

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 8/10/2026 7:29 AM

ROBERT LEE JUDKINS,

Plaintiff-Appellant,

v.

No. A-1-CA-42871

ANGEL FIRE CHALETS HOA,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF COLFAX COUNTY

Steven A. Romero, District Court Judge

Robert Lee Judkins

Angel Fire, NM

Pro Se Appellant

Alcaraz Law, P.A.

Jason R. Alcaraz

Victor A. Hall

Albuquerque, NM

for Appellee

MEMORANDUM OPINION

MEDINA, Chief Judge.

{1} Plaintiff appeals from the district court's order granting Defendant's motion for summary judgment on Plaintiff's claims for breach of duty and damages related to Plaintiff's membership with Defendant. This Court issued a calendar notice proposing to affirm. Plaintiff has filed a memorandum in opposition, a memorandum in support of Plaintiff's memorandum in opposition, a supplemental addendum

1 regarding Defendant’s statutory identity, and a motion for certification of a question
2 of law to our Supreme Court, all of which we have duly considered. Unpersuaded,
3 we affirm. Because we affirm, we deny Plaintiff’s motion for certification of a
4 question of law to our Supreme Court.

5 {2} In our notice of proposed disposition, this Court proposed to affirm on all
6 issues because we could determine only one assertion of error in the docketing
7 statement and the docketing statement failed to provide sufficient information to
8 properly review Plaintiff’s claim of error on appeal. [SCN 2-5] In Plaintiff’s
9 memorandum in opposition, Plaintiff now presents two arguments for our review:
10 (1) the district court erred in granting Defendant’s motion for summary judgment
11 because Plaintiff presented evidence that created a genuine issue of material fact
12 which the district court ignored in its decision in favor of Defendant’s
13 misrepresentations in Defendant’s motion [MIO PDF 1-2, ¶¶ 1, 3]; and (2) the
14 district court’s grant of Defendant’s motion for summary judgment violated
15 Plaintiff’s right to a jury trial. [MIO PDF 2, ¶ 2]

16 {3} For Plaintiff’s first argument, Plaintiff asserts that “the record contains
17 substantial evidence creating triable issues,” citing to Plaintiff’s “[twenty-eight]
18 pages of verified claims & photos” attached to Plaintiff’s complaint. [MIO PDF 2-
19 3; RP 4-30] Plaintiff claims “[t]he [d]istrict [c]ourt disregarded [Plaintiff]’s
20 evidence,” “accepted allegedly altered declarations,” and accuses Defendant’s

1 counsel of violating Rule 16-303 NMRA “by making material misrepresentation.”

2 [MIO PDF 3]

3 {4} We review the district court’s grant of summary judgment de novo. *Encinias*
4 *v. Whitener Law Firm, P.A.*, 2013-NMSC-045, ¶ 6, 310 P.3d 611. “On appeal from
5 the grant of summary judgment, we ordinarily review the whole record in the light
6 most favorable to the party opposing summary judgment to determine if there is any
7 evidence that places a genuine issue of material fact in dispute.” *City of Albuquerque*
8 *v. BPLW Architects & Eng’rs, Inc.*, 2009-NMCA-081, ¶ 7, 146 N.M. 717, 213 P.3d
9 1146. “Summary judgment is appropriate where there are no genuine issues of
10 material fact and the movant is entitled to judgment as a matter of law.” *Self v. United*
11 *Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582.

12 {5} Rule 1-056 NMRA outlines the standards for summary judgment, pursuant to
13 which a party moving for summary judgment is required to show a right to judgment
14 as a matter of law on the basis of facts that are not in dispute. *See* Rule 1-056(D)(2)
15 (requiring that the movant “set out a concise statement of all the material facts”).
16 “The movant need only make a prima facie showing that [it] is entitled to summary
17 judgment. Upon the movant making a prima facie showing, the burden shifts to the
18 party opposing the motion to demonstrate the existence of specific evidentiary facts
19 which would require trial on the merits.” *Bank of N.Y. Mellon v. Lopes*, 2014-
20 NMCA-097, ¶ 6, 336 P.3d 443 (internal quotation marks and citation omitted).

1 {6} In Defendant’s motion for summary judgment, Defendant cited Plaintiff’s
2 interrogatory answers and Plaintiff’s deposition in which Plaintiff admitted to either
3 not seeking damages, unable to prove damages, or refused to produce documents
4 during discovery because Plaintiff lacked evidence to support his claims under
5 Plaintiff’s agreement with Defendant. [RP 205-09 (Defendant’s undisputed material
6 facts); 337-38 (hearing log notes); 361 (order granting)] As a result, Defendant made
7 a prima facie showing that it was entitled to summary judgment, and it was Plaintiff’s
8 burden “to demonstrate the existence of specific evidentiary facts that would require
9 a trial on the merits.” *Id.* (internal quotation marks and citation omitted). In
10 Plaintiff’s response, Plaintiff did not cite to specific evidentiary facts but instead
11 repeated the allegations made in the complaint. [RP 328-29]

12 {7} Although Plaintiff continues to cite to his complaint to create a genuine issue
13 of material fact, Plaintiff “may not simply argue that such evidentiary facts might
14 exist, nor may it rest upon the allegations of the complaint. Rather, the party
15 opposing the summary judgment motion must adduce evidence to justify a trial on
16 the issues.” *Carrillo v. My Way Holdings, LLC*, 2017-NMCA-024, ¶ 24, 389 P.3d
17 1087 (internal quotation marks and citation omitted). Because Plaintiff did not put
18 facts in dispute to create a genuine issue of material fact, summary judgment was
19 appropriate on Plaintiff’s claims. *See id.* (“Where the facts are not disputed and only

1 the legal effect of the facts remains to be determined, summary judgment is
2 appropriate.”).

3 {8} For Plaintiff’s second argument, Plaintiff asserts that the district court’s grant
4 of summary judgment violates Rule 1-038(D) NMRA “as an unauthorized
5 withdrawal of the jury demand.” [MIO PDF 3, ¶ B] *See* Rule 1-038(D) (listing
6 grounds by which a party can waive having a jury trial in a civil action). We disagree.
7 Despite Plaintiff’s claim, neither the Seventh Amendment of the United States
8 Constitution nor New Mexico’s Constitution “creates an absolute right to a jury trial
9 in *all* civil cases, but instead merely preserved the existing common law right to have
10 the facts of a case tried by a jury.” *N.M. Law Grp., P.C. v. Byers*, 2018-NMCA-023,
11 ¶ 3, 413 P.3d 875 (internal quotation marks and citation omitted). Here, Plaintiff,
12 “like all litigants, was entitled to have a jury resolve any disputed facts relevant to
13 the legal issues in this case.” *See id.* ¶ 6 (internal quotation marks and citation
14 omitted). Summary judgment is appropriate when there are no disputed material
15 facts of the case, and therefore “cannot intrude upon the province of a jury, because
16 it is the presence of disputed questions of fact that triggers the need for a jury’s
17 work.” *Id.* Accordingly, ruling upon a motion for summary judgment does not
18 “invade the province of the jury by deciding disputed facts” because there are no
19 facts in dispute. *Id.* ¶ 7 (internal quotation marks and citation omitted). Here, because
20 we conclude that the district court did not err in granting Defendant’s motion for

1 summary judgment, “no jury trial was necessary in this case and no right to such
2 trial was violated by the granting of a summary judgment.” *See id.* ¶ 9. Therefore,
3 the district court’s grant of summary judgment similarly does not act as an
4 unauthorized waiver of a jury demand because there are no disputed facts for the
5 jury’s consideration.

6 {9} As a result, Plaintiff does not now direct this Court to any new fact, law, or
7 argument that persuades us that our notice of proposed disposition was incorrect.
8 *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our
9 courts have repeatedly held that, in summary calendar cases, the burden is on the
10 party opposing the proposed disposition to clearly point out errors in fact or law.”);
11 *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating
12 that a party responding to a summary calendar notice must come forward and
13 specifically point out errors of law and fact, and the repetition of earlier arguments
14 does not fulfill this requirement), *superseded by statute on other grounds as stated*
15 *in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

16 {10} Plaintiff also attempts to raise two new claims for this Court’s review. Plaintiff
17 now claims that Defendant’s counsel violated his ethical duties to the district court
18 by misrepresenting information. [MIO PDF 3; MIS PDF 2-5; 4, 6 (violated duty of
19 candor)] Our review of the record proper shows that Plaintiff did not raise this claim
20 during the proceedings and it was not argued to the district court. [RP 71-72; 103,

1 284 (Plaintiff’s use of the word unethical in the record proper)] As a result, we will
2 not address Plaintiff’s new claim that was raised for the first time on appeal. *See*
3 *Romero v. Sanchez*, 1974-NMSC-013, ¶ 4, 86 N.M. 55, 519 P.2d 291 (recognizing
4 that a new claim for the first time on appeal would not be considered, “even if there
5 would be merit to it”); *Campos Enters. v. Edwin K. Williams & Co.*, 1998-NMCA-
6 131, ¶ 12, 125 N.M. 691, 964 P.2d 855 (“This Court reviews the case litigated below,
7 not the case that is fleshed out for the first time on appeal.” (text only) (citation
8 omitted)); *Sandoval v. Baker Hughes Oilfield Operations, Inc.*, 2009-NMCA-095,
9 ¶ 65, 146 N.M. 853, 215 P.3d 791 (“It is the duty of the appellant to provide a record
10 adequate to review the issues on appeal.”); *State v. Harrison*, 2010-NMSC-038,
11 ¶ 10, 148 N.M. 500, 238 P.3d 869 (“Matters outside the record present no issue for
12 review.” (internal quotation marks and citation omitted)). Even if Plaintiff had
13 presented this argument, violations of the Rules of Professional Conduct do not
14 create civil liability. *See Spencer v. Barber*, 2013-NMSC-010, ¶ 19, 299 P.3d 388
15 (explaining that “the Rules of Professional Conduct cannot be used as a basis for
16 civil liability”). Finally, the record proper establishes that Plaintiff reported
17 Defendant’s counsel to the Disciplinary Board of our Supreme Court during the
18 district court litigation, and Plaintiff’s complaint was dismissed. [RP 181]
19 Consequently, we decline to address this argument further.

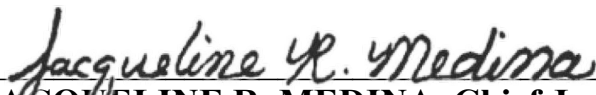
1 {11} Plaintiff also attempts to challenge to Defendant's origination and
2 incorporation under various statutory schemes, alleging that Defendant hides behind
3 different statutes to escape liability. [MIO PDF 3-4; MIS PDF 2; Add. PDF 1-3; MtC
4 1-2] Plaintiff requests that we both enter a cease-and-desist order preventing
5 Defendant from continuing this practice, and enter an order requiring all
6 homeowners associations in New Mexico do the same to prevent any further
7 deception. [Add. PDF 2-3] Plaintiff also asks that we certify the same statutory
8 scheme argument the Supreme Court while we review Plaintiff's appeal. [MtC PDF
9 1-2] But again, Plaintiff did not raise this claim in the district court, and therefore
10 we decline to address Plaintiff's argument or the relief requested further. *See*
11 *Romero*, 1974-NMSC-013, ¶ 4; *Campos Enters.*, 1998-NMCA-131, ¶ 12; *Sandoval*,
12 2009-NMCA-095, ¶ 65; *Harrison*, 2010-NMSC-038, ¶ 10.

13 {12} Finally, Plaintiff states that his memorandum in support of his memorandum
14 in opposition was "submitted for the [C]ourt[']s reference to spot check any one or
15 all of the 100+ or so researched items for accuracy and to demonstrate [Plaintiff's]
16 extensive research" into the record proper in an attempt to establish error. [MIS PDF
17 1; 1-6] We decline Plaintiff's invitation to audit the record proper on his behalf.
18 Doing so would usurp Plaintiff's burden on appeal to establish error on his own
19 behalf and unfairly prejudice Defendant by developing arguments on Plaintiff's
20 behalf. *See Nguyen v. Bui*, 2023-NMSC-020, ¶ 20, 536 P.3d 482 (refusing to

1 consider an issue that is undeveloped, lacks authority and principled analysis, and
2 requires our own speculation to address the issue, rather than carefully considered
3 discussion from the parties); *Murken v. Solv-Ex Corp.*, 2005-NMCA-137, ¶ 14, 138
4 N.M. 653, 124 P.3d 1192 (refusing to review appellate issues where we have to comb
5 the record to do so); *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137
6 N.M. 339, 110 P.3d 1076 (stating that we will not develop an unclear argument on
7 behalf of a party).

8 {13} For the reasons stated in our notice of proposed disposition and herein, we
9 affirm.

10 {14} **IT IS SO ORDERED.**

11 
12 **JACQUELINE R. MEDINA, Chief Judge**

13 **WE CONCUR:**

14 
15 **J. MILES HANISEE, Judge**

16 
17 **JENNIFER L. ATTREP, Judge**