

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

Court of Appeals of New Mexico  
Filed 6/2/2026 8:50 AM

2 **ELLEN M. BACA,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

**No. A-1-CA-42880**

5 **DAN CASH III and PINNACLE**  
6 **REAL ESTATE GROUP, LLC,**  
7 **a New Mexico Corporation,**

8 Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
10 **Victor S. Lopez, District Court Judge**

11 Ellen Baca  
12 Albuquerque, NM

13 Pro Se Appellant

14 Dixon, Scholl, Carrillo, P.A.  
15 Dennis W. Hill  
16 Jeannie Hunt  
17 Albuquerque, NM

18 Curtis & Co.  
19 Mark A. Metzgar  
20 Albuquerque, NM

21 for Appellees

22 **MEMORANDUM OPINION**

23 **WRAY, Judge.**

24 {1} Plaintiff appeals from the district court's order granting Defendants' motion  
25 to dismiss her amended complaint. This Court issued a calendar notice proposing to

1 affirm in part and reverse in part. Plaintiff filed a memorandum opposing those  
2 portions of the calendar notice proposing affirmance. To date, Defendants have not  
3 filed a memorandum in opposition, and their time for doing so has now run. Having  
4 considered Plaintiff's arguments, we affirm in part and reverse in part.

5 {2} In her memorandum, Plaintiff maintains the district court erred in dismissing  
6 her amended complaint with prejudice without leave to amend. [MIO 2-3] Citing  
7 *Allred v. Board of Regents of the University of New Mexico*, 1997-NMCA-070, 123  
8 N.M. 545, 943 P.2d 579, Plaintiff contends the district court must consider factors  
9 such as prejudice to the opposing party, interference with the judicial process, and  
10 culpability of the litigant before dismissing an action with prejudice. [MIO 2] *Allred*,  
11 however, is not apposite, as it dealt with dismissal as a sanction under Rule 1-037  
12 NMRA for the plaintiff's noncompliance with discovery obligations. *Id.* ¶ 17.  
13 Plaintiff cites no authority to support her contention that those factors should be  
14 applied in the present case, where the district court dismissed claims under Rule 1-  
15 012(B)(6) NMRA for failure to state a claim on which relief can be granted. [RP  
16 217-18 ¶¶ 20, 28] *See ITT Educ. Servs., Inc. v. N.M. Tax'n & Revenue Dep't*, 1998-  
17 NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969 (refusing to consider a proposition  
18 that was unsupported by citation to authority). Moreover, Plaintiff does not address  
19 our proposed conclusion that Plaintiff did not preserve this issue for review by  
20 asking the district court for leave to amend and by presenting viable alternative

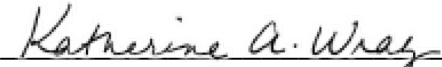
1 claims. [CN 8-9] *See State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758  
2 P.2d 306 (stating that when a case is decided on the summary calendar, an issue is  
3 deemed abandoned when a party fails to respond to the proposed disposition of that  
4 issue).

5 {3} Plaintiff’s remaining arguments do not persuade us that this Court’s proposed  
6 summary disposition was in error and do not otherwise impact our analysis or our  
7 disposition of this case. As such, we affirm in part and reverse in part for the reasons  
8 stated in our notice of proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-  
9 036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in  
10 summary calendar cases, the burden is on the party opposing the proposed  
11 disposition to clearly point out errors in fact or law.”); *State v. Mondragon*, 1988-  
12 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding  
13 to a summary calendar notice must come forward and specifically point out errors  
14 of law and fact,” and the repetition of earlier arguments does not fulfill this  
15 requirement), *superseded by statute on other grounds as stated in State v. Harris*,  
16 2013-NMCA-031, ¶ 3, 297 P.3d 374.

17 {4} Accordingly, we reverse the district court’s dismissal of Counts 1, 2, and 4 for  
18 failure to state a claim, affirm the district court’s dismissal of Counts 3 and 5 and its  
19 order striking Plaintiff’s April 18, 2025 exhibit list and accompanying exhibits filed

1 for the April 21, 2025 hearing, and remand to the district court for further  
2 proceedings consistent with this memorandum opinion.

3 {5} **IT IS SO ORDERED.**

4   
5 **KATHERINE A. WRAY, Judge**

6 **WE CONCUR:**

7   
8 **ZACHARY A. IVES, Judge**

9   
10 **SHAMMARA H. HENDERSON, Judge**