

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

2 **IN THE MATTER OF THE ESTATE**
3 **OF SHANE KAPINSKI, Deceased,**

Court of Appeals of New Mexico

Filed 2/17/2026 7:28 AM

4 **STACY SPERBER-MILLER,**



Mark Reynolds

5 Petitioner-Appellee,

6 v.

No. A-1-CA-42769

7 **ROBERT KAPINSKI and PATRICIA**
8 **PADILLA,**

9 Contestants/Counter-Petitioners-Appellants.

10 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

11 **Kathleen McGarry Ellenwood, District Court Judge**

12 Roepke Law Firm, LLC
13 Karl H. Roepke
14 Albuquerque, NM

15 for Appellee

16 The Soto Law Office, LLC
17 Ramón A. Soto
18 Albuquerque, NM

19 for Appellants

20 **MEMORANDUM OPINION**

21 **ATTREP, Judge.**

22 {1} Contestants appeal from the district court's denial of their motion to continue
23 the hearing on Contestants' motion to vacate previous orders finding decedent's will
24 valid and the district court's grant of Petitioner's motion to dismiss for lack of

1 standing to challenge the will. This Court issued a calendar notice proposing to
2 affirm. Contestants have filed a memorandum in opposition, which we have duly
3 considered. Unpersuaded, we affirm.

4 {2} Contestants' memorandum in opposition maintains that the district court erred
5 by denying their motion to continue the hearing on their motion to vacate previous
6 orders finding that the will was valid because it prevented them from presenting their
7 expert witness on handwriting to contest decedent's will. [MIO 4-7] In our calendar
8 notice, we proposed to conclude that the district court did not abuse its discretion
9 under the factors outlined in *State v. Torres*, 1999-NMSC-010, ¶ 10, 127 N.M. 20,
10 976 P.2d 20. It appeared from the record proper that

11 a continuance would delay reviewing a decision made over a year
12 previously; the district court found Petitioner's evidence establishing a
13 valid will credible; Contestants received a previous continuance in this
14 case; Contestants are attempting to reopen a decision of the district
15 court; and Contestants were previously unprepared to present their
16 witness.

17 [CN 4]

18 {3} Contestants' memorandum in opposition does not dispute the facts this Court
19 relied on in its proposed disposition. [MIO 4-7] Rather, Contestants rely on our
20 Supreme Court's opinion in *State v. Salazar*, 2007-NMSC-004, 141 N.M. 148, 152
21 P.3d 135, and out-of-state authority to establish that the district court abused its
22 discretion.

1 {4} We remain unpersuaded. *Salazar* involved a district court’s denial of a
2 *criminal defendant’s* motion to continue so that he could present evidence at his own
3 trial. *See id.* ¶¶ 14-17. We decline to equate the facts in *Salazar* to the facts of the
4 instant case—a denial of a petitioner’s motion to continue a hearing on their motion
5 to set aside a previously entered final judgment by the district court. Additionally,
6 the out-of-state authorities that Contestants now cite are not binding precedent on
7 this Court, and we decline to address them further when Contestants’ appeal is firmly
8 resolved by our own case law. *See In re N.M. Indirect Purchasers Microsoft Corp.*,
9 2007-NMCA-007, ¶ 11, 140 N.M. 879 149 P.3d 976 (explaining that out-of-state
10 law may provide guidance, but even then it may only be persuasive, not binding).

11 {5} Contestants’ memorandum in opposition also maintains that the district court
12 erred by granting Petitioner’s motion to dismiss for lack of standing to challenge the
13 will. [MIO 1-4] In our notice of proposed disposition, we proposed to affirm the
14 district court and conclude that Contestants are not interested persons to the probate
15 proceedings such that Contestants have standing to challenge the will because the
16 record did not support Contestants’ assertion that the decedent’s daughter consented
17 to Contestants representing her in the probate proceedings. [CN 5-7]

18 {6} Contestants maintain that they are interested parties under the Uniform
19 Probate Code’s priority-by-nomination mechanism because the decedent’s daughter
20 consented to their appointment. [MIO 2-3] *See* NMSA 1978, § 45-3-203(C) (2018).

1 But Contestants admit that the record proper does not contain an agreement allowing
2 Contestants to act as a fiduciary or otherwise on the daughter’s behalf, as required
3 by Section 45-3-203(C), the daughter has not otherwise appeared over the course of
4 the probate proceedings, and Contestants’ petition requests appointment as co-
5 personal representatives, not representatives acting on behalf of the daughter. [MIO
6 3] While Contestants argue that we should consider the daughter’s affidavit of
7 consent attached to their petition to be the same as the daughter “nominat[ing] a
8 qualified person to act as personal representative by an appropriate writing filed with
9 the court,” we decline to do so. *See id.*

10 {7} Contestants now argue that, if daughter failed to properly nominate
11 Contestants, the district court should have allowed Contestants to reasonably cure
12 this defect under Rule 1-017(A) NMRA. [MIO 3-4] Rule 1-017(A) states, “Where
13 it appears that an action, by reason of honest mistake, is not prosecuted in the name
14 of the real party in interest, the court may allow a reasonable time for ratification of
15 commencement of the action by, or joinder or substitution of, the real party interest.”
16 We are unpersuaded. First, Rule 1-017(A) does not require a district court provide a
17 reasonable time to cure defects. Rather, a district court may do so in its discretion.
18 *See id.*; *see also Crumpacker v. DeNaples*, 1998-NMCA-169, ¶ 28, 126 N.M. 288,
19 968 P.2d 799 (reviewing for an abuse of discretion). Second, while the district court
20 did not enter a written order granting Petitioner’s motion to dismiss until May 12,

1 2025, the district court entered an oral ruling to the same effect on May 6, 2024,
2 providing Contestants a year to resolve any defect. [RP 328] Third, as previously
3 discussed in the notice of proposed disposition, the daughter actively chose not to
4 appear in the probate proceedings, and we disagree that the district court was
5 required to involuntarily join her to support Contestants’ claim. [RP 329] Finally,
6 Contestants did not move to amend their petition, and doing so now over a year after
7 entry of final judgment would be prejudicial to Petitioner. *See Campos Enters., Inc.*
8 *v. Edwin K. Williams & Co.*, 1998-NMCA-131, ¶ 12, 125 N.M. 691, 964 P.2d 855
9 (“This Court reviews the case litigated below, not the case that is fleshed out for the
10 first time on appeal.” (text only) (citation omitted)); *see also Crumpacker*, 1998-
11 NMCA-169, ¶¶ 26-27 (explaining that part of the consideration for amending under
12 Rule 1-017(A) is whether the amendment would be prejudicial to the defendant).

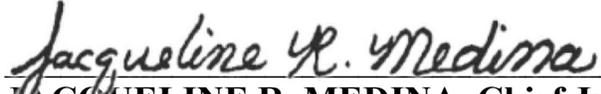
13 {8} In sum, Contestants have not asserted any facts, law, or argument in their
14 memorandum in opposition that persuades this Court that our notice of proposed
15 disposition was incorrect. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
16 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar
17 notice must come forward and specifically point out errors of law and fact,” and the
18 repetition of earlier arguments does not fulfill this requirement), *superseded by*
19 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
20 374; *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d

1 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden
2 is on the party opposing the proposed disposition to clearly point out errors in fact
3 or law.”). Accordingly, for the reasons stated in our notice of proposed disposition
4 and herein, we affirm.

5 {9} **IT IS SO ORDERED.**

6 
7 **JENNIFER L. ATTREP, Judge**

8 **WE CONCUR:**

9 
10 **JACQUELINE R. MEDINA, Chief Judge**

11 
12 **ZACHARY A. LIVES, Judge**