

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BASHAR AHMAD ELYOUSEF, A/K/A  
ROBERT ELYOUSEF,

Appellant,

vs.

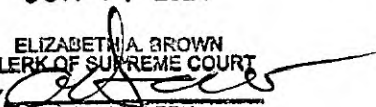
DOMINIQUE DOUMANI, AN  
INDIVIDUAL; DOMINIQUE DOUMANI  
AS TRUSTEE FOR THE DOMINIQUE  
DOUMANI FAMILY TRUST; DOUMANI  
DEVELOPMENT, LLC, A NEVADA  
LIMITED LIABILITY COMPANY;  
DOUMANI HOLDINGS, LLC, AN  
NEVADA LIMITED LIABILITY  
COMPANY; SHANNON NIPP, AN  
INDIVIDUAL; AND FOAMY'S CAR  
WASH, LLC, A NEVADA LIMITED  
LIABILITY COMPANY,

Respondents.

No. 86226-COA

**FILED**

JUN 17 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Bashar Ahmad Elyousef, a/k/a Robert Elyousef appeals from a judgment on a jury verdict in a breach of contract matter. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Elyousef initiated a lawsuit against respondents Dominique Doumani, as an individual and as trustee for the Doumani Family Trust, Doumani's boyfriend Shannon Nipp, and three companies that Doumani owns: Doumani Holdings, LLC; Doumani Development, LLC; and Foamy's Car Wash, LLC, asserting causes of action for breach of contract, breach of

the implied covenant of good faith and fair dealing, unjust enrichment, fraudulent inducement, and conversion. In his complaint, Elyousef sought declaratory relief and the imposition of a constructive trust against respondents. Doumani and her companies asserted various contract-related counterclaims against Elyousef.

Elyousef's lawsuit was premised on an alleged verbal partnership agreement that he entered into with Doumani and Nipp, where, according to Elyousef, they would purchase land, develop commercial properties, find tenants, and then sell the developments. Under this agreement, Doumani would receive 40 percent of the profits and Elyousef and Nipp would each receive 30 percent of the profits. Additionally, Elyousef would receive a \$150,000 developer fee for each property. He alleged that he found eight parcels of land that the partnership purchased to develop, and that he worked from late 2016 to early 2020 on the development side of the projects. Elyousef alleged that, in April 2020, after he performed his work under the agreement, Doumani and Nipp locked him out of his office and refused to pay him in accordance with their agreement.

Doumani claimed that they did not have a partnership or any contract; rather, Elyousef worked for her companies as an independent contractor, that he was paid nearly \$500,000 for his work during the relevant years, and he was not entitled to any further compensation.

Additionally, Doumani alleged that, at the time the answer and counterclaims were filed, none of the properties had sold so regardless of any alleged agreements, there were no profits to distribute.

Prior to trial, the parties engaged in extensive discovery, with the discovery period being extended multiple times. On the last day of discovery, respondents disclosed numerous new documents, including a mutual nondisclosure agreement (NDA) purportedly signed by Elyousef and Doumani in April 2018, which stated, in relevant part, that the parties were contemplating an agreement on certain properties, there was no existing agreement between the parties, no future verbal agreements would be enforceable between the parties, any definitive agreement would be set forth in writing, and neither party may assert claims against the other unless it was pursuant to the terms of a written "definitive agreement." During his deposition, Elyousef acknowledged that he remembered signing an NDA but testified that he did not read it.

Shortly after the NDA disclosure, respondents filed various motions in limine and a motion for partial summary judgment. In their motion for partial summary judgment, respondents argued that the NDA precluded any claim of a verbal partnership agreement between the parties and that Elyousef could not establish profits and damages where only one of the properties had sold at that point for a loss, and any future profits

could not be calculated without sales or an expert witness, which Elyousef had not disclosed.

Relevant to this appeal, respondents filed several motions in limine seeking to (1) exclude Elyousef from testifying as an expert witness, (2) exclude evidence of profits not earned, (3) admit the NDA between the parties and preclude Elyousef from contesting its authenticity, and (4) preclude Elyousef from presenting evidence of profit damages on the basis that he had failed to sufficiently quantify his damages in his NRCP 16.1 disclosures and could not determine profits where most of the properties had not yet sold.

Elyousef opposed respondents' motions and, in relevant part, filed a motion in limine to exclude the NDA, arguing that he believed it was forged, it was untimely disclosed on the last day of discovery in January 2022 despite being dated April 2018, and that the untimely disclosure prejudiced him because it prevented him from conducting discovery with respect to its legitimacy.

Following a hearing on the various motions, the district court granted in part respondents' motion for partial summary judgment, concluding that there was no genuine dispute of material fact with respect to profits on the unsold properties. The court granted respondents' motion in limine to exclude Elyousef from testifying as an expert because he was not designated as an expert witness and failed to comply with the expert

witness disclosure requirements set forth in NRCP 16.1. Additionally, it was undisputed that Elyousef did not hold any professional licenses or degrees or have relevant employment experience to satisfy the expert witness requirements delineated in *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008). The court also granted in part respondents' motion in limine to exclude evidence of profits not earned. The court further granted in part respondents' motion in limine to admit the NDA, reasoning that sufficient evidence, including Elyousef's own testimony, was presented to admit it. The court noted that Elyousef did not seek to extend discovery or continue trial in the months between the disclosure of the NDA and the hearing on the motion, and some discovery, including his and Nipp's depositions, was conducted after its disclosure. However, the district court denied respondents' request to preclude Elyousef from contesting the NDA's authenticity. Finally, the district court granted respondents' motion in limine to exclude evidence of profits not properly quantified in part, but denied it with respect to Elyousef's claim for developer fees and concerning a letter of intent from a prospective purchaser for one of the unsold properties.

Elyousef thereafter filed a motion to reconsider the district court's prior rulings on the motion for partial summary judgment and motions in limine excluding him as an expert witness, excluding evidence of unearned profits, and excluding evidence of profit damages he had not



sufficiently quantified. Elyousef asserted that, following the court's rulings, he learned that several of the properties had sold, were pending a final sale, or had been listed for sale, contrary to respondents' prior representations. Respondents opposed the motion but stipulated that several of the properties had sold during the pendency of the litigation. Elyousef served a supplemental disclosure pursuant to NRCP 16.1 wherein he provided a revised computation of damages to incorporate the sold properties.

The court held a hearing on the motion to reconsider, and ultimately granted Elyousef's motion to reconsider its rulings on the motion for partial summary judgment and the motions in limine on excluding evidence of unearned profits and un-quantified damages, noting that its prior rulings had been premised on the fact that seven properties had not been sold. Thus, the court reversed its prior rulings and denied respondents' motion for partial summary judgment and the aforementioned motions in limine concerning profits. However, the court upheld its prior ruling excluding Elyousef from testifying as an expert witness.

After a nearly two-week trial, the jury found in favor of respondents on all of Elyousef's claims and in favor of Elyousef on all of the claims brought by Doumani and her companies. Specifically, the jury found that neither party had proven that they were entitled to damages. This appeal followed.

Elyousef first challenges the district court's granting respondents' motions in limine to exclude Elyousef from testifying as an expert and to admit the NDA between the parties. We review a district court's ruling on a motion in limine for an abuse of discretion. *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005). Similarly, we review a district court's ruling to exclude expert testimony for an abuse of discretion. *Leavitt v. Siems*, 130 Nev. 503, 509, 330 P.3d 1, 5 (2014). Absent a showing of "palpable abuse," we do not interfere with a district court's exercise of its discretion. *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). A palpable abuse of discretion occurs only if "no reasonable judge could reach a similar conclusion under the same circumstances." *Leavitt*, 130 Nev. at 509, 330 P.3d at 5.

We turn first to the district court's decision to exclude Elyousef as an expert witness. Elyousef asserts on appeal that he was an expert in his field and "declared" during his deposition that he would be an expert witness. Here, despite Elyousef's contention that he had the experience necessary to testify as an expert witness, we cannot say that the district court abused its discretion in excluding him as an expert. Although Elyousef claims that he had the relevant development experience necessary to testify as an expert, the district court rejected that argument because Elyousef did not have any professional licenses or degrees or have relevant employment experience to satisfy the expert witness requirements

delineated in *Hallmark*, which Elyousef acknowledged at trial. See *Hallmark*, 124 Nev. at 498, 189 P.3d 651. We conclude the district court did not abuse its discretion in making this determination and, thus, Elyousef is not entitled to relief on this issue.

Next, Elyousef contends that the district court abused its discretion by admitting the NDA between the parties because it was disclosed on the day discovery closed and was a fraudulent document. NRCP 16.1(a)(1)(A)(ii) requires parties to provide a copy of all documents that the disclosing party has in its possession and may use to support its claims or defenses. NRCP 26(e) imposes a duty on parties who have made disclosures under NRCP 16.1 to timely supplement or correct the disclosure if the party learns that in some material respect the information disclosed is incomplete.

In this case, respondents did not disclose the NDA until the day discovery was set to close, and the parties filed competing motions and oppositions before the district court regarding its admissibility. Elyousef argued that the disclosure of this document so late in discovery prejudiced his ability to conduct further discovery on its legitimacy, and respondents alleged that it had been misplaced and they turned it over when they discovered it. Ultimately, the court determined that the NDA was admissible, in part based on Elyousef's own deposition testimony where he acknowledged that he had signed an NDA without reading it. As far as its



timeliness, the court determined that Elyousef was not prejudiced by the disclosure, rejecting his argument that it was untimely disclosed, because he was able to conduct some discovery following the disclosure and he had not sought to reopen or seek additional discovery relating to the NDA. We conclude this was not an abuse of discretion. *See Whisler*, 121 Nev. at 406, 116 P.3d at 62. Moreover, we are unpersuaded by Elyousef's claim that the NDA was fraudulent. Although the court admitted the NDA, it expressly permitted Elyousef to attack the document's authenticity at trial, over respondents' objection, and the record demonstrates that Elyousef did so at trial. Under these circumstances, Elyousef failed to show that the district court abused its discretion in granting respondents' motion in limine to admit the NDA.

Elyousef next asserts that the district court rubberstamped respondents' motions in limine and motion for partial summary judgment without regard to the evidence that he presented to show that several of the properties had sold. These claims are contradicted by the record, which shows that, although the court initially granted respondents' motions in part, it later reversed many of its rulings in Elyousef's favor. Specifically, the court granted Elyousef's motions to reconsider the prior rulings granting in part respondents' motions for partial summary judgment and motions in limine to exclude evidence of profits not earned and evidence of damages not quantified. In doing so, the court considered Elyousef's

evidence, acknowledged that its prior rulings were based on the erroneous representation that several of the properties at issue had not sold, and necessarily denied respondents' motions, which rebuts Elyousef's contention that the court rubberstamped motions in favor of respondents. Elyousef, therefore, has not demonstrated that relief is warranted on these bases.

Next, Elyousef asserts that the jury verdict was procured by fraud based on (1) the NDA, which he maintains is fraudulent, and (2) the allegedly false testimony from Doumani and other defense witnesses, whom he claims concealed sales of the properties at issue and lied about the accounting for the properties. When reviewing a jury verdict, "[t]his court upholds a jury verdict if there is substantial evidence to support it, but will overturn it if it was clearly wrong from all the evidence presented." *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 308, 212 P.3d 318, 324 (2009) (quoting *Soper v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 224 (1995)).

Here, we conclude that substantial evidence supports the jury verdict. *Id.* Although respondents were permitted to introduce the NDA into evidence, Elyousef was given the opportunity to attack the authenticity of the NDA at trial, and it was within the province of the trier of fact to resolve conflicts in the evidence such as Elyousef's challenge to the NDA. *See Ford Motor Co. v. Trejo*, 133 Nev. 520, 531, 402 P.3d 649, 657 (2017) (stating "[i]t is a well settled rule in this state that whenever conflicting

testimony is presented, it is for the jury to determine what weight and credibility to give to that testimony” (quotation marks omitted)). Further, his contention that respondents concealed evidence of the property sales is belied by the record. That issue was litigated prior to trial when the district court granted Elyousef’s motion to reconsider the partial grant of summary judgment and grants of respondents’ motions in limine. Moreover, Elyousef testified about the property sales at trial, which rebuts his contention that they had been concealed and resulted in a jury verdict obtained by fraud.

Additionally, to the extent Elyousef challenges the veracity of the witnesses’ testimony, he had the opportunity to cross-examine them at trial, and it was the jury’s responsibility to resolve any conflicts in the testimony and weigh witness credibility. *See Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 524 (2000) (“The credibility of witnesses and the weight to be given their testimony is within the sole province of the trier of fact.”). We do not reweigh witness credibility on appeal. *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal). Moreover, the record on appeal does not include the transcripts from the days of trial at which Doumani or any of the defense witnesses testified. Thus, because Elyousef failed to provide this court with the entirety of the trial transcripts necessary to review his claims, we presume that they support the judgment. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that it is

appellant's burden to ensure that a proper appellate record is prepared and that, if the appellant fails to do so, "we necessarily presume that the missing [documents] support[ ] the district court's decision").

Elyousef next asks this court to vacate the jury verdict pursuant to NRCP 60(b)(3) based on the concealment of the property sales, fraud, and respondents' alleged misconduct. However, he did not file a motion seeking NRCP 60 relief in the district court in the first instance and cannot seek such relief for the first time on appeal. *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."); NRCP 60(b) (providing, in relevant part, that "[o]n motion" the district court may relieve a party from a final judgment in certain circumstances).

Finally, Elyousef argues that the district court was biased against him. We conclude that relief is unwarranted on this point because Elyousef has not demonstrated that the court's conduct or decisions in the underlying case were based on knowledge acquired outside of the proceedings and the court's decision does not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that unless an alleged bias has its origins in an extrajudicial source, disqualification is

unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); see *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally “do not establish legally cognizable grounds for disqualification”); see also *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167, 1171 (2023). Therefore, Elyousef is not entitled to relief based on this claim.<sup>1</sup>

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<sup>1</sup>To the extent Elyousef raises other arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

Further, we decline Elyousef’s request to consider materials not included in the district court record and submitted directly to this court. “We cannot consider matters not properly appearing in the record on appeal.” *Carson Ready Mix, Inc. v. First Nat. Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981). Moreover, Elyousef’s reliance on NRAP 10(c) in submitting materials to this court is misplaced because that rule requires him to seek corrections to the record in the district court rather than file documents outside the record in this court. See *id.* at 476-77, 635 P.2d at



Accordingly, for the reasons set forth above, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge  
Bashar Ahmad Elyousef  
Marquis Aurbach Chtd.  
Howard & Howard Attorneys PLLC  
Eighth District Court Clerk

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277-78 (providing that the rules of appellate procedure delineate the proper procedures to be followed for the designation of the record on appeal and noting that this court does not have the power to alter or amend the district court record). We further decline any additional requests for relief pending as part of this appeal.