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

7 **LOS ALAMOS NATIONAL BANK,**

8 Plaintiff-Appellant,

9 v.

**NO. 30,943**

10 **SANTA FE HORSE PARK, LLC, a New Mexico**  
11 **Limited Liability Company, CHARLES R. KOKESH,**  
12 **MARLA G. KOKESH, SANTA FE VENTURE TRUST,**  
13 **a New Mexico Trust, REVERDY JOHNSON, or his successor**  
14 **in interest, trustee of the Santa Fe Venture Trust,**  
15 **SANTA FE VENTURE PARTNERS, LP, a California**  
16 **Limited Partnership,**

17 Defendants-Appellees.

18 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**  
19 **Barbara Vigil, District Judge**

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21 Thomas A. Simons, IV  
22 Faith Kalman Reyes  
23 Santa Fe, NM

24 for Appellant

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27 Daniel Sanchez  
28 Robert M. Strumor  
29 Santa Fe, NM

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2 Christopher Carlsen  
3 Santa Fe, NM

4 Scott M. Davidson  
5 Albuquerque, NM

6 for Appellees

7 **MEMORANDUM OPINION**

8 **VIGIL, Judge.**

9 Plaintiff appeals an order granting Defendants' motion for relief from judgment.

10 In this Court's notice of proposed summary disposition, we proposed to affirm.

11 Plaintiff has filed a memorandum in opposition and a motion to consolidate this

12 appeal with another appeal arising from the same underlying district court case. We

13 have duly considered Plaintiff's arguments, and as we are not persuaded by them, we

14 deny its motion to consolidate and we affirm.

15 **Whether It Was Error to Grant Relief from a Stipulated Judgment**

16 Plaintiff contends that the district court erred in addressing Defendant Santa

17 Fe Horse Park's claims regarding the Hagerman Well water rights pursuant to a Rule

18 1-060(B) NMRA motion for relief from judgment. [DS 7] *See Sun Country Savings*

19 *Bank of N.M., F.S.B. v. McDowell*, 108 N.M. 528, 532, 775 P.2d 730, 734 (1989)

20 (holding that the district court did not abuse its discretion in refusing to grant a motion

1 for relief from a stipulated judgment because “Rule 1-060 was not designed nor does  
2 it permit relief from final orders when the effect of such relief would free the moving  
3 party from calculated voluntary choices and decisions previously made”). In this  
4 Court’s notice of proposed summary disposition, we proposed to find no error,  
5 because although both the parties and the district court characterized the ruling as  
6 being pursuant to Rule 1-060(B), it appeared to this Court that the district court was  
7 not actually providing relief from the judgment pursuant to that rule, and instead was  
8 determining whether the Hagerman Well water rights came within the terms of the  
9 judgment. *See Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 238, 824 P.2d  
10 1033, 1040 (1992) (stating that a district court always retains jurisdiction to enforce  
11 and give effect to the terms of a judgment).

12 In Plaintiff’s memorandum in opposition, it argues that this Court overlooked  
13 the terms of the stipulated judgment, which expressly incorporated two paragraphs of  
14 the complaint. [MIO 2-3] We clearly did not overlook these provisions, as we quoted  
15 them in our notice of propose summary disposition. The stipulated judgment provides  
16 that “[j]udgment of foreclosure is hereby entered on the mortgage held by [Plaintiff]  
17 as referred to in . . . Plaintiff’s Complaint . . . , and providing a sale of the property as  
18 described in Paragraphs 14 and 15 of the Complaint and the Mortgage.” [RP 206]  
19 Paragraphs 14 and 15 of the complaint state that the mortgage is a valid lien on the

1 described real property and that “[o]n information and belief, the property includes  
2 wells, water rights, and various contracts and/or options to purchase water or water  
3 rights, all of which are subject to the LANB mortgage and the other agreements  
4 between LANB and the non-lienholder Defendants.” [RP 3]

5 Plaintiff’s memorandum does not persuade us that we have misinterpreted these  
6 provisions. The stipulated judgment is clear that “[j]udgment of foreclosure is hereby  
7 entered on the mortgage . . . ,” such that the foreclosure would only warrant a sale of  
8 that property that was subject to the terms of the mortgage. [RP 206] Nothing about  
9 the judgment reflects an intention to provide Plaintiff with any interests beyond its  
10 interest in the property covered by the mortgage, and Paragraph 15 of the complaint  
11 only states that on “information and belief” certain water rights were subject to the  
12 mortgage. [RP 3] We do not read this paragraph to express a conclusion that the  
13 Hagerman Well water rights were in fact subject to the mortgage. Instead, we read it  
14 to mean that the agreement between the parties was that the mortgage was to be  
15 foreclosed and that the terms of the mortgage might encompass certain water rights.  
16 Plaintiff appeared to recognize that the language of the stipulated judgment did not  
17 constitute an agreement that the Hagerman Well rights were subject to the mortgage,  
18 since, in the district court, Plaintiff stated that “Para[graph] 15 of the Stipulated  
19 Judgment . . . merely acknowledges the possibility that water rights and wells may be

1 among the ‘rights’ and ‘appurtenances’ enumerated in the mortgage [RP 286  
2 (emphasis in original)], and Plaintiff repeatedly stated that the stipulated judgment  
3 provided that the Hagerman Well rights “may” be subject to the mortgage. [RP 259,  
4 284, 285] As there was a dispute between the parties about whether the Hagerman  
5 Well rights were in fact subject to the mortgage, and as the stipulated judgment did  
6 not expressly resolve this dispute, the district court could determine, without resort to  
7 Rule 1-060(B), whether the Hagerman Well rights were subject to the mortgage as  
8 part of its determination of whether the judgment of foreclosure on the mortgage  
9 included those rights. The district court did not grant relief from the stipulated  
10 judgment and instead interpreted the terms of the stipulated judgment so that it could  
11 be properly effectuated.

### 12 **Whether the Hagerman Well Water Rights Were Included in the Mortgage**

13 Plaintiff contends that the district court erred in concluding that the Hagerman  
14 Well water rights were not encompassed by that portion of the mortgage that states  
15 that Santa Fe Horse Park “assigns, . . . as additional security all the right title and  
16 interest in . . . and all rights . . . that in any way pertain to or are on account of the use  
17 or occupancy of the whole or any part of the Property.” [DS 9] In our notice of  
18 proposed summary disposition, we proposed to conclude that Plaintiff’s excerpted  
19 language was somewhat misleading and that a reading of the relevant provisions in

1 full indicated that the assignment was of “rents, issues and profits” that would entitle  
2 Plaintiff as assignee to income and profits from the property. We proposed to  
3 conclude that neither a right to purchase water rights in the future nor the water rights  
4 themselves, once purchased, would come within a reasonable reading of the  
5 mortgage’s terms for assignment of rents, issues, and profits.

6 Plaintiff’s memorandum in opposition argues that the Court has improperly  
7 relied on the heading of the relevant section of the mortgage, in violation of another  
8 provision that states that headings are not to be used to interpret the terms of the  
9 mortgage. [MIO 4] Plaintiff is incorrect. Although our notice included the heading  
10 when quoting the language of the section regarding assignments of rents, issues, and  
11 profits, the text of the section itself indicates that it covers assignment of “rents, issues  
12 and profits.” [RP 1109] We have relied on the text, and not the heading for our  
13 interpretation.

14 Plaintiff argues that we have also interpreted the section on assignments of  
15 rents, issues, and profits too narrowly. [MIO 5] We disagree. The general rule is that  
16 while appurtenant water rights will be automatically conveyed with the land unless the  
17 grantor reserves them, water rights that are not appurtenant must be expressly  
18 conveyed. *See Hydro Res. Corp. v. Gray*, 2007-NMSC-061, ¶¶ 23-24, 143 N.M. 142,  
19 173 P.3d 749. As we pointed out in our notice of proposed summary disposition,

1 Plaintiff has abandoned its argument that the Hagerman Well water rights—which  
2 were conveyed along with a separate parcel of land that was purchased after the  
3 mortgage at issue in this case [RP 1175-79, 1181-82]—were appurtenant to the land  
4 that was subject to the mortgage here. Since Plaintiff does not argue that the rights  
5 were automatically conveyed because they are appurtenant to the land, we presume  
6 the rights are not appurtenant and that they therefore would have to be expressly listed  
7 in the mortgage in order to convey them to Plaintiff. As we pointed out in our notice  
8 of proposed summary disposition, Plaintiff cited no authority to suggest that a broad  
9 reading of a clause in a mortgage assigning “rents, issues, and profits” derived from  
10 the use or occupancy of a property should be read to encompass water rights. Where  
11 a party cites no authority in support of an argument, this Court may presume that there  
12 is none. *See In re Adoption of Doe*, 100 N.M. 764, 765, 676 P.2d 1329, 1330 (1984).  
13 We decline to read the provisions regarding rents, issues, and profits to constitute an  
14 express conveyance of the Hagerman Well rights.

### 15 **The Terms of the District Court’s Order**

16 Plaintiff contends that the district court erred in its conclusion that “[o]wnership  
17 of water rights is governed by the New Mexico Constitution and a separate body of  
18 law and procedure,” and that the district court was required to apply the law governing  
19 mortgages and contracts. [DS 10] In our notice of proposed summary disposition, we

1 proposed to conclude that even if the district court’s statement was erroneous, it would  
2 not constitute reversible error, since Plaintiff failed to demonstrate any error in the  
3 substance of its ruling. *See In re Estate of Heeter*, 113 N.M. 691, 695, 831 P.2d 990,  
4 994 (Ct. App. 1992) (“On appeal, error will not be corrected if it will not change the  
5 result.”).

6 In response, Plaintiff argues that the district court should not have applied water  
7 law principles at all, and should have only interpreted the terms of the mortgage.  
8 [MIO 7] We disagree with Plaintiff’s assessment of whether the district court should  
9 have made its decision with reference to water law principles, first, because the issue  
10 involved the ownership of water rights, and second, because, although it has  
11 abandoned this argument on appeal, Plaintiff expressly asked the district court to  
12 conclude that the water rights were appurtenant to the land that was subject to the  
13 mortgage. [RP 1230 (asking the district court to conclude that the Hagerman Well  
14 water rights were “appurtenances”)] Furthermore, even if the district court had done  
15 as Plaintiff now suggests and just considered the terms of the mortgage without  
16 reference to water law principles, as we have explained, the terms of the mortgage do  
17 not convey the Hagerman Well water rights. Accordingly, we find no reversible error  
18 based on this statement.

19 **Assignment to the General Calendar**



1 Plaintiff asserts that our notice of proposed summary disposition perpetuates  
2 several errors, and asks this Court to assign the case to the general calendar so that the  
3 Court may benefit from “the analysis provided to the Court in briefing on the General  
4 Calendar,” and so that the Court can engage in a “broader examination of the  
5 underlying facts.” [MIO 7-8] Plaintiff misunderstands its obligation on appeal.  
6 Plaintiff cannot file a docketing statement and a memorandum in opposition that do  
7 not provide a complete analysis of the facts and law and then request that the case be  
8 assigned to the general calendar so that it may do so. We have read the record  
9 carefully, and once this Court filed its notice of proposed summary disposition and  
10 Plaintiff had access to the record proper, we presume that Plaintiff also did so in order  
11 to make its best arguments on appeal. We note that Plaintiff’s memorandum in  
12 opposition contains no citations to the record proper and contains only two citations  
13 to legal authority—both of which were included in its docketing statement and  
14 therefore had already been considered by this Court. If Plaintiff had facts, analysis,  
15 or legal authority that it believed would have persuaded this Court to reverse the  
16 district court, it was required to present them in its docketing statement, and then  
17 certainly in its memorandum in opposition once it had been alerted to this Court’s  
18 proposed analysis and had access to the full record proper. *See State ex rel. State*  
19 *Highway & Transp. Dep’t v. City of Sunland Park*, 2000-NMCA-044, ¶ 15, 129 N.M.

1 151, 3 P.3d 128 (noting that the docketing statement takes the place of full briefing  
2 when a case is decided on the summary calendar); *Hennesy v. Duryea*,  
3 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (stating that once this Court  
4 issues a notice of proposed summary disposition, “[o]ur courts have repeatedly held  
5 that . . . the burden is on the party opposing the proposed disposition to clearly point  
6 out errors in fact or law”).

7 Plaintiff also asks this Court to assign this case to the general calendar because  
8 another appeal arising from the same district court case has been assigned to the  
9 general calendar. [Supp. Response in Opp. to Proposed Summary Disposition and  
10 Mot. to Consolidate] We decline to do so at this point, where we have already issued  
11 a notice of proposed summary disposition and Plaintiff’s memorandum in opposition  
12 does not persuade us that our proposed disposition is incorrect. As the two appeals  
13 raise separate issues and as we can dispose of the issues raised in this appeal  
14 summarily, the appeals need not be decided together.

15 Therefore, for the reasons stated in this opinion and in our notice of proposed  
16 summary disposition, we affirm.

17 **IT IS SO ORDERED.**

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**MICHAEL E. VIGIL, Judge**



1 **WE CONCUR:**

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3 **JAMES J. WECHSLER, Judge**

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5 **JONATHAN B. SUTIN, Judge**