

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

Court of Appeals of New Mexico

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2 **KENNETH DEHOFF and KATHLEEN**
3 **DEHOFF,**



Mark Reynolds

4 Plaintiffs-Appellants,

5 v.

No. A-1-CA-42929

6 **LINDA GALLEGOS, in her official**
7 **capacity as Sandoval County**
8 **Assessor,**

9 Defendant-Appellee.

10 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

11 **Allison P. Martinez, District Court Judge**

12 Kenneth Dehoff

13 Kathleen Dehoff

14 Corrales, NM

15 Pro Se Appellants

16 NM Local Government Law, LLC

17 Randy M. Autio

18 Albuquerque, NM

19 for Appellee

20 **MEMORANDUM OPINION**

21 **ATTREP, Judge.**

22 {1} Plaintiffs appeal from the district court's order granting Defendant's motion

23 to dismiss filed pursuant to Rule 1-012(B)(6) NMRA. [RP 216] We entered a

1 calendar notice, proposing to affirm. Plaintiffs filed a memorandum in opposition to
2 that notice, which we have duly considered. Unpersuaded, we affirm.

3 {2} Plaintiffs raise five counter-points to our calendar notice. First, Plaintiffs
4 contend that our reliance on *Pacheco v. Hudson*, 2018-NMSC-022, 415 P.3d 505, in
5 proposing to conclude that Defendant was not the proper party for an Inspection of
6 Public Records Act (IPRA) enforcement action, was misplaced because that case
7 “never considered whether an assessor is a proper defendant under IPRA.” [MIO
8 PDF 2] We understand Plaintiffs’ contention to be based on the fact that the party at
9 issue in *Pacheco* was not a county assessor, but a district court custodian and district
10 court judge. *See id.* ¶ 55.

11 {3} The question addressed in *Pacheco* was “who is the proper defendant in an
12 IPRA enforcement action.” *Id.* ¶ 56. *Pacheco* noted that this question was “clearly
13 answered in the text of IPRA itself” and concluded that only the designated records
14 custodian who is assigned IPRA compliance duties is subject to an IPRA
15 enforcement action. *Id.* ¶ 57. This holding is directly analogous to the present
16 situation where it is undisputed Defendant is not the designated records custodian.
17 We therefore remain unpersuaded that our reliance on *Pacheco* was in error and
18 conclude that the district court correctly found that Defendant was not the proper
19 party to bring an IPRA enforcement action against.

1 {4} Plaintiffs next contend that *Gordon v. Sandoval County Assessor*, 2001-
2 NMCA-044, 130 N.M. 573, 28 P.3d 1114, is the relevant authority in this
3 circumstance and that it “necessarily treated” a county assessor “as the proper party
4 by enforcing IPRA duties directly against the” county assessor. [MIO PDF 2] As we
5 proposed to conclude in the calendar notice, *Gordon* did not address the question of
6 “who is the proper defendant in an IPRA enforcement action” that our Supreme
7 Court addressed in *Pacheco*. Additionally, *Gordon* predates *Pacheco*, which is a
8 decision issued by our Supreme Court, by seventeen years. *Cf. State v. Wilson*, 1994-
9 NMSC-009, ¶ 2, 116 N.M. 793, 867 P.2d 1175 (“[T]he Court of Appeals is bound
10 by the precedents set by [the Supreme] Court.”). We therefore conclude that *Gordon*
11 is not relevant to this case, and does not establish that Defendant was the appropriate
12 party to bring Plaintiffs’ IPRA enforcement action against.

13 {5} Plaintiffs next contend that the statutes they relied on in the docketing
14 statement, NMSA 1978, Sections 7-38-4, -19 (1991), stand for the proposition that
15 they “establish custodial responsibility independent of county-level administrative
16 designation.” [MIO PDF 3] However, Plaintiffs continue not to explain how this
17 would establish an exception to the rule from *Pacheco* that the designated records
18 custodian is the only one subject to an IPRA enforcement action. We therefore
19 conclude that Plaintiffs have not established that these statutes provide for an

1 exception to the rule from *Pacheco* that the designated records custodian is the
2 proper defendant in an IPRA enforcement action.

3 {6} Plaintiffs next present an argument concerning the statutory language of
4 IPRA. [MIO PDF 3-4] However, as noted above, *Pacheco* specifically relied on the
5 plain language of the IPRA in reaching its conclusion. Plaintiffs also contend that
6 “[e]xtending *Pacheco* beyond the judiciary would create a structural loophole in
7 IPRA” and “would allow any elected official to deny an IPRA request and then avoid
8 accountability by pointing to a centralized ‘county custodian.’” [MIO PDF 4]
9 Plaintiffs cite no authority in support of this proposition and we note that the IPRA
10 provides for an enforcement mechanism through our court system, but the party
11 seeking enforcement must identify the proper designated record custodian pursuant
12 to *Pacheco* and the plain language of the statute. *See Curry v. Great Nw. Ins. Co.*,
13 2014-NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support
14 an argument, we may assume no such authority exists.”).

15 {7} Plaintiffs’ remaining issues concern their assertion of judicial bias. In our
16 calendar notice, we proposed to conclude that Plaintiffs had failed to preserve this
17 claim. [CN 4] In their memorandum in opposition, Plaintiffs assert that the argument
18 was preserved because they (1) “pushed back on the [district] court’s expressed view
19 that [Plaintiffs] acted improperly”; (2) “disputed the basis for threatened sanctions”;
20 (3) “corrected the [district] court’s misinterpretations of *Pacheco*”; and (4)

1 “responded in real time to statements that suggested the outcome had been
2 predetermined.” [MIO PDF 5] Through this conduct Plaintiffs assert that they
3 “unmistakably conveyed to the district court that” they “believed the proceedings
4 were being handled in a manner that was unfair, prejudicial, and not grounded in the
5 governing law.” [Id.] *But see Woolwine v. Furr’s, Inc.*, 1987-NMCA-133, ¶ 20, 106
6 N.M. 492, 745 P.2d 717 (“To preserve an issue for review on appeal, it must appear
7 that appellant fairly invoked a ruling of the trial court on the same grounds argued
8 in the appellate court.”).

9 {8} However, Plaintiffs appear to tacitly acknowledge that they never objected,
10 moved to disqualify the district court judge, or otherwise raised the issue of judicial
11 bias below. [MIO PDF 5; CN 4] *See State v. Vasquez*, 2025-NMSC-008, ¶ 30, 563
12 P.3d 901 (holding that the appellant did not raise “the issue of bias before the
13 [district] court and, therefore, failed to preserve the claim for review”); *Muse v.*
14 *Muse*, 2009-NMCA-003, ¶¶ 57-60, 145 N.M. 451, 200 P.3d 104 (holding that issues
15 regarding judicial bias must be preserved by a motion for disqualification in the
16 district court). We therefore conclude that Plaintiffs failed to preserve their argument
17 concerning judicial bias.

18 {9} Although Plaintiffs also contend we should apply the doctrine of fundamental
19 error based on an alleged violation of their right to due process, we note that
20 fundamental error does not generally apply in civil cases and Plaintiffs do not assert

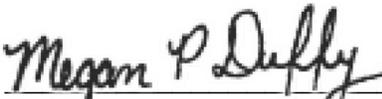
1 or otherwise argue that this is an exceptional case in which we might apply that
2 doctrine. [MIO PDF 5-6] *See State ex rel. Child., Youth & Fams. Dep't v. Paul P.,*
3 *Jr.*, 1999-NMCA-077, ¶ 14, 127 N.M. 492, 983 P.2d 1011 (“Although fundamental
4 error does not generally apply in civil cases, we will apply the doctrine in exceptional
5 cases.”); *Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 (“This Court has
6 no duty to review an argument that is not adequately developed.”). To the extent
7 Plaintiffs assert it was the district court’s burden to excuse itself sua sponte, we
8 conclude that Plaintiffs have not established that we could overlook the lack of
9 preservation in this circumstance. [Id.] *See Moody v. Stribling*, 1999-NMCA-094,
10 ¶ 45, 127 N.M. 630, 985 P.2d 1210 (“Due process claims are not exempt from the
11 fundamental requirement of preservation.”).

12 {10} Accordingly, for the reasons stated herein and in our calendar notice, we
13 affirm.

14 {11} **IT IS SO ORDERED.**

15 
16 **JENNIFER L. ATTREP, Judge**

17 **WE CONCUR:**

18 
19 **MEGAN P. DUFFY, Judge**

20 
21 **ZACHARY A. IVES, Judge**