

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

Court of Appeals of New Mexico

Filed 4/13/2026 7:19 AM

2 **IN THE MATTER OF THE CAROLINA**
3 **GONZALES LIVING TRUST,**
4 **RAFAEL T. GONZALES,**



Mark Reynolds

5 Petitioner-Appellant,

6 v.

No. A-1-CA-41502

7 **MARIA ELENA GONZALES LIRA,**
8 **MARIA BLANCA GONZALES**
9 **SAAVEDRA AND RAMON AUGUSTIN**
10 **GONZALES, AS TRUSTEES OF THE**
11 **CAROLINA M. GONZALES LIVING**
12 **TRUST, dated 1998, as restated,**

13 Respondents-Appellees.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
15 **Daniel E. Rameczyk, District Court Judge**

16 NM Trust & Probate Law Firm, LLC
17 Monica A. Davis
18 Albuquerque, NM

19 for Appellant

20 Vance, Chavez & Associates, LLC
21 James A. Chavez
22 Albuquerque, NM

23 for Appellees

1 **MEMORANDUM OPINION**

2 **HENDERSON, Judge.**

3 {1} Petitioner appeals from the district court’s grant of summary judgment in
4 Respondents’ favor. On appeal, we address three issues raised by Petitioner: (1)
5 whether the district court’s order should be reversed because it “did not state which
6 law(s) were applied” to grant summary judgment; (2) whether the district court erred
7 in considering statements contained in affidavits of two trustees as evidence
8 establishing Respondents’ prima facie case for summary judgment; and (3) whether
9 the district court erred in determining there was no genuine issue of material fact
10 precluding summary judgment. We affirm.

11 **BACKGROUND**

12 {2} This appeal follows years of litigation between Petitioner Rafael Gonzales and
13 his siblings, Respondents Maria Elena Gonzales Lira, Maria Blanca Gonzales
14 Saavedra, and Ramon Augustin Gonzales, regarding the administration of the
15 Carolina M. Gonzales Living Trust (the Trust). Originally created in 1992 and
16 restated in 1999, the Trust was formed by Carolina Gonzales, the mother of
17 Petitioner and Respondents, for the purpose of owning and administering all of
18 Ms. Gonzales’s assets to financially support her for her lifetime with income derived
19 from the Trust’s assets. The Trust corpus consisted of real property, state grazing
20 and mineral leases, and bank accounts. Ms. Gonzales was the primary beneficiary of

1 the Trust until her death in 2021, with remaining Trust assets to be distributed to her
2 children and grandchildren as successive beneficiaries according to a scheme
3 articulated in the Trust's sixth amendment.

4 {3} In May 2018, Petitioner filed a petition claiming that Respondents, as trustees,
5 had breached their fiduciary duties, the duty of impartiality, and the duty of loyalty.
6 The petition also sought an accounting and removal of the trustees. In October 2019,
7 Petitioner amended the petition alleging that the Trust violated an agreement
8 between himself and Ms. Gonzales for the sale of a grazing lease and added an
9 additional claim for breach of contract. Respondents denied Petitioner's allegations,
10 and in August 2020, Respondent Ramon Augustin Gonzales resigned as a trustee.

11 {4} In May 2023, Respondents filed a motion to dismiss or for summary
12 judgment, which was supported by affidavits of the two remaining trustees, Maria
13 Blanca Gonzales Saavedra and Maria Elena Gonzales Lira. Following two hearings,
14 the district court determined that Petitioner had not controverted any of the facts set
15 forth in Respondents' motion and affidavits through his own admissible evidence.
16 However, the district court requested supplemental briefing from the parties after
17 Petitioner again claimed that there were material facts in dispute.

18 {5} After holding a third hearing on Respondents' motion, the district court issued
19 an order granting summary judgment in Respondents' favor and dismissing
20 Petitioner's claims with prejudice. The district court found that Respondents met

1 their burden “to demonstrate there are no issues of material fact” while Petitioner
2 “failed to present any competent material that raised a material issue of fact.” The
3 district court did not make any other findings of fact or conclusions of law in its
4 order. Petitioner appeals.

5 **DISCUSSION**

6 {6} On appeal, Petitioner argues that the district court erred in applying no law
7 before granting summary judgment, contests the admissibility of Respondents’
8 affidavits to the motion for summary judgment, and claims he raised genuine issues
9 of material fact requiring trial on the merits. We briefly address Petitioner’s first
10 claim of error before turning to his two main contentions.

11 {7} We review the grant of summary judgment de novo on appeal. *See Romero v.*
12 *Philip Morris, Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. Summary
13 judgment is appropriate when “there is no genuine issue as to any material fact and
14 . . . the moving party is entitled to judgment as a matter of law.” Rule 1-056(C)
15 NMRA. The district court may properly grant summary judgment where “reasonable
16 minds will not differ as to an issue of material fact,” viewing “the facts in a light
17 most favorable to the party opposing summary judgment and draw[ing] all
18 reasonable inferences in support of a trial on the merits.” *Romero*, 2010-NMSC-035,
19 ¶ 7 (internal quotation marks and citations omitted). While we review the grant of
20 summary judgment de novo, *id.*, the movant bears the “initial burden of establishing

1 a prima case for summary judgment.” *Id.* ¶ 10. Upon the movant making a prima
2 facie showing, “the burden shifts to the non[]movant to demonstrate the existence of
3 specific evidentiary facts which would require trial on the merits.” *Id.* (internal
4 quotation marks and citation omitted). This requires the nonmovant to “show by
5 affidavits or other means, admissible evidence indicating material facts tending to
6 establish each required element of their claims.” *Blauwkamp v. Univ. of N.M. Hosp.*,
7 1992-NMCA-048, ¶ 18, 114 N.M. 228, 836 P.2d 1249.

8 {8} The nonmovant “may not simply argue that such evidentiary facts might exist,
9 nor may it rest upon the allegations of the complaint. Instead, the party opposing the
10 summary judgment motion must adduce evidence to justify trial on the issues.”
11 *Horne v. Los Alamos Nat’l Sec., L.L.C.*, 2013-NMSC-004, ¶ 15, 296 P.3d 478
12 (alteration, internal quotation marks, and citations omitted). “[I]t is the
13 [nonmovant’s] burden to demonstrate, by providing well-supported and clear
14 arguments, that the district court has erred.” *Premier Tr. of Nev., Inc. v. City of*
15 *Albuquerque*, 2021-NMCA-004, ¶ 10, 482 P.3d 1261. If the nonmovant “does not
16 so respond, summary judgment, if appropriate, shall be entered against [the
17 nonmovant].” Rule 1-056(E).

18 {9} First, Petitioner argues that the district court erred “in applying no law” to its
19 grant of summary judgment. Petitioner’s claim is based on a presumption that,
20 because the district court “did not state which law(s) were applied when rendering

1 its decision,” it applied none. However, Petitioner cites no authority asserting that
2 the district court’s order must contain its legal conclusions supporting a grant of
3 summary judgment. Where a party cites no authority to support an argument, we
4 may assume no such authority exists. *See Lee v. Lee (In re Adoption of Doe)*, 1984-
5 NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329. In fact, the weight of authority
6 contradicts Petitioner’s suggestion. New Mexico’s rules of civil procedure do not
7 require the district court to state its conclusions of law unless specifically requested
8 by a party to the litigation. *See* Rule 1-052(A) NMRA (stating that “[f]indings of
9 fact and conclusions of law are unnecessary” in decisions on certain motions,
10 including motions for summary judgment under Rule 1-056, unless “a party makes
11 a timely request”). In the summary judgment context, the district court only needs
12 to state “grounds” for granting summary judgment “[i]f alternative grounds for
13 summary judgment have been presented to the court,” Rule 1-056(C), which was not
14 the case here. We now turn to Petitioner’s argument that the district court
15 impermissibly considered evidence presented by Respondents in support of their
16 motion for summary judgment.

17 {10} Petitioner argues that the district court erred in considering “inadmissible
18 evidence” contained in near-identical affidavits of two trustees, Maria Blanca
19 Gonzales Saavedra and Maria Elena Gonzales Lira, which were attached to
20 Respondents’ motion for summary judgment. Petitioner contends that the district

1 court erred in considering the statements as evidence establishing Respondents’
2 prima facie case for summary judgment because the statements are “mostly hearsay”
3 and “lack foundation.”¹ We disagree and explain.

4 {11} Under Rule 1-056(E), “[s]upporting . . . affidavits shall be made on personal
5 knowledge, shall set forth such facts as would be admissible in evidence, and shall
6 show affirmatively that the affiant is competent to testify to the matters stated
7 therein. Sworn or certified copies of all papers or parts thereof referred to in an
8 affidavit shall be attached thereto or served therewith.” While our Supreme Court
9 has recognized that “[f]or purposes of summary judgment, facts set forth in affidavits
10 that are uncontroverted must be taken as true,” *V.P. Clarence Co. v. Colgate*, 1993-
11 NMSC-022, ¶ 7, 115 N.M. 471, 853 P.2d 722, it has also clarified that “[t]he *form*
12 of summary judgment evidence itself does not have to meet the requirements of
13 admissibility for trial evidence, but the *substance* of the evidence must be of a type
14 that can be admitted at trial.” *Seal v. Carlsbad Indep. Sch. Dist.*, 1993-NMSC-049,
15 ¶ 14, 116 N.M. 101, 860 P.2d 743; *see Wilde v. Westland Dev. Co.*, 2010-NMCA-
16 085, ¶ 28, 148 N.M. 627, 241 P.3d 628 (stating that a district court cannot consider

¹ Although Petitioner asserts on appeal that the statements made in Respondents’ affidavits lacked foundation, Petitioner leaves this claim wholly undeveloped in his briefing. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 (“This Court has no duty to review an argument that is not adequately developed.”). Thus, we decline to address this issue.

1 evidence at the summary judgment stage “if the *substance* of the evidence is
2 inadmissible at trial”).

3 {12} Petitioner claims to have “both in his [r]esponse and orally in the hearing on
4 the [motion for summary judgment], objected to the evidence as being mostly
5 hearsay.” However, Petitioner fails to identify which statements contained in the
6 affidavits he claims constitute inadmissible hearsay, refute Respondents’
7 explanations in the district court for why the statements were admissible, or show
8 that any hearsay was prejudicial. *See Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145
9 N.M. 451, 200 P.3d 104 (“We will not search the record for facts, arguments, and
10 rulings in order to support generalized arguments.”); Rule 12-318(A)(3) NMRA
11 (requiring briefs in chief to contain “a summary of the facts relevant to the issues
12 presented for review[, which] . . . shall contain citations to the record proper,
13 transcript of proceedings, or exhibits supporting each factual representation”). Based
14 on our independent review of the affidavits, we are unsure which statements
15 Petitioner claims constitute hearsay or what foundation was absent as the substance
16 of the affidavits set forth facts based upon the affiants’ personal knowledge about
17 Trust matters, which the affiants were competent to testify about as trustees. *See*
18 Rule 1-056(E). The affidavits were supplemented by substantial documentary
19 evidence, including copies of the Trust’s sixth amendment, recorded property deeds,
20 financial records, the GS2116 grazing lease termination letter, the GS2508 grazing

1 lease renewal contract, a settlement agreement, and land appraisal. Because it
2 appears that Respondents' affidavits were based on personal knowledge and would
3 be admissible at trial, we discern no error in the district court's consideration of the
4 affidavits to support Respondents' prima facie case for summary judgment.

5 {13} Finally, we address whether Petitioner has met his burden in demonstrating
6 the existence of specific evidentiary facts in dispute, which would require trial on
7 the merits. *See Romero*, 2010-NMSC-035, ¶ 10. In this case, the grant of summary
8 judgment disposed of all claims at issue in Petitioner's amended petition. Before
9 issuing its summary judgment order, the district court afforded Petitioner several
10 opportunities to identify a factual dispute during the hearings on Respondents'
11 motion and in giving Petitioner an opportunity to further flesh out his response to
12 Respondents' motion by allowing him to file a supplemental memorandum. The
13 district court determined that Respondents established a prima facie case for
14 summary judgment and Petitioner did not adduce any competent evidence
15 demonstrating a dispute of material fact.

16 {14} On appeal, Petitioner continues to claim a genuine issue of material fact exists
17 as to whether the trustees: (1) misappropriated Trust money, (2) failed to protect
18 trust assets by not bidding on the GS2116 grazing lease that the state had terminated,
19 (3) failed to fence land included in the GS2508 grazing lease so that it could be
20 leased to generate income, and (4) breached the land sale contract between Petitioner

1 and the Trust. However, Respondents did not dispute the truth of the facts asserted
2 by Petitioner—Respondents argued that the asserted facts were not material because
3 that evidence did not establish Petitioner’s claims as a matter of law. The district
4 court agreed and concluded that “assuming every fact in favor of the nonmovant” no
5 dispute existed “for a finder of fact to decide at trial” and that “nothing in the record
6 today” showed “that anything [Respondents] did was illegal or was fraudulent or
7 was a breach of their fiduciary duty.” When Petitioner asked specifically about the
8 misappropriation of Trust funds, the district court observed that although the
9 evidence was undisputed that the funds were taken, nothing established “that any
10 such removal of those assets or expenditure of that money was fraudulent or illegal.”
11 Petitioner’s briefing develops only a cursory argument related to the
12 misappropriation of Trust funds and is otherwise void of any argument that the
13 undisputed facts established the elements of his other claimed breaches. *See Elane*
14 *Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 (“To rule on an
15 inadequately briefed issue, this Court would have to develop the arguments itself,
16 effectively performing the parties’ work for them.”). Petitioner has not met his
17 burden in demonstrating the existence of a material fact in dispute. *See Horne*, 2013-
18 NMSC-004, ¶ 15; *Premier Tr. of Nev., Inc.*, 2021-NMCA-004, ¶ 10; Rule 12-
19 318(A)(3). Thus, we cannot say the district court erred by granting summary
20 judgment in Respondents’ favor.

1 **CONCLUSION**

2 {15} Based on the foregoing, we affirm.

3 {16} **IT IS SO ORDERED.**

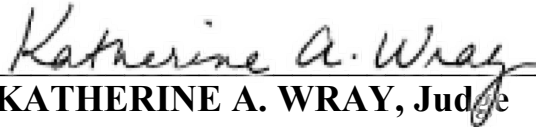


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5 **SHAMARA H. HENDERSON, Judge**

6 **WE CONCUR:**



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



9
10 **KATHERINE A. WRAY, Judge**