

Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

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

2 **FELICIA RICHESIN and SHAWN**  
3 **RICHESIN, Individually and as**  
4 **Owners and Principals of**  
5 **A-QUALITY AUTO SALES, INC.,**

Court of Appeals of New Mexico  
Filed 3/18/2026 1:57 PM



Mark Reynolds

6 Plaintiffs-Appellants,

7 v.

**No. A-1-CA-42009**

8 **TRAVELERS CASUALTY INSURANCE**  
9 **COMPANY,**

10 Defendant-Appellee,

11 and

12 **SAM MONTOYA; REINA MONTOYA;**  
13 **and RNS AUTO SERVICES, LLC,**

14 Defendants.

15 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
16 **Daniel E. Ramczyk and Francis J. Mathew, District Court Judges**

17 Harada & Winters, LLC  
18 Nikko Harada  
19 Christopher P. Winters  
20 Albuquerque, NM

21 Law Offices of Geoffrey R. Romero  
22 Geoffrey R. Romero  
23 Albuquerque, NM

1 Sapien Law, LLC  
2 Phillip G. Sapien  
3 Joseph A. Sapien  
4 Albuquerque, NM

5 for Appellants

6 Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
7 Jennifer A. Noya  
8 Shannon N. Nairn  
9 Albuquerque, NM

10 for Appellee

11 **MEMORANDUM OPINION**

12 **DUFFY, Judge.**

13 {1} Plaintiffs Felicia Richesin, Shawn Richesin, and A-Quality Auto Sales, Inc.  
14 appeal from the district court’s order granting Defendant Travelers Casualty  
15 Insurance Company of America’s motion to dismiss Plaintiffs’ declaratory judgment  
16 action against Travelers with prejudice. Concluding that we are bound by our  
17 Supreme Court’s decision in *Rhodes v. Lucero*, 1968-NMSC-137, ¶ 4, 79 N.M. 403,  
18 444 P.2d 588, we affirm the district court’s dismissal for lack of standing; however,  
19 we reverse the district court’s decision to dismiss Plaintiffs’ claims “with prejudice.”

20 **BACKGROUND**

21 {2} This case arose from a motor vehicle crash in which Plaintiffs Felicia and  
22 Shawn Richesin were injured. Plaintiffs claimed that Defendants Sam Montoya,  
23 Reina Montoya, and RNS Auto Services, LLC (tortfeasor-defendants), were

1 responsible for causing the accident. Travelers insured the tortfeasor-defendants  
2 under a commercial general liability policy. Plaintiffs named Travelers in the lawsuit  
3 and sought a declaratory judgment to “establish the rights and obligations of the  
4 parties” under the Travelers insurance policy. Travelers filed a motion to dismiss,  
5 arguing that Plaintiffs lacked standing to bring a direct claim against the tortfeasor-  
6 defendants’ insurer, citing *Rhodes*. The district court concluded it was bound by  
7 *Rhodes* and dismissed Plaintiffs’ complaint against Travelers with prejudice.

## 8 **DISCUSSION**

9 {3} Plaintiffs contend that the district court erred in dismissing their declaratory  
10 judgment action against Travelers for three reasons: (1) New Mexico’s Declaratory  
11 Judgment Act (DJA), NMSA 1978, §§ 44-6-1 to -15 (1975), permits, and does not  
12 expressly prohibit, a suit against a tortfeasor’s insurer to determine the amount of  
13 coverage available; (2) the DJA conflicts with and supersedes *Rhodes*; and (3)  
14 Travelers is a necessary party to determine the amount of uninsured/underinsured  
15 motorist coverage available under Plaintiffs’ own insurance policy. Plaintiffs also  
16 challenge the district court’s designation of the dismissal as “with prejudice.” As we  
17 explain, our Supreme Court has previously decided the precise issue involved in this  
18 case in *Rhodes*, and this Court has no authority to depart from that precedent, though  
19 we write briefly to note Plaintiffs’ position that intervening changes in the law  
20 warrant reconsideration of *Rhodes*. See *State v. Mares*, 2024-NMSC-002, ¶ 42, 543

1 P.3d 1198 (“If a precedent of this Court has direct application in a case, yet appears  
2 to rest on reasons rejected in some other line of decisions, the Court of Appeals  
3 should follow the case which directly controls, leaving to this Court the prerogative  
4 of overruling its own decisions.” (alteration, emphasis, internal quotation marks, and  
5 citation omitted)). Although we affirm, we agree with Plaintiffs that dismissal under  
6 the circumstances should have been “without prejudice.”

7 {4} The DJA grants jurisdiction to the district courts to settle questions concerning  
8 the rights, status, and legal relations of “any person interested under a . . . written  
9 contract.” *See* §§ 44-6-2, -4. “Under the [DJA], courts in New Mexico have  
10 jurisdiction to adjudicate and declare rights and legal relations only in cases of actual  
11 controversy.” *Am. Fed’n of State, Cnty., & Mun. Emps. (AFSCME) v. Bd. of Cnty.*  
12 *Comm’rs of Bernalillo Cnty.*, 2016-NMSC-017, ¶ 15, 373 P.3d 989 (stating that “[a]  
13 case of actual controversy exists only where a plaintiff satisfies justiciability  
14 requirements”). “An actual controversy is not present unless . . . the litigant has  
15 standing.” *Id.* ¶ 17 (citation omitted). “The determination of whether a party has  
16 standing to sue is a question of law, which we review de novo.” *Forest Guardians*  
17 *v. Powell*, 2001-NMCA-028, ¶ 5, 130 N.M. 368, 24 P.3d 803.

18 {5} In *Rhodes*, the plaintiffs sought a declaratory judgment against the tortfeasor’s  
19 insurance company to determine whether “a policy of insurance issued by the alleged  
20 defendant insurer covers the [tortfeasor].” 1968-NMSC-137, ¶ 3. The New Mexico

1 Supreme Court held there was no justiciable controversy because the plaintiffs did  
2 not yet have a judgment against the tortfeasor “and their rights of recovery against  
3 him are contingent.” *Id.* ¶ 4. Here, Plaintiffs’ claims are nearly identical in substance  
4 and in posture—Plaintiffs filed a declaratory judgment against the tortfeasor-  
5 defendants’ insurer to obtain a coverage determination, and at the time the case was  
6 dismissed, Plaintiffs had not obtained a judgment against the tortfeasor-defendants.

7 {6} Notwithstanding this, Plaintiffs argue that *Rhodes* should not control because  
8 the DJA was substantially amended after *Rhodes* was decided, the current version of  
9 the DJA expressly conflicts with and supersedes *Rhodes*, and the express language  
10 of the current version of the DJA permits Plaintiffs’ declaratory judgment action  
11 against Travelers. Such arguments invite comparison of the statutory changes that  
12 occurred in 1975, the year when the prior version of the DJA was repealed and  
13 replaced with the version of the DJA that remains in effect today. *See* NMSA 1953,  
14 §§ 22-6-4 to -18 (1975) (Vol. 5, 1975 Pocket Supp.). The version of the DJA in  
15 effect in 1968 when *Rhodes* was decided consisted of only three sections. *See* NMSA  
16 1953, §§ 22-6-1 to -3 (1935). Section 22-6-1 stated,

17 *In cases of actual controversy*, the courts of record of the state of New  
18 Mexico shall have the power, upon petition, declaration, complaint, or  
19 other appropriate pleadings, to declare rights and other legal relations  
20 of *any interested party* petitioning for such declaration, whether or not  
21 further relief is or could be prayed, and such declaration shall have the  
22 force and effect of the final judgment or decree and be reviewable as  
23 such.

1 (Emphases added.) We understand Plaintiffs to argue that the current version of the  
2 DJA would allow their suit to proceed against Travelers because the DJA now  
3 expressly allows for declaratory relief to “any person interested . . . *under a written*  
4 *contract.*” See § 44-6-4 (“Any person interested under a . . . written contract . . . or  
5 whose rights, status or other legal relations are affected by a . . . contract or  
6 franchise, may have determined any question of construction or validity arising  
7 under the instrument”). Plaintiffs also direct us to Section 44-6-14, which states that  
8 the DJA “is to be liberally construed and administered.” According to Plaintiffs,  
9 these changes reflect the Legislature’s intent to broaden the scope of the DJA “to  
10 encompass any person who has an interest [in] or whose rights are affected by a  
11 contract to bring a declaratory judgment action”—including against a tortfeasor’s  
12 insurer when there is a dispute about coverage.

13 {7} In light of the 1975 amendments, Plaintiffs argue that there is now a conflict  
14 between the plain language and broad purpose of the current DJA and *Rhodes*. But  
15 both the prior and the current versions of the DJA require an actual controversy,  
16 which *Rhodes* expressly held does not exist where an injured third party’s interests  
17 are contingent on a later determination of liability. 1968-NMSC-137, ¶ 4. Compare  
18 § 22-6-1 (1935), with § 44-6-2. We remain bound by *Rhodes*’ interpretation of the  
19 actual controversy requirement. To the extent there is a conflict, this Court is not in  
20 a position to resolve the matter. See *Mares*, 2024-NMSC-002, ¶ 34 (“stating that

1 “vertical stare decisis, as recognized in the *Alexander* doctrine, requires *absolute*  
2 *fealty* to this Court’s precedents by the Court of Appeals” (emphasis added)). Given  
3 this, we need not address Plaintiffs’ third argument in support of reversal.

4 {8} Though we affirm the district court’s substantive ruling, we conclude the  
5 dismissal should not have been designated as “with prejudice” under the  
6 circumstances. It appears the district court opted to dismiss “with prejudice” to allow  
7 for immediate appellate review of the decision. But whether an order is final for  
8 purposes of appeal does not depend on whether the dismissal is “with prejudice” or  
9 “without prejudice”—both designations are sufficient to create a final, appealable  
10 order. *See Bralley v. City of Albuquerque*, 1985-NMCA-043, ¶¶ 17-18, 102 N.M.  
11 715, 699 P.2d 646 (stating that a dismissal “without prejudice” is a final order).  
12 Rather, the appealability of the order in this case depended on Rule 1-054(B)  
13 NMRA, which states that “if multiple parties are involved, the court may direct entry  
14 of a final judgment about one or more, but fewer than all, claims or parties, only if  
15 the court expressly finds no just reason for delay.” If the order does not include a  
16 finding of “no just reason for delay,” as in this case, then the order of dismissal is  
17 considered nonfinal until the entry of an order “adjudicating all the claims and all  
18 the parties’ rights and liabilities.” *Id.*

19 {9} This is not to say that the order’s “with prejudice” language is inconsequential.  
20 The significance of a denominating a dismissal “with prejudice” is that the dismissal

1 “constitutes an adjudication of the merits and is thus res judicata of the issues  
2 between the parties and their privies,” *Campos v. Brown Constr. Co.*, 1973-NMCA-  
3 140 ¶ 14, 85 N.M. 684, 515 P.2d 1288 (internal quotation marks and citation  
4 omitted), whereas a dismissal “without prejudice” indicates “that the dismissal was  
5 not intended to be res judicata as to the merits of the controversy so as to preclude  
6 [the] plaintiff from pursuing a new action,” *Bralley*, 1985-NMCA-043, ¶ 17; *see*  
7 *Bank of N.Y. v. Romero*, 2016-NMCA-091, ¶ 14, 382 P.3d 991 (stating that “the  
8 designation of a dismissal as ‘with’ or ‘without’ prejudice will generally  
9 substantially impact the viability of a plaintiff’s future, related claim”); *Kirby v.*  
10 *Guardian Life Ins. Co. of Am.*, 2010-NMSC-014, ¶ 66, 148 N.M. 106, 231 P.3d 87  
11 (“A dismissal with prejudice is an adjudication on the merits only to the extent that  
12 when a claim has been dismissed with prejudice, the fourth element of *res judicata*  
13 (a final valid judgment *on the merits*) will be presumed so as to bar a subsequent suit  
14 against the same defendant by the same plaintiff based on the same transaction.”).  
15 This Court has concluded that dismissals for lack of standing are not dismissals on  
16 the merits, and therefore, the dismissal should be “without prejudice.” *See Hope*  
17 *Cnty. Ditch Ass’n v. N.M. State Eng’r*, 2005-NMCA-002, ¶ 10, 136 N.M. 761, 105  
18 P.3d 314; *see also Romero*, 2016-NMCA-091, ¶ 24 (“[A] ‘with prejudice’  
19 designation that reflects adjudication on the merits of a claim is not to be used to

1 communicate that a discrete issue, but not the claim, within a case has been litigated,  
2 implicating issue preclusion.”).

3 {10} In this case, the district court did not dismiss Plaintiffs’ claims against  
4 Travelers on the merits. The court’s standing determination was grounded in *Rhodes*,  
5 which concluded that the declaratory judgment action “does not present [a]  
6 justiciable controversy between the plaintiffs and the defendant insurer” because the  
7 plaintiffs did not hold a judgment against the tortfeasor “and their rights of recovery  
8 against him are contingent.” 1968-NMSC-137, ¶ 4. Consequently, we do not  
9 understand the district court’s decision to prevent reexamination of the standing  
10 question in a later action should Plaintiffs demonstrate that the facts have materially  
11 changed, or new facts have occurred, that alter the parties’ legal relations or rights.  
12 *See Romero*, 2016-NMCA-091, ¶ 25.

13 {11} Based on the foregoing, we conclude the dismissal in this case, on grounds of  
14 standing, should have been without prejudice.

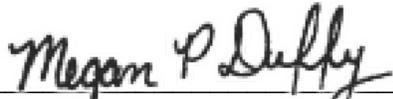
15 **CONCLUSION**

16 {12} We affirm the district court’s dismissal for lack of standing, but reverse the  
17 dismissal of Plaintiffs’ complaint against Travelers with prejudice and remand with  
18 instructions to dismiss *without* prejudice.

19 {13} Travelers’ Rule 12-401(B)(3) NMRA motion to dismiss Plaintiffs’ appeal as  
20 moot is denied.

1 {14} IT IS SO ORDERED.

2  
3

  
MEGAN P. DUFFY, Judge

4 WE CONCUR:

5  
6

  
JENNIFER L. ATTREP, Judge

7  
8

  
SHAMMARA H. HENDERSON, Judge