

HUDDLESTON V. N.M. TAXATION AND REVENUE DEP'T.

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DAVID L. HUDDLESTON,
Protestant-Appellant,
and
KENDRA L. DANIELS,
Protestant,
v.
**NEW MEXICO TAXATION AND
REVENUE DEPARTMENT,**
Respondent-Appellee,
and
**IN THE MATTER OF THE PROTEST OF DAVID
L. HUDDLESTON & KENDRA L. DANIELS TO
NOTICE OF CLAIM OF TAX LIEN ISSUED UNDER
LETTER ID NO. L1880549424.**

No. 35,397

COURT OF APPEALS OF NEW MEXICO

April 11, 2017

APPEAL FROM THE ADMINISTRATIVE HEARINGS OFFICE, Brian VanDenzen, Chief
Hearing Officer

COUNSEL

David Lee Huddleston, Caprock, NM, Pro Se

Taxation and Revenue Department, Elena Morgan, Special Assistant Attorney General,
Santa Fe, NM, for Appellee

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: MICHAEL D. VIGIL, Judge, STEPHEN
G. FRENCH, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Appellant David L. Huddleston appeals from the administrative hearing officer's decision and order denying his tax protest. This Court issued a notice proposing summary affirmance. Appellant has filed a memorandum in opposition to this Court's notice of proposed disposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} In our calendar notice, we recognized that our standard of review is constrained by NMSA 1978, Section 7-1-25(C) (2015), which states that we "shall set aside a decision and order of the hearing officer only if it is found to be: (1) arbitrary, capricious, or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with the law." [CN 2] After reviewing the facts as laid out in Appellant's statement of facts, we proposed to conclude in our calendar notice that it did not appear that the hearing officer's decision, based on the fact that Appellant did not appear for his scheduled administrative tax protest hearing, was arbitrary, capricious, or an abuse of discretion, nor did it appear that the decision and order was not supported by substantial evidence in the record. [CN 3-4] In doing so, we noted that many of Appellant's arguments on appeal were largely nonsensical and the authorities cited appeared to be inapposite to the issue at hand. [CN 4-5] See *Clayton v. Trotter*, 1990-NMCA-078, ¶ 12, 110 N.M. 369, 796 P.2d 262 (stating that this Court will review pro se arguments to the best of its ability, but cannot respond to unintelligible arguments); see also *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists.").

{3} In his memorandum in opposition, Appellant more clearly lays out his contention that the hearing officer's decision was not supported by substantial evidence. [MIO unpaginated 1-3] In particular, Appellant takes issue with an exhibit indicating his tax deficiencies. [MIO unpaginated 1; see RP 17] Specifically, Appellant argues against the validity of the document, asking, perhaps somewhat rhetorically, "Was it found in some trash can and brought to the court?" [MIO unpaginated 1] Appellant also makes arguments with respect to the authority of the Taxation and Revenue Department to levy taxes on him personally. [MIO unpaginated 1] We note that Appellant made similar arguments in his formal request for a tax protest hearing. [See RP 5] We remain, however, unpersuaded.

{4} Specifically, we note that "[a]ny assessment of taxes or demand for payment made by the [New Mexico Taxation and Revenue Department] is presumed to be correct." NMSA 1978, § 7-1-17(C) (2007); *Torridge Corp. v. Comm'r of Revenue*, 1972-NMCA-171, ¶ 15, 84 N.M. 610, 506 P.2d 354 ("The notice of assessment of taxes based on the audit is presumed to be correct."). "The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some

countervailing evidence tending to dispute the factual correctness of the assessment made by the secretary.” *MPC Ltd. v. N.M. Taxation & Revenue Dep’t*, 2003-NMCA-021, ¶ 13, 133 N.M. 217, 62 P.3d 308 (internal quotation marks and citation omitted).

“Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness.” *Id.* (internal quotation marks and citation omitted). Here, there is no indication from Appellant’s request for a tax protest hearing that he intended on presenting countervailing evidence to dispute the factual correctness of the assessment, and his failure to appear at his protest hearing resulted in his outright failure to present countervailing evidence. Because Appellant did not meet his burden to overcome the presumption of correctness, we cannot say that the hearing officer erred in denying his tax protest.

{5} Accordingly, for the reasons stated in this opinion, as well as those provided in our notice of proposed disposition, we affirm.

{6} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

MICHAEL D. VIGIL, Judge

STEPHEN G. FRENCH, Judge