

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

Court of Appeals of New Mexico  
Filed 2/13/2023 11:40 AM

2 **ESTHER GARCIA,**

3 Plaintiff-Appellant,

4 v.



Mark Reynolds

No. A-1-CA-40762

5 **CITY OF ALBUQUERQUE,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Denise Barela Shepherd, District Court Judge**

9 Gilpin Law Firm, LLC

10 Donald G. Gilpin

11 Christopher P. Machin

12 Albuquerque, NM

13 for Appellant

14 Lauren Keefe, City Attorney

15 Ian G. Stoker, Assistant City Attorney

16 E. Justin Pennington, Assistant City Attorney

17 Carrie Cook, Assistant City Attorney

18 Albuquerque, NM

19 for Appellee

20 **MEMORANDUM OPINION**

21 **DUFFY, Judge.**

22 {1} Plaintiff appeals from the district court's order granting Defendant's (the City)

23 motion for summary judgment. This Court issued a notice of proposed summary

24 disposition, proposing to affirm. Plaintiff filed a memorandum in opposition to the

1 proposed summary disposition, and the City filed a memorandum in support, which  
2 we have duly considered. Unpersuaded that the calendar notice was in error, we  
3 affirm.

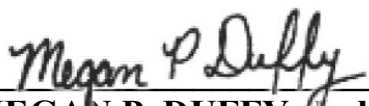
4 {2} Our notice proposed to affirm based on our suggestions that: Plaintiff’s  
5 contentions on appeal did not appear to engage with the district court’s  
6 determinations both that her asserted work releases were not submitted to the City  
7 and not the type of information required by the City, and because Plaintiff did not  
8 identify any further specific issues of material fact that would preclude summary  
9 judgment, she had not demonstrated that the district court was in error. [CN 3-4]

10 {3} In her memorandum in opposition, Plaintiff briefly asserts, without further  
11 development, that one of the doctor’s notes “is an exact duplicate,” “represent[s] the  
12 notice that she can work in the [p]olice [d]epartment,” and the note “is real as it was  
13 delivered to the City.” [MIO 1] Plaintiff does not explain how the asserted note  
14 provided the information that the City had requested, nor identify where in the record  
15 it was demonstrated to have been delivered to the City. *See Chan v. Montoya*, 2011-  
16 NMCA-072, ¶ 9, 150 N.M. 44, 256 P.3d 987 (“It is not our practice to rely on  
17 assertions of counsel unaccompanied by support in the record. The mere assertions  
18 and arguments of counsel are not evidence.” (internal quotation marks and citation  
19 omitted)); *see also V.P. Clarence Co. v. Colgate*, 1993-NMSC-022, ¶ 2, 115 N.M.  
20 471, 853 P.2d 722 (“[T]he briefs and arguments of counsel are not evidence upon

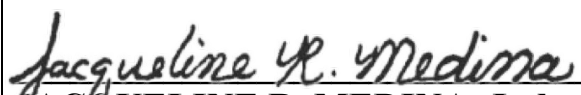
1 which a [district] court can rely in a summary judgment proceeding.”). Without  
2 further development or support, we are unpersuaded that Plaintiff has demonstrated  
3 error. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d  
4 1003 (stating that “[a] party responding to a summary calendar notice must come  
5 forward and specifically point out errors of law and fact” and the repetition of earlier  
6 arguments does not fulfill this requirement), *superseded by statute on other grounds*  
7 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

8 {4} Accordingly, for the reasons stated in our notice of proposed disposition and  
9 herein, we affirm.

10 {5} **IT IS SO ORDERED.**

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MEGAN P. DUFFY, Judge

13 **WE CONCUR:**

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15 \_\_\_\_\_  
JACQUELINE R. MEDINA, Judge

16   
17 \_\_\_\_\_  
SHAMMARA H. HENDERSON, Judge