

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

Court of Appeals of New Mexico
Filed 10/24/2024 9:14 AM

2 **PIERRE AMESTOY,**

3 Plaintiff-Appellant,



Ramon J. Maestas
Chief Clerk

4 v.

No. A-1-CA-40631

5 **NEW MEXICO RACING COMMISSION,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

8 **Maria Sanchez-Gagne, District Court Judge**

9 Eric D. Dixon, Attorney & Counselor at Law, P.A.

10 Eric D. Dixon

11 Portales, NM

12 for Appellant

13 Jackson Loman Stanford Downey & Stevens-Block, P.C.

14 Eric Loman

15 Albuquerque, NM

16 for Appellee

17 **MEMORANDUM OPINION**

18 **HENDERSON, Judge.**

19 {1} Plaintiff Pierre Amestoy appeals the district court's order granting Defendant
20 New Mexico Racing Commission's motion to dismiss for failure to state a claim on
21 which relief could be granted. Plaintiff claims that he stated a proper claim for
22 mandamus and for violations of his procedural and substantive due process rights,
23 pursuant to the New Mexico Civil Rights Act (CRA), NMSA 1978, §§ 41-4A-1

1 to-13 (2021). We conclude that the district court properly dismissed Plaintiff's
2 claims under the CRA because Plaintiff failed to assert the deprivation of a protected
3 property or liberty interest or other substantive right entitling him to constitutional
4 protections. Additionally, we conclude that the district court did not abuse its
5 discretion in denying Plaintiff's petition for a writ of mandamus because Plaintiff
6 did not establish that a violation of a right entitled him to extraordinary relief.
7 Therefore, we affirm.

8 **BACKGROUND**

9 {2} We draw the following facts from Plaintiff's allegations as set forth in his
10 complaint. *See Delfino v. Griffo*, 2011-NMSC-015, ¶ 9, 150 N.M. 97, 257 P.3d 917
11 (stating that, on review of a motion to dismiss, "we accept all well-pleaded factual
12 allegations in the complaint as true" (internal quotation marks and citation omitted)).

13 {3} This dispute arises from a quarter horse race held at Sunland Park in January
14 2020. Plaintiff is the owner of a racehorse named Freedom Flash that ran in the
15 disputed race and placed second to a horse named Major Bites. Following the win,
16 an official veterinarian for Defendant collected a urine sample from Major Bites for
17 drug testing. Clenbuterol, a prohibited substance, was detected in Major Bites' urine
18 sample.

1 {4} Due to the presence of a prohibited substance in Major Bites’ urine sample,
2 the Sunland Park Board of Stewards¹ (the Stewards) held a disciplinary hearing for
3 Major Bites’ owner and trainer. The Stewards determined that, based on the drug
4 test results, the owner and trainer had violated New Mexico Racing Commission
5 Rules. As a result, the trainer was suspended for eighteen months and fined \$15,000.
6 Additionally, the owner’s winnings were revoked and Major Bites was disqualified
7 from the disputed race. Due to Major Bites’ disqualification, Freedom Flash was
8 declared the first-place finisher of the race.

9 {5} Major Bites’ owner and trainer appealed the Stewards’ disciplinary ruling to
10 Defendant.² In March 2021, a hearing officer appointed by Defendant upheld the
11 disqualification and loss of purse. Defendant adopted the hearing officer’s report,
12 findings of fact, conclusions of law, and recommendations, and the sanctions were
13 upheld.

14 {6} In November 2021, Major Bites’ owner and trainer further appealed
15 Defendant’s ruling to the district court pursuant to Rule 1-075 NMRA. The district
16 court reversed Defendant’s imposition of sanctions because “the [disciplinary

¹A steward is “an employee of the [New Mexico Racing Commission] who supervises horse races and oversees a race meet while in progress, including holding hearings regarding licensees and enforcing the rules of the commission and the horse racetrack.” NMSA 1978, § 60-1A-2(GG) (2007).

²“A person who has been aggrieved by a ruling of the stewards may appeal to the commission.” 15.2.1.9(A)(9)(a) NMAC.

1 proceeding] was not considered in an open meeting” in violation of Defendant’s
2 regulations. The district court accordingly concluded that Defendant’s decision was
3 “void,” and the court remanded the matter “for any further proceedings necessary
4 and consistent with the [o]pinion.” Defendant did not bring another disciplinary
5 action against Major Bites’ owner and trainer on remand. As a result, Major Bites
6 was reinstated as the first-place finisher of the disputed race.

7 {7} Plaintiff sued Defendant in January 2022 alleging violations of his substantive
8 and procedural due process rights and violations of equal protection³ due to
9 Defendant’s failure to award Plaintiff, as the owner of Freedom Flash, the first-place
10 winner’s purse. As a result of these alleged violations, Plaintiff sought actual and
11 consequential damages, a declaratory judgment finding that Freedom Flash was the
12 first-place finisher in the disputed race,⁴ and injunctive relief or a writ of mandamus
13 compelling Defendant to pay the first-place purse to Plaintiff. Defendant filed a
14 motion to dismiss all of Plaintiff’s claims, arguing that Plaintiff’s complaint failed

³Plaintiff’s claims regarding equal protection are not at issue on appeal.

⁴Though Plaintiff states that he is seeking a declaratory judgment pursuant to the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975), he makes no argument on appeal as to why the district court erred in denying the requested relief. As Plaintiff has not met his burden to demonstrate error, we decline to review the issue on appeal. *See Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that the district court erred); *State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (stating that there is a presumption of correctness in the rulings or decisions of the district court, and the party claiming error bears the burden of showing such error).

1 to state a claim under Rule 1-012(B)(6) NMRA. The district court granted
2 Defendant’s motion and dismissed Plaintiff’s claims. Plaintiff appeals.

3 **DISCUSSION**

4 {8} We review motions to dismiss a complaint for failure to state a claim under
5 Rule 1-012(B)(6) de novo. *Healthsource, Inc. v. X-Ray Assocs. of N.M.*, 2005-
6 NMCA-097, ¶ 16, 138 N.M. 70, 116 P.3d 861. In considering a motion to dismiss,
7 we test “the legal sufficiency of the complaint, not the factual allegations of the
8 pleadings which, for purposes of ruling on the motion, the court must accept as true.”
9 *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 2, 134 N.M. 43, 73 P.3d 181
10 (internal quotation marks and citation omitted). Accepting all well-pleaded factual
11 allegations in the complaint as true, we “resolve all doubts in favor of sufficiency of
12 the complaint.” *Delfino*, 2011-NMSC-015, ¶ 9 (internal quotation marks and citation
13 omitted). Dismissal under Rule 1-012(B)(6) is appropriate only where the
14 nonmoving party is “not entitled to recover under any theory of the facts alleged in
15 their complaint.” *Delfino*, 2011-NMSC-015, ¶ 12 (internal quotation marks and
16 citation omitted).

17 {9} Plaintiff argues that the district court erred in dismissing his constitutional
18 claims against Defendant because: (1) Plaintiff is entitled to relief for deprivation of
19 his constitutionally protected property or liberty interests, in the ability to engage in
20 his chosen profession and in a fair horse race, without due process; and (2) Plaintiff

1 is entitled to relief for violations of substantive due process. Additionally, Plaintiff
2 argues that the district court abused its discretion in denying his petition for
3 mandamus because Defendant had a nondiscretionary duty to disqualify Major Bites
4 after he tested positive for a banned substance. Finally, Plaintiff argues for the first
5 time on appeal that he is entitled to relief against Defendant under a common law
6 cause of action or for breach of contract. We address each of these arguments below.

7 **I. New Mexico Civil Rights Act**

8 {10} Plaintiff brings his claims for violations of both substantive and procedural
9 due process pursuant to the CRA. Under the CRA, a person can recover for
10 violations of “rights, privileges or immunities” secured pursuant to the bill of rights
11 of the New Mexico Constitution. Section 41-4A-3(B). Article II, Section 18 of the
12 New Mexico Constitution states that “[n]o person shall be deprived of life, liberty
13 or property without due process of law.” The due process clause protects individuals
14 against violations of both procedural and substantive due process. *See Nash v. Bd.*
15 *of Cnty. Comm’rs of Catron Cnty.*, 2021-NMSC-005, ¶ 36, 480 P.3d 842.

16 {11} Our Supreme Court has previously interpreted New Mexico’s due process
17 clause more broadly than the United States Supreme Court has interpreted the federal
18 due process clause in certain circumstances. *See, e.g., Montoya v. Ulibarri*, 2007-
19 NMSC-035, ¶ 23, 142 N.M. 89, 163 P.3d 476 (holding that New Mexico’s due
20 process clause requires that habeas petitioners must be permitted to assert claims of

1 actual innocence); *State v. Vallejos*, 1997-NMSC-040, ¶ 32, 123 N.M. 739, 945 P.2d
2 957 (holding that all forms of entrapment violate New Mexico’s due process clause).
3 *See generally State v. Gomez*, 1997-NMSC-006, ¶ 19, 122 N.M. 777, 932 P.2d 1
4 (providing that we may “diverge from federal precedent for three reasons: a flawed
5 federal analysis, structural differences between state and federal government, or
6 distinctive state characteristics”). However, New Mexico courts still rely on federal
7 procedural due process analysis to address due process challenges under the state
8 constitution. *See Titus v. City of Albuquerque*, 2011-NMCA-038, ¶ 40, 149 N.M.
9 556, 252 P.3d 780 (addressing procedural due process); *Nash*, 2021-NMSC-005,
10 ¶¶ 35-36 (addressing substantive due process). On appeal, Plaintiff does not argue
11 that a test distinct from the federal standard should apply to his procedural or
12 substantive due process under the state constitution. As Plaintiff has not argued that
13 we should depart from the federal due process standard, we decline to do so at this
14 time. *See State v. Randy J.*, 2011-NMCA-105, ¶ 30, 150 N.M. 683, 265 P.3d 734
15 (declining to decide an undeveloped state constitutional argument).

16 **A. Procedural Due Process**

17 {12} We first address Plaintiff’s assertion that he is entitled to relief for violation
18 of his procedural due process rights because Defendant did not bring another
19 disciplinary action against Major Bites’ owner and trainer after the district court
20 reversed the disqualification and other penalties. “Procedural due process requires

1 the government to give notice and an opportunity to be heard before depriving an
2 individual of liberty or property.” *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064,
3 ¶ 26, 122 N.M. 524, 928 P.2d 250. “Before a procedural due process claim may be
4 asserted, the plaintiff must establish that [(1) they were] deprived of a legitimate
5 liberty or property interest and that [(2) they were] not afforded adequate procedural
6 protections in connection with the deprivation.” *Titus*, 2011-NMCA-038, ¶ 40. We
7 conclude that Plaintiff did not establish that he was deprived of a legitimate property
8 or liberty interest.

9 {13} First, Plaintiff argues that Defendant deprived him of his constitutionally
10 protected interest in practicing his chosen profession of horse racing. A license to
11 own and race horses “is a privilege and not a right within the meaning of the due
12 process clause” *Sanderson v. N.M. Racing Comm’n*, 1969-NMSC-031, ¶ 7, 80
13 N.M. 200, 453 P.2d 370. However, a horse’s owner “has a right to engage in [their]
14 chosen profession and is entitled to due process of law if [they are] to be lawfully
15 denied an opportunity to do so.” *State Racing Comm’n v. McManus*, 1970-NMSC-
16 134, ¶ 19, 82 N.M. 108, 476 P.2d 767.

17 {14} Here, Plaintiff did not allege any facts in his complaint that Defendant
18 deprived him of his right to engage in horse racing. Plaintiff did not allege that
19 Defendant took any action against Plaintiff or his license, nor did he allege that
20 Defendant attempted to prevent Plaintiff from engaging in horse racing. Plaintiff did

1 not allege that he was ever at risk of losing his license to earn a living in his chosen
2 profession. Thus, Plaintiff has not established that he is entitled to relief for an
3 alleged deprivation of his right to practice horse racing.

4 {15} Second, Plaintiff argues that he was denied his right to a fair horse race when
5 Defendant violated its own rules and regulations and did not attempt to discipline
6 Major Bites' owner and trainer after the initial disqualification and penalties were
7 voided and reversed by the district court. In support, Plaintiff relies on *Edelberg v.*
8 *Illinois Racing Board*, 540 F.2d 279, 285 (7th Cir. 1976), for the proposition that
9 horse owners have a property interest subject to due process protections in a fair
10 horse race. In *Edelberg*, the United States Court of Appeals for the Seventh Circuit
11 stated that substance use regulations in horse racing “protect[] the property rights of
12 the owners of the horses that do compete fairly” *Id.* at 283. However, *Edelberg*
13 does not state which property rights of horse owners are protected by these
14 regulations, nor does Plaintiff identify such rights. “We will not review unclear
15 arguments, or guess at what [a party’s] arguments might be.” *Headley v. Morgan*
16 *Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076. Moreover,
17 Plaintiff does not cite any additional authority to support the idea that he had a
18 constitutionally protected interest in a fair contest. Where a party cites no authority
19 to support an argument, we may assume no such authority exists. *See Lee v. Lee (In*
20 *re Adoption of Doe)*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329. Thus,

1 Plaintiff has not established that he was deprived of an interest protected by the New
2 Mexico Constitution.

3 {16} Moreover, to the extent that Plaintiff argues that Defendant’s failure to follow
4 its own regulations after the matter was remanded from district court violated due
5 process, we disagree. “State substantive rights . . . must not be confused with
6 procedural requirements. Identifying the contours of the substantive right begins a
7 task distinct from deciding what procedural protections are necessary to protect that
8 right.” *Garcia v. Las Vegas Med. Ctr.*, 1991-NMCA-053, ¶ 14, 112 N.M. 441, 816
9 P.2d 510 (internal quotation marks and citation omitted). Again, because Plaintiff
10 did not allege any deprivation of a constitutionally protected property or liberty
11 interest, we do not get to the question of what protections—such as following
12 regulations—were necessary to comport with due process.⁵ Therefore, we conclude
13 that the district court did not err in dismissing his procedural due process claims.

14 **B. Substantive Due Process**

15 {17} Next, Plaintiff argues that the district court erred in dismissing his claim for

⁵Even if we were to construe Plaintiff’s argument as an assertion of a property interest in agency enforcement of its regulations, Plaintiff fails to cite any authority to support such an assertion. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2. Further, upon our own review, the weight of authority contradicts such an argument. *Cf. Starko, Inc. v. Gallegos*, 2006-NMCA-085, ¶ 23, 140 N.M. 136, 140 P.3d 1085 (“It would fundamentally change § 1983 jurisprudence to hold that a violation of any state statute is a per se violation of the United States Constitution, even where that state statute grants a protected property interest.”).

1 violation of substantive due process. “Substantive due process cases inquire whether
2 a statute or government action shocks the conscience or interferes with rights
3 implicit in the concept of ordered liberty.” *Bounds v. State ex rel. D’Antonio*, 2013-
4 NMSC-037, ¶ 50, 306 P.3d 457 (internal quotation marks and citation omitted). To
5 prevail on a claim of substantive due process, a plaintiff must either “establish that
6 [their] property interests were injured by governmental action that shocks the
7 conscience,” *Moongate Water Co. v. State*, 1995-NMCA-084, ¶ 18, 120 N.M. 399,
8 902 P.2d 554, or demonstrate that they were deprived of a fundamental right or
9 liberty not enumerated in the constitution, *see Morris v. Brandenburg*, 2016-NMSC-
10 027, ¶ 22, 376 P.3d 836 (discussing federally recognized substantive due process
11 rights such as the right to marriage, to use contraception, and to have children).

12 {18} As previously discussed, Plaintiff has not demonstrated a deprivation of any
13 property or liberty interest. Moreover, Plaintiff does not argue that the right to a fair
14 contest is a fundamental personal interest derived from the New Mexico Constitution
15 such that New Mexico should consider it a right protected by substantive due
16 process. This Court has no duty to review an argument that is not adequately
17 developed. *See Headley*, 2005-NMCA-045, ¶ 15 (declining to entertain a cursory
18 argument that included no explanation of the party’s argument and no facts that
19 would allow the Court to evaluate the claim). Thus, we decline to further address

1 Plaintiff's assertion that Defendant deprived him of a fundamental right in violation
2 of substantive due process.

3 **II. Mandamus**

4 {19} We next turn to Plaintiff's claim that the district court erred in denying his
5 petition for mandamus. "[T]he grant or denial of a petition for writ of mandamus is
6 reviewed for an abuse of discretion." *State ex rel. Stapleton v. Skandera*, 2015-
7 NMCA-044, ¶ 5, 346 P.3d 1191. "A district court abuses its discretion if its decision
8 is contrary to logic and reason, or if it exceeds the bounds of reason, all the
9 circumstances before it being considered." *FastBucks of Roswell, N.M., LLC v. King*,
10 2013-NMCA-008, ¶ 7, 294 P.3d 1287 (internal quotation marks and citations
11 omitted).

12 {20} "There are two requirements for mandamus to issue: (1) the petitioner must
13 establish a clear legal right to the performance of the duty sought to be enforced; and
14 (2) the act to be compelled must be ministerial constituting a nondiscretionary duty
15 which the respondent is required to perform." *Wallbro v. Nolte*, 2022-NMCA-027,
16 ¶ 20, 511 P.3d 348 (internal quotation marks and citation omitted), *cert. granted*,
17 2022-NMCERT-004 (S-1-SC-38773). However, "[w]here there is no violation of a
18 right, a court lacks the power to compel an officer of a coordinate branch of
19 government to perform a duty." *Kerr v. Parsons*, 2016-NMSC-028, ¶ 30, 378 P.3d
20 1.

1 {21} In this case, mandamus is not proper because Plaintiff did not establish that
2 his rights were violated. The district court only had the power to compel Defendant
3 to act if Defendant violated a right held by Plaintiff by not bringing a second
4 disciplinary action against Major Bites' owner and trainer after the original action
5 was dismissed. *See id.* (providing that where a flat fee arrangement and the
6 appropriations act did not violate the claimant's right to effective assistance of
7 counsel, the district court lacked power to issue a remedial order). Plaintiff, however,
8 identifies no such right in his briefing. Accordingly, the district court did not abuse
9 its discretion in denying Plaintiff's petition for mandamus.

10 **III. Plaintiff's Additional Arguments**


11 {22} Finally, we briefly address Plaintiff's remaining assertions in his brief in chief
12 that he is entitled to relief under a common law theory of recovery or for breach of
13 contract.

14 {23} Plaintiff does not dispute Defendant's contention that neither a common law
15 theory of recovery nor a breach of contract claim were ever raised in the district
16 court proceeding. As a result, we will not address the potential viability of these new
17 causes of action that were raised for the first time on appeal. *See Romero v. Sanchez*,
18 1974-NMSC-013, ¶ 4, 86 N.M. 55, 519 P.2d 291 (recognizing that a new claim
19 raised for the first time on appeal would not be considered, "even if there were merit
20 to it").

1 **CONCLUSION**

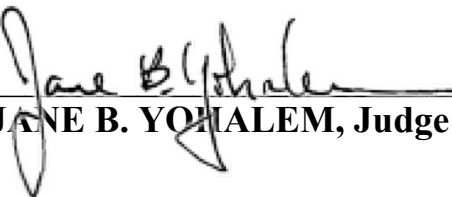
2 {24} For the reasons set forth herein, we affirm the district court's order granting
3 Defendant's motion to dismiss.

4 {25} **IT IS SO ORDERED.**

5 
6 **SHAMMA H. HENDERSON, Judge**

7 **WE CONCUR:**

8 
9 **PENNER L. ATTREP, Chief Judge**

10 
11 **JANE B. YOHALEM, Judge**