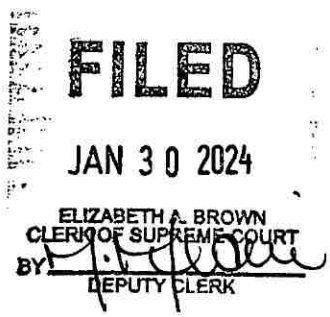
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KARINA JETT,
Appellant,
vs.
PETER MIKELIS, JR., AS SPECIAL ADMINISTRATOR OF THE ESTATE OF PETER MIKELIS, SR., DECEASED,
Respondent.[1]

No. 84032-COA



ORDER OF AFFIRMANCE

Karina Jett appeals from the final judgment following a bench trial and an order denying a motion for a new trial pursuant to NRCP 59(a)(1)(A) in a contract and tort action. Eighth Judicial District Court, Clark County; Gloria Sturman, Judge.

At the age of 91, Peter Mikelis, Sr. (Mikelis), commenced the underlying proceeding against one of his adult children, Jett, in connection with a transaction in which Mikelis purchased certain real property and then transferred the property to himself and Jett as joint tenants with the right of survivorship. In his verified complaint, Mikelis alleged that he took this action based on Jett's representations that he could reside in the house until his death and that the arrangement would ensure the property passed to her, without going through probate, upon his death. Mikelis further

[1]We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

alleged that Jett subsequently refused to permit him to reside in the house, stating that it was hers and she intended to rent it to third parties. Based on the foregoing allegations, Mikelis asserted various claims against Jett, including, as relevant here, fraud in the inducement. Jett, in turn, filed an answer in which she denied the foregoing allegations.

One year after filing his amended complaint, Mikelis passed away. His son, respondent Peter Mikelis, Jr. (Peter), was then appointed as special administrator of Mikelis's estate and substituted into the present case as plaintiff. Jett later moved for summary judgment, arguing that, as relevant here, Peter could produce no admissible evidence to establish a genuine dispute of material fact concerning the fraud in the inducement claim since Mikelis was the only witness, aside from Jett, to the discussions surrounding the subject real property transaction and was not deposed prior to his death. Peter opposed that motion, arguing that he could establish a genuine dispute of material fact by way of affidavits that were attached to his opposition from himself and Mikelis's granddaughter, Yvette Swanbom, concerning the events giving rise to this case, including their conversations with Jett about the subject real property transaction. During the subsequent hearing, the district court reasoned that Mikelis's verified complaint was itself evidence and constituted his testimony in this matter, however, Jett argued that the verified complaint constituted inadmissible hearsay, which prompted the district court to defer ruling on the motion for summary judgment pending supplemental briefing on that issue and other evidentiary issues. The district court later deferred ruling on the various

evidentiary issues until they arose at trial and did not subsequently enter a written order resolving Jett's motion for summary judgment.

Instead, the case eventually proceeded to a bench trial. At the bench trial, Peter and Swanbom both testified and Mikelis's amended complaint was introduced into evidence. Jett was not present at the trial, but instead, appeared through her trial counsel, Anthony F. DeMartino, who did not object to the admission of the verified complaint or proffer any witness testimony or evidence on Jett's behalf, aside from the grant, bargain, and sale deed that made Jett a joint tenant of the subject property. Following the bench trial, the district court entered judgment in Peter's favor, essentially finding that the uncontroverted evidence demonstrated that Jett fraudulently induced Mikelis to transfer an interest in the subject property to her. Based on that finding, the district court rescinded the deed, meaning that sole ownership of the property reverted to Mikelis's estate. Moreover, the district court determined that Jett was liable for double damages under Nevada's elder abuse statute, NRS 41.1395, and using Mikelis's $15,000 down payment for the subject property as a measure of the damages that he incurred by way of Jett's refusal to allow him access to the property, directed Jett to pay $30,000 to Mikelis's estate.

Jett then moved for, as relevant here, a new trial pursuant to NRCP 59(a)(1)(A), arguing that there was an irregularity in the proceedings because DeMartino represented her at trial even though her attorneys of record were Robert J. Walsh and Matthew Pawlowski of the law firm Walsh and Friedman. In particular, Jett asserted that the representation was improper because she did not consent to it and no withdrawal or change of

counsel was effected in accordance with S.C.R. 46. Peter opposed that motion, arguing that the representation was proper because Walsh assigned DeMartino, who was an associate of Walsh and Freidman, to handle the trial and that Jett did not object after this was explained to her. Following a hearing, the district court concluded that Jett failed to establish a basis for a new trial, and denied her motion. This appeal followed.

On appeal, Jett first challenges the district court's de facto denial of her motion for summary judgment on the fraud in the inducement claim.[2] *See Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 289, 994 P.2d 1149, 1150 (2000) (concluding that a district court's failure to rule on a motion constituted a denial of the motion). This court reviews a district court's decision with respect to a motion for summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and that the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31.

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[2]Although Jett's challenge concerns each of the causes of action that survived to the summary judgment stage, we only address the fraud in the inducement claim here since that was the claim upon which the district court eventually entered judgment in favor of Peter, which we conclude was proper for the reasons discussed below.

In arguing that she was entitled to summary judgment on the fraud in the inducement claim, Jett contends that Peter could not establish a genuine dispute of material fact without Mikelis's verified complaint, which Jett maintains could not be considered at the summary judgment stage because it would not be admissible at trial since Mikelis was dead and could not be cross-examined. *See* NRCP 56(c) (providing that a party may establish the existence of a genuine dispute of material fact by pointing to materials in the record, including affidavits, while the opposing party may object on grounds that the materials are not "in a form that would be admissible in evidence"); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) ("Evidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence."); *see also Conaway v. Smith*, 853 F.2d 789, 792 (10th Cir. 1988) (explaining that a verified complaint has the same force and effect as an affidavit for purposes of summary judgment if it, as relevant here, presents facts that would be admissible at trial). In response, Peter makes no attempt to argue that the verified complaint was admissible at trial and could therefore properly be considered at the summary judgment stage. We treat Peter's silence on these issues as a confession of error. *See Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (concluding that respondents confessed error by failing to respond to appellant's argument); *cf.* NRAP 31(d)(2) (providing that the appellate courts may treat a respondent's failure to file an answering brief as a confession of error).

However, this does not end our analysis because Peter argues instead that his and Swanbom's affidavits were sufficient to establish a

genuine dispute of material fact on the fraud in the inducement claim and that Jett therefore was not prejudiced insofar as the district court relied on the verified complaint as a basis to deny her motion.[3] *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (providing that a prejudicial error is one that "affects [a] party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached"); *cf.* NRCP 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."). To prevail on a claim for fraud in the inducement, a plaintiff must establish each of the following elements: (1) the defendant made a false representation; (2) the defendant knew or believed that the representation was false, or had knowledge that it lacked a sufficient basis for making the

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[3]To the extent that Jett's position is that the verified complaint was critical to Peter's case because fraud may only be established by way of the defrauded party's testimony, her argument lacks merit. Indeed, courts are routinely called upon to evaluate claims of fraud when the defrauded party is unavailable to testify, most notably in the context of will contests. *See, e.g., In re Estate of Bethurem*, 129 Nev. 869, 872-73, 876-77, 313 P.3d 237, 239-40, 242-43 (2013) (evaluating whether a will was the product of undue influence, which is a species of fraud, by considering testimony from the decedent's family members and third parties concerning the events leading up to the decedent's execution of the will at issue). Moreover, recognizing the surreptitious nature of fraud, the supreme court has explained that, although fraud is never presumed, it need not be established by direct evidence, but instead, "may be inferred from strong presumptive circumstances." *See Tognini v. Kyle*, 15 Nev. 464, 468 (1880) ("As a rule, the motives of men can be best ascertained by a proper consideration of their acts and declarations, and oftentimes they can be revealed by no other means.").

representation; (3) the defendant intended to induce the plaintiff to consent to the contract's formation; (4) the plaintiff justifiably relied on the misrepresentation; and (5) the plaintiff suffered damages as a result. *J.A. Jones Constr. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004) (setting forth the elements of a claim for fraud in the inducement).

Here, Swanbom attested to the following in her affidavit. Swanbom learned that Mikelis transferred an interest in the property to Jett and that Jett was barring Mikelis from the property. Swanbom then contacted Jett and asked why Jett "would not live up to her bargain of having [Mikelis] live in the home and rent[ing] rooms out to poker players who would come into town." Jett responded that "players simply do not want to share the home with an old man." Swanbom repeatedly begged Jett in subsequent conversations to fulfill her arrangement with Mikelis, but Jett indicated that "the home was hers," that it "was part of her real estate rental portfolio," and that "she would simply wait out for the death of [Mikelis] and . . . would receive the home."

In his affidavit, Peter attested that he was personally aware that Mikelis attempted to move into the home and witnessed that his father was locked out. Peter further attested that he confronted Jett regarding the matter, and that Jett responded by "[s]imply stat[ing] that the house was hers."

Taking the foregoing averments in the light most favorable to Peter, who was the nonmoving party, we conclude that they established a genuine dispute of material fact as to each element of a claim for fraud in

the inducement.[4] *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. First, Swanbom's affidavit indicates that, during her conversations with Jett, she presented specific allegations concerning an agreement between Jett and Mikelis whereby Mikelis would live in the subject property and Jett would rent rooms in the property to poker players, which Jett did not dispute. The foregoing supports an inference that Jett represented to Mikelis that he would be able to live in the property after transferring an interest to her and that she would rent rooms to poker players, presumably to cover expenses. *See id.*; *Tognini*, 15 Nev. at 468; *see also J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018. Moreover, insofar as Swanbom's affidavit indicates that Jett's response to Swanbom's allegations was to state that poker players don't want to live with an old man, that the property was

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[4]To the extent that Jett attempts to demonstrate that the averments in Peter's and Swanbom's affidavits would be inadmissible at trial, and, therefore, could not be considered at the summary judgment stage, she has not demonstrated a basis for relief. The averments discussed above were relevant, *see* NRS 48.025 (providing that relevant evidence is generally admissible); *see also* NRS 48.015 (defining the term "relevant evidence"), based on Peter's and Swanbom's personal knowledge, *see* NRS 50.025 (providing that witnesses generally may not testify as to matters of which they lack personal knowledge), and largely concerned Jett's own statements, which were not hearsay, *see* NRS 51.035(3)(a) (explaining that an out of court statement offered against a party does not constitute hearsay if it is the party's own statement). Moreover, although Swanbom's affidavit discussed her own out of court statement to Jett concerning her understanding of the agreement between Mikelis and Jett, that statement was not offered to prove the truth of the matter asserted, *see* NRS 51.035 (defining "[h]earsay" as an out of court statement offered to prove the truth of the matter asserted), but rather, to lay the foundation for Jett's response.

hers, and that she would wait for Mikelis to die to receive the property, the affidavit likewise supports inferences that Jett knew her representation to be false and, by making the representation, intended to induce Mikelis into transferring an interest in the property to her. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Tognini*, 15 Nev. at 468; *see also J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018. Further, insofar as Peter's affidavit indicates that Mikelis attempted to move into the home, but was locked out, it supports an inference that Mikelis relied on Jett's representation that he would be able to live in the property while she rented rooms, which was justifiable given that it was undisputed that Jett was a licensed real estate agent and that Mikelis was elderly, disabled, and on a fixed income. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Tognini*, 15 Nev. at 468; *see also J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018. And to the extent that both Swanbom's and Peter's affidavits indicate that Jett barred Mikelis from the property, they tended to show that he suffered damages. *See J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018.

Thus, because Swanbom's and Peter's affidavits were sufficient to establish a genuine dispute of material fact with respect to each element of a claim for fraud in the inducement, we conclude that Jett was not harmed by any abuse of discretion occasioned by the district court's consideration of Mikelis's verified complaint when it evaluated her motion for summary judgment, *see Hansen v. Universal Health Servs. of Nev., Inc.*, 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999) (recognizing that a district court's determinations concerning the admissibility of evidence are reviewed for an abuse of discretion); *see also Wyeth*, 126 Nev. at 465, 244

P.3d at 778; *cf.* NRCP 61. As a result, the district court did not err insofar as it denied the motion. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029.

Judgment in favor of Peter on the fraud in the inducement claim

Turning to the judgment in favor of Peter on the fraud in the inducement claim, Jett reiterates her position that the district court could not properly admit the verified complaint, which she contends was the only evidence to support the claim. Because Jett failed to renew her objection to the admissibility of the verified complaint at trial and thereby failed to preserve her argument for appellate review, *see Richmond v. State*, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002) (holding, in the criminal context, that "where an objection has been fully briefed, the district court has thoroughly explored the objection during a hearing on a pretrial motion, and the district court has made a definitive ruling, then a motion in limine is sufficient to preserve an issue for appeal"), we review for plain error, meaning that we will not reverse the judgment in favor of Peter unless "the failure to grant relief will result in a manifest injustice or a miscarriage of justice." *See In re Parental Rights as to J.D.N.*, 128 Nev. 462, 469, 283 P.3d 842, 847 (2012) (internal quotation marks omitted) (quoting 5 Am. Jur. 2d *Appellate Review* § 720 (2007). As discussed above, Peter confessed error with respect to the district court's decision to admit Mikelis's verified complaint. Thus, we turn to Peter's assertion that the admission of the verified complaint at trial did not prejudice Jett since his and Swanbom's testimony were sufficient to sustain the district court's judgment.

Following a bench trial, this court reviews the district court's legal conclusions de novo. *Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619,

621, 426 P.3d 593, 596 (2018). However, we will not disturb the district court's factual findings "unless they are clearly erroneous or not supported by substantial evidence." *Id.* In evaluating whether substantial evidence supported a verdict, this court "must assume that the [fact-finder] believed all the evidence favorable to [the prevailing party] and drew all reasonable inferences in his [or her] favor." *Clark Cty. Sch. Dist. v. Payo*, 133 Nev. 626, 636, 403 P.3d 1270, 1278 (2017). Substantial evidence is that which a reasonable person may accept as adequate to sustain a judgment. *See Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). To prevail on a claim for fraudulent inducement, a plaintiff is required to prove each of the elements discussed above by clear and convincing evidence. *See J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018.

Here, Peter proffered Swanbom's testimony, which was similar to the averments in her affidavit. In particular, Swanbom provided the following testimony concerning various conversations she had with Jett during the months following Mikelis's purchase of the subject property and subsequent transfer of an interest in the property to Jett. Swanbom initially questioned Jett as to why Mikelis purchased such a large house and how he was going to maintain it given his age. Jett responded that Mikelis was going to live "downstairs in the master area," that she was going to take care of him, and that she was going to rent rooms to poker players who came into Las Vegas for World Series of Poker tournaments and split the profits with Mikelis since he was on a fixed income. Swanbom subsequently questioned Jett as to why she arranged for Mikelis to purchase the property with a home loan guaranteed by the United States

Department of Veterans Affairs when the home was going to be an investment property. Jett again stated that she was going to rent out rooms and Mikelis was going to live in the house. Swanbom eventually questioned Jett as to why Mikelis had been locked out of the home, and Jett responded that she was going to rent the entire house and indicated that Mikelis was "not going to live there because nobody wants to live with an old man." Jett also stated that she would keep the house in litigation until Mikelis dies, and further associated her claim to the home with being left out of Mikelis's will.

As to Peter's testimony, he indicated that he learned of Mikelis's purchase of the subject property at a breakfast with Mikelis and Jett where Jett pulled him aside and stated that the home was hers alone and that she was "going to draw up papers to see that Peter and [his] sister . . . can never have any claim to th[e] home or the equity in it." Peter also testified that he went to the subject property with Mikelis a few weeks later to assist him in moving various belongings into the property, but they could not do so because Mikelis's key would not work.

Assuming that the district court believed the foregoing testimony, which was favorable to Peter, and drawing all reasonable inferences in his favor, we conclude that it constituted substantial evidence to support the judgment in his favor on the fraud in the inducement claim. *See Payo*, 133 Nev. at 636, 403 P.3d at 1278; *Tognini*, 15 Nev. at 468. In particular, Swanbom's testimony concerning the statements that Jett made about the nature of her arrangement with Mikelis supports an inference that she made a corresponding representation to Mikelis before he

purchased the property and transferred an interest in it to her—specifically, that Peter would live in the master bedroom and that she would take care of him, rent rooms to poker players, and split the profits with Mikelis. Moreover, to the extent that Peter and Swanbom testified about statements Jett made concerning why she would not permit Mikelis to live in the house and how she intended to acquire sole ownership of the property, their testimony supported an inference that Jett knew her representation to be false and intended the representation to induce Mikelis into purchasing the property. Likewise, insofar as Peter testified regarding Mikelis's efforts to move into the property, his testimony supported an inference that Mikelis relied on Jett's representation when he purchased the property and transferred an interest in it to her, which was justifiable since, as discussed above, it is undisputed that Jett was a real estate agent and that Mikelis was elderly, disabled, and on a fixed income. And both parties' testimony concerning the actions that Jett took to bar Mikelis from the property tended to show that he suffered damages.

Given the foregoing and because Jett failed to proffer any countervailing evidence or testimony, Peter's and Swanbom's testimony constituted clear and convincing evidence of each element of the fraud in the inducement claim. *See J.A. Jones Constr.*, 120 Nev. at 290, 89 P.3d at 1018; *see also In re Discipline of Stuhff*, 108 Nev. 629, 635, 837 P.3d 853, 856 (1992) (explaining that evidence "need not possess such a degree of force as to be irresistible" to be clear and convincing, although it must at least "be evidence of tangible facts from which a legitimate inference . . . may be drawn" (alteration in original) (internal quotation marks omitted)). Thus,

substantial evidence supported the district court's judgment in favor of Peter on that claim, *Wells Fargo Bank*, 134 Nev. at 621, 426 P.3d at 596. Accordingly, Jett has not established a manifest injustice or miscarriage of justice that would warrant reversal under the circumstances presented here.[5] *See In re Parental Rights as to J.D.N.*, 128 Nev. at 469, 283 P.3d at 847; *see also* NRCP 61; *Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

Order denying Jett's motion for a new trial pursuant to NRCP 59(a)(1)(A)

Jett next challenges the denial of her motion for a new trial pursuant to NRCP 59(a)(1)(A), which authorizes the district court to grant

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[5]To the extent that Jett argues that Mikelis did not mitigate his damages because he failed to take affirmative steps to gain access to the house after being locked out and that Peter could not prove the elements of the fraud in the inducement claim because it was true as a matter of law that Mikelis could reside in the house given that he was an owner, she failed to preserve these issues for appellate review by raising them below. *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 . . . is deemed to have been waived and will not be considered on appeal."). But regardless, Jett's arguments in this respect lack merit, as the record reflects that she took affirmative steps to bar Mikelis, who was an elderly disabled man, from residing in the property until he died. Moreover, the uncontroverted evidence also establishes that Jett not only represented that Mikelis would be able to reside in the house, but also represented that she would take care of him and cover his expenses by renting rooms in the house, which she failed to do. And, under the circumstances presented here, we cannot conclude that it was unreasonable for Mikelis to attempt to resolve the dispute between himself and Jett through Swanbom's assistance before commencing the underlying action against Jett approximately two years after the subject real property transaction. *See Conner v. S. Nev. Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987) (stating that, "[a]s a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts").

a new trial based on an "irregularity in the proceedings of the court" that "affect[ed] the substantial rights of the moving party." In particular, Jett contends that the appearance of DeMartino on her behalf at trial constituted an irregularity in the proceedings of the district court since Walsh and Pawloski were her attorneys of record and no withdrawal or change of counsel had been effected in accordance with S.C.R. 46. Moreover, Jett contends that she was denied her counsel of choice in violation of her due process rights and takes issue with the quality of DeMartino's representation, which she contends was prejudicial to her defense. This court reviews the district court's resolution of a motion for a new trial for an abuse of discretion. *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 74, 319 P.3d 606, 611 (2014).

As a preliminary matter, Jett's reliance on S.C.R. 46 is misplaced. Indeed, that rule simply explains the procedure that must be followed to change a client's counsel once counsel has appeared in an action that has not proceeded to final judgment. *See* S.C.R. 46 (providing that an attorney in an action may be changed any time before the entry of final judgment "[u]pon consent of the attorney, approved by the client" or "[u]pon the order of the court or judge thereof on the application of the attorney or client"); *Aldabe v. Aldabe*, 84 Nev. 392, 398, 441 P.2d 691, 695 (1968) (stating the same). The rule does not say anything about whether an attorney of record may delegate aspects of the representation of a client to another attorney at the attorney of record's law firm, which is what happened here and is a common practice in Nevada and other jurisdictions. *See, e.g., Streit v. Covington & Crowe*, 98 Cal. Rptr. 2d 193, 196-97 (Cal. Ct.

App. 2000) (explaining that, when an attorney makes an appearance in a case on behalf of the attorney of record, there is an association of counsel and both attorneys are in an attorney-client relationship with the represented litigant, regardless of whether the attorney who is not the attorney of record will be responsible for the bulk of the work in the case). Because Jett has not directed this court's attention to any legal authority that demonstrates that an associate attorney from the same law firm cannot appear in an action on behalf of the attorney of record,[6] we decline to further consider whether DeMartino was outrighted barred from appearing in this case. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that Nevada's appellate courts need not consider arguments unsupported by relevant legal authority).

As to Jett's assertions that she did not consent to DeMartino representing her in this matter and that she was denied her chosen counsel under these circumstances, we discern no basis for relief. In particular, nothing in the record before this court demonstrates that Jett raised any concerns with anyone involved in this case concerning DeMartino's handling of her defense until after the trial in this matter. Moreover, with his opposition to Jett's motion for a new trial, Peter provided an affidavit from DeMartino, who attested that he had several telephone conversations

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[6]Although Jett cites to *Aldabe* in seeking to establish the foregoing, that decision does not support her position, as the supreme court simply held that, as relevant here, a client's attorney of record remained her attorney of record because no change or withdrawal was effected in accordance with S.C.R. 46. 84 Nev. at 388, 441 P.2d at 691.

with Jett concerning his representation and that she never raised any objections. The foregoing constitutes substantial evidence to support the district court's determination that Jett failed to establish a basis for a new trial in this respect. *See Wells Fargo Bank*, 134 Nev. at 621, 426 P.3d at 596; *Ellis*, 123 Nev. at149, 161 P.3d at242. We recognize that Jett provided her own affidavit with her motion to dismiss in which she attested that, among other things, she "believed that [s]he did not have a choice in the matter." However, that averment does not provide a basis for reversal, as the district court's decision to deny Jett's motion demonstrates that it did not find it persuasive—presumably because Jett had previously changed her attorney of record in this case and thereby demonstrated her understanding of her right to choose her counsel—and we do not reweigh the evidence or the district court's credibility determination on appeal. *See Ellis*, 123 Nev. at 152, 161 P.3d at 244 (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal).

Lastly, to the extent that Jett takes issue with the quality of DeMartino's representation, she is essentially presenting an ineffective-assistance-of-counsel argument. However, litigants in civil cases generally do not have a right to the effective assistance of counsel. *See Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) ("We find no support . . . for the proposition that the right to an ineffective-assistance-of-counsel argument exists in civil cases."); *see also Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) ("noting "the presumption that, unless [an] indigent litigant may lose his physical liberty if he loses the

litigation, there is generally no right to counsel in a civil case"). Given that this case is a purely civil tort and contract action, and because there is no indication that Jett is an indigent litigant in danger of losing her physical liberty, her argument in this respect lacks merit.

Thus, for the foregoing reasons, we conclude that Jett failed to demonstrate that the district court abused its discretion by denying her motion for a new trial pursuant to NRCP 59(a)(1)(A). *See Gunderson*, 130 Nev. at 74, 319 P.3d at 611. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[7]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Gloria Sturman, District Judge
Persi J. Mishel, Settlement Judge
Andersen & Broyles, LLP
Law Office of Daniel Marks
Compan Law Offices
Eighth District Court Clerk

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[7]Insofar as the parties raise arguments that are not specifically addressed herein, we have reviewed them and conclude they do not warrant relief.