IN THE NEW MEXICO COURT OF APPEALS

NOE RODRIGUEZ,

Worker/Appellant

v.

Ct. App. No. 33,104
WCA No. 13-00562

BRAND WEST DAIRY, uninsured employer
and **UNINSURED EMPOYER'S FUND,**
Statutory Payer,

Employer/Insurer/Appellees

On Appeal From The Workers' Compensation Administration,
Workers' Compensation Judge Victor Lopez

BRIEF IN CHIEF OF APPELLANT NOE RODRIGUEZ,

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ORAL ARGUMENT REQUESTED

Page

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

New Mexico Cases:

Federal Cases:

Other State Cases:

Sate Constitutional, Statutory and Rule Provisions:

SUMMARY OF PROCEEDINGS

A. Nature of the Case

This is an appeal from a workers' compensation judge's Order to Dismiss the case of Appellant, Noe Rodriguez, a dairy worker who suffered severe injuries while working at a dairy farm in Lovington, New Mexico. The workers' compensation judge, Victor Lopez, dismissed the case based on the farm and ranch laborer exclusion contained in NMSA 1978, § 52-1-6(A), despite the fact that over a year prior to Mr. Rodriguez' injury, a state district judge in *Griego v. New Mexico Workers' Compensation Admin.*, 2nd Jud. Dist. No. CV 2009-10130 (filed Dec. 27, 2011) declared the provision unconstitutional. *Griego* was pending on appeal in Ct. App. No. 32,120 at the time of Judge Lopez' dismissal order.

B. Course of Proceedings, Disposition Below and Summary of Facts Relevant to the Issues Presented [1]

Workers' Compensation Judge Lopez granted the motion to dismiss under the standards of Rule 1-012(b)(6) NMRA, and made the following findings and conclusions that are most relevant to the resolution of this case:

1. Noe Rodriguez was a dairy worker at the time of the accident; he sustained traumatic brain injury, neck injury and facial disfigurement as a result of being kicked by a cow; and the accident, which occurred on

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[1] Appellants have merged the treatment of the Proceedings and Facts because the bulk of the facts relevant to this appeal involve the proceedings.

December 23, 2012, occurred within the course and scope of his employment with Brand West Dairy. [RP 216 (¶¶ 1-4)]

2. Noe Rodriguez was a "farm or ranch laborer" under NMSA 1978 Section 52-1-6(A). District Court Judge Valerie Huling's Final Order and Judgment in *Griego* declared that the farm and ranch laborer exclusion violates the Equal Protection Clause of Article II, Section 18 of the New Mexico Constitution. [RP 204 (¶ 9) and RP 205 (¶14)]

3. WCA judges cannot entertain constitutional challenges to provisions of the Act, but the Declaratory Judgment Act provides such jurisdiction in the District Court, and the District Court has properly entertained that challenge and has declared the invalidity of the "farm and ranch laborer" exclusion. [RP 207 (¶¶ 23 and 24)]

4. There is an interest in WCA judicial respect for the District Court's decision, "*at least until the issue is finally resolved by the appellate courts.*" [RP 206 (¶ 19)] (emphasis added)

Despite the foregoing acknowledgements, Judge Lopez dismissed Mr. Rodriguez' claim, ruling that he was "bound to follow [as] the conclusion under current case law" the thirty year-old statement in *Cueto v. Stahmann Farms, Inc.*, 1980-NMCA-036, 94 N.M. 223, 608 P.2d 535, that the exclusion was not unconstitutional [*see* RP 208 (¶ 29)]—a matter that was not fully briefed or argued

in that case, and a view of *Cueto* that was roundly rejected by the district court in its opinion in *Griego*. [RP 59]

Plaintiffs filed their notice of appeal in the instant case on August 12, 2013, followed by its Docketing Statement, filed on August 21, 2013. Further relevant to the appeal in this case are the following appellate proceedings in *Griego*:

1. The defendants in *Griego*—the WCA and its Director—*did not* appeal the district court's ruling on the unconstitutionality of the statute, but instead based their appellate challenge on the jurisdictional authority of the district court to issue its ruling. *See* Defendants'/Appellants' BIC in *Griego v. New Mexico Workers' Compensation Admin.*, Ct. App. No. 32,120, at 2. [RP 145]

2. On November 25, 2013, the Court of Appeals issued a Memorandum Opinion which included three distinct rulings as follows:

    a. First, the Court of Appeals dismissed as moot the WCA's appeal with respect to the three individual plaintiffs because each of their individual cases had settled. *Griego v. New Mexico Workers' Compensation Admin.*, Ct. App. No. 32,120, Memorandum Opinion, filed Nov. 25, 2013 at 5 [2];

[2] The Memorandum Opinion is attached to Appellant's Motion for Summary Reversal as Exhibit A. This Memorandum Opinion was also attached to Appellant's Motion for Summary Reversal, previously filed herein.

b. Second, the Court of Appeals "disagreed" with defendants' conclusion that the district court's ruling was in conflict with the Court of Appeals' prior opinion in *Cueto v. Stahmann Farms, Inc.*, 1980-NMCA-036, 94 N.M. 223, 608 P.2d, and defendants' assertion that "workers' compensation judges will have to choose" which to follow; rather, the Court of Appeals made clear that the district court determined that *Cueto* was inapposite and "[a]s a party to the declaratory judgment action, *the WCA is bound by the district court's ruling.*" *Griego* Memorandum Opinion at 6 (emphasis added); and

c. Third, with respect to the constitutional validity of the exclusion, the Court of Appeals noted that "[i]f Appellants believed that the district court ruled contrary to established binding precedent, their remedy was to seek review of that decision in this Court. They did not..." *Id.* On this point, the Court of Appeals ruled:

> Having chosen to focus their appeal only on the jurisdictional and authority issues discussed above [ ], *Appellants cannot now escape the effect of unchallenged parts of the district court's decision.*"

Id. at 6-7 (emphasis added).

In light of the foregoing developments, Noe Rodriguez filed a motion seeking summary reversal of Judge Lopez' dismissal, based on this Court's ruling in *Griego*. This Court denied that motion by way of a January 27, 2014 Minute

Order, but granted an extension of time for filing this Brief in Chief until February 17, 2014.[3]

INTRODUCTION TO THE ARGUMENT

Mr. Rodriguez' appeal raises the fundamental question whether the *Griego* case—in which the district court held unconstitutional the "farm and ranch laborer" exemption from coverage in Section 52-1-6(A), [RP 62] and the ruling of this Court that "*the WCA is bound by the district court's ruling*" —must govern this subsequent workers' compensation appeal. Mr. Rodriguez contends that it does, and that in light of the district court judgment in *Griego* and its final resolution by this Court on appeal, the Order of the workers' compensation judge must be reversed, and remanded for the resolution of his case without any consideration of the unconstitutional statutory provision. *See* Argument, Point I, *infra.*

If this Court finds it more advisable to provide further resolution of the constitutional question—as suggested throughout by WCA counsel (despite their failure to present the question directly in their *Griego* appeal), then, based on the evidence of record in this case, Mr. Rodriguez urges this Court to rule that Section 52-1-6(A) is unconstitutional and must be held for naught and not enforced by the

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[3] Following this Court's Mandate in *Griego* (issued on February 5, 2014), Plaintiffs are filing a motion in the district court seeking supplemental injunctive relief to further enforce the previously issued declaratory judgment.

WCA and its administrative law judges in this and any future claims for workers' compensation benefits. *See* Argument, Point II, *infra.*

ARGUMENT

I. THE DISTRICT COURT RULING INVALIDATING THE FARM AND RANCH LABORER EXCLUSION IN *GRIEGO* AND THE SUBSEQUENT COURT OF APPEALS RULING THAT THE WCA IS BOUND BY THE DISTRICT COURT RULING CONTROLS THIS CASE

The district court's declaratory judgment that the farm and ranch laborer exclusion is unconstitutional in violation of equal protection is a final judgment which must be followed and enforced by the WCA. *See B. L. Goldberg & Assocs. v. Uptown, Inc.*, 1985-NMSC-084, ¶ 3, 103 N.M. 277, 705 P.2d 683 (an order or judgment is considered final when all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible). While the WCA and its director had every right to challenge the validity of that judgment, their appeal to this Court failed to challenge the essential constitutional ruling, requiring this Court to declare that "the WCA is bound by the district court's ruling," and they "cannot now escape the effect of unchallenged parts of the district court's decision." *Griego* Memorandum Opinion at 6-7.

Furthermore, the workers' compensation judge recognized the clarity and authority of the district court judgment in *Griego*—a ruling that he acknowledged "warrants respect" in this subsequent case "at least until the issue is finally

resolved by the appellate courts." [RP 206 (¶ 19)] Judge Lopez, however, felt constrained by what he considered to be the "conclusion under current case law"—a statement in *dicta* found in *Cueto*, 1980-NMCA-036, ¶ 8 ("Cueto also seems to argue that the exemption denies him equal protection. It does not; the exemption is not arbitrary, but has a reasonable basis."). That statement, which is based on a supposition rather than a reasoned resolution of a fully presented legal argument, is far removed from the issue and holding of *Cueto*. In *Cueto*, the court held that "the general character of [Mr. Cueto's] work, rather than his activity on any particular day" made him a farm and ranch laborer and thus exempt from coverage under the Act. *Cueto*, 1980-NMCA-036, ¶ 10.

As a result, this *dicta* on the constitutional question was flatly and properly rejected by the district court in performing her comprehensive constitutional review on the basis of an extensive factual record. As Judge Huling noted in rejecting the applicability of *Cueto*: "[A]mong other distinctions, including the apparent lack of a developed factual record, that case was decided prior to the adoption of our modern rational basis test." [RP 59]

If the nature of the *dicta,* its lack of any factual record, and being contained in a case under a prior, more restrictive equal protection standard are not enough, this Court's ruling in *Griego* on that point has certainly established that Judge Lopez's ruling is in error and cannot be sustained. When confronted with the argument put

forward by the WCA in its *Griego* appeal that "the district court's ruling . . . appears to conflict with an earlier Court of Appeals ruling [*Cueto*]," this Court was clear in its contrary conclusion, stating "we disagree". *Griego* Memorandum Opinion at 6. This disagreement was premised on all of the reasons put forward by the district court on why *Cueto* did not apply, and this Court ultimately made the definitive conclusion that "the WCA is bound by the district court's [constitutional] ruling." *Id.*

Thus, on the basis of the district court's ruling that the exclusion is unconstitutional, and the finality of that opinion after this Court's rejection of the WCA's appeal, coupled with this Court's clear declaration that the WCA and its director "cannot now escape the effect of unchallenged parts of the district court's decision"—this Court should reverse the contrary decision of the workers' compensation judge, and remand the case for resolution of this and all future claims for benefits without reference to the invalid farm and ranch employer exclusion.

II. THE FARM AND RANCH LABORER EXCLUSION IS UNCONSTITUTIONAL AND MAY NOT BE APPLIED IN THIS OR ANY FUTURE CLAIMS FOR BENEFITS BY INJURED WORKERS

During the course of the *Griego* litigation, and in this case as well, the representatives of the WCA have expressed a need for a substantive appellate ruling on the validity of the "farm and ranch laborer" exclusion of the Act. [*See* RP

26, 36, 201] And yet, as the only parties who were able to challenge the district court's definitive ruling on that question, the WCA appellants in *Griego* refused to present that question directly to this Court. Now, however, this Court has the opportunity to provide clear resolution on this issue. Mr. Rodriguez has provided the same evidentiary support in this record, which was stipulated to by the WCA in *Griego* and formed the basis for Judge Huling's ruling that the farm and ranch labor exclusion is unconstitutional.

"The threshold question in analyzing all equal protection challenges is whether the legislation creates a class of similarly situated individuals who are treated dissimilarly" *Breen v. Carlsbad Municipal Schools,* 2005-NMSC-028, ¶ 10, 138 N.M. 331, 120 P.3d 413. The farm and ranch laborer exclusion treats farm laborers – who are similarly situated to other workers in the state – differently from other workers. More specifically, the Workers' Compensation Act requires employers of three or more employees to provide workers' compensation coverage, but the Act excludes employers of three or more farm and ranch laborers from this coverage requirement. NMSA 1978 § 52-1-6(A). Farm and ranch laborers are defined as agricultural workers who work primarily with crops or animals. *See Holguin v. Billy the Kid Produce*, 1990-NMCA-073, ¶ 9, 110 N.M. 287, 795 P.2d 92. These workers are similarly situated to other workers in the state, and more particularly, farm and ranch workers who work directly with crops

and animals are similarly situated with farm workers who work to package and process those crops. There is no notable difference between a farm worker picking onions in a field and a farm worker packaging those same onions in an onion shed; yet the farm and ranch laborer exclusion operates to provide workers' compensation benefits to the latter and not to the former.[4] Indeed, even the WCA has conceded that the farm and ranch laborer exclusion treats a similarly situated group of workers differently. [RP 78-79 (¶¶ 117-119)].

A. The Farm and Ranch Laborer Exclusion Violates New Mexico's Equal Protection Clause Since It Does Not Survive New Mexico's Rational Basis Standard.

The New Mexico Constitution provides "nor shall any person be denied equal protection of the laws". N.M. Const. Art. II § 18. Equal protection guarantees that the government will treat individuals similarly situated in an equal manner. W*agner v. AGW Consultants*, 2005-NMSC-016, ¶ 21, 137 N.M. 734, 114 P.3d 1050. Equal protection "prohibit[s] the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on a real difference." *Madrid v. St. Joseph Hosp.*, 1996-NMSC-064, ¶ 10, 122 N.M. 524, 928 P.2d 250. Rational basis review under the New Mexico

[4] While the farm and ranch laborer exclusion excludes laborers who primarily harvest crops or work with animals, it does not exclude other agricultural workers. *See Tanner v. Bosque Honey Farms, Inc.*, 119 N.M. 760, 762, 895 P.2d 282, 284 (Ct. App. 1995). The exclusion thus ensures that some employees on farms and ranches are covered by the Workers' Compensation Act, while other very similar workers are not, evidencing a classic case of unequal treatment.

Constitution is a more exacting form of rational basis review than its federal counterpart . . . and has been called "heightened rational basis." *See Trujillo v. City of Albuquerque (Trujillo III)*, 1998-NMSC-031, ¶ 32, 125 N.M. 721, 965 P.2d 305. As noted by the *Trujillo III* Court, "in adopting the rational basis test, we hasten to add that we are not adopting the test characterized as a virtual rubber-stamp, as toothless, and as preordaining the result by applying no real scrutiny." *Id.* ¶ 30 (internal citations and quotations omitted). Rather, as this Court has noted, under New Mexico's rational basis test, "there must be either a factual foundation in the record to support the basis or a firm legal rationale to support the basis." *Corn v. N.M. Educ. Fed. Credit Union*, 1994-NMCA-161, ¶ 14, 119 N.M. 199, 889 P.2d 234; *see also Alvarez v. Chavez*, 1994-NMCA-133, ¶18, 118 N.M. 732, 886 P.2d 461 (policy decisions must be "squarely supported by a firm factual foundation"). Both *Corn* and *Alvarez* were overruled by *Trujillo III*, but only "to the extent they adopted a fourth tier of review." *Trujillo III*, 1998-NMSC-031, ¶ 32. In the process, however, the Supreme Court made clear that "the rational basis standard that we articulate today subsumes that fourth tier and addresses the concerns" addressed in those prior Court of Appeals opinions. *Id. See also Wagner*, 2005-NMSC-016, ¶ 24 (rational basis requires evidence in record or firm legal rationale).

B. Neither Of The State's Purported Reasons For Excluding Farm And Ranch Laborers - The Cost To The Industry And The Difficulties Of Administering The Program – Survive Rational Basis Scrutiny.

The purported justifications for the farm and ranch laborer exclusion are to protect the agricultural industry from having to pay for workers' compensation (as all other employers in the state must do) and that administering workers' compensation to farm and ranch workers would be unreasonably difficult for the Workers' Compensation Administration. [RP 59, 64] Neither of these justifications pass constitutional muster under New Mexico's current rational basis law, and in fact, neither of these justifications were sufficient for the district court in *Griego* to find that the exclusion had a rational basis.

According to the WCA, the annual estimated cost to the agricultural industry for providing workers' compensation to its workers is less than 1% of its annual profit. [RP 61] The average value of agricultural production in New Mexico for 2005-2009 was approximately three billion dollars. [RP 50] "The industry averages over $667 million in profit per year, generating a net profit in 2010 of over one billion dollars." [RP 61] Yet, the total annual cost of providing workers' compensation coverage to New Mexican farm and ranch laborers is $6.2 million dollars. [RP 107] Clearly, the agricultural industry can afford the cost of providing workers' compensation insurance to its workers.

It is also important to note that by striking down the farm and ranch laborer exclusion, only large farms are impacted, since only employers with 3 or more employees are required to purchase workers' compensation. In total, only 9% of New Mexico's farms would be impacted by the law – about 1,800 farms – yet that 9% employ approximately 83% of all of the agricultural workers in the state. [RP 50] Thus, by ensuring that a small number of larger farms have workers' compensation coverage, almost all of the state's agricultural workers will have coverage.

Additionally, the justification that it would be difficult to administer workers' compensation to farm and ranch workers is not supportable. The WCA estimates that the inclusion of farm and ranch laborers in mandatory workers' compensation coverage would result in approximately 1.4% more covered workers, and the number of claims to the Workers' Compensation Administration would likely increase by less than 1%. [RP 60]

Moreover, as the WCA stipulated, it is, in fact, administratively feasible to add "farm and ranch laborers" to the system, including those who work for multiple employers on a seasonal basis and those who are employed by farm labor contractors. [RP 60] As of 2011, 29% of New Mexico of farm and ranch employers were already voluntarily providing coverage for their workers. *Id.* Furthermore, all agricultural workers that do not work primarily harvesting crops

or with animals are also already required to be covered by workers' compensation, demonstrating that the WCA can deal with the types of situations presented by farm and ranch laborers. *Id.* "Thus, the Workers' Compensation Administration already deals with cases concerning these other agricultural employees that are covered by workers' compensation, and they do not pose any special difficulties for the Administration." [RP 50]

A less than 1% increase in the number of claims to the Workers' Compensation Administration would not negatively affect the ability of the administration to run its programs, and even if it did, the New Mexico Supreme Court has held that even under a rational basis standard, the proper inquiry is not whether a classification achieves cost savings, but rather whether it does so non-arbitrarily. *Schirmer v. Homestake Mining Co.*, 1994-NMSC-095, ¶ 9, 118 N.M. 420, 882 P.2d 11. "Of course, a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources." *Plyler v. Doe,* 457 U.S. 202, 226, 102 S. Ct. 2382, 2399 (citing *Graham v. Richardson,* 403 U.S. 365, 374-375 (1971)). Furthermore, this Court has held that it is not enough to assert that a classification achieves administrative convenience. *See Halliburton Co. v. Property Appraisal Department*, 88 N.M. 476, 480, 542 P.2d 56, 60 (Ct. App. 1975) (court struck down tax scheme because no rational

basis to tax contractors who operate in two counties more than those who operate in only one).

C. The Farm And Ranch Laborer Exclusion is Arbitrary and Irrational.

There is no basis to distinguish between farm and ranch laborers and other agricultural workers for purposes of workers' compensation. There is no reason to exclude those workers who pick the chile, but include the workers who pack it. There is no reason to exclude the workers who milk the cows, but include those who process the milk in a cheese factory. These processing workers may work for the same employers as the farm and ranch laborers; their work is subject to the same market forces as employers of farm and ranch laborers [RP 51]; and it is no harder to administer the program to farm and ranch laborers than it is to the processing workers. [RP 50] These distinctions are arbitrary. [RP 61]

Arbitrary distinctions are particularly persuasive factors under the rational basis test. *See DeMonaco v. Renton*, 18 N.J. 352, 113 A.2d 782 (1955) (constitutionally invalid to exclude from mandatory workers' compensation sales clerks who sell newspapers while including other sales clerks who do not sell newspapers); *Washington National Ins Co v. Board of Review*, 1 N.J. 545, 553, 64 A.2d 443, 447 (1949) (constitutionally invalid to exclude from mandatory workers' compensation industrial life insurance agents while including all other industrial insurance agents, holding that "[t]he legislation is unequal, partial and

discriminatory; it treats members of the same class differently, capriciously denying to some the benefits granted to others."); *Burch v. Foy*, 62 N.M. 219, 308 P.2d 199 (1957) (section of Wage and Hour Act which permitted drug store employees to be paid less than variety store employees violates equal protection clause since classification arbitrary, oppressive and without rational basis); *State ex rel. Patterson v. Industrial Commission of Ohio*, 77 Ohio St. 3d 201, 672 N.E. 2d 1008 (1996) (struck down section of Ohio workers' compensation act which treated work-fair employees differently from non work-fair employees since, given purpose of the Act, classification not rationally related to a legitimate government purpose).

There is nothing unique about farm and ranch laborers in terms of workers' compensation coverage [RP 79 (¶ 119)]; there is no evidence that the agricultural industry is different from other industries when it comes to providing workers' compensation insurance [RP 100, ¶ 265]; administering the program to farm and ranch laborers will not be an undue burden on the WCA [*see* RP 60]; and the agricultural industry is the only industry allowed to shift the burden of its injured workers from the industry to the taxpayers. [RP 62] As a result, the exclusion of farm and ranch laborers is arbitrary, creating an artificial distinction that lacks a reasonable basis in fact, and is, therefore, unconstitutional under the New Mexico rational basis standard of review. [RP 62]

Indeed, the record concerning the particular class of workers to whom the "farm and ranch laborers" exception mainly applies, would also merit application of intermediate scrutiny under New Mexico law—under which the exclusion would necessarily fail. Intermediate equal protection scrutiny applies to protect discrete groups that have "been subjected to a history of discrimination and political powerlessness based on . . . characteristics that are . . . beyond the individuals' control." *Breen,* 2005-NMSC-0028, ¶ 21. The record is replete with facts that farm and ranch laborers in New Mexico have been subjected to a regretful history of mistreatment by employers and lack political power, which also has a racial and ethnic overtone, [*see* RP 82-95], thus meriting invalidity under that standard as well—although a route not taken by the district court in *Griego.* [RP 57]

CONCLUSION

For the foregoing reasons, Appellant urges this Court to:

1. Declare the farm and ranch laborer exclusion contained in NMSA 1978, § 52-1-6(A) unconstitutional in violation of the equal protection clause of Art. II, § 18 of the New Mexico Constitution;
2. Reverse the decision of the workers' compensation judge, and remand the case for a decision on the merits of his compensation claim

without any consideration or application of the unconstitutional "farm and ranch laborer" exclusion; and

3. Direct the WCA and all its components, including its workers' compensation judges and those responsible for the operation and administration of the Uninsured Employers Fund, to carry out their functions without any application of the invalid exclusion.

Respectfully submitted,

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STATEMENT CONCERNING ORAL ARGUMENT

Due to the unique area of law that this case entails, Appellant believes that this Court should have the opportunity to question the parties with respect to their conduct and the proper relationship between *Griego* and this case and all cases going forward. For this reason, oral argument is requested.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via First Class mail on this 17th day of February, 2014 to:

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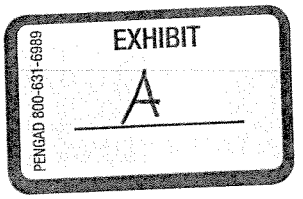

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

JOE GRIEGO, ELOY VIGIL, RAMON MOLINA, SIN FRONTERAS ORGANIZING PROJECT, and HELP-NEW MEXICO, INC.,

Plaintiffs-Appellees,

v.

THE NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION, and NED FULLER, in his official capacity as Director of the Workers' Compensation Administration,

Defendants-Appellants.

NO. 32,120

APPEAL FROM DISTRICT COURT OF BERNALILLO COUNTY
Valerie A. Huling, District Judge

New Mexico Center on Law and Poverty
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MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} During the course of this case, the three individual plaintiffs each settled their workers' compensation claims with the Workers' Compensation Administration. We must decide whether settlement of these claims renders moot the appeal of the district court's ruling that a portion of the Workers' Compensation Act is unconstitutional and its order to re-open the individual plaintiffs' claims. Because we determine that the issues appealed relate to the district court's jurisdiction over and rulings relevant to the individual plaintiffs, we conclude that these issues are moot and dismiss the appeal.

BACKGROUND

{2} Three individual plaintiffs and two organizational plaintiffs (collectively, Plaintiffs) brought a declaratory action against the Workers' Compensation Administration and its director (the WCA or Appellants) requesting a declaration that the portion of the Workers' Compensation Act, NMSA 1978, §§ 52-1-1 to -70 (1929, as amended through 2013), excluding farm and ranch laborers from its coverage was a violation of workers' right to equal protection under Article II, Section 18 of the New Mexico Constitution. *See* § 52-1-6(A) ("The provisions of the Workers' Compensation Act shall not apply to employers of . . . farm and ranch laborers." (the

exclusion)); NMSA 1978, §§ 44-6-1 to -15 (1975) (the Declaratory Judgment Act). In a later motion for final judgment, Plaintiffs also requested an injunction requiring the WCA to re-open the individual plaintiffs' claims and requiring the WCA to stop relying on the exclusion to deny claims.

{3} The district court held that the exclusion was unconstitutional and ordered the WCA to re-open the individual plaintiffs' claims. It denied the organizational plaintiffs' request for other injunctive relief. Plaintiffs filed a motion asking the district court to reconsider its denial of the broader injunctive relief they had sought. But, before the court could rule, Plaintiffs withdrew their motion. The WCA appealed.

{4} All three of the individual plaintiffs settled their claims with the WCA. This Court requested supplemental briefing from both parties as to why this appeal was not moot as a result of the settlement of the individual claims.

DISCUSSION

{5} As a preliminary matter, we note that the organizational plaintiffs did not cross-appeal the district court's denial of their request for injunctive relief. They nevertheless argue on appeal that this Court should issue an order granting that relief if it affirms the district court's rulings. But Plaintiffs do not argue that this Court can consider the issue under Rule 12-201(C) NMRA, which provides that "[a]n appellee

may, without taking a cross-appeal . . . raise issues on appeal for the purpose of enabling the appellate court to affirm, or raise issues for determination only if the appellate court should reverse, in whole or in part, the judgment or order appealed from[,]" and we agree that Rule 12-201(C) does not provide an avenue for review of this request. Thus, it is not before the Court.

{6} In order to place the parties' responses to the mootness question in context, we review the issues appealed by Appellants. Appellants make two arguments. They maintain that (1) the district court lacked jurisdiction over the individual plaintiffs' claims because those plaintiffs should have pursued their challenge to the constitutionality of the farm and ranch labor exclusion through an appeal to the Court of Appeals as is required for appeals from decisions of workers' compensation judges; and (2) the district court did not have the authority to order the WCA to re-open the individual plaintiffs' claims for consideration on their merits. *See* NMSA 1978, § 52-5-8 (1989) (providing for appeal of workers' compensation judges' decisions to the Court of Appeals).

{7} Critical to our analysis is the fact that both of these arguments focus on the district court's jurisdiction over and treatment of the individual plaintiffs' claims. Appellants do not argue that the district court lacked jurisdiction over the *organizational* plaintiffs' claims, nor do they explicitly attack the district court's

determination of unconstitutionality. Appellants also do not challenge the organizational plaintiffs' standing to bring a declaratory action against the WCA.

{8} The parties agree that the three individual plaintiffs have settled their claims with the WCA. They also agree that, consequently, Appellants' contention that the district court erred in ordering the WCA to re-open these claims is now moot. Appellants argue that their contention that the district court lacked jurisdiction to hear the declaratory action is also moot. In an interesting turnabout, Plaintiffs maintain that the appeal should not be dismissed as moot because the WCA "continues to urge that it is not bound to enforce the district court judgment declaring [the exclusion] unconstitutional" and that this case falls within exceptions to the mootness doctrine.

{9} The only issues before this Court are those appealed by Appellants. *Cf. In re Doe*, 1982-NMSC-099, ¶ 3, 98 N.M. 540, 650 P.2d 824 (recognizing that the appellate courts should not deviate from arguments presented). Those issues pertain only to the jurisdiction of the district court over the individual plaintiffs' declaratory action and to the power of the district court to order the WCA to re-open the individual plaintiffs' claims. Those issues are moot. And since Appellants failed to appeal the district court's ruling on constitutionality or challenge the district court's jurisdiction over the organizational plaintiffs, the district court's ruling on this issue stands.

{10} To the extent Appellants maintain that "the [d]istrict [c]ourt's ruling [that the exclusion is unconstitutional invited] chaos" because it appears to conflict with an earlier Court of Appeals holding and that workers' compensation judges will have to choose whether to follow the district court's order or other case law, we disagree. *See Cueto v. Stahmann Farms, Inc.*, 1980-NMCA-036, ¶ 8, 94 N.M. 223, 608 P.2d 535. The district court considered the holding in *Cueto* and determined that it was inapposite because "among other distinctions, including the apparent lack of a developed factual record, that case was decided prior to the adoption of our modern rational basis test." As a party to the declaratory judgment action, the WCA is bound by the district court's ruling. *See State ex rel. Maloney v. Sierra*, 1970-NMSC-144, ¶ 10, 82 N.M. 125, 477 P.2d 301 (stating that the district court's decision on an unchallenged issue was final); § 44-6-2 (stating that declarations "shall have the force and effect of a final judgment or decree").

{11} If Appellants believed that the district court ruled contrary to established binding precedent, their remedy was to seek review of that decision in this Court. They did not. As this issue is not before us, we neither examine nor draw any conclusions about it. *State v. Correa*, 2009-NMSC-051, ¶ 31, 147 N.M. 291, 222 P.3d 1 ("On appeal, issues not briefed are considered abandoned, and we do not raise them on our own."). Having chosen to focus their appeal only on the jurisdictional

and authority issues discussed above, however, Appellants cannot now escape the effect of unchallenged parts of the district court's decision.

CONCLUSION

{12} The appeal is dismissed.

{13} **IT IS SO ORDERED.**

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

JONATHAN B. SUTIN, Judge