

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

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Mark Reynolds

VALENTINA LEYBA,

Petitioner-Appellee,

v.

No. A-1-CA-43469

ANTONIO BAROS,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Amber Chavez Baker, District Court Judge

Valentina Leyba

Bernalillo, NM

Pro Se Appellee

Antonio G. Baros

Albuquerque, NM

Pro Se Appellant

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Respondent appeals from the district court's order modifying the timesharing arrangement between the parties. This Court issued a calendar notice proposing to affirm. Respondent filed a memorandum in opposition, and Petitioner filed a memorandum in support—both of which we have duly considered. Unpersuaded, we affirm.

{2} Respondent continues to assert that the district court erred in five ways. [MIO 2] First, Respondent continues to assert that there was no material change in circumstances warranting a change to the existing custody agreement. [MIO 3] Second, Respondent asserts he was not properly served with notice of Petitioner's motion to modify the timeshare agreement. [MIO 16] Third, Respondent asserts he was denied due process. [MIO 41] Fourth, Respondent asserts the district court failed to independently review the hearing officer's recommendation in accordance with Rule 1-053.2 NMRA. [MIO 53] Fifth, Respondent asserts the district court erred in concluding Petitioner was entitled to attorney fees and awarding costs. [MIO 69] We note that Respondent's memorandum in opposition does not comply with the Rules of Appellate Procedure. *See* Rule 12-210(D)(3)(b) NMRA (setting forth a page limitation for summary calendar memoranda). This Court will review the issues raised on appeal but admonishes Respondent to follow the rules in the future. *See Camino Real Env't. Ctr., Inc. v. N.M. Dep't of Env't*, 2010-NMCA-057, ¶ 21, 148 N.M. 776, 242 P.3d 343 (recognizing that while we view pleadings by self-represented litigants with tolerance, a self-represented litigant, nevertheless, "is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar" (alteration, internal quotation marks, and citation omitted)).

1 **DISCUSSION**

2 **Custody Modification**

3 {3} The district court's child custody determination is reviewed for an abuse of
4 discretion. *Hough v. Brooks*, 2017-NMCA-050, ¶ 18, 399 P.3d 387; *see Clayton v.*
5 *Trotter*, 1990-NMCA-078, ¶ 5, 110 N.M. 369, 796 P.2d 262 ("In matters of
6 custody . . . we will overturn an award only when there has been a manifest abuse of
7 discretion."). "An abuse of discretion occurs when a ruling is clearly contrary to the
8 logical conclusions demanded by . . . the case." *Hough*, 2017-NMCA-050, ¶ 18
9 (internal quotation marks and citation omitted). This Court upholds findings made
10 by the district court in child custody proceedings "if they are supported by
11 substantial evidence." *Id.* ¶ 18. "Substantial evidence is such relevant evidence that
12 a reasonable mind would find adequate to support a conclusion." *Id.* (internal
13 quotation marks and citation omitted). "The question is not whether substantial
14 evidence exists to support the opposite result, but rather whether such evidence
15 supports the result reached." *Vanderlugt v. Vanderlugt*, 2018-NMCA-073, ¶ 35, 429
16 P.3d 1269 (internal quotation marks and citation omitted). In determining if the
17 district court's decision was based on substantial evidence, "we view the evidence
18 in the light most favorable to the result below, resolving all conflict and indulging
19 in all inferences in favor of the decision." *Rhinehart v. Nowlin*, 1990-NMCA-136,
20 ¶ 48, 111 N.M. 319, 805 P.2d 88.

1 {4} The hearing officer in this case heard testimony from both parties. Respondent
2 testified regarding Petitioner’s behavior, referencing incidents from May, August,
3 September, and October 2025. [RP 536] Petitioner testified to Respondent’s actions
4 in December 2025. [RP 538] Petitioner’s testimony indicated that because
5 Petitioner’s work schedule and timesharing schedule overlap, her time with Children
6 was “severely limited.” [CN 2; RP 539] Petitioner’s work schedule could change in
7 the future, and assigned work schedules have the potential to change every six
8 months. [RP 538] In light of testimony from both parties’ regarding their tumultuous
9 relationship, the hearing officer concluded that “[t]here is little to no possibility of
10 the parents reaching agreements regarding modifying the timesharing schedule.”
11 [CN 2-3; RP 539] The parties had failed to improve their co-parenting
12 communication, did not “possess the skills to work together for the best interests of
13 . . . Children,” and exhibited an “extreme level of conflict and hostility.” [RP 539;
14 CN 2-3] Moreover, the hearing officer concluded that the parties’ significant co-
15 parenting deficiencies and inability to communicate with one another negatively
16 impacted Children’s best interests. [RP 535-36] The district court adopted the
17 hearing officer’s findings. [RP 571]

18 {5} Respondent asserts that Petitioner’s employment schedule alone was not
19 legally sufficient to warrant modification of the timesharing arrangement. [MIO 7-
20 8] In particular, Respondent asserts modification was not warranted because the

1 district court did not identify any effect Mother's schedule had on Children's
2 welfare. [MIO 7-8] Respondent insists that "the existing arrangement remained
3 operational" and there was no evidence "that the arrangement had ceased
4 functioning" due to Petitioner's new work schedule. [MIO 7-8] We are unpersuaded.

5 {6} Whether or not there was proof that Children were exhibiting negative
6 reactions to Petitioner's absence and the parties' hostility toward one another, the
7 finding that the parties' inability to communicate with one another was negatively
8 impacting Children's best interests was sufficient to support the modification of
9 custody. *See Thomas v. Thomas*, 1999-NMCA-135, ¶ 11, 128 N.M. 177, 991 P.2d 7
10 (concluding that despite the absence of proof that the children were emotionally
11 damaged, the observation of the parents' continued inability to cooperate, such that
12 it was affecting the children, was sufficient to support custody modification).
13 Moreover, Respondent's assertion fails to account for the fact that the best interests
14 and the welfare of Children are treated synonymously for purposes of custody
15 modification. *See Hopkins v. Wollaber*, 2019-NMCA-024, ¶ 17, 458 P.3d 583. The
16 district court therefore did not abuse its discretion in concluding that Petitioner's
17 changing work schedule placed Children in a position where the parties'
18 demonstrated inability to work together negatively affected Children's interests and
19 welfare and modifying the timesharing agreement. *See Rhinehart*, 1990-NMCA-
20 136, ¶ 48.

1 {7} Additionally, Respondent has failed to respond to our proposed disposition by
2 identifying any authority to support his assertions. [CN 3] *See State v. Mondragon*,
3 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party
4 responding to a summary calendar notice must come forward and specifically point
5 out errors of law and fact,” and explaining that the repetition of earlier arguments
6 does not fulfill this requirement), *superseded by statute on other grounds as stated*
7 *in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. In particular, Respondent
8 has identified no authority indicating that a custody arrangement must cease
9 functioning in order to warrant modification. *See ITT Educ. Servs., Inc. v. N.M.*
10 *Tax’n & Revenue Dep’t*, 1998-NMCA-078, ¶ 10, 125 N.M. 244, 959 P.2d 969
11 (refusing to consider a proposition that was unsupported by citation to authority).
12 Insofar as Respondent asserts that it was improper to contemplate future changes to
13 Petitioner’s work schedule, we note those changes were part of a broader assessment
14 of the parties’ inability to communicate and work together to reach agreements
15 regarding timesharing, and Respondent has not identified any authority indicating it
16 was an abuse of discretion to consider such circumstances. [RP 539; MIO 10] *See*
17 *id.*; *Hough*, 2017-NMCA-050, ¶ 30 (recognizing that the district court has
18 considerable discretion in determining whether custody is in the best interests of the
19 children).

1 {8} We also note that Respondent makes various assertions regarding the factual
2 findings, which we review in the light most favorable to the result below. *See*
3 *Rhinehart*, 1990-NMCA-136, ¶ 48. For instance, Respondent asserts the district
4 court’s findings contained generalized and out-of-date characterizations that are
5 insufficient to accurately describe the circumstances here. [MIO 13-14] The hearing
6 officer heard testimony from both parties regarding multiple instances, occurring
7 since the entry of the last custody order, in which the other party failed to cooperate
8 or acted contrary to the other parent’s interests. [RP 536-38] Accordingly, we are
9 unpersuaded by Respondent’s assertion. *See Hopkins*, 2019-NMCA-024, ¶ 17
10 (recognizing that a court may modify a custody order upon a showing that a change
11 in circumstances occurred since the entry of the prior custody order). Additionally,
12 Respondent repeatedly relies on, and refers to, his willingness to assist Petitioner
13 [MIO 8, 11, 12], asserting his assistance was “particularly important” because it
14 rendered any change brought about by Petitioner’s changed work schedule
15 immaterial and insubstantial [MIO 12]. However, Respondent’s assertions regarding
16 his own cooperation do not amount to evidence, *see Muse v. Muse*, 2009-NMCA-
17 003, ¶ 51, 145 N.M. 451, 200 P.3d 104, and Respondent does not identify any
18 specific instance in which he offered or gave assistance despite the record being
19 replete with examples of the parties’ inability or unwillingness to cooperate with one
20 another. [RP 535] We therefore conclude Respondent has failed to demonstrate the

1 district court abused its discretion in modifying the parties' timesharing. *See Hough*,
2 2017-NMCA-050, ¶ 30.

3 **Notice and Service**

4 {9} Respondent continues to assert that he was not given proper notice of
5 Petitioner's motion for modification of timeshare agreement and that he was
6 deprived on a meaningful opportunity to appear. [MIO 19] This Court will uphold
7 the district court's factual findings where they are supported by substantial evidence.
8 *See id.* ¶ 18. "When there is a conflict in the testimony, we defer to the trier of fact."
9 *Sunnyland Farms, Inc. v. Cent. N.M. Elec. Coop., Inc.*, 2013-NMSC-017, ¶ 37, 301
10 P.3d 387 (alteration, internal quotation marks, and citation omitted). "The question
11 is not whether substantial evidence exists to support the opposite result, but rather
12 whether such evidence supports the result reached." *N.M. Tax'n & Revenue Dep't v.*
13 *Casias Trucking*, 2014-NMCA-099, ¶ 20, 336 P.3d 436 (internal quotation marks
14 and citation omitted). "We will [neither] reweigh the evidence nor substitute our
15 judgment for that of the fact[-]finder." *Id.* (alteration, internal quotation marks, and
16 citation omitted).

17 {10} Petitioner filed a motion for modification of timeshare on November 12, 2025.
18 [RP 463] Respondent acknowledges that a process server delivered "a package" to
19 him on November 18, 2025. [MIO 23] The district court specifically found that

1 Respondent was served with a copy of Petitioner’s motion on November 18, 2025.

2 [RP 568]

3 {11} Nevertheless, Respondent points to the process server’s affidavit which
4 provides, in a preprinted form, that the individual served accepted a copy of the
5 summons and complaint. [RP 469] According to Respondent, the affidavit indicates
6 a factual discrepancy exists, concerning whether there was proof of service as to
7 Petitioner’s motion, which warrants reversal. [MIO 21-25] We disagree.

8 {12} The district court explicitly found that Respondent was served with a copy of
9 the motion, and that finding is supported by a certificate of service from Petitioner’s
10 attorney. [RP 468] Thus, even assuming Respondent is correct in asserting that the
11 process server’s use of a preprinted form created a factual dispute, we defer to the
12 trier of fact and decline to substitute our judgment for that of the district court. *See*
13 *Sunnyland Farms, Inc.*, 2013-NMSC-017, ¶ 37; *Casias Trucking*, 2014-NMCA-099,
14 ¶ 20. We therefore conclude Respondent has not demonstrated error as to service.

15 {13} Respondent also asserts that the notice of hearing filed December 10, 2025,
16 which notified the parties of the January 6, 2026 hearing, “was transmitted” with an
17 “accompanying packet contain[ing] materials from a different proceeding.” [MIO
18 25] According to Respondent, that “packet” included a notice of hearing, exhibit
19 instructions, evidentiary deadlines, and Zoom information for a hearing in June
20 2025. [MIO 26] Respondent’s assertion in this regard is not supported by the record

1 proper, which contains a notice of hearing clearly identifying the January 6, 2026
2 hearing. [RP 513] Included with the notice of hearing are a “hearing information
3 sheet” and Zoom instructions; those materials provide general information regarding
4 how to attend the hearing and submit exhibits virtually. [RP 513-19] Insofar as we
5 understand Respondent to assert it was error for the district court to include those
6 attachments because they were “outdated” and had also been included for previous
7 proceedings, we are unpersuaded. [MIO 25-27; RP 513-319] Respondent’s assertion
8 that his preparation for the hearing was prejudiced by this information [MIO 27], is
9 similarly unpersuasive, as he has not identified any arguments or evidence that he
10 was unable to present due to the allegedly late or incorrect notice. *See Deaton v.*
11 *Gutierrez*, 2004-NMCA-043, ¶ 31, 135 N.M. 423, 89 P.3d 672 (“[A]n assertion of
12 prejudice is not a showing of prejudice, and in the absence of prejudice, there is no
13 reversible error.” (alteration, internal quotation marks, and citation omitted)).

14 {14} Respondent also asserts that the circumstances described above demonstrate
15 “cumulative defects” [MIO 35] that deprived him of a “meaningful opportunity to
16 prepare” [MIO 30]. We disagree.

17 {15} Regardless of whether Respondent had actual notice of the January 2026
18 hearing—as early as November 18, 2026, or as late as December 10, 2026 [MIO
19 25]—as set forth in our proposed disposition, Respondent had actual notice and just
20 over a month to prepare for the hearing, at which he appeared and advocated on his

own behalf. [CN 5-6] We conclude that Respondent has failed to demonstrate reversible error based on a due process violation. *See Thomas*, 1999-NMCA-135, ¶ 11 (recognizing that due process requires notice and an opportunity to be heard).

{16} Insofar as we understand Respondent to also assert the district court lacked personal jurisdiction over him due to perceived defects in notice and service [MIO 32-34], we are similarly unpersuaded. Respondent filed an “objection” to Petitioner’s motion on December 1, 2025, in which he asserted modification was not in Children’s best interests and that there had been no change in circumstances warranting modification. [RP 568] Given that Respondent filed substantive objections to the merits of Petitioner’s motion, Respondent waived his challenge to personal jurisdiction. *See Barreras v. N.M. Motor Vehicle Div.*, 2005-NMCA-055, ¶ 7, 137 N.M. 435, 112 P.3d 296; *Guthrie v. Threlkeld Co.*, 1948-NMSC-017, ¶ 8, 52 N.M. 93, 192 P.2d 307 (“[A]ny action upon the part of the defendant, except to object to the jurisdiction, which recognizes the case as in court, will amount to a general appearance.” (internal quotation marks and citation omitted)). That Respondent simultaneously contested the adequacy of service and district court’s jurisdiction does not negate that waiver. [MIO 32-33] Respondent has not identified any authority to suggest otherwise. *See ITT Educ. Servs., Inc.*, 1998-NMCA-078, ¶ 10.

1 **Due Process**

2 {17} In his memorandum in opposition, Respondent continues to assert he was
3 denied due process with regard to two hearings in April 2025. [MIO 41] As discussed
4 in our proposed disposition, Respondent had notice of and appeared on his own
5 behalf at both hearings. [CN 6] The notice of hearing notified Respondent that the
6 issue to be determined by the proceedings was an emergency motion to modify
7 timeshare and exchange location. [CN 6; RP 326]

8 {18} Respondent asserts he was denied due process because he did not have a fair
9 opportunity to prepare for the argument that the timesharing schedule should be
10 changed to accommodate Petitioner's work schedule. [MIO 42] In support,
11 Respondent cites to *Taylor v. Tittman*, 1995-NMCA-034, ¶ 8, 120 N.M. 22, 896 P.2d
12 1171. His reliance on *Taylor*, however, is unpersuasive, given that he was aware of
13 Petitioner's desire to modify the timeshare agreement. [MIO 45; CN 7; RP 348, 397]
14 *See id.* ¶ 16 (concluding that the issue of termination of joint custody was outside of
15 the matters raised in the parties' motions and as such, the parties notified of matters
16 contained in the motions were not given adequate notice that the hearing would also
17 consider termination of joint custody); *id.* ¶ 8 (looking to the adequacy of "notice of
18 *the issues to be determined by the proceeding*" (emphasis added)).

19 {19} "Procedural due process is a flexible right, and the amount of process due
20 depends on the particular circumstances of each case." *Sandia v. Rivera*, 2002-

1 NMCA-057, ¶ 10, 132 N.M. 201, 46 P.3d 108 (internal quotation marks and citation
2 omitted); see *Buffington v. McGorty*, 2004-NMCA-092, ¶ 30, 136 N.M. 226, 96 P.3d
3 787 (holding that in the context of Rule 1-053.2 domestic relations proceedings, due
4 process requires that “the parties be given an opportunity to submit objections to a
5 [domestic relations] hearing officer’s report and recommendations” and “be heard
6 by a judicial officer”).

7 {20} Respondent has not identified any authority that supports his assertion that he
8 was denied due process because he was not notified of every possible basis for
9 modifying the timesharing arrangements that might arise during the hearing. *See ITT*
10 *Educ. Servs., Inc.*, 1998-NMCA-078, ¶ 10 (refusing to consider a proposition that
11 was unsupported by citation to authority). We are similarly unpersuaded by his
12 assertion, presented without supporting authority, that due process under these
13 circumstances “require[d] more than an opportunity to speak.” [MIO 50] *See Sandia*,
14 2002-NMCA-057, ¶ 10.

15 {21} In addition, though Respondent asserts he suffered prejudice by pointing to
16 avenues of investigation that he might have pursued, he has not responded to our
17 proposed disposition by identifying specific arguments, testimony, or evidence he
18 would have presented. [CN 8] Instead, he presents potential sources of information
19 and invites this Court to make inferences regarding potential evidence he might have
20 presented, based solely on supposition and conjecture. *See generally Romero v.*

1 *Philip Morris, Inc.*, 2010-NMSC-035, ¶ 10, 148 N.M. 713, 242 P.3d 280 (“An
2 inference is not a supposition or a conjecture, but is a logical deduction from facts
3 proved and guess work is not a substitute therefor.” (internal quotation marks and
4 citation omitted)). Respondent has therefore failed to demonstrate that he suffered
5 prejudice. [MIO 48] *See Deaton*, 2004-NMCA-043, ¶ 31; *see also Jones v. N.M.*
6 *State Racing Comm’n*, 1983-NMSC-089, ¶ 6, 100 N.M. 434, 671 P.2d 1145
7 (rejecting a due process claim in the absence of a showing of prejudice).

8 {22} Respondent also asserts the district court improperly set “evidentiary limits”
9 on him by disallowing his attempts to introduce additional documentary evidence—
10 not submitted as part of the first hearing—at the second hearing. [MIO 49, 51] We
11 note, however, that the second hearing was held only to allow Respondent to fully
12 present his testimony. [MIO 44; RP 327] Given that both parties were expected to
13 present their exhibits two days prior to the hearing in accordance with a set deadline
14 [MIO 44; RP 327], we discern no error in the district court limiting both parties
15 equally in this way. *Cf. Thomas*, 1999-NMCA-135, ¶ 22 (affirming the district
16 court’s efforts to limit self-represented litigants to compliance with standard, proper
17 procedures); *see generally* Rule 1-016 NMRA. We are similarly unpersuaded by
18 Respondent’s assertion that the hearing officer improperly shifted the burden of
19 proof by announcing its intention to recommend modification and asking what
20 replacement schedule Respondent might prefer. [MIO 49] Respondent’s reliance on

1 Rule 1-015 NMRA and principles relating to notice pleading is unpersuasive as they
2 do not apply to these circumstances. [MIO 47] We therefore conclude Respondent
3 has not demonstrated that he was denied due process.

4 {23} Lastly, Respondent has not responded to our proposed disposition with regard
5 to the denial of his Rule 1-060(B)(6) NMRA motion. [CN 8] *See Mondragon*, 1988-
6 NMCA-027, ¶ 10. Given our conclusion that Respondent was not denied due
7 process, we further conclude Respondent has not demonstrated that the district court
8 abused its discretion in construing Respondent's assertions of error on this issue as
9 a Rule 1-060(B)(6) motion and denying that motion. [CN 8; RP 567] *See N.M.*
10 *Uninsured Emp.s' Fund v. Gallegos*, 2017-NMCA-044, ¶ 16, 395 P.3d 553
11 (observing that motions to reinstate that are filed more than thirty days after the entry
12 of a final disposition generally must rely on Rule 1-060(B)(6) NMRA); *see, e.g.,*
13 *State ex rel. Hum. Servs. Dep't v. Rawls*, 2012-NMCA-052, ¶ 8, 279 P.3d 766
14 (recognizing that we review the denial of Rule 1-060(B) motions, including motions
15 to reinstate, for abuse of discretion).

16 **Rule 1-053.2 Review**

17 {24} Respondent also continues to assert that the district court did not properly
18 review his objections to the hearing officer's recommendations. [MIO 56, 68] As
19 support, he points out that, despite having cited Rule 1-060(B) and the constitution
20 in his objection to the hearing officer's report [RP 551], the district court's order

1 concluded that Respondent had “failed to allege any grounds . . . to set aside” the
2 previous order pursuant to Rule 1-060 [RP 567]. [MIO 56-59] We perceive no error
3 considering Respondent’s objection on that issue did not comply with the Rule. *See*
4 Rule 1-053.2(G) (providing that a party’s objections must specifically identify,
5 among other things, the specific portion of the recommendations to which they
6 object, a summary of the evidence, and the specific findings of fact to which they
7 object). Respondent similarly asserts the district court erred by adopting the hearing
8 officer’s order, containing recommendation and findings, in its entirety. [MIO 60-
9 61] Again, we perceive no error. *See* Rule 1-053.2(H)(3) (providing that “[t]he
10 district court . . . may adopt the recommendations, modify them, [or] reject them in
11 whole or in part”).

12 {25} Respondent also points out that although he attached materials to his
13 objections and “expressly limited” their applicability to “non-merits record
14 correction,” the district court characterized the materials differently. [MIO 64]
15 According to Respondent, these “affirmative record contradictions” [MIO 66]
16 indicate the district court did not adequately review and independently determine the
17 matters Respondent raised. [MIO 56-67] We disagree. The district court’s order
18 explicitly stated that it had reviewed the record in its entirety [RP 565] and discussed
19 the matters raised in Respondent’s objections [RP 566]. We therefore conclude the

1 district court acted in accordance with Rule 1-053.2(H), and Respondent has not
2 demonstrated otherwise.

3 **Attorney Fees and Costs**

4 {26} Respondent continues to challenge the district court’s order regarding attorney
5 fees and costs. [RP 626; MIO 69-73; CN 10] We review for an abuse of discretion.
6 *See Herald v. Bd. of Regents of Univ. of N.M.*, 2015-NMCA-104, ¶ 59, 357 P.3d
7 438. A district court abuses its discretion when its ruling “exceeds the bounds of all
8 reason” or is “arbitrary, fanciful, or unreasonable.” *Meiboom v. Watson*, 2000-
9 NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154 (internal quotation marks and
10 citation omitted).

11 {27} The district court granted Petitioner’s request for attorney fees in its March
12 16, 2026 order. [RP 593] On March 19, 2026, Petitioner’s attorney filed an affidavit
13 of attorney fees claiming to have reviewed Respondent’s two post-judgment
14 motions—a motion to reconsider and a motion to stay enforcement. [RP 599]
15 Petitioner’s attorney stated: “I have billed by client for two (2) filing fees at thirteen
16 dollars (\$13.00) each for a total of twenty-six dollars.” [RP 600] The hearing officer
17 reviewed the affidavit, in conjunction with the requirements of Rule 1-127 NMRA
18 and Rule 1-054 NMRA, and recommended denying Petitioner’s requested attorney
19 fee award. [RP 613-14] The hearing officer concluded attorney fees were warranted
20 because Petitioner had succeeded on the merits and accrued additional attorney fees

1 due to Respondent’s behavior and pattern of litigation, but also concluded that
2 Petitioner’s attorney had not provided enough specificity regarding the amount of
3 time spent performing recoverable tasks. [RP 614] The hearing officer concluded
4 that the only sufficiently specific costs were the filing fees, and accordingly
5 recommended that Respondent reimburse Petitioner \$26 for the cost of the two filing
6 fees. [RP 614] The district court adopted the hearing officer’s findings and
7 recommendations. [RP 626]

8 {28} As to attorney fees, Respondent’s memorandum in opposition aptly explains
9 the distinctions between his current argument and our previous understanding of his
10 argument, based on the docketing statement, as stated in our proposed disposition.
11 [MIO 72; CN 10] We now understand Respondent to challenge the district court’s
12 determination that Petitioner was entitled to attorney fees, which he distinguishes
13 from the district court’s subsequent decision to award Petitioner \$0. [RP 626; MIO
14 72] Despite citing to Rule 1-127 as support for his assertion of error, *see id.*
15 (identifying factors relevant to attorney fees in domestic relations cases),
16 Respondent has not identified the facts relevant to those considerations or whether
17 he presented such facts to the hearing officer and district court. *See Lukens v. Franco*,
18 2019-NMSC-002, ¶ 5, 433 P.3d 288 (stating that an appellant is obligated to
19 “properly present this court with the issues, arguments, and proper authority,” and
20 emphasizing that “[m]ere reference [to these components] in a conclusory statement

1 will not suffice and is in violation of our rules of appellate procedure” (internal
2 quotation marks and citation omitted)). He has similarly failed to explain how the
3 hearing officer’s consideration of those factors was improper or identified any other
4 authority to support his assertions. We therefore conclude that Respondent has not
5 demonstrated the district court abused its discretion by concluding Petitioner was
6 entitled to recover attorney fees under these circumstances. *See Meiboom*, 2000-
7 NMSC-004, ¶ 29.

8 {29} Regarding the cost award, Respondent’s memorandum in opposition asserts
9 that the award was not adequately supported by the record and recoverable under
10 existing legal authority. [MIO 75, 73-78; A-1-CA-43471 DS 4-7 ¶¶ a, b, e, f] In
11 particular, Respondent contests the district court’s decision to award the filing fees
12 as costs without documentary evidence despite expressly finding that there was
13 insufficient documentation supporting the attorney fee award. [MIO 75; A-1-CA-
14 43471 DS 5]

15 {30} In making this assertion of error, Respondent fails to recognize that
16 Petitioner’s attorney attested to the amount and number of filings in an affidavit.
17 Respondent does not explain why the district court should not consider a sworn
18 affidavit, even when not accompanied by documentation, and none of the authority
19 cited suggests that it was error for the district court to do so. *See, e.g., May v. DCP*
20 *Midstream, L.P.*, 2010-NMCA-087, ¶ 17, 148 N.M. 595, 241 P.3d 193 (noting that

1 the district court relied on the plaintiff's affidavit in its cost award determination).
2 Moreover, insofar as Respondent perceives some unacceptable discrepancy between
3 the district court's determination that there was insufficient support for an award of
4 attorney fees while awarding costs based on the same affidavit, we are unpersuaded.
5 Under Rule 1-054(D), filing fees are a recoverable cost, while legal research is not
6 recoverable. The affidavit provided an exact breakdown of the number of filings and
7 cost of each, but it did not provide such specificity regarding the hours spent
8 "drafting responses and researching claims that were made regarding a variety of
9 different Rules." [RP 600] That lack of specificity was the basis for the district
10 court's denial. [RP 626]

11 {31} Additionally, we note that costs other than attorney fees are allowed to the
12 prevailing party. Rule 1-054(D)(1); *see* Rule 1-054(D)(2)(a) (identifying filing fees
13 as a recoverable cost). The language of Rule 1-054(D) creates a presumption for an
14 award of costs in favor of the prevailing party, and the burden is on the losing party
15 to demonstrate circumstances that justify the reduction or denial of costs. *May*, 2010-
16 NMCA-087, ¶ 16; *see Apodaca v. AAA Gas Co*, 2003-NMCA-085, ¶ 103, 134 N.M.
17 77, 73 P.3d 215 (stating that a party might satisfy their burden by showing bad faith
18 or misconduct, that an award would be unjust, that other circumstances justify the
19 denial or reduction of costs, and the losing party's inability to pay). Though he
20 asserts that he filed a response to the affidavit that challenged "itemization,

1 reasonableness, recoverability, financial circumstances, and ability to pay,”
2 Respondent has not identified any facts that he presented relevant to those matters.
3 [MIO 70-71] We therefore conclude Respondent has failed to demonstrate that he
4 presented facts sufficient to overcome the presumption, such that might indicate the
5 district court abused its discretion in awarding costs. *See Lukens*, 2019-NMSC-002,
6 ¶ 5.

7 {32} For the reasons stated in our notice of proposed disposition and herein, we
8 affirm.

9 {33} **IT IS SO ORDERED.**



10
11 **SHAMMARA H. HENDERSON, Judge**

12 **WE CONCUR:**



13
14 **JACQUELINE R. MEDINA, Chief Judge**



15
16 **MEGAN P. DUFFY, Judge**