

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

Court of Appeals of New Mexico
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2 **PRESBYTERIAN HEALTHCARE**
3 **SERVICES,**



Mark Reynolds

4 Plaintiff-Appellee,

5 v.

No. A-1-CA-43219

6 **MARIAN ALLEN,**

7 Defendant-Appellant.

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

9 **Nancy J. Franchini, District Court Judge**

10 Davis Miles, PLLC
11 Benjamin A. Jacobs
12 Albuquerque, NM

13 for Appellee

14 Marian Allen
15 Albuquerque, NM

16 Pro Se Appellant

17 **MEMORANDUM OPINION**

18 **MEDINA, Chief Judge.**

19 {1} Defendant, a self-represented litigant, appeals the district court's order
20 granting Plaintiff's motion for summary judgment. Unpersuaded that Defendant
21 demonstrated error, we issued a notice of proposed disposition, proposing to
22 summarily affirm. Defendant has responded to our notice with a memorandum in
23 opposition. We remain unpersuaded and affirm.

1 {2} Our notice proposed to reject the merits of Defendant’s contentions that there
2 were material factual issues that should preclude summary judgment [CN 1-5] and
3 that the sign-on bonus agreement was ambiguous as to whether Defendant would
4 need to repay a portion of the sign-on bonus [CN 5-7]. We also proposed to reject
5 Defendant’s contention that the district court erred by rejecting her equitable
6 defenses for the failure to provide adequate information and demonstrate error. [CN
7 7] Defendant’s response contains conclusory statements and demonstrates neither
8 district court error nor error in our notice. We explain below.

9 {3} We proposed to affirm on grounds that the record did not show that Defendant
10 submitted an affidavit or other admissible evidence to establish any facts or
11 demonstrate a fact issue for trial in order to defeat summary judgment. [CN 3] *See*
12 *Dow v. Chilili Coop. Ass’n*, 1986-NMSC-084, ¶ 13, 105 N.M. 52, 728 P.2d 462 (A
13 party opposing summary judgment “may not simply argue that [evidentiary] facts
14 [requiring a trial on the merits] might exist, nor may [the party] rest upon . . .
15 allegations.”). Defendant’s memorandum in opposition claims that she submitted
16 sworn factual assertions and documentary evidence that demonstrated the existence
17 of factual issues with respect to her claim of constructive discharge and her equitable
18 defenses. [MIO 2-4] However, Defendant does not specifically describe the evidence
19 she claims to have introduced and does not state when she introduced the evidence
20 or refer to the record proper showing the submission of this evidence, despite our

1 explicit instructions to do so. [CN 5] Because we see no indication in the record
2 proper that Defendant introduced evidence that created a material factual issue and
3 because Defendant continues to rely on conclusory claims about the record proper
4 and conclusory allegations of error without *demonstrating how* she created a
5 material factual issue that would defeat summary judgment, we conclude that
6 Defendant did not create a factual dispute. *See State v. Mondragon*, 1988-NMCA-
7 027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a
8 summary calendar notice must come forward and specifically point out errors of law
9 and fact, and explaining that the repetition of earlier arguments does not fulfill this
10 requirement), *superseded by statute on other grounds as stated in State v. Harris*,
11 2013-NMCA-031, ¶ 3, 297 P.3d 374.

12 {4} Our notice also proposed to affirm the district court’s conclusion that under
13 the circumstances, the sign-on bonus agreement unambiguously required repayment
14 from Defendant. [CN 5-7] As we explained in our notice, the sign-on bonus
15 agreement broadly states that should the Recipient “leave employment, for any
16 reason . . . [the] Recipient agrees to pay [Plaintiff] a pro-rated amount.” [RP 6 ¶ 5]
17 This broad repayment provision is followed by an exhaustive list of specific
18 exceptions that do not apply to Defendant’s situation. [CN 6] In response, Defendant
19 asserts that the district court’s “conclusion is inconsistent with New Mexico law”
20 [MIO 2], relying solely on the broad principle that “[a]mbiguity is a question fact,

1 not law” [Id. 3]. However, “[i]t is well established that whether a contractual
2 provision is ambiguous is a question of law, which we review de novo.” *Randles v.*
3 *Hanson*, 2011-NMCA-059, ¶ 26, 150 N.M. 362, 258 P.3d 1154 (alteration, internal
4 quotation marks, and citation omitted). An ambiguity exists if contract terms are
5 “subject to equally logical but conflicting interpretations.” *Id.* (internal quotation
6 marks and citation omitted). Defendant’s bare insistence that there is an ambiguity
7 in the relevant contract terms as applied to her does not persuade us that our proposed
8 affirmance was incorrect. *See Mondragon*, 1988-NMCA-027, ¶ 10.

9 {5} Lastly, we note that Defendant’s memorandum in opposition seems to claim
10 that our notice improperly imposed appellate burdens on her. [MIO 1-2] We
11 disagree. Our notice set forth the information that a docketing statement needs to
12 supply to this Court; it explained why Defendant’s docketing statement did not meet
13 these obligations; and it provided guidance for what Defendant should include in
14 any response she may wish to file. [CN 3-5] *See* Rule 12-208(D)(3), (5) NMRA;
15 *State v. Chamberlain*, 1989-NMCA-082, ¶ 11, 109 N.M. 173, 783 P.2d 483;
16 *Thornton v. Gamble*, 1984-NMCA-093, ¶ 18, 101 N.M. 764, 688 P.2d 1268. Instead
17 of responding to our notice by satisfying her obligations as the appellant,
18 Defendant’s memorandum in opposition contends “the record proper—not the
19 docketing statement—controls appellate review.” [MIO 1] This is inconsistent with
20 our rules and case law. *See State v. Talley*, 1985-NMCA-058, ¶ 23, 103 N.M. 33,

1 702 P.2d 353 (explaining that the docketing statement is intended to serve as a fair
2 substitute for the complete record on the summary calendar); *Chamberlain*, 1989-
3 NMCA-082, ¶ 11 (stating that where an appellant fails in the obligation under Rule
4 12-208 to provide us with a summary of all the facts material to consideration of the
5 issue raised on appeal, we cannot grant relief on the ground asserted). Although it is
6 not our obligation to comb the record to find evidence to support Defendant’s
7 contentions, we have reviewed the limited record proper before us and do not see
8 where Defendant introduced evidence to support her theories and defenses. *See Muse*
9 *v. Muse*, 2009-NMCA-003, ¶ 42, 145 N.M. 451, 200 P.3d 104 (“We are not obligated
10 to search the record on a party’s behalf to locate support for propositions a party
11 advances or representations of counsel as to what occurred in the proceedings.”); *In*
12 *re Estate of Heeter*, 1992-NMCA-032, ¶ 15, 113 N.M. 691, 831 P.2d 990 (“This
13 [C]ourt will not search the record to find evidence to support an appellant’s
14 claims.”). As a result, it was crucial for Defendant to specifically describe any
15 evidence she may have presented, how she presented it, how Plaintiff responded to
16 it, and how she demonstrated district court error. Defendant did not satisfy these
17 obligations, and the record before us does not support her claims of a factual dispute
18 or an ambiguity in the contract. Thus, we are not persuaded Defendant has
19 demonstrated that the district court erred by granting summary judgment.

20 {6} For the reasons stated above, and in our notice, we affirm.

1 {7} IT IS SO ORDERED.

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Jacqueline R. Medina

JACQUELINE R. MEDINA, Chief Judge

4 WE CONCUR:

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J. Miles Hanisee

J. MILES HANISEE, Judge

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Katherine A. Wray

KATHERINE A. WRAY, Judge