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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-41745

**MARTHA L. WARNER and CLYDE
JAMES WARNER, husband and wife,**

Plaintiffs-Appellants,

v.

**ANALISA DOPORTO; JEREMY DOPORTO;
DOPORTO CONSTRUCTION COMPANY;
NEW MEXICO JUNIOR COLLEGE, a public
junior college; NEW MEXICO JUNIOR
COLLEGE BOARD OF DIRECTORS;
and CHARLEY CARROLL,**

Defendants-Appellees.

**APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Lee A. Kirksey, District Court Judge**

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for Appellants

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for Appellees

MEMORANDUM OPINION

IVES, Judge.

{1} Plaintiffs Martha L. and Clyde James Warner appeal the district court's orders dismissing their claims as to New Mexico Junior College Defendants and entering summary judgment in favor of the Doporto Defendants. We issued a notice proposing to summarily affirm. The New Mexico Junior College Defendants filed a memorandum supporting our proposed analysis, and Plaintiffs filed a memorandum opposing it. After due consideration, we remain unpersuaded the district court erred. We affirm.

{2} On appeal, Plaintiffs contend the district court improperly ruled (1) the exclusivity provision of the Worker's Compensation Act (WCA) barred her tort claims against the Junior College Defendants [MIO unnumbered 1-3], and (2) Plaintiffs failed to comply with the notice provision of the Tort Claims Act (TCA) [MIO unnumbered 4-5]. Plaintiffs abandon their opposition to the order of summary judgment entered in favor of the Doporto Defendants. [MIO unnumbered 5] *See Taylor v. Van Winkle's IGA Farmer's Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927 P.2d 41 (recognizing that issues raised in a docketing statement, but not contested in a memorandum in opposition are abandoned).

{3} Plaintiffs' response to our notice does not refer us to any analogous authority that would support their claim to an exception to the exclusivity of the WCA, under *Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-034, ¶¶ 26-29, 131 N.M. 272, 34 P.3d 1148. And, we are not persuaded that Plaintiffs have alleged actions and inactions from the New Mexico Junior College Defendants that are comparably egregious to survive the motion to dismiss and warrant the exclusivity exception in *Delgado*. *See Morales v. Reynolds*, 2004-NMCA-098, ¶ 14, 136 N.M. 280, 97 P.3d 612 (determining that the requirements and comparable degree of egregiousness of *Delgado* guide the plaintiff's burden to overcome a pretrial motion concerning the conduct alleged by the plaintiff). Thus, we hold that Plaintiffs have not demonstrated error in the district court's ruling, granting the motion to dismiss.

{4} With respect to Plaintiffs' TCA claims, they have not responded to our notice with reference to any analogous authority that would support their assertion that the New Mexico Junior College Defendants were on actual notice that litigation was likely to ensue. *See Dutton v. McKinley Cnty. Bd. of Comm'rs*, 1991-NMCA-130, ¶ 9, 113 N.M. 51, 822 P.2d 1134 ("[T]he law is now firmly established that the notice required is not simply actual notice of the occurrence of an accident or injury but rather, actual notice that there exists a 'likelihood' that litigation may ensue." (internal quotation marks and citation omitted)). Thus, we hold that Plaintiffs have not demonstrated error in the dismissal of the claims against the New Mexico Junior College Defendants for lack of notice under the TCA.

{5} For the reasons provided above and in our notice, we affirm the district court's orders ruling in favor of Defendants.

{6} IT IS SO ORDERED.

ZACHARY A. IVES, Judge

WE CONCUR:

SHAMMARA H. HENDERSON, Judge

GERALD E. BACA, Judge