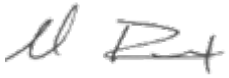
IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO



ALFREDO OROZCO,

Plaintiff-Appellant,

v.

No. A-1-CA-42373

AIMBANK, a Texas limited liability corporation; PLATINUM BANK, a Texas corporation; TYE CHRISTENSEN, an Individual; SAMUEL HAWTHORNE, an Individual; DAX D. VOSS, an Individual; TORY GILES, an Individual; and TRISH VERGILI, an Individual; ASSURANT COMMERCIAL CAPITAL, LLC, a Texas limited liability corporation; ELITE ACCOUNTING, a New Mexico accounting business; BRANDON BENNETT, an Individual; JOHN MOORE, an Individual; JAQUEDA MERIDETH, an Individual; GREG GARRETT, an Individual; and NATHAN VILLALOBOS, an Individual,

Defendants Appellees.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Lee A. Kirksey, District Court Judge

Alfredo Orozco
Hobbs, NM

Pro Se Appellant

Bigbee & Curtis, LLP
Andrew B. Curtis
Kinzie R. Johnson
Lubbock, TX

for Appellees AimBank, Platnum Bank, Tye Christensen

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Leslie McCarthy Apodaca
Albuquerque, NM

for Appellees Samuel Hawthorne and Dax D. Voss

Hinkle Shanor LLP
Lucas M. Williams
Paige Taylor
Roswell, NM

for Appellees Tory Giles and Trish Vergili

Martin & Lutz, P.C.
David P. Lutz
Las Cruces, NM

for Appellee Greg Garrett

Atkins, Hollman, Jones, Peacock, Lewis & Lyon, Inc.
Alex E. Reynolds
Odessa, TX

for Appellee Nathan Villalobos

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Plaintiff appeals following the district court's entry of a judgment on the pleadings, which dismissed Defendant Greg Garrett from the action below. [RP 789]

We entered a calendar notice, proposing to affirm. Plaintiff filed a memorandum in opposition to that notice, which we have duly considered. Unpersuaded, we affirm.

{2} Plaintiff's memorandum in opposition provides us with no basis to reevaluate our proposed conclusions in the calendar notice as to all three issues Plaintiff presented in his docketing statement. As to Plaintiff's first issue that the district court erred in not adding the certification language from Rule 1-054(B) NMRA into several orders Plaintiff seeks to appeal from, we note that Plaintiff's contentions regarding this issue are identical to what was presented in the docketing statement. [DS 6-9; MIO 1-3] In our calendar notice we proposed to affirm the district court because "the plain language of Rule 1-054(B) permits, but does not require, a district court to add the certification language allowing an appeal from an order that would otherwise be nonfinal." [CN 2] Further, we also proposed to disagree with Plaintiff's assertion that our prior mandate in A-1-CA-41497 required the district court to amend any of its orders to add the certification language from Rule 1-054(B). [Id.] Because Plaintiff's contentions in his memorandum in opposition are identical to those in the docketing statement and because Plaintiff does not directly address our proposed disposition, we conclude that Plaintiff has not demonstrated our calendar notice was in error as to this issue. [MIO 2] *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.

{3} As to Plaintiff's second issue, we noted in the calendar notice that Plaintiff had not provided us a sufficient factual basis to evaluate his contentions that the district court erred in failing to consider the discovery rule. [CN 3-4] In his memorandum in opposition, Plaintiff directs us only to the allegations in his first amended complaint filed on June 6, 2022. [MIO 3-4] However, these factual contentions do not provide us with any basis to evaluate whether the district court erred.

{4} Based on our review of the first amended complaint, we note that it states five causes of action against the fourteen different defendants in this matter who were mostly dismissed at various times. [RP 12-22, 791-802] Plaintiff provides us with no contentions related to how the discovery rule applies to each cause of action against each defendant and does not explain how the issue was raised and addressed below. Consequently, this Court would be required to conduct the relevant analysis on Plaintiff's behalf based solely on the allegations contained in the first amended complaint, which we decline to do. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to entertain a cursory argument that included no explanation of the party's argument and no facts that

would allow this Court to evaluate the claim). Further, Plaintiff provides us with no authority indicating that the discovery rule is applicable in this circumstance and this Court does not conduct research on behalf of an appellant. *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). Indeed, it was Plaintiff's burden to establish that the district court erred. *See 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. [An a]ppellant must affirmatively demonstrate its assertion of error."). We therefore affirm the district court as to this issue.

{5} Lastly, we address Plaintiff's third issue from the docketing statement, which related to whether the district court was required to hold a hearing before granting summary judgment pursuant to Rule 1-056 NMRA. We note that we are unclear as to whether the district court relied on Rule 1-056 in entering any of the orders Plaintiff appealed from. [RP 791-802] Regardless, in our calendar notice we relied on our prior case law concluding that an oral hearing is not required before a district court grants summary judgment. [CN 4] *See Nat'l Excess Ins. Co. v. Bingham*, 1987-NMCA-109, ¶ 9, 106 N.M. 325, 742 P.2d 537. In the memorandum in opposition,

Plaintiff asserts that "[w]hile not always required by the rule, many judges in New Mexico allow or prefer oral arguments on dispositive motions like summary judgment to ensure they fully understand the arguments." [MIO 7] Whether certain judges have such a preference is irrelevant to determining whether the district court committed reversible error in this circumstance by granting summary judgment without an oral hearing. Because Plaintiff has not established that our reliance on *National Excess Insurance Co.* was incorrect, we conclude that the district court did not err. *See Mondragon*, 1988-NMCA-027, ¶ 10; *Farmers, Inc.*, 1990-NMSC-100, ¶ 8.

{6} Accordingly, for the reasons stated in our calendar notice and herein, we affirm.

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

Jacqueline R. Medina

JACQUELINE R. MEDINA, Chief Judge

WE CONCUR:

Megan P Duffy

MEGAN P. DUFFY, Judge

ZACHARY A. IVES, Judge