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1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 Opinion Number:

3 Filing Date: January 26, 2026

4 **NO. S-1-SC-40623**

5 **JAMES F. BUTTERWORTH,**

6 Plaintiff-Appellee,

7 v.

8 **ETHAN JACKSON,**

9 Defendant,

10 and

11 **DR. SARAH SMITH,**

12 Intervenor-Appellant.

13 **CERTIFICATION FROM THE NEW MEXICO COURT OF APPEALS**

14 **Jeffrey A. Shannon, District Judge**

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1 **OPINION**

2 **THOMSON, Chief Justice.**

3 {1} On certification from the Court of Appeals, this case presents the question
4 whether this Court should abolish the common law tort of alienation of affections in
5 New Mexico. See Order of Certification to the New Mexico Supreme Court,
6 *Butterworth v. Jackson*, A-1-CA-42095, at 4-5 (N.M. Ct. App. Oct. 22, 2024). We
7 first recognized alienation of affections in 1923 in *Birchfield v. Birchfield*, 1923-
8 NMSC-066, ¶ 6, 29 N.M. 19, 217 P. 616, and we have not relied upon the tort since
9 1925, see *Murray v. Murray*, 1925-NMSC-029, ¶ 1, 16, 30 N.M. 557, 240 P. 303.

10 {2} On August 28, 2025, this Court heard oral argument in this matter, and we
11 announced our decision from the bench to overrule our precedent in *Birchfield*,
12 thereby abolishing the tort of alienation of affections. We further determined that the
13 plaintiff in this case, James Butterworth (Ex-Husband), could not proceed with his
14 claims under a theory of prima facie tort. Accordingly, we instructed the district
15 court to dismiss Ex-Husband’s claims against the defendant, Ethan Jackson
16 (Boyfriend). We now write to explain our reasoning.

17 **I. BACKGROUND**

18 {3} Dr. Sarah Smith (Ex-Wife) and Ex-Husband were married residents of
19 Colorado. Boyfriend resides in New Mexico. In 2021, in the midst of the married

1 couple's Colorado divorce proceedings, Ex-Husband filed a complaint against
2 Boyfriend in New Mexico alleging alienation of affections and prima facie tort. Ex-
3 Husband claimed that Boyfriend, after meeting Ex-Wife at a party in Colorado in
4 2019, maliciously initiated a relationship with her while she was still married,
5 causing the alienation of her affections and the couple's divorce.

6 {4} Boyfriend filed motions to dismiss and for summary judgment, arguing that
7 alienation of affections was no longer a legally valid cause of action in New Mexico.
8 The district court denied both motions and certified for interlocutory appeal the
9 question whether the tort is still legally valid. The Court of Appeals denied the
10 application.

11 {5} Then, in 2024, citing "burdensome and invasive discovery requests," Ex-Wife
12 concurrently filed a motion to intervene and a motion for judgment on the pleadings.
13 She argued that all material events occurred in Colorado and, therefore, Colorado
14 law controlled. Colorado law does not recognize and, in fact, criminalizes pursuit of
15 this particular tort. C.R.S. §§ 13-20-201, 13-20-205. Ex-Wife characterized Ex-
16 Husband's alienation of affections action as a way "to gain leverage while he
17 appeal[ed] the Colorado" divorce ruling.

18 {6} The district court granted the motion to intervene, converted Ex-Wife's
19 motion for judgment on the pleadings to one for summary judgment, and denied the

1 motion because discovery was incomplete. When the motion for summary judgment
2 was denied, the district court granted further, extensive discovery, including “all
3 communications between the Intervenor and the Defendant,” to allow Ex-Husband
4 to respond to Ex-Wife’s choice of law argument. Ex-Wife then asked the district
5 court to certify its ruling for interlocutory appeal, seeking review of whether
6 Colorado or New Mexico law controls in multi-state alienation of affections cases.
7 The district court certified the choice of law issue to the Court of Appeals. The Court
8 of Appeals, opting to cut to the core of the case, reframed the issue and certified to
9 this Court the question “whether the tort of alienation of affections should be
10 abolished in New Mexico.” *See* Order of Certification to the New Mexico Supreme
11 Court, *Butterworth*, A-1-CA-42095, at 3.

12 {7} We granted review of the certified question. However, because the parties
13 failed to brief arguments on this Court overturning its own precedent, whether any
14 decision to do so should apply retroactively or prospectively, and the impact of
15 NMSA 1978, § 40-2-1 (1907) (“Mutual obligations” section under Chapter 40,
16 Article 2: “Rights of Married Persons Generally”) on the viability of the tort of
17 alienation of affections, we requested supplemental briefing to fill those gaps.

1 **II. DISCUSSION**

2 **A. Tort of Alienation of Affections in New Mexico**

3 {8} We begin our discussion with an understanding of the history and origin of
4 alienation of affections. This Court first recognized the tort over a century ago.
5 *Birchfield*, 1923-NMSC-066, ¶ 6. Arising from claims that a woman’s father-in-law
6 interfered with her marriage to his son, we explained the tort was intended to
7 vindicate a plaintiff’s “loss of the society, companionship, fellowship, comfort,
8 conjugal affections and support of the husband [or wife], when caused by any third
9 person maliciously invading the hallowed precincts of the home, and without
10 justification severing the ties which bind.” *Id.*

11 {9} Two years later, in this Court’s second and final precedential case concerning
12 the tort, we affirmed a judgment in favor of a wife who brought an alienation of
13 affections action against her husband’s parents. *Murray*, 1925-NMSC-029, ¶¶ 1, 16.
14 Importantly, in *Murray*, we clarified the interests at issue in alienation of affections
15 claims. *See id.* ¶ 2. Rejecting the defendant’s narrow definition of “consortium,” we
16 stated that “[c]onsortium means much more than the mere sexual relation, and
17 consists also in that affection, companionship, conjugal love, fellowship, and
18 assistance so necessary to a successful marriage relation.” *Id.* Taken together, this
19 Court has interpreted *Birchfield* and *Murray* as establishing an independent claim

1 for loss of consortium stemming from “the *intentional* alienation of . . . affections”
2 by a third party. *Roseberry v. Starkovich*, 1963-NMSC-201, ¶¶ 3-4, 73 N.M. 211,
3 387 P.2d 321 (emphasis added), *overruled on other grounds by Romero v. Byers*,
4 1994-NMSC-031, ¶ 13, 117 N.M. 422, 872 P.2d 840.

5 {10} Although this Court has not revisited the tort since *Murray*, we are keenly
6 aware that “our court of appeals has declared that it ‘look[s] with disfavor on claims
7 for damages based on alienation of affections.’” *Lovelace Med. Ctr. v. Mendez*,
8 1991-NMSC-002, ¶ 29, 111 N.M. 336, 805 P.2d 603 (alteration in original) (quoting
9 *Thompson v. Chapman*, 1979-NMCA-041, ¶ 10, 93 N.M. 356, 600 P.2d 302). The
10 Court of Appeals first declared its disapproval of the tort nearly fifty years ago in
11 *Thompson*, where it identified clear disjunction between the common law tort and
12 the public policy demands of modern New Mexico. 1979-NMCA-041, ¶ 10. There,
13 the Court went so far as to conclude that “public policy declares that it is in the best
14 interest of the people to abolish the remedy” and that “[i]f [the Court] had the power”
15 it would have done so. *Id.* The Court of Appeals did not believe that the tort could
16 provide adequate monetary damages, that it further ““diminishes human dignity
17 [and] inflicts pain and humiliation,”” and more fundamentally, that ““the interests
18 which the action seeks to protect are not protected by its existence, and the harm it
19 engenders far outweighs any reasons for its continuance.”” *Id.* (quoting *Wyman v.*

1 *Wallace*, 549 P.2d 71, 74 (Wash. Ct. App. 1976) (per curiam), *aff'd*, 615 P.2d 452
2 (Wash. 1980)).

3 {11} The Court of Appeals next expressed concerns regarding the tort's
4 implications for litigants' right to privacy. *Hakkila v. Hakkila*, 1991-NMCA-029, ¶¶
5 18, 22, 112 N.M. 172, 812 P.2d 1320. In an opinion rejecting an interspousal claim
6 for intentional infliction of emotional distress, the Court emphasized that “[n]ot only
7 should intramarital activity ordinarily not be the basis for tort liability, it should also
8 be protected against disclosure in tort litigation.” *Id.* ¶ 18 (alteration in original).
9 Driving the Court of Appeals' disposition was the underlying “public policy of New
10 Mexico to avoid inquiry into what went wrong in a marriage.” *Id.* ¶ 21. The Court
11 identified this policy as a through-line in contemporary New Mexico divorce law,
12 noting that we were the first to recognize no-fault divorce, that our law apportions
13 community property without inquiry into fault, and that punishment is not a
14 consideration in alimony. *Id.*

15 {12} The final case displaying the Court of Appeals' disfavor for the tort cited both
16 *Thompson* and *Hakkila* to reject claims of intentional infliction of emotional distress
17 and prima facie tort which mirrored alienation of affections claims. *Padwa v.*
18 *Hadley*, 1999-NMCA-067, ¶¶ 2, 18, 127 N.M. 416, 981 P.2d 1234. Affirming the
19 dismissal of the plaintiff's complaint alleging the defendant “engaged in a pattern of

1 intrusive and often times sexual behavior with [the plaintiff's] wife, his former wife,
2 and his former fiancée," the Court of Appeals held that the plaintiff failed to "state
3 a claim for relief in tort under New Mexico law." *Id.* ¶ 2. The Court of Appeals noted
4 its prevailing "concern that the harshness of litigation might unduly invade the
5 privacy and intimacy inherent in the marital relationship and threaten fundamental
6 personal liberties arising out of it." *Id.* ¶ 12. Concluding that the plaintiff made "no
7 serious claim that he could sue . . . his ex-wife, his present wife, or his former
8 fiancée, for their presumably equal role in these consensual affairs," the Court of
9 Appeals rejected the idea that the plaintiff could sue a third-party defendant "for the
10 same injuries." *Id.* ¶¶ 13-14. In New Mexico's treatment of torts implicating marital
11 relationships, *Padwa* identified a "common concern, grounded in sound public
12 policy, against undue interference in consensual sexual relations between adults."
13 *Id.* ¶ 19. To the Court of Appeals, spousal affections are not property, and as such
14 "[i]t is difficult to envision how the cuckolded spouse . . . could successfully state a
15 claim in tort against the third party, whatever the label, without simultaneously
16 trammeling the privacy rights and liberty interests of the other spouse." *Id.* ¶¶ 19-20.
17 *Padwa* concluded that "recogniz[ing] such conduct as tortious" would "in effect,
18 create a legal right in a husband . . . to the affections and loyalty of his partner." *Id.*
19 ¶ 20.

1 {13} Applying de novo review, we now complete the arc originating in the Court
2 of Appeals and overrule *Birchfield*. See *Boradiansky v. State Farm Mut. Auto. Ins.*
3 *Co.*, 2007-NMSC-015, ¶ 5, 141 N.M. 387, 156 P.3d 25 (“Appellate courts review
4 questions of law de novo.” (internal quotation marks and citation omitted)).

5 **B. Special Justification Exists for Overturning *Birchfield***

6 {14} This Court has long recognized the value in adhering to stare decisis, opining:

7 Stare decisis is the judicial obligation to follow precedent, and it lies at
8 the very core of the judicial process of interpreting and announcing law.
9 It promotes very important principles in the maintenance of a sound
10 judicial system: 1) stability of the law, 2) fairness in assuring that like
11 cases are treated similarly, and 3) judicial economy.

12 *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 11, 127 N.M. 654,
13 986 P.2d 450 (internal quotation marks and citation omitted). Thus, out of respect
14 for principles of stare decisis, our decision to overrule this Court’s precedent in
15 *Birchfield* requires “special justification.” *Trujillo v. City of Albuquerque*, 1998-
16 NMSC-031, ¶ 34, 125 N.M. 721, 965 P.2d 305 (internal quotation marks and citation
17 omitted). When determining whether such justification exists, we look to “whether
18 one of the following convincingly demonstrates that a past decision is wrong”:

19 1) whether the precedent is so unworkable as to be intolerable; 2)
20 whether parties justifiably relied on the precedent so that reversing it
21 would create an undue hardship; 3) whether the principles of law have
22 developed to such an extent as to leave the old rule no more than a
23 remnant of abandoned doctrine; and 4) whether the facts have changed

1 in the interval from the old rule to reconsideration so as to have robbed
2 the old rule of justification.

3 *State v. Chavez*, 2021-NMSC-017, ¶ 52, 485 P.3d 1279 (internal quotation marks
4 and citation omitted). We hold that these factors weigh in favor of overruling
5 *Birchfield* and abolishing the tort of alienation of affections in New Mexico.

6 {15} The tort’s genesis dates back to the Roman Law concept of a damages remedy
7 for the loss of services of a servant, incorporated into English law in the thirteenth
8 century. *See Dupuis v. Hand*, 814 S.W.2d 340, 343 (Tenn. 1991). Then, in 1349, due
9 to a labor shortage caused by the Black Death, England mandated compulsory labor
10 and granted damages for loss of services if a servant was enticed away. *Id.* Because
11 a wife was a type of servant to her husband, the damages remedy also applied to the
12 loss of her services. *Id.* Thus, the tort originated in the English common law when
13 wives were property of their husbands. Judge J. Matthew Martin, *An American*
14 *Anachronism: The Heart Balm Torts*, The Honourable Society of the Middle Temple
15 (Education 2021), [https://middletemplar.org.uk/an-american-anachronism-the-](https://middletemplar.org.uk/an-american-anachronism-the-heart-balm-torts/)
16 [heart-balm-torts/](https://middletemplar.org.uk/an-american-anachronism-the-heart-balm-torts/) [<https://perma.cc/454W-JJWF>]; *Coulson v. Steiner*, 390 P.3d 1139,
17 1142 (Alaska 2017) (same); *Helsel v. Noellsch*, 107 S.W.3d 231, 232 (Mo. 2003)
18 (en banc) (same).

19 {16} Those profoundly patriarchal origins do not reflect the law as it stands today.
20 By 1900, most states had enacted some iteration of Married Women’s Property Acts,

1 which afforded women legal independence from their husbands and the right to own
2 property. *Hoye v. Hoye*, 824 S.W.2d 422, 424 (Ky. 1992). Women no longer being
3 mere servants to their husbands eliminated the bedrock upon which the tort rested,
4 forcing courts to either abolish the action or adopt a new rationale: the preservation
5 of marriage, an interest shared equally by husbands and wives, opening the tort to
6 both parties to a marriage alike. *Id.*; see also *Russo v. Sutton*, 422 S.E.2d 750, 753
7 (S.C. 1992). In New Mexico, the tort has always been available to both husbands
8 and wives. See, e.g., *Birchfield*, 1923-NMSC-066, ¶ 6. That fact cannot, however,
9 disentangle the tort from its anachronistic and deeply inequitable roots. See
10 *Nonhuman Rts. Project, Inc. v. Breheny*, 197 N.E.3d 921, 945 (N.Y. 2022) (Wilson,
11 J., dissenting) (“Under English common law, . . . the very being or legal existence
12 of the woman is suspended during the marriage, or at least is incorporated and
13 consolidated into that of the husband. During marriage, a wife simply had no legal
14 existence. She became, in the words of the Seneca Falls Declaration of Sentiments,
15 civilly dead.” (brackets, internal quotation marks, and citations omitted)).

16 {17} Indeed, the inherently dehumanizing nature of the tort is reflected in the fact
17 that, regardless of gender, it treats affections as property and presumes that a spouse
18 has *no agency* regarding to whom they give their affections. Cf. *Nelson v. Jacobsen*,
19 669 P.2d 1207, 1222 (Utah 1983) (Stewart, J., concurring and dissenting) (“Persons

1 who have been married do not generally fall prey to overwhelmingly seductive
2 powers of another like some inert piece of iron drawn inexorably into the ever-
3 stronger field of power of a magnet. The affection of married persons for each other
4 is usually alienated by their own conduct or misconduct.”), *superseded by statute on*
5 *other grounds as stated in Braun v. Medtronic Sofamor Danek, Inc.*, 719 F. App’x
6 782, 796 (10th Cir. 2017). Instead, the tort purports to take interlopers to task for
7 effectively *stealing* the affections of the spouse just as one might steal an inanimate
8 object.

9 {18} We agree with the Court of Appeals that “[a] spouse’s love or a lover’s
10 companionship is not property that is subject to theft or trespass, and plaintiffs in
11 such suits do not deserve to recover for the loss of or injury to property which they
12 do not, and cannot, own.” *Padwa*, 1999-NMCA-067, ¶ 19 (internal quotation marks
13 and citation omitted). To conclude otherwise would “disregard[] the volitional act
14 of the other spouse[, ex-spouse, or ex-lover] that is essential to the termination [of
15 the marriage or love affair].” *Id.* (second and third alterations in original) (internal
16 quotation marks and citation omitted).

17 {19} Similarly, the development of contemporary loss of consortium law in New
18 Mexico further demonstrates that the tort’s treatment of affections as property
19 renders it a remnant of abandoned doctrine. Under *Birchfield* and *Murray*, New

1 Mexico limited recovery for loss of consortium to cases alleging “*intentional*
2 *interference with consortium*” and denied recovery where harm arose from a third
3 party’s negligence. *Roseberry*, 1963-NMSC-201, ¶ 15 (emphasis added). We
4 reasoned that “while [alienation of affections] is a direct injury to consortium, *a*
5 *relationship entitled to protection under the law*, [negligent injury] is purely a
6 coincidental result occurring without purpose or intent of the tortfeasor.” *Id.*
7 (emphasis added).

8 {20} This Court abandoned that restrictive rationale three decades later when,
9 relying upon the definition of consortium in *Black’s Law Dictionary*, we determined
10 that “[l]oss of consortium is simply the emotional distress suffered by one spouse
11 who loses the normal company of [their] mate when the mate is physically injured
12 due to . . . tortious conduct.” *Romero*, 1994-NMSC-031, ¶ 8. Thus, this Court has
13 made clear that loss of consortium is a *relational* interest, not a legal one—even
14 where the relationship is that of a married couple. *Lozoya v. Sanchez*, 2003-NMSC-
15 009, ¶ 20, 133 N.M. 579, 66 P.3d 948 (rejecting the idea that claims for loss of
16 consortium are only viable where the tortfeasor damages a *marital* relationship,
17 reasoning that “[a] person brings [a loss of consortium] claim to recover for damage
18 to a *relational* interest, not a legal interest”), *abrogated by Heath v. La Mariana*
19 *Apartments*, 2008-NMSC-017, ¶ 21, 143 N.M. 657, 180 P.3d 664. And absent a legal

1 interest in consortium, alienation of affections lacks any foundation upon which to
2 build a claim.

3 {21} In that vein, we reject Ex-Husband’s suggestion that tortious interference with
4 a contract might serve as the foundational legal wrong supporting alienation of
5 affections actions. Establishing a claim of intentional interference with contractual
6 relations requires a party to prove that a defendant had knowledge of a contract, that
7 performance was refused, and that the defendant “played an active and substantial
8 part in causing the plaintiff to lose the benefits of his or her contract.” *Fogelson v.*
9 *Wallace*, 2017-NMCA-089, ¶ 62, 406 P.3d 1012 (brackets, internal quotation marks,
10 and citation omitted). Here, as discussed, there is no underlying legal interest in
11 affections that might be subject to a contract. Nor could a spouse bring a breach of
12 contract claim against their partner, the other contract party, for lack of affections—
13 setting marital contracts apart from others. *See Hoyer*, 824 S.W.2d at 426 (“Marital
14 interference torts are distinguishable from actions for tortious interference with a
15 contract against a third party because in contract suits the plaintiff can sue not only
16 the third party but also the other party to the contract. In alienation of affections . . . ,
17 [a] spouse may not be subject to a suit by the marital partner. This logical asymmetry
18 has prompted the majority of jurisdictions to eliminate these marital torts.”).

1 {22} And we decline to interpret Section 40-2-1 as creating one such contractual
2 right to affections, let alone one subject to breach of contract or tortious interference
3 claims. Such a right is susceptible to the same defects we identified with regards to
4 a property right to affections under the tort. Furthermore, to date, this Court has
5 exclusively interpreted Section 40-2-1 with respect to alimony and material
6 “support.” We will not vastly expand our reading of the statute to support a claim
7 for alienation of affections. To the extent the Legislature created any statutory rights
8 in Section 40-2-1, it also created a statutory remedy where the terms of Section 40-
9 2-1 are violated: divorce under NMSA 1978, Section 40-4-1 (1973).

10 {23} Instead, the legal recourse for lack of affection in a marriage is dissolution of
11 the marriage and alimony. In 1973, New Mexico became the first state to adopt no-
12 fault divorce on the ground of incompatibility. Section 40-4-1(A). The decision by
13 the Legislature reflected “the public policy of New Mexico to avoid inquiry into
14 what went wrong in a marriage.” *Hakkila*, 1991-NMCA-029, ¶¶ 18, 21. And in stark
15 contrast to that clear policy preference, alienation of affections cases *require*
16 “inquiry into what went wrong.” *Id.* ¶ 21. They demand disclosure of a couple’s most
17 intimate and painful choices in search of causation, all while treating one spouse as
18 a passive, helpless bystander upon which the defendant acted and asking courts to
19 reach that exact conclusion.

1 **III. CONCLUSION**

2 {24} The core of alienation of affections claims and the proof they demand are
3 irreconcilable with the legal developments that followed our holding in *Birchfield*.
4 And beneath the legal progress of the last one hundred years is a sweeping
5 undercurrent of social change that robs the tort of any lingering justification in the
6 law. Therefore, we expressly abolish the tort of alienation of affections and overrule
7 *Birchfield*.

8 {25} **IT IS SO ORDERED.**

9
10

DAVID K. THOMSON, Chief Justice

11 **WE CONCUR:**

12
13

MICHAEL E. VIGIL, Justice

14
15

C. SHANNON BACON, Justice

16
17

JULIE J. VARGAS, Justice

18
19

BRIANA H. ZAMORA, Justice