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

2 **STEVEN CHRISTOFFEL,**

3 Plaintiff-Appellant,

4 v.

NO. 35,056

5 **JACK CLOUD, as Planning Department**
6 **Manager of the City of Albuquerque, and**
7 **CITY OF ALBUQUERQUE,**

8 Defendants-Appellees.

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

10 **Clay Campbell, District Judge**

11 Steven G. Christoffel

12 Albuquerque, NM

13 Pro Se Appellant

14 Jessica M. Hernandez, City Attorney

15 Daniel P. Dietz, Assistant City Attorney

16 John E. DuBois, Assistant City Attorney

17 for Appellees

18 **MEMORANDUM OPINION**

19 **KENNEDY, Judge.**

1 {1} Steven Christoffel, a self-represented litigant, appeals from the district court's
2 order dismissing his tort claim action against Jack Cloud, in his capacity as the City
3 of Albuquerque Planning Department Manager. In our notice of proposed summary
4 disposition, we proposed to affirm. In response to this Court's notice, Christoffel filed
5 a memorandum in opposition, which we have duly considered. We remain
6 unpersuaded by Christoffel's arguments and therefore affirm.

7 {2} In his docketing statement, Christoffel argued: (1) the district court erred in
8 finding that Cloud is not a law enforcement officer; (2) the district court erred in
9 finding that the Board of Appeals did not have appellate jurisdiction over his appeal
10 of a building permit and certificate of occupancy; and (3) the district court erred in
11 finding that Cloud did not owe him any legal rights or legal duties. [DS 2 (¶ 5)]
12 Because Christoffel's arguments appeared to lack merit, this Court proposed to affirm.

13 **Issue 1**

14 {3} In our notice of proposed disposition, we considered the job description for the
15 Planning Department Manager, set forth in the amended complaint [RP 162-64 (¶ 8);
16 *see also* DS 7-9], and we proposed to hold that Cloud is not a law enforcement officer,
17 as defined in the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30 (1976,
18 as amended through 2010). [CN 3-4] We also suggested that Cloud's principal duties

1 as the Planning Department Manager in the present case were not to maintain public
2 order. [CN 4-5]

3 {4} In his memorandum in opposition, Christoffel maintains that Cloud is a law
4 enforcement officer, and his principal duties as the Planning Department Manager
5 were to maintain public order. [MIO 1-26] We note that Christoffel has not pointed
6 out errors in fact or law with our proposed disposition. *See Hennessy v. Duryea*,
7 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly
8 held that, in summary calendar cases, the burden is on the party opposing the proposed
9 disposition to clearly point out errors in fact or law.”). Instead, Christoffel cites
10 various legal authorities, which he claims support his arguments; however, we are not
11 persuaded. *See Fernandez v. Farmers Ins. Co. of Ariz.*, 1993-NMSC-035, ¶ 15, 115
12 N.M. 622, 857 P.2d 22 (“[C]ases are not authority for propositions not considered.”
13 (internal quotation marks and citation omitted)). Where a party cites no authority to
14 support an argument, we may assume no such authority exists. *In re Adoption of Doe*,
15 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329. Therefore, we remain
16 unconvinced that the district court erred in this case.

17 **Issue 2**

18 {5} In our notice of proposed disposition, we suggested that the Zoning Board of
19 Appeals did not have appellate jurisdiction over Christoffel’s appeal, and even if it

1 did, Christoffel’s appeal was untimely filed. [CN 5] *See* Albuquerque, N.M., Rev.
2 Ordinances § 14-16-4-4 (1974, amended 2014) (governing appeals under the Zoning
3 Code). As discussed in our notice, following Christoffel’s appeal of the City of
4 Albuquerque’s issuance of a building permit and certificate of occupancy for the
5 property located at 7440 Jim McDowell Road, Cloud sent Christoffel a notice stating
6 that the appeal was not well taken. [CN 2; RP 169-70] Cloud’s notice further stated
7 that, under Albuquerque, N.M., Rev. Ordinances § 14-16-4-4, “appeals relating to the
8 issuance of a building permit or certificate of occupancy are not heard by the Zoning
9 Board of Appeals.” [CN 2 (quoting RP 170)] Additionally, Cloud noted that “all
10 zoning appeals must be filed within fifteen (15) days of the issuance of a decision”
11 and “the building permit and certificate of occupancy that [Christoffel was]
12 challenging were issued several years [earlier].” [Id.] Finally, Cloud stated that “in
13 order to appeal a decision of this type, a person must own property within three
14 hundred feet (300') of the subject site or demonstrate a personal or pecuniary interest
15 or property right adversely affected by the decision” and Christoffel’s application did
16 not demonstrate either of these circumstances. [Id.] Accordingly, Cloud rejected
17 Christoffel’s appeal. [Id.]

18 {6} In response, Christoffel maintains that the Zoning Board of Appeals had
19 appellate jurisdiction. [MIO 27-32] In support of this argument, Christoffel asserts

1 that “[a]ny city appellate body . . . may suspend any applicable procedural rule if
2 doing so does not adversely impact any party’s rights[,]” “[t]he Zoning Board of
3 Appeals may choose to waive the 30 day time limit on an appeal, or any other
4 applicable procedural rule if doing so does not adversely impact any party’s rights[,]”
5 and “[t]he Zoning Board of Appeals or any member of the board may choose to hear
6 an appeal in the public interests.” [MIO 31-32] Even if these assertions are correct and
7 the Zoning Board of Appeals had discretion to accept Christoffel’s appeal, Christoffel
8 failed to meet his burden in showing that the Board of Appeals erred in not exercising
9 this discretion and that the district court erred in finding that the Board of Appeals had
10 appellate jurisdiction over his appeal of a building permit and certificate of occupancy.
11 *See City of Albuquerque v. Westland Dev. Co.*, 1995-NMCA-136, ¶ 34, 121 N.M. 144,
12 909 P.2d 25 (“The appellant has the burden to point out clearly and specifically the
13 error it asserts on appeal.”).

14 **Issue 3**

15 {7} In our notice of proposed disposition, we acknowledged Christoffel’s argument
16 that the district court erred in finding that Cloud did not owe him any legal rights or
17 legal duties [CN 5; DS 2 (¶ 5)]; however, we noted that the district court did not make
18 a ruling on this issue [CN 5; RP 220-21]. Therefore, we proposed to hold that this
19 issue was not preserved for appellate review and we declined to address the issue

1 further. [CN 5-6] *See Crutchfield v. N.M. Dep't of Taxation & Revenue*, 2005-NMCA-
2 022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (“[O]n appeal, the party must specifically
3 point out where, in the record, the party invoked the court’s ruling on the issue.
4 Absent that citation to the record or any obvious preservation, we will not consider the
5 issue.”); *see also* Rule 12-208(D)(4) NMRA (requiring that the docketing statement
6 include a statement of how each issue was preserved in the trial court).

7 {8} Christoffel did not respond to this issue in his memorandum in opposition.
8 Therefore, this issue is deemed abandoned. *See Griffin v. Thomas*, 1997-NMCA-009,
9 ¶ 7, 122 N.M. 826, 932 P.2d 516 (recognizing that an issue is deemed abandoned
10 where a party fails to respond to the calendar notice’s proposed disposition of the
11 issue); *Taylor v. Van Winkle’s Iga Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M.
12 486, 927 P.2d 41 (same).

13 {9} Accordingly, for the reasons stated here and in our notice of proposed summary
14 disposition, we affirm.

15 {10} **IT IS SO ORDERED.**

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17

RODERICK T. KENNEDY, Judge

1 **WE CONCUR:**

2

3 **TIMOTHY L. GARCIA, Judge**

4

5 **J. MILES HANISEE, Judge**