

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

2 **THE ESTATE OF GREGORITA**
3 **SANCHEZ, by Personal Representative**
4 **Elizabeth Padilla,**

Court of Appeals of New Mexico
Filed 1/30/2023 11:32 AM



Mark Reynolds

5 Plaintiff-Appellee,

6 v.

No. A-1-CA-40494

7 **TRACI MARTINEZ,**

8 Defendant-Appellant,

9 and

10 **ANY PERSON OR PERSONS OR**
11 **ENTITITES WHO CLAIM ANY**
12 **RIGHT OR INTEREST IN THE**
13 **SUBJECT PROPERTY,**

14 Defendants.

15 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

16 **Bradford Dalley, District Court Judge**

17 Brandt Thrower Law Firm, P.C.

18 Brandt Thrower

19 Farmington, NM

20 for Appellee

21 Proudlaw, PLLC

22 Jules August Grandjean, II

23 Farmington, NM

24 for Appellant

1 **MEMORANDUM OPINION**

2 **BOGARDUS, Judge.**

3 {1} Defendant appeals from the district court’s entry of final judgment in favor of
4 Plaintiff. This Court issued a notice of proposed summary disposition, proposing to
5 affirm. Defendant filed a memorandum in opposition to the proposed summary
6 disposition, and Plaintiff filed a memorandum in support, which we have duly
7 considered. Unpersuaded that the calendar notice was in error, we affirm.

8 {2} Our notice proposed to affirm based on our suggestions that: (1) Defendant
9 failed to preserve her claim that the district court erred in deeming Plaintiff’s
10 requests for admission, unanswered by Defendant, as admitted, and that in the
11 absence of any claim that Defendant was not served with the requests for admission,
12 the issue lacked merit; (2)-(3) Defendant failed to preserve her claim that the district
13 court erred in admitting the transcript of a witness deposition at trial, and that
14 Defendant was not entitled to cross-examine a witness in this civil case; and (4) to
15 the extent Defendant contended that the district court improperly denied her an
16 opportunity to object to Plaintiff’s proposed form of judgment when the district court
17 filed the judgment one day prior to the close of the ten day period that it provided
18 for objections to the judgment, her arguments were again unpreserved, as well as
19 unclear. [CN 1-5]

1 {3} In her memorandum in opposition, Defendant generally repeats many of her
2 arguments. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759
3 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must
4 come forward and specifically point out errors of law and fact” and the repetition of
5 earlier arguments does not fulfill this requirement), *superseded by statute on other*
6 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. To the
7 extent she repeats the same arguments, we affirm for the reasons stated in the
8 proposed disposition. To the extent she does not contest proposed resolutions of
9 several of her issues, we deem those issues abandoned. *See Griffin v. Thomas*, 1997-
10 NMCA-009, ¶ 7, 122 N.M. 826, 932 P.2d 516 (“[A]n issue is deemed abandoned
11 where a party fails to respond to the calendar notice’s proposed disposition of the
12 issue.”).

13 {4} Defendant does now frame some of her arguments somewhat differently in
14 response to the calendar notice. First, she contends that not receiving a hearing about
15 the requests for admission constituted plain error. [MIO1-2] *See* Rule 12-
16 321(B)(2)(b) NMRA (including, as an exception from the general preservation
17 requirement, issues of plain error); *State v. Paiz*, 1999-NMCA-104, ¶ 28, 127 N.M.
18 776, 987 P.2d 1163 (“[T]he plain error rule is to be used sparingly. It is an exception
19 to the rule that parties must raise timely objection to improprieties at trial, a rule
20 which encourages efficiency and fairness.” (citation omitted)). “The rule of plain

1 error applies to errors that affect substantial rights of the accused and only applies to
2 evidentiary matters.” *State v. Dartez*, 1998-NMCA-009, ¶ 21, 124 N.M. 455, 952
3 P.2d 450. Defendant, who is not criminally accused in this civil case, has not
4 demonstrated how her substantial rights were affected beyond asserting, without
5 supporting authority, that “due process rights to notice and hearing” and
6 “fundamental rights as a litigant” were implicated. [MIO 2, 5] We are not persuaded
7 that she has demonstrated that plain error applies as an exception to preservation.
8 [CN 3] Defendant’s attempt to distinguish the facts of *Muse v. Muse*, 2009-NMCA-
9 003, ¶ 32, 145 N.M. 451, 200 P.3d 104 (reasoning that the remedy for an order that
10 was improperly entered for lack of notice is to file a motion to vacate the order, and
11 a party cannot complain on appeal when no such motion is filed), does not persuade
12 us that our proposal that Defendant has failed to preserve this issue was in error. We
13 reiterate that Defendant does not claim that she did not receive the requests for
14 admission and therefore, even if preserved, her claim lacks merit.

15 {5} Defendant also now argues that the district court erred in admitting deposition
16 testimony because the transcript was mailed to her one hour before trial and that
17 Plaintiff “reveal[ed]” on appeal that the witness was located in Las Vegas at the time
18 of trial. [MIO 3] Again, this issue was unpreserved below, and Defendant does not
19 demonstrate that that any exceptions to preservation apply in this context. Without

1 further development or support, we are unpersuaded that Defendant has
2 demonstrated error as to this issue.

3 {6} Accordingly, for the reasons stated in our notice of proposed disposition and
4 herein, we affirm.

5 {7} **IT IS SO ORDERED.**

6 
7 KRISTINA BOCCARDUS, Judge

8 **WE CONCUR:**

9 
10 ZACHARY A. IVES, Judge

11 
12 JANE B. YOHALEM, Judge