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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **SHARON RUSSELL,**

3                   **Petitioner-Appellant,**

4           **v.**

**No. 34,499**

5 **GLEND A COOK, PERSONAL REPRESENTATIVE**

6                   **Respondent-Appellee,**

7 **IN THE MATTER OF THE ESTATE OF**

8 **DIANA RUSSELL, DECEASED.**

9 **APPEAL FROM THE DISTRICT COURT OF ROOSEVELT COUNTY**

10 **Donna J. Mowrer, District Judge**

11 Eric D. Dixon

12 Portales, NM

13 for Appellant

14 Stephen E. Doerr

15 Portales, NM

16 for Appellee

17                                   **MEMORANDUM OPINION**

18 **HANISEE, Judge.**

19 {1}    Petitioner appeals the district court's decision upholding the validity of

1 Decedent Diana Russell's will and refusing to find that a breach of fiduciary duty  
2 occurred prior to Decedent's death. We issued a notice of proposed disposition  
3 proposing to affirm, and Petitioner has responded with a memorandum in opposition.  
4 We have considered the arguments raised in that memorandum; however, we continue  
5 to believe summary affirmance is appropriate in this case. We therefore affirm the  
6 district court's decision.

7 {2} In our notice we admonished counsel for Petitioner, pointing out that the  
8 docketing statement recited only evidence favorable to Petitioner's position, while  
9 omitting virtually all of the evidence that appeared to support the district court's  
10 decision. The memorandum in opposition suffers from the very same deficiency.  
11 Petitioner does not contend that the substantial amount of evidence discussed in the  
12 notice, which is favorable to the district court's decision, was not in fact presented at  
13 trial. Instead, she again recites at length the evidence that would have supported a  
14 contrary result had the district court chosen to credit it. We see no reason to again  
15 review all of the evidence we have already analyzed in the notice of proposed  
16 summary disposition. We simply reiterate the point made in that notice, that we must  
17 view the evidence in the light most favorable to the district court's decision,  
18 disregarding all evidence that conflicts with that decision. *See Jones v. Schoellkopf*,  
19 2005-NMCA-124, ¶ 8, 138 N.M. 477, 122 P.3d 844. Doing so, for the reasons stated

1 in the notice and because Petitioner has insufficiently contested those reasons, we hold  
2 there was substantial evidence supporting the district court’s decision concerning  
3 Decedent’s competency to execute her will, as well the decision refusing to find a  
4 breach of fiduciary duty by Glenda Cook. *See Hennessy v. Duryea*, 1998-NMCA-036,  
5 ¶ 24, 124 N.M. 754, 955 P.2d 683 (pointing out that a party opposing summary  
6 disposition must specifically point out error in fact or law in the notice of proposed  
7 disposition).

8 {3} With respect to the breach-of-fiduciary-duty issue, we note one new argument  
9 made in the memorandum in opposition concerning that claim. Petitioner argues that  
10 Ms. Cook breached her fiduciary duty “as a matter of law” by Ms. Cook’s “failure to  
11 account for the money spent” by Decedent during the last months of her life. [MIO  
12 12] Petitioner makes this argument in the face of Ms. Cook’s testimony, to which we  
13 pointed in our notice, to the effect that every check she wrote for Decedent was done  
14 at Decedent’s direction and in Decedent’s presence, and that she had no idea what  
15 Decedent had done with the funds she obtained by writing checks to “cash.” By  
16 claiming that Ms. Cook had a responsibility to “account for the money spent” by  
17 Decedent, Petitioner seems to be arguing that a person who has a power of attorney  
18 granted by another, and therefore owes a fiduciary duty toward the other person, has  
19 a legal responsibility to act as a guardian of that person. In other words, Petitioner

1 appears to maintain that Ms. Cook had a duty not just to write checks in accordance  
2 with Decedent’s instructions, but also to prevent Decedent from wasting her own  
3 assets by having Ms. Cook write questionable checks or excessive numbers of checks  
4 to obtain cash, which was then unaccounted for.

5 {4} We know of no authority, and Petitioner has cited none, for the proposition that  
6 a person holding a power of attorney and writing checks at the direction of another  
7 person has a duty to ensure that the other person’s money is well-spent. A person who  
8 owes a fiduciary duty toward someone else has a duty of loyalty to that person, which  
9 primarily includes a duty not to profit at the other person’s expense. *See, e.g., Walta*  
10 *v. Gallegos Law Firm, P.C.*, 2002-NMCA-015, ¶ 41, 131 N.M. 544, 40 P.3d 449;  
11 *Moody v. Stribling*, 1999-NMCA-094, ¶ 27, 127 N.M. 630, 985 P.2d 1210. In this  
12 case there is no evidence that Ms. Cook enriched herself in any way with Decedent’s  
13 assets. Instead, Petitioner complains that Ms. Cook allowed Decedent to pay money  
14 to third parties, and to write checks for excessive amounts of cash, with no evidence  
15 that any of that cash found its way into Ms. Cook’s pockets. Petitioner has not done  
16 enough to develop her “breach of fiduciary duty as a matter of law” argument, and we  
17 will not perform Petitioner’s research for her. We therefore decline to address this  
18 argument. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M.  
19 339, 110 P.3d 1076 (stating that this Court will not consider unclear or undeveloped

1 arguments).

2 {5} Based on the foregoing and upon the analysis set out in the notice of proposed  
3 disposition, we affirm the district court's decision.

4 {6} **IT IS SO ORDERED.**

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**J. MILES HANISEE, Judge**

7 **WE CONCUR:**

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**RODERICK T. KENNEDY, Judge**

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**LINDA V. VANZI, Judge**