

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

Court of Appeals of New Mexico

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2 **GUY HENCE,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-43101

5 **Governor of the State of New Mexico**

6 **MICHELLE LUJAN GRISHAM,**

7 Defendant-Appellee.

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

9 **Jeffrey Shannon, District Court Judge**

10 Guy Hence

11 Taos, NM

12 Pro Se Appellant

13 Holly Agajanian

14 Santa Fe, NM

15 for Appellee

16 **MEMORANDUM OPINION**

17 **Medina, Chief Judge.**

18 {1} Plaintiff appeals from the district court's order dismissing his application for

19 a preliminary injunction against Defendant Governor Lujan Grisham. [RP 20-22] In

20 this Court's notice of proposed disposition, we proposed summary affirmance.

21 Plaintiff filed a memorandum in opposition, which we have duly considered.

22 Remaining unpersuaded, we affirm.

1 {2} “A party responding to a summary calendar notice must come forward and
2 specifically point out errors of law and fact,” and the repetition of earlier arguments
3 does not fulfill this requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107
4 N.M. 421, 759 P.2d 1003, *superseded by statute on other grounds as stated in State*
5 *v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. In our proposed summary
6 disposition, we proposed to conclude that the district court did not err in dismissing
7 the application for the preliminary injunction on two grounds, that Plaintiff lacked
8 standing, and that Plaintiff failed to state a claim upon which relief could be granted.

9 {3} With regard to standing, the district court concluded that:

10 Plaintiff does not have standing because he has not suffered a legally
11 cognizable injury and he did not allege any facts claiming an actual
12 injury. Plaintiff merely alleges generalized emotional and taxpayer
13 injuries, which are insufficient to constitute an injury-in-fact for the
14 purposes of standing.

15 [RP 20] We reviewed standing case law at length in our proposed summary
16 disposition. [CN 4-7] We noted that “at least as a matter of judicial policy if not of
17 jurisdictional necessity, our courts have generally required that a litigant
18 demonstrate injury in fact, causation, and redressability to invoke the court’s
19 authority to decide the merits of a case.” *ACLU v. City of Albuquerque*, 2008-
20 NMSC-045, ¶ 10, 144 N.M. 471, 188 P.3d 1222. [CN 5]

21 Even a slight injury establishes an injury in fact sufficient to confer
22 standing. However, we have repeatedly emphasized that the injury in
23 fact prong of our standing analysis requires that the party bringing suit

1 show that [they are] injured or threatened with injury in a direct and
2 concrete way as a matter of sound judicial policy.

3 *Deutsche Bank Nat. Tr. Co. v. Johnston*, 2016-NMSC-013, ¶ 14, 369 P.3d 1046
4 (alterations, internal quotation marks, and citations omitted). [CN 5] We suggested
5 that because it appears that the injuries Plaintiff asserts he has suffered were
6 generalized ethical concerns, they do not arise to the direct and concrete injuries in
7 fact required by New Mexico’s standing doctrine. [CN 5]

8 {4} In his memorandum in opposition, Plaintiff asserts that he “has suffered
9 extreme harm and mental suffering as described in the complaint and in previous
10 documentation, i.e.,] sleeplessness, anxiety, increase in blood pressure readings,
11 cardiac palpitations and general worry, etc.” [MIO PDF 1] However, Plaintiff has
12 not provided this Court with any further authority or information to suggest that
13 these types of injuries create standing for Plaintiff. We conclude that, while Plaintiff
14 asserts he is experiencing harm and mental suffering, he has not shown that he “is
15 injured or threatened with injury in a direct and concrete way” by the Governor’s
16 actions in order to confer standing. *Deutsche Bank Nat. Tr. Co.*, 2016-NMSC-013,
17 ¶ 14 (internal quotation marks and citation omitted). Accordingly, based upon the
18 law regarding standing in New Mexico, particularly with regard to the injury in fact
19 element, we conclude that the district court did not err in deciding that Plaintiff did
20 not have standing to request this preliminary injunction.

1 {5} With regard to Plaintiff’s failure to state a claim, the district court decided:
2 “Plaintiff has made no showing that the challenged bills or the appropriations in the
3 bills violate any laws or constitutional provisions. Plaintiff merely appears to have a
4 disagreement with the Governor and Legislature’s policy decisions to build the
5 reproductive health clinics.” [RP 20-21] In our proposed summary disposition, we
6 proposed to agree with the district court, and suggested that Plaintiff’s application
7 for a preliminary injunction did not plead any facts that could give rise to a cause of
8 action under New Mexico law, and therefore the district court did not err by
9 dismissing it. We proposed to conclude that, while Plaintiff has asserted that he
10 firmly disagrees with the appropriations for reproductive health clinics made by the
11 Legislature and signed by Defendant, acting in her role as Governor, such
12 disagreement does not give rise to any cause of action under New Mexico law. [CN
13 8]

14 {6} In his memorandum in opposition, Plaintiff continues to profess his firm
15 opposition to abortion. As the district court decided, we acknowledge that Plaintiff
16 disagrees with the Governor and the Legislature’s policy decisions to build the
17 reproductive health clinics. [RP 20-21] However, Plaintiff has not explained how
18 this disagreement gives rise to a cause of action in the judiciary.

19 {7} In his memorandum in opposition, Plaintiff does not engage with our
20 proposed disposition on his failure to state a claim upon which relief can be granted,

1 nor has the memorandum in opposition asserted any facts, law, or argument that
2 persuade this Court that our notice of proposed disposition was erroneous. *See*
3 *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our
4 courts have repeatedly held that, in summary calendar cases, the burden is on the
5 party opposing the proposed disposition to clearly point out errors in fact or law.”);
6 *Mondragon*, 1988-NMCA-027, ¶ 10.

7 {8} Because we affirm the district court on these threshold issues and conclude
8 that Plaintiff did not have standing and also did not state a claim upon which relief
9 could be granted, we do not reach the arguments in Plaintiff’s memorandum in
10 opposition regarding the morality of abortion.

11 {9} As discussed in our proposed disposition, this Court must apply the
12 presumption of correctness and conclude that there was no error by the district court.
13 [CN 9] We presume correctness in the trial court’s rulings; the burden is on the
14 appellant to clearly demonstrate the claimed error on appeal. *State v. Aragon*, 1999-
15 NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211; *see also Farmers, Inc. v. Dal*
16 *Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (“The
17 presumption upon review favors the correctness of the trial court’s actions.
18 Appellant must affirmatively demonstrate its assertion of error.”).

19 {10} Accordingly, for the reasons stated in our notice of proposed disposition and
20 herein, we affirm the district court.

1 {11} IT IS SO ORDERED.

2 *Jacqueline R. Medina*
3 _____
4 JACQUELINE R. MEDINA, Chief Judge

4 WE CONCUR:

5 
6 _____
7 ZACHARY A. IVES, Judge

7 
8 _____
9 SHAMMARA H. HENDERSON, Judge