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

Court of Appeals of New Mexico
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Mark Reynolds

2 **SIRPHEY, LLC,**

3 Plaintiff-Appellee,

4 v. **No. A-1-CA-41888**

5 **BOARD OF THE COUNTY COUNCIL**
6 **OF LOS ALAMOS COUNTY, and**
7 **MICHAEL ARELLANO, building official**
8 **of Los Alamos County,**

9 Defendants-Appellants,

10 and

11 **HARTLINE BARGER LLP,**

12 Non-Party Appellant.

13 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
14 **Jason Lidyard, District Court Judge**

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MEMORANDUM OF OPINION

THOMSON, Justice, sitting by designation.

I. INTRODUCTION

{1} The Board of the County Council of Los Alamos County[1] (BCCLAC), seeks to overturn the decisions of the First Judicial District Court in an administrative appeal, specifically docketing: (1) the court's denial of BCCLAC's motions to dismiss, (2) the court's order and judgment imposing sanctions, and (3) the court's holding that BCCLAC violated Appellee Sirphey, LLC's (Sirphey) due process rights. BCCLAC's related petition for writ of certiorari did not challenge the district court's ruling on BCCLAC's motions to dismiss, and in any event the challenges to those motions are resolved by our ruling on the docketed issues. The sanctions and the due process issues are properly before us, and we reverse both.

[1] We note that Appellant's preferred designation is "Board of County Councilors of the County of Los Alamos," but refer to the name as presented in the case caption.

II. BACKGROUND

{2} In 2019, Los Alamos County's chief building official placed a red tag stop work order on a commercial building in which Sirphey had a leasehold interest. The red tag ordered Sirphey to stop work due to a lack of permitting. Sirphey claimed the work being done did not require a permit and therefore the stop work order was improper. Accordingly, Sirphey appealed the order to the Los Alamos County Board of Appeals (BOA). The BOA orally denied the appeal, and later issued written minutes memorializing the denial. The minutes contained a few brief sentences that summarized the members' votes and concluded that "the [a]ppeal by [Sirphey] is denied, [because Sirphey] failed to show that the issuance of a red tag on November 22, 2019 was unlawful, arbitrary, or capricious." Sirphey appealed the BOA's ruling to BCCLAC, which orally affirmed the BOA's ruling. Sirphey then appealed to the district court under Rule 1-075 NMRA.

{3} Sirphey's attempts to appeal were complicated both by procedural errors and by the BOA's failure to issue written findings after denying Sirphey's appeal—despite a county ordinance requiring the BOA to issue written findings and a decision. *See* Los Alamos, N.M., County Code of Ordinances ch. 10, art. 3, § 10-84 (2015). The procedural errors, including Sirphey's delay in bringing the appeal to the district court, prompted BCCLAC to move to dismiss the appeal entirely, either as moot or untimely. Sirphey argued that the appeal could not be untimely because

the BOA never issued the written findings required for a final decision, and noted it only delayed its appeal because it was waiting on written findings. Sirphey therefore urged the court to remand the proceeding to the BOA for findings of fact so that its appeal could be properly considered.

{4} BCCLAC maintained that remand was not appropriate because the ordinance merely required "findings," which did not necessarily mean "findings of fact." Under this rationale, the BOA's minutes constituted a final decision and BCCLAC's motions to dismiss were properly before the court.

{5} Unpersuaded by BCCLAC's line of reasoning, the district court held that Sirphey's appeal was not yet ripe because the BOA had not issued written findings of fact. The court denied the motions to dismiss and remanded the case to the BOA for written findings of fact and conclusions of law. Sirphey then moved to sanction BCCLAC for violating Rule 1-011 NMRA by filing "baseless motions" based on the "frivolous" argument that written findings of fact were not required.

{6} After the BOA issued findings of fact, the BOA's decision was ripe for appeal, and Sirphey again petitioned for a writ of certiorari, seeking an appeal as of right under Rule 1-075. *See* N.M. Const. art. VI, § 2 ("[A]n aggrieved party shall have an absolute right to one appeal."). The district court granted certiorari and eventually held that BCCLAC had violated Sirphey's constitutional right to due process. The court also granted Sirphey's motion for sanctions.

{7} BCCLAC sought to appeal the district court's decisions in two ways: (1) seeking discretionary appeal by petitioning for a writ of certiorari, and (2) seeking an appeal as of right by filing a docketing statement. The docketing statement contested (1) the denial of BCCLAC's motions to dismiss, (2) the order and judgment for sanctions, and (3) the court's finding of due process violations. The petition for writ of certiorari did not contest the denial of BCCLA's motions to dismiss but mirrored the docketing statement's positions on the due process violations. This Court denied the petition for certiorari, calendared the issues from the docketing statement, and requested additional argument on whether BCCLAC's motions to dismiss were properly included as an appeal of right. We address each issue in turn.

III. DISCUSSION

A. The Motions to Dismiss Are Not Appealable as of Right Because They Are Not Constitutional Issues

{8} BCCLAC argues that it may appeal its motions to dismiss as of right, because the motions were heard by the district court under its original jurisdiction and not in exercising its appellate authority in review of a determination by an administrative agency. We disagree with BCCLAC because, as we explain, the timeliness and mootness rulings appealed by BCCLAC do not fall into the narrow category of issues the district court hears in its original jurisdiction during an administrative appeal.

{9} Administrative decisions, like the conclusions of BCCLAC, may be appealed to a district court under Rule 1-075. When a matter is appealed under Rule 1-075, the district court hears it in its appellate jurisdiction. *See* Rule 1-075(T). However, constitutional questions outside the scope of an administrative agency's review are heard in the district court's original jurisdiction. *Victor v. N.M. Dep't of Health*, 2014-NMCA-012, ¶ 24, 316 P.3d 213. Therefore, if the district court is the first body with jurisdiction to hear a *constitutional* issue, the issue is appealable as of right to this Court. *See El Castillo Ret. Residences v. Martinez*, (*El Castillo*) 2015-NMCA-041, ¶ 15, 346 P.3d 1164; N.M. Const. art. VI, § 2; *see also* Rule 12-102(B) NMRA (stating that all appeals from district court other than those described in Rule 12-102(A) "shall be taken to the Court of Appeals").

{10} BCCLAC reads *Victor* and *El Castillo* to provide that "issues or claims not dealt with by the administrative agency" are heard in the district court's original jurisdiction and are therefore appealable as of right. We disagree with this expansive reading. Nothing in *Victor* or *El Castillo* suggests that raising a constitutional issue in an administrative appeal subjects all related matters to the court's original jurisdiction. *Victor* and *El Castillo* speak only to constitutional issues being subject to original jurisdiction, and do not expand this analysis to all issues "not dealt with by the administrative agency." *See El Castillo*, 2015-NMCA-041, ¶¶ 22, 23 (holding that constitutional issues were outside a board's authority and therefore the district

court should hear those appeals from the board in its original jurisdiction); *Victor*, 2014-NMCA-012, ¶ 24 (holding that "constitutional challenges that exceed the scope of the hearing officer's review are subject to the original jurisdiction of the district court"). "[M]atters raised within the context of a district court's appellate jurisdiction are subject to the same jurisdictional basis on which the action is grounded." *Nance v. State Taxation & Revenue Dep't*, A-1-CA-35341, mem. op. ¶ 11 (N.M. Ct. App. May 8, 2017) (nonprecedential).

{11} BCCLAC appeals, in part, the district court decision concluding Sirphey's due process rights had been violated. That is a constitutional issue not heard by the BOA or BCCLAC, which BCCLAC may appeal as of right under Rule 12-201 NMRA and Rule 12-202 NMRA. On the other hand, the issues of timeliness and mootness are not constitutional issues. *See Howell v. Heim*, 1994-NMSC-103, ¶ 7, 118 N.M. 500, 882 P.2d 541 (describing mootness as "a limitation upon jurisdiction"), and *Mascareñas v. City of Albuquerque*, 2012-NMCA-031, ¶ 24, 274 P.3d 781 (characterizing the timeliness of appeal as a jurisdictional issue). Those matters were therefore raised within the context of the district court's appellate jurisdiction, and BCCLAC may appeal them only by writ of certiorari. BCCLAC did not contest these issues through a petition for writ, and instead included them only on the docketing statement. While this court may treat a docketing statement as a petition for writ of certiorari in order to reach the merits of a case, it is under no obligation to do so. *See*

Wakeland v. N.M. Dep't of Workforce Sols., 2012-NMCA-021, ¶ 16, 274 P.3d 766 ("A docketing statement will generally substantially comply with Rule 12-505 [NMRA] so as to permit this Court to review it as a substitute for a petition for writ of certiorari under a liberal standard of construing documents in order to reach their merits.) Because we reverse on the merits of the sanctions and due process claims, we see no need to engage in an analysis of whether it is proper to treat BCCLAC's writ as a docketing statement.

B. The District Court Erred in Imposing Sanctions

{12} BCCLAC also contests the Rule 1-011 sanctions imposed by the district court. Sanctions are based on a party's misconduct towards the court, rather than conduct toward other parties, and are "collateral to or separate from the decision on the merits." *Gonzalez v. Surgidev Corp.*, 1995-NMSC-047, ¶¶ 13, 22, 120 N.M. 151, 899 P.2d 594. Accordingly, we treat sanctions as a separate judgment from that of the underlying case. *See Audette v. Montgomery*, 2012-NMCA-011, ¶ 13, 270 P.3d 1273 (treating sanctions issued by a district court in its appellate capacity as requiring entire record review, while limiting review of the underlying zoning appeal to documents submitted for discretionary appeal pursuant to Rule 12-505(D)(3)). Unlike the underlying decision, the separate judgment for sanctions has not yet been appealed and we review it now pursuant to Rule 12-202(A) as an appeal of right from the district court.

{13} BCCLAC argues that the sanctions order should be reversed either because the district court applied an incorrect Rule 1-011 standard or because its motions to dismiss were not baseless or unfounded. Because we resolve the sanctions issue by concluding Appellant's argument was not baseless, we need not further consider whether the district court applied an incorrect Rule 1-011 standard.

{14} Rule 1-011 was "designed to encourage honesty in the bar" by deterring attorneys from filing pleadings, motions, or other papers for which there is no "good ground." *Rivera v. Brazos Lodge Corp.*, 1991-NMSC-030, ¶¶ 13-14, 111 N.M. 670, 808 P.2d 955. The "good ground" provision allows the court to sanction attorneys "only in those rare cases in which an attorney deliberately presses an unfounded claim or defense." *Id.* ¶ 13. A court may impose Rule 1-011 sanctions when a filing is "not warranted by existing law or a reasonable argument for its extension." *Id.* A court should not impose "good ground" sanctions where the issue is "a question on which reasonable lawyers and judges could differ." *Lowe v. Bloom*, 1991-NMSC-058, ¶¶ 6-9, 112 N.M. 203, 813 P.2d 480.

{15} We review Rule 1-011 sanctions under an abuse of discretion standard. *Rivera*, 1991-NMSC-030, ¶ 16. A trial court abuses its discretion when it orders sanctions based on an erroneous view of the law, including an erroneous finding that a claim was "non-meritorious." *See Rangel v. Save Mart, Inc.*, 2006-NMCA-120,

¶¶ 23-25, 140 N.M. 395, 142 P.3d 983. Whether a claim is "non-meritorious" is a legal question we review de novo. *See id.* ¶¶ 16-25.

{16} In *Rangel*, a district court ordered sanctions after determining that an attorney filed a charging lien without good grounds for doing so. *Id.* ¶¶ 25-26. This Court reviewed the case law upon which the charging lien was premised, and determined it could be "fairly interpreted" to support the charging lien. *Id.* ¶ 21. We then reversed the sanctions, reasoning that where the district court has incorrectly deemed a legal argument non-meritorious, the court has "based its decision on [an] erroneous view" of the law, and thus abused its discretion. *Id.* ¶ 25. Accordingly, to determine whether the district court here abused its discretion, we must review de novo whether the district court erred in determining that "findings" could never be fairly interpreted to mean anything other than "findings of fact."

{17} BCCLAC was sanctioned after the district court held that (1) "finding" meant "finding of fact," (2) the BOA's decision, which lacked any findings of fact, was thus not final, and (3) BCCLAC's motions to dismiss were therefore improper. The district court relied on a *Black's Law Dictionary* definition of "finding"—which directs the reader to the entry for "findings of fact"—to conclude that BCCLAC's position was not a reasonable interpretation or extension of existing law.

{18} Whether "finding" means findings of fact is not before us, and we write only to decide whether BCCLAC's interpretation of the word was so unfounded as to

constitute a Rule 1-011 violation. We agree with the district court that most practitioners would assume "findings" in this context mean findings of fact. *See Gila Res. Info. Project v. N.M. Water Quality Control Comm'n*, 2005-NMCA-139, ¶¶ 33-38, 138 N.M. 625, 124 P.3d 1164 (holding that, even where a statute does not explicitly require findings of fact, administrative agencies must clearly state the basis for their conclusions to facilitate "effective, meaningful appellate review"). However, we also note that our appellate courts, including this Court, occasionally use "finding" to introduce legal conclusions, as the BOA did here. *See, e.g.*, *State v. Sena*, 2020-NMSC-011, ¶ 29, 470 P.3d 227 ("[W]e find constitutional error"); *State v. Stevens*, 2026-NMCA-006, ¶ 17, 584 P.3d 975 ("[W]e find no discovery violation by the [s]tate under the facts of this case"); *Handley v. Halladay*, 1978-NMSC-069, ¶ 8, 92 N.M. 76, 582 P.2d 1289 ("We find respondent contributorily negligent as a matter of law"); *Lonewolf v. Lonewolf*, 1982-NMSC-152, ¶ 9, 99 N.M. 300, 302, 657 P.2d 627 ("We find that the district court properly exercised jurisdiction, and we affirm the judgment."). Further, not all legal dictionaries define "finding" as strictly synonymous with "findings of fact." *See, e.g.*, *Finding*, *Black's Law Dictionary* (6th ed. 1990) ("The result of the deliberation of a jury or a court. A decision upon the question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc. A recital of the facts as found. The word commonly applies to the result reached by a judge or jury."); *see also*

Ballentine's Law Dictionary (3rd ed. 1969) (maintaining separate entries for "finding" and "finding of fact"). Although BCCLAC's argument may have strained legal probability, it is evident that reasonable lawyers and even judges differ in their use of the word and we cannot say that BCCLAC's construction of the term was "so non-meritorious as to constitute a violation of Rule 1-011." *See Rangel*, 2006-NMCA-120, ¶ 23. We therefore reverse the order for sanctions.

C. Sirphey Did Not Have a Property Interest for Purposes of Due Process

{19} "Before a procedural due process claim may be asserted, the plaintiff must establish that [they were] deprived of a legitimate liberty or property interest." *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 21, 118 N.M. 470, 882 P.2d 511. A protected property interest exists where there is a "legitimate claim of entitlement" created by "existing rules or understandings that stem from an independent source." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). Claims of entitlement in land use center on the decisionmaker's degree of discretion in removing the property. *Zia Shadows, L.L.C. v. City of Las Cruces*, 829 F.3d 1232, 1237 (10th Cir. 2016). Where the relevant rules permit no discretion for removal, a property interest exists. *See Lovato v. City of Albuquerque*, 1987-NMSC-086, ¶¶ 9-11, 106 N.M. 287, 742 P.2d 499.

{20} Sirphey claims it was deprived of a property interest when a building official placed a stop work order on the leasehold property, despite no work being done that

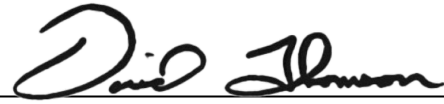
required a construction permit. Whether Sirphey had a property interest in performing work without a permit is dependent upon the discretion given to the building officer in placing the stop work order.

{21} The Los Alamos Building Code governs building regulation in the county. Los Alamos, N.M., County Code of Ordinances ch. 10, art. 3, § 10-71 (2000, amended 2025). The code gives the building official discretion to stop work where work is being done in violation of the code. Los Alamos, N.M., County Code of Ordinances ch. 10, art. 3, § 10-80 (1985). It also gives building officials discretion to determine whether a violation has occurred. Los Alamos, N.M., County Code of Ordinances § 10-81 (1985). Because the building officer had discretion to determine whether work was being done that required a permit, Sirphey could have no reasonable expectation of a right to continue work without the potential for a stop work order. Sirphey thus had no property interest in the circumstance that led to the stop work order, and its due process claim necessarily fails. We therefore reverse the district court's holding that the BCCLAC proceedings deprived Sirphey of due process.

IV. CONCLUSION

{22} We reverse the order and judgment for sanctions and the finding of a due process violation.

1 {23} **IT IS SO ORDERED.**



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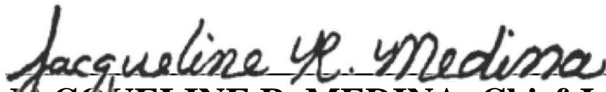
3 **DAVID K. THOMSON, Justice**
4 **Sitting by designation**

5 **WE CONCUR:**



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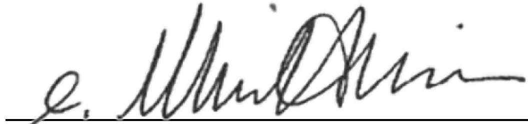
7 **JACQUELINE R. MEDINA, Chief Judge**



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9 **J. MILES HANISEE, Judge**