Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 11/18/2026 11:51 AM
Mark Reynolds

KRISTIN D. JONES,

Petitioner-Appellee,

v. **No. A-1-CA-43595**

MICHAEL R. JONES,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Bryan Fox, District Court Judge

Leigh & Dougherty, P.C.
Tiffany O. Leigh
Albuquerque, NM

for Appellee

Michael R. Jones
Santa Fe, NM

Pro Se Appellant

MEMORANDUM OPINION

BACA, Judge.

{1} Respondent Michael R. Jones appeals from the district court's orders reinstating a default judgment against him as a sanction for his not responding to discovery, denying his motion for reconsideration, and awarding attorney fees and costs to Petitioner Kristin D. Jones. We issued a calendar notice proposing to affirm.

Respondent filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} In our calendar notice, we stated that Respondent's lack of responses to discovery appeared in the record and was undisputed. [CN 3] In the memorandum in opposition, Respondent acknowledges he had not responded to the discovery as of the January 15, 2026, hearing on Petitioner's motion to reinstate the default judgment. [MIO 2] Respondent states, however, that he provided the responses on January 23, 2026, and he argues the district court should have accounted for these responses before entering its order on January 26, 2026. [MIO 2, 9-10] Respondent further asserts that the district court should have imposed a lesser sanction than default judgment. [MIO 8] In support, Respondent cites *Lopez v. Wal-Mart Stores, Inc.*, 1989-NMCA-013, 108 N.M. 259, 771 P.2d 192, where this Court reversed the dismissal of a complaint due to plaintiff's noncompliance with an order compelling discovery because the plaintiff provided the responses by the time the order was entered and there was no other evidence in the record that the noncompliance was willful. [MIO 9] *See id.* ¶¶ 1, 11.

{3} Unlike in *Lopez,* the record in this case shows that Respondent did not serve the responses until after the district court entered its order. [DS 6; RP 145 ¶ 39, 168 ¶ 20, 172] On January 30, 2026—after entry of the order reinstating the judgment—Respondent certified that he mailed the responses on January 23, 2026. [RP 123]

The certification, however, was incorrect. Respondent subsequently stated that he mailed the discovery responses on January 30, 2026, and that he delivered them by courier on a later date. [DS 6; RP 145 ¶ 39, 168 ¶ 20, 172] Because Respondent did not serve discovery responses until after entry of the order, *Lopez* does not support his contention. *See id.* ¶ 11.

{4} In Respondent's memorandum in opposition, he states that he informed the district court that he did not attend a mediation, that he was unable to schedule a second mediation due to lack of communication with his former attorney, that he did not have notice of the pleadings, and that the district court found that some of his statements regarding miscommunication and lack of notice were not credible. [MIO 2, 4] The memorandum in opposition does not state which pleadings Respondent did not receive. The record shows, however, that Respondent's attorney was served with the discovery on July 1, 2025. [RP 87] Respondent was aware of the discovery as early as August 2025 when he claims to have mailed his attorney a USB drive with his interrogatory answers. [RP 104 ¶ 4] Respondent stated that he was not informed when his attorney withdrew, and that he did not know about Plaintiff's motion for default judgment until December 18, 2025. [DS 4; RP 104 ¶¶ 1, 2] Despite learning about the overdue discovery and the pending motion on December 18, 2025; however, he still did not respond to the discovery, which remained unanswered as of the January 15, 2026 hearing. [MIO 2] We also note that Respondent, an attorney,

was using the Odyssey file and serve system in this case at least as early as December 19, 2025 [RP 107], and thus had access to all case filings, including Petitioner's motion and the notice of hearing. We conclude that the above evidence was sufficient for the district court to find that Respondent's conduct was conscious or intentional, and thus willful, such that the district court did not abuse its discretion by entering default judgment. *See United Nuclear Corp. v. Gen. Atomic Co.*, 1980-NMSC-094, ¶¶ 202, 386, 96 N.M. 155, 629 P.2d 231 (affirming entry of default judgment as sanction for willful noncompliance with discovery); *Lopez*, 1989-NMCA-013, ¶ 7 (stating that "willful failure [to comply with discovery] implies conscious or intentional failure, as distinguished from accidental or involuntary noncompliance" and that "wrongful intent is not required").

{5} Respondent continues to assert that he was prevented from offering evidence at the hearing on Petitioner's motion. [MIO 3, 4, 5, 6, 7] In the calendar notice, we stated that Respondent had not identified any specific evidence that he was prevented from offering or why it was material to his failure to respond to discovery. [CN 4, 6] In Respondent's memorandum in opposition, he states that he was prevented from offering evidence and argument on timesharing, appointment of trustees for life insurance policies, and distribution of debts and retirement accounts. [MIO 3, 4] These issues, however, go to the merits of the case itself. They are not material to why Respondent did not respond to discovery, which was the matter to be addressed

at the hearing and the reason for the district court's order. [RP 102, 126 ¶ 9, 128 ¶¶ 24-27] To the extent that Respondent challenges those terms of the default judgment as unfair and unreasonable [MIO 11], Respondent presents no specific facts or legal authority to support his challenge. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). Furthermore, because the merits of this dispute were resolved by default judgment as a discovery sanction, Respondent is not entitled to a trial to challenge that resolution. *See United Nuclear Corp.*, 1980-NMSC-094, ¶ 394 ("A party cannot approach its obligation to make good faith discovery however it chooses as to certain matters, and at the same time expect to have the case proceed in a normal fashion as to other issues."). We therefore conclude that Respondent has not demonstrated the district court erred in ordering that the default judgment be reinstated as a sanction for his nonresponse to discovery. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 ("The presumption upon review favors the correctness of the trial court's actions. Appellant must affirmatively demonstrate its assertion of error.").

{6} Respondent continues to assert that the district court deprived him of due process by curtailing his ability to present argument and evidence. [MIO 7] We

initially note that the record does not support Respondent's assertion that he was not given "[f]ull notice of the hearing time" [MIO 8], because the notice of hearing included the date, time, and duration of the hearing [RP 102]. We further note that Respondent does not present any other new due process arguments, and he does not cite any legal authority for the proposition that entry of a default judgment as a discovery sanction, after notice and a hearing, violates due process. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that "[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact," and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore conclude that Respondent has not demonstrated that his due process rights were violated. *See Farmers, Inc.*, 1990-NMSC-100, ¶ 8.

{7} Finally, Respondent continues to challenge the award of attorney fees and costs. [MIO 12] In our calendar notice, we stated that the district court considered the parties' financial information pursuant to Rule 1-127 NMRA, and that Respondent did not cite the specific information the district court failed to consider and he did not describe how that information would have affected the district court's award of attorney fees and costs. [CN 10-11] In response, the memorandum in opposition lists the Rule 1-127 factors that Respondent generally asserts were not

considered, but continues not to cite any specific facts or describe how consideration of those facts would have changed the district court's decision. [MIO 12-14] *See Mondragon*, 1988-NMCA-027, ¶ 10. We therefore conclude that Respondent has not demonstrated the district court erred in awarding attorney fees and costs. *See Farmers, Inc.*, 1990-NMSC-100, ¶ 8.

{8} Accordingly, we affirm for the reasons stated in our notice of proposed disposition and this memorandum opinion. *See Hennessy*, 1998-NMCA-036, ¶ 24.

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

GERALD E. BACA, Judge

WE CONCUR:

J. MILES HANISEE, Judge

JANE B. YOHALEM, Judge