Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

# IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 12/23/2025 8:48 AM
Mark Reynolds

**DAVID DURAN,**

Plaintiff-Appellee/Cross-Appellant,

v. **No. A-1-CA-41162**

**GRACE DURAN,**

Defendant-Appellant/Cross-Appellee.

**APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
**Maria Sanchez-Gagne, District Court Judge**

The Terry Firm, LLC
Adrian Terry
Edgewood, NM

for Appellee

Catron, Catron & Glassman, P.A.
Richard S. Glassman
Santa Fe, NM

for Appellant

## MEMORANDUM OPINION

**BACA, Judge**

**{1}** This appeal and cross-appeal arise from a dispute between neighboring landowners over an alleged breach of a real estate purchase agreement (Purchase Agreement). Plaintiff David Duran claimed that Defendant Grace Duran breached the Purchase Agreement by failing to both execute a shared well agreement and perform a lot line adjustment after she purchased a tract of land from Plaintiff.

Following a bench trial, the district court concluded that Defendant breached the Purchase Agreement and ordered Defendant to sign a shared well agreement and execute a lot line adjustment. On appeal, Defendant raises two issues generally: (1) the district court erred by ordering Defendant to sign the shared well agreement because it contained a provision, which required Defendant to execute a lot line adjustment; and (2) the district court erred by imposing sanctions against Defendant for failing to timely sign the shared well agreement and for failing to complete the lot line adjustment. On cross-appeal, Plaintiff contends that the district court erred by (1) denying his motion to amend his complaint; (2) denying his motion for declaratory judgment; and (3) calculating the amount of attorney fees and costs awarded to him. For the following reasons, we reverse the portion of the district court's final judgment that requires Defendant to execute a lot line adjustment and the district court's reduction in Plaintiff's costs, but otherwise affirm on the remaining issues raised in the parties' appeals.

**BACKGROUND**

{2} Prior to this dispute, Plaintiff owned a parcel of land known as Tract 2, which he subdivided into what is now known as Tract 2A and Tract 2B. There is a domestic water well located near the southwestern border of Tract 2B, which services a house located on Tract 2B. When Plaintiff subdivided the land, he reserved a 10- by 20-foot well/water line easement burdening Tract 2B for the benefit of Tract 2A, and a

20 foot wide access and utility easement for underground irrigation lines on Tract 2B.[1]

**{3}** In May 2017, Plaintiff and Defendant entered into a Purchase Agreement for Tract 2B, with Plaintiff and his wife as the sellers and Defendant as the buyer. The Purchase Agreement contained a term and provision that Tract 2B included a "Shared Domestic Well." At the time the parties entered into the Purchase Agreement, they were aware that a fence dividing Tract 2A and Tract 2B was not in line with the plat line. Plaintiff alleged that the sale was contingent upon Defendant's promise to execute a shared well agreement between the parties, and to perform a lot line adjustment. The parties completed the sale, but did not execute a shared well agreement and did not perform a lot line adjustment.

**{4}** In 2019, two years later, Defendant listed Tract 2B for sale. Upon learning that Defendant was preparing to sell her property, Plaintiff filed suit, alleging that Defendant breached the Purchase Agreement by failing to execute a shared well agreement and by failing to execute a lot line adjustment. Following a bench trial, the district court concluded that the Purchase Agreement was a contract and that Defendant breached the Purchase Agreement by failing to execute a shared well

[1]In her brief in chief, Defendant expresses some confusion as to the district court's reference to "underground irrigation lines." Trial testimony established that the 20 foot wide access and utility easement was created because Plaintiff invested in an underground irrigation system, and there are underground culverts on Tract 2B.

agreement with Plaintiff for the well on Tract 2B. To remedy the breach, the district court ordered Defendant to execute a shared well agreement and complete a lot line adjustment with Plaintiff to provide Plaintiff access to and use of the well on Defendant's property.

**{5}** Plaintiff's counsel prepared a draft of the proposed shared well agreement, and the parties' respective attorneys engaged in negotiations to reach a final draft. Defendant's counsel withdrew from representation shortly thereafter. After Defendant's counsel withdrew, Plaintiff's counsel made additional changes to the proposed final shared well agreement and emailed it to Defendant. The final agreement provided, in relevant part:

> The parties acknowledge and agree that[] . . . each party shall cooperate with the other party to perform and complete a lot line adjustment, for and between Tract 2A and Tract 2B, for the purpose of exchanging portions of land in each tract equal in acreage or other measure, so that the underground water lines and appurtenances currently located on Tract 2B are thereafter situated on Tract 2A; and [Defendant] shall pay the cost and expense thereof.

**{6}** Defendant did not sign the agreement, and moved for an extension of time from the district court, stating that she was seeking new representation to review the document. Approximately one month later, Plaintiff moved for an order to show cause as to why Defendant should not be sanctioned for not signing the agreement. Following a hearing on the motion to show cause, the district court entered final judgment and imposed sanctions on Defendant in the amount of "$100[ ] per day

until Defendant executes a shared well agreement with Plaintiff," and "$10[ ] per day until Defendant performs and completes a lot line adjustment with Plaintiff, at Defendant's cost and expense." During the hearing, Defendant stated that although she did not want to sign an agreement that had not been reviewed by an attorney, she could not afford to pay the fines. Defendant ultimately signed the proposed final agreement.

{7} Shortly after final judgment was entered, Defendant retained new counsel and filed a timely motion to alter or amend the judgment, pursuant to Rules 1-052(D) and 1-059(E) NMRA, arguing that the order as to the lot line adjustment was not supported by the findings of fact and that the lot line adjustment was unnecessary. Following a hearing, the district court denied Defendant's motion, stating that its order was well thought-out based on the evidence that was presented before the district court related to the well and water line easement on Defendant's property. This appeal followed.

## DISCUSSION

### I. Defendant's Appeal

### A. The Lot Line Adjustment

{8} Defendant appeals the district court's order denying her Rule 1-059 motion to alter, amend or reconsider the judgment. We review the grant or denial of a motion under Rule 1-059 for abuse of discretion. *See Martinez v. Ponderosa Prods., Inc.*,

1988-NMCA-115, ¶ 4, 108 N.M. 385, 772 P.2d 1308. "An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (internal quotation marks and citation omitted). However, "even when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo." *Harrison v. Bd. of Regents of Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (internal quotation marks and citation omitted). We recognize that the reviewing court must liberally construe the district court's findings of fact to sustain a judgment, if possible. *Chavez v. Derek J. Sharvelle, M.D., P.A.*, 1988-NMCA-005, ¶ 19, 106 N.M. 793, 750 P.2d 1119. However, a judgment cannot be sustained on appeal unless the conclusion upon which it is based is supported by the findings of fact. *Id.* Likewise, a judgment inconsistent with the district court's findings cannot be sustained on appeal. *Id.*

**{9}** Here, we agree with Defendant that the district court erred in ordering Defendant to execute a lot line adjustment because the record reveals that Plaintiff expressly abandoned his claim as to the lot line adjustment eleven months before trial. At a hearing on April 19, 2021, Plaintiff's counsel informed the district court that Plaintiff was no longer pursuing the lot line adjustment. Specifically, at that hearing, Plaintiff's counsel stated, "I would concede and inform the court that my client was deposed recently by Defendant's counsel, and at this point he has given

up, waived, or otherwise decided not to prosecute his claim as to Issue 2; the lot line adjustment."[2] Consequently, because Plaintiff abandoned the lot line adjustment issue, the district court abused its discretion by ordering Defendant to complete the lot line adjustment. *See Credit Inst. v. Veterinary Nutrition Corp.*, 2003-NMCA-010, ¶ 19, 133 N.M. 248, 62 P.3d 339; *see also Benz*, 2013-NMCA-111, ¶ 11 ("An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." (internal quotation marks and citation omitted)).

**{10}** Lastly, we reject Plaintiff's argument that the shared well agreement constitutes an independent contract that is separate from the Purchase Agreement, and thus any challenge to the shared well agreement could not be brought in this matter. We explain.

**{11}** In this case, within thirty days of the district court entering its judgment and final order, Defendant, pursuant to Rules 1-052(D) and 1-059(E), filed "Defendant's Motion to Amend the Findings and Conclusions, and to Alter, Amend or Reconsider the Judgement." Rule 1-052(D) provides that "[u]pon motion of a party filed not later than thirty (30) days after entry of judgment, the court may amend its findings or conclusions or make additional findings and conclusions and may amend the

[2] We further note that at the hearing on Plaintiff's motion for summary judgment in July 2021, Defendant's counsel stated that "there's no dispute about lot lines," and Plaintiff's counsel did not dispute that statement.

judgment accordingly." *See* NMSA 1978, § 39-1-1 (1917). The shared well agreement is the direct result of the district court's judgment and order—the sole reason Defendant signed the agreement was because she could not afford the fines imposed by the district court's sanction. Thus, the district court could have modified its judgment to remove the clause pertaining to the lot line adjustment upon Defendant's timely motion.

**{12}** For these reasons, we conclude that the district court's judgment ordering Defendant to complete a lot line adjustment is not supported by the findings, and is clearly contrary to the logical conclusions demanded by the facts of the case. Therefore, the district court's ruling cannot be sustained. *See Chavez*, 1988-NMCA-005, ¶ 23. We therefore reverse the portion of the district court's judgment and final order as to the lot line adjustment.[3]

## II. Plaintiff's Cross-Appeal

**{13}** On cross-appeal, Plaintiff challenges the district court's denial of two pretrial motions, and the court's calculation of the costs and attorney fees awarded to Plaintiff.

[3]Because we reverse the district court's judgment and final order regarding the lot line adjustment, we necessarily reverse, without further discussion, the district court's sanctions regarding the same.

### A. The District Court Did Not Abuse Its Discretion in Denying Plaintiff's Motion to Amend the Complaint

**{14}** Plaintiff first contends that the district court erred in denying his motion to amend his complaint. "We review the denial of a motion to amend [a] complaint for an abuse of discretion." *Hourigan v. Cassidy*, 2001-NMCA-085, ¶ 28, 131 N.M. 141, 33 P.3d 891. "An abuse of discretion occurs when the court exceeds the bounds of reason, considering all the circumstances before it." *Dominguez v. Dairyland Ins. Co.*, 1997-NMCA-065, ¶ 18, 123 N.M. 448, 942 P.2d 191 (internal quotation marks and citation omitted). Under Rule 1-015(A) NMRA, once an answer has been filed, a party may amend its pleading only by leave of court or by written consent of the adverse party. "While amendments should . . . be [freely] allowed, we will not reverse the [district] court's decision unless there is no reason to support the decision." *Hourigan*, 2001-NMCA-085, ¶ 28.

**{15}** Here, during the course of discovery, Plaintiff located "multiple recorded deeds, plats or other instruments of title or conveyance" that allegedly established "his rights and interests in easements over or upon Defendant's adjoining real property for access to, and use of, water from a well, irrigation lines, and water from one or more ditches or acequias." Plaintiff subsequently moved to amend his complaint to include an additional cause of action for declaratory judgment to obtain "a declaration of rights as between the parties based on one or more recorded plats for the parties' respective properties (Tracts 2A and 2B) and certain well, water line,

and irrigation easements shown and described thereon." The district court denied Plaintiff's motion on the grounds that (1) Plaintiff stated during the hearing on the motion that he "wasn't even certain that a motion to amend the complaint [was] necessary," and (2) Defendant would be prejudiced by the amendment, specifically because it would require witnesses to resubmit to deposition.

**{16}** In this appeal, Plaintiff does not engage with the district court's reasoning for denying the motion, but instead emphasizes that the motion was timely and based upon information obtained in the course of investigation and discovery.[4] The district court, however, did not deny the motion as being untimely. It based its decision on prejudice to the nonmoving party—a proper ground for denying a motion to amend. *E.g.*, *Apodaca v. AAA Gas Co.*, 2003-NMCA-085, ¶ 72, 134 N.M. 77, 73 P.3d 215 (concluding that the district court did not abuse its discretion in denying a motion to amend a complaint where the nonmoving parties would be prejudiced). Accordingly, we hold that the district court did not abuse its discretion in denying Plaintiff's motion to amend. *See id.*

[4]Plaintiff also claims that the district court's denial of the motion to amend "undercut the policy and purpose of the State's recording acts concerning constructive notice, imputed to the world [at] large, concerning recorded instruments affecting real property." But Plaintiff does not explain what policy or purpose of the State's recording act is undermined, and we therefore do not address this argument. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what a party's arguments might be." (alteration, internal quotation marks, and citation omitted))

### B. The District Court Did Not Abuse Its Discretion in Denying Plaintiff's Motion for Declaratory Judgment

**{17}** Plaintiff argues that the district court erred in denying his motion for summary judgment on the issue of whether he was entitled to declaratory judgment. "Generally, we will not review the denial of a summary judgment motion after the [district] court has entered a final judgment on the merits of the case. However, where a motion for summary judgment is based solely on a purely legal issue which cannot be submitted to the trier of fact, and the resolution of which is not dependent on evidence submitted to the trier of fact, the issue should be reviewable on appeal from the judgment." *Beaudry v. Farmers Ins. Exch.*, 2018-NMSC-012, ¶ 9, 412 P.3d 1100 (alteration, omission, internal quotation marks, and citations omitted). Plaintiff's summary judgment motion presented a purely legal basis for consideration. As such, we apply de novo review. *See id.*

**{18}** Before the district court, Plaintiff moved for summary judgment on the issue of whether he was entitled to "an order declaring that [he] holds and possesses one or more easements on or over Defendant's real property for access to, and use of, a water well, water irrigation lines, and one or more irrigation ditches as identified in multiple recorded deed and plats." Following a hearing, the district court denied the motion, finding that there was not sufficient notice in the complaint related to the easements for which Plaintiff was seeking relief. On appeal, Plaintiff argues that the district court erred in denying the motion because Defendant's response to the

motion was untimely, and because she did not proffer evidence that showed that there was a genuine issue for trial, and thus, Defendant failed to rebut his prima facie case that he was entitled to declaratory relief.

**{19}** We first reject Plaintiff's contention that the district court erred by not automatically granting summary judgment simply because Defendant's response was untimely. Under "New Mexico case law, the district court cannot rely on [a] non[]moving party's failure to timely respond as the sole basis for granting a motion for summary judgment." *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 17, 416 P.3d 264; *Brown v. Taylor*, 1995-NMSC-050, ¶ 8, 120 N.M. 302, 901 P.2d 720. ("The moving party may not be entitled to judgment even if the non[]moving party totally fails to respond to the motion."). This is because "the non-moving party is not required to make any showing with regard to factual issues" unless "the moving party has made a prima facie case that it is entitled to summary judgment." *Brown*, 1995-NMSC-050, ¶ 8 (internal quotation marks and citation omitted). And, despite the untimely response, the court proceeded with the hearing on the merits of the motion, and thus we may review the question presented. *Cf. Deaton v. Gutierrez*, 2004-NMCA-043, ¶ 30, 135 N.M. 423, 89 P.3d 672 (stating that an appellate court may review the question presented where a district court addresses an untimely motion on the merits).

{20} The district court denied Plaintiff's motion after hearing arguments, stating that there was not sufficient notice in the complaint related to the easement issue. In its written order denying Plaintiff's motion, the district court further noted that it had previously denied Plaintiff's motion to amend the complaint to include a count for declaratory judgment. Here, too, Plaintiff does not engage with the district court's basis for denying the motion or explain how the district court's reasoning is erroneous as a matter of law. Plaintiff's failure to so engage is fatal to this challenge on appeal. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that the trial court erred); *State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that there is a presumption of correctness in the rulings or decisions of the trial court, and the party claiming error bears the burden of showing such error). Consequently, Plaintiff has not met his burden on appeal for establishing error, and we affirm the district court's denial of summary judgment.

### C. The District Court's Award of Attorney Fees and Costs

{21} Lastly, Plaintiff challenges the amount of attorney fees and costs awarded to him by the district court. Following the bench trial, Plaintiff sought approximately $65,000 in attorney fees and $2,300 in costs. The district court ultimately awarded Plaintiff $15,000 in attorney fees and $1,405.16 in costs. Plaintiff argues that: (1) the district court's reduction in the award for attorney fees was arbitrary and an abuse

of discretion; and (2) the court misapprehended the law when it declined to award the full amount of costs requested by Plaintiff.

**{22}** We review a district court's award of attorney fees and costs for an abuse of discretion. *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M. 654, 986 P.2d 450; *Mascarenas v. Jaramillo*, 1991-NMSC-014, ¶ 24, 111 N.M. 410, 806 P.2d 59. "[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo." *N.M. Right to Choose/NARAL*, 1999-NMSC-028, ¶ 7 (internal quotation marks and citation omitted). Thus, after we determine whether the correct law has been applied, we reverse "only if it [is] contrary to logic and reason." *Id.* ¶ 8 (internal quotation marks and citation omitted).

**1. Attorney Fees**

**{23}** "New Mexico adheres to the so-called American rule that, absent statutory or other authority, litigants are responsible for their own attorney[] fees." *Montoya v. Villa Linda Mall, Ltd.*, 1990-NMSC-053, ¶ 6, 110 N.M. 128, 793 P.2d 258. "Authority [for an award of attorney fees] can be provided by agreement of the parties to a contract." *Id.* "The scope of that authority is defined by the parties in the contract, and a determination of what fees are authorized is a matter of contract interpretation." *Id.*

**{24}** "While an award of attorney fees is discretionary, the exercise of that discretion must be reasonable when measured against objective standards and criteria." *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 13, 287 P.3d 318 (internal quotation marks and citation omitted). "One way of arriving at a reasonable [attorney] fee is the 'lodestar' method." *Atherton v. Gopin*, 2012-NMCA-023, ¶ 7, 272 P.3d 700. We recognize that the lodestar criteria are often used when determining attorney fees, because the criteria reliably provide an objective basis for valuing an attorney's services. *Cf. Rio Grande Sun*, 2012-NMCA-091, ¶ 20.

> A lodestar is determined by multiplying counsel's total hours reasonably spent on the case by a reasonable hourly rate. This value serves as a starting point for the calculation; the fee awarded must also be reasonable. New Mexico courts traditionally use the factors set forth in Rule 16-105 NMRA of the Rules of Professional Conduct to examine the reasonableness of attorney fees.

*Autovest, L.L.C. v. Agosto*, 2021-NMCA-053, ¶ 25, 497 P.3d 642 (internal quotation marks and citations omitted), *aff'd*, 2025-NMSC-001, ¶ 25, 563 P.3d 811.

**{25}** The factors listed in Rule 16-105(A) are:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

"A court need not consider all factors or give all the factors equal weight." *Autovest, L.L.C.*, 2021-NMCA-053, ¶ 25 (internal quotation marks and citation omitted).

**{26}** In this case, the authority to award attorney fees derived from the Purchase Agreement, which provided: "Should any aspect of this [Purchase] Agreement result in arbitration or litigation, the prevailing party of such action . . ., shall be entitled to an award of reasonable attorney[] fees and court costs."

**{27}** Below, in declining to award the full amount of attorney fees requested, the district court reasoned that (1) Plaintiff prevailed on only one of the four claims pled in the complaint, and (2) Defendant was experiencing financial hardship. On appeal, Plaintiff argues that the district court's decision not to award the full amount of attorney fees was arbitrary and an abuse of discretion. Specifically, Plaintiff contends that the district court erred because it failed to consider that (1) the relief

sought in Plaintiff's complaint was unitary; and (2) Plaintiff prevailed in defending against Defendant's counterclaim. We disagree and explain.

**{28}** As to Plaintiff's contention that the relief sought in his various claims was unitary, we conclude that this fact does not matter because the only claim which explicitly authorized the award of attorney fees and survived litigation was the claim for breach of contract. Plaintiff's other claims—which Plaintiff asserts were brought as alternative theories to achieve his goal of obtaining a "judgment from the [d]istrict [c]ourt that [Defendant be] required to share water from a well with [Plaintiff],"—did not. Plaintiff's claim for fraud was dismissed by the district court by directed verdict and his claims for promissory estoppel and unjust enrichment were dismissed by the district court at trial. Ultimately, the fact that each of Plaintiff's claims sought the same relief made no difference, because only the breach of contract claim remained viable and it alone could serve as the basis upon which the district court could award attorney fees. *See Dean v. Brizuela*, 2010-NMCA-076, ¶ 16, 148 N.M. 548, 238 P.3d 917 (stating "it has long been the rule in New Mexico that a party is only entitled to those fees resulting from the cause of action for which there is authority to award attorney fees").

**{29}** We are similarly unpersuaded as to Plaintiff's contention that he is entitled to the full amount of attorney fees because he prevailed in defending against Defendant's counterclaim. Recall that the authority to award attorney fees derived

from the Purchase Agreement that the district court determined Defendant had breached. In her counterclaims, Defendant sought damages for the loss of the sale of her property, alleging that Plaintiff's filing of a lis pendens on her property led to the loss of the sale. Because Defendant's counterclaims were not directly connected to the Purchase Agreement, it is questionable whether the Purchase Agreement could provide the authority to award Plaintiff fees for prevailing against Defendant's counterclaims.

**{30}** This Court has stated that "[w]here a party has asserted a claim for which attorney fees are authorized and has also been required to defend a counterclaim for which no attorney fees are authorized, our courts have not adhered to a rigid rule that attorney fees may never be awarded for defending the counterclaim, but *we do caution that it should be the exception and not the rule to do so*." *Dean*, 2010-NMCA-076, ¶ 16 (emphasis added) (internal quotation marks and citation omitted).

**{31}** Plaintiff has not developed an argument in support of why the district court should have considered the counterclaims as part of its analysis, nor has he identified any authority upon which the district court could rely to justify awarding attorney fees to Plaintiff for prevailing against the counterclaims. Instead, Plaintiff only summarily states that the district court erred by failing to do so. There is a presumption of correctness in favor of the district court's rulings and the appellant bears the burden of clearly demonstrating that the district court erred. *Farmers, Inc.*,

1990-NMSC-100, ¶ 8. Plaintiff has not established that the court abused its discretion by not awarding the full amount of attorney fees sought.

**{32}** Finally, we note that the district court's decision not to award the full amount of attorney fees sought was based on objective criteria—namely Defendant's financial hardship, which was evidenced in the record.

**{33}** For all of the foregoing reasons, we cannot say that the district court abused its discretion when it awarded Plaintiff less than the full amount of attorney fees he sought.

**2. Costs**

**{34}** The district court reduced the amount of costs sought by $938.68. These were costs sought by Plaintiff related to exhibit production. The district court reduced the costs by this amount because Plaintiff's submitted trial exhibits were noncompliant and not tabbed according to the court rules. Plaintiff contends that, since the parties' scheduling order did not specify that exhibits must be tabbed, and since he is unaware of any authority that requires exhibits to be tabbed, the district court abused its discretion and misapprehended Rule 1-054(D)(2)(i) NMRA by reducing the amount of costs awarded. In response, Defendant maintains that the district court was entitled to deny some costs, and argues that the reduction in costs was based upon Defendant's statements regarding her financial hardship. For the reasons that

follow, we conclude that the district court erred in reducing the amount of costs sought by Plaintiff.

**{35}** "In all civil actions or proceedings of any kind, the party prevailing shall recover his costs against the other party unless the court orders otherwise for good cause shown." NMSA 1978, § 39-3-30 (1966). Similarly, Rule 1-054(D)(1) provides that "[u]nless expressly stated either in a statute or in these rules, costs . . . shall be allowed to the prevailing party unless the court otherwise directs." A prevailing party is entitled to an assumption that they will be awarded costs. *Marchman v. NCNB Tex. Nat'l Bank*, 1995-NMSC-041, ¶ 65, 120 N.M. 74, 898 P.2d 709 ("Rule [1-054] creates a presumption that the prevailing party will be awarded costs."). The burden is on the losing party to demonstrate that an award of costs would be unjust or that other circumstances justify a denial or reductions of costs. *Apodaca*, 2003-NMCA-085, ¶ 103. "The trial court has discretion in assessing costs, and its ruling will not be disturbed on appeal unless it was an abuse of discretion." *Key v. Chrysler Motors Co.*, 2000-NMSC-010, ¶ 7, 128 N.M. 739, 998 P.2d 575 (internal quotation marks and citation omitted).

**{36}** Although Defendant is correct in asserting that a losing party's ability to pay is a proper factor for the district court to consider in determining whether to award costs, *see Apodaca*, 2003-NMCA-085, ¶ 103, the district court in this case did not state that it was reducing the cost award due to Defendant's financial hardship.

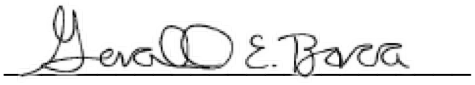
Instead, the district court specifically stated that it was reducing Plaintiff's requested costs by $938.68 because the exhibits tendered to the court during trial were not tabbed as required by court rule. But, in making this ruling, the district court did not specify to which court rule it was referring, and neither the Rule 1-016(B) NMRA scheduling order nor any local rule, or standing order of the district court mandate that trial exhibits be tabbed.

**{37}** Consequently, we conclude that the district court abused its discretion in reducing the costs requested by Plaintiff in the amount of $938.68. *See Benz*, 2013-NMCA-111, ¶ 11 (explaining that "[a]n abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." (internal quotation marks and citation omitted)). We, therefore reverse the district court's reduction of Plaintiff's costs in the amount of $938.68.

## CONCLUSION

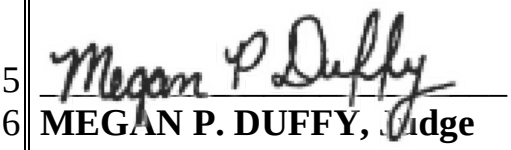
**{38}** We reverse the portion of the district court's judgment requiring Defendant to complete a lot line adjustment, the contempt sanction which fines Defendant for each day she does not complete a lot line adjustment, and the reduction in the award of costs to Plaintiff. We affirm the district court's denial of Plaintiff's motion to amend and motion for declaratory judgment, and affirm the award of attorney fees to Plaintiff.

{39} **IT IS SO ORDERED.**



**GERALD E. BACA, Judge**

**WE CONCUR:**



**MEGAN P. DUFFY, Judge**

**ZACHARY A. IVES, Judge**