

STATE V. HULS

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SETH BENJAMIN HULS,
Defendant-Appellant.**

NO. A-1-CA-36893

COURT OF APPEALS OF NEW MEXICO

December 20, 2018

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, William G. Shoobridge,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Dianna Lewis Luce, Assistant Attorney General, Albuquerque, NM, for Appellee

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JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: HENRY M. BOHNHOFF, Judge,
JENNIFER L. ATTREP, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Defendant appeals his conviction, following a jury trial, of two counts of criminal sexual contact of a minor. [MIO 1] As his sole appellate issue, Defendant challenges the

district court's ruling allowing the victim's testimony to be received by way of a video deposition pursuant to Rule 5-504 NMRA. [Id.] This Court issued a notice of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to that proposed disposition. Having duly considered that memorandum, we remain unpersuaded.

{2} In his docketing statement, Defendant generally asserted that written findings made by the district court were insufficient to justify the admission of victim's videotaped testimony. [DS unnumbered pages 2-3] In his memorandum in opposition to summary affirmance, Defendant continues to assert that those findings are lacking and takes specific issue with the testimony of a mental health counselor who testified regarding the victim's condition and ability to testify, asserting that the current record does not show "that he had a therapeutic relationship with [the child] or had evaluated her for her potential for renewed trauma from having to testify in court." [MIO 4]

{3} As we pointed out in our notice of proposed summary disposition, our rules require that Defendant provide this Court with a factual summary that is sufficient to enable appellate review. See Rule 12-208(D)(3) NMRA (requiring docketing statements to contain a summary of "all facts material to a consideration of the issues presented"); *Thornton v. Gamble*, 1984-NMCA-093, ¶ 18, 101 N.M. 764, 688 P.2d 1268. With regard to the counselor's relationship to the victim, Defendant's docketing statement informs us only that he "testified that he had interviewed the witness and it was his determination that the victim would be harmed by testifying at trial." [DS unnumbered page 1] It thus seems, even on the basis of the sparse facts provided, that the counselor did evaluate the potential trauma that would be associated with testifying in court.

{4} In any event, Defendant's memorandum in opposition does not assert that the evidence was inadmissible, and thus raises only the question of what weight the district court should have given to such testimony. As we pointed out in our notice of proposed summary disposition, it is not the role of this Court to reweigh the evidence received below. See *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (explaining that this Court defers "to the district court when it weighs the credibility of witnesses"); *Las Cruces Prof'l Fire Fighters v. City of Las Cruces*, 1997-NMCA-044, ¶ 12, 123 N.M. 329, 940 P.2d 177 (explaining that this Court does not reweigh the evidence on appeal).

{5} Ultimately, we conclude that Defendant has not met his burden, in opposing the proposed summary disposition "to clearly point out errors in fact or law." *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683; see also *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (explaining that the repetition of earlier arguments does not meet a party's burden to come forward and specifically point out errors of law or fact in a notice of proposed summary disposition), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-01, ¶ 3, 297 P.3d 374. Accordingly, for the reasons stated here and in our notice of proposed summary disposition, we affirm the judgment of the district court.

{6} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

HENRY M. BOHNHOFF, Judge

JENNIFER L. ATTREP, Judge