

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

2 **MICHAEL C. DOLVIN,**

3 Plaintiff-Appellant,

4 v.

5 **GIRIDHAR ANIREDDY, M.D.,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **Ellen R. Jessen, District Court Judge**

9 Michael C. Dolvin

10 Alamogordo, NM

11 Pro Se Appellant

12 Atwood, Malone, Turner & Sabin, P.A.

13 Carla Neusch Williams

14 Lee M. Rogers Jr.

15 Roswell, NM

16 for Appellee

17 **MEMORANDUM OPINION**

18 **HENDERSON, Judge.**

19 (1) Plaintiff, who is self-represented, appeals from a district court order
20 dismissing his medical malpractice complaint. We issued a calendar notice
21 proposing to affirm. Plaintiff has responded with a memorandum in opposition. We
22 affirm.

Court of Appeals of New Mexico

Filed 4/23/2024 10:15 AM

Ramon J. Maestas
Chief Clerk

No. A-1-CA-39693

1 {2} **Issue 1:** Plaintiff is challenging the district court’s order dismissing his
2 medical malpractice complaint as untimely under the applicable statute of repose.
3 [RP 140; MIO 6] NMSA 1978, Section 41-5-13 (2021) states:

4 No claim for malpractice may be brought against a health care
5 provider unless filed within three years after the date that the act of
6 malpractice occurred.

7 {3} As a statute of repose, this provision limits suits to those that are filed within
8 the statutory period, irrespective of tolling provisions that would otherwise apply in
9 other tort actions. *See generally Tomlinson v. George*, 2005-NMSC-020, ¶¶ 8, 9, 138
10 N.M. 34, 116 P.3d 105 (discussing Section 41-5-13). One exception is the tolling
11 provision for the period of time that the claim is pending before the Medical Review
12 Commission (MRC). NMSA 1978, § 41-5-22 (1976).

13 {4} Here, Plaintiff’s August 2017 complaint alleged that the medical malpractice
14 occurred in 2010 and lasted until his mother’s death in January 2011. [RP 1, 3-4]
15 The complaint was not filed until over twice as long as the limitations period
16 allowed. Although Plaintiff refers to a complaint in the MRC that he filed on behalf
17 of his mother’s estate, this Court previously concluded that Plaintiff lacked standing
18 to bring that action. [MIO 8] *Dolvin v. Ruekhaus*, 34,798 memo op. (N.M. Ct. App.
19 January 12, 2017) (nonprecedential). In any event, there is no indication that any
20 MRC action tolled the filings period for a sufficient amount of time. As such, we

1 conclude that the district court properly dismissed the complaint for failure to satisfy
2 the limitations period. [RP 140]

3 {5} **Issue 2:** Plaintiff has claimed that this Court’s March 30, 2022 order,
4 permitting him to bring a Rule 1-060(B) NMRA motion in the district court during
5 the pendency of this appeal was incorrect because he had already made the claim
6 before that court. Given the large number of post-judgment documents filed by
7 Plaintiff in this case, our March 30 order was intended as a good faith effort to allow
8 Plaintiff to clarify any Rule 1-060 arguments that he may have made. [V. 7 RP 1590]

9 As noted by Defendant, Plaintiff did not raise the remand option with the district
10 court. [V. 7, RP 1588] We also note that the district court’s order denying the motion
11 to reconsider concluded that Plaintiff did not establish any grounds for setting aside
12 the judgment under Rule 1-060(B). [V. 4 RP, 826] As a result, the district court has
13 already ruled on Rule 1-060(B) arguments that had been made, and we are not
14 persuaded that the district court ruling was incorrect.

15 {6} **Issue 3:** Plaintiff continues to claim that opposing counsel acted unethically.
16 [MIO 11] This Court is not the proper forum to raise such complaints, which we will
17 not address in the absence of a showing that Plaintiff was prejudiced. *See In re*
18 *Ernesto M., Jr.*, 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 (“An assertion
19 of prejudice is not a showing of prejudice.”).

1 {7} **Issue 4:** Plaintiff continues to claim that his due process rights were violated
2 by the inability to present evidence or make additional arguments to the district
3 court. As we explained in our March 30, 2022 order, Plaintiff is not permitted to
4 endlessly bring motions to reconsider. [V. 7 RP 1591] In addition, Plaintiff has not
5 established that this would change the outcome of the dispositive limitations period
6 issue.

7 {8} **Issue 5:** Plaintiff has claimed that the Medical Malpractice Act is
8 unconstitutional because (presumably) its limitations period denies him his right to
9 pursue a claim. [DS 34] Our Supreme Court has held otherwise. *See Cummings v.*
10 *X-Ray Assocs. of N.M., P.C.*, 1996-NMSC-035, ¶¶ 42, 43, 50-53, 121 N.M. 821, 918
11 P.2d 1321. We are bound by this precedent. *See Alexander v. Delgado*, 1973-NMSC-
12 030, ¶¶ 8-10, 84 N.M. 717, 507 P.2d 778 (holding that the New Mexico Court of
13 Appeals is bound by, and may not overrule or deviate from, New Mexico Supreme
14 Court precedent). In addition, as we explained above, this Court has already
15 addressed Plaintiff's lack of standing to bring the initial MRC action, and he
16 thereafter did not file a complaint in district court that satisfied the limitations period.

17 {9} For the reasons set forth above, we affirm.

18 {10} **IT IS SO ORDERED.**

19
20 
SHAMARA H. HENDERSON, Judge

1 WE CONCUR:

2 *Megan P. Duffy*
3 _____
4 MEGAN P. DUFFY, Judge

4 *Katherine A. Wray*
5 _____
6 KATHERINE A. WRAY, Judge