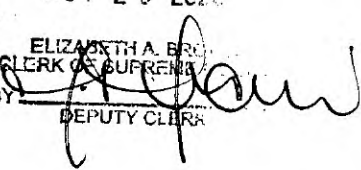


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF:  
ALBERT LEE ALMOND, JR.,  
DECEASED.

No. 84518-COA

NICHOLE SHEPARD,  
Appellant,  
vs.  
MYRA ALMOND; AND BRIAN  
ANDERSON,  
Respondents.

FILE  
NOV 28 2023  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Nichole Shepard appeals from a district court order approving a probate commissioner's recommendation. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Shepard's father, Albert Almond, Jr., died intestate in October 2021. Later that year, Shepard filed a petition for summary administration and issuance of letters of administration intestate, and the district court subsequently appointed her special administrator of Almond's estate. In her petition, Shepard alleged that respondent Myra Almond was falsely holding herself out as Almond's surviving spouse, despite the fact that they had been previously divorced and never remarried, in order to retain Almond's vehicles, which were the only estate assets. Shepard later filed a motion for court intervention, alleging Myra was converting estate

property, and an emergency motion for a preliminary injunction to prevent Myra and her adult son, respondent Brian Anderson, from fraudulently transferring Almond's vehicles to themselves.

Following a hearing on Shepard's original petition and emergency motion on January 13, 2022, the probate commissioner recommended that the district court deny both filings. The commissioner found that there was no evidence of fraudulently converted estate assets and therefore no estate for Shepard to administer. Likewise, without evidence of conversion, the commissioner found there was no basis to issue an injunction. The commissioner noted, however, that Shepard, in her capacity as special administrator, could obtain evidence to support her position. The district court subsequently issued a confirming order adopting the probate commissioner's recommendation, noting that neither party filed an objection or request for judicial review.

After the commissioner issued his recommendation on Shepard's petition and request for injunctive relief, Shepard filed a document entitled "evidence of fraudulent transfers of assets that have been alleged by special administrator," arguing that Myra and Anderson fraudulently forged Almond's signature to steal property from the estate. She attached to the document, in pertinent part, three certificates of title, showing Almond sold various vehicles to Myra and Anderson earlier in 2021, and containing Almond's allegedly forged signature. On February 3, the district court entered an order to show cause under NRS 143.110, ordering Myra and Anderson to appear before the court to answer as to the transfer of title of Almond's vehicles and show cause why they should not

be held liable for conversion of the vehicles. The order set the hearing for February 22.

Following the hearing, at which Shepard participated in pro se and respondents participated through counsel, the probate commissioner entered a written recommendation that Myra and Anderson not be held liable to the estate. The commissioner heard testimony from Myra and Shepard and admitted documents from each side containing alleged examples of Almond's signature. During the hearing, Shepard attempted to introduce an expert witness report to support her position that the vehicle titles in question had not been signed by Almond and contained forged signatures, but the commissioner did not admit the report. The commissioner concluded that he could not find, by a preponderance of the evidence, that the titles to the three vehicles were signed by anyone other than Almond. In making this determination, the commissioner found Myra's testimony credible that Almond signed his signature as the seller on the titles in question, released his interest, and delivered them to her. Additionally, the commissioner found there was no evidence supporting a conclusion other than that Almond intended Myra to receive the vehicles "in case something happened to him."

Shepard subsequently filed a "motion for reconsideration or judicial review of expert witness," alleging that the expert sent her his report the day before the February 22 hearing. Shepard further claimed that the court had previously requested that she obtain evidence to prove Myra and Anderson forged the titles to the three vehicles at issue and she "did that by way of the [e]xpert witness." She asserted that the outcome of the hearing would have been different had the expert report been admitted

and asked the court to reconsider its decision and “schedule the same hearing for a future date after discovery, to allow enough time to let the witness be available to testify.” The expert report, which was attached to her motion, expressed the belief that there was a strong probability that the signature on two of the titles was not written by Almond. Respondents opposed the motion and Shepard filed a response requesting, in pertinent part, a continuance of the previously held hearing.

The district court subsequently entered a written order denying Shepard’s motion for reconsideration and adopting the probate commissioner’s recommendation that respondents not be held liable for conversion of estate assets. The district court concluded that the expert report was hearsay without the expert testifying and being subject to cross-examination. This appeal followed.

On appeal, Shepard first argues that the probate commissioner violated her due process rights by not continuing the hearing to give her time to secure her expert witness and introduce her expert report. She further contends, beyond the due process issue, that the denial of a continuance was an abuse of discretion.

Due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections before a party is deprived of a protected property or liberty interest.” *Flangas v. Perfekt Mktg., LLC*, 128 Nev., Adv. Op. 26, 507 P.3d 574, 579-80 (2022) (internal quotation marks omitted).

In this case, it is undisputed that Shepard had notice of the proceedings and was afforded the opportunity to present evidence to

support her claims. While Shepard asserts that her due process rights were violated because the probate commissioner did not continue the hearing to allow her to introduce her expert report and secure testimony from her expert witness, there is nothing in the record reflecting that Shepard actually sought a continuance, either by motion prior to the hearing or during the hearing itself. Shepard does not argue—either on appeal or in her post-hearing motion practice below—that she requested a continuance at the hearing. And, in her response to respondents’ opposition to her motion for reconsideration before the district court, she essentially acknowledges that she did not request a continuance at the hearing, as she stated that she “could have” sought and is “now” seeking a continuance. Thus, given that the record does not demonstrate that Shepard requested a continuance of the show cause hearing, it cannot be said that the commissioner violated her due process rights by not granting her one. *See id.*

Likewise, we are unpersuaded by Shepard’s contention that the commissioner “owed” her a continuance due to her pro se status and inexperience with legal proceedings. It is well established that pro se parties are subject to the same rules and requirements as those who are represented by counsel. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting that procedural rules “cannot be applied differently merely because a party not learned in the law is acting pro se” (internal quotation marks omitted)), *holding modified on other grounds by Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471 n.6, 469 P.3d 176, 180 n.6 (2020).

Beyond the foregoing arguments, to the extent that Shepard otherwise contends she should have been granted a continuance—either by the commissioner or the district court on reconsideration of the commissioner’s decision—to allow her to conduct discovery and present testimony from her expert witness, we discern no abuse of discretion in the failure to continue the underlying proceedings. *See Matter of M.M.L., Jr.*, 133 Nev. 147, 150, 393 P.3d 1079, 1081 (2017) (providing that whether to grant or deny a continuance lies within the district court’s discretion (citing *S. Pac. Transp. Co. v. Fitzgerald*, 94 Nev. 241, 243, 577 P.2d 1234, 1235 (1978))). Given that, as noted above, the record does not reflect that Shepard requested a continuance either before or during the show cause hearing, Shepard is not entitled to relief based on this argument. *Id.*

Next, Shepard contends that the probate commissioner abused his discretion in making certain evidentiary rulings during the hearing. In particular, she argues that the commissioner erroneously (1) excluded her expert witness report and (2) admitted a title that Myra did not witness Almond sign, and which was allegedly introduced without prior notice. We review a district court’s decision to admit or exclude evidence for abuse of discretion. *M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008); *see also* NRS 155.180 (“Except as specially provided in [Title 12], all the provisions of law and the Nevada Rules of Civil Procedure regulating proceedings in civil cases apply in matters of probate.”).

With respect to Shepard’s contention that her expert report was improperly excluded, we disagree. WDCR 47 provides that, where a party intends to use documents in its case-in-chief, copies shall be provided to the

opposing party within a reasonable time of receipt and provided no later than 48 hours before the hearing or immediately upon receipt if obtained within the 48 hours. And here, Shepard failed to comply with WDCR 47 with regard to the expert report. While Shepard did not receive the report until the day prior to the hearing, it is undisputed that she did not provide it to respondents “immediately upon receipt,” as required by WDCR 47, but rather waited until the following day at the hearing to provide respondents and the commissioner with copies of this document.

Moreover, because Shepard sought to introduce the report to prove that the titles in question contained forged signatures and the expert did not testify at the hearing, the report constituted inadmissible hearsay. *See* NRS 51.035(1) (defining hearsay as a statement offered into evidence to prove the truth of the matter asserted unless the statement was made by a witness testifying at the hearing); *see also* NRS 51.065 (providing that hearsay is inadmissible unless it falls into a delineated exception). Thus, the probate commissioner did not abuse his discretion by excluding the report.

We are similarly unpersuaded by Shepard’s claim that the commissioner improperly admitted a vehicle title introduced by respondents. Below, respondents presented three vehicle titles as part of their evidence and, on appeal, Shepard does not specify which title she challenges on this ground. Thus, she fails to fully develop a cogent argument as to her challenge to the admission of the disputed title. *See Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider claims that

are not cogently argued). Further, Shepard's arguments on this point fail on the merits.

Here, Shepard alleges that the unspecified title was introduced without prior notice and that it was inadmissible because Myra testified that she did not witness Almond sign it. But her claim regarding notice is belied by the record, which shows respondents' exhibits were filed, and Shepard received electronic notice of the filing, on February 17, 2022, more than 48 hours before the hearing, as required by WDCR 47. She therefore had proper notice of the exhibits respondents intended to use at the hearing.

Shepard also contends that the disputed title should not have been admitted based on Myra's testimony that she did not witness Almond sign it. While Shepard appears to suggest that this title was somehow inadmissible hearsay based on the fact Myra did not witness it being signed, this argument lacks merit. *See* NRS 51.035(1) (defining what constitutes hearsay). Moreover, the titles respondents presented at the hearing were for vehicles listed in the district court's order to show cause as vehicles which respondents were directed to show were not converted. Given Shepard's allegations that the signatures on these titles were forged, the titles were essentially the subject of the hearing and thus, they necessarily had to be reviewed and considered at the show cause hearing. Under these circumstances, we cannot say that the probate commissioner's decision to admit the disputed title was an abuse of discretion. *See M.C. Multi-Family Dev., L.L.C.*, 124 Nev. at 913, 193 P.3d at 544.

Finally, Shepard challenges the district court's adoption of the probate commissioner's recommendation that Myra and Anderson were not



liable to the estate for conversion, asserting that substantial evidence showed that they converted Almond's property.

"Except as to matters of law, the findings of fact and recommendation of the probate commissioner will not be disturbed, unless they are clearly erroneous." WDCR 57.3(11). In probate matters, we defer to the underlying findings of fact and will only disturb them if they are not supported by substantial evidence. *Waldman v. Maini*, 124 Nev. 1121, 1129, 195 P.3d 850, 856 (2008). "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion." *In re Estate of Bethurem*, 129 Nev. 869, 876, 313 P.3d 237, 242 (2013).

Shepard's claim that substantial evidence did not support the probate commissioner's recommendation and the district court's order confirming the same is unpersuasive. Although she makes cursory claims that respondents had been untruthful throughout the case and that there was an "overwhelming" amount of relevant evidence showing their deceit, Shepard fails to develop any cogent argument on these points. Accordingly, we need not consider this contention. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38 (explaining that this court need not consider claims that are not cogently argued).

Moreover, to the extent that Shepard suggests that her testimony was more credible than Myra's, this argument does not provide a basis for relief as this court cannot reweigh the credibility of witnesses.<sup>1</sup> *See*

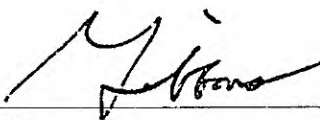
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<sup>1</sup>Although Shepard alleges that the probate commissioner orally stated that respondents were untruthful, its written recommendation finding Myra's testimony credible controls. *See Harrison v. Ramparts, Inc.*,

*Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 523-24 (2000) (refusing to reweigh evidence on appeal). Under these circumstances, and given that Shepard does not otherwise offer any cogent argument challenging the district court's adoption of the commissioner's decision, we conclude that her challenge in this regard is without merit.

Accordingly, for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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137 Nev. 637, 642 n.8, 500 P.3d 603, 608 n.8 (Ct. App. 2021) (explaining that differences between oral findings and written findings do not render the written order invalid because only the written order has legal effect).

<sup>2</sup>Shepard also challenges the denial of her motion for a preliminary injunction. But Shepard never filed an objection or request for judicial review of the commissioner's recommendation that her injunction request be denied within the 14-day time frame. Thus, the court properly adopted the recommendation. WDCR 57.3(7) (providing that the failure to file a written request for judicial review of a commissioner's recommendation within 14 days of service of the recommendation results in the adoption of the recommendation and preclusion of judicial review by the probate judge).

Finally, to the extent that Shepard presents any arguments not specifically addressed in this order, we have considered those arguments and conclude they do not provide a basis for relief.

cc: Hon. David A. Hardy, District Judge  
Nichole Shepard  
Todd L. Torvinen  
Washoe District Court Clerk