

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

2 **JOE BEN SANDERS,**

3 Plaintiff-Appellee,

4 v.

5 **DEBBIE REED LEWIS,**

6 Defendant-Appellant.

Court of Appeals of New Mexico  
Filed 6/29/2026 12:11 PM



Mark Reynolds

**No. A-1-CA-42726**

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **Ellen R. Jessen, District Court Judge**

9 Joe Ben Sanders

10 Tularosa, NM

11 Pro Se Appellee

12 Debbie Reed Lewis

13 Tularosa, NM

14 Pro Se Appellant

15 **MEMORANDUM OPINION**

16 **IVES, Judge.**

17 {1} Defendant appeals from the district court's judgment following bench trial on  
18 a breach of contract claim regarding an oral real estate transaction. We issued a  
19 notice of proposed summary affirmance. Following Defendant's lack of response to  
20 the calendar notice, this Court entered an affirmance. Defendant subsequently  
21 moved for an extension of time to file her memorandum in response, which we

1 granted. Defendant filed a memorandum in opposition with this Court, which we  
2 have duly considered. Remaining unpersuaded, we affirm.

3 {2} On appeal, Defendant maintains that the judgment against her was invalid  
4 because it was entered after the presiding district court judge’s retirement. [MIO 2]  
5 Defendant attaches to her memorandum in opposition what appears to be a news  
6 article published on March 24, 2025, indicating that the judge was planning to retire  
7 on March 31, 2025, which would have been two days before the entry of judgment  
8 on April 2, 2025. [Id.; RP 58-65] Nevertheless, this document presents matters  
9 outside our appellate record and cannot be considered for the first time on appeal.

10 *See King v. Allstate Ins. Co.*, 2004-NMCA-031, ¶ 20, 135 N.M. 206, 86 P.3d 631  
11 (“It is improper for a party to attach to its briefs documents that were not part of the  
12 record below.”); *Campos Enters., Inc. v. Edwin K. Williams & Co.*, 1998-NMCA-  
13 131, ¶ 12, 125 N.M. 691, 964 P.2d 855 (explaining that this Court reviews only  
14 matters that were presented to the trial court); *State v. Harrison*, 2010-NMSC-038,  
15 ¶ 10, 148 N.M. 500, 238 P.3d 869 (“Matters outside the record present no issue for  
16 review.” (internal quotation marks and citation omitted)). Even if we were able to  
17 consider Defendant’s attachment, we note that a news article discussing a future  
18 planned retirement date is insufficient to establish reversible error on the part of the  
19 district court. *See State v. Carlos A.*, 1996-NMCA-082, ¶ 8, 122 N.M. 241, 923 P.2d  
20 608 (“[T]here is a presumption of correctness in the rulings or decisions of the trial

1 court and the party claiming error must clearly show error.”). Because Defendant  
2 has not established that these facts were presented to the district court, and the record  
3 available to us on appeal does not demonstrate error in the district court’s final order,  
4 we affirm on this issue.

5 {3} Defendant also maintains that the district court deprived her of due process by  
6 granting specific performance as a remedy in this case. [MIO 3; CN 3] As we noted  
7 in the calendar notice, specific performance is an available remedy for a successful  
8 breach of contract claim. *See Found. Mins., LLC v. Montgomery*, 2024-NMCA-008,  
9 ¶ 34, 562 P.3d 593 (explaining that “[s]pecific performance is an equitable remedy—  
10 not a separate cause of action—that may be awarded at the district court’s discretion  
11 upon a showing of breach of contract” (alteration, internal quotation marks, and  
12 citations omitted)). There is no fact, law, or argument contained in Defendant’s  
13 memorandum in opposition that persuades us that the district court abused its  
14 discretion in awarding specific performance following judgment on this claim of  
15 breach of contract. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421,  
16 759 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must  
17 come forward and specifically point out errors of law and fact” and the repetition of  
18 earlier arguments does not fulfill this requirement), *superseded by statute on other*  
19 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We affirm  
20 on this issue.

1 {4} Defendant next contends that the district erred in finding that the parties  
2 agreed to a contract that did not include conditions precedent, asserting that  
3 Plaintiff's maps of the property were not formal surveys and that payments alone do  
4 not constitute a conveyance of property. [MIO 3, 15] As we noted in the calendar  
5 notice, the district court found that Defendant accepted two-thirds of the payments  
6 for the land from Plaintiff without satisfaction of Defendant's preconditions, which  
7 the district court deemed substantial performance on this oral contract. [CN 4-5] The  
8 district court's decision was not based on Plaintiff's maps being formal surveys or  
9 the doctrine of adverse possession, as Defendant suggests. [MIO 15-16; RP 58-65]  
10 Though Defendant contends that payments alone do not transfer title [MIO 15], the  
11 district court found that the parties entered an oral agreement to sell the property as  
12 supported by Plaintiff's testimony [RP 58-59 ¶¶ 3-4]. Again, there is no fact, law, or  
13 argument contained in Defendant's memorandum in opposition that persuades this  
14 Court that our notice of proposed disposition was incorrect, and we affirm on these  
15 issues. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d  
16 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden  
17 is on the party opposing the proposed disposition to clearly point out errors in fact  
18 or law."); *Mondragon*, 1988-NMCA-027, ¶ 10 (same).

19 {5} Defendant lastly suggests that the district court erred in determining the statute  
20 of frauds did not apply to this oral contract for land because the facts of this case do

1 not rise to the level of inequity that happened in *Beaver v. Brumlow*, 2010-NMCA-  
2 033, 148 N.M. 172, 231 P.3d 628. [MIO 16, 18] Defendant notes that Plaintiff never  
3 created a permanent structure on the land, only removed bushes, and did not install  
4 utilities. [MIO 17] Defendant also contends, seemingly for the first time, that she  
5 declined payments once she determined that Plaintiff “breached the understanding  
6 and refused to sign a written agreement.” [MIO 18]

7 {6} In *Beaver*, this Court acknowledged the part performance exception to the  
8 statute of frauds, which applies when an oral contract “has been performed to such  
9 extent as to make it inequitable to deny effect thereto.” 2010-NMCA-033, ¶ 18. This  
10 Court noted that this exception usually applies when a party “tak[es] possession of  
11 the property, and mak[es] valuable, permanent, and substantial improvements to the  
12 property.” *Id.* ¶ 21. Though Defendant suggests Plaintiff failed to make permanent  
13 improvements to the property, the district court’s order notes that Plaintiff “cleared  
14 a right of way onto the land at issue, tied it off, gated it, [and] created a pad and put  
15 a cabin/storage unit on the property.” [RP 59 ¶ 9] The gate, the pad, and clearing the  
16 right of way all were valuable, permanent, and substantial improvements like those  
17 contemplated in *Beaver*. *See id.* As we observed in the calendar notice, this case also  
18 presents a stronger basis for a partial performance exception because Defendant  
19 accepted payments of over \$20,000 from Plaintiff for the land, unlike the defendant  
20 in *Beaver*. [CN 6] To the extent that Defendant now claims she rejected Plaintiff’s

1 payments, that assertion contradicts the evidence supporting the district court’s  
2 factual findings that she did indeed accept the payments [RP 59 ¶ 10], and this Court  
3 will not reweigh the evidence on appeal. *See Las Cruces Pro. Fire Fighters v. City*  
4 *of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177 (stating that  
5 “we will not reweigh the evidence nor substitute our judgment for that of the  
6 fact[-]finder”). Accordingly, we cannot say that the district court erred in its decision  
7 that part performance had been executed and that it would be inequitable to enforce  
8 the statute of frauds. *See Beaver*, 2010-NMCA-033, ¶¶ 17-18. We affirm on this  
9 issue.

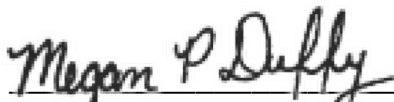
10 {7} For the foregoing reasons and those stated in our notice of proposed  
11 disposition and herein, we affirm.

12 {8} **IT IS SO ORDERED.**



**ZACHARY A. IVES, Judge**

15 **WE CONCUR:**



**MEGAN P. DUFFY, Judge**



**JANE B. YOHALEM, Judge**