

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 9/10/2026 9:42 AM



Mark Reynolds

ROBYN MARTON,

Petitioner-Appellant,

v.

No. A-1-CA-42984

COLE MARTON,

Respondent-Appellee.

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY

Fred Van Soelen, District Court Judge

Lindsey Law Firm, L.L.C.

Daniel R. Lindsey

Clovis, NM

for Appellant

Harmon Barnett Morris, P.C.

Tye C. Harmon

Clovis, NM

for Appellee

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Petitioner appeals following the district court's July 31, 2025 order, which
included an award of reasonable expenses, including attorney fees, in favor of
Respondent. [RP 1141-42] We entered a calendar notice proposing to affirm.
Petitioner did not file a memorandum in opposition to that calendar notice. Instead,
Petitioner filed a motion to amend his docketing statement, which we treat as a

1 memorandum in opposition. *See* Rule 12-210(D)(2) NMRA (“The parties shall have
2 twenty (20) days from the date of service of the notice of proposed disposition to file
3 and serve a memorandum in opposition or a memorandum in support, setting forth
4 reasons why the proposed disposition should or should not be made and why the
5 case should or should not remain assigned to the summary calendar.”). Unpersuaded,
6 we affirm.

7 {2} In our calendar notice, this Court made a number of proposed conclusions
8 regarding the applicability of *Henderson v. Lekvold*, 1983-NMSC-001, 99 N.M. 269,
9 657 P.2d 125. [CN 2-6] Petitioner’s briefing does not address any of our proposed
10 conclusions from the calendar notice. *See State v. Mondragon*, 1988-NMCA-027,
11 ¶ 10, 107 N.M. 421, 759 P.2d 1003 (“A party responding to a summary calendar
12 notice must come forward and specifically point out errors of law and fact,” and the
13 repetition of earlier arguments does not fulfill this requirement.), *superseded by*
14 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
15 374; *see also Taylor v. Van Winkle’s IGA Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5,
16 122 N.M. 486, 927 P.2d 41 (recognizing that issues raised in a docketing statement,
17 but not contested in a memorandum in opposition are abandoned). We therefore
18 conclude that Petitioner has not met his burden of establishing error based on the
19 applicability of *Henderson*. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*,
20 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (“The presumption upon review

1 favors the correctness of the [district] court's actions. [The a]ppellant must
2 affirmatively demonstrate its assertion of error.”).

3 {3} Petitioner's briefing does make contentions concerning whether the district
4 court appropriately awarded attorney fees in favor of Respondent based on its
5 inherent power to “impose attorney fees . . . against parties or attorneys when there
6 is bad faith, vexatious litigation, or conduct that undermines the court's process.”
7 [MIO 17] *See Landess v. Gardner Turf Grass, Inc.*, 2008-NMCA-159, ¶ 14, 145
8 N.M. 372, 198 P.3d 871 (“A court may award attorney fees in order to vindicate its
9 judicial authority and compensate the prevailing party for expenses incurred as a
10 result of frivolous or vexatious litigation.” (alteration, internal quotation marks, and
11 citation omitted)). We review the district court's award of attorney fees for an abuse
12 of discretion. *See Lewis v. Lewis*, 1987-NMCA-073, ¶ 53, 106 N.M. 105, 739 P.2d
13 974.

14 {4} Both parties filed motions in the district court requesting certain relief related
15 to visitation of the minor children. [MIO 3] Following a two-day evidentiary hearing,
16 the district court denied Petitioner's motion and granted Respondent's motion. [RP
17 1141] In that order, the district court made several findings related to Petitioner,
18 including that Petitioner had “taken active steps to delay Respondent in regaining
19 custody of the minor children[;]” Petitioner's testimony “involved circular
20 reasoning[;]” and the testimony of one of Petitioner's witnesses, a counselor, was

1 “back and forth and contradictory.” [RP 1061 #7; MIO 13] Additionally, the district
2 court found that Petitioner had “reviewed and approved the motion prior to filing[,]”
3 but had to back-track the allegations contained in that motion at the hearing, which
4 we presume was because they were untrue. [RP 1062; MIO 13] After making these
5 findings, the district court later entered an order awarding Respondent \$9,184.97 in
6 attorney fees. [RP 1142; MIO 15]

7 {5} Petitioner acknowledges that these findings were based on the testimony and
8 evidence presented and “logically may be deemed the basis for the district court’s
9 award of attorney fees.” [MIO 13] *See Bustos v. Hyundai Motor Co.*, 2010-NMCA-
10 090, ¶ 27, 149 N.M. 1, 243 P.3d 440 (holding that we review a district court’s factual
11 findings as we would the verdict of a jury—for substantial evidence). Additionally,
12 Petitioner provides us with no authority indicating that such findings are insufficient
13 to support the district court’s decision to award attorney fees. *See ITT Educ. Servs.,*
14 *Inc. v. Tax’n & Revenue Dep’t*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969
15 (refusing to consider a proposition that was unsupported by citation to authority);
16 *see Lee v. Lee (In re Adoption of Doe)*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676
17 P.2d 1329 (explaining that where arguments are not supported by cited authority, we
18 presume counsel was unable to find supporting authority, will not research authority
19 for counsel, and will not review issues unsupported by authority).

1 {6} We understand Petitioner’s main contentions in this regard to be a request to
2 reweigh the evidence before the district court. [MIO 12-18] This Court does not
3 reevaluate the evidence before the district court to reach an alternative conclusion.
4 *See Las Cruces Pro. Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12,
5 123 N.M. 329, 940 P.2d 177 (stating that “we will not reweigh the evidence nor
6 substitute our judgment for that of the fact[-]finder”); *Jaynes v. Wal-Mart Store No.*
7 *824*, 1988-NMCA-076, ¶ 8, 107 N.M. 648, 763 P.2d 82 (“It is for the trier of fact to
8 weigh the evidence, determine the credibility of witnesses, reconcile inconsistent
9 statements of the witnesses, and determine where the truth lies.”). To the extent
10 Petitioner is asserting that there were also “deficiencies in the testimony of”
11 Respondent, we conclude that such deficiencies were for the district court to weigh
12 and they do not demonstrate the district court erred. *See Mayeux v. Winder*, 2006-
13 NMCA-028, ¶ 11, 139 N.M. 235, 131 P.3d 85 (recognizing that on review of the
14 district court’s factual findings, the presence of evidence supporting the opposite
15 result is not relevant); *Herrera v. Roman Cath. Church*, 1991-NMCA-089, ¶ 14, 112
16 N.M. 717, 819 P.2d 264 (“Unless clearly erroneous or deficient, findings of the trial
17 court will be construed so as to uphold a judgment rather than to reverse it.”).

18 {7} Petitioner also contends that, in bringing the motion, she was acting in good
19 faith to protect her children from ongoing danger, her testimony “was based on a
20 genuine concern for the welfare of her children[,]” and “[s]he was not responsible

1 for the awkward testimony of the counselor.” [MIO 12, 14] However, this Court has
2 concluded that “[m]isconduct is not any less misconduct because it is executed with
3 a veneer of good intentions.” *Seipert v. Johnson*, 2003-NMCA-119, ¶ 20, 134 N.M.
4 394, 77 P.3d 298 (internal quotation marks and citation omitted). Because the district
5 court’s findings were supported by the evidence and Petitioner has provided us with
6 no basis to doubt the district court’s decision, we conclude that the district court did
7 not abuse its discretion in awarding attorney fees in favor of Respondent. *See*
8 *Farmers, Inc.*, 1990-NMSC-100, ¶ 8.

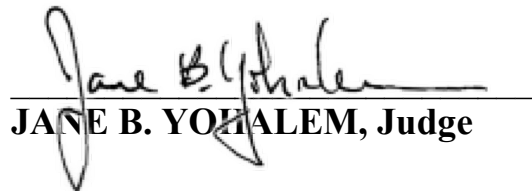
9 {8} Accordingly, and for the reasons stated in our calendar notice, we affirm.

10 {9} **IT IS SO ORDERED.**

11
12 
SHAMMARA H. HENDERSON, Judge

13 **WE CONCUR:**

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

16 
17 **JANE B. YOHALEM, Judge**