

MILLER V. THI NM AT ALAMEDA

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DARIA M. MILLER, Plaintiff-Appellant,
v.
THI OF NEW MEXICO AT THE VILLAGE AT ALAMEDA, LLC, AMBERCARE
HOSPICE, INC., and LEIGH ANGELLIS, Defendant-Appellee.

Docket No. 29,459

COURT OF APPEALS OF NEW MEXICO

August 28, 2009

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, Louis P.
McDonald, District Judge.

COUNSEL

Michael D. Armstrong, Albuquerque, NM, for Appellant.

Jennifer Anderson, Albuquerque, NM, Modrall, Sperling, Roehl, Harris & Sisk PA, Greg Gambill, Albuquerque, NM, Cuddy & McCarthy, LLP, Albuquerque, NM, for Appellees Ambercare Hospice and Leigh Angellis.

George R. McFall, Albuquerque, NM, for Appellee Thi of NM at the Village of Alameda

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, ROBERT E. ROBLES, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Plaintiff appeals the district court's order granting summary judgment in favor of Defendants Leigh Angelliss and Ambercare Hospice, Inc. Persuaded by Plaintiff's docketing statement that the district court applied an incorrect legal standard to Plaintiff's claim for tortious interference with contract, we issued a notice of proposed summary disposition, proposing to summarily reverse and remand. Neither Defendant Leigh Angelliss nor Defendant Ambercare Hospice, Inc., have filed a response to our notice, and the time for doing so has expired. "Failure to file a memorandum in opposition constitutes acceptance of the disposition proposed in the calendar notice." *Frick v. Veazey*, 116 N.M. 246, 247, 861 P.2d 287, 288 (Ct. App. 1993). Therefore, for the reasons set forth in our notice, we reverse the order granting summary judgment in favor of Defendants Leigh Angelliss and Ambercare Hospice, Inc. We remand for the district court to apply the standards for tortious interference with contract by improper means articulated in *Zarr v. Washington Tru Solutions, LLC*, 2009-NMCA-050, ¶ 11, 146 N.M. 274, 208 P.3d 919 (overruling *Los Alamos National Bank v. Martinez Surveying Servs., LLC*, 2006-NMCA-081, 140 N.M. 41, 139 P.3d 201).

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

ROBERT E. ROBLES, Judge