is fundamentally unfair.

Tsunoda argues that Japanese law should have been consulted to determine how the Tsunoda siblings inherited property after their father, Kaichi, died. The record confirms that the property that was at issue, and generated the income that was apparently transferred to Takeshi, was titled in Takeshi's name when Takeshi was about 12 years old. Tsunoda argues that Takeshi's father's agreement to rent the property when Takeshi was 25, demonstrates that Takeshi's father still had title to the land. They argue that therefore, when Takeshi's father died, the land should have been inherited equally by each of the siblings. Problematically, Tsunoda provides no support from the record for this assumption and fails to present a cogent argument. Accordingly, we conclude that the court need not consider this argument. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

While Tsunoda did present Japanese law to the district court, Tsunoda failed to raise the same arguments now raised before this court or to even explain why it was presenting Japanese law to the court. Accordingly, Tsunoda's argument was waived. *See Diamond Enters., Inc.*, 113 Nev. at 1378, 951 P.2d at 74; *see also Old Aztec Mine, Inc.*, 97 Nev. at 52, 623 P.2d at 983.

Turning to the merits of the argument, this court reviews questions of law de novo. *Leven v. Frey*, 123 Nev. 399, 402, 168 P.3d 712,

---

[8]NRCP 44.1 provides that "a party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing."

714 (2007). "The district court's factual findings will be left undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018). The district court made the factual finding that the Japanese bank account titled in Takeshi's name was Takeshi's sole property and did not belong to the Tsunoda family. This factual finding was based upon the testimony of Toichi Tsunoda. Toichi testified that the bank account and land was titled solely in Takeshi's name and that a Japanese court would consider that Takeshi's property. NRCP 44.1 permits a district court to "consider any relevant material or, source including testimony." The district court clearly considered the testimony of Toichi, which was permissible. While it is true that the district court did not cite to any of the Japanese law provided by Tsunoda, this was not an error let alone a reversible error. Finally, further application of Japanese law would not have changed the result because Tsunoda did not present evidence that its funds were used to purchase Oyler's properties or the one formerly jointly titled property.

The district court did not abuse its discretion by excluding Takeshi's letters

Tsunoda argues that the district court abused its discretion by excluding letters from Takeshi showing that transfers of Tsunoda family funds were made for the purpose of investing in real property in the United States because Takeshi was a party opponent, and the statements affect an interest in real property. Oyler responds that the statements were properly excluded because they were not made by a party opponent and further argues that because Tsunoda is raising the real property argument for the first time on appeal, it is waived.

The court reviews the exclusion of evidence for an abuse of discretion. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 914, 193 P.3d 536, 545 (2008). A district court abuses its discretion when it makes an obvious error of law. *See Franklin*, 95 Nev. at 562-63, 598 P.2d at 1149. A statement made by the opposing party and offered against that party is not hearsay. NRS 51.035(3)(a). "A statement contained in a document purporting to establish or affect an interest in property" is admissible "if the matter stated was relevant to the purpose of the document." NRS 51.225.

As discussed above, the Takeshi estate was not properly served; therefore, it was not a party in the lawsuit. Accordingly, we conclude that the district court did not abuse its discretion when it excluded the evidence because it was not the statement of a party opponent.

Moreover, Tsunoda failed to raise any NRS 51.225 hearsay exception argument below. Therefore, the argument is waived on appeal. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. Tsunoda argues that this court should review for plain error, which is a high bar to overcome since plain error is only used in civil cases to address serious errors affecting the substantial rights of the parties. NRS 47.040 (1), (2); *In re J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012) (using plain error to review an error in a termination-of-parental-rights case); *see also Williams v. Zellhoefer*, 89 Nev. 579, 580, 517 P.2d 789, 789 (1983) (stating if argument or authority is not presented as to the alleged error, this court will not consider it unless "the error is so unmistakable that it reveals itself by a casual inspection of the record"). Tsunoda appears to argue that the statements should have been included because they prove that the Tsunoda family sent their funds to Takeshi so Takeshi could invest them for the benefit of the family. We

note that the excluded statements do not prove that $1.6 million of the Tsunoda family funds were ever sent to Takeshi, let alone that they were ever intended to be a real estate or other investment joint venture for the family. These letters, notably, do not contain any replies, nor do they contain any confirmations that $1.6 million was actually wired. Accordingly, we conclude that Tsunoda failed to demonstrate plain error. Importantly, the admission of the letters would not change the result of the proceedings because they have nothing to do with Oyler and they were incomplete—lacking any confirmation that a total of $1.6 million was actually sent. Therefore, the district court did not commit a reversible error.[9]

The district court did not err by finding that the money allegedly transferred to Takeshi in the United States was his separate property in Japan

Tsunoda argues that the district court abused its discretion because overwhelming evidence suggests that the $1.6 million allegedly sent to Takeshi was not Takeshi's sole and separate property. Oyler responds that Tsunoda failed to provide proof that the money belonged to Tsunoda.

---

[9]Tsunoda's argument that the district court erred by finding that no contract existed relies upon the admission of Takeshi's letters. Since the letters were properly excluded from evidence, the district court did not err by finding that no contract existed. After reviewing the letters to address Tsunoda's plain error argument, we also note that they do not establish that a contract was formed since they do not show that $1.6 million was wired to Takeshi or if the money was a loan or loaned at a specific interest rate to be paid back or for a specific real estate investment. We also note that they do not show that Oyler benefited from any contract. Tsunoda merely alleges that Oyler was a party to the contract, but the district court found that there was no evidence supporting that claim and Tsunoda identifies none on appeal.

Following a bench trial, this court leaves the district court's factual findings "undisturbed unless they are clearly erroneous or not supported by substantial evidence." *Wells Fargo Bank, N.A.*, 134 Nev. at 621, 426 P.3d at 596. Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." *Finkel v. Cashman*, 128 Nev. 68, 73, 270 P.3d 1259, 1262 (2012) (internal quotations omitted). Additionally, this court does not reweigh evidence on appeal. *See Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

Here, the district court's factual findings are not clearly erroneous and are supported by substantial evidence. Oyler testified that Takeshi had land titled in his name and there was separate family land from Takeshi's father that Takeshi's younger brother, Toichi, kept. Toichi testified that the land and bank account were in Takeshi's name. Toichi also testified that any assets in Takeshi's name are considered Takeshi's property under Japanese law. Additionally, no records of the alleged wire transfers were ever provided. Further, only one bank statement was provided showing that Takeshi's American bank account received a wire transfer from Takeshi's Japanese bank account. Accordingly, we conclude that substantial evidence supports the district court's factual finding that any money sent was Takeshi's separate property and had no connection to Oyler.

The district court did not err by not independently verifying that the interpreter was certified and not administering an oath under NRS 50.054

Tsunoda argues that the district court failed to administer an oath to the Japanese interpreter and failed to independently verify that the interpreter was a certified interpreter. Tsunoda admits that these arguments were not raised below but argues that this court should review

for plain error. Oyler responds that the district court was not required to administer an oath to the interpreter and that the interpreter was obtained by Tsunoda, so Tsunoda invited the error.

Independent verification of the interpreter

Tsunoda argues that the district court plainly erred by not verifying that the interpreter was certified pursuant to NRS 1.510-.520.[10] Oyler responds that Tsunoda found the interpreter and represented to the court that the interpreter was certified; therefore, Tsunoda cannot now complain that the use of the interpreter was an error.

Tsunoda failed to raise this issue below; therefore, we consider the issue waived. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. Additionally, Tsunoda produced the interpreter and represented to the district court, who asked to confirm the interpreter was certified, that the interpreter was certified. Accordingly, we need not consider Tsunoda's argument because Tsunoda invited the error if there was any, and in any event the error was not plain. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (explaining that a party will not be heard to complain of errors that they induced or provoked the court to commit); *In re J.D.N.*, 128 Nev. at 469, 283 P.3d at 847; *Williams*, 89 Nev. at 580, 517 P.2d at 789. Tsunoda argues that because the interpreter was not certified "it is impossible to ascertain whether the translated testimony was accurate." This broad, far-reaching statement is not supported by any analysis and merely assumes that because the interpreter was not listed as a certified interpreter in 2022 that the testimony is inaccurate. We note that Tsunoda

---

[10]NRS 1.510 provides the regulations for becoming a certified interpreter. NRS 1.520 establishes how to administer the certification of interpreters.

acknowledges that the interpreter is not currently listed as a certified interpreter but could have possibly been certified at the time the case went to trial in 2021. Accordingly, we conclude that the district court did not commit a reversible error.

NRS 50.054

Tsunoda argues that NRS 50.054 required the district court to administer an oath to the interpreter and that the failure to do so was plain error that "presumptively prejudiced the Tsunoda Family's substantial rights, which created a grossly unfair outcome." Tsunoda argues that their substantial rights were violated because Toichi's testimony was not accurately interpreted. Tsunoda's only support for this argument is that Toichi's testimony differed from the translated letters. Oyler responds that the statute does not specify when the oath must be given; therefore, it was not plain error to not give the oath.

First, Tsunoda failed to raise this issue below; therefore, the issue is waived. *See Old Aztec Mine*, 97 Nev. at 52, 623 P.2d at 983. Second, we cannot discern any error, let alone plain error. *See In re J.D.N.*, 128 Nev. at 469, 283 P.3d at 847; *Williams*, 89 Nev. at 580, 517 P.2d at 789. Tsunoda argues that their substantial rights were violated because the interpreter appeared unfamiliar with court proceedings and the testimony produced at trial differed from the translation of letters written by Takeshi. Tsunoda produces no authority and fails to cogently argue that being unfamiliar with court proceedings and trial processes resulted in an inaccurate interpretation of both the questions asked to Toichi and Toichi's answers. Additionally, Tsunoda does not allege that the apparent unfamiliarity of the interpreter with court proceedings was what resulted in an inaccurate interpretation.

Turning to the difference in Toichi's testimony and the translation of Takeshi's letters, differences between oral testimony in trial and written evidence, especially when they were produced by different individuals, does not show that the interpretation was inaccurate. We note that testimony differing in trial from other written or verbal evidence is not unique to this case. *See Cox v. Copperfield*, 138 Nev., Adv. Op. 27, 507 P.3d 1216, 1222 (2022) (addressing impeachment-by-contradiction). Nor does Tsunoda produce any authority that shows that these discrepancies mean the interpretation is inaccurate.

If we consider the merits of the argument, NRS 50.054 provides that an interpreter shall swear or affirm that they will interpret accurately and "repeat the statements of the person with limited English proficiency to the best of" their ability. NRS 50.054(2)(a)-(c). We review issues of statutory construction de novo. *Webb v. Shull*, 128 Nev. 85, 88, 270 P.3d 1266, 1268 (2012). When construing statutes, the word "shall" is presumptively mandatory. *State v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990).

The record reveals that the district court did swear in the interpreter, but the specific language used is not in the record. While Tsunoda alleges the same language was used to swear in the interpreter and Toichi, the witness, this is not reflected in the record. It was Tsunoda's responsibility to provide a complete record to assist this court's appellate review and we assume that missing statements support the district court's ruling. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603,

172 P.3d 131, 135 (2007). Therefore, we conclude that the district court did not commit reversible error.[11]

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[12]

_____, C.J.
Gibbons

_____, J.
Westbrook

cc: Hon. Mark R. Denton, District Judge
Hutchison & Steffen, LLC/Reno
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas
Phillips Ballenger
Eighth District Court Clerk

---

[11]We need not address Tsunoda's cumulative error claim because we do not conclude that any of the alleged errors are errors. *See Nelson v. Heer*, 123 Nev. 217, 227 n.28, 163 P.3d 420, 427 n.28 (2007) (declining to address the issue of cumulative error because the court determined that Nelson's alleged errors were without merit).

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