

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

Court of Appeals of New Mexico  
Filed 3/16/2026 7:21 AM

2 **FELICIA DURAN and**  
3 **REGINA DUTCHOVER,**



Mark Reynolds

4 Plaintiffs-Appellants,

5 v.

**No. A-1-CA-42979**

6 **KIERA MCFARLAND,**

7 Defendant-Appellee.

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

9 **Elaine P. Lujan, District Court Judge**

10 Crowley & Gribble, P.C.

11 Joseph J. Gribble

12 Albuquerque, NM

13 for Appellants

14 Kiera McFarland

15 Las Cruces, NM

16 Pro Se Appellee

17 **MEMORANDUM OPINION**

18 **ATTREP, Judge.**

19 {1} Plaintiffs appeal from the district court's order denying their motion for  
20 reinstatement and a subsequent order denying reconsideration. [RP 12-13, 20-21]

21 We entered a calendar notice, proposing to affirm. Plaintiffs filed a memorandum in  
22 opposition to that notice, which we have duly considered. Unpersuaded, we affirm.

1 {2} We begin by noting that Plaintiffs’ memorandum in opposition presents many  
2 of the same assertions of error that were presented in their docketing statement and  
3 addressed in the calendar notice. “A party responding to a summary calendar notice  
4 must come forward and specifically point out errors of law and fact,” and the  
5 repetition of earlier arguments does not fulfill this requirement. *State v. Mondragon*,  
6 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003, *superseded by statute on*  
7 *other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We  
8 address below only Plaintiffs’ contentions related to Issues A and B within their  
9 memorandum in opposition and refer Plaintiffs to our analysis in our calendar notice  
10 as to Issues C, D, and E.

11 {3} Regarding Issue A, Plaintiffs assert that the district court abused its discretion  
12 in denying reinstatement because Plaintiffs demonstrated a readiness and  
13 willingness to proceed and that the delay was not wholly without justification. [MIO  
14 5] In our calendar notice, we proposed to conclude that “Plaintiffs did not establish  
15 or otherwise address in their motion to reinstate whether the delay was not wholly  
16 without justification, which was the basis of the district court’s order denying the  
17 motion.” [CN 3] The memorandum asserts that this proposed conclusion “elevates  
18 form over substance and misapplies the governing standard.” [MIO 5]

19 {4} However, the district court’s order denying that motion found that “Plaintiffs  
20 are silent regarding the delay in prosecution. Thus, while Plaintiffs may be ready to

1 proceed with prosecution of their claims, they have not demonstrated that the delay  
2 was not wholly without justification.” [RP 13] Our case law is clear that Plaintiffs  
3 were required to show good cause in order to reinstate their case following dismissal  
4 for lack of prosecution under Rule 1-041(E)(2) NMRA, which required showing  
5 both that they were ready, willing, and able to proceed with the prosecution of their  
6 claims *and* that the delay in prosecution was not wholly without justification. *See*  
7 *Summit Elec. Supply Co. v. Rhodes & Salmon, P.C.*, 2010-NMCA-086, ¶ 7, 148  
8 N.M. 590, 241 P.3d 188. The memorandum in opposition therefore has provided us  
9 with no basis to doubt our proposed conclusion as to Issue A in the calendar notice,  
10 and thus we conclude that the district court did not abuse its discretion in denying  
11 Plaintiffs’ motion to reinstate the case.

12 {5} Regarding Issue B, Plaintiffs assert that the district court’s denial of their  
13 motion to reconsider was an abuse of discretion because it rejected their “explanation  
14 for delay on the ground that it was first articulated in the motion to reconsider” and  
15 “motions to reconsider exist precisely to allow courts to correct errors or consider  
16 overlooked facts.” [MIO 6] Plaintiffs provide no authority in support of this assertion  
17 and they do not address our proposed conclusion from the calendar notice that a  
18 district court does not abuse its discretion when it rejects an argument raised for the  
19 first time in a motion to reconsider that could have been raised at an earlier stage of  
20 the proceedings. [CN 4-5] *Cf. Beggs v. City of Portales*, 2013-NMCA-068, ¶ 28, 305

1 P.3d 75 (recognizing that, “[t]o the extent [the p]laintiffs’ motion for reconsideration  
2 raised new matters that could have been raised during the [briefing stage] but were  
3 not, such failure would provide a basis [for] . . . denial of the motion”); *Nance v. L.J.*  
4 *Dolloff Assocs., Inc.*, 2006-NMCA-012, ¶¶ 23-26, 138 N.M. 851, 126 P.3d 1215  
5 (concluding there was no abuse of discretion in denying motion to reconsider where  
6 the movant raised a new argument and evidence that could have been presented at a  
7 summary judgment hearing but were not).

8 {6} Regardless, the district court’s order denying the motion to reconsider reflects  
9 that it did consider Plaintiffs’ justification for the delay despite the rationale not  
10 being presented in the motion to reinstate. That order states that Plaintiffs did “not  
11 address why [they] did not provide this explanation to the [c]ourt when it originally  
12 sought to reopen the case.” [RP 20] However, the order then proceeds to state that  
13 “in any event, the [c]ourt is still not convinced that the over seven-month delay in  
14 this case . . . is justified because Plaintiff[s were] waiting for a third-party insurance  
15 carrier to participate in the case.” [Id.] Consequently, the district court did not deny  
16 the motion to reconsider based on the fact that Plaintiffs first articulated their  
17 rationale for the delay in that motion. Instead, the district court specifically  
18 considered Plaintiffs’ proffered rationale and concluded that it did not justify the  
19 delay. We therefore conclude that the district court did not abuse its discretion in  
20 denying the motion to reconsider.

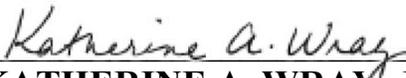
1 {7} Accordingly, for the reasons stated herein and in our calendar notice, we  
2 affirm.

3 {8} **IT IS SO ORDERED.**

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5 **JENNIFER L. ATTREP, Judge**

6 **WE CONCUR:**

7   
8 **ZACHARY A. IVES, Judge**

9   
10 **KATHERINE A. WRAY, Judge**