

CONEJO V. CITY OF ALBUQUERQUE

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**DANIEL CONEJO, AMME HOGAN,
SONNY LEEPER, DAVID QUINTANA,
JAMES REICH, JOHN RUSSO, KEVIN
SMITH, MARK WEINSTEIN, and a Class
of Others Similarly Situated,
Plaintiffs-Appellants,**

v.

**CITY OF ALBUQUERQUE, MARTIN P.
CHAVEZ, Mayor, and REDFLEX
TRAFFIC SYSTEMS, INC.,
Defendants-Appellees,**

and

**M. CHRISTINE MONTOYA, ROLAND M.
CHEEKU, BETTY DELGADO, SYLVIA
PEREZ, SUSAN L. ABRUMS, and all Others
Similarly Situated,
Intervenors-Appellees.**

No. 29,787

COURT OF APPEALS OF NEW MEXICO

May 1, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Richard J.
Knowles, District Judge

COUNSEL

Paul Livingston, Placitas, NM, for Appellants

Robert J. Perry, City Attorney, Michael I. Garcia, Assistant City Attorney, Albuquerque, NM, for Appellees City of Albuquerque

Keleher & McLeod, P.A., Charles A. Pharris, Thomas C. Bird, Ben Feuchter, Albuquerque, NM, for Appellee Redflex Traffic Systems, Inc.

The Branch Law Firm, Turner W. Branch, Frank V. Balderrama, Paul D. Dominguez, Albuquerque, NM, for Intervenors-Appellees

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, JONATHAN B. SUTIN, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Plaintiffs appeal the district court's order to dismiss their class action complaint challenging the City of Albuquerque's "Safe Traffic Operations Program" (STOP) Ordinance. While this appeal was pending, this Court issued opinions in *Titus v. City of Albuquerque*, 2011-NMCA-038, 149 N.M. 556, 252 P.3d 780, and *Montoya v. City of Albuquerque*, No. 29,838, slip op. (N.M. Ct. App. May 18, 2011), in which the plaintiffs raised similar challenges to the legality and constitutionality of the STOP Ordinance. Both Opinions upheld the validity of the STOP Ordinance in favor of the City of Albuquerque. *Titus*, 2011-NMCA-038, ¶ 1; *Montoya*, No. 29, 838, slip op. at 2. The New Mexico Supreme Court granted certiorari and reviewed both cases. *Titus v. City of Albuquerque*, 2011-NMCERT-005, 150 N.M. 667, 265 P.3d 718; *Montoya v. City of Albuquerque*, 2011-NMCERT-008, 268 P.3d 514. Upon this Court's own motion, we issued an order to hold this case in abeyance pending the decisions by the Supreme Court in *Titus* and *Montoya*. The Supreme Court has now quashed certiorari in both cases. *Titus*, 2013-NMCERT-003, ___ P.3d ___ (No. 32,941, Mar. 22, 2013), and *Montoya*, 2013-NMCERT-003, ___ P.3d ___ (No. 33,070, Mar. 22, 2013).

{2} The district court dismissed the present case before it reached the merits, concluding that Plaintiffs were already represented as part of the certified class in *Montoya*. On appeal, Plaintiffs challenge the procedure used by the district court and do not argue that their interests are somehow different than the class in the *Montoya* case. We find nothing in the record that distinguishes the merits of the present case from those decided by this Court in *Montoya* and *Titus*. The merits of Plaintiffs' arguments were either directly considered in *Titus* and *Montoya* or are governed by the issues raised and analysis in those cases. Nothing further remains to be decided on the merits and any procedural error by the district court would now be moot. See *Glaser v. LeBus*, 2012-NMSC-012, ¶ 12, 276 P.3d 959 (affirming the district court if it is right for any reason); *Maralex Res., Inc. v. Gilbreath*, 2003-NMSC-023, ¶ 13, 134 N.M. 308, 76 P.3d 626 ("[A]n appellate court will affirm the district court if it is right for any reason and if affirmance is not unfair to the appellant." (internal quotation marks and citation omitted)). We therefore affirm the district court's dismissal based on our holdings in *Titus*, 2011-NMCA-038, ¶ 1 and *Montoya*, No. 29, 838, slip op. at 2.

{3} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

JONATHAN B. SUTIN, Judge