

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
10/26/2023 11:43 AM
AUDREY GARCIA
CLERK OF THE COURT
Dominique Sanchez

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

**APPELLEE/CROSS-APPELLANT/PETITIONER
SANDOVAL COUNTY ASSESSOR'S MOTION TO STRIKE
APPELLANTS/CROSS-APPELLEES/RESPONDENTS'
STATEMENT OF APPELLATE ISSUES**

Appellee/cross-appellant/petitioner Linda P. Gallegos, the Sandoval County Assessor, moves to strike the appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff's "Statement of the Issues" filed on October 17th, 2023, as it (1) violates Rule 1-011(A), NMRA, by including scandalous and impertinent material and (2) does not comply with the formatting requirements of Rules 1-100 and 1-074.

Background

This is a case about property tax valuations. The DeHoffs filed a protest of the valuation placed on their property by Gallegos, the Sandoval County Assessor. A hearing on the protest was held before the Sandoval County Valuation Protests Board. The

DeHoffs presented arguments to the Protests Board. So did Gallegos and her staff. This case seeks the Court's review of the decision of the Protests Board.

The DeHoffs' Statement

The DeHoffs make a number of statements in this filing that go beyond mere disagreements about the facts and the law. The Assessor's Office is said to have engaged in "egregious misconduct" and committed "multiple instances of perjury." Statement, p. 2. (The DeHoffs did not number the pages of the document; the citations herein begin with the first page of the "Statement.") The DeHoffs claim the Sandoval County Assessor's Office is "an unaccountable, unprofessional, and unethical government entity willing to work beyond the bounds of the law." *Id.* Gallegos and her staff are accused of "misrepresent[ing]" information to the Protests Board. *Id.* at 6. The DeHoffs say the Assessor's "employees committed perjury" and "altered evidence." *Id.* at 7. The DeHoffs make multiple accusations of "perjury." *Id.* at 8. They claim "government misconduct," "a pattern of deliberate misrepresentations and lies," "misrepresentations of facts, misrepresentations of law and . . . perjury." *Id.* at 11. Over a full page of the statement is spent on the DeHoff's claims of "perjury from altered evidence." *Id.* at 17–18.

The Civil Rules on Allegations in Filings

Rule 1-011(A), NMRA, bars the filing of documents with the Court which contain "scandalous or indecent matter." Filings may not be made unless there "is good ground to support it." *Id.* Rule 1-012(F), NMRA, provides that the Court may strike "immaterial, impertinent or scandalous matter." "Scandalous matter" is "both grossly disgraceful (or defamatory) and irrelevant to the action or defense." *Scandalous matter*, Black's Law Dictionary (9th ed. 2009). Scandalous matter "improperly casts a derogatory light on someone, most typically on a party to the action." *Jenkins v. City of Las Vegas*, 333 F.R.D.

544, 548 (D.N.M. 2019) (interpreting Fed. R. Civ. P. 12(F)). “Impertinent” is a synonym of “irrelevant,” which is a statement “not tending to prove or disprove a matter in issue.” *Irrelevant*, Black’s Law Dictionary (9th ed. 2009). It is not necessary for a movant to show prejudice to have material stricken for scandalousness or immateriality. *Jenkins*, 333 F.R.D. at 548.

The Material Should Be Stricken

The DeHoffs make accusations of perjury, which is a criminal offense under New Mexico law. See NMSA 1978, § 30-25-1 (2009). They also claim Gallegos and her staff of altering evidence, which is another criminal offense. See NMSA 1978, § 30-26-1 (1963) (crime of tampering with public records). Accusations of perjury and altering evidence are libelous *per se* because they allege criminal offenses involving moral turpitude. *Marchiondo v. New Mexico State Tribune Co.*, 1981-NMCA-156, ¶ 17, 98 N.M. 282, 648 P.2d 321. The same is true of the statements by the DeHoffs against Gallegos and her employees of malfeasance because they allege “unfitness to perform the duties of an office or employment for profit, or the want of integrity in the discharge of the duties of such office or employment” and “falsity which prejudices [someone] in his profession or trade.” *Id.* In addition, these *ad hominem* attacks are irrelevant to the argument of the case as they do not help resolve either the legal or factual issues.

Improper Formatting

“[A]ll pleadings and papers filed in the district court shall be: clearly legible . . . with consecutive page numbers at the bottom . . . printed using pica (10 pitch) type style or a twelve (12) point typeface The contents . . . shall be double spaced.” Rule 1-100, NMRA. Unless leave is requested, a statement of appellate issues may not exceed twenty-five pages. Rule 1-074(N), NMRA. The DeHoff’s statement of appellate issues—as

scanned by the Court—has portions that are illegible. The pages are not numbered. It appears to be set in smaller than twelve-point type. It is single-spaced. And because it is single-spaced and uses smaller type than allowed, the nineteen-page document exceeds the length that would be allowed if the DeHoffs had complied with the formatting requirements of Rule 1-100, NMRA.

Rule 1-074(K) requires the appellant's statement of appellate issues contain:

- (1) a statement of the issues;
- (2) a summary of the proceedings, briefly describing the nature of the case, the course of proceedings, and the disposition in the agency. The summary shall include a short recitation of all facts relevant to the issues presented for review, with specific references to the record on appeal showing how the issues were preserved in the proceedings before the agency. A contention that a decision or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition;
- (3) an argument, which shall contain the contentions of the appellant with respect to each issue presented in the statement of appellate issues, with citations to the authorities, statutes, and the record on appeal relied upon, and with a statement of the applicable standard of review. Applicable New Mexico decisions shall be cited. The argument shall set forth a specific attack on any finding, or such finding shall be deemed conclusive. A contention that a decision or finding of fact is not support by substantial evidence shall be deemed waived unless the argument identifies with particularity the fact or facts that are not supported by substantial evidence; and
- (4) a statement of the precise relief sought.

The document does not comply with this rule. The document is not organized along the lines required. It would be burdensome for Gallegos to attempt to respond to the document in its current form.

Conclusion

Gallegos requests that (1) the DeHoffs statement of appellate issues be stricken and (2) they be given leave to file a document that complies with the Rules of Civil Procedure for the District Courts.

Respectfully submitted:

MICHAEL ESHLEMAN,
SANDOVAL COUNTY ATTORNEY

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Certificate of Service

I certify that on October 26th, 2023, I e-mailed a copy of this document to:

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/s/Michael Eshleman
Michael Eshleman,
Sandoval County Attorney

State of New Mexico
County of Sandoval
Thirteenth Judicial District

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
11/13/2023 9:37 AM
AUDREY GARCIA
CLERK OF THE COURT
Gabriella Montoya

Kenneth and Kathleen DeHoff,
Appellants

vs.

No. D-1329-CV-2023-1382

Linda Gallegos in her role as Sandoval County Assessor
Appellee

Opposition to Motion to Strike Appellant's statement of the Issues

Appellants received on October 26, 2023 Appellee motion to strike Appellant's Statement of the Issues. Appellants ask the court to deny Appellee's Motion to Strike Appellant's Statement of the Issues because it is frivolous and without merit because it is based on misstatements of law, inaccurate characterizations of Appellant statements and unsubstantiated innuendo.

Appellee enumerated three justifications for striking Appellant's Statement of the Issues. We dismiss each as without merit based on review of the relevant rules.

1. Scandalous Material, a Rule 1-011 NMRA violation

The Appellee's motion lacked the factual basis necessary to constitute an actionable argument in support of their claims regarding scandalous material within the Appellant's Statement of the Issues. To meet the criteria set by Black's Law Dictionary, the Appellee was required to make fact-based arguments to support a legitimate defamation claim, an irrelevance claim, and to identify specific materials unbecoming of the dignity of the court. Appellant's Statement of the Issues must be limited to a review of the record and legislative immunity safeguards Appellant's ability to highlight the alleged Appellee misdeeds without the risk of a defamation claim, within the context of the record, making it impossible for Appellee to establish any defamation claim. Further, Appellees made no factual argument regarding either irrelevance or materials unbecoming of the dignity of the court. Hence the scandalous material claim is without merit.

2. Improper Formatting, a Rule 1-100 NMRA Violation

Appellee misstated to the court the text of Rule 1-100 NMRA by excluding the introductory phrase: "*Except exhibits and papers filed by electronic transmission pursuant to Rule 1-005.2 NMRA of these rules...*". This clearly exempts electronically filed PDF documents from the rule Appellee complained about. All filings by Appellants have been electronically filed to berdissues@nmcourts.gov as Adobe Acrobat 'pdf' files, including the pdfs emailed directly to Appellee representatives as required by 1-005.2 NMRA. The misstatement by Appellee of ignoring the exclusionary introduction of 1-100 NMRA renders this claim without merit.

3. Improper Formatting, a Rule 1-074(K) NMRA Violation

A mischaracterization of the content of Appellant's statement of issues in declaring the failure to follow the structure as identified within 1-074(K) renders this claim without merit. Appellants provide two arguments. First, Appellee is simply wrong. All four sections as required by 1-074(K) are present and labelled within the statement of issues. Second, Appellants note the well-founded precedent that Appeals should be heard on the merits and not rejected due to missing 'niceties of pleadings' that Appellants may have neglected to provide: *WAKELAND V. NEW MEXICO DEP'T OF WORKFORCE SOLUTIONS*, 2012-NMCA-021, 274 P.3d 766 ¶9.

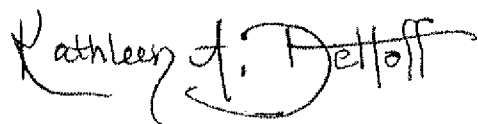
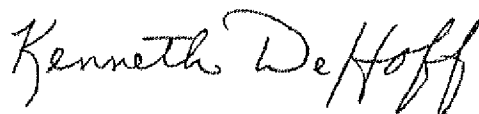
Based on fundamental mischaracterizations of the facts of Appellant's Statement of the Issues, Appellee's Motion to Strike is without merit and should be denied.

We certify that on 11/10/2023 we did also provide this document to Appellee's legal representative

Kenneth and Kathleen DeHoff

505-301-5629

66 Bad Coyote Place, Corrales NM 87048

Handwritten signature of Kathleen DeHoff in black ink.Handwritten signature of Kenneth DeHoff in black ink.

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

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SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

**APPELLEE/CROSS-APPELLANT/PETITIONER
SANDOVAL COUNTY ASSESSOR'S
REPLY TO HER MOTION TO STRIKE APPELLANTS/CROSS-
APPELLEES/RESPONDENTS' STATEMENT OF APPELLATE ISSUES**

Appellee/cross-appellant/petitioner Linda P. Gallegos, the Sandoval County Assessor, offers this reply in support of her motion to strike the appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff's "Statement of the Issues." Three objections were raised in that motion regarding the inclusion of scandalous material, the formatting of the document, and compliance with Rule 1-074, NMRA. Gallegos stands by her original motion on the first and third points and will address only the second here.

Formatting Rules

The DeHoffs state they are not required to comply with the formatting requirements of Rule 1-100 because they filed documents electronically under Rule 1-005.2, NMRA. But the DeHoffs filed their statement of issue by e-mail—which is not

the electronic filing as contemplated by the rules. Rule 1-005.2(A)(3), NMRA, speaks of “the electronic filing system approved by the Supreme Court for use by the district courts to file and serve documents by electronic transmission in civil actions.” The DeHoffs appear pro se and “[s]elf-represented parties are prohibited from electronically filing documents.” Rule 1-005.2(B)(1), NMRA. Attorneys are required to use the electronic filing system for civil cases. LR 13-208, NMRA. The DeHoffs reading of Rule 1-100, NMRA, would mean that virtually no filings would need to comply with the formatting requirements of that rule. “There is no surer way to misread any document than to read it literally,” wrote Learned Hand. *Guiseppi v. Walling*, 144 F.2d 608, 624 (2d Cir. 1944) (Hand, J., concurring). The rules must be read as a whole, not in isolation. See *State v. Davis*, 2003-NMSC-022, ¶ 12, 134 N.M. 172, 74 P.3d 1064 (“All of the provisions of a statute, together with other statutes *in pari materia*, must be read together to ascertain legislative intent.”) It is illogical that the preface to Rule 1-100, NMRA, makes the body of that rule superfluous.

Conclusion

Gallegos requests that (1) the DeHoffs statement of appellate issues be stricken and (2) they be given leave to file a document that complies with the Rules of Civil Procedure for the District Courts.

(Signature Page Follows)

Respectfully submitted:

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Certificate of Service

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Michael Eshleman,
Sandoval County Attorney

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

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**APPELLEE/CROSS-APPELLANT/PETITIONER
SANDOVAL COUNTY ASSESSOR'S
NOTICE OF COMPLETION OF BRIEFING ON
HER MOTION TO STRIKE APPELLANTS/CROSS-
APPELLEES/RESPONDENTS' STATEMENT OF APPELLATE ISSUES**

Appellee/cross-appellant/petitioner Linda P. Gallegos, the Sandoval County Assessor, notifies the Court that briefing is now complete on her motion to strike.

(Signature Page Follows)

Respectfully submitted:

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