

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 9/28/2026 8:03 AM

**KEVIN STEWART and
DELINAH STEWART,**


Mark Reynolds

Plaintiffs/Counter Defendants-Appellees,

v.

No. A-1-CA-43234

ERIC CHRISTENSEN,

Defendant/Counter Plaintiff-Appellant.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY

Douglas W. Decker, District Court Judge

JoHanna C. Cox
Albuquerque, NM

for Appellees

Lauren Joseph Wolongevicz
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Defendant Eric Christensen appeals from the district court's December 8,
2025 order, which followed a November 7, 2025 bench trial. [RP 132-34] We
entered a calendar notice, proposing to affirm. Defendant filed a memorandum in
opposition, which we have duly considered. Unpersuaded, we affirm.

1 {2} Defendant’s docketing statement asserted error based on the district court’s
2 handling of interrogatories he submitted to Plaintiffs, but it provided this Court with
3 almost no relevant facts to evaluate the claim of error. [DS PDF 12] In our calendar
4 notice, we noted that the record reflected that the district court had entered a
5 scheduling order requiring all discovery to be completed by May 12, 2025, and all
6 motions, excluding motions in limine and motions related to pleadings, to be filed
7 by June 16, 2025. [CN 2] On June 6, 2025, Defendant served his interrogatories on
8 Plaintiffs via email, which we note was past the discovery deadline. [Id.] On July
9 14, 2025, Plaintiffs moved to compel a response to the interrogatories, and included
10 a request to “modify court scheduling to accommodate this discovery.” [Id.] On July
11 29, 2025, the district court entered an order indicating that discovery was discussed
12 at the hearing on an unrelated motion and ordering Plaintiffs to respond to the
13 interrogatories by August 4, 2025. [Id.] That order did not state that it extended the
14 motion deadline. After receiving the discovery and just a few days before trial,
15 Defendant moved to compel on October 27, 2025, asserting that Plaintiffs’ responses
16 were inadequate. [Id.] At the November 7, 2025 trial, the district court apparently
17 denied Defendant’s motion to compel as untimely. [CN 4]

18 {3} In his memorandum, Defendant does not dispute our reliance on any of the
19 above facts and continues to argue that the district court erred in denying his October
20 27, 2025 motion to compel. [MIO 4] We understand Defendant to first be contending

1 that the district court did extend the motion deadline in the July 29, 2025 order, and
2 thus the October 27, 2025 motion was timely. [MIO 3, 5] The record does not reflect
3 that this was the case. The district court’s July 29, 2025 order extended the deadline
4 from the scheduling order solely to require Plaintiffs to respond to Defendant’s
5 discovery requests by August 4, 2025, which we interpret as an extension only to the
6 discovery deadline. The district court’s order did not indicate that it was extending
7 the motion deadline, and Defendant does not point to anywhere else in the record
8 where the district court extended the motion deadline past June 16, 2025. Regardless,
9 even if the July 29, 2025 order could be read to have extended both deadlines, that
10 deadline was extended only until August 4, 2025. Defendant did not file his motion
11 to compel until October 27, 2025. Thus, the motion was untimely in either scenario.

12 {4} Defendant also contends that the district court failed “to exercise the
13 discretion Rule 1-016(B) [NMRA] confers to manage discovery in a way that avoids
14 manifest injustice to a pro se litigant.” [MIO 5] Defendant provides no relevant
15 authority in support of this assertion, and we note that a self-represented litigant “is
16 held to the same standard of conduct and compliance with court rules, procedures,
17 and orders as are members of the bar.” *Camino Real Env’t. Ctr., Inc. v. N.M. Dep’t*
18 *of Env’t*, 2010-NMCA-057, ¶ 21, 148 N.M. 776, 242 P.3d 343 (internal quotation
19 marks and citation omitted). Further, as we suggested in the calendar notice,
20 Defendant waited until a few days before trial and well after the deadline to file his

1 motion to compel. [CN 5] We therefore conclude that Defendant has not provided
2 us a basis to doubt our proposed conclusion from the calendar notice that the district
3 court did not abuse its discretion in denying the motion to compel. *See Reaves v.*
4 *Bergsrud*, 1999-NMCA-075, ¶ 28, 127 N.M. 446, 982 P.2d 497 (“We will not
5 interfere with the [district] court’s enforcement of pretrial deadlines.”); *Ramirez v.*
6 *Marsh*, 2025-NMSC-050, ¶ 14, 580 P.3d 768 (noting that “[t]he standard of review
7 for discovery orders is [an] abuse of discretion”).

8 {5} Defendant next contends that he “raised a preserved ADA issue concerning
9 written transcription as an accommodation.” [MIO 8] *See* 42 U.S.C. § 12132. In our
10 calendar notice, we noted that there are requirements to preserve an issue under the
11 Americans with Disabilities Act (ADA) for appellate review. [CN 6-7] “To preserve
12 issues concerning violations of the ADA, the [appellant] bears the initial burden of
13 asserting that [they are] a qualified individual with a disability under 42 U.S.C.
14 Section 12131(2).” *State ex rel. Child., Youth & Fams. Dep’t v. Johnny S., Sr.*, 2009-
15 NMCA-032, ¶ 8, 145 N.M. 754, 204 P.3d 769. An appellant must raise and prove
16 application of the ADA as to them “as early in the case as possible.” *Id.* ¶¶ 9-10.
17 Once an individual has asserted that they have a qualifying disability under the ADA,
18 “[they] must create a factual and legal record sufficient to allow meaningful
19 appellate review of the district court[’s] decision on the issue.” *Id.* ¶ 8. While the

1 level of development needed is case-specific, “there must be a request for relief
2 citing the ADA backed by facts developed in the record” at a minimum. *Id.*

3 {6} In Defendant’s memorandum, he does not specifically address the
4 requirements from *Johnny S.* Instead, Defendant contends that he “repeatedly raised
5 a transcript-based ADA accommodation issue.” [MIO 8] In making this assertion,
6 Defendant relies on his docketing statement and his requests for extension to file that
7 docketing statement that were directed at this Court, but were also filed in the district
8 court months after the proceedings had concluded. [MIO 12; RP 142-47, 158-60]
9 These filings are inadequate because they are untimely and do not “create a factual
10 and legal record sufficient to allow meaningful appellate review of the district
11 court[’s] decision on the issue.” *Id.* ¶ 8; *see id.* ¶ 9 (holding that it is a party’s burden
12 to raise and argue the application of the ADA “as early in the case as possible”). The
13 only document directed at the district court that Defendant points us to in making
14 these contentions is a motion to appear telephonically at a motion hearing he filed
15 on July 24, 2025. [RP 46] That motion does not invoke the ADA, it concerns the
16 need to appear telephonically at a specific hearing, not the need for transcripts, the
17 motion was granted by the district court through a pro forma order, and Defendant
18 does not contend he was unable to attend telephonically. [RP 48] Indeed, it appears
19 that the first time Defendant invoked the ADA in the record was in his motion to
20 extend the time to file his docketing statement with this Court, and Defendant

1 recognizes that “the district court made no findings or clear ruling addressing [his]
2 transcript-based accommodation requests.” [MIO 11; RP 147] *See id.* ¶ 5 (noting
3 that the appellant had failed “to ask for any specific finding or conclusion of law that
4 [the appellant] was a qualified individual with a disability within the meaning and
5 protection of the ADA”).

6 {7} As Defendant appears to acknowledge, his interactions with the district
7 court’s ADA coordinator took place outside the record and “[m]atters outside the
8 record present no issue for review.” [MIO 11] *State v. Harrison*, 2010-NMSC-038,
9 ¶ 10, 148 N.M. 500, 238 P.3d 869 (internal quotation marks and citation omitted).

10 To the extent Defendant is arguing it was the district court’s burden to develop the
11 record sufficient to allow appellate review of his ADA claim, that contention was
12 rejected in *Johnny S.* [MIO 5, 7] *See* 2009-NMCA-032, ¶ 7 (“We decline to place
13 on district judges the obligation to initiate inquiry into the applicability of the ADA
14 in particular cases.”); *id.* ¶ 8 (holding that, to preserve the issue, it is the “initial
15 burden” of the party seeking the ADA accommodation to prove that they are a
16 qualified individual with a disability under the ADA). We therefore conclude that
17 Defendant did not preserve his ADA issue because he did not raise it in a timely
18 fashion and failed to adequately develop in the district court a legal and factual
19 record regarding the ADA that would permit appellate review.

1 {8} Defendant next contends that the district court’s “failure to honor its written
2 remote-appearance order at the August 27, 2025 setting presents a nonfrivolous
3 accommodation issue that should not be resolved summarily.” [MIO 6] We conclude
4 that the same issues with preservation under *Johnny S.* are applicable to this issue.
5 Additionally, we are unclear how the district court failed to honor Defendant’s
6 request to attend the August 27, 2025 remotely. In Defendant’s memorandum, he
7 acknowledges that he “was allowed to appear telephonically” at the August 27, 2025
8 trial. [MIO 7]

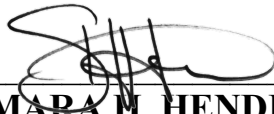
9 {9} As we noted in the calendar notice, the district court apparently granted
10 Plaintiffs’ oral motion for a default based on Defendant’s failure to appear in-person
11 at the August 27, 2025 trial. [CN 5] However, the district court did not enter a written
12 order on Plaintiffs’ oral motion and the trial was reset for November 7, 2025, which
13 Defendant does not contend he was unable to attend remotely. [RP 100] “On appeal,
14 error will not be corrected if it will not change the result.” *Heeter v. Heeter (In re*
15 *Est. of Heeter)*, 1992-NMCA-032, ¶ 23, 113 N.M. 691, 831 P.2d 990. Because the
16 August 27, 2025, trial had no impact on the outcome of this case, we conclude that
17 Defendant has not established the district court erred in this circumstance. *See*
18 *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6,
19 800 P.2d 1063 (“The presumption upon review favors the correctness of the trial
20 court’s actions. [The a]ppellant must affirmatively demonstrate its assertion of

error.”); *Kennedy v. Dexter Consol. Schs.*, 2000-NMSC-025, ¶ 26, 129 N.M. 436, 10 P.3d 115 (“An error is harmless unless the complaining party can show that it created prejudice.”).

{10} Lastly, Defendant invites this Court to place this case on the general calendar to permit full briefing on the issues already addressed herein and to have access to the audio recording of the proceedings below “if [this Court] determines the existing record is insufficient.” [MIO 13-14] Defendant has not raised an issue where we would deem that necessary and he has not established a need for additional briefing in light of our analysis and conclusions above. *See State v. Talley*, 1985-NMCA-058, ¶ 23, 103 N.M. 33, 702 P.2d 353 (suggesting that a complete verbatim transcript of proceedings is not necessary to afford adequate appellate review); *Udall v. Townsend*, 1998-NMCA-162, ¶ 7, 126 N.M. 251, 968 P.2d 341 (holding that a party is not entitled to a particular calendar assignment).

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

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


SHAMMARA M. HENDERSON, Judge

WE CONCUR:


JENNIFER L. ATTREP, Judge


JANE B. YOHALEM, Judge