

SERNA V. ROMERO

This memorandum opinion was not selected for publication in the New Mexico Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

ANTONIO LOPEZ SERNA,

Plaintiff-Appellant,

vs.

**ANTHONY ROMERO, FRANCIS SUTTLES, KARLA REHMAN,
JESSE DIAZ, and CENTRAL NEW MEXICO CORRECTIONAL FACILITY,**

Defendants-Appellees.

NO. 31,745

COURT OF APPEALS OF NEW MEXICO

April 18, 2012

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY, William A. Sanchez,
District Judge

COUNSEL

Antonio Lopez Serna, Santa Fe, NM, Pro se Appellant

Kennedy, Moulton & Wells, P.C., Debra J. Moulton, Albuquerque, NM, for Appellees

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge,
MICHAEL D. BUSTAMANTE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

Serna appeals an order granting summary judgment in favor of Defendants on all of his claims against them. In this Court's notice of proposed summary disposition, we proposed to affirm. Serna has filed a memorandum in opposition, which we have duly

considered. As we are not persuaded by his arguments in support of reversal, we affirm. He has also filed a motion asking this Court to order that he be given certain medication. Because this Court does not review matters that have not been raised in the district court in the first instance, we deny Serna's motion. Finally, Serna has filed a complaint with this Court that is captioned as a complaint in federal district court. As this is not a federal district court, and as this Court is not a trial court and does not resolve complaints, it appears that Serna has misfiled the complaint. Accordingly, we simply note its filing with this Court, but take no action on it.

In our notice of proposed summary disposition, we proposed to hold that the district court properly dismissed Serna's suit for lack of subject matter jurisdiction. Our proposal was based on NMSA 1978, Section 41-4-16(B) (1977) (stating that "no court shall have jurisdiction to consider any suit or action" pursuant to the Tort Claims Act if the statutorily required notice was not given), and NMSA 1978, Section 33-2-11(B) (1990) (stating that the district court does not have subject matter jurisdiction over any civil action filed by an inmate of the corrections department "with regard to any cause of action pursuant to state law that is substantially related to the inmate's incarceration by the corrections department until the inmate exhausts the corrections department's internal grievance procedure"). In Serna's memorandum in opposition, he does not dispute that he did not give notice or that he did not exhaust his administrative remedies. [Ct. App. File, memorandum filed on March 19, 2012, along with a letter] Instead, he points to the difficulties he has faced in pursuing this action, both because he is not an attorney and because he is incarcerated. While we recognize these difficulties, they do not alter the fact that the district court was without jurisdiction to hear Serna's complaint. Accordingly, the district court did not err in dismissing it.

Therefore, for the reasons stated in this opinion and in our notice of proposed summary disposition, we affirm the district court's order granting summary judgment in Defendants' favor and dismissing Serna's complaint. We deny Serna's motion for medical treatment, which cannot be filed in this Court in the first instance, and we note, but take no action on Serna's federal district court complaint that was misfiled in this Court.

IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

MICHAEL D. BUSTAMANTE, Judge