

1 **GARCIA, Judge.**

2 {1} Citicorp Trust Bank FSB (Citicorp) appeals from the district court's order
3 affirming the final judgment. This Court's second calendar notice proposed to affirm
4 the district court's decision dismissing the foreclosure action with prejudice under
5 Rule 1-041(E)(1) NMRA. Citicorp filed a memorandum in opposition to the proposed
6 disposition. Not persuaded by Citicorp's arguments, we affirm.

7 {2} This Court's second calendar notice proposed to conclude that assuming
8 Citicorp followed the proper procedures and sought an evidentiary hearing to make
9 its loss mitigation efforts part of the record, any such efforts that did not take place
10 until April 2013, two years after Citicorp filed the complaint, did not constitute timely
11 action under Rule 1-041(E)(1). [2 CN 4-5] *See State ex rel. Reynolds v. Molybdenum*
12 *Corp.*, 1972-NMSC-027, ¶ 10, 83 N.M. 690, 496 P.2d 1086 (discussing what
13 constitutes timely action under Rule 1-041(E)(1)). Citicorp continues to argue that
14 affirming a dismissal on this basis would chill a mortgagee's and a loan servicer's
15 attempts to keep borrowers in their homes following default over concern those
16 attempts could be viewed as failing to prosecute foreclosure actions. [MIO 7] *See*
17 *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating
18 that a party responding to a summary calendar notice must come forward and

1 specifically point out errors of law and fact, and the repetition of earlier arguments
2 does not fulfill this requirement), *superseded by statute on other grounds as stated in*
3 *State v. Harris*, 2013-NMCA-031, 297 P.3d 374. However, Citicorp does not
4 demonstrate how the district court’s decision “exceed[ed] the bounds of reason,” such
5 that it amounted to an abuse of discretion. *Summit Elec. Supply Co. v. Rhodes &*
6 *Salmon, P.C.*, 2010-NMCA-086, ¶ 6, 148 N.M. 590, 241 P.3d 188 (internal quotation
7 marks and citation omitted); *see Molybdenum Corp.*, 1972-NMSC-027, ¶ 24 (stating
8 that “the discretion of the trial court will be upheld on appeal except for a clear abuse
9 thereof”). Nor does Citicorp point to any specific factual or legal error with this
10 Court’s proposed disposition. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
11 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
12 cases, the burden is on the party opposing the proposed disposition to clearly point out
13 errors in fact or law.”).

14 {3} This Court’s second calendar notice further proposed to affirm the district
15 court’s conclusion that taking almost three years to transfer the file to the new lender
16 was an unreasonable amount of delay, and Citicorp took none of the actions our courts
17 have recognized to bring the case to trial during that time. *See Jones v. Montgomery*
18 *Ward & Co.*, 1985-NMSC-062, ¶ 10, 103 N.M. 45, 702 P.2d 990 (setting out various
19 factors such as pursuit of discovery, communications between the court and counsel,

1 and motions hearings actually conducted as bearing on whether sufficient action has
2 been taken). [2 CN 6-7] Citicorp continues to argue that because its motion to
3 substitute parties was filed before the motion to dismiss, the district court abused its
4 discretion by dismissing for lack of prosecution. [MIO 9] *See Mondragon*, 1988-
5 NMCA- 027, ¶ 10. Citicorp does not dispute the facts relied upon in the calendar
6 notice, nor does it point to any error with this Court’s proposed disposition. *See*
7 *Hennessy*, 1998-NMCA-036, ¶ 24.

8 {4} Accordingly, for all of these reasons and those stated in the second calendar
9 notice, we affirm.

10 {5} **IT IS SO ORDERED.**

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12 **TIMOTHY L. GARCIA, Judge**

13 **WE CONCUR:**

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15 **M. MONICA ZAMORA, Judge**

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17 **J. MILES HANISEE, Judge**