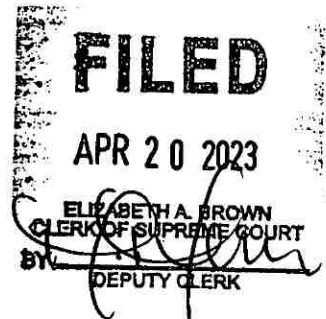


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

YOSSI ATTIA, AN INDIVIDUAL; AND
MOSHE SCHNAPP, AN INDIVIDUAL,
Appellants,
vs.
DENNIS E. RUSK, ARCHITECT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND DENNIS E. RUSK, AN
INDIVIDUAL,
Respondents.

No. 84615-COA



ORDER OF AFFIRMANCE

Yossi Attia and Moshe Schnapp appeal from a district court Decision and Order, Final Judgment, and Stipulation and Order Dismissing Remaining Claims in a breach of contract matter. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In January 2005, appellants Yossi Attia, Moshe Schnapp (Jacob¹), and others (collectively, the "Verge Group") formed the Verge Living Corporation to develop a high-rise residential project to be built in downtown Las Vegas.² Attia and Jacob hired respondent Dennis Rusk, an architect, through his company, Denis E. Rusk, Architect, LLC (collectively, Rusk) to develop and design architectural plans for the project, called "Verge."

Rusk was terminated from the Verge project in early 2008 after the parties' relationship soured due to budgetary concerns and difficulties

¹Moshe Schnapp is referred to throughout the proceedings as Moshe Jacob, therefore this court will refer to appellant Moshe Schnapp as "Jacob."

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

securing city approval of Rusk's plans. Attia, on behalf of Verge Living Corporation, filed a complaint with the Nevada Board of Architecture, Interior Design and Residential Design (the Board) alleging Rusk was incompetent and negligent in his work on the Verge project.³ After the administrative complaint was filed, Rusk filed a complaint in district court, and the parties asserted claims against each other related to the project's failure. Subsequently, Attia and Jacob declared bankruptcy, and in 2009, as part of a bankruptcy settlement conference, the parties agreed to mutually release all claims based on a handwritten settlement agreement that required Attia and Jacob to pay Rusk \$400,000.

When Attia and Jacob failed to pay Rusk pursuant to the settlement agreement, Rusk sued them for breach of contract and asserted fraud-based claims, seeking the unpaid balance of the settlement agreement and punitive damages. Attia asserted counterclaims related to the original contract between the parties and later amended his countersuit to include a claim for fraud in the inducement of the settlement agreement. Attia's fraud in the inducement claim was based on allegations by both Attia and Jacob that Rusk falsely promised to give them his "shovel ready" architectural plans that had been approved by the city so they could complete the Verge project. According to Attia and Jacob, Rusk made these false representations to the Verge group at a side meeting that occurred during a break in the settlement conference outside the presence of the parties' respective counsel. Attia and Jacob alleged that Rusk knew his architectural plans were not approved by the city at the time he made the representations. Although Attia and Jacob argued that Rusk's delivery of

³The Board subsequently found that Rusk's work was negligent and incompetent in 2011.

the “shovel ready” plans was a settlement term, the written settlement agreement and subsequent addendums contained no reference to Rusk’s architectural plans.

The district court bifurcated the trial and limited the first part to whether the settlement agreement was valid or induced through fraud. After a three-day bench trial, the district court found that the settlement agreement was valid because Attia and Jacob failed to prove, by clear and convincing evidence, the elements of fraud in the inducement. First, the district court determined that Attia and Jacob failed to prove that a side meeting ever occurred at the settlement conference where Rusk could have made the alleged false representations about his architectural plans. Second, the district court found that, even if the side meeting *had* occurred, and even if Rusk *had* made representations to the Verge Group about his plans, Rusk had a good faith belief that his plans were either approved or close to being approved by the city. Third, the district court found that, based on the tumultuous relationship between the parties, Attia and Jacob could not have justifiably relied on any alleged false representations Rusk made about his plans. And finally, the district court found that if Attia and Jacob *had* relied on such representations, and if the delivery of “shovel ready” plans was intended to be part of the agreement, the parties’ written settlement agreement would have referenced those plans, but it did not. Thus, the district court entered judgment in favor of Rusk on his contract-based claims, ordered Attia and Jacob to pay Rusk damages and interest for the unpaid amount due under the settlement agreement, and vacated the second phase of the trial. Ultimately, the parties and district court entered a stipulation and order dismissing the remaining claims, including Rusk’s claim for punitive damages, and Attia and Jacob appealed.

On appeal, Attia and Jacob make four primary arguments. First, they contend that the district court abused its discretion in (1) permitting Rusk to testify that, at the time of the 2009 settlement conference, he believed his architectural plans for the Verge project had been approved by the city and (2) considering documentary evidence of those plans bearing the city's purported stamp of approval. They assert that this evidence was precluded by a prior court order, inadmissible hearsay, and irrelevant. Second, Attia and Jacob contend that the district court abused its discretion by considering documents and testimony that were not admitted into evidence during the trial when it drew some of its conclusions. Third, they contend that the district court erred in interpreting the parties' handwritten settlement agreement when it found that the agreement was fully inclusive of all material terms. Finally, they contend that the district court's decision and order was against the manifest weight of the evidence because "there was substantial evidence in the record that contradicted some of the court's findings and conclusions." We address each argument in turn.

A district court's decision to admit evidence is reviewed for abuse of discretion, and it will not be disturbed "absent a showing of palpable abuse." *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008). Attia and Jacob argue that Rusk should not have been allowed to testify that he believed his plans had been approved by the city in 2009 because, in 2011, the Board found Rusk's work on the Verge project negligent and incompetent, and the district court later ordered that Rusk would be "precluded from arguing contrary to the [B]oard's decision" at trial. However, the district court's order did not explicitly or implicitly preclude Rusk from testifying that he *believed* the

city had approved his plans two years before the Board made its findings. Furthermore, even if that pretrial ruling could be read to preclude such testimony, the district court was free to change its ruling before entry of a final written order, and to the extent it did so here, Attia and Jacob cannot demonstrate any error. See NRCP 54(b) (“[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.”).

Although Attia and Jacob further contend that testimony and documentary evidence that Rusk’s plans had been approved was inadmissible “hearsay,” that evidence was not introduced for the truth of the matter asserted but was, instead, admitted to establish Rusk’s state of mind and belief that his plans had been approved. Cf. NRS 51.035 (defining “hearsay” as a “statement offered in evidence to prove the truth of the matter asserted”). And while Attia and Jacob contend that “evidence and argument regarding Rusk’s belief that his plans were approved were irrelevant” and therefore inadmissible, the challenged evidence was relevant to their claim of fraud in the inducement, which was premised on Rusk allegedly misrepresenting the readiness of his architectural plans at the settlement conference. See *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (including a party’s knowledge or belief that a representation was false as one of the elements necessary to establish fraud in the inducement); NRS 48.015. The district court did not abuse its discretion in considering this evidence at trial.

With respect to Attia and Jacob's argument that the district court erred by considering "documents and testimony that were not admitted into evidence during the trial when it drew some of its conclusions," they fail to clearly identify any unadmitted evidence that the district court allegedly relied upon or explain why, but for the consideration of such evidence, "a different result might reasonably have been reached." *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (stating that, to be reversible, an error must be prejudicial and not harmless); accord NRCP 61 (explaining that harmless error is error that does not affect a party's substantial rights). Because Attia and Jacob have failed to set forth any cogent argument in support of their claim that the district court relied on unadmitted evidence at trial, we decline to address it. See *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (holding that the court need not consider claims not cogently argued).⁴

Turning to Attia and Jacob's argument that the district court erred in interpreting the parties' handwritten settlement agreement, we

⁴We note that the district court reopened evidence to admit a copy of the parties' signed settlement agreement, which it was permitted to do pursuant to *Ford v. Ford*, 105 Nev. 672, 676, 782 P.2d 1304, 1307 (1989) (stating that the "decision to reopen a case for the introduction of additional evidence is within the sound discretion of the trial court" and that "district courts should freely grant leave to amend and reopen"). The district court further considered handwriting exemplars that had been conditionally admitted at trial after finding that Rusk's closing brief laid a sufficient foundation for their admission. To the extent Attia and Jacob may be challenging either ruling on appeal, they fail to demonstrate any error affecting their substantial rights. Cf. *Wyeth*, 126 Nev. at 465, 244 P.3d at 778 ("An error is harmless when it does not affect a party's substantial rights.").

likewise see no error. Settlement agreements are governed by general principles of contract law, and we review contract interpretation de novo. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). “This court initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written.” *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (internal quotation marks omitted). Attia and Jacob contend that the district court should have interpreted the parties’ handwritten settlement agreement to include the rights to Rusk’s architectural plans. However, the parties’ written settlement agreement made no mention of Rusk’s architectural plans; instead, it provided, in pertinent part, that Rusk “offers to settle all claims against all parties . . . for a total amount of \$400,000.” Likewise, the addendums to the parties’ agreement made no mention of Rusk’s architectural plans, either. The district court did not err in construing the settlement agreement and accompanying addendums as written.

Finally, Attia and Jacob contend that the district court’s decision and order was “against the manifest weight of the evidence” because there was substantial evidence in the record to support their claims of fraud in the inducement that the district court did not find persuasive. That is not a basis for reversal. The district court weighed the evidence presented by Attia and Jacob against the evidence presented by Rusk and deemed Rusk’s evidence to be more credible. Because we are not at liberty to reweigh the evidence presented to the district court, Attia and Jacob fail to demonstrate grounds for reversal. *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (noting that appellate courts are “not at liberty to weigh the evidence anew, and where conflicting

evidence exists, all favorable inferences must be drawn toward the prevailing party").⁵

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Marquis Aurbach Chtd.
Nersesian & Sankiewicz
Eighth District Court Clerk

⁵Insofar as the parties raise 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.