

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

2 **MARTHA L. WARNER and CLYDE**  
3 **JAMES WARNER, husband and wife,**

Court of Appeals of New Mexico  
Filed 7/16/2024 9:39 AM



Ramon J. Maestas  
Chief Clerk

4           Plaintiffs-Appellants,

5 v.

**No. A-1-CA-41745**

6 **ANALISA DOPORTO; JEREMY DOPORTO;**  
7 **DOPORTO CONSTRUCTION COMPANY;**  
8 **NEW MEXICO JUNIOR COLLEGE, a public**  
9 **junior college; NEW MEXICO JUNIOR**  
10 **COLLEGE BOARD OF DIRECTORS;**  
11 **and CHARLEY CARROLL,**

12           Defendants-Appellees.

13 **APPEAL FROM THE DISTRICT COURT OF LEA COUNTY**  
14 **Lee A. Kirksey, District Court Judge**

15 Zebas Law Firm, L.L.C.  
16 Joseph M. Zebas  
17 Hobbs, NM

18 for Appellants

19 Hinkle Shanor LLP  
20 Richard E. Olson  
21 Chelsea R. Green  
22 Roswell, NM

23 Allen, Shepherd & Lewis, P.A.  
24 Sebastian A. Dunlap  
25 Albuquerque, NM

26 for Appellees

1 **MEMORANDUM OPINION**

2 **IVES, Judge.**

3 {1} Plaintiffs Martha L. and Clyde James Warner appeal the district court’s orders  
4 dismissing their claims as to New Mexico Junior College Defendants and entering  
5 summary judgment in favor of the Doporto Defendants. We issued a notice  
6 proposing to summarily affirm. The New Mexico Junior College Defendants filed a  
7 memorandum supporting our proposed analysis, and Plaintiffs filed a memorandum  
8 opposing it. After due consideration, we remain unpersuaded the district court erred.  
9 We affirm.

10 {2} On appeal, Plaintiffs contend the district court improperly ruled (1) the  
11 exclusivity provision of the Worker’s Compensation Act (WCA) barred her tort  
12 claims against the Junior College Defendants [MIO unnumbered 1-3], and (2)  
13 Plaintiffs failed to comply with the notice provision of the Tort Claims Act (TCA)  
14 [MIO unnumbered 4-5]. Plaintiffs abandon their opposition to the order of summary  
15 judgment entered in favor of the Doporto Defendants. [MIO unnumbered 5] *See*  
16 *Taylor v. Van Winkle’s IGA Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486,  
17 927 P.2d 41 (recognizing that issues raised in a docketing statement, but not  
18 contested in a memorandum in opposition are abandoned).

19 {3} Plaintiffs’ response to our notice does not refer us to any analogous authority  
20 that would support their claim to an exception to the exclusivity of the WCA, under

1 *Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034, ¶¶ 26-29, 131 N.M. 272,  
2 34 P.3d 1148. And, we are not persuaded that Plaintiffs have alleged actions and  
3 inactions from the New Mexico Junior College Defendants that are comparably  
4 egregious to survive the motion to dismiss and warrant the exclusivity exception in  
5 *Delgado*. See *Morales v. Reynolds*, 2004-NMCA-098, ¶ 14, 136 N.M. 280, 97 P.3d  
6 612 (determining that the requirements and comparable degree of egregiousness of  
7 *Delgado* guide the plaintiff's burden to overcome a pretrial motion concerning the  
8 conduct alleged by the plaintiff). Thus, we hold that Plaintiffs have not demonstrated  
9 error in the district court's ruling, granting the motion to dismiss.

10 {4} With respect to Plaintiffs' TCA claims, they have not responded to our notice  
11 with reference to any analogous authority that would support their assertion that the  
12 New Mexico Junior College Defendants were on actual notice that litigation was  
13 likely to ensue. See *Dutton v. McKinley Cnty. Bd. of Comm'rs*, 1991-NMCA-130,  
14 ¶ 9, 113 N.M. 51, 822 P.2d 1134 (“[T]he law is now firmly established that the notice  
15 required is not simply actual notice of the occurrence of an accident or injury but  
16 rather, actual notice that there exists a ‘likelihood’ that litigation may ensue.”  
17 (internal quotation marks and citation omitted)). Thus, we hold that Plaintiffs have  
18 not demonstrated error in the dismissal of the claims against the New Mexico Junior  
19 College Defendants for lack of notice under the TCA.

1 {5} For the reasons provided above and in our notice, we affirm the district court's  
2 orders ruling in favor of Defendants.

3 {6} **IT IS SO ORDERED.**

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ZACHARY A. IVES, Judge

6 **WE CONCUR:**

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SHAMMARA H. HENDERSON, Judge

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GERALD E. BACA, Judge