IN THE SUPREME COURT OF THE STATE OF NEVADA

HELGA DYRHAUGE, INDIVIDUALLY,
Appellant,
vs.
ROBERT RANDOLPH BLACK, JR., AN INDIVIDUAL,
Respondent.

No. 85979

FILED

MAY 30 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment on a jury verdict. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Appellant Helga Dyrhauge filed a personal-injury lawsuit against respondent Robert Randolph Black, Jr. following a car accident. The jury returned a verdict in favor of Black and the district court entered a corresponding judgment. Dyrhauge appeals, challenging several procedural and evidentiary rulings. We affirm.

Standard of review

Legal questions are reviewed de novo. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 364, 212 P.3d 1068, 1079 (2009). Evidentiary rulings are reviewed for an abuse of discretion. *FGA, Inc. v. Giglio*, 128 Nev. 271, 283, 278 P.3d 490, 497 (2012). In conducting either review, this court will only reverse a jury verdict where the asserted error is "prejudicial and not harmless." *Khoury v. Seastrand*, 132 Nev. 520, 539, 377 P.3d 81, 94 (2016) (citing NRCP 61). Errors are not harmless if they affect a "party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached." *Id.* (internal quotation marks omitted). Plain-error review, which applies if a party failed to object below to an issue now raised on appeal, instead asks whether "no other reasonable explanation for the verdict exists." *Gunderson v. D.R. Horton, Inc.*, 130 Nev.

67, 75, 319 P.3d 606, 612 (2014) (quoting *Ringle v. Bruton*, 120 Nev. 82, 96, 86 P.3d 1032, 1041 (2004)).

Dyrhauge does not cogently argue that cumulative error should apply

As an initial matter, Dyrhauge argues on appeal that the alleged errors cumulatively warrant reversal. This court applies the cumulative-error doctrine in criminal cases, not civil. *See, e.g., Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (applying the cumulative-error doctrine in a criminal matter). Dyrhauge does not present an argument as to why we should adopt the doctrine in civil cases. Absent briefing on the issue, we need not address this issue and instead address whether the alleged procedural and evidentiary errors warrant reversal on their own. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006) (reiterating that it is an appellant's "responsibility to cogently argue, and present relevant authority, in support of [their] appellate concerns").

The alleged procedural errors do not supply a basis for reversal

Dyrhauge claims that the district court committed various procedural errors. She first argues the district court erred by instructing the jury regarding an improper burden of proof by stating that it was "not sure" whether it liked the "tipping-the-scales" analogy in describing the preponderance of evidence. She further argues that the district court erred because it should have given a curative instruction following that statement. We disagree on both points. This isolated comment—which did not misstate the law—does not reveal any error. The same is true of the district court's alleged responsibility to offer a curative instruction. *Cf. Leonard v. State*, 114 Nev. 1196, 1213, 969 P.2d 288, 299 (1998) (rejecting an argument premised on the district court's failure to give a curative instruction when failing to do so "did not materially prejudice appellant").

Neither the statement itself nor the lack of a curative instruction reveal error, let alone reversible error. *See Khoury*, 132 Nev. at 539, 377 P.3d at 94.

Dyrhauge next asserts that the district court committed reversible error in allowing her counsel, who had contracted COVID-19, to continue trial remotely. Even assuming arguendo this is error, it is invited error. Invited error "embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (quoting 5 Am. Jur. 2d *Appeal and Error* § 713 (1962)). Dyrhauge's counsel "induced or provoked" any error in specifically requesting to proceed remotely. *Id.* Therefore, Dyrhauge cannot "complain[ ] on appeal" of this error. *Id.*

The alleged evidentiary errors do not supply a basis for reversal

Dyrhauge also claims that the district court committed various evidentiary errors warranting reversal. First, Dyrhauge maintains that a new trial is needed because the district court allowed defense expert Dr. Lesnak to testify beyond the scope of his expert report. She points to a colloquy between Dr. Lesnak and defense counsel where she claims the defense "suggested . . . the existence of materials that [Dr. Lesnak] had not reviewed," purportedly leading Dr. Lesnak to change his causation opinion "in the middle of trial." Dyrhauge concedes that she did not contemporaneously object to this line of questioning below but stresses that she moved to strike the next day and that this nevertheless amounts to plain and serious error.

Because Dyrhauge failed to contemporaneously object to this testimony at trial, we review for plain error. *See* NRS 47.040(1)(a) (requiring parties to make "a timely objection or motion to strike" and state

"the specific ground of objection"); *Gunderson*, 130 Nev. at 75, 319 P.3d at 612. Even assuming arguendo it was error to allow the complained-of colloquy, we are not persuaded that this line of questioning prompted Dr. Lesnak to offer opinions that led to a different outcome at trial. *See Shoshone Coca-Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 447, 420 P.2d 855, 860 (1966) (recognizing that a "non-treating doctor may give his expert opinion at trial based upon a hypothetical question"); NRS 50.285(1) (allowing experts to testify on "facts or data . . . made known to the expert at or before the hearing"). In this, we also note that Dyrhauge was able to and did in fact cross-examine Dr. Lesnak about this line of questioning at trial. Because plain error is reserved for those errors where "no other reasonable explanation for the verdict exists," this challenge fails. *Gunderson*, 130 Nev. at 75, 319 P.3d at 612.

Second, Dyrhauge contends that the district court erred in restricting cross-examination into defense expert Dr. Seiff's pro-defense biases and instances where the doctor had been stricken as an expert. Below, in the sidebar on this issue, Dyrhauge did not say she wanted to address Dr. Seiff's potential biases; rather, Dyrhauge said she wanted to cross-examine Dr. Seiff about instances where Dr. Seiff had been stricken as an expert. The record shows that the district court, accordingly, allowed cross-examination into the instances Dr. Seiff had been stricken as an expert. The record further shows Dyrhauge did not ask for another sidebar to explain how she wanted to cross-examine Dr. Seiff about his potential biases after the district court, allegedly, "immediately prevented further questioning." Thus, we are not persuaded that the district court abused its discretion in limiting cross-examination to the issues Dyrhauge actually requested below. *See Matter of Guardianship of D.M.F.*, 139 Nev., Adv. Op.

38, 535 P.3d 1154, 1161 (2023) (defining an abuse of discretion as failing to supply appropriate reasons for a determination, exceeding the bounds of law or reason, or making an arbitrary or capricious decision); *Capanna v. Orth*, 134 Nev. 888, 893, 432 P.3d 726, 732 (2018) (noting the district court's "wide latitude to restrict cross-examination" (quoting *Leonard,* 117 Nev. at 72, 17 P.3d at 409)).

Third, Dyrhauge maintains the district court erred by refusing to grant, in its entirety, her emergency motion to strike any "irrelevant and salacious evidence," which included online photos and references to sex work, thereby prejudicing her substantial rights. (Capital letters omitted.) For example, Dyrhauge claims that she could not conduct a meaningful voir dire and that the jury was exposed to "cross-examination and testimony regarding images that were the subject of various bench conferences and which were never shown to the jury." Moreover, Dyrhauge argues that the district court erred in allowing Black to repeatedly reference this prejudicial evidence in order to point "the moral finger at her," improperly imply she was a sex worker, and suggest Dyrhauge was "hiding something relevant." At the same time, Dyrhauge argues Black's conduct constituted attorney misconduct by violating an order granting a motion in limine.

Neither an abuse of discretion review of the district court's evidentiary decision nor a de novo review of the record for alleged attorney misconduct reveal reversible error. *See Superpumper, Inc. v. Leonard, Tr. for Bankr. Est. of Morabito*, 137 Nev. 429, 435, 495 P.3d 101, 107 (2021) (reviewing a determination of whether evidence is relevant for a clear abuse of discretion); *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. 122, 132, 137, 252 P.3d 649, 656, 659 (2011) (recognizing that violating an order granting a motion in limine could be grounds for attorney

misconduct; a question of law reviewed de novo). We agree with the district court's comments at the hearing that it could not predict how Dyrhauge might open the door and that such evidence could inform her injuries. *See* NRS 48.015-.035 (explaining when evidence is relevant and when such relevant evidence is admissible); 31A C.J.S. *Evidence* § 289 (2020) (recognizing that "evidence may become material when a party, witness, or counsel, in argument, opens the door for the receipt of the evidence during trial"). And we cannot say that the parameters the district court placed, in seeking to balance these possibilities with the other allegedly prejudicial aspects of the evidence, was an abuse of discretion, particularly where the jury never saw the photos. *Cf. United States v. Gartmon*, 146 F.3d 1015, 1021 (D.C. Cir. 1998) (observing, in a criminal case, that FRE 403 does not "generally require the government to sanitize its case, to deflate its witnesses' testimony, or to tell its story in a monotone"). For similar reasons, we also perceive no attorney misconduct amounting to reversible error. *See Roth*, 127 Nev. at 132, 252 P.3d at 656 (recognizing that violating an order granting a motion in limine supplies grounds for a new trial in part where the "violation is clear") (quoting *Black v. Shultz*, 530 F.3d 702, 706 (8th Cir. 2008))).

Finally, Dyrhauge claims it was error to allow Black to use certain pieces of impeachment evidence, where such evidence allegedly lacked foundation or was not properly disclosed pursuant to NRCP 16.1 or NRCP 26. We find these arguments unpersuasive. Even assuming such impeachment evidence should not have come in, we cannot say that these

instances of impeachment are grounds for reversal.[1] *See Khoury*, 132 Nev. at 539, 377 P.3d at 94. For these reasons, we

ORDER the judgment of the district court AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Eric Johnson, District Judge
Persi J. Mishel, Settlement Judge
Pacific West Injury Law
Messner Reeves LLP
Eighth District Court Clerk

[1]We have carefully considered Dyrhauge's remaining arguments and conclude they lack merit.