

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

2 **FRANCESCO BUFANO,**

3 Plaintiff-Appellant,

4 v.

5 **ERIC DURAN,**

6 Defendant-Appellee.

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

8 **Marie C. Ward, District Court Judge**

9 Francesco Bufano
10 Albuquerque, NM

11 Pro Se Appellant

12 Eric Duran
13 Albuquerque, NM

14 Pro Se Appellee

15 **MEMORANDUM OPINION**

16 **ATTREP, Judge.**

17 {1} Plaintiff, a self-represented litigant, appeals from the district court's order
18 denying his second motion to reconsider and his motion to reinstate following
19 dismissal for lack of prosecution. This Court issued a calendar notice proposing to
20 summarily affirm. Plaintiff filed a memorandum in opposition, which we have duly
21 considered. Unpersuaded that the district court committed reversible error, we
22 affirm.

Court of Appeals of New Mexico

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Mark Reynolds

No. A-1-CA-42580

1 {2} Plaintiff continues to assert the district court committed multiple errors
2 throughout the proceedings. [MIO 1-11] For instance, Plaintiff’s memorandum in
3 opposition elaborates on his prior assertion that he was not served with a copy of the
4 district court’s March 14, 2024 order, stating that he first received the order when he
5 visited the courthouse in May 2024 to ask for updates on his case. [MIO 4 ¶ 9] Even
6 assuming Plaintiff had learned of the order earlier and sought a timely appeal,
7 Plaintiff has not identified a meritorious ground for reversal of that order, and
8 therefore has not demonstrated prejudice resulted from any delay in receiving the
9 order. [CN 7] *See* Rules 1-060(B)(1)-(6), -061 NMRA; *Barreras v. Archibeque*,
10 2024-NMCA-053, ¶ 11, 552 P.3d 711 (“We are a court of review and our function
11 is to see if legal error that would change the result occurred.” (internal quotation
12 marks and citation omitted)). As a result, Plaintiff has not met his burden of
13 demonstrating reversible error. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
14 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar
15 notice must come forward and specifically point out errors of law and fact,” and the
16 repetition of earlier contentions does not fulfill this requirement), *superseded by*
17 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
18 374.

19 {3} In addition, Plaintiff contends the district court judge assigned to this case
20 engaged in unlawful ex parte communications with the judge assigned to a related

1 case. [MIO 8 ¶ 21, 9 ¶ 25] According to Plaintiff, the district court disclosed to the
2 parties that the two judges had communicated about Defendant’s motion to
3 consolidate the cases—a motion that was ultimately denied. [DS 13; D-202-CV-
4 2023-09027, 2-15-24 Ord.] *See* Rule 1-042(A) NMRA (permitting the district court
5 to consolidate pending actions involving a common issue of law or fact). Plaintiff’s
6 assertion is largely speculative, and he concedes that he does not know anything
7 improper was discussed. [MIO 8 ¶ 21] We are not persuaded that communication
8 between judges about a motion to consolidate is unlawful; on the contrary, such
9 communications are often necessary. *See* Rule 21-209(A)(1), (3) NMRA comm.
10 cmt. 5 (permitting a judge to engage in ex parte communications for administrative
11 purposes and to communicate with other judges about a pending case). Moreover,
12 Plaintiff does not cite legal authority that would bar these communications, and we
13 assume no such authority exists. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031,
14 ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an argument, we
15 may assume no such authority exists.”). We therefore conclude that Plaintiff has not
16 demonstrated reversible error. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
17 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
18 cases, the burden is on the party opposing the proposed disposition to clearly point
19 out errors in fact or law.”).

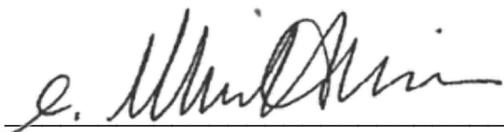
1 {4} Plaintiff also contends the district court erred in believing Defendant’s trial
2 testimony and evidence, in not giving Plaintiff’s testimony and evidence its due
3 weight, and in issuing a mutual restraining order rather than an order restraining only
4 Defendant. [MIO 2-8] We reiterate that the matter on appeal is the district court’s
5 March 6, 2025 order [RP 155], not the December 15, 2022 mutual restraining order
6 [RP 58], which Plaintiff did not appeal [CN 4]. Moreover, “[w]e will not reweigh
7 the evidence nor substitute our judgment for that of the fact-finder.” *See Clark v.*
8 *Clark*, 2014-NMCA-030, ¶ 26, 320 P.3d 991 (internal quotation marks and citation
9 omitted).

10 {5} The remaining issues raised in Plaintiff’s memorandum in opposition are not
11 responsive to this Court’s proposed disposition and therefore do not demonstrate
12 reversible error. *See Hennessy*, 1998-NMCA-036, ¶ 24. We affirm for the reasons
13 stated in our notice of proposed disposition.

14 {6} **IT IS SO ORDERED.**

15 
16 **JENNIFER L. ATTREP, Judge**

17 **WE CONCUR:**

18 
19 **J. MILES HANISEE, Judge**

20 
21 **SHAMMARA H. HENDERSON, Judge**