

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

Court of Appeals of New Mexico

Filed 1/31/2025 11:57 AM

2 **PIERRE AMESTOY and LESLIE**  
3 **AMESTOY,**



Ramon J. Maestas  
Chief Clerk

4           Plaintiffs-Appellants,

5 v.

**No. A-1-CA-40646**

6 **NEW MEXICO RACING COMMISSION,**

7           Defendant-Appellee.

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

9 **Bryan Biedscheid, District Court Judge**

10 Eric D. Dixon

11 Portales, NM

12 for Appellants

13 Jackson Loman Stanford Downey

14 & Stevens-Block, P.C.

15 Eric Loman

16 Albuquerque, NM

17 for Appellee

18                                           **DISPOSITIONAL ORDER**

19 **HENDERSON, Judge.**

20           This matter is on appeal from the district court's order dismissing Plaintiffs  
21 Pierre and Leslie Amestoy's claims for failure to exhaust their administrative  
22 remedies. For the reasons that follow, we affirm.

1           1.       Plaintiffs filed a complaint alleging that Defendant, the New Mexico  
2 Racing Commission (NMRC), violated Plaintiffs' New Mexico Constitutional rights  
3 by collecting \$10,000 in fines in retaliation for Plaintiffs filing a separate, unrelated  
4 lawsuit. Additionally, Plaintiffs sought injunctive and declaratory relief regarding  
5 the enforceability of the fines. Plaintiffs alleged that in 2019 a racehorse owned by  
6 Plaintiffs was the first-place finisher in a race at the Downs Racetrack in  
7 Albuquerque, New Mexico. Allegedly, a prohibited amount of a substance was  
8 detected in the horse's blood sample taken following the race. Due to the quantity of  
9 the substance in the horse's blood sample, the NMRC Sunland Park Board of  
10 Stewards (Stewards) held a disciplinary hearing for Plaintiffs, as the horse's owners,  
11 as well as the horse's trainer. Following the hearing, the Stewards issued their initial  
12 ruling and disqualified the horse from the disputed race, suspended the trainer for  
13 fifteen days and fined him \$1,500, revoked the winning purse funds, and fined  
14 Plaintiffs \$5,000 each, for a total of a \$10,000 fine. Plaintiffs and the trainer  
15 separately appealed the Stewards' disciplinary rulings to Defendant. However, prior  
16 to receiving a ruling from Defendant, Plaintiffs withdrew their appeal. Several years  
17 later, Defendant sought to enforce the outstanding \$10,000 in fines owed by  
18 Plaintiffs. Plaintiffs paid the fines and subsequently filed the underlying lawsuit.

19           2.       Defendant then filed a motion to dismiss Plaintiffs' claims in the  
20 alternative, for summary judgment, asserting that Plaintiffs had failed to exhaust

1 their administrative remedies prior to filing their lawsuit. In response, Plaintiffs  
2 argued that Defendant was estopped from imposing the fines because (1) Defendant  
3 dismissed the horse trainer’s appeal and reversed the sanctions against him; and (2)  
4 Plaintiffs believed the fines would not be imposed if they withdrew their  
5 administrative appeals. Additionally, Plaintiffs argued that exhaustion of their  
6 remedies would have been futile because “Defendant did not enforce its own rules  
7 [by collecting the fines] in a timely and expeditious fashion.”

8       3.     Following a hearing, the district court granted Defendant’s motion. The  
9 court reasoned that the question presented by Plaintiffs’ lawsuit was whether “those  
10 fines [were] lawfully imposed or not and did . . . Plaintiffs need to exhaust remedies  
11 with respect to their appeal of those fines before coming to district court to have the  
12 court declare actions related to them to be unlawful or inequitable.” Based on the  
13 parties’ briefing and Plaintiffs’ complaint, the district court concluded that Plaintiffs  
14 had failed to exhaust their administrative remedies and accordingly dismissed their  
15 complaint.

16       4.     On appeal, Plaintiffs argue that they did not need to exhaust their  
17 administrative remedies because Defendant did not have original jurisdiction over  
18 Plaintiffs’ claims of retaliation and estoppel, and Defendant acted in excess of its  
19 statutory authority by untimely enforcing the \$10,000 fines against Plaintiffs.  
20 Plaintiffs also argue that they stated a valid claim of retaliation and estoppel.

1           5.       “Under the exhaustion of administrative remedies doctrine, where relief  
2 is available from an administrative agency, the plaintiff is ordinarily required to  
3 pursue that avenue of redress before proceeding to the courts; and until that recourse  
4 is exhausted, suit is premature and must be dismissed.” *Lucero v. Bd. of Regents of*  
5 *Univ. of N.M.*, 2012-NMCA-055, ¶ 9, 278 P.3d 1043 (internal quotation marks and  
6 citation omitted). “[F]ailure to exhaust administrative remedies deprives a district  
7 court of subject matter jurisdiction.” *Rist v. Design Ctr. at Floor Concepts*, 2013-  
8 NMCA-109, ¶ 13, 314 P.3d 681.

9           6.       We have carefully reviewed the briefs, applicable law, and arguments  
10 made by the parties. We have also reviewed the entire record.

11           7.       We decline to review Plaintiffs’ assertions of error on appeal. First,  
12 Plaintiffs argue that they were not required to exhaust their administrative remedies  
13 on their claim of retaliation and estoppel. Specifically, Plaintiffs argue that  
14 exhaustion was not available to assert that Defendant collected the fines in retaliation  
15 for Plaintiffs’ exercise of their constitutional right to petition because Defendant  
16 lacked original jurisdiction over these claims. However, this argument was not raised  
17 below and was not preserved. *See Sandoval v. Baker Hughes Oilfield Operations,*  
18 *Inc.*, 2009-NMCA-095, ¶ 56, 146 N.M. 853, 215 P.3d 791 (“In order to preserve an  
19 issue for appeal, [an appellant] must have made a timely and specific objection that  
20 apprised the district court of the nature of the claimed error and that allows the

1 district court to make an intelligent ruling thereon.”); Rule 12-321(A) NMRA (“To  
2 preserve an issue for review, it must appear that a ruling or decision by the trial court  
3 was fairly invoked.”). Moreover, Plaintiffs fail to argue that an exception to the  
4 preservation requirement is applicable. *See* Rule 12-321(B) (listing exceptions to the  
5 preservation requirement). Although Plaintiffs’ argument implicates the subject  
6 matter jurisdiction of the district court, *see* Rule 12-321(B)(1) (providing that the  
7 “[s]ubject matter jurisdiction of the trial . . . court may be raised at any time”), this  
8 Court has made clear that when an appellant seeks to “create jurisdiction with new  
9 arguments” on appeal, as Plaintiffs do here, preservation is not excused. *See Anthony*  
10 *Water & Sanitation Dist. v. Turney*, 2002-NMCA-095, ¶ 15, 132 N.M. 683, 54 P.3d  
11 87 (construing Rule 12-216 NMRA, subsequently recompiled as Rule 12-321).  
12 Thus, we will not address this argument.

13       8.       Second, Plaintiffs fail to cite any relevant authority to support the  
14 proposition that Defendant acted in excess of its statutory authority by collecting the  
15 fines that had been imposed against Plaintiffs. Plaintiffs assert that Defendant was  
16 “required by its own regulations” to collect the fines thirty days after they were  
17 issued. However, the provision that Plaintiffs cite as authority simply states that  
18 “[a]ll fines imposed by the stewards shall be paid to [Defendant] within [thirty] days  
19 after the ruling is issued, unless otherwise ordered.” *See* 15.2.1.9(A)(7)(f) NMAC.  
20 This regulation is unrelated to the time period in which Defendant can enforce a

1 previously imposed fine, but rather imposes a requirement on the person or entity  
2 fined to pay the fine within a certain amount of time. Absent any citation to relevant  
3 authority on this issue, we decline to consider it further. *See Nguyen v. Bui*, 2023-  
4 NMSC-020, ¶ 19, 536 P.3d 482 (“Issues raised in appellate briefs which are  
5 unsupported by cited authority will not be reviewed by us on appeal.” (internal  
6 quotation marks and citation omitted)).


7       9. Finally, Plaintiffs fail to make a cognizable argument regarding their  
8 claim that Defendant was collaterally estopped from enforcing the fines against  
9 them. In their brief-in-chief, Plaintiffs summarily assert that they pleaded a valid  
10 claim of estoppel because they understood that Defendant would not enforce the  
11 fines after Plaintiffs dismissed their administrative appeal and Defendant enforced  
12 the fines three years after the fines were imposed in retaliation for Plaintiffs filing  
13 their unrelated, separate lawsuit. This Court has no duty to review an argument that  
14 is not adequately developed. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-  
15 045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to entertain a cursory argument  
16 that included no explanation of the party’s argument and no facts that would allow  
17 this Court to evaluate the claim). Additionally, it is not until Plaintiffs’ reply brief  
18 that they attempt to flesh out this argument. This Court will not review arguments  
19 that are raised or developed for the first time in a reply brief. *See Wilcox v. N.M. Bd.*

1 of *Acupuncture & Oriental Med.*, 2012-NMCA-106, ¶ 15, 288 P.3d 902. Therefore  
2 we decline to further consider this argument.

3 10. Based on the foregoing, we conclude that the district court did not err  
4 in dismissing Plaintiffs' claim for failure to exhaust administrative remedies. As  
5 such, we need not address Plaintiffs' remaining arguments regarding the factual  
6 sufficiency of their complaint. *See Crist v. Town of Gallup*, 1947-NMSC-012, ¶ 14,  
7 51 N.M. 286, 183 P.2d 156 (stating that appellate courts need not address questions  
8 unnecessary for the resolution of the case), *superseded by statute on other grounds*  
9 *as stated in Hoover v. City of Albuquerque*, 1954-NMSC-043, ¶ 5, 58 N.M. 250, 270  
10 P.2d 386.


11 11. For these reasons, we affirm the district court's dismissal of Plaintiffs'  
12 claims for failure to exhaust their administrative remedies.

13 **IT IS SO ORDERED.**

14   
15 \_\_\_\_\_  
16 **SHAMMARA H. HENDERSON, Judge**

16 **WE CONCUR:**

17   
18 \_\_\_\_\_  
19 **JENNIFER L. ATTREP, Chief Judge**

19   
20 \_\_\_\_\_  
21 **JANE B. YOHALEM, Judge**