

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

2 **SOUTHWEST ENVIROTEC, LLC**
3 **and HENRY MEDINA,**

Court of Appeals of New Mexico
Filed 6/27/2024 10:53 AM



Ramon J. Maestas
Chief Clerk

4 Plaintiffs-Appellants,

5 v.

No. A-1-CA-40711

6 **WAYNE SUGGS, JR.; DANNY SUGGS;**
7 **BOBBY SUGGS; and JOHNNY'S**
8 **SEPTIC TANK COMPANY, INC.,**

9 Defendants-Appellants.

10 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**
11 **Casey B. Fitch, District Court Judge**

12 Domenici Law Firm, P.C.
13 Pete V. Domenici, Jr.
14 Lorraine Hollingsworth
15 Albuquerque, NM

16 for Appellants

17 Rodey, Dickason, Sloan Akin & Robb, P.A.
18 Henry M. Bohnhoff
19 Jacques H. Chouinard
20 Albuquerque, NM

21 for Appellees

22 **MEMORANDUM OPINION**

23 **BOSSON, Justice, retired, sitting by designation.**

24 {1} Plaintiffs Henry Medina d/b/a Southwest Envirotec, LLC (SWET) brought
25 suit against Defendants Wayne Suggs Jr., Danny Suggs, Bobby Suggs, and Johnny's

1 Septic Tank Co., Inc. (collectively, Johnny's), alleging that Johnny's engaged in
2 illegal practices to the detriment of SWET's business. SWET moved, in relevant
3 part, to amend its original complaint to add a common law competitive injury claim.
4 While acknowledging the liberal right to amend a complaint under the Rules of Civil
5 Procedure, the district court denied the motion, holding that New Mexico does not
6 currently recognize such a claim. On appeal, SWET urges this Court to adopt the
7 common law claim of competitive injury as set forth in Section 1 of the Restatement
8 (Third) of Unfair Competition (1995) (the Restatement), and permit that claim to
9 proceed in district court. We decline SWET's invitation on the particular
10 circumstances of this case, and affirm.

11 **DISCUSSION**

12 {2} Because this is a memorandum opinion prepared for the benefit of the parties,
13 we provide only those facts that are necessary to resolve the issues raised on appeal.
14 Both SWET and Johnny's are competitors in the business of hauling and disposing
15 of solid waste, including grease trap waste, sand trap waste, and sludge. SWET sued
16 Johnny's, bringing claims of prima facie tort, civil conspiracy, and tortious
17 interference with business relations on the grounds that Johnny's engaged in a
18 pattern of illegal practices that gave it an unfair competitive advantage over SWET,
19 negatively impacting SWET's business. Later, after considerable discovery, SWET
20 moved to amend its original complaint to add a common law competitive injury

1 claim under the Restatement. The district court denied the motion, concluding that
2 such a claim is not recognized in New Mexico and the court was without authority
3 to adopt one. Johnny’s moved for partial summary judgment on all of SWET’s
4 claims as they related to the hauling and disposal of grease. The district court granted
5 Johnny’s motion for partial summary judgment, and the parties accordingly
6 stipulated to the additional dismissal of all SWET’s claims related to the other forms
7 of waste.

8 {3} On appeal, SWET only challenges the district court’s decision against the
9 claim for common law competitive injury. SWET urges this Court to adopt such a
10 claim from the Restatement. Given the specific posture of this case, we decline to
11 do so.

12 {4} On appeal, it is the appellant’s burden to demonstrate affirmatively to this
13 Court that error occurred below, and that such error warrants reversal. *See Corona*
14 *v. Corona*, 2014-NMCA-071, ¶ 26, 329 P.3d 701 (“The appellate court presumes
15 that the district court is correct, and the burden is on the appellant to clearly
16 demonstrate that the district court erred.”). Although SWET explains the scope of a
17 competitive injury claim under the Restatement, it provides little to no argument in
18 support of its assertion that this Court should adopt the Restatement. *See Elane*
19 *Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“To rule on an
20 inadequately briefed issue, this Court would have to develop the arguments itself,

1 effectively performing the parties’ work for them. . . .This creates a strain on judicial
2 resources and a substantial risk of error. It is of no benefit either to the parties or to
3 future litigants for this Court to promulgate case law based on our own speculation
4 rather than the parties’ carefully considered arguments.”). SWET provides limited
5 examples of established New Mexico cases and causes of action that share similar
6 features with common law competitive injury claims, but SWET does not cite any
7 authority that demonstrates an intent by either the Legislature or New Mexico courts
8 to recognize or allow such claims. “Where a party cites no authority to support an
9 argument, we may assume no such authority exists.” *Curry v. Great Nw. Ins. Co.*,
10 2014-NMCA-031, ¶ 28, 320 P.3d 482.

11 {5} Furthermore, in *Gandydancer, LLC v. Rock House CGM, LLC*, 2019-NMSC-
12 021, 453 P.3d 434, our Supreme Court recently resolved the question of whether a
13 business may bring a competitive injury claim against a rival business under the New
14 Mexico Unfair Practices Act (UPA), NMSA 1978, §§ 57-12-1 to -26 (1967, as
15 amended 2019). The Court concluded that the Legislature expressed its intent that
16 competitive injury claims no longer be recognized under the UPA when, in 1971,
17 the Legislature removed such claims from the language of the Act. *See*
18 *Gandydancer*, 2019-NMSC-021, ¶¶ 19-20. Accordingly, the Court held that it would
19 not independently recognize a cause of action for competitive injury under the UPA.
20 *See id.* ¶ 23 (providing that the Court “will not expand the zone of interest protected

1 by the UPA after it has been limited by the Legislature,” because “[i]t is within the
2 purview of the Legislature to expand the zone of interest protected by the UPA to
3 include competitor suits for competitive injury if that is a policy that the Legislature
4 decides to pursue”). As SWET does not advance an argument distinguishing
5 *Gandydancer* from the present case, we are unpersuaded by SWET’s request to
6 adopt a competitive injury claim from the Restatement. *See Elane Photography,*
7 *LLC*, 2013-NMSC-040, ¶ 70.

8 {6} Our second reason for affirmance is that Johnny’s demonstrates that SWET’s
9 competitive injury claim relies on the same factual basis as the other claims for
10 which the district court granted summary judgment. Because SWET does not
11 challenge the district court’s grant of summary judgment, Johnny’s argues that, even
12 if a competitive injury claim were viable in New Mexico, SWET’s case would fail,
13 as the lower court already determined that the relevant and necessary facts to support
14 such a claim were unsupported by evidence in the record.

15 {7} Johnny’s arguments have merit, and we need not assess their overall
16 persuasiveness given SWET’s failure to file a reply brief in this matter. When an
17 appellant fails to file a reply brief, this Court may view its lack of response to
18 arguments in the answer brief as a concession. *See Delta Automatic Sys., Inc. v.*
19 *Bingham*, 1999-NMCA-029, ¶ 31, 126 N.M. 717, 974 P.2d 1174 (providing that
20 when an appellant’s reply brief does not contain a response to an argument in the

1 answer brief, “such a failure to respond constitutes a concession on the matter” and
2 “[t]his Court has no duty to search the record or research the law to ‘defend’ in a
3 civil case a party that fails to defend itself on an issue”).

4 {8} Given the above, we conclude that SWET has not met its burden to adequately
5 demonstrate reversible error, and that it has failed to overcome the presumption of
6 correctness we afford the district court’s rulings. *See Corona*, 2014-NMCA-071,
7 ¶ 26; *Hall v. City of Carlsbad*, 2023-NMCA-042, ¶ 5, 531 P.3d 642. We do not
8 foreclose the possibility that future litigants may, upon a different showing and
9 factual basis, make a persuasive argument that New Mexico courts should adopt and
10 recognize common law competitive injury claims under the Restatement. But we
11 decline to do so here.

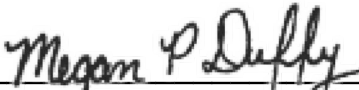
12 **CONCLUSION**

13 {9} For the foregoing reasons, we affirm.

14 {10} **IT IS SO ORDERED.**

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17 **RICHARD C. BOSSON, Justice, retired,**
Sitting by designation

1 **WE CONCUR:**

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3 **MEGAN P. DUFFY, Judge**

4 
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5 **ZACHARY A. IVES, Judge**