

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

Court of Appeals of New Mexico  
Filed 6/18/2026 9:48 AM

2 **DONALD BOYCE, ROBERT A. LINDSAY,**  
3 **and ERIK NYQUIST, on behalf of themselves**  
4 **and all others similarly situated,**



Mark Reynolds

5 Plaintiffs-Appellees,

6 and

7 **ERICA V. OLIVAS,**

8 Objecting Plaintiff-Appellant,

9 v.

**No. A-1-CA-41325**

10 **DESERT PALMS APARTMENTS LIMITED**  
11 **PARTNERSHIP, a New Mexico limited**  
12 **partnership,**

13 Defendant-Appellee.

14 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**  
15 **Manuel I. Arrieta, District Court Judge**

16 Law Office of Jamison Barkley, LLC  
17 Jamison Berkley  
18 Santa Fe, NM

19 Coyle & Benoit, P.L.L.C.  
20 Christopher Benoit  
21 El Paso, TX

22 for Appellees

1 The Furth Law Firm P.A.  
2 Ben Furth  
3 Paul Hibner  
4 Las Cruces, NM

5 for Appellant

6 Butt, Thornton & Baehr, P.C.  
7 Neil R. Blake  
8 Rheba Rutkowski  
9 Albuquerque, NM

10 for Defendant-Appellee

11 **MEMORANDUM OPINION**

12 **ATTREP, Judge.**

13 {1} This appeal stems from an underlying class action lawsuit between  
14 Defendant-Appellee Desert Palms Apartments (the Apartments) and Plaintiffs-  
15 Appellees, a class of former and current tenants of the Apartments (the Class).  
16 Following the successful negotiation of a class action settlement (the Settlement),  
17 counsel for the Class (Class Counsel or Benoit) filed a motion for attorney fees and  
18 costs (the Fee Motion). The Fee Motion, in relevant part, requested that the district  
19 court order disbursement of funds to Class Counsel in the amount of 30 percent of  
20 the common fund settlement for attorney fees incurred in the course of administering  
21 the Class, as well as costs. The Fee Motion sought division of the fees and costs  
22 between Class Counsel and the Class’s former counsel, Angel L. Saenz (Saenz), who  
23 faced disciplinary proceedings before the New Mexico Supreme Court regarding

1 misconduct in his administration and representation of the Class and its members.  
2 The Fee Motion represented that this division of fees and costs would be in  
3 accordance with a fee-and-cost sharing agreement entered between Benoit and Saenz  
4 and approved by the Class representatives. Objector-Appellant Erica V. Olivas  
5 (Objector)—a member of the Class—objected to the Fee Motion, arguing that  
6 Saenz’s misconduct and the New Mexico Supreme Court’s disciplinary order barred  
7 him from receiving his portion of fees and costs under the fee-and-cost sharing  
8 agreement. To some extent, Objector additionally challenged the award of fees and  
9 costs to Benoit. The district court denied Objector’s objections, made extensive  
10 findings of fact and conclusions of law, and entered an order approving the  
11 Settlement and granting the Fee Motion. On appeal, Objector argues that the district  
12 court erred in awarding attorney fees and costs to both Saenz and Benoit. While this  
13 case was pending on appeal, Saenz disclaimed any right to his portion of attorney  
14 fees and costs, with the Class stipulating to redistribution of these funds to the Class  
15 pro rata. Based on this disclaimer and stipulation, we reverse the district court’s  
16 award of attorney fees and costs to Saenz; we otherwise affirm.

17 **DISCUSSION**

18 {2} Objector first argues that the district court erred in awarding Saenz his fees  
19 and costs, given Saenz’s misconduct and the New Mexico Supreme Court’s  
20 disciplinary order. Objector next argues that the district court erred in awarding fees

1 and costs to Benoit, because, according to Objector, Benoit acted against the interest  
2 of the Class by aiding Saenz. We address these claims in turn.

3 **I. The Class Concedes All Issues Pertaining to the Conduct of Saenz and**  
4 **His Fees and Costs**

5 {3} After briefing was completed in this appeal, the Class filed a motion to  
6 supplement the record with a declaration from Saenz, disclaiming his interest in any  
7 and all fees and costs awarded to him by the district court. Objector opposed the  
8 motion, arguing that (1) the motion seeks to add new evidence to the record as  
9 opposed to simply correcting or modifying the record; (2) regardless of Saenz’s  
10 declaration, a determination on the merits as to Saenz’s misconduct is necessary to  
11 resolve the dispute about the award of fees and costs to Benoit; and (3) public policy  
12 considerations necessitate a determination on the merits by this Court on all of the  
13 issues.

14 {4} We agree with Objector that the Class’s motion does not seek supplementation  
15 as contemplated by the Rules of Appellate Procedure. Under these rules, a party may  
16 supplement the record only “[i]f anything material to either party is omitted from the  
17 record proper by error or accident.” *See* Rule 12-209(C) NMRA. This does not allow  
18 for the submission of new evidence or material into the record on appeal, especially  
19 where such material was not presented to the district court. *Cf. Durham v. Guest*,  
20 2009-NMSC-007, ¶ 9, 145 N.M. 694, 204 P.3d 19 (“Reference to exhibits not in the  
21 record proper and not presented to the district court for consideration is improper

1 and a violation of the Rules of Appellate Procedure.”). We, however, do not end our  
2 analysis here.

3 {5} Rather than attempting to submit new evidence to this Court, it appears the  
4 Class is simply attempting to concede several issues on appeal—specifically those  
5 pertaining to the award of attorney fees and costs to Saenz. Although this Court is  
6 not obligated to accept a party’s concessions on appeal, we see no barrier to doing  
7 so here. *See State v. Guerra*, 2012-NMSC-027, ¶ 9, 284 P.3d 1076 (accepting a  
8 party’s concessions on appeal, while noting that the decision to do so is  
9 discretionary); *see also Atlas Elec. Constr. Inc. v. Flintco, LLC*, 2024-NMCA-046,  
10 ¶¶ 9-10, 550 P.3d 881 (accepting and relying on the parties’ concessions on appeal).

11 We do not read the Class’s motion to suggest that the issues pertaining to Benoit’s  
12 receipt of fees and costs are resolved by Saenz’s declaration, nor are we persuaded  
13 by Objector’s claims that public policy concerns require us to review the conceded  
14 issues. Based on the concessions by the Class, the ultimate resolution of the issues  
15 pertaining to the award of attorney fees and costs to Saenz is clear: Saenz will not  
16 receive his attorney fees and costs. If this Court were to proceed in light of these  
17 developments, it would be doing so unnecessarily. *See Crutchfield v. N.M. Dep’t of*  
18 *Tax’n & Revenue*, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 (explaining  
19 that “[a] reviewing court generally does not decide academic or moot questions”).

20 We see little value in analyzing whether Saenz is entitled to receive fees and costs

1 in which he has disclaimed any interest. We therefore accept the Class’s concession  
2 that Saenz is not entitled to his fees and costs and grant the Class’s motion to  
3 supplement the record to this extent. We proceed to the resolution of the remaining  
4 issues on appeal pertaining to Class Counsel.

5 **II. The District Court Did Not Err in Awarding Fees and Costs to Class**  
6 **Counsel**

7 {6} Objector argues that current Class Counsel, Benoit, is similarly not entitled to  
8 attorney fees and costs because, by opposing her objections to any award to Saenz,  
9 Class Counsel aided Saenz in violating the New Mexico Supreme Court’s  
10 disciplinary order and prioritized Saenz’s interests over the interests of the Class.  
11 Objector further argues that both Class Counsel and the district court breached their  
12 fiduciary duties to the Class. We conclude that Objector has not met her burden of  
13 demonstrating that the district court erred in its award of attorney fees and costs to  
14 Class Counsel. *See Corona v. Corona*, 2014-NMCA-071, ¶ 26, 329 P.3d 701 (“The  
15 appellate court presumes that the district court is correct, and the burden is on the  
16 appellant to clearly demonstrate that the district court erred.”).

17 {7} Because Objector raised the subject of Benoit’s alleged misconduct for the  
18 first time at the hearing on the Fee Motion, there was minimal factual development  
19 of these issues below. It is for this reason that the Class argues that Objector did not  
20 preserve these issues. For the most part, we disagree. It is true, as the Class points  
21 out, that Objector did not challenge Benoit’s fee and cost request in her filed

1 objections. Further, because Objector did not argue at the hearing that Class Counsel  
2 and the district court breached fiduciary duties, this issue was not preserved for our  
3 review. *See Benz v. Town Ctr. Land, LLC.*, 2013-NMCA-111, ¶ 24, 314 P.3d 688  
4 (providing that in order to properly preserve an issue for appeal, “it must appear that  
5 appellant fairly invoked a ruling of the trial court on the same grounds argued in the  
6 appellate court” (internal quotation marks and citation omitted)). As for the  
7 remaining issues pertaining to Benoit’s fees and costs, we conclude these were  
8 preserved. Objector identified three reasons at the hearing why Saenz’s conduct  
9 precluded an award of fees and costs and then argued that because Benoit opposed  
10 her objections, “all three” reasons precluded Benoit from collecting his fees and  
11 costs. Benoit responded, the district court questioned Objector about the claims, and  
12 in its ruling, the district court rejected “any issue of ethical claims raised here.” This  
13 suffices for preservation. *See Sandoval v. Baker Hughes Oilfield Operations, Inc.*,  
14 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791 (explaining that the purposes  
15 of the preservation rule are to (1) inform the district court of the issue, (2) allow the  
16 opposing party the opportunity to adequately and fairly respond, and (3) “to create a  
17 record sufficient to allow this Court to make an informed decision regarding the  
18 contested issue”).

19 {8} Turning to the merits, we observe that Objector provides little relevant legal  
20 authority to support the proposition that Class Counsel was not entitled to fees for

1 work previously performed or costs already incurred because Class Counsel  
2 advocated for Saenz to receive his fees and costs pursuant to the fee-and-cost sharing  
3 agreement. *See Curry v. Great Nw. Ins. Co.*, 2014-NMSC-031, ¶ 28, 320 P.3d 482  
4 (“Where a party cites no authority to support an argument, we may assume no such  
5 authority exists.”). We therefore do not consider Objector’s arguments to involve  
6 the misapprehension of the law or the application of the incorrect law. *See In re N.M.*  
7 *Indirect Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 6, 140 N.M. 879, 149  
8 P.3d 976 (noting that we review de novo whether the district court has made “[a]  
9 discretionary decision based on a misapprehension of the law” or “the question of  
10 whether the correct law has been applied and the district court’s application of that  
11 law to the facts”). Instead, we consider Objector’s arguments to be that the award of  
12 fees and costs to Benoit was unreasonable under the circumstances. *See id.*  
13 (providing that an appellate court will only reverse an award of attorney fees for an  
14 abuse of discretion where “it is contrary to logic and reason” (text only) (citation  
15 omitted)). In that light, “an award of attorney’s fees on the basis of reasonable  
16 compensation is a finding not to be disturbed unless patently erroneous as reflecting  
17 an abuse of discretion.” *Hertz v. Hertz*, 1983-NMSC-004, ¶ 43, 99 N.M. 320, 657  
18 P.2d 1169 (text only) (citation omitted).

19 {9} In granting Benoit fees and costs, the district court heard Objector’s  
20 arguments, reviewed the evidence, and indicated its awareness of the entire

1 proceeding. Among the circumstances relied on by the district court, the court noted  
2 that Benoit consulted an expert on the New Mexico Rules of Professional Conduct  
3 prior to entering the fee-and-cost sharing agreement. Further, the district court  
4 observed, Saenz and Benoit negotiated and signed the fee-and-cost sharing  
5 agreement before the New Mexico Supreme Court entered an order barring Saenz's  
6 continued "involvement" in the case; and in any event, the district court found that  
7 the order did not prohibit Saenz from receiving fees for work performed or costs  
8 incurred prior to his withdrawal. The Class representatives approved the fee-and-  
9 cost sharing agreement, as well as agreed to the amount that the Settlement allocated  
10 for fees and costs. Benoit disclosed the proposed fee-sharing ratio to the district  
11 court, even though the Settlement would have permitted Benoit to simply receive  
12 30 percent of the settlement common fund and disburse to Saenz separately. At the  
13 hearing on the Fee Motion, Benoit explained that he responded in opposition to  
14 Objector's position because his role was to defend the Settlement for the benefit of  
15 the Class and to endeavor to resolve the matter as expeditiously as possible.

16 {10} Under these circumstances, we discern no abuse of discretion in the district  
17 court's decision to overrule Objector's objections as to Benoit's alleged misconduct  
18 and to award Class Counsel attorney fees and costs. *See In re N.M. Indirect*  
19 *Purchasers Microsoft Corp.*, 2007-NMCA-007, ¶ 6 ("[W]e review a discretionary

1 decision for an abuse of discretion and reverse only if it is contrary to logic and  
2 reason.” (alteration, internal quotation marks, and citation omitted)).

3 **CONCLUSION**

4 {11} For the foregoing reasons, and in accordance with the Class’s concessions on  
5 appeal, we reverse the district court’s award of attorney fees and costs to Saenz, and  
6 we remand to the district court for recalculation of attorney fees and costs and  
7 redistribution to the Class of the attorney fees and costs previously awarded to Saenz.

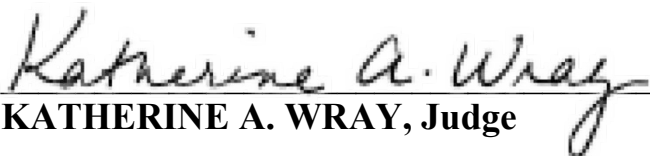
8 Otherwise, we affirm.

9 {12} **IT IS SO ORDERED.**

10   
11 **JENNIFER L. ATTREY, Judge**

12 **WE CONCUR:**

13   
14 **SHAMMARA H. HENDERSON, Judge**

15   
16 **KATHERINE A. WRAY, Judge**