

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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NATALIE PAVELOCK, M.D.,

Plaintiff-Appellant,



Mark Reynolds

v.

No. A-1-CA-42364

**NEW MEXICO MEDICAL
BOARD,**

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

Maria Sanchez-Gagne, District Court Judge

Elsner Law & Policy, LLC

Gretchen Elsner

Santa Fe, NM

for Appellant

Long, Komer & Associates, P.A.

Mark E. Komer

John Molera

Santa Fe, NM

for Appellee

MEMORANDUM OPINION

IVES, Judge.

{1} Dr. Natalie Pavelock appeals from the district court's dismissal of her claims for relief against the New Mexico Medical Board (Board) under the New Mexico Civil Rights Act (NMCRA), NMSA 1978, §§ 41-4A-1 to -13 (2021); and the Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975). Dr. Pavelock's

1 claims are based on allegations about how the Board handled administrative
2 proceedings involving her license to practice medicine in New Mexico. The district
3 court agreed with the Board that the claims were barred by the doctrine of claim
4 preclusion. Because we conclude that none of the other pieces of litigation involving
5 Dr. Pavelock and the Board—two administrative appeals and a declaratory judgment
6 action—have claim preclusive effect with respect to the dismissed action and
7 because we are not persuaded that there is a basis to affirm the dismissal as right for
8 any reason, we reverse.¹

9 **BACKGROUND**

10 {2} The Board investigated allegations of impairment regarding Dr. Pavelock.
11 The investigation led to administrative proceedings involving Dr. Pavelock's license
12 to practice medicine that ultimately produced four pieces of litigation in the district
13 court, each of which we describe below.

¹Dr. Pavelock argues at times that the administrative proceedings before the Board should not be given preclusive effect. Although administrative proceedings can be given preclusive effect in later civil actions under certain circumstances, *see Shovelin v. Cent. N.M. Elec. Co-op., Inc.*, 1993-NMSC-015, ¶ 12, 115 N.M. 293, 850 P.2d 996; Restatement (Second) of Judgments § 83 (1982), the Board's renewed motion to dismiss argued that the district court proceedings should be given preclusive effect. The issues on appeal therefore pertain to those proceedings and not the administrative proceedings.

Pavelock 1: The First Administrative Appeal

{3} After investigating, the Board entered a notice of contemplated action to initiate disciplinary action against Dr. Pavelock. The notice centered on allegations about Dr. Pavelock’s workplace behavior, alcohol consumption outside the workplace, and lack of cooperation with the Board’s investigation. The Board then conducted a hearing, after which, in August 2021, the Board issued a decision directing Dr. Pavelock to “enter into an agreement for a mandatory wellness program and to provide the Board access to information” so it could monitor her compliance with the program. Dr. Pavelock filed a Rule 1-074 NMRA appeal in the district court to challenge the Board’s decision (*Pavelock 1*). In February 2022, the district court issued an order affirming the August 2021 decision as being supported by substantial evidence and made in accordance with law.

Pavelock 2: The Declaratory Judgment Action

{4} In September 2021, because the Board found that Dr. Pavelock had not complied with its August decision, the Board ordered that Dr. Pavelock’s license to practice medicine in New Mexico be suspended pending further order. The Board subsequently reported the license suspension to the National Practitioner Data Bank (NPDB). One month after the district court issued its *Pavelock 1* order, Dr. Pavelock filed a declaratory judgment action to address the September 2021 indefinite license suspension (*Pavelock 2*), an issue that was not addressed by the district court in

1 *Pavelock 1*. The district court in *Pavelock 2* entered an order in August 2022, holding
2 that 16.10.5.10(B) NMAC—a regulation upon which the Board relied when it
3 suspended Dr. Pavelock’s license indefinitely—exceeded the Board’s statutory
4 authority under NMSA 1978, Section 61-1-2(I) (2022, amended 2024) and directed
5 the Board to revise the regulation. The court also concluded that the Board’s
6 September 2021 order exceeded the Board’s statutory authority and declared that
7 order “unlawful, invalidated[,] and therefore void.” Finally, the court remanded Dr.
8 Pavelock’s case to the Board and directed it to comply with federal reporting
9 requirements when reporting to the NPDB.

10 ***Pavelock 3: The Civil Rights and Declaratory Judgment Action***

11 {5} In June 2022, Dr. Pavelock filed a civil rights action against the Board under
12 the NMCRA (*Pavelock 3*). The complaint contained two counts: the first alleging
13 various procedural due process violations by the Board in the course of the
14 administrative proceedings against her, and the second alleging substantive due
15 process and equal protection violations connected to the Board’s reliance on a sex-
16 based standard to determine that Dr. Pavelock’s alcohol consumption was
17 “excessive” for a female physician.

18 {6} Dr. Pavelock moved to consolidate *Pavelock 3* with *Pavelock 2*, which was
19 still pending. The Board opposed consolidation, arguing it was “not in the interest
20 of judicial economy” and “common issues of law and fact” would not “predominate

1 sufficiently to warrant consolidation.” The Board also moved to dismiss *Pavelock 3*
2 for claim preclusion based on *Pavelock 1* and issue preclusion based on the Board’s
3 August 2021 decision. Dr. Pavelock served discovery requests on the Board, and the
4 Board moved to stay discovery pending resolution of its motion to dismiss and Dr.
5 Pavelock’s motion for consolidation. The district court denied consolidation.

6 {7} After a series of continuances, and after the district court entered its final order
7 in a subsequent administrative appeal (*Pavelock 4*) discussed below, Dr. Pavelock
8 filed an amended complaint in *Pavelock 3* in September 2024. The amended
9 complaint alleged additional procedural due process violations connected to the
10 Board’s conduct after its September 2021 suspension order, and reiterated the same
11 equal protection and substantive due process violations set forth in the original
12 complaint. The amendment also added a request for declaratory judgment and
13 supplemental relief related to the application of, and the Board’s compliance with,
14 the Impaired Health Care Provider Act, NMSA 1978, §§ 61-7-1 to -12 (1976, as
15 amended through 2001). The Board renewed its motion to dismiss for claim and
16 issue preclusion based on *Pavelock 1*, 2, and 4 and for failure to state a claim. The
17 district court granted the Board’s motion on the grounds of claim preclusion in
18 November 2024, and Dr. Pavelock’s appeal of the court’s order is before us now.

Pavelock 4: The Second Administrative Appeal

{8} In September 2022, pursuant to the district court’s order in *Pavelock 2*, the Board held a public board meeting and briefly discussed Dr. Pavelock’s matter. Soon after, the Board issued an amended order suspending Dr. Pavelock’s license from September 2, 2021, to September 30, 2022. Dr. Pavelock filed a Rule 1-074 administrative appeal to the district court challenging the amended order (*Pavelock 4*). In February 2024, the district court concluded that the Board’s actions were not in accordance with the Medical Practice Act, NMSA 1978, §§ 61-6-1 to -39 (1923, as amended through 2026), and the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to -37 (1957, as amended through 2024), and reversed the Board’s amended order. However, by that time, Dr. Pavelock’s license had expired without renewal, and the Board therefore conducted no further proceedings regarding her license.

DISCUSSION

I. Claim Preclusion

{9} To assert claim preclusion, a party “must establish that (1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits.” *Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54. All four elements must be met for claim preclusion to bar a subsequent claim, *see State ex rel. Peterson v. Aramark Corr. Servs., LLC*, 2014-NMCA-036, ¶ 33, 321 P.3d 128, but even if all

four are met, the claim is only precluded if it “reasonably could and should have been brought during the earlier proceeding,” *Potter*, 2015-NMSC-002, ¶ 10. Reviewing the district court’s ruling de novo, *see Bank of N.Y. v. Romero*, 2016-NMCA-091, ¶ 15, 382 P.3d 991, we conclude that neither the declaratory judgment action (*Pavelock 2*) nor either of the administrative appeals (*Pavelock 1* and *4*) preclude Dr. Pavelock from bringing her *Pavelock 3* claims. We address each pair of cases in turn.²

A. The *Pavelock 3* Claims Are Not Precluded by *Pavelock 2*

We first conclude that *Pavelock 2* does not have preclusive effect on the claims in *Pavelock 3* because after a declaratory judgment action, “a plaintiff may seek further relief in a later lawsuit, and ‘it is irrelevant that the further relief could have been requested initially.’” *Tunis v. Country Club Ests. Homeowners Ass’n, Inc.*, 2014-NMCA-025, ¶ 21, 318 P.3d 713 (quoting Restatement (Second) of Judgments § 33 cmt. c (1982)). In other words, declaratory judgment actions such as *Pavelock 2* do not preclude later claims for additional relief such as those raised in *Pavelock 3*. *See id.* We therefore need not analyze whether the four elements of claim preclusion are met by *Pavelock 2*, *see Potter*, 2015-NMSC-002, ¶ 10, because even

²The parties analyze whether *Pavelock 1*, *Pavelock 2*, and *Pavelock 4*—considered collectively—preclude the claims in *Pavelock 3*. The parties have not cited any authority suggesting that the requirements of claim preclusion may be satisfied by a combination of multiple cases, and we are aware of no such authority. We therefore separately analyze each case relied upon by the Board.

1 if they are met, *Pavelock 2* does not preclude the claims for further relief brought in
2 *Pavelock 3*.

3 **B. The *Pavelock 3* Claims Are Not Precluded by *Pavelock 1***

4 {11} Turning to the first administrative appeal, we assume without deciding that
5 the first two elements of the claim preclusion test are met—that is, we assume
6 without deciding that the affirmance of the Board’s August 2021 order by the district
7 court in *Pavelock 1* was a final judgment on the merits. *See id.* Dr. Pavelock argues
8 that, for these elements to be satisfied, her *Pavelock 3* claims must have been actually
9 litigated in *Pavelock 1* and resolved by the judgment in that case. This argument
10 appears to conflate the requirements for claim preclusion, which is at issue here, with
11 the requirements for issue preclusion, which is not at issue here. *See Pielhau v. State*
12 *Farm Mut. Auto. Ins. Co.*, 2013-NMCA-112, ¶ 11, 314 P.3d 698 (“[I]ssue preclusion
13 requires that the issue was actually litigated and necessarily determined in the first
14 suit, whereas claim preclusion does not so require.” (internal quotation marks
15 omitted)). In general, a final judgment is one in which “all issues of law and fact
16 have been determined and the case [is] disposed of by the trial court to the fullest
17 extent possible.” *White v. Farris*, 2021-NMCA-014, ¶ 23, 485 P.3d 791 (internal
18 quotation marks and citation omitted); *see also* Restatement (Second) of Judgments
19 § 13 (1982) (distinguishing finality under claim preclusion and issue preclusion).
20 Although the dispute between the parties was ongoing and extended in time and

1 subject matter beyond the August 2021 decision that was the only topic addressed
2 in *Pavelock 1*, we assume without deciding that the district court’s February 2022
3 *Pavelock 1* order is a final judgment on the merits because it resolved Dr. Pavelock’s
4 administrative appeal by affirming the Board’s August 2021 decision and we
5 therefore assume without deciding that the first and second elements are satisfied.
6 *See also* Restatement (Second) of Judgments § 20(1) (1982) (explaining
7 circumstances in which a final judgment is not on the merits that do not apply here).
8 {12} The third element is met. *Pavelock 1* and *Pavelock 3* involve the same parties
9 in their same capacities, *see Potter*, 2015-NMSC-002, ¶ 10, because both district
10 court cases were initiated by Dr. Pavelock against the Board, and we are aware of
11 nothing suggesting that Dr. Pavelock or the Board appeared in different capacities
12 in the two cases. *See* Restatement (Second) of Judgments § 36 (1982) (stating that
13 “[a] party appearing in an action in one capacity, individual or representative, is not
14 thereby bound by or entitled to the benefits of the rules of res judicata in a subsequent
15 action in which [they] appear[] in another capacity” and that “[a] party appears in
16 [their] individual capacity unless, in [their] designation as a party or by other
17 manifestation, it is made evident that [they] appear[] in some other capacity”). Dr.
18 Pavelock’s argument that the parties are not the same compares the parties’
19 capacities in *Pavelock 3* and in the administrative proceedings, in which, according
20 to Pavelock, the Board “served as prosecutor, . . . judge and jury,” and Dr. Pavelock

1 “was merely a respondent in the administrative process.” We need not decide
2 whether the differences relied on by Dr. Pavelock would be legally significant if the
3 Board was relying on the administrative proceedings before the Board because the
4 Board is not relying on those proceedings. As we have explained, *see supra* note 1,
5 the Board is relying on the district court proceedings, and we have therefore
6 considered only the parties’ capacities in those proceedings.

7 {13} Turning to the final element—whether the cause of action was the same in
8 *Pavelock 1* and *Pavelock 3*—we apply the transactional approach, under which “all
9 issues arising out of a common nucleus of operative facts” are “a single cause of
10 action.”³ *Potter*, 2015-NMSC-002, ¶ 11 (internal quotation marks and citation
11 omitted). Under this approach, we consider all of the following factors: (1) how the
12 facts “are related in time, space, or origin”; (2) whether the facts “form a convenient
13 trial unit”; and (3) whether treatment of the facts as a single trial unit “conforms to
14 the parties’ expectations.” *Id.* (internal quotation marks and citation omitted). We
15 address each factor in turn. *See* Restatement (Second) of Judgments § 24 cmt. b
16 (1982) (explaining that “no single factor is determinative” in the analysis).

17 {14} As to the first factor, we do not believe the facts of *Pavelock 1* and the facts
18 of *Pavelock 3* are closely related in time, space, or origin. *Pavelock 1* pertained to a

³Neither party has briefed, and we need not decide and do not decide, whether a Rule 1-074 administrative appeal qualifies as a “cause of action” for purposes of claim preclusion.

1 narrow sliver of a broad and ongoing dispute: the Board’s August 2021 decision
2 directing Dr. Pavelock to “enter into an agreement for a mandatory wellness program
3 and to provide the Board access to information” so it could monitor her compliance
4 with the program. In contrast, *Pavelock 3* pertains to various events in the broad
5 dispute between the parties. Dr. Pavelock alleges in her complaint that the Board
6 deprived her of her right to procedural due process in its conduct during the
7 investigation and administrative hearing and in its reporting to the NPDB and
8 posting on its website about her licensure between August 2021 and September
9 2024. She also alleges the Board deprived her of her rights to substantive due process
10 and equal protection “by subjecting her to discipline entirely or partially on the basis
11 of ‘excessive alcohol use’ as defined by the specifically gender-based and gender-
12 discriminatory . . . standard” introduced by the Board’s expert witness in the
13 administrative hearing. Finally, Dr. Pavelock seeks declaratory judgment regarding
14 the application of the Impaired Health Care Provider Act, which she alleges the
15 Board failed to comply with during the investigation. Therefore, although the factual
16 origins of *Pavelock 1* and *3* both pertain in a general sense to the investigation and
17 resulting discipline of Dr. Pavelock, *Pavelock 3* considers far more broadly the
18 administrative proceedings and the Board’s reporting after it issued its August 2021
19 decision. Because of these differences, we conclude that the first factor weighs
20 against the application of claim preclusion.

1 {15} We reach the same conclusion with respect to the second factor: whether the
2 facts form a convenient trial unit. Precedent requires us to “examine overlap of the
3 witnesses and evidence relevant to the claims” in the two actions. *Fogelson v.*
4 *Wallace*, 2017-NMCA-089, ¶ 43, 406 P.3d 1012 (internal quotation marks and
5 citation omitted). This examination is inherently awkward under the circumstances
6 of this case due to the nature of the two proceedings at issue. The test requires an
7 examination of the overlap of witnesses and evidence relevant to the claims in the
8 two cases, but in a Rule 1-074 appeal such as *Pavelock 1*, no witnesses testify before
9 the district court and no new evidence is presented to the district court because there
10 is no trial; the district court considers only the facts developed in the administrative
11 record. *See Lara v. Presbyterian Healthcare Servs.*, 2026-NMCA-066, ¶ 7, 593 P.3d
12 1098; *see also* Rule 1-074(H), (I), (O) (explaining the contents of the appellate
13 record and the court’s discretion in allowing oral argument). It is unclear to us—and
14 the Board has not explained—how taking purely appellate proceedings and adding
15 the trial proceedings needed for the claims raised in *Pavelock 3* would produce a
16 convenient *trial* unit, thereby increasing judicial economy. *See Armijo v. City of*
17 *Española*, 2016-NMCA-086, ¶ 9, 382 P.3d 957 (identifying judicial economy as a
18 purpose of claim preclusion); *Roybal v. Lujan de la Fuente*, 2009-NMCA-114, ¶ 23,
19 147 N.M. 193, 218 P.3d 879 (“The party seeking to bar the claim has the burden of
20 establishing [claim preclusion].” (internal quotation marks and citation omitted)).

1 Even leaving this concern aside, we do not believe that *Pavelock 1* and *Pavelock 3*
2 would form a convenient trial unit because each case involves a different
3 constellation of facts, as we have explained. Because of these significant factual
4 differences, the evidentiary overlap is not substantial. We therefore conclude that
5 the second factor weighs against application of claim preclusion.⁴

6 {16} The third factor also weighs against claim preclusion. The question is whether
7 the Board, as the party asserting claim preclusion, “had reason to expect that the
8 additional claims raised were precluded by the judgment in the prior lawsuit,” taking
9 into account “the procedural posture of each proceeding relative to the other,”
10 *Fogelson*, 2017-NMCA-089, ¶ 46 (omission, internal quotation marks, and citation
11 omitted), and “whether the policy of finality outweighs [Dr. Pavelock]’s interest in
12 vindication of [her] claims,” see *Bank of Santa Fe v. Marcy Plaza Assocs.*, 2002-

⁴The Board asks us to apply the following rule: “a plaintiff must join *related* civil claims when invoking a [d]istrict [c]ourt’s civil jurisdiction for an administrative appeal.” The only New Mexico precedent cited by the Board, *Ford v. N.M. Dep’t of Pub. Safety*, 1994-NMCA-154, ¶ 30, 119 N.M. 405, 891 P.2d 546, is off point; it did not involve an administrative appeal. Whether the proposed rule should be part of New Mexico jurisprudence is an open question, as this Court recognized years after this Court decided *Ford*. See *Mascareñas v. City of Albuquerque*, 2012-NMCA-031, ¶ 30, 274 P.3d 781 (noting that “our state appellate courts have not decided” whether claim preclusion “require[s] that [a p]laintiff file [an] administrative appeal and civil complaint in the same action”). We need not answer—and do not answer—that question here. We instead resolve this appeal based on its specific facts, concluding that the administrative appeal and civil action at issue here do not warrant claim preclusion under the test established by New Mexico precedent.

1 NMCA-014, ¶ 22, 131 N.M. 537, 40 P.3d 442. Dr. Pavelock initiated *Pavelock 3*
2 after *Pavelock 1* had been decided, which arguably supports a reasonable expectation
3 that “additional claims arising from a common nucleus of operative facts would be
4 barred by [claim preclusion].” *Fogelson*, 2017-NMCA-089, ¶ 48 (internal quotation
5 marks and citation omitted). But *Pavelock 1* was an administrative appeal that, as
6 discussed, resolved only the Board’s August 2021 decision. Given the distinctions
7 in relevant factual allegations and procedure discussed above, we are not persuaded
8 that the Board’s interest in finality or the judicial system’s interest in efficiency or
9 the interest in finality outweighs Dr. Pavelock’s interest in vindicating her *Pavelock*
10 3 claims. See *Bank of Santa Fe*, 2002-NMCA-014, ¶ 22.

11 {17} Considered together, the three factors weigh in favor of concluding that the
12 claims underlying *Pavelock 1* and *Pavelock 3* are not part of the same transaction
13 and, thus, that the fourth and final element of claim preclusion is not satisfied. We
14 therefore hold that the *Pavelock 3* claims are not precluded by *Pavelock 1*. See
15 *Peterson*, 2014-NMCA-036, ¶ 33.

16 **C. The *Pavelock 3* Claims Are Not Precluded by *Pavelock 4***

17 {18} Our claim preclusion analysis for *Pavelock 4* is substantially similar to our
18 analysis for *Pavelock 1*. *Pavelock 4* concluded with a final judgment on the merits,
19 see *Potter*, 2015-NMSC-002, ¶ 10, because the district court’s order resolved Dr.
20 Pavelock’s second Rule 1-074 administrative appeal by reversing the Board’s

1 September 2022 amended order suspending Dr. Pavelock’s license for a defined
2 period of time. And *Pavelock 3* and *Pavelock 4* involve the same parties in the same
3 capacities. *See id.*

4 {19} Applying the three transactional approach factors once more, the Board’s
5 decision to discipline Dr. Pavelock and subsequent execution of that decision again
6 appear, at least in a very general way, to form a common factual origin for *Pavelock*
7 *3* and *Pavelock 4*. *See id.* ¶ 11. But *Pavelock 4* addressed the Board’s 2022 amended
8 license suspension order, whereas *Pavelock 3* centers on aspects of the
9 administrative proceedings and the Board’s reporting on its website and to the NPDB
10 beginning in August 2021 and extending to after the district court decided *Pavelock*
11 *4*. Thus, the facts underlying each case are distinct in time and address separate
12 conduct by the Board. And for the same reasons considered in our conclusion about
13 *Pavelock 1*, we are not persuaded that *Pavelock 3* and *4* would form a convenient
14 trial unit.

15 {20} Lastly, because *Pavelock 3* began in June 2022 and was dismissed in
16 November 2024, while *Pavelock 4* began in October 2022 and concluded in
17 February 2024, we do not believe it would have been reasonable for the Board to
18 expect that *Pavelock 3* was precluded by *Pavelock 4* considering the temporal
19 overlap in the cases’ proceedings. *See Fogelson*, 2017-NMCA-089, ¶ 46. We find
20 guidance in *Anaya v. City of Albuquerque*, in which this Court concluded that the

1 defendants did not have reason to expect that claims in a second case would be
2 precluded by the first case where, by the time the first case reached trial and
3 judgment, “the only litigation action in [the second] case of any substance
4 subsequent to the filing of [the d]efendants’ answers was the taking of [the
5 p]laintiff’s deposition.” 1996-NMCA-092, ¶ 17, 122 N.M. 326, 924 P.2d 735. Here,
6 by the time *Pavelock 4* was decided in February 2024, the Board had moved to
7 dismiss and moved to stay discovery after receiving Dr. Pavelock’s discovery
8 requests. After a series of continuances, no further action took place regarding
9 *Pavelock 3* until after *Pavelock 4* was decided. Thus, there was limited litigation
10 regarding *Pavelock 3* in the time that it overlapped with *Pavelock 4*, suggesting it
11 would not be reasonable for the Board to expect the *Pavelock 3* claims to be
12 precluded by *Pavelock 4*.⁵ Compare *id.*, with *Fogelson*, 2017-NMCA-089, ¶ 48
13 (concluding that an expectation of claim preclusion was reasonable where the first
14 action proceeded to judgment before the second action against the individual
15 defendants was filed). Taken together, the three factors do not weigh in favor of

⁵We perceive no tension between our analysis in this case and *Cagan v. Vill. of Angel Fire*, 2005-NMCA-059, ¶¶ 16-18, 137 N.M. 570, 113 P.3d 393, *disapproved of on other grounds by Concerned Residents of Santa Fe N. v. Santa Fe Ests., Inc.*, 2008-NMCA-042, ¶ 45, 143 N.M. 811, 182 P.3d 794. In *Cagan*, this Court recognized that a temporal overlap in the pendency of two cases is not necessarily fatal to a claim preclusion defense and that the viability of the defense depends on whether the facts of the case satisfy the four elements of claim preclusion. *See id.*

concluding that the claims underlying *Pavelock 3* and *4* were part of the same transaction, and we therefore conclude that Dr. Pavelock’s *Pavelock 3* claims are not precluded by *Pavelock 4*.

D. Dr. Pavelock’s Claims in *Pavelock 3* Are Not Precluded by *Pavelock 1, 2, or 4*

{21} In sum, though we are mindful of the extent of litigation that has taken place in *Pavelock 1, 2, and 4*, we do not believe that any of those cases afforded Dr. Pavelock the “full and fair opportunity” to litigate the claims she brought against the Board in *Pavelock 3*. See *Kirby v. Guardian Life Ins. Co. of Am.*, 2010-NMSC-014, ¶ 61, 148 N.M. 106, 231 P.3d 87 (internal quotation marks and citation omitted). We therefore hold that the claims in *Pavelock 3* are not precluded by either the declaratory judgment action or the two administrative appeals.

II. Right for Any Reason

{22} In addition to its arguments regarding the application of claim preclusion, the Board raises two arguments that we may only consider under the right for any reason doctrine, which allows an appellate court to “affirm a district court ruling on a ground not relied upon by the district court if (1) reliance on the new ground would not be unfair to the appellant, and (2) there is substantial evidence to support the ground on which the appellate court relies.” *Freeman v. Fairchild*, 2018-NMSC-023, ¶ 30, 416 P.3d 264 (alteration, internal quotation marks, and citation omitted).

1 Neither of the Board's arguments supplies a basis for affirmance of the dismissal of
2 Dr. Pavelock's complaint.

3 {23} First, the Board argues that the complaint "fails to set forth an actionable due
4 process violation" pursuant to Rule 1-012(B)(6) NMRA. The Board argues that Dr.
5 Pavelock "was plainly afforded procedural and substantive due process through her
6 numerous lawsuits and appeals," and so she "received all the process that she was
7 entitled to under law." In making this argument, the Board appears to only address
8 procedural due process and does not address the substantive due process, equal
9 protection, or declaratory components of Dr. Pavelock's complaint. For example,
10 the Board focuses on the notice and hearing it provided during the administrative
11 process and Dr. Pavelock's ability to appeal and request a stay of administrative
12 action before the district court. But "a motion to dismiss a complaint is properly
13 granted only when it appears that the plaintiff cannot recover or be entitled to relief
14 under any state of facts provable under the claim," and, given the Board's arguments,
15 we are unpersuaded that here there "is a total failure to allege some matter which is
16 essential to the relief sought." *Las Luminarias of the N.M. Council of the Blind v.*
17 *Isengard*, 1978-NMCA-117, ¶ 3, 92 N.M. 297, 587 P.2d 444. In short, even if we
18 were to agree with the arguments made by the Board on appeal regarding Dr.
19 Pavelock's procedural due process claim, those arguments would provide us with no

1 basis on which to affirm the district court’s dismissal of all the claims in Dr.
2 Pavelock’s complaint.

3 {24} Second, the Board briefly argues that Dr. Pavelock may not bring her claims
4 against the Board pursuant to the NMCRA because many of the events alleged in
5 her complaint occurred in early 2021, but the NMCRA applies only to claims arising
6 after July 1, 2021. This argument is contrary to the text of the provision of the
7 NMCRA on which the Board relies. Section 41-4A-12 provides that “[c]laims
8 arising *solely* from acts or omissions that occurred prior to July 1, 2021[,] may not
9 be brought pursuant to the [NMCRA].” (Emphasis added.) The Board does not argue
10 that we should deviate from the statute’s plain meaning, and we are aware of no
11 reason to do so. *See State v. Whittington*, 2008-NMCA-063, ¶ 11, 144 N.M. 85, 183
12 P.3d 970 (“The primary indicator of legislative intent is the plain language of the
13 statute.”). Because Dr. Pavelock’s complaint describes various events occurring
14 after July 1, 2021—even extending to 2024—we decline to affirm the dismissal
15 based on Section 41-4A-12.

16 **CONCLUSION**

17 {25} We reverse and remand to the district court for further proceedings consistent
18 with this opinion.

1 {26} IT IS SO ORDERED.



2
3
4 **ZACHARY A. IVES, Judge**

4 **WE CONCUR:**



5
6 **JENNIFER L. ATTREP, Judge**



7
8 **GERALD E. BACA, Judge**