

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **TECOLOTE LAND GRANT, by and through**
3 **the TECOLOTE BOARD OF TRUSTEES,**
4 **WALTER ATENCIO, MANUEL PACHECO,**
5 **CHRIS CASTELLANO, JEROME GARZA, and**
6 **MEL J. CASTELLANO JR.,**

Court of Appeals of New Mexico
Filed 4/19/2023 10:14 AM



Mark Reynolds

7 Plaintiffs,

8 v.

No. A-1-CA-39211

9 **EDUARDO MONTOYA, ANTONIO MONTOYA,**
10 **ESTEVAN MONTOYA, CARLOS MONTOYA,**
11 **RICARDO MONTOYA, DANIEL MONTOYA,**
12 **TOM GONZALES, LEOPOLDO GONZALES,**
13 **and GABRIEL MONTOYA,**

14 Defendants, Counterclaimants, and
15 Third-Party Defendants-Appellees,

16 v.

17 **JILL MONTOYA MARLOW, ELIZABETH**
18 **MONTOYA GARCIA, and ANDREA**
19 **MONTOYA GURULE,**

20 Third-Party Defendants-Appellees,

21 _____
22 **SABRINA MONTOYA CHAVEZ,**

23 Third-Party Proposed Intervenor-Appellant.

1 **APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY**
2 **George Eichwald, District Court Judge**

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4 Pete V. Domenici, Jr.
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6 Albuquerque, NM

7 for Appellees Antonio Montoya, Estevan Montoya, Carlos Montoya, Ricardo
8 Montoya, Daniel Montoya and Gabriel Montoya

9 Cuddy & McCarthy, LLP
10 M. Karen Kilgore
11 Santa Fe, NM

12 for Appellees Jill Montoya Marlow, Elizabeth Montoya Garcia, and Andrea
13 Montoya Gurule

14 Carlos Ruiz de la Torre
15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **MEDINA, Judge.**

19 {1} Sabrina Montoya Chavez appeals the district court’s denial of her motion to
20 intervene in the lawsuit between a land grant known as the Tecolote Land Grant
21 (Land Grant), certain descendants of Jose Maria Montoya (the Montoya
22 Defendants), and third-party Defendants Jill Montoya Marlow, Elizabeth Montoya
23 Garcia, and Andrea Montoya Gurule (the Montoya Sisters). In the third-party claim,
24 the Montoya Sisters claim both title and a superior interest over the Montoya
25 Defendants to part of the land called the Andrea Tract. Chavez argues on appeal: (1)

1 the district court erred in denying her motion to intervene in the third-party claim as
2 a matter of right because she has the same interest as the Montoya Sisters, who are
3 her sisters; and (2) for the first time on appeal, she should be joined as a necessary
4 and indispensable party to the litigation. We hold that the district court did not abuse
5 its discretion when denying Chavez’s motion to intervene and that Chavez is not a
6 necessary party to the litigation. We therefore affirm.

7 {2} This is the third time this land dispute is before this Court. *See Montoya v.*
8 *Tecolote Land Grant ex rel. Tecolote Bd. of Trs.*, 2008-NMCA-014, 143 N.M. 413,
9 176 P.3d 1145; *Tecolote Land Grant ex rel. Tecolote Bd. of Trs. v. Montoya*, 2014-
10 NMCA-092, 335 P.3d 222. Because this is a memorandum opinion and the parties
11 are familiar with the lengthy procedural history and facts on appeal, we discuss the
12 facts only as they become necessary to our analysis.

13 **DISCUSSION**

14 **I. Intervention of Right**

15 {3} We begin with Chavez’s argument that the district court abused its discretion
16 in denying her motion to intervene as a matter of right under Rule 1-024(A) NMRA.
17 Chavez asserts the district court erred because she is also a Montoya Sister, her
18 petition was timely, and she met the requirements for intervention.. We disagree and
19 explain.

1 {4} “In reviewing an appeal from an order involving denial of intervention as a
2 matter of right under Rule 1-024(A), where the facts underlying the application are
3 not in dispute, we review the propriety of the court’s ruling as an issue of law.”
4 *Chino Mines Co. v. Del Curto*, 1992-NMCA-108, ¶ 8, 114 N.M. 521, 842 P.2d 738.
5 “We review issues of law de novo.” *NM-Emerald, LLC v. Interstate Dev., LLC*,
6 2021-NMCA-020, ¶ 8, 488 P.3d 707 (internal quotation marks and citation omitted).

7 {5} Rule 1-024 provides for intervention of right and permissive intervention.
8 Rule 1-024(A), (B). Chavez argues that she is allowed to intervene as a matter of
9 right under Rule 1-024(A)(2).

10 Under Rule 1-024(A)(2), an applicant seeking to intervene as a matter
11 of right must file a timely application, and satisfy a three-part test
12 showing that (1) the applicant has an interest in the subject matter of
13 the action; (2) protection of the applicant’s interest may be impaired or
14 impeded by disposition of the action; and (3) the interest sought to be
15 protected is not adequately represented by existing parties.

16 *Chino Mines Co.*, 1992-NMCA-108, ¶ 7 (citation omitted); *see* Rule 1-024(A)(2).

17 {6} Although the parties dispute the timeliness of Chavez’s motion to intervene,
18 we decline to address this argument. We do so because, even assuming the petition
19 was timely, we hold that Chavez failed to establish that her ability to protect her
20 interest is impaired.

21 {7} Without question, the district court denied the motion because it agreed with
22 the Montoya Defendants’ argument that the litigation did not prevent Chavez from
23 protecting her interest in the Andrea Tract in a separate quiet title claim. The district

1 court stated at the motion hearing that “it’s not to say that [Chavez doesn’t] have a
2 cause of action, but let them bring it through a separate lawsuit” and “that’s not to
3 say that [Chavez] cannot bring a separate cause of action, but not in this case.”
4 Chavez does not dispute this on appeal. In fact, Chavez does not challenge the
5 district court’s conclusion that a separate action would be sufficient to protect her
6 interest. Rather, Chavez admits that the Montoya Sisters’ requested relief in their
7 motion for summary judgment would not impair her ability to protect her interest.

8 {8} Because Chavez has not made any argument to establish her ability to protect
9 her interest will be impaired or impeded if her motion to intervene is not granted,
10 Chavez has failed to establish that the district court erred in denying her motion to
11 intervene as a matter of right. We therefore affirm the district court’s denial of
12 Chavez’s motion.

13 **II. Joinder of Indispensable Party**

14 {9} Chavez also argues that she should have been joined as a necessary and
15 indispensable party to the litigation under Rule 1-019(A) NMRA. We review the
16 district court’s finding of indispensability of a party for abuse of discretion. *Kaywal,*
17 *Inc. v. Avangrid Renewables, LLC*, 2021-NMCA-037, ¶ 45, 495 P.3d 550. Although
18 Chavez did not raise the joinder issue below, “we have held, however, that this issue
19 may be raised for the first time on appeal.” *See C.E. Alexander & Sons, Inc. v. DEC*
20 *Int’l, Inc.*, 1991-NMSC-049, ¶ 7, 112 N.M. 89, 811 P.2d 899. “When a Rule [1-019]

1 claim is raised for the first time on appeal, the analysis differs when it is raised before
2 judgment is entered.” *Id.* ¶ 9.

3 {10} When a joinder argument is raised below at the district court, the district court
4 is able to view evidence regarding the missing party to determine if the party is
5 indispensable. But that “is not our role on appeal, and we do not have the appropriate
6 tools at our disposal to determine the factual predicate of a party’s indispensability.”
7 *Id.* ¶ 10. In some circumstances, “where no judgment has yet been entered and an
8 appellant raises the non[]joinder of a party for the first time on interlocutory appeal,”
9 this Court has declined to consider the argument. *Kaywal, Inc.*, 2021-NMCA-037,
10 ¶ 47. This Court has also stated that “in some cases a remand may be in order to
11 allow the trial court to engage in the appropriate balancing.” *C.E. Alexander & Sons*,
12 1991-NMSC-049, ¶ 10. This case does not require either of these resolutions
13 however, because Chavez is unable to establish that her ability to protect her interest
14 is impaired.

15 {11} Rule 1-019(A)(2)(a) requires that a party shall be joined if the party claims an
16 interest in the subject matter and the party’s absence may “as a practical matter
17 impair or impede his ability to protect that interest.” As discussed above, the district
18 court found that Chavez could protect her interest by filing a separate quiet title
19 action, Chavez does not challenge this on appeal, and the Montoya Sisters’ summary
20 judgment motion does not prevent Chavez from doing so.

1 {12} Rule 1-019(A)(2)(b) requires that a party shall be joined in the action if the
2 party's claim "leaves[s] any of the persons already parties subject to a substantial
3 risk of incurring double, multiple, or otherwise inconsistent obligations by reasons
4 of his claimed interest." Although Chavez asserts the other parties would be subject
5 to substantial risk in her absence, she gives no explanation as to why this would be
6 the case. *See Elane Photography, LLC v. Willcock*, 2013-NMSC-040, ¶ 70, 309 P.3d
7 53 ("We will not review unclear arguments, or guess at what a party's arguments
8 might be." (alteration, internal quotation marks, and citation omitted)). Our review
9 shows Chavez's request in her motion to intervene exposes the parties to the same
10 risk as the Montoya Sisters' motion for summary judgment. Whether Chavez
11 establishes an interest through intestate succession or contested quitclaim deed from
12 Jill Montoya Marlow, it would have the same effect as what is occurring in the
13 case—attempting to establish interests in the Andrea Tract based upon the lineage
14 of Andrea Montoya. As such, the record does not support that Chavez's absence
15 subjects the parties to a substantial risk of inconsistent obligations.


16 {13} We conclude that Chavez's ability to protect her interest in the property is not
17 impaired, and her absence does not subject the other parties to substantial risk of
18 inconsistent obligations. Therefore, we hold that Chavez is not a necessary and
19 indispensable party to the litigation.

1 **CONCLUSION**

2 {14} For the foregoing reasons, we affirm.

3 {15} **IT IS SO ORDERED.**

4



JACQUELINE R. MEDINA, Judge

5 **WE CONCUR:**

6 

7 **MEGAN P. DUFFY, Judge**

8 

9 **ZACHARY A. IVES, Judge**