

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE FIFTH  
TOTAL RESTATEMENT OF THE JOHN  
J. MOMOT, JR. REVOCABLE FAMILY  
TRUST ORIGINALLY DATED APRIL 1,  
1987.

ROXANNE MARIE MOMOT,  
Appellant,


vs.

JOSEPH FRANK MOMOT, LUCILLE  
MOMOT-TAGIE; AND DOLLY  
KELEPECZ-MOMOT,  
Respondents.

No. 84609-COA

FILED

JAN 30 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Roxanne Marie Momot appeals from a district court order instructing co-trustees. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

Roxanne is a beneficiary of the Fifth Total Restatement of the John J. Momot Jr. Revocable Family Trust, Originally Dated April 1, 1987, and the niece of respondents Joseph Frank Momot and Lucille Tagie, who are the current co-trustees of the trust. Respondent Dolly Kelepecz-Momot—the other primary beneficiary of the trust—is Roxanne's step-mother. Under the terms of the latest amendment to the trust, Roxanne received, among other things, exclusive use and enjoyment of a Las Vegas trust property—815 Shetland Rd—rent free for her life, as well as lump sum distributions from the trust upon reaching certain ages. Dolly received, among other things, exclusive use of two trust properties, one at Kelly Way

in Las Vegas, and the other in Newport Beach, CA.<sup>1</sup> Additionally, Section 15.4 of the trust contained a no contest provision, which provided that

The Trustor specifically desires that this Trust Indenture and that these Trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these Trusts or any other person . . . lawfully or indirectly, singly or in conjunction with another person, seek or establish to assert any claim or claims to the assets of these Trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the Trusts, or to invalidate, impair or set aside its provisions, or to have the same or any part thereof declared null and void or diminished, or to defeat or change any part of the provisions of the Trusts established herein, then in any and all of the above-mentioned cases and events, such [ ] persons shall receive One Dollar (\$1.00), and no more, in lieu of any interest in the assets of the Trusts or interest in income or principal.

In 2021, the co-trustees filed an “Emergency Petition for Return of Stolen Trust Property by Beneficiary and Related Relief.”<sup>2</sup> In that petition, the co-trustees alleged that Roxanne had not only deliberately caused damage to the Shetland Road property, but also filed fraudulent documents with the offices of the Nevada and California Secretary of State,

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<sup>1</sup>The trust holds title to these properties through several business entities that make up the assets of the trust, including I’m Busy Crusin LLC, Unaccounted For Limited Partnership, and JJM Properties, LLC.

<sup>2</sup>The district court assumed continuing *in rem* jurisdiction over the Fifth Total Restatement of the John J. Momot Jr. Revocable Family Trust, Originally Dated April 1, 1987, in 2019. Both Roxanne and the co-trustees participated in that action.

forming fraudulent entities similar to existing trust LLCs in order to take control of trust property.<sup>3</sup> After doing so, the co-trustees alleged that Roxanne changed the utilities of the Newport Beach home owned by the LLC into her name, and proceeded to break into the home, change the locks, and remove all of Dolly's personal belongings.

Because of Roxanne's actions, the co-trustees moved the court to issue injunctive and declaratory relief, including striking the fraudulent secretary of state filings and prohibiting Roxanne from interfering with trust property or coming within 500 feet of the Newport Beach property. Finally, the co-trustees moved to enforce the trust's no contest clause against Roxanne.

After further proceedings, the district court issued a preliminary injunction and, in an order entered on December 3, 2021, scheduled an evidentiary hearing on February 7 and 8, 2022 to try the remaining issues regarding the no contest clause and the damage to the Newport Beach property. The order further indicated that discovery would conclude on January 17, 2022, that dispositive motions should be filed on or before January 24, 2022, and that all pretrial memorandums and exhibit books should be provided to the court and served on or before January 31, 2022.

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<sup>3</sup>In one example, Roxanne purportedly created an entity entitled "I'm Busy Crusin" and used documents from that entity to successfully name herself manager and resident agent of the trust's LLC "I'm Busy Crusin, LLC," which held the primary ownership interest in the trust's Newport Beach property.

On or around January 12, 2022—approximately five days before the end of the discovery period—Roxanne retained Jefferey Shaner to represent her. The record reflects that Roxanne did not participate in written discovery prior to that date, and later, on January 21, walked out of her (re)scheduled deposition before it began. On January 25, Shaner filed a motion to withdraw as counsel and to continue the evidentiary hearing, alleging that, even though Roxanne retained him only a few days before the discovery cut off, she refused to meet or speak with him until the morning of her deposition, which was scheduled after the discovery cutoff date, and that after that date, insulted him and questioned his competence. Afterward, the relationship deteriorated to the extent that Shaner requested to withdraw as counsel. Notably, Roxanne failed to oppose the motion, make an appearance at the hearing on the motion to withdraw, or otherwise communicate with the court regarding Shaner's request.

At the February 2 hearing on the motion to withdraw, the district court made findings regarding the merits of Shaner's motion, while also noting that Shaner had contracted COVID-19 since filing the motion and would be unable to represent Roxanne at the upcoming evidentiary hearing. Ultimately, the court granted Shaner's motion in part, allowing him to withdraw on the basis that the attorney-client relationship had deteriorated. However, the court declined to continue the evidentiary hearing on the basis that Roxanne failed to demonstrate good cause to do so, noting Roxanne's failure to oppose the motion, the co-trustees' and Dolly's claims of prejudice and the court's busy trial schedule (which would likely delay the hearing for months), Roxanne's prior notice of the trial

(which was scheduled several months in advance), and that Roxanne had only been represented by Shaner for nine days prior to the hearing.

Accordingly, the co-trustees served Roxanne with a trial subpoena, which indicated that the evidentiary hearing would proceed as scheduled on February 7. However, on the morning of trial, Roxanne did not appear and instead communicated to the co-trustees' counsel that she did not have a way to get to the courthouse. At that time, counsel arranged for a driver to go and pick her up from her residence, but Roxanne indicated in an email that she had gone to Starbucks. After searching approximately three local Starbucks and returning to Roxanne's residence, the driver was asked to come to the hearing and testified as to his efforts to locate Roxanne. The district court thereafter determined that Roxanne had decided not to participate in the hearing, and, pursuant to the stipulations of counsel, went forward with the proceedings without her present. Roxanne also did not appear for the second day of the hearing, claiming that she had contracted COVID-19, and again failed to directly notify the court of her absence. The court found that Roxanne's statements to counsel were not credible, there was good cause to proceed with the evidentiary hearing in her absence as "Roxanne had knowledge of the Orders of this Court and the proceedings occurring on these days, but refused to appear for her deposition, did not appear for Trial despite being served with a Trial Subpoena, did not seek to appear nor appear virtually nor submit any exhibits or a Pretrial Memorandum."

Following the evidentiary hearing, the district court entered its forty-page "Findings of Fact, Conclusions of Law, Order and Judgment, and Permanent Injunction" where—as relevant here—it instructed the co-

trustees to enforce the no-contest clause against Roxanne, and entered a permanent injunction prohibiting Roxanne from interfering with trust assets or physically threatening Dolly or the co-trustees. After the resolution of several unsuccessful post-judgment motions, Roxanne now appeals.

On appeal, Roxanne argues (1) that the district court erred in assuming personal jurisdiction over her on the basis that she was purportedly served by mail in Newport Beach, California; (2) that Clark County, Nevada is the improper venue for this dispute; (3) that the district court erred in allowing this action to proceed under the Federal Courts Jurisdiction and Venue Clarification Act (FCJVA) and because it “broke” diversity jurisdiction; (4) that the district court abused its discretion when it allowed Roxanne’s counsel to withdraw without continuing the evidentiary hearing; and (5) that the district court erred when it enforced the no contest clause against her.

Having reviewed the arguments presented in Roxanne’s informal briefs filed on August 19, August 24, and September 20, 2022, respondents’ answering brief and supplemental answering brief, Roxanne’s reply and supplemental reply and the record presented on appeal, we conclude that Roxanne has failed to present any basis for reversal of the district court’s findings of fact and conclusions of law.

Turning first to Roxanne’s procedural challenges to service, venue, and personal jurisdiction, Roxanne alleges that the district court erred in assuming *in personam* jurisdiction over her as she was served by mail in Newport Beach, CA. But, in its order, the district court found, and the record before us supports, that the co-trustees’ process server personally



served Roxanne with the initial emergency petition and the trial subpoena. Accordingly, we conclude that Roxanne's claims that she was not properly served with the petitions or trial subpoena below are belied by the record.

As to Roxanne's arguments that the district court erred by assuming personal jurisdiction over her, these claims are similarly without merit, as the record reflects that Roxanne is not only a resident of Nevada (and thus subject to the district court's jurisdiction), but nonetheless also subjected herself to the district court's jurisdiction in regard to the revocable trust under NRS 164.010(5)(b) (stating that when the court assumes in rem jurisdiction over the trust, it shall "be deemed to have personal jurisdiction over any trustee confirmed by the court and *any person appearing in the matter*, unless such an appearance is made solely for the purpose of objecting to the jurisdiction of the court" (emphasis added)), when the court initially assumed jurisdiction over the trust in 2019. We therefore conclude that the district court's exercise of personal jurisdiction over Roxanne was not clearly erroneous. *See Baker v. Eighth Jud. Dist. Ct.*, 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000) (reviewing jurisdictional issues de novo); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009) (reviewing a district court's factual findings regarding personal jurisdiction for clear error).

Roxanne also argues that California, not Nevada, is the proper venue for this dispute, as the alleged injury to the trust occurred in Newport Beach, and that the district court erred by allowing the action to proceed, purportedly violating the FCJVA and breaking diversity jurisdiction. However, Roxanne failed to raise these arguments in the district court, and we therefore need not consider them. *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.”); *see also Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 437, 245 P.3d 542, 544 (2010) (“[P]arties may not raise a new theory for the first time on appeal, which is inconsistent with or different from the one raised below.” (internal quotation marks omitted)). Nevertheless, Roxanne’s contentions in regard to venue and her allegations regarding diversity jurisdiction lack merit. As stated above, the district court first assumed *in rem* jurisdiction over the trust in 2019, and these proceedings are appropriate under the district court’s continuing jurisdiction over the trust. Thus, venue is appropriate in Clark County under NRS 164.010(4) (providing, in order of preference, the means of determining proper venue). Further, not only are all parties to this proceeding residents of Nevada (thus making diversity jurisdiction impossible), but it is also well recognized that “a court, state or federal, which first assumes jurisdiction of property is entitled to maintain and exercise its jurisdiction, to the exclusion of any other court, even to the point of enjoining proceedings in the other court.” *Bergeron v. Loeb*, 100 Nev. 54, 58, 675 P.2d 397, 400 (1984) (recognizing that a Nevada court’s assumption of *in rem* jurisdiction over a trust would preclude a federal court’s exercise of jurisdiction over the same). We therefore conclude that Roxanne’s challenges related to venue and diversity jurisdiction present no basis for relief.

Next, Roxanne argues that the district court abused its discretion when it permitted counsel to withdraw prior to the evidentiary hearing without continuing the hearing. This court reviews an order granting a motion to withdraw as counsel for an abuse of discretion. *See*



*Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). And here, Roxanne's argument is waived as she failed to object to the motion to withdraw below. See *Old Aztec*, 97 Nev. at 52, 623 P.2d at 983. Nevertheless, we conclude that the district court did not abuse its discretion in allowing counsel to withdraw and denying the request to continue the hearing as the record supports its findings that Roxanne had been aware of the upcoming evidentiary hearing for months, failed to actively participate in discovery, and had only been represented by counsel for a period of nine days prior to his withdrawal. And further, to the extent that Roxanne challenges the district court's decision to not continue the hearing, she also failed to raise this issue below, see *id.*, and, based on the record before us, this court can discern no abuse of discretion in the district court's decision to hold the hearing based on its findings that Roxanne received notice of the upcoming evidentiary hearing but refused to participate in the process. See *Bongiovi v. Sullivan*, 122 Nev. 556, 570, 138 P.3d 433, 444 (2006) ("We review the district court's decision on a motion for continuance for an abuse of discretion.").

Finally, Roxanne argues that the district court abused its discretion in instructing the co-trustees to enforce the no contest clause against her. We review a district court's factual determination of whether a beneficiary violated a trust's no-contest clause for clear error. *In re W.N. Connell & Marjorie T. Connell Living Tr.*, 134 Nev. 613, 616, 426 P.3d 599, 602 (2018). A no-contest clause, like the one used here, "express[es] a directive to reduce or eliminate the share allocated to a beneficiary or . . . the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or

in a trust-related instrument.” NRS 163.00991(8)(a). With certain exceptions not applicable here, a no-contest clause must be enforced by the court in accordance with the terms of the trust and “without regard to the presence or absence of probable cause for, or the good faith or bad faith of the beneficiary in, taking the action prohibited by the no-contest clause.” NRS 163.00195(1).

In its order, the district court found, among other things, that throughout these proceedings Roxanne demonstrated an intent to invade and convert the Newport Beach property and attempted to take control over trust assets by filing fraudulent documents with the California and Nevada Secretary of State. Moreover, in her filings in the instant matter, Roxanne represented that she was the rightful owner of all trust assets and asserted that she was the sole beneficiary of the trust. In light of these actions, the court found that Roxanne sought to “establish or assert . . . claims to the assets” of the trust, attacked the administration and distribution of the trust by interfering with Dolly’s use and enjoyment of the Newport Beach property, and attempted to defeat or change the trust provisions, thus triggering the trust’s no-contest clause. The district court based these findings on the 143 exhibits admitted during the evidentiary hearing, as well as testimony from several sworn witnesses.

On appeal, Roxanne generally argues that the court erred when enforcing the no-contest clause, but other than presenting broad assertions of fraud on behalf of the co-trustees Roxanne fails to challenge any of the independent bases for the district court’s order mentioned above. We therefore conclude that she has failed to present a basis for relief on these issues. *Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1288

(Ct. App. 2022) (“The failure to properly challenge each of the district court’s independent alternative grounds leaves them unchallenged and therefore intact, which results in a waiver of any assignment of error as to any of the independent alternative grounds.”).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

cc: Hon. Gloria Sturman, District Judge  
Roxanne Marie Momot  
Dolly Kelepecz-Momot  
The Jimmerson Law Firm, P.C  
Eighth District Court Clerk

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<sup>4</sup>Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.