


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

Court of Appeals of New Mexico
Filed 11/18/2024 10:08 AM

2 **LETICIA LOPEZ,**

3 Petitioner-Appellee,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-40340

5 **JOSHUA GONZE,**

6 Respondent-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

8 **Bryan Biedscheid, District Court Judge**

9 Law Office of Dorene A. Kuffer, P.C.

10 Dorene A. Kuffer

11 Daniel D. Walton

12 Lawrence B. Kronen

13 Albuquerque, NM

14 for Appellee

15 Adler Law Firm, P.C.

16 Timothy J. Adler

17 Jazmine J. Johnston

18 Albuquerque, NM

19 for Appellant

20 **MEMORANDUM OPINION**

21 **HENDERSON, Judge.**

22 {1} Respondent Joshua Gonze appeals from three district court orders awarding a

23 total of \$312,470.27 in attorney fees and costs to Petitioner Leticia Lopez. On appeal,

24 we address two main issues raised by Respondent: (1) whether the district court

1 abused its discretion in awarding attorney fees to Petitioner; and (2) whether the
2 district court's awards of attorney fees were unreasonable. We affirm.

3 **BACKGROUND**

4 {2} This appeal stems from an ongoing, nearly fifteen-year-old divorce and child
5 custody proceeding. In April 2020, the district court entered an order pursuant to
6 Rule 1-127 NMRA partially granting Petitioner's motion for attorney fees incurred
7 from 2009 through 2017 (First Order) in the amount of \$125,000 for attorney fees
8 and \$30,000 in expert witness fees. The same day, the court entered another order,
9 also pursuant to Rule 1-127, partially granting Petitioner's motion for fees incurred
10 in 2017 and 2018 (Second Order) in the amount of \$100,000 for attorney fees and
11 \$2,470.27 for the cost of a custody evaluation. Then, in August 2021, the district
12 court entered a third order (Third Order), pursuant to Rule 1-127, awarding
13 Petitioner an additional \$55,000 in attorney fees incurred in responding to five
14 motions filed by Respondent. Respondent appeals.

15 **DISCUSSION**

16 {3} On appeal, Respondent presents numerous arguments contesting both the
17 grant and the amount of attorney fees. We briefly address several of these arguments
18 before turning to Respondent's two main assertions of error.

19 {4} On appeal, there is a presumption of correctness in favor of the district court's
20 rulings and the appellant bears the burden of clearly demonstrating that the district

1 court erred. *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8,
2 111 N.M. 6, 800 P.2d 1063. Moreover, we review the district court’s findings of fact
3 for substantial evidence, *see Autrey v. Autrey*, 2022-NMCA-042, ¶ 9, 516 P.3d 207,
4 including the district court’s findings of the Rule 1-127 NMRA factors for granting
5 attorney fees, *see Monsanto v. Monsanto*, 1995-NMCA-048, ¶¶ 17-20, 119 N.M.
6 678, 894 P.2d 1034 (holding that substantial evidence supported an award of
7 attorney fees where the district court found an economic disparity between the
8 parties based on financial resources available to the parties, including access to
9 assets and the parties’ ability to pay their attorney fees throughout the litigation). On
10 appeal, a party challenging a finding for lack of substantial evidence must refer to
11 “all of the evidence, both favorable and unfavorable, followed by an explanation of
12 why the unfavorable evidence does not amount to substantial evidence, such as is
13 necessary to inform both the appellee and the Court of the true nature of the
14 appellant’s arguments.” *Aspen Landscaping, Inc. v. Longford Homes of N.M., Inc.*,
15 2004-NMCA-063, ¶ 28, 135 N.M. 607, 92 P.3d 53. In reviewing a substantial
16 evidence claim, “[t]he question is not whether substantial evidence exists to support
17 the opposite result, but rather whether such evidence supports the result reached.”
18 *Las Cruces Pro. Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123
19 N.M. 329, 940 P.2d 177.

1 {5} In this case, Respondent argues that the district court erred by not making
2 findings of fact to support its findings of economic disparity in the First and Second
3 Orders or its grant of fees in the Third Order. Respondent cites to no authority that
4 states the district court must enter findings of fact to support a grant of attorney fees.
5 Where a party cites no authority to support an argument, we may assume no such
6 authority exists. *See Lee v. Lee (In re Adoption of Doe)*, 1984-NMSC-024, ¶ 2, 100
7 N.M. 764, 676 P.2d 1329. In fact, the weight of authority contradicts Respondent’s
8 suggestion. *See Rule 1-052(A) NMRA* (stating that “[f]indings of fact and
9 conclusions of law are unnecessary” in decisions on certain motions, including
10 motions for attorney fees under Rule 1-127). Therefore, we decline to address this
11 issue.

12 {6} Additionally, Respondent argues that the parties’ settlement agreement
13 precluded any awards of attorney fees in this case. Respondent informs this Court
14 that he preserved this issue in six different motions without reference to specific
15 page numbers. However, we find no mention of Respondent’s contentions regarding
16 the settlement agreement in these motions. Respondent also makes passing reference
17 to his testimony below that the settlement agreement indicates that the parties
18 intended to bear their own fees.¹ However, the parties’ behavior in the following

¹Upon our own review of the record, we found relevant oral and written orders by the district court. We remind counsel for Respondent that it is Appellant’s responsibility to properly cite the record for our review. *See Rule 12-321(A) NMRA*;

1 eleven years demonstrates to the contrary. Respondent requested fees both early in
2 the litigation, near the time the settlement agreement was entered, and much later,
3 near the time that Petitioner requested the fees and costs at issue. Respondent cannot
4 request fees below and argue now on appeal that the district court erred by failing to
5 enforce the settlement agreement. *See Culp v. Sandoval*, 1916-NMSC-028, ¶ 31, 22
6 N.M. 71, 159 P. 956 (“If a person voluntarily acquiesces in, or recognizes the validity
7 of, a judgment, order, or decree, or otherwise takes a position which is inconsistent
8 with the right to appeal therefrom, [they] thereby impliedly waive[their] right to
9 have such judgment, order, or decree reviewed by an appellate court.” (internal
10 quotation marks and citation omitted)). Thus, Respondent has waived this argument.

11 {7} Respondent also contests the district court’s finding of fact in the First and
12 Second Orders that third-party funds received by Petitioner were loans and its
13 finding of fact in all three orders that there was an economic disparity between the
14 parties. However, on appeal, Respondent fails to present the evidence both
15 supporting and contesting these findings, and further fails to explain why such

see also Sandoval v. Baker Hughes Oilfield Operations, Inc., 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791 (“In order to preserve an issue for appeal, [the appellant] must have made a timely and specific objection that apprised the district court of the nature of the claimed error and that allows the district court to make an intelligent ruling thereon.”); *Crutchfield v. N.M. Dep’t of Tax’n & Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (“[O]n appeal, the party must specifically point out where, in the record, the party invoked the [district] court’s ruling on the issue. Absent that citation to the record or any obvious preservation, we will not consider the issue.”).

1 evidence does not amount to substantial evidence. *See Aspen Landscaping, Inc.*,
2 2004-NMCA-063, ¶ 28. Instead, Respondent argues that the district court had
3 substantial evidence to find that the funds were gifts and that there was no economic
4 disparity. The district court found that the funds were loans because “those funds are
5 to be repaid to the third-party.” The record includes testimony and several
6 promissory notes indicating that the funds were to be repaid. Respondent argues
7 extensively about the legal requirements for creating enforceable notes for
8 repayment, but the district court’s finding indicates that the court permissibly gave
9 more weight to Petitioner’s position that the funds were to be repaid. As a result,
10 Respondent fails to establish that the district court had insufficient evidence to find
11 that the funds were loans, misunderstands our standard of review, and does not
12 demonstrate error. Therefore, the district court’s findings regarding economic
13 disparity and the nature of the loans stand. *See Baker v. Endeavor Servs., Inc.*, 2018-
14 NMSC-035, ¶ 2, 428 P.3d 265 (“Unless findings are directly attacked, they are the
15 facts in th[e appellate] court, and a party claiming error on the part of the [district]
16 court must be able to point clearly to the alleged error.” (internal quotation marks
17 and citation omitted)). We decline to address these arguments further.²

²Because we accept the district court’s finding that the funds were loans rather than gifts, we need not address Respondent’s argument that the district court abused its discretion when not considering the funds as income when assessing the parties’ economic disparity. Similarly, because we will not address Respondent’s assertions of error in the district court’s grant of fees in the Third Order, we need not address

1 {8} We now turn to the remaining arguments presented by Respondent: (1)
2 whether the district court abused its discretion in awarding Petitioner’s attorney fees;
3 and (2) whether the amount of the district court’s attorney fee award in the Third
4 Order was unreasonable. We review the district court’s decision to award attorney
5 fees in domestic relations cases for an abuse of discretion. *Monsanto*, 1995-NMCA-
6 048, ¶ 9. This discretion must be exercised with the intent to ensure each party
7 engaged in “efficient case preparation and presentation.” *Id.* “The amount of the
8 [attorney fee] award, if any, is also discretionary.” *Sheets v. Sheets*, 1987-NMCA-
9 128, ¶ 21, 106 N.M. 451, 744 P.2d 924. “An abuse of discretion occurs if the decision
10 is against the logic and effect of the facts and circumstances of the case.” *Bustos v.*
11 *Bustos*, 2000-NMCA-040, ¶ 24, 128 N.M. 842, 999 P.2d 1074.

12 {9} Under NMSA 1978, Section 40-4-7(A) (1997), the district court may award
13 attorney fees and costs related to the preparation and presentation of a domestic
14 relations case. When awarding fees, the district court must consider the factors set
15 forth in Rule 1-127: (1) the “disparity of the parties’ resources, including assets and
16 incomes”; (2) “prior settlement offers”; (3) “the total amount of fees and costs
17 expended by each party . . .”; and (4) “success on the merits.” We discuss
18 Respondent’s arguments in turn.

Respondent’s argument that the district court improperly awarded the fees as a sanction against Respondent.

1 **I. Grant of Attorney Fees**

2 {10} Respondent contends that the district court abused its discretion in awarding
3 attorney fees in the First and Second Orders because the parties failed to reach a
4 settlement agreement, both parties allegedly expended significant legal fees in
5 litigating the ongoing case, and both parties were equally successful on the merits of
6 their motions.³ We disagree. The district court abuses its discretion in awarding
7 attorney fees in a domestic relations matter when it fails to consider the factors set
8 forth in Rule 1-127. *See Weddington v. Weddington*, 2004-NMCA-034, ¶ 27, 135
9 N.M. 198, 86 P.3d 623. In this case, the district court clearly contemplated the
10 relevant factors as it made findings of fact regarding each. The court noted that both
11 Respondent and Petitioner had filed motions of “questionable utility” and “filed a
12 mix of successful and unsuccessful motions.” However, the court concluded that “on
13 the whole, Petitioner is found to be slightly more successful on the merits and so this
14 factor weighs slightly in her favor.” The district court also noted that Petitioner had
15 used “significant funds to make [her] legal efforts possible.” Moreover, the court
16 was presented with settlement offers by both parties. Respondent disagrees with the

³As discussed above, Respondent also contends that the district court erred in awarding attorney fees because there was not an economic disparity between the parties. However, as we conclude that Respondent’s argument is improperly tailored to our standard of review, *see Aspen Landscaping, Inc.*, 2004-NMCA-063, ¶ 28, only Respondent’s arguments regarding the remaining Rule 1-127 factors are relevant to our analysis.

1 district court's view of the proposed settlements, the fees incurred, and the parties'
2 relative success, but has not met his burden on appeal to demonstrate that the district
3 court abused its discretion in granting Petitioner's attorney fees in the First and
4 Second Orders. *See Corona v. Corona*, 2014-NMCA-071, ¶ 26, 329 P.3d 701.
5 Therefore, we affirm the district court's grant of fees in the First and Second Orders.

6 **II. Calculation of Fees**

7 {11} Finally, Respondent argues that the district court abused its discretion by
8 awarding \$55,000 in attorney fees in the Third Order because the invoices attached
9 to Petitioner's motion for fees did not include entries specific enough to determine
10 which items related to the motions the fee award was based on. We disagree. The
11 district court clearly reviewed all of the itemized time entries and determined what
12 attorney time was related to this matter. The court heard arguments on the amount
13 of fees and specifically addressed Respondent's concerns about the relevance and
14 reasonableness of the requested fees and reduced the requested amount of fees
15 accordingly. It is clear that the district court reviewed the time and determined
16 whether it related to the matters relevant to the Third Motion for Fees; therefore, we
17 perceive no error and affirm.

18 **CONCLUSION**

19 {12} For the foregoing reasons, we affirm the district court's orders.

1 {13} IT IS SO ORDERED.



SHAMMARA H. HENDERSON, Judge

2 WE CONCUR:

3 *Kristina Bogardus*

4 KRISTINA BOGARDUS, Judge

5 *Katherine A. Wray*

6 KATHERINE A. WRAY, Judge