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

2 **FAYE LYNN RICHARDS,**

3 Petitioner-Appellee,

4 v.

5 **DEAN GAMACHE,**

6 Respondent-Appellant.

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

8 **Gerard J. Lavelle, District Court Judge**

9 Faye Lynn Richards

10 Tijeras, NM

11 Pro Se Appellee

12 Terri Keller

13 Albuquerque, NM

14 for Appellant

15 **MEMORANDUM OPINION**

16 **ATTREP, Chief Judge.**

17 {1} Respondent Dean Gamache (Father) appeals from the district court's order
18 modifying custody of the child (Child) he has with Petitioner Faye Lynn Richards
19 (Mother). In this Court's notice of proposed disposition, we proposed summary
20 affirmance. In response, Father has filed a memorandum in opposition and a motion
21 to supplement the record, both of which we have duly considered. Remaining

Court of Appeals of New Mexico
Filed 10/23/2024 10:01 AM



Ramon J. Maestas
Chief Clerk

No. A-1-CA-41897

1 unpersuaded, we deny Father’s motion to supplement the record and affirm the
2 district court’s order.

3 {2} In his memorandum in opposition, Father continues to assert that the evidence
4 presented in a separate domestic violence case (DV case) between himself and
5 Mother, which resulted in the district court entering an order of protection against
6 Father, did not support the district court’s modification of custody in this case. [MIO
7 2] As stated in our proposed disposition, Father not only failed to identify the
8 evidence presented at the hearing in this case, but also submitted little—if any—
9 evidence of his own in opposition to Mother’s motion to modify custody, and based
10 on the evidence identified in the hearing officer’s report, the district court did not
11 abuse its broad discretion in concluding that a substantial and material change in
12 circumstances warranted modifying custody. [CN 4-5] *See Thomas v. Thomas*,
13 1999-NMCA-135, ¶ 10, 128 N.M. 177, 991 P.2d 7 (stating that the trial court has
14 broad discretion and great flexibility in fashioning a custody arrangement, so long
15 as there is substantial evidence to support its findings and there has been a substantial
16 change in circumstances that affects the best interest of the children since the prior
17 order). The memorandum in opposition acknowledges Father’s failure to proffer
18 evidence in opposition to modifying custody, stating that “[t]here was no new
19 evidence presented at the . . . hearing for modification, only reference and argument

1 by both [Mother and Father] (through his counsel) surrounding the allegation of
2 evidence of child abuse presented at the DV [case] hearing.” [MIO 1-2]

3 {3} Father’s memorandum in opposition provides no new facts or citation to
4 authority to demonstrate that the district court erred or that this Court’s proposed
5 disposition was incorrect. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
6 N.M. 421, 759 P.2d 1003, *superseded by statute on other grounds as stated in State*
7 *v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374 (stating that “[a] party responding to
8 a summary calendar notice must come forward and specifically point out errors of
9 law and fact,” and the repetition of earlier arguments does not fulfill that
10 requirement); *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,
11 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the
12 burden is on the party opposing the proposed disposition to clearly point out errors
13 in fact or law.”). Instead, Father continues to ask that this Court consider evidence
14 presented during the DV case in reviewing the district court’s order now on appeal.
15 [MIO 2] To effectuate such review, Father submitted a motion to supplement the
16 record, asking that this Court “accept the record proper (evidence and exhibits) in
17 the DV case.” [Mot. 3]

18 {4} The motion to supplement the record acknowledges that in this case, Father
19 “asked the same [h]earing [o]fficer to basically reconsider the evidence that was
20 presented in the DV case,” and explains that Father’s counsel “did not feel it was

1 necessary to repeat the evidence and exhibits . . . heard by the same [h]earing
2 [o]fficer just a few weeks prior [in the DV case].” [Mot. 2-3] Additionally, Father
3 asserts that the hearing officer “relied entirely on the evidence and exhibits admitted
4 in the DV hearing to reach her decision” in this case. [Mot. 2] To support this
5 assertion, Father points to certain paragraphs of the hearing officer’s report. [Mot. 3
6 ¶ 6] However, the portions of the report Father cites to do not support Father’s
7 assertion—they contain a limited recitation of the DV case’s relevant procedural
8 history, including the issuance of the protective order, the effective dates of the
9 protective order, and that the order of protection was affirmed in a memorandum
10 order despite Father’s objections. [RP 50-52] Furthermore, the hearing officer’s
11 report in this case contains a summary of only the testimony given in this case, a
12 notation that Father did not testify, and a summary from Father’s attorney rehashing
13 certain matters addressed at the hearings in the DV case. [RP 51] We are therefore
14 unpersuaded by Father’ assertion that the hearing officer “relied entirely on the
15 evidence and exhibits admitted in the DV [case] hearing to reach her decision
16 granting modification in [this] case.” [Mot. 2]

17 {5} Additionally, Father does not provide any citation to authority to suggest that
18 it is either proper or necessary for this Court in this appeal to consider the “evidence
19 and exhibits” submitted in the DV case. *See Curry v. Great Nw. Ins. Co.*, 2014-
20 NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an

1 argument, we may assume no such authority exists.”). Such matters are beyond the
2 scope of this appeal. *Cf. Durham v. Guest*, 2009-NMSC-007, ¶ 9, 145 N.M. 694, 204
3 P.3d 19 (noting that the “[r]eference to exhibits not in the record proper and not
4 presented to the district court for consideration is improper and a violation of the
5 Rules of Appellate Procedure”). Accordingly, we deny Father’s motion to
6 supplement the record.

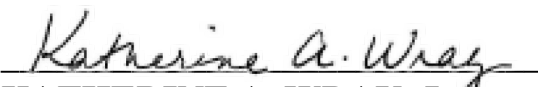
7 {6} For the reasons stated in our notice of proposed disposition and herein, we
8 affirm.

9 {7} **IT IS SO ORDERED.**

10 
11 **JENNIFER L. ATTREP, Chief Judge**

12 **WE CONCUR:**

13 
14 **GERALD E. BACA, Judge**

15 
16 **KATHERINE A. WRAY, Judge**