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

2 **CHAVEZ LAW OFFICES, P.A.,**

Court of Appeals of New Mexico
Filed 1/30/2024 10:50 AM

3 Plaintiff-Appellant,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41482

5 **ENRIQUE “KIKI” VIGIL, former**
6 **Sheriff of Doña Ana County; BOARD**
7 **OF COUNTY COMMISSIONERS OF**
8 **DOÑA ANA COUNTY; JULIA BROWN,**
9 **former County Manager of Doña Ana**
10 **County, in her individual capacity; and**
11 **FERNANDO MACIAS, former County**
12 **Manager of Doña Ana County, in his**
13 **individual capacity,**

14 Defendants-Appellees.

15 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

16 **Casey B. Fitch, District Court Judge**

17 Chavez Law Offices, LLC

18 Gene N. Chavez

19 Albuquerque, NM

20 for Appellant

21 Mynatt Martinez Springer, P.C.

22 Blaine T. Mynatt

23 Las Cruces, NM

24 for Appellees

1 **MEMORANDUM OPINION**

2 **HANISEE, Judge.**

3 {1} Plaintiff appeals the district court’s order granting summary judgment in favor
4 of Defendant Board of County Commissioners of Doña Ana County (the County) as
5 well as the order denying his motion for reconsideration. We issued a calendar notice
6 proposing to affirm. Plaintiff has filed a memorandum in opposition, which we have
7 duly considered. Unpersuaded, we affirm.

8 {2} Our calendar notice proposed to affirm the district court’s grant of summary
9 judgment on the grounds that Plaintiff had failed to demonstrate that a genuine issue
10 of material fact existed. [CN 4] Specifically, we stated that Plaintiff had failed to
11 present evidence that a contract existed between himself and the County because he
12 did not dispute any of the facts set forth by the County regarding the process by
13 which a contract is executed and approved and that contracts not executed through
14 that process are invalid. [CN 4] In addition, we stated that despite Plaintiff’s
15 affidavits from the sheriff and the sheriff’s assistant, they did not appear to establish
16 that a contract was ever actually agreed on or approved by the County. [CN 5]

17 {3} In his memorandum in opposition, Plaintiff continues to argue that he
18 presented “both testimony at the hearing and in the form of affidavit to establish that
19 an agreement was entered, the agreement was authorized, legal services were
20 performed and payment was promised, but ultimately never paid.” [MIO 3] Plaintiff,

1 however, has still not provided us with any facts to show that there is a genuine issue
2 of material fact. Rather, he makes conclusory statements that summary judgment is
3 not proper “if there is any question of fact” and that he presented evidence in the
4 form of testimony and affidavits. [MIO 3 (emphasis omitted)] Plaintiff has not
5 provided any more facts, argument, or authority to demonstrate that the contract he
6 alleges existed was created through the County’s procurement process such that a
7 genuine issue of material fact exists. *See Roth v. Thompson*, 1992-NMSC-011, ¶ 17,
8 113 N.M. 331, 825 P.2d 1241 (“The movant need only make a prima facie showing
9 that he is entitled to summary judgment. Upon the movant making a prima facie
10 showing, the burden shifts to the party opposing the motion to demonstrate the
11 existence of specific evidentiary facts which would require trial on the merits.”
12 (citations omitted)). Accordingly, we conclude that Plaintiff has not met his burden
13 to demonstrate that the district court erred in granting summary judgment in
14 Defendants’ favor. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,
15 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the
16 burden is on the party opposing the proposed disposition to clearly point out errors
17 in fact or law.”).

18 {4} Plaintiff also continues to assert that he presented evidence through live
19 testimony and affidavits that the contract was breached and that he brought his
20 claims within the statute of limitations period. [MIO 5] Specifically, he argues that

1 two representatives of the County—the sheriff and the sheriff’s assistant—testified
2 that “they assured . . . Plaintiff of payment, as of their last day in office in December[]
3 2018.” [MIO 6] Plaintiff asserts that December 31, 2018, was the controlling date as
4 that was the date the contract was breached. [MIO 6] However, Plaintiff has not
5 demonstrated that either the sheriff or the sheriff’s assistant were authorized to enter
6 into a contract with Plaintiff on behalf of the County so as to establish that a valid
7 contract existed, and that was later breached. Accordingly, we remain unpersuaded
8 that there was a valid contract, and conclude that Plaintiff has not met his burden in
9 overcoming summary judgment. *See id.*

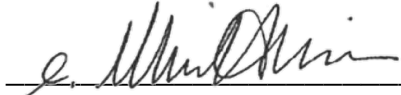
10 {5} To the extent that Plaintiff continues to argue against the application of
11 collateral estoppel, we remain unpersuaded. Plaintiff asserts that in the prior lawsuit
12 against Defendant Vigil there was one outstanding issue regarding whether
13 Defendant Vigil was acting within the course and scope of his employment as
14 sheriff, which should preclude summary judgment. [MIO 7] He argues that the
15 district court “should have adjudicated the issue of course and scope of the actions
16 of [the sheriff].” [MIO 7] However, Plaintiff has failed to demonstrate that he did
17 not have a full and fair opportunity to litigate this issue in the prior suit against
18 Defendant Vigil. *See Shovelin v. Cent. N.M. Elec. Co-op., Inc.*, 1993-NMSC-015,
19 ¶ 10, 115 N.M. 293, 850 P.2d 996 (explaining that “[i]f the movant introduces
20 sufficient evidence to meet all elements of this test, the [district] court must then

1 determine whether the party against whom estoppel is asserted had a full and fair
2 opportunity to litigate the issue in the prior litigation”). As such, we remain
3 unpersuaded that the district court erred in granting summary judgment in favor of
4 the County.

5 {6} Finally, Plaintiff continues to assert that the New Mexico Tort Claims Act
6 (NMTCA), NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2020), applies
7 and “requires a county to provide a defense, including attorney[] fees, for public
8 employees when liability is sought for torts or any violation of property rights or
9 rights secured by federal or New Mexico law allegedly committed by the employee
10 acting within the scope of his duties.” [MIO 7 (emphasis omitted)] Section 41-4-
11 4(B). Plaintiff maintains that he “sought damages in addition to contract and not
12 limited to only contract.” [MIO 7] However, Plaintiff has not explained what these
13 additional damages are and has not provided any new facts, argument or authority
14 regarding what alleged tort occurred in this case that would bring it under the
15 NMTCA such that Section 41-4-4(B) would apply. As such, we remain unpersuaded
16 that the district court erred in denying Plaintiff’s motion to amend his complaint.

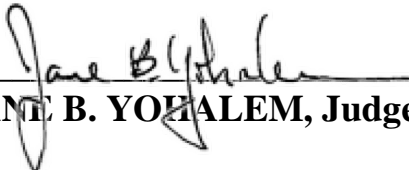
17 {7} For reasons stated in our notice of proposed disposition and herein, we affirm
18 the district court’s grant of summary judgment in favor of the County.

1 {8} IT IS SO ORDERED.

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4 **J. MILES HANISEE, Judge**

4 WE CONCUR:

5 
6 _____
7 **JENNIFER L. ATTREP, Chief Judge**

7 
8 _____
9 **JANE B. YOHALEM, Judge**