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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

CAITLIN D'AGOSTINO,

Plaintiff-Appellant,

v. **No. A-1-CA-42291**

NEW MEXICO TAXATION & REVENUE DEPARTMENT,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY
Bryan Biedscheid, District Court Judge

Mescall Law Firm, P.C.
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for Appellant

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for Appellee

MEMORANDUM OPINION

BACA, Judge.

{1} In this case, brought pursuant to the Inspection of Public Records Act (IPRA), NMSA 1978, §§ 14-2-1 to -12 (1947, as amended through 2025), Plaintiff appeals from the district court's order denying her motion for attorney fees after the district court concluded that Defendant's offer of settlement made pursuant to Rule

1-068(A) NMRA unambiguously included attorney fees. Plaintiff offers several arguments in support of reversal. Unpersuaded, we affirm.

I. BACKGROUND

{2} Plaintiff filed this IPRA enforcement action after Defendant failed to respond to Plaintiff's written IPRA request. Approximately one year after Plaintiff filed the action, Defendant served an "Offer of Settlement Pursuant to Rule 1-068(A)" on Plaintiff. The offer of settlement stated, in its entirety:

> Defendant[], pursuant to Rule 1-068(A), . . . offers to allow judgment to be taken against it by Plaintiff[] in the amount of [f]ifteen [t]housand [d]ollars ($15,000.00). This offer is for settlement purposes and is not an admission of liability. If this offer is not accepted within ten (10) days after the service of this offer, it shall be deemed withdrawn. Evidence of this offer is not admissible except in a proceeding to determine costs.

{3} Plaintiff filed a timely "Notice of Acceptance of Rule 1-068 Offer of Settlement" after receiving the offer. Eight days after filing the notice of acceptance, Plaintiff filed a motion for attorney fees (the Motion). In Defendant's response to the Motion, Defendant alleged that its Rule 1-068 offer was intended to include attorney fees, and alleged in a later pleading that "[t]he parties' negotiations showed that attorney[] fees were included in the [o]ffer of [s]ettlement."

{4} The district court denied the Motion without a hearing. In its order, the district court made the following findings and conclusions:

> 1. It is undisputed that Plaintiff[] accepted a Rule 1-068 [o]ffer of [s]ettlement on September 17, 2024.

2. The offer of settlement was for payment to Plaintiff[] in the amount of $15,000.00.

3. Rule 1-068(A) states that a "party may serve upon any adverse party an offer to allow an appropriate judgment to be entered in the action in accordance with the terms and conditions specified in the offer."

4. As noted by Plaintiff, [Section] 14-2-12(D) requires the [c]ourt to award damages, costs, and reasonable attorney[] fees in the subject IPRA action. As a result, it is unambiguous that reasonable attorney[] fees were included in the claims being settled, rather than an additional, discretionary award.

5. As noted by Plaintiff, while costs are often properly added to a Rule 1-068 settlement, attorney[] fees are not within the definition of costs and so are not properly added unless specified in the settlement.

6. The [c]ourt notes that $15,000.00 is in excess of any amount that the [c]ourt would have awarded as damages in this matter, indicating that some compensation for attorney[] fees and costs was included in that amount.

7. The [c]ourt notes that Plaintiff[]'s request for an additional $85,500.00 to be awarded, in addition to the agreed $15,000.00, is unreasonable as a standalone amount and as a modification that greatly exceeds the agreed settlement amount and, as such, without any mention of such a claim being preserved in the settlement, it would be an abuse of discretion for this court to so substantially re[]write the parties' settlement terms.

{5} Plaintiff appeals from the district court's order denying her motion for attorney fees.

II. DISCUSSION

{6} On appeal, Plaintiff makes six arguments in support of reversal: (1) "The reasoning in *Dunleavy v. Miller*[, 1993-NMSC-059, 116 N.M. 353, 862 P.2d 1212] applies with equal force to attorney[] fees"; (2) "Rule 1-068(A) requires the party

making an [o]ffer of [s]ettlement to specify whether attorney[] fees are included in the offer"; (3) "[u]se of the word 'judgment' in Rule 1-068(A) incorporates the same meaning as used in Rule 1-054 [NMRA]"; (4) "in Finding of Fact No. 5, the district court erred as a matter of law by disregarding that Rule 1-054 does not differentiate between 'costs' and 'attorney[] fees'"; (5) "in Findings of Fact Nos. 4, 5[, and] 7, the district court erred as a matter of law by disregarding the requirement in Rule 1-068(A) that the party making an [o]ffer of [s]ettlement specify 'the terms and conditions . . . in the offer.' In addition, Finding of Fact No. 4 is based on pure conjecture; there is nothing in the offer of settlement to support this finding"; and (6) "Finding of Fact No. 6 is arbitrary and capricious."

{7} We begin by addressing Plaintiff's interpretation of this Court's holding in *Dunleavy*. We then address Plaintiff's argument that Rule 1-068 requires the party making an offer of settlement to specify whether attorney fees are included in the offer. We conclude by explaining that, while we are skeptical of the district court's basis for determining that Defendant's Rule 1-068 offer included attorney fees, we are constrained by the limits of Plaintiff's briefing, and thus cannot fully address the merits of the district court's decision.

A. Standard of Review

{8} "Generally, we review an award of attorney fees for abuse of discretion. However, a discretionary decision based on a misapprehension of the law is an abuse

of discretion that must be reviewed de novo. If the trial court has correctly applied the law to the facts, we review a discretionary decision for an abuse of discretion and reverse only if it is contrary to logic and reason." *Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 2012-NMCA-091, ¶ 10, 287 P.3d 318 (alterations, internal quotation marks, and citation omitted). To the extent that we construe the provisions of statutes or rules, our review is likewise de novo. *See Am. Civ. Liberties Union of N.M. v. Duran*, 2016-NMCA-063, ¶ 24, 392 P.3d 181.

B. The *Dunleavy* Holding

{9} Plaintiff first argues that in *Dunleavy* our Supreme Court held that an offer of settlement must specify whether Rule 1-054 costs are included in the offer. Plaintiff further argues that this purported requirement in *Dunleavy* "applies with equal force to attorney[] fees." We disagree.

{10} In *Dunleavy*, the defendant, pursuant to Rule 1-068, made an offer of settlement for "$70,000 including costs."[1] *Dunleavy*, 1993-NMSC-059, ¶ 31. The

[1]Rule 1-068 was amended in 2003. *See* Rule 1-068 annot. Significantly for our discussion here, one of the amendments made to the first sentence of the rule eliminated language concerning the inclusion of costs in the offer to settle the case. The pre-2003 amendment of Rule 1-068 stated, "At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against [them] for the money or property or to the effect specified in [their] offer, *with costs then accrued*." (Emphasis added.) The post-2003 (and current) version of Rule 1-068 eliminated the italicized language, and states, "[A]t any time more than ten (10) days before the trial begins, any party may serve upon any adverse party an offer to allow an appropriate

plaintiff refused the offer. *Id.* A jury rendered a verdict in favor of the plaintiff in the net amount of $69,363.15.[2] *Id.* The trial court found that the offer of settlement exceeded this award and assessed the defendant's postoffer costs against the plaintiff. *Id.*

{11} Our Supreme Court concluded that the trial court erred and held that the plaintiff's preoffer costs should have been added to her damage award to determine the amount of "the judgment finally obtained" under Rule 1-068, since the offer of settlement included all costs accrued to that point. *Dunleavy*, 1993-NMSC-059, ¶ 33 (internal quotation marks and citation omitted). In other words, if an offer of settlement "specifically includes costs[,] then costs accrued up to the date of the offer must also be added to the amount awarded by the jury if the two figures are to be

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judgment to be entered in the action in accordance with the terms and conditions specified in the offer."

As well, Rule 1-068 was formerly titled "Offer of judgment" and required that the accepting party "allow judgment to be taken against [them] for the money or property or to the effect specified in [their] offer." *See* Rule 1-068 annot. As mentioned, in 2003, Rule 1-068 was amended. It was retitled "Offer of settlement" to make explicit that when either party makes an offer of settlement that is accepted, the party who thereby agreed to make a payment may tender full payment of the agreed-upon sum before a judgment is entered. *See id.* Thus, while our pre-2003 caselaw discusses Rule 1-068 as an offer of judgment, we refer to it now as an offer of settlement.

[2]In its verdict, the jury assessed the plaintiff's damages at $91,267.30, and apportioned negligence seventy-six percent to the defendant and twenty-four percent to the plaintiff under the trial court's comparative negligence instruction. *Dunleavy*, 1993-NMSC-059, ¶ 31. The trial court subtracted the amount attributable to the plaintiff's own negligence, $21,904.15, from the total damages of $91,267.30, and entered judgment in the amount $69,363.15. *Id.*

compared meaningfully." *Id.* (omission, internal quotations marks, and citation omitted). Our Supreme Court continued that "[a] valid Rule [1-0]68 offer of [settlement] must compensate the plaintiff for all costs accrued through the making of the offer. The costs may be either included in the offer . . . or determined in addition to the settlement for damages." *Dunleavy*, 1993-NMSC-059, ¶ 34. (internal quotation marks, and citation omitted).

{12} Plaintiff's interpretation of *Dunleavy* stretches the holding too far. *Dunleavy* stands for the proposition that when costs are expressly included in a Rule 1-068 offer, a trial court must include a prevailing-plaintiff's preoffer costs as part of the "judgment finally obtained" in order to compare the value of the judgment to the value of the Rule 1-068 offer. Plaintiff has not explained how *Dunleavy* is instructive in resolving the issues in this case beyond her assertion that *Dunleavy* held that an offer of settlement must specify whether the offer is inclusive of costs. We therefore conclude that it is inapplicable and of no help in resolving the remaining issues. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (stating that this Court has no duty to review an argument that is not adequately developed, and "[w]e will not review unclear arguments, or guess at what [a party's] arguments might be" (internal quotation marks and citation omitted)).

C. Rule 1-068 Does Not Expressly Require a Party to Specify Whether Attorney Fees Are Included in an Offer of Settlement

{13} Plaintiff next argues that Rule 1-068(A) requires the party making an offer of settlement to specify whether attorney fees are included in the offer. In support of this argument, Plaintiff maintains that "[Rule 1-068's] reference to 'terms and conditions' naturally includes essential details, such as whether attorney[] fees are included. Consequently, the party making the offer must specify whether attorney[] fees are included 'in the offer.'" We disagree and explain.

Rule 1-068(A) provides, in relevant part, that

> at any time more than ten (10) days before the trial begins, any party may serve upon any adverse party an offer to allow an appropriate judgment to be entered in the action in accordance with the terms and conditions specified in the offer. . . . If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon such judgment may be entered as the court may direct.

As we mentioned above, in 2003, Rule 1-068 was amended and retitled to "Offer of settlement" *See* Rule 1-068 comm. cmt. for 2003 amend. The committee commentary for the 2003 amendment explains that Rule 1-068 was retitled

> to make explicit that when either party makes an offer of settlement which is accepted, the party who thereby agreed to make a payment may tender full payment of the agreed-upon sum before a judgment is entered. When this is done, the court should enter a judgment of dismissal with prejudice rather than a money judgment in the amount specified in the offer of settlement. Because the form of judgment will depend upon whether full payment is tendered before the accepted offer results in a judgment, *the offer of settlement shall not be conditioned on*

> *the form that the judgment might take, but only upon the substantive content of the settlement proposal*. (Emphasis added.)

{14} Additionally, this Court in *Pope v. Gap, Inc.*, 1998-NMCA-103, ¶ 10, 125 N.M. 376, 961 P.2d 1283, held that traditional contract principles apply to Rule 1-068 offers, including the principles of offer and acceptance, and mutual assent. We further concluded in *Pope* that the language in Rule 1-068 "suggests that the [offeror] is the master of the terms of the offer, and if the offer is accepted, a judgment is [to be] entered by the court [in accordance with the terms and conditions specified in the offer]. In other words, Rule 1-068 leaves no discretion in the district court to do anything but to enter the judgment once an offer of judgment has been accepted. In entering the judgment, the district court does not actually determine the substance of the issues presented by the parties but only perfunctorily enters the judgment as agreed upon by the parties." *Pope*, 1998-NMCA-103, ¶ 21 (citations omitted).

{15} Our reading of *Pope*, Rule 1-068, and the commentary and annotations for Rule 1-068, leads us to conclude that neither Rule 1-068 nor the trial court regulates the substantive terms of an offer by predetermining the terms and conditions that an offer must include. Rather, the "terms and conditions" of a Rule 1-068 offer are those that the parties negotiated and agreed to themselves. Moreover, the primary purpose of Rule 1-068 is to encourage settlement and to avoid protracted litigation. *Pope*, 1998-NMCA-103, ¶ 32 (citing *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981); *Marek v. Chesny*, 473 U.S. 1, 5 (1985)). To remain consistent with Rule 1-

068's purpose, parties should be afforded much leeway to draft and negotiate offers of settlement that are tailored to the unique facts of each case. To conclude otherwise would undercut Rule 1-068's purpose. Put differently, to hold that Rule 1-068 requires a party to include a specific term or condition in their offer of settlement—including a term that clearly indicates whether the offer is inclusive of attorney fees—would discourage settlement by restricting the offeror's autonomy in drafting a settlement offer.[3]

{16} For these reasons, we hold that Rule 1-068 does not require a party to expressly state whether the offer is inclusive of attorney fees.

D. Plaintiff's Remaining Arguments

{17} Plaintiff also challenges the district court's fourth finding that Section 14-2-12(D) "requires the [c]ourt to award damages, costs, and reasonable attorney[] fees in the subject IPRA action. As a result, it is unambiguous that reasonable attorney[] fees were included in the claims being settled, rather than an additional, discretionary award." We construe the district court's fourth finding as a conclusion of law that

[3]Of course, an offeror who does not clearly define the terms of the offer runs the risk that the terms will be deemed ambiguous, and ambiguity is construed against the drafter. *E.g.*, *Rojas v. Reliable Chevrolet (NM), LLC*, 2024-NMCA-003, ¶ 5, 539 P.3d 1253 ("We construe ambiguities in a contract against the drafter to protect the rights of the party who did not draft it." (internal quotation marks and citation omitted)). Accordingly, while it may be prudent to expressly state whether a Rule 1-068 offer includes attorney fees, it is ultimately the offeror's responsibility to weigh the potential consequences of extending a Rule 1-068 offer that does not clearly indicate whether fees are included.

Defendant's Rule 1-068 offer was unambiguous. *See Watson Land Co. v. Lucero*, 1974-NMSC-003, ¶ 5, 85 N.M. 776, 517 P.2d 1302; *Gough v. Famariss Oil & Refining Co.*, 1972-NMCA-045, ¶ 10, 83 N.M. 710, 496 P.2d 1106.

{18} Whether a contract contains an ambiguity is a matter of law that we normally review de novo. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23, 299 P.3d 844. "The purpose, meaning and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive." *Id.* (internal quotation marks and citation omitted).

{19} In concluding that Defendant's Rule 1-068 offer unambiguously included attorney fees, the district court appeared to rely on a harmonized reading of Rule 1-068 and Section 14-2-12(D) as evidence of Defendant's intent. Specifically, it appears the district court reasoned that a "judgment" in an IPRA enforcement action consists of damages, costs and reasonable attorney fees. Thus, because Defendant offered to allow judgment to be taken against it in this IPRA enforcement action, Defendant's Rule 1-068 offer of settlement must have intended to compensate Plaintiff for damages, costs, *and* reasonable attorney fees. *But see Faber v. King*, 2015-NMSC-015, ¶¶ 15-16, 348 P.3d 173 (discussing the difference between the statutory damages provided by Section 14-2-11 when a public entity fails to respond to an IPRA request and the damages, costs, and attorney fees provided by Section 14-2-12 for a successful enforcement action).

{20} We acknowledge that this line of reasoning is controvertible. However, Plaintiff's briefing on this issue consists of a single, conclusory statement that the district court's ruling "is based on pure conjecture; there is nothing in the [o]ffer of [s]ettlement to support this finding." Plaintiff has not, for example, argued that the offer was ambiguous or provided any reasoning to support such a position. In light of the fact that Plaintiff has not adequately challenged the district court's conclusion that the offer unambiguously included attorney fees, it is not necessary to address Plaintiff's remaining arguments, which are equally underdeveloped and unsupported. Therefore, we decline to address Plaintiff's arguments further. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("To rule on an inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties' work for them. This creates a strain on judicial resources and a substantial risk of error. It is of no benefit either to the parties or to future litigants for this Court to promulgate case law based on our own speculation rather than the parties' carefully considered arguments." (citation omitted)); *see also Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 ("The presumption upon review favors the correctness of the [district] court's actions. [An a]ppellant must affirmatively demonstrate [their] assertion of error.").

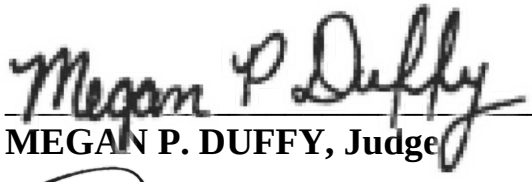
CONCLUSION

{21} We affirm the district court's order denying Plaintiff's motion for attorney fees.

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

GERALD E. BACA, Judge

WE CONCUR:



MEGAN P. DUFFY, Judge

SHAMMARA H. HENDERSON, Judge