

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

Court of Appeals of New Mexico
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2 **ALLEN L. LUETTGEN,**

3 Petitioner-Appellee,



Mark Reynolds

4 v.

No. A-1-CA-41917

5 **IRENE H. LUETTGEN,**

6 Respondent-Appellant.

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

8 **Gerard J. Lavelle, District Court Judge**

9 Ellison & Martinez Family Law, LLC

10 Linda L. Ellison

11 Albuquerque, NM

12 for Appellee

13 Bately Riley Family Law

14 L. Helen Bennett

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **YOHALEM, Judge.**

19 {1} Respondent Irene H. Luetgen (Wife) appeals the district court's order

20 requiring that she reimburse her ex-husband, Petitioner Allen L. Luetgen (Husband)

21 \$281,108, pursuant to their 2008 marriage settlement agreement (MSA), which

22 provides that the expenses of the marital home until it is sold be divided between

23 Husband and Wife, with Wife paying 45 percent and Husband 55 percent of the

1 expenses for the home and that any profit from the sale of the home be divided
2 equally between Husband and Wife. For the reasons stated below, we affirm.

3 **BACKGROUND**

4 {2} The parties were married in 1988 and divorced in September 2008. Using
5 forms adopted by the courts to assist pro se litigants in divorce proceedings, the
6 parties agreed to the terms of a MSA without the assistance of counsel. The parties’
7 principal asset was the marital home (the home). The MSA provides, in relevant
8 part, (1) that both parties would live in the home “[u]ntil the home sells[and] pay
9 expenses, including utility bills” as follows, “[Wife] will pay 45 [percent] of the
10 expenses [and Husband] will pay 55 [percent] of the expenses”; and (2) that both
11 parties would cooperate in the sale of the home, and keep the home in “showing
12 condition.” With respect to the home, the MSA also provides: “Any profits or debit
13 will be split equally.”

14 {3} The parties anticipated a swift sale of the home. The MSA includes a general
15 provision stating that all of the assets and debts would be divided by August 6, 2009.
16 Due to the drop in real estate values precipitated by the 2008 mortgage crisis, the
17 parties discovered that the home was underwater and if they sold it, they would owe
18 money that neither had the resources to pay, rather than making a profit. With
19 foreclosure threatening, and the parties planning for Wife to move out of the home
20 into her own house, Wife quitclaimed the home to Husband in order to allow

1 Husband to refinance the mortgage in his name. Husband continued to live in the
2 home. The parties did not modify the MSA. Neither party returned to court, and the
3 MSA terms were left in place for more than thirteen years.

4 {4} On April 4, 2022, Wife filed this action to enforce the MSA. Wife asked the
5 district court to order the sale of the home, and then to divide the profit from that
6 sale pursuant to the terms of the MSA, or to order Husband to refinance and pay
7 Wife her share of the proceeds. Husband argued in response that Wife had sold her
8 interest in the home to him in 2009, giving him a quitclaim deed in return for a loan
9 to buy a house.

10 {5} The district court held an evidentiary hearing on Wife's motion to enforce the
11 MSA on August 30, 2022. Wife sought the enforcement of the MSA as written,
12 contending that she had never intended to give up her 50 percent ownership of the
13 home and that she remained entitled to half the profit from the home. At the hearing,
14 Wife's attorney estimated the sale value of the home as approximately \$1.2 million.
15 Wife testified that the quitclaim deed to Husband was simply a device to allow
16 Husband to refinance the home in his name and avoid foreclosure. Husband argued
17 that the quitclaim deed represented the sale of Wife's interest in the home to him.

1 {6} The district court agreed with Wife that her interest in the home had not been
2 sold to Husband,¹ agreed to order either the sale of the home or allow Husband to
3 buy-out Wife's interest in the home through refinancing, held that Wife was entitled
4 to half the profit after the expenses were split between the parties as set out in the
5 MSA, and directed the parties to present an accounting of the expenses for the home
6 during the thirteen years the home was owned jointly by the parties so these expenses
7 could be subtracted from any profit in the percentages set by the MSA. The effect of
8 the court's order was to grant the requests made by Wife in her April 4, 2022 motion,
9 and at the August 30, 2022 hearing on that motion. The district court acknowledged
10 that if there was disagreement about the expenses, another hearing might be
11 necessary to resolve that dispute.

12 {7} On December 14, 2022, Husband filed a motion asking the district court to
13 determine the amount of allowable expenses for the home under the terms of the
14 MSA during the thirteen years he occupied the home after the divorce, the parties
15 being unable to agree on what expenses were to be divided between the parties. The
16 court referred the matter to a settlement facilitator. The parties agreed to the

¹The evidence in the record supports the district court's finding that Husband loaned Wife \$25,000 from his separate retirement account so she could buy a house for herself and the children of the marriage. Although the parties argued about the significance of the quitclaim deed and the promissory note showing the loan to Wife, the district court's finding that these transactions were not intended to and did not change the joint ownership of the home is supported by substantial evidence in the record.

1 appointment of a special master to sell the home but did not reach agreement on the
2 allowable expenses.

3 {8} The district court held an evidentiary hearing on January 10, 2024, to resolve
4 the issue of the amount of allowable, reimbursable expenses incurred by Husband
5 for the home. The district court found that the MSA did not clearly define the
6 “expenses” the parties intended to divide other than to say that the utilities would be
7 divided. Based on the evidence at the hearing, the court found that the amount
8 remaining to be paid on the mortgage, the costs of insurance on the home, the
9 property taxes, and expenses for maintenance not performed by Husband. The
10 district court also included utilities in the calculation, pursuant to an explicit term of
11 the MSA providing for the division of the utilities between the parties. Based on
12 amounts extensively documented in the exhibits by Husband and explained in his
13 testimony, the court found that 45 percent of the total expenditures that qualified as
14 expenses under the MSA added up to \$281,108. Wife would be required to deduct
15 that amount from any profit from the sale of the home or to reimburse Husband if
16 there was no profit.

17 {9} Wife filed a motion to reconsider the expenses she was ordered to pay “in
18 light of new facts and evidence presented by [the] special master.” The parties had
19 learned from the special master that the value of the home was significantly below
20 Wife’s expectation of the \$1.2 million estimated by her counsel at the August 2022

1 hearing. Even the original listing price of \$900,000 was reduced based on structural
2 defects discovered by an inspection. At a sale price of \$550,000, the net equity in
3 the home for each of the parties was likely exceeded by the expenses owed.

4 {10} Wife’s motion for reconsideration argued that her expenses should be reduced
5 based on Husband’s alleged sabotage of the home’s septic system, malfeasance in
6 maintaining the home over the years, and alleged interference with the sale of the
7 home. The district court denied the motion, finding no merit to Wife’s contentions
8 that Husband deliberately allowed the property to fall into disrepair or sabotaged the
9 septic system to prevent her from receiving any equity from the sale of the home.

10 The district court noted that Husband shared Wife’s interest in maximizing the sale
11 value of the home, and found it highly unlikely that Husband would have maliciously
12 reduced the value of the home against his own interests. The district court found that
13 the reason for the sale of the home not meeting Wife’s expectation of a value of
14 \$900,000 or \$1.2 million was that both parties “grossly overestimated the value of
15 the real property.” The court further found that the parties’ valuation of the home
16 was unrealistic at the time they agreed to the MSA. Even at that time, the court found
17 that any profit from the sale of the home was doubtful.

1 **DISCUSSION**

2 {11} As best we can tell, Wife raises two arguments on appeal: first, she claims that
3 Husband’s refinancing of the mortgage on the home should be treated as the separate
4 debt of Husband. Second, Wife argues that the district court’s construction of the
5 MSA’s requirement that “expenses” for the home be shared by Husband and Wife
6 was unfair and inequitable because the district court failed to take into account the
7 unanticipated delay in the sale of the home. Finding these arguments to be
8 inadequately developed or unpreserved, we affirm.

9 **I. Wife’s Argument That the Refinanced Mortgage Is Separate Debt Is Not**
10 **Adequately Developed**

11 {12} Wife argues on appeal that the district court “erred in requiring Wife to
12 reimburse Husband” for the post-refinance mortgage payments because the
13 mortgage debt outstanding from the time of the refinance was “solely and entirely
14 Husband’s.” We find Wife’s argument to be inadequately developed to warrant
15 review on appeal.

16 {13} Wife points this Court to the general principle that “a debt contracted or
17 incurred by a spouse . . . after entry of a decree of dissolution of marriage” is a
18 separate debt. *See* NMSA 1978, § 40-3-9(A)(1) (1983); *see also Zemke v. Zemke*,
19 1993-NMCA-067, ¶ 18, 116 N.M. 114, 860 P.2d 756 (providing that a debt “takes
20 its status as community or separate property at the time and by the manner of its
21 acquisition” (internal quotation marks and citation omitted)). Wife, however, does

1 not elaborate on her apparent assumption that the refinanced mortgage debt at issue
2 here should be considered to be a newly incurred debt, nor does she direct us to any
3 specific authority to support such a contention. *See Corona v. Corona*, 2014-NMCA-
4 071, ¶ 28, 329 P.3d 701 (“This Court has no duty to review an argument that is not
5 adequately developed.”); *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320
6 P.3d 482 (“Where a party cites no authority to support an argument, we may assume
7 no such authority exists.”).

8 {14} To the extent that Wife intends to claim that the refinancing converted the
9 mortgage into Husband’s separate debt under the plain terms of the MSA, this
10 argument fares no better. In her brief in chief, Wife broadly refers to the MSA’s
11 provisions concerning “the incursion of separate debt,” but she does not identify
12 those provisions with specificity, and she offers no explanation as to how the plain
13 terms of the MSA required a finding by the district court that the refinanced
14 mortgage debt was incurred solely for Husband’s benefit.

15 {15} To the extent Wife intends to rely on her assertion in her brief in chief that
16 Husband “used the [home] as collateral for debts that benefitted only himself,” Wife
17 fails to cite to any evidence in the record supporting the truth of this allegation. Most
18 importantly for purposes of our review, Wife fails to properly challenge the district
19 court’s finding to the contrary—that the remaining mortgage debt was an allowable
20 expense *for the home*. To properly challenge a factual finding on appeal, the

1 challenging party “must clearly indicate the findings that it wishes to challenge and
2 must provide this Court with a summary of all the evidence bearing on the finding,
3 including the evidence that supports the [district] court’s determination, regardless
4 of interpretation.” *Aspen Landscaping, Inc. v. Longford Homes of N.M., Inc.*, 2004-
5 NMCA-063, ¶ 28, 135 N.M. 607, 92 P.3d 53. This Court views the evidence in the
6 light most favorable to the findings below, and the challenging party must outline
7 “why the . . . evidence [unfavorable to their challenge on appeal] does not amount
8 to substantial evidence.” *Id.* Wife has not complied with any part of this required
9 procedure for challenging a district court’s findings. In particular, Wife does not
10 disclose in her briefing that Husband testified that he refinanced the mortgage
11 periodically solely to lower the interest rate and did not take any pocket cash,
12 substantial evidence which supports the district court’s finding that the refinanced
13 mortgage was an allowable expense used solely for the home.

14 {16} In Wife’s reply brief, she points for the first time to a term of the MSA
15 providing that “[a]ny money that one of us borrows after we have both signed [the
16 MSA] will be the debt of, and owed by, that person only.” Even if we entertain
17 Wife’s late-raised argument, this argument would fail for the same reasons described
18 above. That is, Wife fails to explain or support her proposition that Husband’s
19 refinancing of the mortgage debt on the marital home was the type of after-borrowed
20 debt contemplated by the terms of the MSA, or to properly attack the findings of the

1 district court that Husband’s refinancing was an allowable expense for the home.
2 We accordingly decline to consider Wife’s separate debt argument any further. *See*
3 *Corona*, 2014-NMCA-071, ¶ 28; *Curry*, 2014-NMCA-031, ¶ 28.

4 **II. Wife’s Argument About Fair and Equitable Division of Expenses Is Not**
5 **Preserved and, Even If Preserved, Is Otherwise Undeveloped for Our**
6 **Review on Appeal**

7 {17} Wife complains that the district court failed to account for the rental value of
8 the home during the thirteen years Husband lived there, divided the utilities equally
9 under the terms of the MSA when Husband alone benefitted from them, and made
10 Wife pay for personal loans that were couched as mortgage refinancing, but that
11 benefitted only Husband. For the reasons that follow, we conclude this argument
12 was not preserved and that, like Wife’s first argument, it relies on facts contrary to
13 the court’s findings without including a developed argument showing that the court’s
14 findings are not supported by substantial evidence.

15 {18} “[O]n appeal, the party must specifically point out where, in the record, the
16 party invoked the court’s ruling on the issue. Absent that citation to the record or
17 any obvious preservation, we will not consider the issue.” *Crutchfield v. N.M. Dep’t*
18 *of Tax’n & Revenue*, 2005-NMCA-022, ¶ 14, 137 N.M. 26, 106 P.3d 1273. In
19 arguing her second claim of error was preserved, Wife cites generally to each motion
20 and hearing without noting the particular pages or places in the transcripts these
21 issues were raised and where a ruling from the court was sought or obtained. *See*

1 Rule 12-318(A)(4) NMRA (requiring that for each issue in an appellant’s brief in
2 chief, “a statement explaining how the issue was preserved in the court below, with
3 citations to [the] record proper, transcript of proceedings, or exhibits relied on”).

4 {19} Our review of the record has not revealed any preservation by Wife of her
5 argument that the district court was required to fashion an equitable solution that
6 took into account the unanticipated delay in the sale of the home. Indeed, in the
7 motions and responses, and at the evidentiary hearings in the district court, Wife
8 argued the opposite of what she now claims on appeal—asking the district court to
9 strictly enforce the terms of the MSA and ignore the thirteen intervening years. Wife
10 argued that the home was never sold, as required by the MSA, and that the provisions
11 of the MSA, therefore, remain in effect as written and must be executed by requiring
12 Husband to sell the home.

13 {20} Wife also did not object to the district court’s summary of its decision, at the
14 conclusion of the evidentiary hearing on her motion to enforce the MSA in August
15 2022. The court plainly stated its intent to subtract from the sale price of the home
16 the “expenses” as provided in the MSA, including the balance remaining on the
17 mortgage, utility costs, and the costs of maintaining the home over the thirteen years
18 since the district court entered the MSA.

19 {21} At the hearing in January 2024, where the expenses incurred by Husband were
20 in issue, Wife cross-examined Husband on the calculation of each expense, and

1 argued that the improvements to the home made by Husband, which were not
2 authorized by her, should not be included as expenses. Wife also objected to the
3 value of the Husband’s labor being included in maintenance costs for the home. Wife
4 prevailed on these challenges to the expenses. The court did not include the cost of
5 improvements, and did not allow Husband to include a value for his labor in the
6 maintenance expenses. However, Wife did not argue that the expenses identified by
7 the court as reimbursable under the MSA were unfair because they failed to account
8 for benefits that inured only to Husband, as Wife now argues on appeal.

9 {22} After the special master determined that the value of the home was half of
10 what Wife assumed it was worth, Wife filed a motion for reconsideration of the
11 district court’s calculation of expenses. Wife argued that the court should reduce the
12 share of expenses allotted to her based on what she alleged was sabotage by Husband
13 of the septic system, Husband’s interference with the showing and sale of the home,
14 and Husband’s malfeasance in caring for the home. Even on reconsideration, Wife
15 did not argue that the district court’s identification of allowable “expenses” under
16 the MSA was inequitable or unfair because they unfairly subsidized Husband’s
17 living expenses, including his rent, utilities, and personal loans over a thirteen-year
18 period, as she now claims on appeal.

19 {23} Preservation is not a mere formality—it allows the district court to correct any
20 potential error, avoiding the need for appeal. *See Madrid v. Roybal*, 1991-NMCA-

1 068, ¶ 7, 112 N.M. 354, 815 P.2d 650. Preservation ensures that the opposing party
2 has an opportunity to meet and defend against the objection raised. *See State v. Bell*,
3 2015-NMCA-028, ¶ 2, 345 P.3d 342. Finally, preservation ensures that a sufficient
4 record is created to allow this Court to review the district court’s decision for error.
5 *See Morga v. Fedex Ground Package Sys., Inc.*, 2018-NMCA-039, ¶ 39, 420 P.3d
6 586 (noting that one of the purposes of the preservation rule is “to create a record
7 sufficient to allow this Court to make an informed decision regarding the contested
8 issue” (internal quotation marks and citation omitted)). This Court reviews “the case
9 litigated below, not the case that is fleshed out for the first time on appeal.” *Cubra*
10 *v. State ex rel. Child., Youth & Fams. Dep’t*, 1996-NMCA-035, ¶ 13, 121 N.M. 465.
11 “Issues not properly raised in the [district] court and on which a ruling by the
12 [district] court was not properly invoked will not be considered on appeal.” *Skarda*
13 *v. Skarda*, 1975-NMSC-031, ¶ 30, 88 N.M. 130, 537 P.2d 1392.

14 {24} Even if Wife had preserved this issue, she again does not offer a developed
15 argument in her briefs on appeal challenging the findings of the district court either
16 as to her claim that Husband benefitted from personal loans that were couched as
17 mortgage refinancing, or as to Wife’s claim that the district court failed to allocate
18 an amount equivalent to rent and utilities to Husband alone. We have already
19 discussed Wife’s failure to properly challenge the court’s finding that the mortgage

1 refinancing was solely a loan for the home, and not a personal loan for Husband, as
2 Wife again argues, and we will not repeat that discussion.

3 {25} Wife’s claim that the district court’s findings of fact fail to allocate an amount
4 for monthly living expenses—rent and utilities—to Husband is similarly not
5 supported by anything other than Wife’s unsupported allegations in her brief on
6 appeal. Wife is mistaken. Under the district court’s calculations of expenses for the
7 home in its findings of fact, the court assigns to Husband alone the payment of the
8 mortgage monthly for the thirteen years he lived in the home. The court does not
9 require Wife to share the expense of these monthly mortgage payments—they are
10 simply excluded from the remaining balance of the mortgage left to be divided
11 between the parties. In other words, the court’s calculations require no
12 reimbursement from Wife for these monthly mortgage payments. Wife does not
13 offer any explanation or evidence to support her claim that the unreimbursed
14 monthly payments of interest and principal by Husband was insufficient to cover
15 both a reasonable rent and the payment of utilities monthly. We accordingly decline
16 to consider Wife’s argument that the court’s allocation of expenses was inequitable
17 any further. *See Corona*, 2014-NMCA-071, ¶ 28

18 **CONCLUSION**

19 {26} For the reasons stated, we affirm the judgment of the district court.

1 {27} IT IS SO ORDERED.

2
3



JANE B. YCHALEM, Judge

4 WE CONCUR:

5
6



JENNIFER L. ATTKEP, Judge

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8



KRISTOPHER N. HOUGHTON, Judge