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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-39085

JESSE CLEMENTS,

Plaintiff-Appellant,

v.

**GREGG MERCANTEL, personally and as
Secretary of the New Mexico Corrections
Department; NEW MEXICO CORRECTIONS
DEPARTMENT, CENTRAL NEW MEXICO
CORRECTIONAL FACILITY, and
CORRECTIONS OFFICERS JANE AND
JOHN DOES 1 AND 2,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF GUADALUPE COUNTY
Floripa Gallegos, District Judge**

Law Offices of Augustine M. Rodriguez, L.L.C.
Augustine M. Rodriguez
Albuquerque, NM

for Appellant

Jarmie & Rogers, P.C.
Mark D. Jarmie
Matthew D. Bullock
Albuquerque, NM

for Appellees

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Plaintiff appeals from the district court's order denying his third motion to reinstate his complaint following dismissal for lack of prosecution. This Court issued a calendar notice proposing to summarily affirm. Plaintiff filed a memorandum in opposition and Defendants filed a memorandum in support, both of which we have duly considered. Unpersuaded that the district court abused its discretion or otherwise committed reversible error, we affirm.

{2} Plaintiff maintains that the district court erred when it denied his third motion for reinstatement under Rule 1-041(E)(2) NMRA and allowed Defendants to defend against reinstatement without having filed an answer. [MIO PDF 1-4] The arguments contained in Plaintiff's memorandum in opposition do not persuade us that this Court's proposed summary disposition was in error and do not otherwise impact our analysis or our disposition of this case. As such, we affirm for the reasons stated in our notice of proposed disposition. See *Hennessey v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{3} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

ZACHARY A. IVES, Judge

JANE B. YOHALEM, Judge