

**ATHERTON V. CHAPMAN**

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**ARLENE RUTH ATHERTON,  
Plaintiff-Appellant,**

**v.**

**ROBERT CHAPMAN, individually and as  
PRESIDENT OF SANTA FE HARDWARE,  
SANTA FE HARDWARE; CITY OF SANTA FE:  
SANTA FE TRANSIT a/k/a SANTA FE TRAILS  
BUS SYSTEM and JOHN DOE 1,  
Defendants-Appellees.**

No. A-1-CA-36123

COURT OF APPEALS OF NEW MEXICO

March 1, 2018

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, David K. Thomson,  
District Judge

**COUNSEL**

Arlene Ruth Atherton, Albuquerque, NM, Pro Se Appellant

Riley Shane & Keller P.A., Daniel A. Alderete, Tyler J. Bates, Carmela D. Starace,  
Albuquerque, NM, for Appellee Santa Fe Hardware

Hatcher Law Group, P.A., Scott P. Hatcher, Santa Fe, NM, for Appellee City of Santa  
Fe

**JUDGES**

M. MONICA ZAMORA, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, EMIL J.  
KIEHNE, Judge

**AUTHOR:** M. MONICA ZAMORA

## MEMORANDUM OPINION

**ZAMORA, Judge.**

{1} Plaintiff appeals the dismissal of her lawsuit for lack of prosecution and lack of participation in discovery. We issued a notice of proposed disposition proposing to dismiss the appeal insofar as it attempts to challenge the district court's order of dismissal, and to affirm the district court's refusal to reinstate the case. Our notice was sent to the address Plaintiff provided, 6121 Indian School Road NE, Albuquerque, NM 87110. The notice was also emailed to the email address provided by Plaintiff. In addition, Defendants filed a memorandum in support that was served on Plaintiff at the mailing address she provided. In sum, Plaintiff has been given proper and actual notice of the proposed disposition.

{2} Rather than filing a memorandum in opposition to the proposed disposition, Plaintiff has filed three documents entitled "Notice" of one thing or another. The second of these notices, filed on January 23, acknowledges that the notice of proposed disposition was received at the mailing address provided by Plaintiff. The notice then states that our notice was scanned and emailed to Plaintiff, but she was unable to open it. On January 25 Plaintiff filed another notice, which unfortunately is written in indecipherable handwriting. Once Plaintiff became aware of the document issued by this Court, it was incumbent on her to investigate the contents of that document and to comply with our appellate rules by filing a memorandum in opposition to our proposed disposition, assuming she wishes to avoid summary disposition of the appeal. See *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (holding that the party opposing summary disposition must clearly point out errors in fact or law in that proposed disposition). That responsibility is not vitiated by the fact that Plaintiff was apparently unable to open an electronic version of the notice sent to her by an unnamed individual, who received the notice at the mailing address provided by Plaintiff. There has been ample opportunity since that time for Plaintiff to obtain a paper copy of the notice by mail, wherever she may be residing at the present time, or alternatively to request an electronic version of the notice directly from this Court (and, incidentally, to provide a working email address since the email address Plaintiff previously provided apparently did not allow this Court's notice to reach Plaintiff).

{3} Plaintiff's failure to file a memorandum in opposition to the notice of proposed summary disposition, within twenty days of the date that notice was filed, means that Plaintiff has failed to comply with the time limitations set out in Rule 12-210(D)(2) NMRA. We therefore affirm the district court's refusal to reinstate the case and dismiss this appeal.

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**EMIL J. KIEHNE, Judge**