

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 2/1/2023 9:15 AM

2 **CENTURY BANK,**

3 Plaintiff-Appellee,

4 v.

5 **LORETTA CISNEROS, SHARON A. BACA,**
6 **and CHRIS R. BACA,**

7 Defendants-Appellants.

8 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
9 **Francis J. Mathew, District Court Judge**

10 Jurgens & With, P.A.
11 James R. Jurgens
12 Santa Fe, NM

13 for Appellee

14 Joseph B. Coffey
15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **MEDINA, Judge.**

19 {1} Defendants appeal a default judgment in this suit on a promissory note, raising
20 three appellate issues. [ADS 3-4] This Court issued a notice of proposed disposition
21 proposing to affirm the judgment below, partly on the basis that the docketing
22 statement failed to provide information necessary to review the actions of the district
23 court. Defendants have filed a memorandum in opposition to that proposed

1 disposition, and Plaintiff has filed a motion in support thereof, both of which we
2 have duly considered. Remaining unpersuaded that the district court committed
3 error, we now affirm.

4 {2} Defendants' memorandum no longer asserts either of the first two appellate
5 issues raised in their docketing statement and we deem those arguments abandoned
6 on appeal. *See Taylor v. Van Winkle's Iga Farmer's Mkt.*, 1996-NMCA-111, ¶ 5,
7 122 N.M. 486, 927 P.2d 41 (recognizing that where the proposed disposition of an
8 issue is not contested in a memorandum in opposition, that issue is abandoned).
9 Instead, Defendants' memorandum in opposition opposes our proposed disposition
10 of their third appellate issue, which questioned whether the district court erred by
11 granting a default judgment as a sanction. [ADS 4; MIO 1]

12 {3} As noted in our notice of proposed disposition, New Mexico's rules governing
13 discovery authorize the entry of a default judgment as a sanction for discovery
14 violations. Rule 1-037(B)(2)(c) NMRA. [CN 9] The district court's decision to enter
15 such a sanction is reviewed on appeal solely for an abuse of discretion. *Weiss v. THI*
16 *of N.M. at Valle Norte, LLC*, 2013-NMCA-054, ¶ 15, 301 P.3d 875. In assessing the
17 district court's exercise of its discretion to impose a sanction, we must consider "the
18 nature of the [offending] conduct and level of culpability found by the district court,"
19 keeping in mind that reversal on appeal is appropriate only in circumstances where

1 “the district court’s decision is clearly untenable or contrary to logic and reason.” *Id.*
2 (text only).

3 {4} Our notice of proposed disposition also pointed out that, following the passage
4 of multiple discovery deadlines, Plaintiff filed a motion to compel interrogatory
5 responses and document production, Defendants filed no response to that motion,
6 the district court granted the motion to compel, Defendants still did not respond to
7 the discovery request, Plaintiff moved for sanctions, and Defendants did not respond
8 to that motion. [CN 8-9] Plaintiff then filed a proposed order imposing sanctions and
9 Defendants filed no objections to that order, which was ultimately entered by the
10 district court following a presentment hearing. [CN 9; RP 130-32] Defendants’
11 memorandum now concedes that their “failures [were] significant and worthy of
12 censure” before pointing out that they filed a certificate of service attesting to service
13 of interrogatory answers and responsive documents on the eve of the presentment
14 hearing. [MIO 1-2]

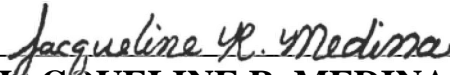
15 {5} Defendants’ memorandum also reiterates that one Defendant was “extremely
16 fearful [of the ongoing COVID-19 pandemic] and of being in the presence of
17 traveling strangers,” presumably complicating her ability to consult with counsel.
18 [MIO 2] On that basis, Defendants assert that no willful failure to comply with
19 discovery occurred. [Id.] Defendants’ memorandum also now informs us that these
20 facts were presented to the district court at the presentment hearing. [MIO 1]

1 {6} Although this Court appreciates the difficulties caused by the COVID-19
2 pandemic, we are not persuaded that such complications negate a finding of willful
3 noncompliance in this case. Although such difficulties may explain Defendants’
4 delayed discovery responses, the memorandum before us offers no explanation for
5 Defendants’ complete failure to respond in any way to the multiple motions, orders,
6 and proposed orders flowing from their delayed response to that discovery. As our
7 notice of proposed disposition noted, Defendants’ docketing statement did not offer
8 any explanation for their failure to file any response to the motion to compel
9 discovery. [CN 8] The memorandum opposing that disposition still does not offer
10 any such explanation.

11 {7} Accordingly, Defendants’ memorandum does not persuade us that our
12 proposed summary disposition was in error or that an abuse of discretion occurred
13 below. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d
14 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden
15 is on the party opposing the proposed disposition to clearly point out errors in fact
16 or law.”); *see also State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759
17 P.2d 1003 (explaining that the repetition of earlier arguments does not meet a party’s
18 burden to point out errors of law or fact in a notice of proposed summary
19 disposition), *superseded by statute on other grounds as stated in State v. Harris*,
20 2013-NMCA-031, ¶ 3, 297 P.3d 374. Accordingly, for the reasons stated here and

1 in our notice of proposed summary disposition, we affirm the default judgment
2 entered below.

3 {8} **IT IS SO ORDERED.**

4 
5 **JACQUELINE R. MEDINA, Judge**

6 **WE CONCUR:**

7 
8 **ZACHARY A. IVES, Judge**

9 
10 **JANE B. YOHALEM, Judge**