

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

Court of Appeals of New Mexico

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2 **DLG TRUST PLLC,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-42902

5 **XIN ZHANG,**

6 Defendant-Appellee.

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

8 **Victor S. Lopez, District Court Judge**

9 Adler Law Firm, P.C.

10 Timothy J. Adler

11 A. Howland Swift

12 Albuquerque, NM

13 Bluff & Associates

14 Guy W. Bluff

15 Albuquerque, NM

16 for Appellant

17 Law Office of Stephen B. Waller, LLC

18 Stephen B. Waller

19 Albuquerque, NM

20 for Appellee

21 **MEMORANDUM OPINION**

22 **ATTREP, Judge.**

23 {1} Plaintiff appeals from the district court's order dismissing Plaintiff's motion

24 to confirm arbitration awards for lack of jurisdiction because Plaintiff filed a

1 “motion” rather than a “complaint” to initiate the proceedings, and, alternatively,
2 granting Defendant’s motions to vacate the arbitration awards because the arbitrator
3 exceeded his authority. This Court issued a calendar notice proposing to reverse.
4 Defendant has filed a memorandum in opposition and Plaintiff has filed a
5 memorandum in support, both of which we have duly considered. We reverse.

6 {2} Defendant first asserts that the district court correctly determined that it lacked
7 jurisdiction to hear Plaintiff’s motion to confirm arbitration awards. [MIO 4-42] In
8 our calendar notice, we proposed to conclude that Plaintiff’s motion to confirm the
9 arbitration awards was sufficient to invoke the district court’s jurisdiction and the
10 district court’s reasoning that Plaintiff must first file a complaint “is not supported
11 by our case law, the New Mexico Rules of Civil Procedure, or the Uniform
12 Arbitration Act.” [CN 2-6]

13 {3} Defendant asserts that we should affirm the district court, but argues that we
14 should affirm as right for any reason rather than on the grounds relied on by the
15 district court. [MIO 11-13] In fact, Defendant admits that the district court was likely
16 incorrect in its original reasoning. [MIO 1-2] Rather, Defendant now proposes a two-
17 part, normative view of how arbitration should proceed in New Mexico. First,
18 Defendant argues that any party that seeks to initiate arbitration proceedings is
19 required to file a motion to compel arbitration in the district court so that the district
20 court can first decide issues of contract enforcement in the arbitration context—

1 validity and unconscionability—before arbitration can begin. [MIO 4-6; 31-35; 40-
2 42] Second, Defendant argues that we should hold, for the first time, that these
3 threshold issues are jurisdictional in nature and failure to present these issues to the
4 district court before arbitration begins is a jurisdictional defect that renders the
5 district court unable to review or confirm any portion of the arbitration proceedings
6 that have already commenced. [MIO 18-19; 35; 37; 39; 41; 44] As such, here,
7 because Plaintiff failed to present these threshold issues to the district court before
8 arbitration commenced, Defendant suggests the district court correctly found that it
9 lacked jurisdiction to confirm the awards. [MIO 4-42]

10 {4} We remain unpersuaded. We agree with Defendant that questions of validity
11 and enforcement, absent specific exceptions, are generally matters for the district
12 court’s consideration. *See, e.g., Szantho v. THI of N.M. at Sunset Villa, LLC*, 2025-
13 NMCA-006, ¶¶ 12-15, 570 P.3d 203 (explaining that issues of contract formation
14 and enforcement are generally the purview of the district court); *see also* NMSA
15 1978, § 44-7A-7(b)-(c) (2001) (explaining that the district court shall determine
16 whether an agreement to arbitrate exists). We also agree that Plaintiff was required
17 to establish a valid arbitration agreement at the onset of arbitration. *See Strausberg*
18 *v. Laurel Healthcare Providers, LLC*, 2013-NMSC-032, ¶ 42, 304 P.3d 409
19 (explaining that the party seeking to arbitrate must establish the existence of a valid
20 arbitration agreement under New Mexico state law). However, the district court is

1 not required to determine whether the contract is valid unless the party opposing
2 arbitration contests the validity of the arbitration agreement. *Szantho*, 2025-NMCA-
3 006, ¶ 24 (“Courts should order arbitration of a dispute only where the court is
4 satisfied that neither the formation of the parties’ arbitration agreement nor (absent
5 a valid provision specifically committing such disputes to an arbitrator) its
6 enforceability or applicability to the dispute is in issue. *Where a party contests either*
7 *or both matters*, the court must resolve the disagreement.” (emphasis added)
8 (alteration, internal quotation marks, and citation omitted)).

9 {5} Similarly, despite Defendant’s argument that Plaintiff was responsible for
10 establishing that the agreement to arbitrate was enforceable, Defendant “has not
11 cited, nor has this Court found, a case from any jurisdiction holding that the party
12 seeking contract enforcement has the burden to prove the absence of
13 unconscionability.” *See Strausberg*, 2013-NMSC-032, ¶ 41. Rather, “New Mexico
14 contract law treats unconscionability as an affirmative contract defense.” *Id.* ¶ 38.
15 And like all affirmative defenses, “the party alleging an affirmative defense has the
16 burden of proof.” *Id.* ¶ 36.

17 {6} Additionally, while Defendant argues that Plaintiff was responsible for
18 providing Defendant the opportunity to raise these issues, the Uniform Arbitration
19 Act allowed Defendant to raise these issues to the district court even if Plaintiff did
20 not originally move to compel arbitration. NMSA 1978, § 44-7A-8(b) (2001)

1 (stating that the district court shall decide issues of validity and enforceability “[o]n
2 motion of a person alleging that an arbitration proceeding *has been initiated* or
3 threatened but that there is no agreement to arbitrate,” but if the district court “finds
4 that there is an enforceable agreement to arbitrate, it shall order the parties to
5 arbitrate” (emphasis added)).

6 {7} Accordingly, under our case law and relevant statutory authority, Defendant
7 was required to raise these issues, and it was not Plaintiff’s responsibility to initiate
8 proceedings in district court for sua sponte consideration of Defendant’s affirmative
9 defenses. Indeed, Defendant acknowledges that he was responsible for bringing
10 these challenges before the district court. [MIO 24-26] Like we discussed in our
11 notice of proposed disposition, Defendant actively choose not to participate in either
12 the arbitration or district court proceedings until after the district court initially
13 confirmed three of the four arbitration awards at issue. [CN 9-10] And while
14 Defendant now provides a list of what he may have argued with regard to the validity
15 or enforceability of the arbitration agreement if Plaintiff has initiated the proceedings
16 by first filing a motion to compel arbitration [MIO 26-30; 35-37], “[t]his Court
17 reviews the case litigated below, not the case that is fleshed out for the first time on
18 appeal.” *Campos Enters., Inc. v. Edwin K. Williams & Co.*, 1998-NMCA-131, ¶ 12,
19 125 N.M. 691, 964 P.2d 855 (alteration, internal quotation marks, and citation
20 omitted). Finally, the cases Defendant cites in his memorandum in opposition are

1 distinguishable because, in each of those cases, the party opposing arbitration raised
2 either one or both of the two affirmative defenses at issue—validity and
3 enforceability. *See, e.g., Szantho*, 2025-NMCA-006, ¶¶ 8-9 (discussing how the
4 party opposing arbitration argued to the district court that the agreement was not
5 valid).

6 ¶8} We are also unpersuaded that the district court’s failure to consider these
7 questions before arbitration proceedings began is a jurisdictional defect to the
8 proceedings as a whole. While Defendant contends this a novel issue that we should
9 resolve in his favor, Defendant acknowledges that this Court has previously resolved
10 a similar question in *Lyndoe v. D.R. Horton, Inc.*, 2012-NMCA-103, 287 P.3d 357.
11 [MIO 3-4, n.3] In *Lyndoe*, this Court explained that satisfaction of the statutory
12 requirements of the Uniform Arbitration Act’s consolidation requirements were not
13 jurisdictional in nature, because district courts in this state are courts of general
14 jurisdiction under our state constitution and therefore “have[] the power to hear all
15 matters not excepted by the constitution and those matters conferred by law.” *Id.*
16 ¶¶ 9-12. Despite Defendant’s attempt to distinguish *Lyndoe* and complicate the
17 proceedings to enforce an arbitration award, we see no reason to depart from our
18 long-established case law and state constitution to hold that a district court lacks
19 jurisdiction to hear a matter because a party failed to properly raise affirmative
20 defenses.

1 {9} Defendant next asserts that the district court did not err by granting his
2 motions to vacate. [MIO 40-44] Defendant contends that the district court correctly
3 found that the arbitrator exceeded the scope of the arbitration agreement. [MIO 40-
4 44] We proposed to conclude that the district court erred because Defendant filed
5 his first motion to vacate past the ninety-day deadline to contest an arbitration award
6 at the district court, and therefore forfeited his right to do so. [CN 6-11] Despite
7 Defendant’s attempt to argue the merits of his motions, Defendant agrees with our
8 proposed analysis that he was required to file within ninety days. [MIO 6-7]
9 Defendant does not argue that this Court incorrectly calculated the length between
10 him receiving notice of the arbitration award and filing his first motion to vacate.
11 Nor does Defendant attempt to argue other, extenuating circumstances to justify his
12 late filing. We therefore decline to address Defendant’s arguments about the merits
13 of his motions to vacate because Defendant’s untimely filing forfeited his rights to
14 contest the arbitration awards. *See United Tech. & Res., Inc. v. Dar Al Islam*, 1993-
15 NMSC-005, ¶¶ 19-20, 115 N.M. 1, 846 P.2d 307 (explaining that “[c]ourts applying
16 the Uniform Arbitration Act have consistently held that parties to arbitration who
17 fail to present their substantive defenses within the statutory time limit are barred
18 from later asserting those defenses” and in “the absence of timely presentation of
19 any defense by [the aggrieved party] to confirmation, the district court was required
20 to confirm the award”).

1 {10} In sum, Defendant has not asserted any facts, law, or argument in their
2 memorandum in opposition that persuades this Court that our notice of proposed
3 disposition was incorrect. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
4 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar
5 notice must come forward and specifically point out errors of law and fact,” and the
6 repetition of earlier arguments does not fulfill this requirement), *superseded by*
7 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
8 374; *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d
9 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden
10 is on the party opposing the proposed disposition to clearly point out errors in fact
11 or law.”). We are therefore unpersuaded by Defendant’s arguments now on appeal.

12 {11} Plaintiff has also filed a memorandum in support. While Plaintiff agrees with
13 this Court’s proposed conclusions, Plaintiff argues that we miscalculated the length
14 between Defendant receiving notice of the award and Defendant’s first motion to
15 vacate. [MIS 2-5] While we agree with Plaintiff’s argument, we decline to address
16 it further. There is no dispute that Defendant’s first motion to vacate was untimely,
17 and the extent of Defendant’s untimeliness does not affect Defendant’s waiver of his
18 right to challenge the arbitration awards at the district court. *See United Tech. &*
19 *Res., Inc.*, 1993-NMSC-005, ¶¶ 19-20.

1 {12} Plaintiff also asks that we clarify the scope of our remand to the district court.
2 [MIS 5-7] Plaintiff cites the district court order, which additionally concluded “[t]he
3 final *Castillo v. Arrieta*[, 2016-NMCA-040, 368 P.3d 1249,] question addressed by
4 the [district court] may be further evaluated by the [district court] if the
5 jurisdictional, the arbitrator selection question, and exceeding scope of authority
6 issue are not otherwise dispositive and upheld.” [RP 1491, ¶ D] Plaintiff argues, and
7 we agree, that the district court is precluded from considering whether Defendant’s
8 original attorney sufficiently explained what rights Defendant waived by agreeing
9 to arbitrate disputes, as required by *Castillo*, 2016-NMCA-040, ¶ 23, because this is
10 a similar enforceability argument that Defendant has already waived under the
11 Uniform Arbitration Act’s ninety-day requirement. Here, because Defendant failed
12 to properly present a statutory ground to vacate the arbitration awards in a timely
13 manner, the district court “shall confirm [the] award.” NMSA 1978, §§ 44-7A-24(c),
14 -25(b) (2001).

15 {13} For the foregoing reasons and the reasons stated in our notice of proposed
16 disposition and herein, we reverse.

17 {14} **IT IS SO ORDERED.**

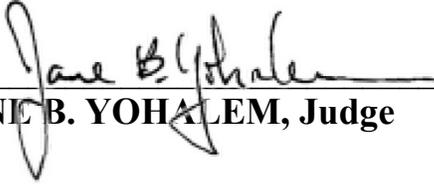
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JENNIFER L. ATTREY, Judge

1 **WE CONCUR:**

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3 **SHAMMARA H. HENDERSON, Judge**

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5 **JANE B. YOHALEM, Judge**