IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

DIANA Y. DEBACA MIRELES,
Personal Representative of the
ESTATE OF STELLA DEBACA,

Plaintiff-Appellee,

v. **No. A-1-CA-42588**

JUNE DEBACA and MARK DEBACA,

Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY
Amanda Sanchez Villalobos, District Court Judge

Tibo J. Chavez, Jr.
Belen, NM

for Appellee

Rocha de Gandara Law Firm
Jane Rocha de Gandara
Los Lunas, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} Defendants appeal following the district court's entry of an amended final judgment. [6 RP 1201-02] This Court issued a calendar notice proposing to summarily affirm. Defendants filed a memorandum in opposition and Plaintiff filed a memorandum in support, which we have duly considered. Defendants also filed a

motion to amend their docketing statement. We deny the motion to amend the docketing statement and affirm.

{2} In their memorandum, Defendants abandon their issue concerning adverse possession, [MIO 5] but continue to argue that the district court erred by not finding that Plaintiff was unjustly enriched, and thus the district court also erred by not imposing a constructive trust. [MIO 4] To prevail on a claim for unjust enrichment, a party must show that "(1) another has been knowingly benefitted at [their] expense (2) in a manner such that allowance of the other to retain the benefit would be unjust." *Ontiveros Insulation Co. v. Sanchez*, 2000-NMCA-051, ¶ 11, 129 N.M. 200, 3 P.3d 695. "[T]he judgment of the trial court will not be disturbed on appeal if the findings of fact entered by the trial court are supported by substantial evidence and are sufficient to support the judgment." *Sunwest Bank of Albuquerque, N.A. v. Colucci*, 1994-NMSC-027, ¶ 8, 117 N.M. 373, 872 P.2d 346. "[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

{3} As we noted in our calendar notice, Defendants do not challenge or otherwise discuss any of the factual findings of the district court. [CN 2] "[A]n appellant is bound by the findings of fact made below unless the appellant properly attacks the findings." *Martinez v. Sw. Landfills, Inc.*, 1993-NMCA-020, ¶ 18, 115 N.M. 181,

848 P.2d 1108. We therefore conclude that Defendants are bound by the district court's factual findings and that they are supported by substantial evidence.

{4} The district court found that Defendants had not established the value of the preexisting shop, before any construction work to convert the shop into a house, and that Defendants did not establish the value of their improvements as a potential offset to Plaintiff's lost rent. [6 RP 1144, 1149; CN 5] In their memorandum, Defendants contend only that they established that the rental value of the residence was $1,400-$1,500 a month and that because the residence "could last an additional 30 years" that Plaintiff is enriched by $540,000 "for future rental value not including the value of the residence." [MIO 4] However, Defendants do not address the benefit they received by living on the property rent-free for decades or the value of the preexisting shop before they made improvements to convert it into a residence. Defendants provide us no authority indicating they can recover solely based on the value of future rent alone in this circumstance. *See Lee v. Lee* (*In re Adoption of Doe*), 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (explaining that where arguments are not supported by cited authority, we presume counsel was unable to find supporting authority, will not research authority for counsel, and will not review issues unsupported by authority); *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 ("The presumption upon review favors the correctness of the trial court's actions. [The a]ppellant must affirmatively

demonstrate its assertion of error."). We therefore conclude that the district court did not err in finding that Plaintiff was not unjustly enriched. Because Defendants were not unjustly enriched, we further conclude that the district court did not abuse its discretion in not imposing a constructive trust. *See In re Est. of Duran*, 2003-NMSC-008, ¶ 35, 133 N.M. 553, 66 P.3d 326 ("The imposition of a constructive trust is an equitable remedy, and as such is within the broad discretion of the district court.").

{5} Defendants' memorandum next addresses the admission of the testimony from Diana DeBaca following the district court's oral ruling limiting her testimony to her role as personal representative. [MIO 5-8] However, we understand Defendants' assertions in this regard to be identical to what was presented in the docketing statement, although Defendants now acknowledge that the district court did not enter a written order and the ruling was only oral. [MIO 5] *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact" and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Defendants do not address our proposed conclusion from the calendar notice that a district court's oral ruling can be changed at any time or otherwise indicate how this amounted to reversible error. [CN 7] *See State v. Jaramillo*, 2004-NMCA-041, ¶ 16, 135 N.M. 322, 88 P.3d 264 ("[T]he

general rule is that an oral ruling can be changed at any time."). To the extent Defendants are asserting that the district court erred by "not following" its prior oral order, we conclude that it did not do so. [MIO 5]

{6} We understand Defendant's memorandum to be separately asserting that the district court abused its discretion in admitting Diana DeBaca's testimony because the testimony was not relevant and that the testimony was prejudicial. [MIO 6] *See Sandoval v. Gurley Props. Ltd.*, 2022-NMCA-004, ¶ 14, 503 P.3d 410 (stating that the standard of review for the exclusion of evidence is an abuse of discretion, but a complaining party must also show on appeal that the evidence was prejudicial to obtain a reversal). Because this issue was not raised in the docketing statement, we treat this contention as a motion to amend the docketing statement. In cases assigned to the summary calendar, this Court will grant a motion to amend the docketing statement to include additional issues if the motion (1) is timely, (2) states all facts material to a consideration of the new issues sought to be raised, (3) explains how the issues were properly preserved or why they may be raised for the first time on appeal, (4) demonstrates just cause or excuse by explaining why the issues were not originally raised in the docketing statement, and (5) complies in other respects with the appellate rules. *State v. Rael*, 1983-NMCA-081, ¶ 15, 100 N.M. 193, 668 P.2d 309. This Court will deny motions to amend that raise issues that are not viable, even if they allege fundamental or jurisdictional error. *State v. Moore*, 1989-NMCA-073,

¶¶ 44-45, 109 N.M. 119, 782 P.2d 91, *superseded by rule on other grounds as recognized in State v. Salgado*, 1991-NMCA-044, ¶ 2, 112 N.M. 537, 817 P.2d 730.

{7} According to Defendants' memorandum, Diana DeBaca "testified to the agreement she had with her parents to live on the property without paying rent and that she could not claim any of the improvements" and that she "testified to the agreement her daughter had with [Plaintiff] and the agreement her brother had with [Plaintiff] when they lived on the property." [MIO 5-6] Defendants assert that the district court failed to properly limit Diana DeBaca's "testimony to matters relevant to the issues in dispute, thereby exceeding the bounds of proper judicial discretion." [MIO 7]

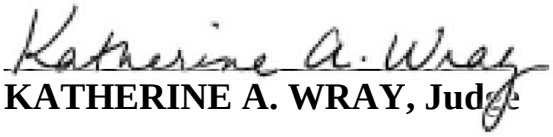
{8} "Relevant evidence is that which has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Kilgore v. Fuji Heavy Indus. Ltd.*, 2010-NMSC-040, ¶ 25, 148 N.M. 561, 240 P.3d 648 (internal quotation marks and citation omitted). Defendants' main claims in this matter relate to whether they were entitled to compensation for the improvements they made to the preexisting shop located on Plaintiff's property. Whether there were agreements in place that permitted other relatives other than Defendants to live on the property without the ability to claim improvements was therefore relevant. Additionally, Defendants again do not explain how this testimony was prejudicial other than baldly asserting

that this is the case. [MIO 5, 7] *See Sandoval*, 2022-NMCA-004, ¶ 14. We conclude that the district court did not abuse its discretion in admitting Diana DeBaca's testimony, and therefore this issue is not viable.

{9} Lastly, Defendants filed a separate motion to amend their docketing statement to add an additional issue. Defendants' motion contends that "[t]he additional issue is a procedural due process claim that is interrelated to the constructive trust and unjust enrichment claims which would address the duress and undue influence of the Plaintiff." [2-9-26 Mot. 1] In support, Defendants state that "[t]he [district c]ourt failed to complete the hearing on the [m]otion for [p]reliminary [i]njunction and [t]emporary [r]estraining [order] in which only the Plaintiff's testimony was taken which affected the [c]ourt[']s view of the evidence." [*Id.*] Defendants provide us with no additional details to evaluate this claim of error. We therefore conclude that the claim raised by Defendants in their motion to amend the docketing statement is also not viable. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what a party's arguments might be." (alteration, internal quotation marks, and citation omitted)); *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 ("We will not search the record for facts, arguments, and rulings in order to support generalized arguments.").

{10} Accordingly, for the reasons stated in our calendar notice and herein, we affirm. Defendants' motion to amend their docketing statement is **DENIED** as not viable.

{11} **IT IS SO ORDERED.**



KATHERINE A. WRAY, Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

SHAMMARA H. HENDERSON, Judge