

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

2 **DENNIS MURPHY as Personal**
3 **Representative of the ESTATE**
4 **OF LAWRENCE A. WACONDA,**
5 **and NADINE WACONDA, as**
6 **parent and next friend of**
7 **E.W., a minor, and**
8 **R.W., a minor,**

Court of Appeals of New Mexico
Filed 6/8/2026 10:51 AM



Mark Reynolds

9 Plaintiffs-Appellants,

10 v.

No. A-1-CA-42330

11 **WILSHIRE INSURANCE**
12 **COMPANY & IAT INSURANCE**
13 **GROUP, INC.,**

14 Defendants-Appellees,

15 and

16 **DANIEL PERALTA; ERNEST LEE;**
17 **SELENA ARAGON; ALLSTATE**
18 **INSURANCE COMPANY; YOUNG**
19 **INSURANCE AGENCY, INC.;**
20 **UNITED SERVICES AUTOMOBILE**
21 **ASSOCIATION; and PROGRESSIVE**
22 **DIRECT INSURANCE COMPANY,**

23 Defendants.

24 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**
25 **Bryan Biedscheid, District Court Judge**

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2 Charles S. Parnall
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6 for Appellants

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10 for Appellees

11 **MEMORANDUM OPINION**

12 **HANISEE, Judge.**

13 {1} Plaintiffs sought coverage under a commercial automobile policy on behalf of
14 Lawrence Waconda, who died in a car accident while driving a vehicle not listed in
15 the policy. Defendants denied coverage and Plaintiffs sued. Both parties moved for
16 summary judgment or partial summary judgment, and the district court found in
17 favor of Defendants. The district court later denied Plaintiffs' motion to reconsider,
18 finding that Waconda was not an insured under the policy. Plaintiffs appeal, arguing
19 that the district court erred in granting Defendants' motion for summary judgment.
20 Plaintiffs argue that the policy was ambiguous and that Defendants violated the
21 Unfair Practices Act. Plaintiffs also argue that Defendants obtained rejection of
22 underinsured/uninsured motorist coverage improperly, forged Waconda's signature
23 in a name change endorsement that adjusted the policy, and mistakenly insisted that

1 Defendant Young was not Defendant Wilshire’s agent. Determining there to be no
2 coverage for Waconda, we affirm in part and remand.

3 **BACKGROUND**

4 {2} Because this is a memorandum opinion, we offer background facts only
5 briefly, presenting additional facts as relevant in our discussion. This case concerns
6 an individual, Waconda, who purchased a commercial automobile insurance policy
7 from Defendant Wilshire Insurance Company, Inc., and IAT Insurance Group, Inc.,
8 and through Defendant Young Insurance Agency, Inc. (collectively, Defendants).
9 Following Waconda’s death from a car accident, his personal representative and
10 estate (the Estate) requested the policy from Defendants. Defendants sent a version
11 of the policy. The policy first identified the named insured as “Lawrence A.
12 Waconda d/b/a/ Waconda Livestock Carriers,” but shortly thereafter, a name change
13 endorsement (NIE) purportedly changed the named insured to “Waconda Livestock
14 Carriers LLC.” That change came to be reflected on the policy declarations page.

15 {3} The Estate sought coverage from Defendants for the damages from
16 Waconda’s death, but Defendants denied coverage, asserting that Waconda was not
17 covered under the policy. Plaintiffs sued. As stated, the parties filed motions for
18 summary judgment, the district court granted Defendants’ motion, and later denied
19 Plaintiffs’ motion to reconsider. The upshot of the district court rulings was that
20 Plaintiffs “failed to present evidence which would create a genuine dispute of

1 material fact that Mr. Waconda was an insured under the Wilshire policy as a matter
2 of law.”

3 {4} Plaintiffs appeal, arguing that the district court erred when it construed the
4 ambiguities within the policy in Defendants’ favor and granted summary judgment
5 for Defendants, finding there was no individual coverage for Waconda and
6 additionally dismissing Plaintiffs’ uninsured/underinsured (“UM/UIM”) coverage
7 rejection, authenticity, and agency claims. Plaintiffs also argue that the district court
8 erred when its no-coverage finding led to a dismissal of additional claims, namely
9 Plaintiffs’ Unfair Practices Act (UPA) claim, NMSA 1978, §§ 57-12-1 to -27 (1967,
10 as amended through 2025).

11 **DISCUSSION**

12 **I. Standard of Review**

13 {5} We review an order granting or denying summary judgment de novo, granting
14 summary judgment “only when there are no issues of material fact, with the facts
15 viewed in the light most favorable to the non[]moving party.” *United Nuclear Corp.*
16 *v. Allstate Ins. Co.*, 2012-NMSC-032, ¶ 9, 285 P.3d 644. Additionally, the
17 interpretation of terms within insurance policies is “a matter of law about which the
18 court has the final word.” *Rummel v. Lexington Ins. Co.*, 1997-NMSC-041, ¶ 60, 123
19 N.M. 752, 945 P.2d 970. Contract interpretation is also subject to de novo review.
20 *See United Nuclear Corp.*, 2012-NMSC-032, ¶ 9.

1 **II. Preservation**

2 {6} Before addressing the substantive arguments in this appeal, we must first
3 address Defendants’ argument that Plaintiffs did not preserve the issues raised on
4 appeal. As Defendants correctly note, “[t]o preserve an issue for review on appeal,
5 it must appear that [the] appellant fairly invoked a ruling of the trial court on the
6 same grounds argued in the appellate court.” *Azar v. Prudential Ins. Co. of Am.*,
7 2003-NMCA-062, ¶ 22, 133 N.M. 669, 68 P.3d 909 (internal quotation marks and
8 citation omitted). Plaintiffs cite a plethora of filings, with no specific reference to
9 page numbers or quotations, arguing that all issues were preserved for appeal.

10 {7} As to the question of whether ambiguity existed in the insurance contract, we
11 agree with Defendants. Plaintiffs at no point invoked a ruling from the district court
12 regarding ambiguity until their motion to reconsider, where they mentioned the
13 concept only passingly. Because “[a] motion for reconsideration asks the trial court
14 to reconsider issues already presented,” and the ambiguity issue was not presented
15 prior to the motion to reconsider, we hold that such was not preserved. *See Vill. of*
16 *Los Ranchos de Albuquerque v. Shiveley*, 1989-NMCA-095, ¶ 15, 110 N.M. 15, 791
17 P.2d 466. Further, we note a number of occasions in the various briefings where
18 Plaintiffs referred to the policy as “unambiguous” and asked the district court to
19 enforce the policy’s terms. We therefore address only the preserved arguments, that
20 of UM/UIM rejection of coverage, authenticity, and agency.

1 {8} As for those three issues, Defendants argue they too were not preserved. In
2 arguing such, Defendants ask us to ignore Plaintiffs’ motions for partial summary
3 judgment on UM/UIM coverage, authenticity, and agency, as well as our whole-
4 record standard of review for summary judgment rulings and precedent stating that
5 preservation merely requires an invocation of a ruling—a requirement Plaintiffs’
6 have met on all three issues. *See Zamora v. St. Vincent Hosp.*, 2014-NMSC-035, ¶ 9,
7 335 P.3d 1243 (examining “the whole record on review” of summary judgment
8 dispositions); Rule 12-321 NMRA (governing preservation). We therefore hold that
9 Plaintiffs properly preserved these three arguments.

10 **III. Coverage**

11 {9} For any of these three issues to matter to Plaintiffs’ case, we must first
12 ourselves answer the threshold question—resolved by the district court in the
13 negative—of whether the vehicle Waconda was driving at the time of the accident
14 that took his life or Waconda, as its driver, were covered under the policy. For this
15 answer, we look directly to the policy itself.

16 {10} The policy explains its UM/UIM coverage of an “insured” as follows: “We
17 will pay all sums the ‘insured’ is legally entitled to recover as damages from the
18 owner or driver of an ‘uninsured motor vehicle.’” Under the “Who Is An Insured”
19 heading of the same UM/UIM coverage section, it explains that when on the
20 declarations page the named insured is designated as an “individual” (as opposed to

1 an organization or business entity), the named insured is covered, as are any family
2 members and anyone occupying a covered auto. But that same declarations page lists
3 as the named insured Waconda Livestock Carriers LLC—not an individual, but an
4 entity. Ambiguity, however, does not arise “merely because the parties hold
5 competing interpretations about the meaning of a policy provision.” *United Nuclear*
6 *Corp.*, 2012-NMSC-032, ¶ 10 (internal quotation marks and citation omitted).
7 Instead, we construe the insurance contract “with the primary goal of ascertaining
8 the intentions of the contracting parties with respect to the challenged terms at the
9 time they executed the contract.” *Ponder v. State Farm Mut. Auto. Ins. Co.*, 2000-
10 NMSC-033, ¶ 11, 129 N.M. 698, 12 P.3d 960 (alteration, internal quotation marks,
11 and citation omitted). In this analysis, we “consider extrinsic evidence in
12 determining whether an ambiguity exists in the first instance.” *Id.* ¶ 13.

13 {11} Plaintiffs assert repeatedly that Waconda was also a named insured under the
14 policy. But Defendants provided evidence that they were required to amend the
15 “named insured” from a sole proprietorship that included Waconda as an individual
16 to a limited liability company that did not include any individuals, in order to comply
17 with the requirements of the New Mexico Public Regulation Commission (PRC).
18 Plaintiff responded by asserting that Defendant’s facts were misleading and false,
19 but did not provide evidence to support a material dispute of fact. *See* Rule 1-056
20 (D)(2) NMRA; *Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶ 10, 148 N.M.

1 713, 242 P.3d 280 (“Once this prima facie showing has been made, the burden shifts
2 to the non[]movant to demonstrate the existence of specific evidentiary facts which
3 would require trial on the merits.” (internal quotation marks and citation omitted)).

4 {12} Nor did Plaintiffs provide any evidence to rebut Defendant Wilshire’s
5 evidence that after the policy changed Waconda ratified by his conduct the change
6 to the named insured. *See Bd. of Cnty. Comm’rs of Cnty. of Bernalillo v. Chavez*,
7 2008-NMCA-028, ¶ 15, 143 N.M. 543, 178 P.3d 828. *Chavez* explains that
8 “[r]atification occurs if, knowing the terms and conditions of the agreement[,] the
9 person acts pursuant to the agreement, and accepts the benefits of the agreement for
10 a considerable length of time after [they have] had the opportunity to avoid or
11 repudiate.” *Id.* (internal quotation marks and citation omitted). Plaintiffs provided
12 no evidence that Waconda found the change in the named insured designation
13 problematic or incorrect at any point between the time the change occurred to his
14 passing, a period of nearly seven years, including several renewals.

15 {13} The record supports the district court’s conclusion that no dispute of fact
16 existed regarding the parties’ common understanding that the named insured was
17 corrected to indicate Waconda Livestock Carriers LLC, as opposed to including
18 Waconda individually.

19 {14} This undisputed material fact obviates the remaining issues, as follows.
20 Plaintiffs’ argument that Defendants never obtained a valid and explicit rejection of

1 UM/UIM coverage from Waconda, thereby obliging them to provide such under
2 New Mexico law, *see Jordan v. Allstate Ins. Co.*, 2010-NMSC-051, ¶ 32, 149 N.M.
3 162, 245 P.3d 1214 (holding the policy limit rejection insufficient as a matter of law
4 because the rejections were not made a part of the policies delivered to the plaintiff),
5 is incorrect because valid and explicit rejections of UM/UIM coverage are only
6 required from the named insured—here, Waconda Livestock Carriers LLC. The fact
7 that Defendants never obtained a valid and explicit rejection of UM/UIM coverage
8 from Waconda is of no moment, since Waconda was not a named insured under the
9 UM/UIM portion of the policy to begin with.

10 {15} Plaintiffs’ authenticity argument is likewise hampered: whether Waconda
11 authenticated the NIE by signing it himself or whether his signature was forged
12 matters little to the critical absence of Waconda as a named insured on the
13 declarations page. Additionally, Plaintiffs provided no evidence to rebut
14 Defendants’ evidence that Waconda effectively ratified the policy by operating
15 business as usual for nearly seven years after the NIE went into effect, implying that
16 the signature—whether or not it was forged—was of no concern to Waconda.
17 Therefore, the authenticity argument is inapposite.

18 {16} Plaintiffs’ agency claim too falls short in light of the absence of coverage.
19 Plaintiffs argued that Defendant Wilshire misrepresented its relationship with
20 Defendant Young by disavowing agency in an attempt to exculpate itself from

1 responsibility. Plaintiffs argue that statutory law imputing an agent’s actions to an
2 insurer applies when a plaintiff establishes that a defendant insurer appointed an
3 agent and the agent then solicited, negotiated, and sold a product to the plaintiff. *See*
4 NMSA 1978, § 59A-18-24 (2016). In Plaintiffs’ view, Defendant Wilshire’s actions
5 show that Defendant Young was its agent, meaning that Defendant Young’s actions
6 can be imputed to Defendant Wilshire. Such an argument would again be material if
7 the policy at issue provided coverage in this circumstance; because we have held
8 that it does not, Plaintiffs’ agency argument stops there and neither Defendant
9 Wilshire nor Defendant Young are culpable for problems that do not exist.

10 {17} Finally, we view Plaintiffs’ UPA claims as unresolved by the coverage
11 determination. Defendant’s amended motion for summary judgment argued that
12 Plaintiffs’ extracontractual claims depended on coverage, and Plaintiffs did not
13 respond. The district court’s granting of Defendant’s motion for summary judgment
14 as to all claims nonetheless effectively dismissed all claims raised in Plaintiffs’
15 complaint, including the UPA claim. *See City of Santa Fe v. Catanach*, 2023-
16 NMCA-017, ¶¶ 20-21, 525 P.3d 419 (holding the district court to have resolved all
17 issues of law and fact and fully disposed of the case even though it did not explicitly
18 dismiss each and every claim or counterclaim, because “the general rule of finality
19 is not inflexible and is to be given a practical, rather than a technical, construction”
20 (internal quotation marks and citation omitted)). Therefore, while we recognize the


1 finality of the district court’s order granting Defendant’s motion for summary
2 judgment, we hold that Defendant, as the party moving for summary judgment, did
3 not meet its burden of “making a prima facie showing that there is an absence of a
4 genuine issue of fact, and that it is entitled as a matter of law to judgment in its favor”
5 on this issue, instead pointing only to cases involving failure-to-pay bad faith claims
6 *See Weatherford Artificial Lift Sys., LLC v. Clarke*, 2021-NMCA-065, ¶ 11, 499 P.3d
7 679 (alteration, internal quotation marks, and citation omitted). We therefore reverse
8 and remand the district court’s dismissal of the UPA claim, acknowledging
9 Plaintiffs’ contention that this claim may exist independent of coverage under some
10 circumstances. *See Wilson v. Berger Briggs Real Estate & Ins., Inc.*, 2021-NMCA-
11 054, ¶¶ 22-26, 497 P.3d 654 (explaining that the UPA “merely requires that a
12 misrepresentation be made in connection with the sale of goods” and holding that a
13 plaintiff had standing to bring a UPA claim despite lack of coverage (omission,
14 internal quotation marks, and citation omitted)).

15 **CONCLUSION**

16 {18} We agree with the district court’s determination that Mr. Waconda was not
17 covered by the policy during the occurrence of the fatal accident. We therefore
18 affirm the grant of summary judgment as to coverage and remand for consideration
19 of the remaining UPA claim.

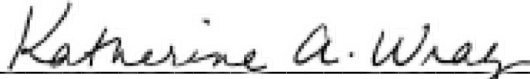
1 {19} IT IS SO ORDERED.

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3



J. MILES HANISEE, Judge

4 WE CONCUR:

5 

6 **KATHERINE A. WRAY, Judge**

7 

8 **KRISTOPHER N. MOUGHTON, Judge**