

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

Court of Appeals of New Mexico

Filed 12/23/2025 8:51 AM



Mark Reynolds

**JESSIE CARTER,**

Plaintiff-Appellant,

v.

**No. A-1-CA-42836**

**CITY OF ALBUQUERQUE and**

**ALBUQUERQUE POLICE**

**DEPARTMENT,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

**Lisa C. Ortega, District Court Judge**

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for Appellees

## MEMORANDUM OPINION

**ATTREP, Judge.**

{1} Plaintiff appeals from the district court's order granting Defendants' motion for summary judgment on Plaintiff's Whistleblower Protection Act (WPA) claim. This Court issued a calendar notice proposing to affirm. Plaintiff has filed a memorandum in opposition and Defendants have filed a memorandum in support, both of which we have duly considered. We affirm.

{2} Plaintiff's memorandum in opposition reasserts that the district court erred by granting summary judgment because the district court misapplied our test for determining if someone is a "public employer" for purposes of the WPA, as explained in *Janet v. Marshall*, 2013-NMCA-037, 296 P.3d 1253. [MIO 2-5] *See id.* ¶¶ 12, 14 (explaining that the test is "whether supreme power or freedom from external control has been vested in the holder of the position" and when someone is "not autonomous and independent in their duties and decision making and [is] not free from the ultimate decision-making authority of their superiors," they are not a public employer for purposes of the WPA (alteration, internal quotation marks, and citation omitted)).

{3} In our calendar notice, we proposed to conclude that Plaintiff failed to establish that summary judgment was improper under the test for determining whether someone is an officer of the state such that their conduct falls under the

1 WPA. [CN 3-4] It appeared from the record proper that “Defendants provided an  
2 organization chart of the police department showing that the detectives and the  
3 sergeant act[ed] under the authority and direction of others in the chain of command  
4 in the scope of their duty.” [CN 4] Further, since the detectives and sergeant were  
5 “assigned” the investigation, they were “not autonomous and independent in their  
6 duties and decision[-]making and were not free from the ultimate decision-making  
7 authority of their superiors such that they are not public employers for purposes of  
8 the WPA.” [CN 4] Our review of the record proper additionally showed that the  
9 affidavit Plaintiff contended created a genuine issue of material fact “only describes  
10 the conduct at issue” and not whether the detectives and sergeant were independent  
11 in their decision-making. [CN 4]

12 {4} While Plaintiff maintains that the district court erred and that summary  
13 judgment was improper, Plaintiff’s memorandum in opposition does not argue that  
14 a genuine issue of material fact existed such that summary judgment was improper.  
15 Rather, Plaintiff argues that the district court’s order and our proposed affirmance  
16 “would represent a drastic narrowing of [the WPA]’s protections and would fly in  
17 the face of the [WPA]’s purpose.” [MIO 4] Plaintiff cites an unpublished opinion of  
18 this Court, *Parsons v. Vill. of Corrales*, A-1-CA-40997, mem. op. (N.M. Ct. App.  
19 Sept. 15, 2025) (nonprecedential), and unrelated district court proceedings in  
20 support. [MIO 2, 5]

1 {5} We remain unpersuaded. As Plaintiff admits, the WPA requires that the  
2 “unlawful or improper act” complained of be “on the part of a *public employer*.”  
3 [MIO 3] NMSA 1978, § 10-16C-2(E) (2010) (emphasis added). While Plaintiff  
4 argues as a matter of policy that this is too restrictive [MIO 2-5], the undisputed facts  
5 presented at the district court establish that the complained-of conduct was not done  
6 by a public employer. [CN 4]

7 {6} Additionally, we find both the unpublished opinion and district court  
8 proceedings unpersuasive. *Parsons* is not binding precedent on this Court for our  
9 analysis in the instant case. *See Eastland Fin. Servs. v. Mendoza*, 2002-NMCA-035,  
10 ¶ 16, 132 N.M. 24, 43 P.3d 375 (“An unpublished opinion is written solely for the  
11 benefit of the parties to the action and has no controlling precedential value.”).  
12 Further, *Parsons* did not involve a determination of whether someone was a “public  
13 employer” under the WPA. Instead, this Court analyzed whether the employee  
14 reported unlawful conduct in good faith and whether the report was for the public  
15 benefit as required by the WPA. *See Parsons*, A-1-CA-40997, mem. op. ¶¶ 5-15.  
16 Further, a district court order in an unrelated case is not precedential and we decline  
17 to consider it. *See Murphy v. Pediatrix Cardiology of N.M., P.C.*, \_\_\_-NMCA-\_\_\_,  
18 ¶ 19 n.4, \_\_\_P.3d \_\_\_ (A-1-CA-41672, Mar. 10, 2025) (providing that  
19 nonprecedential orders from district courts “lack precedential authority so we

1 decline to address them”), *cert. granted, Murphy v. N.M. Superintendent of Ins.*,  
2 2025-NMCERT-008, S-1-SC-40815.

3 {7} In sum, Plaintiff has not now asserted any facts, law, or argument in his  
4 memorandum in opposition that persuades this Court that our notice of proposed  
5 disposition was incorrect. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107  
6 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar  
7 notice must come forward and specifically point out errors of law and fact,” and the  
8 repetition of earlier arguments does not fulfill this requirement), *superseded by*  
9 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d  
10 374; *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d  
11 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden  
12 is on the party opposing the proposed disposition to clearly point out errors in fact  
13 or law.”). Accordingly, for the reasons stated in our notice of proposed disposition  
14 and herein, we affirm.

15 {8} **IT IS SO ORDERED.**

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JENNIFER L. ATTREP, Judge

1 **WE CONCUR:**

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3 **J. MILES HANISEE, Judge**

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5 **GERALD E. BACA, Judge**