


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
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3 Plaintiff-Appellant,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41071

5 **IRVIN CHACON,**

6 Defendant-Appellee.

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

8 **Mark Sanchez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Walter Hart, Assistant Attorney General

12 Albuquerque, NM

13 for Appellant

14 Harrison & Hart, LLC

15 Nicholas T. Hart

16 Albuquerque, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **YOHALEM, Judge.**

20 {1} The State appeals the district court's order excluding testimony and
21 preventing the State's witness from testifying in this case. This Court issued two
22 notices of proposed disposition in this appeal, the most recent of which proposed to
23 reverse and remand for further proceedings. In response to our second notice,

1 Defendant has filed a memorandum in opposition to summary reversal, which we
2 have duly considered. For the following reasons, we reverse.

3 {2} Defendant’s memorandum in opposition argues that the reasons for the district
4 court’s ruling were apparent, and therefore, the district court was not obligated to
5 specifically articulate its reasoning. [MIO 7] As discussed in our second proposed
6 disposition, a district court must assess the following when determining whether to
7 levy sanctions for a discovery violation: “(1) the culpability of the offending party,
8 (2) the prejudice to the adversely affected party, and (3) the availability of lesser
9 sanctions.” *State v. Le Mier*, 2017-NMSC-017, ¶ 15, 394 P.3d 959; *see also State v.*
10 *Harper*, 2011-NMSC-044, ¶ 15, 150 N.M. 745, 266 P.3d 25 (same). “Upon weighing
11 those factors, the district court then has discretion to decide which sanction to
12 impose, but has an obligation to explain the reasons for its decision.” *State v. Lewis*,
13 2018-NMCA-019, ¶ 11, 413 P.3d 484. Even if the district court is “unquestionably
14 aware of its obligation to consider the *Harper* factors,” the facts on which its decision
15 is based, and the reasons for imposing a sanction, must be contained in the record so
16 that this Court can determine “whether the district court exercised due care in making
17 its decision.” *Id.* ¶ 12.

18 {3} Defendant asserts that this case contains a “complete record” that, taken in its
19 entirety, demonstrates the district court considered each *Harper* factor. [MIO 6-7]
20 To support this assertion, Defendant points out that his motion to dismiss contained

1 a citation to *Le Mier* [RP 67], and the State’s response to his motion identified the
2 *Harper* factors [RP 73] [MIO 6]. We note, however, that Defendant’s motion fails
3 to mention any of the *Harper* factors or the mandatory nature of the analysis under
4 *Harper* and *Le Mier*. [RP 67] Furthermore, Defendant cites *Le Mier* only as support
5 for the proposition that trial courts have the authority to proactively manage their
6 dockets. [*Id.*] The State’s response to Defendant’s motion does identify the *Harper*
7 factors, and it contains brief assertions that each of the factors should be weighed in
8 the State’s favor. [RP 73-74] As noted in our second proposed disposition, however,
9 the district court made no attempt to evaluate the *Harper* factors during the hearing,
10 and the district court’s order neither mentions any of the *Harper* factors nor explains
11 the reasons for its decision. [CN 2-3]

12 {4} In our second proposed disposition, we analogized this case to *Lewis*, in which
13 the district court heard argument from the State citing *Harper* and arguing for lesser
14 sanctions, but verbally rejected the available lesser sanctions and dismissed the case
15 with prejudice. *Lewis*, 2018-NMCA-019, ¶ 4. On appeal, this Court noted that
16 although the district court was “unquestionably aware of its obligation to consider
17 the *Harper* factors, nothing in the record reveal[ed] the district court’s reasons for
18 imposing a sanction of dismissal with prejudice or the facts on which the district
19 court based its decision.” *Id.* ¶ 12. Accordingly, we concluded the record was

1 “inadequate to determine whether the district court exercised due care in making its
2 decision” and reversed. *Id.*


3 {5} Here, Defendant asserts that because the State’s motion listed the *Harper*
4 factors and the district court’s order “considered [Defendant’s] motion and heard
5 arguments from both parties,” there is a “complete record addressing each of the
6 *Harper* factors,” and this case is therefore distinguishable from *Lewis*. [MIO 8] We
7 disagree. The only mention of the analytic framework set forth in *Harper*, *Le Mier*,
8 and *Lewis* contained in this record lies in the State’s response to Defendant’s motion.
9 [RP 74] As the State asserted there was no prejudice, no culpability, and available
10 lesser sanctions—assessments that would not warrant extreme sanctions—the
11 State’s pleading does little to explain the district court’s reasoning in excluding the
12 State’s witness. *See Lewis*, 2018-NMCA-019, ¶ 12 (reiterating the requirement that
13 the district court explain its decision on the record and lamenting the lack of “a
14 thorough record that indicates a careful consideration of the *Harper* factors”).

15 {6} Defendant also asserts that this Court should apply a less rigorous approach
16 than that required by *Lewis* because the district court imposed a sanction of witness
17 exclusion rather than dismissal. [MIO 7] Such an approach is not supported by the
18 case law. In fact, this Court recently rejected an approach that alters the analytical
19 framework based on the level of sanction imposed. *See State v. McWhorter*, 2022-
20 NMCA-011, ¶ 17, 505 P.3d 865 (“[T]he analytical framework articulated in

1 [Harper, Le Mier, and Lewis] does not occur after the fact based on the level of
2 sanction the district court deems appropriate; instead, it is the framework the court
3 must work through to arrive at the appropriate sanction, and this analysis may in
4 some instances lead the court to lesser sanctions.”). Furthermore, this Court has
5 explicitly recognized that “both dismissal and witness exclusion constitute ‘extreme’
6 sanctions.” *Lewis*, 2018-NMCA-019, ¶ 8.

7 {7} For the reasons stated in our second notice of proposed disposition and herein,
8 we conclude that the district court in this case failed to satisfy the requirement that
9 it develop an adequate record and explain its reason for imposing the sanction of
10 excluding the State’s witness. *See id.* ¶ 16. We therefore reverse the district court’s
11 order excluding testimony and remand for further proceedings consistent with this
12 opinion.

13 {8} **IT IS SO ORDERED.**

14 
15 **JANE B. YONALEM, Judge**

16 **WE CONCUR:**

17 
18 **KRISTINA BOGARDUS, Judge**

19 
20 **SHAMMARA H. HENDERSON, Judge**