IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

CHELSEA BETHKE,

Plaintiff-Appellant,

v. **No. A-1-CA-40908**

NEW MEXICO STATE UNIVERSITY,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
James T. Martin, District Court Judge

Western Agriculture, Resource and Business Advocates, LLP
A. Blair Dunn
Jared R. Vander Dussen
Albuquerque, NM

for Appellant

Kemp Smith LLP
CaraLyn Banks
Las Cruces, NM

for Appellee

MEMORANDUM OPINION

DUFFY, Judge.

{1} Plaintiff appealed following the dismissal of her complaint under the New Mexico Human Rights Act (NMHRA). We previously issued a notice of proposed summary disposition in which we proposed to affirm. Plaintiff has filed a

memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} The relevant background information and principles have previously been set forth. We will avoid undue reiteration here and focus instead on the content of the memorandum in opposition.

{3} Plaintiff continues to assert that the district court erred in concluding that the exclusion set forth in NMSA 1978, Section 41-4A-3(D) (2021), operates as a bar to her claim. [DS 3-8; MIO 2-5] The district court's determination was premised upon the plain language of the statutory subsection, which provides, "Individuals employed by a public body shall be prohibited from using the New Mexico Civil Rights Act to pursue a claim arising from the individual's employment by the public body." *Id.* Insofar as Plaintiff's complaint clearly specifies that her claim arises from her employment with Defendant, [RP 1-4] and insofar as Defendant is indisputably a public body for purposes of the NMHRA, [CN 2-3] the district court's determination was well founded.

{4} In her memorandum in opposition Plaintiff continues assert that the exclusion set forth in Subsection (D) should not apply because she is *no longer* employed with Defendant. [MIO 2-5] To that end, Plaintiff reads the term "employed" in the present tense only, contending that it "cannot simultaneously mean currently employed and previously employed[.]" [MIO 3] However, contrary to Plaintiff's assertions, the

term "employed" is grammatically consistent with both current and past tense usages (i.e., an individual *is employed* or *was employed*). We therefore reject Plaintiff's argument. *See, e.g.*, *Flores v. Herrera*, 2015-NMCA-072, ¶¶ 15-19, 352 P.3d 695 (holding that a term compatible with both present and past tenses signified applicability with respect to both past and present employment status), *rev'd on other grounds*, 2016-NMSC-033, 384 P.3d 1070.

{5} Plaintiff further contends that the district court's reading of the statutory exclusion creates ambiguity. [MIO 2, 3] We disagree. The plain language makes clear that the statutory exclusion applies with respect to any individual "employed" by a public body, whose claim "aris[es] from the individual's employment by the public body." Section 41-4A-3(D). The fact that this provision is equally applicable to the claims of individuals currently and previously so employed does not render it ambiguous.

{6} In the final analysis, we conclude that adoption of Plaintiff's restrictive view of the exclusion set forth in Section 41-4A-3(D) would entail reading a limitation into the statutory language. This we decline to do. *See, e.g.*, *Flores*, 2015-NMCA-072, ¶ 19 (declining a similar invitation to read a temporal limitation into a statutory provision). *See generally Reule Sun Corp. v. Valles*, 2010-NMSC-004, ¶ 15, 147 N.M. 512, 226 P.3d 611 ("Under the plain meaning rule, when a statute's language is clear and unambiguous, we will give effect to the language and refrain from further

statutory interpretation. We will not read into a statute language which is not there, especially when it makes sense as it is written." (internal quotation marks and citation omitted)).

{7} Accordingly, for the reasons stated in our notice of proposed summary disposition and above, we affirm.

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

MEGAN P. DUFFY, Judge

WE CONCUR:

JENNIFER L. ATTREP, Chief Judge

KATHERINE A. WRAY, Judge