

MANDEVILLE V. PRESBYTERIAN HEALTHCARE SVCS.

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CHRISTOPHER MANDEVILLE,
Plaintiff-Appellee/Cross-Appellant,
v.
PRESBYTERIAN HEALTHCARE
SERVICES,
Defendant-Appellant/Cross-Appellee.

No. 32,441 Consolidated with 32,401

COURT OF APPEALS OF NEW MEXICO

January 31, 2013

COUNSEL

Whitener Law Firm, P.A., James C. Ellis, Albuquerque, NM, for Appellee

Montgomery & Andrews, P.A., Randy S. Bartell, Andrew S. Montgomery, Seth C. McMillan, Albuquerque, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, LINDA M. VANZI, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

Defendant-Appellant/Cross-Appellee Presbyterian Healthcare Services (Defendant) has appealed from a judgment in the underlying civil litigation, contesting the propriety of the district court's decision to permit Plaintiff-Appellee/Cross-Appellant Christopher Mandeville (Plaintiff) to amend his complaint at the eleventh hour to include a claim for punitive damages. We issued a notice of proposed summary disposition on November 14, 2012, proposing to reverse and remand for further proceedings. On December 18

Plaintiff filed a response, indicating generally that he does not oppose our proposed summary disposition, but requesting specification that “all issues including punitive damages and costs” be considered in the course of the proceedings on remand. [Response 1 (emphasis omitted)]. On December 19 Defendant filed an objection to Plaintiff’s responsive memorandum, both on grounds of lateness and on grounds that his specific request conflicts with our proposed summary disposition. [Objection 1-2]

Because neither party takes issue with the analysis set forth in the notice of proposed summary disposition, we adhere to it. We further decline Plaintiff’s request for specification relative to the scope of the issues to be considered in the course of the proceedings on remand. As we previously observed in the notice of proposed disposition, the overarching concern is simply that Defendant be afforded the opportunity “to prepare for and conduct a defense free of eleventh-hour surprises.” *Camp v. Bernalillo Cty. Med. Ctr.*, 96 N.M. 611, 616, 633 P.2d 719, 724 (Ct. App. 1981). Insofar as this might be accomplished in a variety of ways, we leave it to the district court to determine how best to proceed.

Accordingly, for the reasons stated above and at greater length in the notice of proposed summary disposition, we reverse and remand for further proceedings.

IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge