

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

Court of Appeals of New Mexico

Filed 1/31/2025 12:33 PM



Ramon J. Maestas  
Chief Clerk

2 **JUAN SILVA,**

3           Plaintiff-Appellant,

4 v.

**No. A-1-CA-41797**

5 **AUGUSTINE MONROY,**

6           Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **Curtis R. Gurley, District Court Judge**

9 DNA-People's Legal Services, Inc.

10 Anne Kathryn Woods

11 Farmington, NM

12 for Appellant

13 Burns Law Group, P.C.

14 Mitchel S. Burns

15 Farmington, NM

16 for Appellee

17                                   **MEMORANDUM OPINION**

18 **WRAY, Judge.**

19 {1} Plaintiff appeals from the district court's order granting Defendant's motion  
20 to dismiss. [RP 58] In this Court's notice of proposed disposition, we proposed to  
21 summarily reverse. Defendant filed a memorandum in opposition (MIO), which we  
22 have duly considered. Unpersuaded by Defendant's MIO, we reverse.

1 {2} In our notice of proposed disposition, we relied on *Wooley v. Wicker*, 1965-  
2 NMSC-065, ¶¶ 4-5, 75 N.M. 241, 403 P.2d 685, and suggested that the district court  
3 erred in dismissing Plaintiff’s appeal from magistrate court because the denial of a  
4 motion to set aside a default judgment was a final order and appealable. [CN 1] In  
5 his MIO, Defendant outlined procedural history that predates the district court’s  
6 dismissal of the appeal but did not address our proposed disposition or assert any  
7 new facts, law, or argument that persuade us that our proposed disposition was  
8 erroneous. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955  
9 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the  
10 burden is on the party opposing the proposed disposition to clearly point out errors  
11 in fact or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759  
12 P.2d 1003 (stating that a party responding to a summary calendar notice must come  
13 forward and specifically point out errors of law and fact, and the repetition of earlier  
14 arguments does not fulfill this requirement), *superseded by statute on other grounds*  
15 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer  
16 him to our analysis therein.

17 {3} Accordingly, for the reasons stated in our notice of proposed disposition and  
18 herein, we reverse the district court’s order. To the extent Defendant is requesting in  
19 his MIO that Plaintiff post an appeal bond that request has been mooted by our  
20 disposition of this case.

1 {4} **IT IS SO ORDERED.**

2 *Katherine A. Wray*  
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**KATHERINE A. WRAY, Judge**

4 **WE CONCUR:**

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6 \_\_\_\_\_  
**SHAMMARA H. HENDERSON, Judge**

7 *Jane B. Yohalem*  
8 \_\_\_\_\_  
**JANE B. YOHALEM, Judge**