MONROE V. FALLICK

JANET R. MONROE F/K/A
JANET FALLICK,
Petitioner-Appellee,
v.
GREGG FALLICK,
Respondent-Appellant.

NO. A-1-CA-35475

COURT OF APPEALS OF NEW MEXICO

December 17, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Victor S. Lopez, District Judge

COUNSEL

Keleher & McLeod, P.A., Thomas C. Bird, Albuquerque, NM, Romero & Constant, P.C., Margaret Y. Romero, Gina T. Constant, Albuquerque, NM, for Appellee

Gregg Fallick, Albuquerque, NM, Pro Se Appellant.

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: **JULIE J. VARGAS, Judge,** EMIL J. KIEHNE, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} The opinion filed December 10, 2018, is hereby withdrawn and this opinion is filed in its stead. Gregg Fallick (Husband) appeals the district court's orders: (1) granting

partial summary judgment in Janet Monroe's (Wife) favor, thereby enforcing the parties' prenuptial agreement; (2) denying Husband's quantum meruit claim for unpaid legal services he allegedly provided to Wife during their marriage; (3) granting Wife's motion for attorney fees; and (4) denying Husband's motion for sanctions. Unpersuaded, we affirm.

BACKGROUND

{2} A day before their marriage, the parties signed a prenuptial agreement indicating that all of their respective property would be classified as separate property. The prenuptial agreement indicated that the parties could only modify it in writing and that any discussions regarding such modifications "shall not be binding, and shall be considered as discussions only, unless and until they are reduced to a writing." The parties represented that they had read the agreement in its entirety, that each understood its legal consequences, and that they entered into it voluntarily and "free from duress, fraud, undue influence, coercion, or misrepresentation of any kind."

{3} After approximately seven years, Wife filed a petition for dissolution of marriage. Shortly after, the district court entered a decree of divorce, but specifically reserved jurisdiction to determine the economic issues in post-divorce proceedings. Litigation continued for several years, mainly focused on the enforcement of the prenuptial agreement, Husband's quantum meruit claim, and a discovery squabble stemming from Wife's response to an interrogatory that led to Husband filing a motion to compel.

{4} During the course of such proceedings, Wife filed a motion for partial summary judgment, seeking an order that the parties' prenuptial agreement was valid and enforceable. Husband responded with a number of defenses asserting that the prenuptial agreement was unenforceable, none of which were presented in his response to Wife's petition for dissolution of marriage. The district court granted Wife's motion, finding that the agreement was clear, unambiguous, and subject to interpretation as written. However, the district court did not address many of the defenses raised by Husband in his response, except for a claim of fraud in the inducement. The parties then proceeded to trial exclusively on Husband's quantum meruit claim for attorney fees. After the trial, the district court dismissed Husband's claim and entered detailed findings of fact and conclusions of law. The district court never ruled on Husband's motion to compel.

{5} Husband appealed the orders enforcing the prenuptial agreement and dismissing his quantum meruit claim. While that appeal was pending, the district court entered a separate order awarding Wife attorney fees and costs. Husband also appealed that order, which this Court consolidated with the first appeal.

DISCUSSION

{6} On appeal, Husband raises a multitude of alleged errors by the district court, which we have narrowed down into four categories for review, whether the district court

erred by: (1) granting Wife's motion for partial summary judgment regarding the parties' prenuptial agreement; (2) denying Husband's quantum meruit claim; (3) failing to sanction Wife based on her response to an interrogatory; and (4) awarding Wife attorney fees and costs.

STANDARD OF REVIEW

{7} As previously noted, the district court granted Wife's motion for partial summary judgment and enforced the parties' prenuptial agreement as written. In his brief, Husband fails to identify the applicable appellate standard of review. *See* Rule 12-318(A)(4) NMRA. As a result, he fails to articulate his arguments according to the applicable standard of review, leaving it to this Court to decipher the district court's perceived error in granting partial summary judgment.

{8} **"**Summary judgment is proper if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Koenig v. Perez*, 1986-NMSC-066, ¶ 6, 104 N.M. 664, 726 P.2d 341. When employing this standard of review, "we step into the shoes of the district court as if we were ruling on the motion in the first instance." *State v. Zuni Pub. Sch. Dist., #89*, 2018-NMSC-029, ¶ 16, ___ P.3d ___. (omission, internal quotation marks, and citation omitted) "The movant need only to make a prima facie showing that he [or she] is entitled to summary judgment." *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331, 825 P.2d 1241. Once the movant makes this showing, "the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts [that] would require trial on the merits." *Id*. "A party opposing a motion for summary judgment must make an affirmative showing by affidavit or other admissible evidence that there is a genuine issue of material fact once a prima facie showing is made by the movant." *Associated Home & RV Sales, Inc. v. Bank of Belen*, 2013-NMCA-018, ¶ 29, 294 P.3d 1276 (internal quotation marks and citation omitted). Summary judgment is appropriate where the facts are not in dispute and only the legal effect of those facts remain to be determined. *See Gardner-Zemke Co. v. State*, 1990-NMSC-034, ¶ 11, 109 N.M. 729, 790 P.2d 1010.

{9} Because Husband does not specifically attack the facts establishing the existence of the prenuptial agreement, we proceed from the standpoint that Wife met her burden of making a prima facie factual showing that she was entitled to summary judgment. With the burden now shifting to Husband, we construe his argument to be that the district court erred in determining that there was no issue of material fact that the prenuptial agreement was unambiguous.

{10} We begin our analysis by interpreting the prenuptial agreement as a contract. *See Lebeck v. Lebeck*, 1994-NMCA-103, ¶ 18, 118 N.M. 367, 881 P.2d 727. "It is black letter law that, absent an ambiguity, a court is bound to interpret and enforce a contract's clear language and cannot create a new agreement for the parties." *Ponder v. State Farm Mut. Auto Ins. Co.*, 2000-NMSC-033, ¶ 11, 129 N.M. 698, 12 P.3d 960 (internal quotation marks and citation omitted). This Court will determine, as a matter of law, whether a contract is ambiguous. *Sierra Blanca Sales Co. v. Newco Indus., Inc*.,

1972-NMCA-153, ¶ 11, 84 N.M. 524, 505 P.2d 867. "A contract is ambiguous only if it is reasonably susceptible to different constructions." *Kirkpatrick v. Introspect Healthcare Corp*., 1992-NMSC-070, ¶ 14, 114 N.M. 706, 845 P.2d 800.

I. Prenuptial Agreement

{11} The district court concluded that "[t]he [p]renuptial [a]greement is clear and unambiguous and is therefore subject to interpretation as written." Husband argues that the district court erred because it based its interpretation of the prenuptial agreement on the four corners of the contract. Husband relies exclusively on *Mark V, Inc. v. Mellekas*, 1993-NMSC-001, 114 N.M. 778, 845 P.2d 1232*,* in making this assertion. *Mark V* held that a court might look to extrinsic evidence outside of the four corners of a contract "in order to decide whether the meaning of a term or expression contained in the agreement is actually unclear." *Id*. ¶ 11. Further, "[C]ourts are now allowed to consider extrinsic evidence in determining whether an ambiguity exists in the first instance[.]" *Ponder*, 2000-NMSC-033, ¶ 13.

{12} Husband does not identify what word or expression of the prenuptial agreement lacked clarity or what extrinsic evidence the district court should have considered in determining whether it was ambiguous. *See C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶ 15, 112 N.M. 504, 817 P.2d 238 ("It is important to bear in mind that the meaning the court seeks to determine is the meaning one party (or both parties, as the circumstances may require) attached to a particular term or expression at the time the parties agreed to those provisions."). Indeed, Husband conceded during his deposition that there was no ambiguity in the prenuptial agreement as written. Husband's argument appears to suggest that we should consider, in our interpretation of the contract, his contentions that the parties intended the prenuptial agreement to protect Wife from possible claims by Husband's previous wife and that the parties would eventually void the prenuptial agreement without any evidence of when this was to occur and what effect it was to have on the parties and the division of their property. However, during the seven years of marriage there is no evidence that the parties took any steps to void the prenuptial agreement, even after Husband's dispute with his previous wife concluded, and we do not see how Husband's hypothetical contention would change the meaning of a term or expression within the prenuptial agreement as it was written, particularly given Husband's concession that it is unambiguous. We conclude that Husband has failed to meet his burden. We agree with the district court that the prenuptial agreement is unambiguous and must be enforced based on its clear language indicating that the parties' property would remain separate.

A. The Forum Selection Clause of the Prenuptial Agreement

{13} Husband's next contention is that Wife's action of filing her claim in Bernalillo County, contrary to the forum selection clause in the prenuptial agreement identifying San Francisco County, California as the sole venue to bring any disputes, constituted a waiver of the agreement in its entirety.[1] Husband cites no authority in support of this proposition. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482

("Where a party cites no authority to support an argument, we may assume no such authority exists."); *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶15, 137 N.M. 339, 110 P.3d 1076 ("We will not review unclear arguments, or guess at what [a party's] argument might be.").

{14} Indeed, contrary to Husband's assertion, the authority he relies upon supports the proposition that Wife intended to waive only the forum selection clause and nothing more. *See J.R. Hale Contracting Co. v. United N.M. Bank at Albuquerque*, 1990-NMSC-089, ¶ 10, 110 N.M. 712, 799 P.2d 581 ("[E]xpressions or conduct that lead a party reasonably to believe that certain conditions or obligations will not be insisted upon may operate as a waiver, and courts will then speak in terms of estoppel as well as waiver."). Moreover, Husband was in clear agreement with adjudicating the prenuptial agreement in New Mexico as he also specifically waived the forum selection clause by participating and filing pleadings in the proceedings below. *See, e.g.*, *McLam v. McLam*, 1973-NMSC-050, ¶ 8, 85 N.M. 196, 510 P.2d 914. (determining in a divorce case that a party's claim of forum non conveniens lacked merit where the case had been before the district court for a considerable amount of time before the doctrine was raised).

B. Rule 1-056 NMRA and Due Process

{15} Husband next argues that the district court erred in granting the motion for partial summary judgment because it violated Rule 1-056 and his right to due process. Husband contends that there were issues that Wife's motion failed to address. The issues "would include but not be limited to" eight claims that Husband presented to the district court in his response to Wife's motion for partial summary judgment, only alluding to some of them vaguely in a prior response motion. In making this assertion, Husband relies on *Azar v. Prudential Insurance Co. of America*, 2003-NMCA-062, 133 N.M. 669, 68 P.3d 909.

{16} In *Azar*, a single plaintiff, amongst many plaintiffs, moved for and was granted summary judgment against a defendant. *Id*. ¶ 86. However, the district court also mistakenly ruled on the claims as though brought by all the plaintiffs, rather than the single plaintiff who had moved for partial summary judgment. *Id*. This Court held that granting partial summary judgment violated Rule 1-056 and the defendant's due process rights because the defendant did not have "notice and a reasonable opportunity to respond or present evidence to establish a genuine issue of material fact as to each of the claims adjudicated against it." *Id*. ¶¶ 87-88.

{17} *Azar* is inapplicable to Husband's situation. Wife moved for partial summary judgment seeking to enforce the prenuptial agreement, a claim she originally brought when she filed her petition for dissolution of marriage. The district court adjudicated only this claim against Husband in entering its order and Husband had notice of the claim and an opportunity to respond.

C. Remaining Affirmative Defenses

{18} Husband's remaining arguments are undeveloped, unpled affirmative defenses, and, in some instances, appear to place the burden on Wife to disprove their applicability. *See Corona v. Corona,* 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed."); *see also Strausberg v. Laurel Healthcare Providers, LLC*, 2013-NMSC-032, ¶ 39, 304 P.3d 409 ("[U]nder settled principles of New Mexico contract law, the party alleging an affirmative contract defense has the burden to prove that the contract is unenforceable on that basis."); *Lebeck*, 1994-NMCA-103, ¶¶ 18-19 (holding that once a proponent of a prenuptial agreement establishes its existence, the opponent must prove its invalidity by a preponderance of the evidence). Husband asserted numerous claims below in various motions, but did not plead them in his response pleading. On appeal, Husband's claims are for fraudulent inducement, estoppel, oral modification, amendment through consistent course of conduct pursuant to the Uniform Premarital Agreement Act, and modification under the Uniform Electronic Transactions Act. The district court's order only addressed the fraud claim, concluding that Husband did not plead fraud with particularity under Rule 1-009(B) NMRA. In addition to proclaiming that these claims precluded summary judgment, Husband further contends that the district court erred in not permitting him the opportunity to amend his responsive pleading to include the fraud claim. We find no error in the district court's order as none of these claims were properly pled under both Rule 1-008(C) NMRA and Rule 1-009(B).

{19} Under Rule 1-008, a party is required to plead affirmative defenses in a response pleading. *See also* Rule 1-009 (indicating further that fraud must be pled with particularity); *Little v. Baigas*, 2017-NMCA-027, ¶ 22, 390 P.3d 201 (indicating that estoppel must also be pled with particularity). The purpose of this rule is to provide notice and the opportunity to demonstrate why the affirmative defense should not succeed. *Fogelson v. Wallace*, 2017-NMCA-089, ¶ 19, 406 P.3d 1012. An affirmative defense is defined as a state of facts provable by a defendant that will bar a plaintiff's recovery once a right to recover is established. *See Sonida, LLC v. Spoverlook, LLC*, 2016-NMCA-026, ¶ 25, 367 P.3d 854. "It is also well established that if an affirmative defense is not pleaded or otherwise properly raised, it is waived." *Bronstein v. Biava*, 1992-NMSC-053, ¶ 8, 114 N.M. 351, 838 P.2d 968. An exception to the rule exists if an issue is tried by express or implied consent of the parties. *See Am. Inst. of Mktg. Sys., Inc. v. Keith*, 1971-NMSC-072, ¶ 8, 82 N.M. 699, 487 P.2d 127.

{20} Even if they were adequately briefed, Husband's remaining claims are affirmative defenses. Rule 1-008 specifically identifies estoppel and fraud as affirmative defenses and our case law indicates that oral modification of a contract is an affirmative defense. *See* Rule 1-008 (indicating that fraud and estoppel are affirmative defenses); *Yucca Min. & Petroleum Co. v. Howard C. Phillips Oil Co.,* 1961-NMSC-155, ¶ 33, 69 N.M. 281, 365 P2d 925 (indicating that oral modification of a contract is an affirmative defense). Husband's remaining two statutory claims are also affirmative defenses. They demonstrate a need for him to prove that the parties changed the prenuptial agreement in some manner that would negate Wife's prima facie showing of a valid prenuptial agreement, which Husband did not do. *See Sonida, LLC*, 2016-NMCA-026, ¶ 25. Husband did not articulate in his response pleading any specific defenses, did not

allege any facts that the parties intended to void the prenuptial agreement, and, as discussed in more detail below, the parties did not try the claims by express or implied consent. *See Groff v. Circle K. Corp.*, 1974-NMCA-081, ¶ 8, 86 N.M. 531, 525 P.2d 891. If Husband had requested leave to amend, he would have had the opportunity to cure the initial waiver of his affirmative defenses that occurred when he filed his responsive pleading. *See Chavez v. Kitsch*, 1962-NMSC-122, ¶¶ 11-13, 70 N.M. 439, 374 P.2d 497 (stating a party that has failed to plead an affirmative defense in the answer has waived the defense and this defense cannot be revived unless the party is relieved by the trial court with a motion to amend the answer to include the affirmative defense); *see also* Rule 1-015(A) NMRA. However, Husband never requested leave from the district court to do so, making his contention that the district court erred in this regard immaterial. **[AB 33]** *See Am. Inst. of Mktg. Sys., Inc.*, 1971-NMSC-072, ¶¶ 7-8. Accordingly, we hold that Husband waived his affirmative defense claims.

II. Husband's Quantum Meruit Claim

{21} Husband alleges he provided legal services to Wife in regards to an employment matter throughout their marriage and he sought the value of such services in quantum meruit. Husband calculates that he provided $810,000 in legal services to Wife and that Wife obtained, at a minimum, a $2,000,000 benefit from his services based on an increase in her pension and severance pay from her employer. After a full-day trial, the district court declined to award any fees to Husband and entered its findings of facts and conclusions of law. Although Husband also did not raise this claim in his response pleading, Wife did not object during the trial and the district court ruled on the matter. *See Wynne v. Pino*, 1967-NMSC-254, ¶¶ 12-13, 78 N.M. 520, 433 P.2d 499; *Turner v. Bassett*, 2003-NMCA-136, ¶ 32, 134 N.M. 621, 81 P.3d 564 ("When a party does not object to the [district] court's consideration of an issue not raised in the pleadings and the court rules on that issue, the issue has been tried by the consent of the parties."), *rev'd on other grounds by* 2005-NMSC-009, ¶ 1, 137 N.M. 381, 111 P.3d 701 Thus, we conclude that the parties tried the quantum meruit claim by implied consent and therefore address Husband's contention on appeal.

{22} We note that it appears from our review of the record that the district court permitted Wife to file some exhibits separately after the trial because of time constraints. However, Wife's exhibits focused on refuting Husband's contentions that the parties had agreed to subsequently void the prenuptial agreement, despite the fact that the district court had already granted partial summary judgment enforcing the prenuptial agreement. Husband filed a response, objecting to the entry of the exhibits and contending that they were outside the scope of the trial. Wife's reply brief indicated that Husband based his quantum meruit claim on the notion that the parties agreed to void the prenuptial agreement. Despite not hearing evidence of this at the trial, the district court evidently considered the exhibits, accepted Wife's contentions, and entered findings relevant to the prenuptial agreement. This included that the parties never voided the prenuptial agreement, that Husband's claim that Wife promised to void it was not credible, and that the parties acted in accordance with the belief that their property was separate. These facts led to the district court's conclusion that Husband could not

recover in quantum meruit because there was no voided contract and Husband had no reasonable expectation that the parties would void it.

{23} The district court based its legal conclusion on *Calderon v. Navarette*, 1990-NMSC-098, ¶ 7, 111 N.M. 1, 800 P.2d 1058 which held that "[a]s a general rule an attorney may recover the reasonable value of services rendered under a void contract." In *Calderon*, the district court voided the contingency fee agreement between the attorney and his client and neither party disputed this nullification on appeal. *Id*. ¶¶ 4, 7. Thus, our Supreme Court declared that any recovery on a voided contract would be grounded in a quantum meruit theory[.] *Id*. ¶ 7.

{24} For clarification, we note that although the district court's findings appear to be relevant to the arguments we have concluded that Husband has waived, the evidence is relevant to Husband's quantum meruit claim, the substance of which we now proceed to address. A claim for quantum meruit is a claim in equity when a party is unable to rely on contractual relief. *Ontiveros Insulation Co. v. Sanchez*, 2000-NMCA-051, ¶ 11, 129 N.M. 200, 3 P.3d 695. When reviewing a district court's "exercise of its equitable powers, we will reverse only upon a showing that the court abused its discretion." *Id.* ¶ 9. "An abuse of discretion occurs when a ruling is clearly contrary to the logical conclusions demanded by the facts and circumstances of the case." *Benz v. Town Center Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (internal quotation marks and citation omitted). If the district court's decision is fact-based, "we must look at the facts relied on as a basis for the exercise of its discretion, to determine if the facts are supported by substantial evidence." *Gilmore v. Gilmore*, 2010-NMCA-013, ¶ 24, 147 N.M. 625, 227 P.3d 115 (internal quotation marks and citation omitted).

{25} An attorney may recover the reasonable value of legal services rendered in quantum meruit. *See Calderon*, 1990-NMSC-098, ¶ 7. A court will award the fee based upon the benefit actually provided to the client. *Id*. ¶ 13. The burden is on the lawyer to prove the value of the services rendered. *In re Dawson*, 2000-NMSC-024, ¶ 14, 129 N.M. 369, 8 P.3d 856.

{26} We note that Husband does not identify with particularity which findings of fact in the district court's order following the trial on the quantum meruit claim are unsupported by substantial evidence. *See* Rule 12-318(A)(4). As such, these facts are binding upon this Court on appeal. *See State ex rel. Blanchard v. City Comm'rs of Clovis*, 1988-NMCA-008, ¶ 15, 106 N.M. 769, 750 P.2d 469; *see also Lerma v. Romero*, 1974-NMSC-089, ¶ 2, 87 N.M. 3, 528 P.2d 647 ("This Court will not second-guess the [district] court in its findings of fact and will accept them as the findings in this Court, since they are not directly attacked."). The relevant findings related to the quantum meruit claim are that (1) Husband gave Wife advice, reviewed emails, drafted letters, and gave input regarding Wife's dispute with her employer; (2) Husband did not enter into either a written or verbal fee agreement to represent Wife in any legal case before, during, or after their marriage; (3) Wife had hired a different attorney to represent her in the employment matter who worked to achieve settlement with the employer and was paid $44,982 in legal fees; (4) Husband, by his own admission, "did not understand the

relevant employment law issues"; (5) Husband did not keep track of his time he allegedly spent assisting Wife and his testimony that he provided between 200 and 400 hours a year, over seven years, in services was "not credible"; (6) neither Husband nor Wife had an expectation that Husband would be compensated for his time; and (7) Husband was simply an active and loving spouse trying to help Wife.

{27} Based on the district court's findings, it is clear that Husband did not meet his burden of establishing the value of his services that the claimed amount of $810,000 was a reasonable fee, or that Wife received any discernable benefit from the services he provided. As such, we presume the assistance provided by Husband to Wife during her employment dispute to be the inherent gratuitous support one provides to a spouse. *See Garcia v. Candelaria*, 1898-NMSC-009, ¶¶ 9-11, 9 N.M. 374, 54 P. 342; *see also* 66 Am. Jur. 2d *Restitution & Implied Contracts* § 46 (2018).

{28} Based on this conclusion, we need not address whether we agree with the district court's interpretation of *Calderon* that a voided contract or belief that the contract will be voided is required for an attorney to recover fees in quantum meruit. *See* Rule 16-105(B) NMRA (requiring a written fee agreement except when a lawyer charges a regularly represented client on the same basis and when the lawyer provides legal services under Rule 16-605 NMRA). Accordingly, we affirm the district court's denial of Husband's quantum meruit claim.

{29} Husband also alleges that the district court abused its discretion by not permitting him more time to present his case, not allowing him to present all the evidence that he wanted to because of the time restriction, and ignoring evidence he presented in reaching its conclusions.[2] We view Husband's remaining arguments as an attempt to relitigate his quantum meruit claim that the district court expressly rejected. Husband invites this Court to assume the district court's role in reweighing evidence, judging parties' credibility, and managing its courtroom, which we decline to do. *See Skeen v. Boyles*, 2009-NMCA-080, ¶ 37, 146 N.M. 627, 213 P.3d 531 (stating that, when the district court hears conflicting evidence, "we defer to its determinations of ultimate fact, given that we lack opportunity to observe demeanor, and we cannot weigh the credibility of live witnesses"); *see also Pizza Hut of Santa Fe, Inc. v. Branch*, 1976-NMCA-051, 89 N.M. 325, 552 P.2d 227 (holding that district courts "have supervisory control over their dockets and inherent power to manage their own affairs so as to achieve the orderly and expeditious disposition of cases").

III. Husband's Motion for Sanctions

{30} Husband filed a motion for discovery sanctions, but the district court never entered a ruling. "The burden is on the party making a motion to obtain a ruling from the court and failure to do so constitutes a waiver of the motion precluding its consideration on appeal." *Matter of Ferrill*, 1981-NMCA-074, ¶ 47, 97 N.M. 383, 640 P.2d 489 (internal quotation marks and citation omitted). However, when a district court enters an order that is inconsistent with the relief sought by the unaddressed motion, we will consider the motion denied for purposes of appeal. *Id*. ¶ 48. Husband does not argue that he did

not waive his right to appeal the motion for sanctions. Yet, Wife contends that the resolution of the case in Wife's favor and the award of a portion of Wife's attorney fees is inconsistent with the relief sought in Husband's motion for sanctions. Thus, we proceed as if the district court had denied the motion. We also review the district court's presumptive denial of the motion for sanctions for an abuse of discretion. *Lewis ex rel. Lewis v. Samson*, 2001-NMSC-035, ¶ 13, 131 N.M. 317, 35 P.3d 972.

{31} The genesis of Husband's contention that the district court abused its discretion stems from an interrogatory issued to Wife concerning whether Wife listed Husband's biological son, Wife's former stepson, as a dependent on the first tax return Wife filed post-divorce. The interrogatory stated "Did you list and/or refer to [Husband's biological son] on any of your tax filings for the tax year 2013 for any reason, including but not limited to as a dependent exemption?" After Wife objected to the interrogatory, Husband filed a motion to compel and Wife sought a protective order. The result was that the district court permitted Husband to take a limited deposition of the Certified Public Accountant (CPA) who prepared Wife's tax returns and ordered Wife to supplement her responses. Wife apparently did supplement her response and responded "no" to the interrogatory, despite having already represented both to Husband via correspondence and to the district court at the hearing on the motion to compel that Wife did mistakenly declare Husband's son as a dependent on her tax return, that this was in error, and an amended return had been filed as a result. Wife later justified her response by claiming that she relied on the CPA to prepare her tax return, rather than having filled out the documents herself. Wife asserted that she "elected to answer the interrogatory literally." At the trial on the quantum meruit claim, Husband attempted to demonstrate Wife's lack of credibility by questioning her on the claimed deduction on her tax returns. In response, Wife testified that the CPA was new, that she had provided her with the previous year's tax return, that the CPA had copied information from that tax return where Wife conceivably declared the deduction previously, that she did not thoroughly read the tax return before signing it, and that she didn't recall seeing Husband's son on her tax return before she signed.

{32} Husband asks us to overturn the district court and remand with instructions to enter judgment in his favor because of the alleged intentional, bad faith misconduct of Wife, but does not articulate any appropriate authority to support such a sanction. While Rule 1-037(D)(2) NMRA may be applicable here, the requested remedy of reversal of a court judgment is extreme. Rule 1-037(D)(2) sanctions may be appropriate when a party gives a misleading or deceptive answer to an interrogatory. *See Sandoval v. Martinez*, 1989-NMCA-042, ¶ 7, 109 N.M. 5, 780 P.2d 1152. The imposition of Rule 1-037(D)(2) sanctions is "guided by the extent to which a party's preparation for trial has been obstructed." *Sandoval*, 1989-NMCA-042, ¶ 20.

{33} We do not think Husband's proposed sanction is appropriate under the circumstances of this case. *Id*. ¶ 13 (holding that dismissal should be imposed "in extreme cases and only upon a clear showing of willfulness or bad faith" (internal quotation marks and citation omitted)). Although Wife's supplemental response to the interrogatory was dubious, Wife made it clear from Husband's initial objection that she

had mistakenly declared Husband's son as a dependent. Wife's response was merely representative of the contentious behavior exhibited by the parties throughout the course of litigating this case below and we do not see how it could have obstructed Husband's preparation for trial in a meaningful way. To remedy the situation, the district court permitted Husband to take the CPA's deposition on the matter who confirmed Wife's contentions and Husband used Wife's response to impeach her credibility at the trial on the quantum meruit claim. As such, we find no abuse of discretion in the district court's decision not to sanction Wife.

IV. Wife's Attorney Fees

{34} Husband also contends that the district court erred in awarding Wife attorney fees and costs totaling $11,319.69. In its order, the district court reasoned that it decided the case pursuant to the parties' prenuptial agreement, which called for reasonable attorney fees and costs for the prevailing party in a dispute over enforcement. On appeal, Husband argues that the district court erred for three reasons: (1) in determining Wife was the prevailing party; (2) ignoring Wife's sanctionable conduct; and (3) not granting Husband's request for a hearing. Other than baldly stating these three reasons for why the district court erred, Husband does not elaborate further. "To rule on an inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties' work for them." *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53. "This creates a strain on judicial resources and a substantial risk of error. It is of no benefit either to the parties or to future litigants for this Court to promulgate case law based on our own speculation rather than the parties' carefully considered arguments." *Id*. Therefore, we affirm the district court's award of attorney fees and cost to Wife.

V. Reassignment of District Court Judge

{35} Last, Husband also asks us to remand this matter to a different district court judge based on the district court's alleged violation of the Code of Judicial Conduct. Husband argues that the district court violated Rule 21-211(A) NMRA and Rule 21-100 NMRA because it was not impartial by committing an extraordinary number of errors and abuses of discretion. Because we find the district court committed no errors, we need not address Husband's request that we require a different judge or a different jurisdiction to hear this case on remand.

CONCLUSION

{36} For the aforementioned reasons, we affirm.

{37} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

JULIE J. VARGAS, Judge

EMIL J. KIEHNE, Judge

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1 The prenuptial agreement also contains a provision that states that the parties "agree that the laws of the State of California govern the construction of this Agreement[.]" However, the district court appeared to apply New Mexico law in its order and both parties cited predominantly to New Mexico authorities below. *See Espinosa v. United of Omaha Life Ins. Co.*, 2006-NMCA-075, ¶¶ 10-11, 139 N.M. 691, 137 P.3d 631 ("Choice of law questions must be adequately raised below, or they are waived."). On appeal, the parties do not raise the applicability of California law, do not articulate how applying California law would reach a different result, and continue to argue based on New Mexico authorities. *See id*.; *see also Fowler Bros., Inc. v. Bounds*, 2008-NMCA-091, ¶¶ 8-10, 144 N.M. 510, 188 P.3d 1261 (discussing the false conflict doctrine). In fact, Husband's brief appears to implore us to apply New Mexico law.

2 Husband also states that the district court abused its discretion by not allowing him to present admissions from Wife's deposition transcript and sustaining Wife's objections to Husband's leading questions, but he fails to identify why this was the case. "This Court has no duty to review an argument that is not adequately developed." *Corona*, 2014-NMCA-071, ¶ 28.