

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 11/12/2025 8:40 AM

DAVID J. DONOVAN,

Plaintiff-Appellant,

v.

No. A-1-CA-42695

KATHRYN THORSON,

Defendant-Appellee,

and

FIDELITY INVESTMENTS,

Defendant.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY

Emilio Chavez, District Court Judge

David J. Donovan

Arroyo Seco, NM

Pro Se Appellant

Herdman MacGillivray Fullerton

Cameron Pumarejo Honeycutt PC

Frank T. Herdman

Santa Fe, NM

for Appellee

MEMORANDUM OPINION

IVES, Judge.

{1} Plaintiff, a self-represented litigant, appeals from the district court's entry of
final judgment, after a jury trial, in favor of Defendant on all claims and

1 counterclaims, order denying Plaintiff's motion to alter or amend the judgment, and
2 order denying Plaintiff's motion for a new trial. This Court issued a calendar notice
3 proposing to affirm. Plaintiff filed a memorandum in opposition, raising two issues
4 that were not previously asserted in Plaintiff's docketing statement. We construe this
5 as a motion to amend. Having considered Plaintiff's filing, we deny the motion to
6 amend the docketing statement as nonviable, and affirm. *See State v. Moore*, 1989-
7 NMCA-073, ¶ 42, 109 N.M. 119, 782 P.2d 91 (stating that this Court will deny
8 motions to amend that raise issues that are not viable). Additionally, we deny
9 Defendant's motion to strike Plaintiff's memorandum in opposition and request for
10 sanctions.

11 {2} As an initial matter, we briefly discuss the subject of Defendant's motion to
12 strike—Plaintiff's citations to legal authorities that either refer to the incorrect
13 appellate reporter and therefore do not cite to the case discussed, or that do not
14 contain the direct quotation relied on by Plaintiff. Our own review of Plaintiff's
15 authorities establishes that Defendant is correct, and Plaintiff's problematic citations
16 complicate our review now on appeal. *See In re Montoya*, 2011-NMSC-042, ¶ 23,
17 150 N.M. 731, 266 P.3d 11 (“[A] failure of candor to the court can prejudice the
18 administration of justice in violation of Rule 16-804[] NMRA.”). Additionally,
19 because Plaintiff's case citations are incorrect or inaccurate, Plaintiff has failed to
20 cite supporting authority. This alone is grounds for affirmance on appeal. *See State*

1 *v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 (“[A]ppellate courts will not
2 consider an issue if no authority is cited in support of the issue and that, given no
3 cited authority, we assume no such authority exists.”); *see also ITT Educ. Servs.,*
4 *Inc. v. N.M. Tax’n & Revenue Dep’t*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959
5 P.2d 969 (explaining that in the absence of citations to supporting authority, we need
6 not consider an appellant’s issue further). While Defendant requests that we strike
7 Plaintiff’s memorandum in opposition and order sanctions, we decline to do so, and
8 we instead proceed to review Plaintiff’s memorandum in opposition on the merits.
9 However, we do caution Plaintiff to use correct legal citations in the future.

10 {3} Plaintiff continues to maintain, based on the same theories presented in his
11 docketing statement, the same assertions of error that this Court has previously
12 discussed. First, Plaintiff reasserts that the district court erred in admitting
13 Defendant’s recordings of Plaintiff into evidence. [MIO PDF 2-4] However, as we
14 explained to Plaintiff in our notice of proposed disposition, Plaintiff did not object
15 to the admission of the evidence at trial, and therefore this issue is not preserved for
16 our review. [CN 2]

17 {4} Plaintiff similarly reasserts that he was entitled to recovery for work done on
18 the property under the theory of quantum meruit and that the district court erred by
19 failing to submit this claim to the jury. [MIO PDF 4-8] Plaintiff continues to rely on
20 *Kaiser v. Thomson*, 1951-NMSC-037, 55 N.M. 270, 232 P.2d 142. [MIO PDF 6]

1 However, as we explained in our notice of proposed disposition, the claim was not
2 submitted to the jury because the district court granted Defendant’s motion for
3 summary judgment on this claim. [CN 2-3] Additionally, Plaintiff’s reliance on
4 *Kaiser* is misplaced. In *Kaiser*, our Supreme Court held that a plaintiff could not
5 recover reimbursement for work done on a property under the theory of quantum
6 meruit unless the plaintiff held the appropriate license for his work—that is, unless
7 the plaintiff was a licensed contractor. *See id.* ¶¶ 2-8. [CN 5] Finally, Plaintiff’s
8 docketing statement agreed that Plaintiff could only recover for work done if
9 Plaintiff had the appropriate license. [CN 4]

10 {s} Plaintiff also reasserts that Defendant’s claim for intentional infliction of
11 emotional distress was not supported by substantial evidence because Defendant did
12 not provide medical records. [MIO PDF 8-9] But Plaintiff continues to provide no
13 authority that actual, medical damages are required to establish a claim of intentional
14 infliction of emotional distress, and our research shows that a claimant must only
15 show that they experienced distress. [CN 6-7] *See* UJI 13-1628 NMRA. And
16 although Plaintiff disagrees that Defendant’s evidence was sufficient to establish
17 conduct “so extreme in degree, as to go beyond all possible bounds of decency,” *see*
18 *Padwa v. Hadley*, 1999-NMCA-067, ¶ 10, 127 N.M 416, 981 P.2d 1234 (internal
19 quotation marks and citation omitted), this was a question for the jury, not this Court,
20 to answer, and we decline to undo the answer given by the jury when it returned its

1 verdict. *See Perea v. Fiesta Park Healthcare, LLC*, 2023-NMCA-014, ¶ 25, 525
2 P.3d 378 (explaining that we resolve all facts in favor of the party prevailing below
3 and indulge in all reasonable inferences in favor of the jury’s verdict and disregard
4 all contrary evidence).

5 {6} Further, Plaintiff continues to argue that Defendant’s closing remarks
6 prejudiced the jury about Plaintiff’s financial status, causing the jury to award a
7 greater judgment than appropriate. [MIO PDF 10-11] But the record contradicts
8 Plaintiffs assertion now on appeal. [CN 7-8] And as we explained in our notice of
9 proposed disposition, this “claim relies on an argument our case law has consistently
10 rejected: that the size of the noneconomic damages alone justifies an inference of
11 passion or prejudice.” *Saunders v. Union Pac. R.R. Co.*, 2025-NMCA-019, ¶ 43, 572
12 P.3d 253.

13 {7} Plaintiff finally reasserts that the district court erred by denying his motion for
14 a new trial. [MIO PDF 11-16] Although Plaintiff continues to focus on the injury
15 and prejudice suffered by him as a result of the jury verdict and entry of final
16 judgment [MIO PDF 11-12, 15-16], we explained in our notice of proposed
17 disposition, the record established that there was a high likelihood of prejudice to
18 Defendant if the district court granted Plaintiff’s motion. [CN 9-10] *See Marquez v.*
19 *Frank Larrabee & Larrabee, Inc.*, 2016-NMCA-087, ¶ 15, 382 P.3d 968 (explaining
20 that a movant must establish, among other requirements, that there is little likelihood

1 of prejudice to the nonmoving party should a judgment be vacated). While Plaintiff
2 now contends that Defendant would experience “[m]inimal or [n]o [p]rejudice” if
3 his motion was granted [MIO PDF 13-14], Plaintiff provides no correct citation in
4 support. Rather, as we explained in our notice of proposed disposition, the record
5 established that that the likelihood of prejudice to Defendant was high, and we will
6 not speculate on Plaintiff’s behalf. [CN 9-10] *See Elane Photography, LLC v.*
7 *Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“We will not review unclear
8 arguments, or guess at what a party’s arguments might be.” (text only) (citation
9 omitted)).

10 {8} As such, Plaintiff does not direct this Court to any new fact, law, or argument
11 that persuades us that our notice of proposed disposition was incorrect. Rather,
12 Plaintiff’s arguments repeat the same assertions of error without directing this Court
13 to error in our proposed resolution of these issues. *See Hennessy v. Duryea*, 1998-
14 NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held
15 that, in summary calendar cases, the burden is on the party opposing the proposed
16 disposition to clearly point out errors in fact or law.”); *State v. Mondragon*, 1988-
17 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding
18 to a summary calendar notice must come forward and specifically point out errors
19 of law and fact,” and the repetition of earlier arguments does not fulfill this
20 requirement), *superseded by statute on other grounds as stated in State v. Harris*,

1 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer Plaintiff to our previous
2 analysis in our proposed summary disposition.

3 {9} Additionally, Plaintiff seeks to amend his docketing statement to raise two
4 new issues. First, Plaintiff asserts that the district court erred by failing to sever
5 Defendant's intentional infliction of emotional distress claim from the rest of the
6 claims presented to the jury because Defendant's recordings of Plaintiff entered into
7 evidence "[a]llow[ed] the recordings to influence the jury [and] effectively denied
8 [P]laintiff a fair trial and constitutes a fundamental miscarriage of justice." [MIO
9 PDF 4] However, the record establishes that Defendant attempted to bifurcate the
10 property claims from the remainder of the claims [2 RP 363-65], Plaintiff opposed
11 Defendant's request [2 RP 366-68], and the district court denied Defendant's
12 motion. [2 RP 375] Assuming that the district court erred in denying Defendant's
13 motion to bifurcate, "[i]t is well established that a party may not invite error and then
14 proceed to complain about it on appeal." *State v. Jim*, 2014-NMCA-089, ¶ 22, 332
15 P.3d 870. In other words, a party may not request a ruling from the district court and
16 then, on appeal, claim that the ruling that the party requested was erroneous and
17 requires reversal.

18 {10} Second, Plaintiff argues that he is also entitled to compensation under the
19 theory of quantum meruit or unjust enrichment for his management of an investment
20 account. [MIO PDF 4, 6-7] Our review of the record shows that Plaintiff did not

1 plead a claim for a management fee related to the investment account, only for his
2 work on the property. [1 RP 6-7] Instead, Plaintiff pled a claim for joint-ownership
3 of the account under a theory of express agreement [1 RP 15], and the jury found in
4 favor of Defendant. [4 RP 892] Because Plaintiff did not plead a claim for a
5 management fee, this issue was not presented to the jury, and Plaintiff cannot now
6 present this issue for the first time on appeal. *See State v. Druktenis*, 2004-NMCA-
7 032, ¶ 122, 135 N.M. 223, 86 P.3d 1050 (“[G]enerally, [we will not] address issues
8 not preserved below and raised for the first time on appeal.”).

9 {11} For the reasons stated in our notice of proposed disposition and herein, we
10 affirm.

11 {12} **IT IS SO ORDERED.**

12
13 
ZACHARY A. IVES, Judge

14 **WE CONCUR:**

15 
16 **SHAMMARA H. HENDERSON, Judge**

17 
18 **GERALD E. BACA, Judge**