MARQUEZ V. NEW MEXICO BEHAVIORAL HEALTH INST.

MOLLY MARQUEZ,
Plaintiff-Appellant,
v.
NEW MEXICO BEHAVIORAL HEALTH INSTITUTE,
Defendant-Appellee.

No. 33,132

COURT OF APPEALS OF NEW MEXICO

December 16, 2013

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY, Abigail Aragon, District Judge

COUNSEL

Molly Marquez, Las Vegas, NM, Pro Se Appellant

Miller Stratvert, PA, Paula G. Maynes, Luke A. Salganek, Santa Fe, NM, for Appellee

JUDGES

RODERICK T. KENNEDY, Chief Judge. WE CONCUR: M. MONICA ZAMORA, Judge, J. MILES HANISEE, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Chief Judge.

{1} Appearing pro se, Molly Marquez (Plaintiff) appeals from the district court's order granting New Mexico Behavioral Health Institute's (Defendant) motion to dismiss for failure to state a claim pursuant to Rule 1-012(B)(6) NMRA. [DS 22, RP 136] We issued

a notice proposing to summarily affirm, and Plaintiff filed a memorandum in opposition. We remain unpersuaded by Plaintiff's arguments and affirm.

I. DISCUSSION

A. Denial of Motion for Recusal

{2} Plaintiff continues to argue that Judge Abigail Aragon erred in denying Plaintiff's request for recusal. In our notice, we noted that the record reflects that the district court set aside Plaintiff's second notice of excusal, excusing Judge Aragon from presiding over this case because Plaintiff had previously exercised her right to a peremptory excusal, excusing Judge Eugene Mathis from presiding over this case. We asked Plaintiff to specifically state how she and/or her trial attorney raised the issue of Judge Aragon's alleged bias or conflict of interest in the district court.

{3} In her memorandum in opposition, Plaintiff continues to argue that Judge Aragon "should have been recused." [MIO 1] However, Defendant fails to point out how she preserved this argument in the district court. We thus conclude that this issue was not preserved for our review. *See State v. Varela*, 1999-NMSC-045, ¶ 25, 128 N.M. 454, 993 P.2d 1280 ("In order to preserve an error for appeal, it is essential that the ground or grounds of the objection or motion be made with sufficient specificity to alert the mind of the trial court to the claimed error or errors, and that a ruling thereon then be invoked." (internal quotation marks and citation omitted)).

B. Not Allowing Plaintiff to Speak

{4} Plaintiff continues to argue that "her civil rights were . . . violated" when the district court did not allow her to speak at the hearing on Defendant's motion to dismiss. [MIO 1] In our notice, we noted that Plaintiff did not provide any authority supporting her position. We also noted that because the district court had orally granted Defendant's motion to dismiss before it advised Plaintiff to speak with her attorney, rather than directly to the court, we perceived no possible prejudice.

{5} In her memorandum in opposition, Plaintiff fails to cite any specific authority supporting her position. In addition, she does not explain what she intended to say or why it would have affected the district court's ruling with respect to the timeliness of the allegations contained in her complaint. We thus conclude that there was no error, let alone reversible error.

C. Grant of Motion to Dismiss

{6} In our notice, we addressed the issue of whether the district court erred in granting Defendant's motion to dismiss and proposed to conclude that the district court did not err because it is clear from the face of Plaintiff's complaint that her action is time-barred. *See Butler v. Deutsche Morgan Grenfell, Inc.*, 2006-NMCA-084, ¶ 27, 140 N.M. 111, 140 P.3d 532 (stating that granting a motion to dismiss on statute of limitations

grounds is proper where it is clear from the face of the pleading that the action is time-barred).

{7} In her memorandum in opposition, Plaintiff argues that "[t]he statute of limitations has not ran out on [her] because her employment has been interrupted since back then and thus not leaving her any other alternative but to file [a] complaint in defense of her current status and blacklist in her file affecting her career to this date." [MIO 2] Plaintiff does not cite any authority in support of her position that the statute of limitations has somehow been tolled because she continues to suffer from alleged discrimination that happened over twenty years ago. We are aware of no such authority and thus affirm. *See Slusser v. Vantage Builders, Inc.*, 2013-NMCA-073, 306 P.3d 524 (affirming order granting summary judgment in favor of the defendant former employer on statute of limitations grounds).

II. CONCLUSION

{8} For the reasons discussed above and in our previous notice, we affirm.

{9} IT IS SO ORDERED.

RODERICK T. KENNEDY, Chief Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

J. MILES HANISEE, Judge