

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

2 **MAXIMINO AGUILAR,**

3 Plaintiff-Appellant,

4 v.

Court of Appeals of New Mexico

Filed 3/2/2026 7:10 AM



Mark Reynolds

No. A-1-CA-41765

5 **G.I. SGT. DELEON, OFFICER SANCHEZ,**
6 **MS. EARLY, MS. MORENO, LT. SOTO, and**
7 **MANAGEMENT TRAINING CORPORATION,**

8 Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

10 **Ellen R. Jessen, District Court Judge**

11 Maximino Aguilar
12 Chaparral, NM

13 Pro Se Appellant

14 Sutin Thayer & Browne APC
15 Christina Muscarella Gooch
16 Jared A. Greth
17 Albuquerque, NM

18 for Appellees

19 **MEMORANDUM OPINION**

20 **IVES, Judge.**

21 {1} Plaintiff appeals from the district court's order granting Defendants' motion
22 to dismiss for failure to state a claim upon which relief can be granted. We issued a
23 calendar notice proposing to affirm. Plaintiff has filed a memorandum in opposition,
24 and Defendants have filed a memorandum in support. We have carefully considered

1 both memoranda. Unpersuaded by Plaintiff’s argument that reversible error
2 occurred, we affirm.

3 {2} In his docketing statement, Plaintiff raised numerous issues. We proposed to
4 affirm. In his memorandum in opposition, Plaintiff has not provided any new facts,
5 argument, or authority to persuade us that our proposed disposition was erroneous.
6 A party responding to a summary calendar notice must come forward and
7 specifically point out errors of law and fact, and the repetition of earlier arguments
8 does not fulfill this requirement. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10,
9 107 N.M. 421, 759 P.2d 1003, *superseded by statute on other grounds as stated in*
10 *State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; *see also Hennessy v. Duryea*,
11 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly
12 held that, in summary calendar cases, the burden is on the party opposing the
13 proposed disposition to clearly point out errors in fact or law.”).

14 {3} Plaintiff instead relies on a petition for a writ of certiorari filed by a different
15 individual in a separate appeal. Plaintiff states that “the needed information is
16 located within the contents of the writ of certiorari . . . [and] in that pleading [this
17 Court] will see the relevance of this [r]epley and the writ of cert[iorari] as well as
18 other major issues going on with . . . Defendants.” [MIO 5] Plaintiff further states
19 that “all that is left to do is make the link to these commonalit[ies] and share these
20 features and the relationship to the claims [Defendant makes] regarding the illegal

1 and unethical treatment of all parties that are ‘in’ on this scheme.” [MIO 5] Finally,
2 Plaintiff points to Rule 11-201 NMRA, which governs judicial notice of adjudicative
3 facts. [MIO 4] Plaintiff states that “[t]his [j]udicial [n]otice demonstrates . . . the
4 actions and the[] illegal conduct by all relevant parties that have been described in
5 all recent [Court of Appeals] pleadings from [the individual who filed the petition
6 for writ of certiorari.]” [MIO 6]

7 {4} We note that the petition for writ of certiorari filed by another individual in a
8 separate appeal is not part of the record proper in this appeal, and we cannot consider
9 it because “[m]atters outside the record present no issue for review.” *Kepler v. Slade*,
10 1995-NMSC-035, ¶ 13, 119 N.M. 802, 896 P.2d 482 (internal quotation marks and
11 citation omitted); *see Durham v. Guest*, 2009-NMSC-007, ¶ 10, 145 N.M. 694, 204
12 P.3d 19 (noting that the “reference to facts not before the district court and not in the
13 record is inappropriate and a violation of our Rules of Appellate Procedure”).

14 {5} Regarding Plaintiff’s citation to Rule 11-201, we conclude that it is not
15 applicable to the issues Plaintiff has raised. Specifically, judicial notice, as
16 contemplated by Rule 11-201, “is a way for a court to accept facts ‘not subject to
17 reasonable dispute’ and can be accurately and readily determined from ‘sources
18 whose accuracy cannot reasonably be questioned.’” *State v. Valdez*, 2013-NMCA-
19 016, ¶ 20, 293 P.3d 909 (quoting Rule 11-201(B)(2)). “Judicial notice is reserved for
20 obvious facts, universally accepted as true.” *Valdez*, 2013-NMCA-016, ¶ 20.

1 Plaintiff has not established that the contents of the petition for certiorari are obvious
2 facts that are universally accepted as true. We also note that, based on our review
3 of the record proper and Plaintiff’s memorandum in opposition, the contents of the
4 petition for certiorari were not addressed by the district court in this case and are
5 therefore inappropriate for our review. *See Woolwine v. Furr’s, Inc.*, 1987-NMCA-
6 133, ¶ 20, 106 N.M. 492, 745 P.2d 717 (“To preserve an issue for review on appeal,
7 it must appear that appellant fairly invoked a ruling of the trial court on the same
8 grounds argued in the appellate court.”); *see also Kepler*, 1995-NMSC-035, ¶ 13
9 (“Matters outside the record present no issue for review.” (internal quotation marks
10 and citation omitted)).

11 {6} Finally, to the extent that Plaintiff argues that Defendants acted in bad faith
12 by filing a motion in support of our summary disposition, we disagree. Rule 12-
13 210(D)(2) NMRA, provides, in part, that “[t]he parties shall have twenty (20) days
14 from the date of service of the notice of proposed disposition to file and serve
15 a memorandum in opposition or *a memorandum in support.*” (emphasis added).
16 Because Defendants’ memorandum in support was filed within twenty days from
17 the date of our calendar notice, we are unpersuaded that they acted in bad faith.

18 {7} For the reasons stated in our notice of proposed disposition and herein, we
19 affirm.

1 {8} IT IS SO ORDERED.

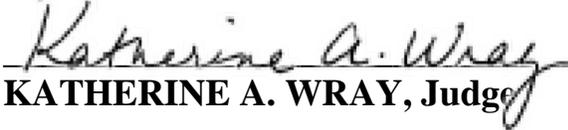


ZACHARY A. IVES, Judge

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3
4 WE CONCUR:



5
6 JANE B. YOCHALEM, Judge



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8 KATHERINE A. WRAY, Judge