

COWLEY V. COWLEY

This decision of the New Mexico Court of Appeals was not selected for publication in the New Mexico Appellate Reports. Refer to Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Electronic decisions may contain computer-generated errors or other deviations from the official version filed by the Court of Appeals.

KATHERINE L. COWLEY,
Petitioner-Appellee,
v.
WILLIAM COWLEY,
Respondent-Appellant.

Docket No. A-1-CA-37689
COURT OF APPEALS OF NEW MEXICO
May 1, 2019

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Mary W. Rosner,
District Judge

COUNSEL

Bates Law Firm, Lloyd O. Bates, Jr., Las Cruces, NM for Appellee

Sarah Van Cott, Las Cruces, NM for Appellant.

JUDGES

M. MONICA ZAMORA, Chief Judge. WE CONCUR: J. MILES HANISEE, Judge,
JENNIFER L. ATTREP, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

M. ZAMORA, Chief Judge.

{1} Respondent has appealed following the entry of a final decree of dissolution of marriage. We previously issued a notice of proposed summary disposition in which we proposed to vacate and remand for further proceedings. Petitioner has filed a responsive memorandum. After due consideration, we adhere to our initial assessment. We therefore vacate in part, and remand for further proceedings.

{2} The pertinent background information was previously set forth in the notice of proposed summary disposition. We will avoid undue reiteration here, focusing instead on the content of the responsive memorandum.

{3} First and foremost, we understand Petitioner to contend that the unchallenged aspects of the final decree, concerning child custody, communication, child support, healthcare, financial disclosures, the restoration of Petitioner's name, and indemnification, *inter alia*, should be left intact. [MIO 1-3] Succinctly stated, we agree.

{4} Next, we understand Petitioner to suggest that we 'dismiss' the questions and concerns relative to the disposition of the proceeds of the sale of the marital residence which are the object of Respondent's appeal and the subject of our notice of proposed summary disposition, because Respondent failed to present or specifically request findings of fact and conclusions of law. [MIO 2-3] However, this does not operate as a bar to appellate review. *See, e.g., Jury v. Jury*, 2017-NMCA-036, ¶ 27, 392 P.3d 242 (commenting upon the "notable absence of findings of fact and conclusions of law supporting the district court's ruling[,] and observing that although neither of the parties submitted proposed findings and conclusions, appellate review was not precluded). "[W]here the record is sufficiently clear to allow the appellate court to clearly understand which issues were raised and argued to the trial court, and not abandoned, the appellate court may address these issues on their merits." *Cordova v. Taos Ski Valley, Inc.*, 1996-NMCA-009, ¶ 14, 121 N.M. 258, 910 P.2d 334, 339. As described at greater length in the notice of proposed summary disposition, the issue raised by Respondent on appeal was obviously raised below and not abandoned. We therefore decline Petitioner's invitation to dismiss the appeal. [MIO 3]

{5} Accordingly, for the reasons previously stated, we conclude that the portion of the decree which concerns the disposition of the proceeds of the sale of the marital residence must be vacated. However, we clarify that other unchallenged aspects of the final decree should remain undisturbed. We therefore partially vacate the decree, and remand for further proceedings on the aforementioned issue.

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

M. MONICA ZAMORA, Chief Judge

WE CONCUR:

J. MILES HANISEE, Judge

JENNIFER L. ATTREP, Judge