

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN MICHAEL DELONG,
Appellant,
vs.
BRIAN CRAIG PHELPS,
Respondent.

No. 50663

FILED

NOV 06 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court judgment entered in a bench trial in a contract action. Second Judicial District Court, Washoe County; Jerome Polaha, Judge, and Noel E. Manoukian, Senior Judge.

On appeal, appellant contends, among other things, that the district court (1) erred in denying his unopposed motion for summary judgment; (2) improperly granted respondent's prejudgment writ of attachment without providing appellant with notice and an opportunity to be heard on the motion for a writ of attachment; (3) should have discharged the writ of attachment to the extent that the writ of attachment included property that was exempt from attachment under NRS 21.090; (4) improperly denied his demand for a jury trial; (5) that the judge should have disqualified himself before ruling on certain matters but improperly disqualified all judges of the Second Judicial District Court without any reasonable explanation; (6) should have

dismissed respondent's complaint, as it is barred by the statute of frauds; and (7) judgment is not supported by substantial evidence.

Having considered appellant's civil proper person appeal statement, respondent's response, and the appellate record, we conclude that none of appellant's claims warrants reversal of the district court's judgment.

First, the district court properly denied appellant's summary judgment motion. See NRCP 56(c) (providing that summary judgment is appropriate only when the pleadings, depositions, affidavits, or discovery on file demonstrate that no genuine issue as to any material fact remains, so that the moving party is entitled to summary judgment as a matter of law). Here, the pleadings and affidavits filed with the district court demonstrated that genuine issues of material fact remained in dispute.

Second, appellant's claim that the district court was required to give him notice and an opportunity to be heard on respondent's motion for a prejudgment writ of attachment is without merit in this matter. NRS 31.017(5) (providing that a court may issue a writ of attachment without notice to the defendant when, among other reasons, the "defendant is about to give, assign, hypothecate, pledge, [or] dispose of" his property and the defendant's property is in Nevada). And to the extent that appellant claimed that property in the storage unit was exempt under NRS 31.200, it does not appear that appellant filed a

motion to discharge the prejudgment writ of attachment. See NRS 31.200.¹ Following the bench trial, the district court found that NRS Chapter 21 was inapplicable because appellant had constructively given respondent possession of the collateral that had been pledged as security for the loans, which resulted in respondent's perfected security interest in the property under NRS 104.9313(1). We conclude that substantial evidence supports the district court's finding. Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (providing that the district court's findings of fact and conclusions of law will not be set aside when supported by substantial evidence, unless clearly erroneous).

Third, the district court did not improperly deny appellant's request for a jury trial. See NRCP 38 (requiring that a written demand for jury trial be filed or the right to a jury trial is considered waived). To the extent that appellant requested a jury trial in his amended answer and cross-complaint, the district court determined that that document was improperly filed and constituted a fugitive document, as appellant had not sought leave to amend his answer. Thereafter, appellant never sought leave of the district court to file the amended answer and cross-

¹Appellant's argument that he was entitled to a discharge of the writ of attachment pursuant to NRS 21.010 or NRS 21.090 lacks merit, as NRS Chapter 21 pertains to the enforcement of judgments and at the time respondent had applied for a prejudgment writ of attachment, no judgment had been entered adjudicating respondent's complaint.

complaint. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (recognizing that this court will not consider any documentation not properly appearing in the district court record). Moreover, the district court record demonstrates that appellant was served with a trial schedule notice and was aware of the trial date. Thus, appellant's request for a jury trial was properly denied.

Fourth, concerning appellant's claim that the district court judge was required to recuse himself before ruling on various motions and that the district court improperly disqualified all judges in the Second Judicial District Court, we conclude that appellant's arguments lack merit. WDCR 2(6) (allowing overflow trials and matters to be assigned to other judges or a senior judge); Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (explaining that under the "invited error" doctrine, a party cannot complain of errors that the party induced or provoked the court to commit).

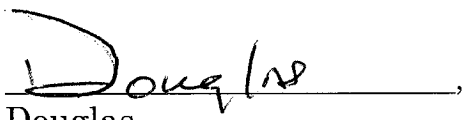
Finally, regarding appellant's argument that respondent's complaint is barred by the statute of frauds, we conclude that this argument lacks merit. Pentax Corp. v. Boyd, 111 Nev. 1296, 1299, 904 P.2d 1024, 1026 (1995) (explaining that the statute of frauds is satisfied when the contract is in writing, contains the parties' names, the terms of the contract, any interest or property affected, and the consideration to be paid for that interest). We further determine that the district court did not abuse its discretion in denying appellant's request for a continuance of the trial. Bongiovi v. Sullivan, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006). We also conclude that substantial evidence

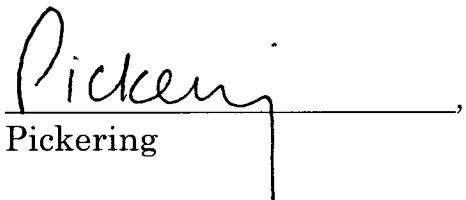
supports the district court's judgment. Sheehan & Sheehan, 121 Nev. at 486, 117 P.3d at 223 (providing that this court defers to the district court's fact-based determinations when substantial evidence supports the findings).

Based on the above discussion, we

ORDER the judgment of the district court AFFIRMED.²

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

²Having considered all issues raised by appellant, we conclude that his other contentions lack merit and do not warrant reversal of the district court's judgment.

In light of this order, we deny as moot appellant's request for transcripts.

cc: Chief Judge, Second Judicial District
Hon. Noel E. Manoukian, Senior Judge
Stephen Michael DeLong
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk