

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 8/10/2026 10:57 AM

KERRY KRUSKAL,

Plaintiff-Appellant,

v.

No. A-1-CA-43224

**ROGER ROMERO, and AGAPE
CONSTRUCTION OF TAOS LLC,**

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY

Steven A. Romero, District Court Judge

Kerry Kruskal
Arroyo Seco, NM

Pro Se Appellant

Allen, Shepherd & Lewis, P.A.
Sebastian A. Dunlap
Albuquerque, NM

for Appellees

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Plaintiff appeals the district court's order granting Defendants' motion for
summary judgment. In our notice of proposed summary disposition, we proposed to
affirm. Plaintiff filed a memorandum in opposition, which we have duly considered.
Unpersuaded by Plaintiff's arguments, we affirm.

1 {2} As we observed in our proposed disposition, the undisputed facts presented in
2 Defendants’ motion for summary judgment indicated that Plaintiff never incurred
3 any repair costs associated with Defendants’ installation of a roof, and as of the date
4 this case was filed, Plaintiff neither owned nor retained any right to make repairs to
5 the roof. [CN 4] We suggested that Defendants therefore made a prima facie showing
6 that Plaintiff failed to establish the existence of an injury in fact. [CN 4] *See Am.*
7 *Civ. Liberties Union of N.M. (ACLU) v. City of Albuquerque*, 2007-NMCA-092, ¶ 7,
8 142 N.M. 259, 164 P.3d 958 (“An injury in fact is an invasion of a legally protected
9 interest which is (a) concrete and particularized, and (b) actual or imminent, not
10 conjectural or hypothetical.” (internal quotation marks and citation omitted)). In his
11 response to Defendants’ motion for summary judgment, Plaintiff did not provide any
12 affidavit, property appraisals, property listings, or other evidence to rebut
13 Defendants’ prima facie showing. [CN 5] *See* Rule 1-056 NMRA. Accordingly, we
14 proposed to conclude that, based on the undisputed material facts, the district court
15 did not err in granting summary judgment for Defendants. [CN 6-7, 10]

16 {3} In his memorandum in opposition, Plaintiff continues to contest the district
17 court’s grant of summary judgment. In doing so, Plaintiff focuses on facts relating
18 to whether Defendants’ work complied with the relevant codes and how much
19 repairing the roof would cost. [MIO 2-4] In particular, Plaintiff relies on a work

1 estimate, dated months after Plaintiff sold the home, to support his claims. [MIO 2-
2 3, 5-6; RP 68, 96]

3 {4} Based on the record before us, Plaintiff's assertion that he suffered an injury
4 in fact is unsupported. See Rule 1-056(D), (E). Plaintiff provided no affidavit to
5 support the assertions he made in opposition to the motion for summary judgment.
6 [RP 203] Plaintiff did not set forth any facts to indicate that, having sold the home
7 in 2022 [RP 96], he retained any right to the property, specifically any right to
8 initiate, oversee, or complete repairs to the roof. He similarly failed to set forth facts
9 to affirmatively show he incurred any expense to repair the roof prior to selling the
10 home or that the roof's condition affected the selling price of the home. Moreover,
11 the assertions in Plaintiff's memorandum in opposition rely on conjecture; they refer
12 exclusively to the cost of potential repairs to be made in the future. Accordingly,
13 Plaintiff has failed not only to demonstrate that he had a legally protected interest in
14 the roof, but also to identify any concrete, personalized, and actual or imminent
15 invasion of a legally protected interest. See *Am. Fed'n of State, Cnty., & Mun. Emps.*
16 *v. Bd. of Cnty. Comm'rs of Bernalillo Cnty.*, 2016-NMSC-017, ¶ 32, 373 P.3d 989
17 (quoting 15 *Moore's Federal Practice* § 101.40[4][b][i] at 101-60 for the proposition
18 that "[a]n injury that is merely conjectural, speculative, or hypothetical will not
19 satisfy the injury-in-fact component of standing"); *ACLU*, 2007-NMCA-092, ¶ 7.

1 {5} We therefore conclude Plaintiff neither rebutted Defendants' prima facie
2 showing in accordance with Rule 1-056, nor established that the district court erred
3 in granting Defendants' motion for summary judgment. *See Deaton v. Gutierrez*,
4 2004-NMCA-043, ¶ 23, 135 N.M. 423, 89 P.3d 672 ("As [the d]efendants have no
5 title to the disputed property, we fail to see how they either could have been injured
6 in fact by any conduct by [the p]laintiff or how a favorable decision could enure to
7 their benefit."). Furthermore, insofar as Plaintiff's memorandum in opposition does
8 not address the breach of contract issues that we discussed in our proposed
9 disposition, Plaintiff has abandoned those issues. *See Taylor v. Van Winkle's IGA*
10 *Farmer's Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that
11 issues resolved in a proposed disposition, but not contested in a memorandum in
12 opposition, are abandoned).

13 {6} For the reasons stated in our notice of proposed disposition and herein, we
14 affirm.

15 {7} **IT IS SO ORDERED.**

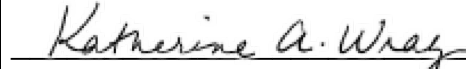
A handwritten signature in black ink, appearing to read 'SHAMMARA H. HENDERSON', written over a horizontal line.

SHAMMARA H. HENDERSON, Judge

1 **WE CONCUR:**

2 

3 **ZACHARY A. IVES, Judge**

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5 **KATHERINE A. WRAY Judge**