

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

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

2 **CITY OF RUIDOSO DOWNS,**

3 Plaintiff-Appellee,

4 v.

NO. A-1-CA-36650

5 **JOHN KIMBRELL a/k/a**

6 **JUAN KIMBRELL,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY**

9 **Daniel A. Bryant, District Judge**

10 Alexandra J. Bobbit

11 Ruidoso, NM

12 for Appellee

13 John G. Kimbrell

14 Ruidoso Downs, NM

15 Pro Se Appellant

16 **MEMORANDUM OPINION**

17 **VIGIL, Judge.**

18 {1} Defendant John Kimbrell a/k/a Juan Kimbrell (“Defendant”) appeals from

1 orders of the district court, dismissing two separate cases for lack of final orders from
2 the municipal court. [36650 RP 61-62; 36652 RP 34-35] Unpersuaded by Defendant’s
3 docketing statement, we entered a notice of proposed summary disposition, proposing
4 to affirm. Defendant has filed a memorandum in opposition (MIO) to our notice. We
5 remain unpersuaded and therefore affirm.

6 {2} In his docketing statements, Defendant raised numerous issues, all of which
7 appear to stem from the district court’s decision to dismiss his cases. Our notice,
8 which proposed summary affirmance, set forth the relevant facts and the law that we
9 believed controlled. In response, Defendant set forth three issues, challenging our
10 proposed disposition. First, he contends that this Court has failed to examine the
11 record properly. [MIO 1] Second, he contends that “[c]onsolidation of cases can not
12 be done by the Appellate Courts.” [MIO unnumbered 2] Lastly, he contends that
13 contrary to what this Court set out in the proposed disposition, he did, in fact file a
14 notice of appeal. [MIO 4] Our understanding of these issues, does not change the
15 outcome of this case. Nonetheless, we address each issue in turn.

16 {3} First, Defendant claims that this Court failed to examine the record properly
17 with respect to the district court’s holding of a trial instead of a hearing, which he
18 claims was illegal. [MIO 1-unnumbered 2] This contention, however, does nothing to
19 address how the district court erred in ruling that there are no final orders from the

1 municipal court. Accordingly, Defendant failed to demonstrate error in the district
2 court's ruling. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955
3 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the
4 burden is on the party opposing the proposed disposition to clearly point out errors in
5 fact or law.”) As we explained in our proposed disposition, we presume that the
6 district court's ruling regarding finality was correct. *See Farmers, Inc. v. Dal Mach.*
7 *& Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (“The
8 presumption upon review favors the correctness of the trial court's actions. Appellant
9 must affirmatively demonstrate its assertion of error.”).

10 {4} Second, Defendant contends that this Court violated rules of procedure by
11 consolidating No. A-1-CA-36650 with No. A-1-CA-36652. [MIO unnumbered 2-4]
12 Again, this does not explain how the district court erred. *Id.* Additionally, we direct
13 Defendant's attention to Rule 12-317(B) NMRA of our Rules of Appellate Procedure,
14 which gives this court authority to sua sponte consolidate cases on appeal. *Id.* (“The
15 appellate court may consolidate appeals on its own motion or on motion of a party.”).

16 {5} Lastly, Defendant contends that he did, in fact, file a notice of appeal. [MIO 4-
17 5] Again, this does not explain how the district court erred, which is Defendant's
18 burden on appeal. *See Hennessy*, 1998-NMCA-036, ¶ 24 (“Our courts have repeatedly
19 held that, in summary calendar cases, the burden is on the party opposing the proposed

1 disposition to clearly point out errors in fact or law.”) We do note that Defendant filed
2 pleadings in the district court on September 12, 2017, both titled “Case Information
3 Sheet ” in case numbers D-1226-LR-2017-00015 and D-1226-LR-2017-00014.
4 [36650 RP 139-41; 36652 RP 36-41] These, however, are not notices of appeal.
5 Notably, these pleadings, which are forms, specifically ask whether a notice of appeal
6 has been filed. [Id.] In response to that question Defendant replied, “Yes,” and he
7 listed the date of filing for the notices of appeal as August 24, 2017. [Id.] As an
8 exhibit, Defendant attached the notice of appeal filed from municipal court to district
9 court—not from district court to this Court. [36650 RP 141] Therefore, we conclude
10 that Defendant did not file notices of appeal as required pursuant to Rule 12-202
11 NMRA. Regardless, as we explained in our proposed disposition, we construed
12 Defendant’s timely non-conforming documents as notices of appeal and proceeded to
13 examine the merits of this appeal. *See Wakeland v. N.M. Dep’t of Workforce*
14 *Solutions*, 2012-NMCA-021, ¶ 7, 274 P.3d 766.

15 {6} In sum, Defendant’s MIO does not supply any new legal or factual argument
16 that persuades us that our analysis or proposed disposition was incorrect. *See State v.*
17 *Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a]
18 party responding to a summary calendar notice must come forward and specifically
19 point out errors of law and fact[,]” and the repetition of earlier arguments does not

1 fulfill this requirement), *superseded by statute on other grounds as stated in State v.*
2 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Accordingly, for the reasons set forth
3 in our notice of proposed disposition and in this opinion, we affirm.

4 {7} **IT IS SO ORDERED.**

5 _____
6 **MICHAEL E. VIGIL, Judge**

7 **WE CONCUR:**

8 _____
9 **STEPHEN G. FRENCH, Judge**

10 _____
11 **EMIL J. KIEHNE, Judge**