

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YI-CHEN KUO,
Appellant,
vs.
TSI KWONG LAN,
Respondent.

No. 84506-COA

FILED

FEB 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Yi-Chen Kuo appeals from a district court order annulling her marriage to Tsi Kwong Lan for want of understanding. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

Respondent Tsi Kwong Lan (Tsi) and appellant Yi-Chen Kuo (Yi-Chen)¹ have known each other for many years, but rarely have they been geographically close—over the relevant years, Tsi lived in Las Vegas while Yi-Chen lived in Taiwan.² In addition to physical distance, there is a significant age gap between the parties of roughly 30 years.³ Nevertheless, Yi-Chen avers that she was both a caretaker and romantic partner to Tsi throughout the years that he was married to other women.

Tsi's wife of 40 years died in April 2021. Shortly after hearing the news, Yi-Chen arrived in Las Vegas. Less than a week after her arrival, Yi-Chen wired \$200,000 of Tsi's money to her family in Taiwan. Cynthia, Tsi's daughter living in Massachusetts, also arrived to be with her father and was surprised to find Yi-Chen staying in her father's home.

¹There are several naming conventions for the parties in the record. We adopt the naming convention used by the district court in its order.

²We recount the facts only as necessary for our disposition.

³Tsi was born in 1936, and Yi-Chen was born in 1963.

Exactly one month after the death of Tsi's wife, Yi-Chen said she was taking Tsi out for a day of shopping. When they returned, Yi-Chen announced that the two of them got married at the Love Story Wedding Chapel. When asked about the marriage, Tsi said he could not remember getting married to Yi-Chen but did remember standing in line somewhere. Over the next few days, the situation rapidly devolved. It ended at a bank, with the involvement of both Adult Protective Services and the police, where Yi-Chen was arrested after trying to transfer more of Tsi's money into both her personal account and an account belonging to her family in Taiwan. Yi-Chen entered an *Alford* plea and was convicted of attempt exploitation of an older/vulnerable person.⁴

Tsi was released to Cynthia's care, and the two eventually made it to Cynthia's home in Massachusetts. Tsi's medical records show that he was in perceptible cognitive decline since 2020, but following the death of his wife, his mental health noticeably deteriorated. Tsi's discharge summary from psychiatric care described him as being gravely disabled and unable to recall either Yi-Chen's name or his recent marriage to her. In outpatient care, Tsi was given a neuropsychological evaluation, which resulted in him being diagnosed as having Alzheimer's disease with late onset dementia, as well as being assessed a verbal and visual memory score in the first percentile. The evaluation recommended guardianship over Tsi and 24-hour supervision. As a result, Tsi moved into an assisted care facility near Cynthia's home.

Cynthia applied for guardianship and conservatorship of her father, which was granted by order of a Massachusetts court. Cynthia's

⁴In Nevada, an *Alford* plea is treated as a plea of nolo contendere. *State v. Gomes*, 112 Nev. 1473, 1475, 930 P.2d 701, 703 (1996).

guardianship authority was not limited under the order, other than by what is found under Mass. Gen. Laws Ann. ch. 190B, § 5-309 (West 2012) (MGLA). As guardian, Cynthia filed a complaint for annulment in Nevada in Tsi's name, arguing that he was incapable of assenting to the marriage to Yi-Chen for want of understanding. Following trial, the district court granted Tsi an annulment and ordered Yi-Chen to return the \$200,000 of Tsi's money that she had successfully wired to her family before her arrest. This appeal followed.

Yi-Chen raises three issues as to why the decision and order of the district court were improper. First, Yi-Chen argues as a matter of law that Cynthia's guardianship did not give her standing in Nevada as a real party in interest. Second, Yi-Chen claims that the district court abused its discretion by considering inadmissible evidence, including her *Alford* plea. Third, Yi-Chen claims there was insufficient evidence offered to show that Tsi had a want of understanding, so the district court abused its discretion in granting the annulment. We disagree and address each claim in turn.

In Nevada, a marriage may be annulled for want of understanding. NRS 125.330; *McNee v. McNee*, 49 Nev. 90, 237 P. 534 (1925). The issue of standing is one that we review de novo. *See Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). The district court's factual findings are given deference and will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 669, 704 (2009). Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). When a district court makes a credibility determination, it is not within this court's purview to weigh conflicting evidence or assess witness credibility. *Id.* at 152, 161 P.3d at 244.

Cynthia had standing as the representative of Tsi, who was a real party in interest, and Yi-Chen's jurisdictional argument is unpersuasive

Yi-Chen raises several arguments as to why Cynthia was not allowed to bring this action. First, Yi-Chen claims Cynthia lacked standing. Second, Yi-Chen represents that MGLA ch. 190B, § 5-209 (West 2012) allows a guardian to sue for divorce but is mute on a guardian's authority to seek an annulment. Third, Cynthia failed to register her guardianship in Nevada as required by NRS 159.2027. Fourth, the plain language of NRCP 17(c)(1)(A) restricts representing a protected person's interests to a "general" guardian. Finally, the plain language of NRS 125.330 restricts an action for an annulment for want of understanding to only the parties of the marriage.

Each of Yi-Chen's arguments attacking Cynthia's authority to bring this action on behalf of her father fail. As to Yi-Chen's first argument, a guardian has standing under Nevada law to bring an action on behalf of a protected person who is a real party in interest. NRCP 17(a)(1)(C). In support of her second claim, that Massachusetts law restricted what marital actions Cynthia could bring on behalf of her father, Yi-Chen cited to a Massachusetts statute governing the limitations of a guardian over a *minor*, but this is not the applicable law in this case. For one, Tsi is not a minor. But also, the Massachusetts court order granting Cynthia guardianship over Tsi cites to MGLA ch. 190B, § 5-309 (West 2012) as her only restriction. This statute governs the standard limits of a guardian, such as their fiduciary duties, and it contains no limit on the types of marital actions that may be brought on behalf of a protected person, so long as the action is in the protected person's best interest.

Yi-Chen's third argument about Cynthia's failure to register her guardianship in Nevada fails because Tsi included in the record a copy of Cynthia's guardianship registration with the Eighth Judicial District Court.

Additionally, Yi-Chen did not file a reply brief, and so she has not contested Cynthia's claim that she properly registered her guardianship in Nevada. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating a party's failure to respond to an argument as a concession that the argument is meritorious).

Yi-Chen's fourth argument regarding a "general" guardian also fails. Yi-Chen does not provide a definition of a "general" guardian in her briefing, but to the extent she means only a long-term guardian is permitted to represent a real party in interest under NRCP 17(c), the argument fails. At the time the annulment action was filed, Cynthia had an emergency temporary guardianship and conservatorship over Tsi. The plain language of NRCP 17 does not restrict her ability to bring a legal action on behalf of Tsi under either of her roles. *See* NRCP 17(c)(1)(C), (D). Furthermore, the rule uses the terms "guardian," "conservator," and "a like fiduciary" as defining who can sue on behalf of a protected person without qualification to any of the terms. Yi-Chen has failed to cite authority as to how a temporary guardian is not a general guardian when each has the same authority. Nor has she addressed the effects of Cynthia also being a conservator and the fiduciary role assigned to her by court order as well as Massachusetts and Nevada law. Therefore, we conclude that Yi-Chen has failed to make a cogent argument supported by the law, and this court need not consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Yi-Chen's final argument, that NRS 125.330(1)⁵ restricts the ability to seek an annulment to the married parties, also fails. First, as

⁵When either of the parties to a marriage for want of understanding shall be incapable of assenting thereto, the marriage shall be void from the

mentioned above, NRC 17(c) allowed Cynthia to bring a claim on Tsi's behalf. Also, Yi-Chen's interpretation of the annulment statute would nonsensically trap protected persons in void, otherwise annulable marriages. Because we will not interpret a statute in a manner that produces absurd results, we necessarily reject Yi-Chen's argument. See *Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 586, 473 P.3d 1034, 1036 (2020).

Therefore, we conclude that Yi-Chen has failed to show as a matter of law that there was any issue or limitation, under either Nevada or Massachusetts law, that restricted Cynthia's authority as Tsi's guardian to bring an action for annulment on his behalf.

Yi-Chen's evidentiary arguments fail because the evidence was either admissible, she failed to object below, or there was admissible corroborating evidence offered

Yi-Chen argues that the district court improperly considered inadmissible evidence. Yi-Chen claims that Gary Zalkin, an attorney who specializes in guardianship and mental health law, was improperly offered as an expert and inappropriately relied on documents that Yi-Chen avers were inadmissible on hearsay grounds, such as the medical discharge summaries. Yi-Chen also argues the court erred by admitting the police report because it was hearsay and by admitting Yi-Chen's criminal conviction because her *Alford* plea was the same as a *nolo contendere* plea.

Yi-Chen's argument fails as to Zalkin's designation as an expert, as well as to the documents admitted in support of his expert testimony. First, Yi-Chen does not cite to where in the record she raised these objections

time its nullity shall be declared by a court of competent authority." NRS 125.330(1).

or arguments in the district court.⁶ Further, there appears to be no objections on these grounds within the trial transcripts. Failure to object at trial is a waiver of that objection and need not be considered on appeal. *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). So, Yi-Chen waived her objection to both Zalkin's expertise and the underlying documents.

But assuming Yi-Chen had objected, Tsi laid sufficient foundation to show Zalkin was qualified to offer expert testimony.⁷ As to the documents, common hearsay exceptions likely apply. For example, many of the reports could be admissible to show the effect on Cynthia's decision to seek guardianship, Tsi's then existing emotional or physical condition, statements for purposes of a medical diagnosis, etc. *See, e.g.*, NRS 51.015; NRS 51.105; NRS 51.115. Also, as to Zalkin's reliance on these documents, he was offering expert testimony and was therefore allowed to use facts or data that would otherwise be inadmissible. *See* NRS 50.285(1).

Likewise, Yi-Chen's claims about the police report and criminal conviction both fail, as the trial transcripts clearly show that Yi-Chen objected to both pieces of evidence at trial, and both objections were sustained. However, the effect of winning these objections made little difference for Yi-Chen. Cynthia was a percipient witness to part of the

⁶*See, e.g.*, NRAP 28(e)(1); *Summa Corp. v. Brooks Rent-A-Car*, 95 Nev. 779, 780, 602 P.2d 192, 193 (1979) (stating that "[t]his court will not comb the record to ascertain matters which should have been set forth in [a party's] brief").

⁷The record shows that Zalkin had professional training in diagnostics relating to dementia as a psychotherapist and more than 20 years of experience as a practicing attorney in the area of mental health law. He has also written published treatises on mental health law, guardianship, and conservatorship.

events leading to Yi-Chen's arrest, so her testimony included many of the same things that were contained in both the police report and criminal conviction. Further, the portions of both documents that were relied on by Zalkin to form his expert opinion could be properly referenced under NRS 50.285(1). Finally, Yi-Chen offered testimony about what happened leading to her arrest and *Alford* plea. So, even if Yi-Chen's objections had been overruled, she has not shown how it would have affected her substantial rights.⁸

Therefore, we conclude that Yi-Chen has failed to show that the evidence she asserts was improperly admitted despite her objections was, in fact, admitted. As to her other evidentiary arguments, she has failed to show that she made timely objections to preserve her arguments for appeal and how evidentiary exceptions would not apply. Thus, each of Yi-Chen's evidentiary arguments fails to show there was an abuse of discretion or plain error by the district court.

Substantial evidence supports the district court's findings and order

Yi-Chen argues that there was insufficient evidence presented to the district court for a finding that Tsi had a want of understanding at the time he married her. But the factual findings of the district court indicate otherwise, as the court's order includes the following: Yi-Chen's testimony was contradictory, vague, uncorroborated, and not credible; Tsi's

⁸*Cf.* NRCP 61 ("Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.")

Massachusetts guardian ad litem concurred with and supported the annulment action on his behalf; evidence of Tsi's medical condition at the time of marriage showed significant cognitive impairment; Yi-Chen's testimony included that she was aware of Tsi's premarital diagnosis of decreased cognitive function; and Cynthia testified about Tsi's memory and mental health issues—including an attempt to take his own life, believing people were present who were not, and not being able to remember his own actions immediately after the fact. This is merely an example of the evidence presented to the district court and is far from exhaustive.

The above facts, and the many others presented to the district court, were sufficient for a reasonable person to accept that Tsi had a want of understanding at the time he married Yi-Chen.⁹

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Vincent Ochoa, District Judge
Israel Kunin, Settlement Judge
Lin Law Group
Willick Law Group
Eighth District Court Clerk

⁹Insofar as the parties have raised other 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.