

KUPCAK V. MOSAIC POTASH CARLSBAD

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JACOB F. KUPCAK III and

DEBRA S. KUPCAK,

Petitioners-Appellants,

vs.

MOSAIC POTASH CARLSBAD, INC.,

a New Mexico mining operation;

MARSCHALL I. SMITH, individually,

president, Mosaic Potash Carlsbad, Inc.;

JIM PROKOPANKO, individually, CEO,

Mosaic Potash Carlsbad, Inc.; **WILLIAM**

BOYER, individually, general manager,

Mosaic Potash Carlsbad Inc.; **JOHN DOE/**

JANE DOE, individually, company attorney;

CARGILL PAYROLL DEPARTMENT;

YVONNE NILSSON, individually, supervisor,

Cargill Payroll Department;

Respondents-Appellees.

No. 31,103

COURT OF APPEALS OF NEW MEXICO

June 2, 2011

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Richard J. Brown,
District Judge

COUNSEL

Jacob F. Kupcak, III, Debra S. Kupcak, Carlsbad, NM, Pro Se Appellants

Jose A. Howard-Gonzales, El Paso, TX, for Appellees

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A. FRY, Judge.

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

Petitioners appeal an order dismissing their complaint. In this Court's notice of proposed summary disposition, we proposed to affirm. Petitioners have filed a memorandum in opposition, which we have duly considered. As we are not persuaded by Petitioners' arguments, we affirm.

In this Court's notice of proposed summary disposition, we proposed to hold that the district court did not err in dismissing the case based on the defense to liability provided by 26 U.S.C. § 6332(e) (1990). In their memorandum in opposition, Petitioners continue to put forth various constitutional and statutory arguments on the merits of whether the levy in this case was proper and whether it violated their rights. However, even if Petitioners are correct on the merits, they have not explained why dismissal of this suit against Respondents was not appropriate pursuant to 26 U.S.C. § 6332(e).

Because Petitioners have failed to respond to the portion of our proposed analysis regarding § 6332(e), they are unable to persuade us that our proposal is in error. 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."); *State v. Johnson*, 107 N.M. 356, 358, 758 P.2d 306, 308 (Ct. App. 1988) (stating that an issue is deemed abandoned when a party fails to respond to this Court's notice of proposed summary disposition of that issue).

Therefore, for the reasons stated in this opinion and in our notice of proposed summary disposition, we affirm.

IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge