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

Court of Appeals of New Mexico  
Filed 12/30/2024 9:48 AM

2 **MAURO S. NAVA,**

3 Plaintiff-Appellant,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41621**

5 **OLENA MCCORMICK a/k/a**

6 **OLENA DZIUBA,**

7 Defendant-Appellee.

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

9 **Joshua Allison, District Court Judge**

10 Mauro Nava

11 Albuquerque, NM

12 Pro Se Appellant

13 Business Law Southwest

14 Shay Elizabeth Meagle

15 Brittany Sayer

16 Albuquerque, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **HANISEE, Judge.**

20 {1} Plaintiff Mauro S. Nava appeals from the district court's order dismissing his  
21 remaining claims with prejudice and granting Defendant Olena McCormick's  
22 counterclaim for breach of contract. This Court issued a calendar notice proposing  
23 to affirm. Plaintiff filed a memorandum in opposition and two addenda and

1 Defendant filed a memorandum in support, all of which we have duly considered.  
2 Unpersuaded, we affirm. Additionally, we deny Plaintiff’s motion for stay of  
3 execution of the judgment under Rule 12-207(B) NMRA. Although filed in this  
4 Court, our review shows that the district court has granted Plaintiff’s request for  
5 relief. Further, for the same reasons stated herein, we deny Plaintiff’s motion to  
6 remand to the district court.

7 {2} Plaintiff maintains that the district court erred by dismissing his remaining  
8 claims with prejudice because Plaintiff needed more time to gather information to  
9 support his claims through the discovery process. [MIO PDF 2-4] In this Court’s  
10 notice of proposed disposition, we noted that “[i]t appears from the record that  
11 following the filing of the complaint in April . . . 2022, Plaintiff did nothing in  
12 furtherance of [his] additional claims.” [CN 4] Additionally, we noted that Plaintiff  
13 made no attempt to engage in discovery until July 2023, and Plaintiff admitted he  
14 did “not meaningfully participate[] in the litigation of his claims.” [CN 5] We  
15 proposed to conclude that Plaintiff failed to establish reversible error and to affirm  
16 the district court.

17 {3} In response, Plaintiff does not direct this Court to any new fact, law, or  
18 argument that persuades us that our notice of proposed disposition was incorrect.  
19 Rather, Plaintiff only asserts that his counsel “neglected his duties” by failing to file  
20 Plaintiff’s interrogatories. [MIO PDF 2] Plaintiff’s argument ignores the opportunity

1 Plaintiff was given to direct this Court to error in our proposed resolution of this  
2 issue. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683  
3 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on  
4 the party opposing the proposed disposition to clearly point out errors in fact or  
5 law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003  
6 (stating that “[a] party responding to a summary calendar notice must come forward  
7 and specifically point out errors of law and fact,” and the repetition of earlier  
8 arguments does not fulfill this requirement), *superseded by statute on other grounds*  
9 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer  
10 Plaintiff to our previous analysis in our proposed summary disposition.

11 {4} Plaintiff also continues to dispute the facts relied on by the district court in  
12 granting summary judgment on Defendant’s counterclaim as well as by this Court  
13 in proposing to affirm the district court [First Addendum PDF 3, 7], and attempts to  
14 present new factual information not considered by the district court. [Second  
15 Addendum PDF 1-2] This Court proposed to affirm the district court based on the  
16 undisputed material facts established by Defendant’s motion for summary judgment  
17 and Plaintiff’s response. Plaintiff’s memorandum again does not direct this Court to  
18 any new fact, law, or argument presented to the district court to establish how the  
19 district court erred in adopting Defendant’s undisputed material facts. To the extent  
20 Plaintiff’s second addendum presents new factual information that may create a

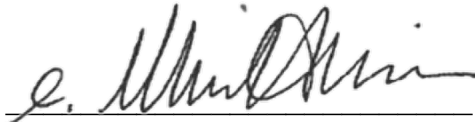
1 dispute, this information was not presented to the district court. Our review is limited  
2 to only the information and arguments presented to the district court at the time. *See*  
3 *Trujillo v. Presbyterian Healthcare Servs., Inc.*, 2024-NMCA-004, ¶ 22, 539 P.3d  
4 1216 (“We review the case litigated below, not the case that is fleshed out for the  
5 first time on appeal.” (text only) (citation omitted)); Rule 1-056(D) NMRA  
6 (requiring the motion’s facts be “deemed admitted unless specifically controverted”  
7 by the response). Additionally, Plaintiff provides no citations to the record to  
8 establish how these facts may have been disputed. [First Addendum PDF 3] We are  
9 therefore unpersuaded that Plaintiff’s argument impacts our analysis and disposition  
10 of the case. *See Hennessy*, 1998-NMCA-036, ¶ 24. As such, Plaintiff has not met his  
11 burden of demonstrating error in this regard.

12 {5} Finally, Plaintiff has abandoned his claims that the district court failed to  
13 consider his untimely affidavits at the summary judgment stage and failed to toll the  
14 statute of limitations on his claims. [MIO PDF 1-4; First Addendum PDF 1-3] As  
15 such, we need not address these claims of error further. *See Taylor v. Van Winkle’s*  
16 *IGA Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing  
17 that issues raised in a docketing statement, but not contested in a memorandum in  
18 opposition are abandoned).

19 {6} For the reasons stated in our notice of proposed disposition and herein, we  
20 affirm.

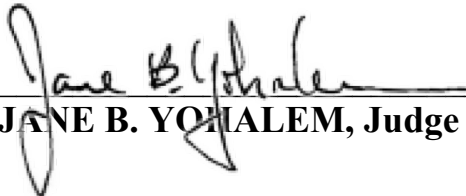
1 {7} IT IS SO ORDERED.

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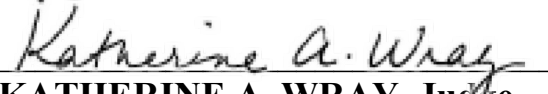
  
J. MILES HANISEE, Judge

4 WE CONCUR:

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JANE B. YOHALEM, Judge

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KATHERINE A. WRAY, Judge