IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

COULTON QUEVEDO, by and through his Attorney-in-Fact (with power of attorney), AIMEE BEVAN, BARBARA GUILFOYLE, individually, SUSAN WECKESSER, as Conservator for RYAN MORGAN, CHERYL MORGAN, individually, JORDAN ALMANZA, individually, and MARC FLEMING, individually,

Plaintiffs/Appellants,

v.

Case No. 34,345

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT, NEW MEXICO LICENSING AND CERTIFICATION AUTHORITY, a division of the NEW MEXICO COMMUNITY OUTREACH AND BEHAVIORAL HEALTH PROGRAMS, and the NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS,

Defendants/Appellees.

Appeal from the First Judicial District Court, Santa Fe County, New Mexico
The Hon. Francis J. Mathew, District Judge, District Court No. D-101-CV-2013-03219

REPLY BRIEF OF PLAINTIFFS/APPELLANTS AIMEE BEVAN *ET AL.*

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TABLE OF CONTENTS

RULE 12-213(G) NMRA STATEMENT OF COMPLIANCE

I HEREBY CERTIFY that this Reply Brief was prepared using proportionally spaced, 14-point, Times New Roman typeface in the Microsoft Word 2010 word-processing program and that, pursuant to the limitations of Rule 12-213(F)(3) NMRA, its body contains 4,352 words according to Microsoft Word 2010's word-count function.

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TABLE OF AUTHORITIES

New Mexico cases

Federal cases

Statutes and Ordinances

New Mexico Jury Instructions

New Mexico Regulations

ARGUMENT

Existing New Mexico case law supports a holding that governmental immunity is waived for the State's negligent failure to safely operate and maintain the buildings and premises of the Tierra Blanca Ranch youth program, and Defendants have not established the State did not have a duty to do so. At a minimum, the case law mandates complete discovery before a determination of whether immunity is waived under the facts and circumstances of this case.

The State Defendants couch Plaintiffs' claims as being based on "administrative functions" of State employees, relying on an outdated interpretation of the waiver in NMSA 1978, § 41-4-6 (2007). Plaintiffs request that this Court reject Defendants' argument, overrule the District Court's decision to grant the State's Motion for Summary Judgment, and hold that the extensive statutes, regulations, and contracts pertaining to Tierra Blanca Ranch ("TBR"), along with the funding with taxpayer money that has been used to run TBR, gave rise to a duty by the State to operate and maintain the program to ensure a minimum level of safety for the participants. Whether the State breached its duties is an issue for the jury. *Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P.*, 2014-NMSC-014, ¶ 4.

In the Answer Brief, Plaintiffs' argument is incorrectly summarized as being that "if the State had licensed and regulated the program and enforced the

purportedly applicable laws, as the State allegedly was required to have done, the State would have been negligent in the operation or maintenance of some unidentified building...." (Answer Brief at 7). Plaintiffs' argument is the opposite—the State was negligent because it chose not to take actions mandated by its duty of care. Negligence can consist of an act or a failure to act. *See* UJI 13-1601 NMRA. It is the latter that is at issue here.

Applying that ordinary meaning of the term "negligence" as used in Section 41-4-6, the Court should hold immunity is waived based on the State's multiple failures to safely operate and maintain the TBR youth program, which the State should have been licensing. *See* NMSA 1978, § 41-4-2(B) (1976) ("Liability for acts or omissions under the Tort Claims Act shall be based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.").

I. EXISTING CASE LAW SUPPORTS A HOLDING THAT IMMUNITY IS WAIVED FOR CLAIMS OF NEGLIGENCE IN THE OPERATION OF TIERRA BLANCA RANCH.

The State has a duty through its licensing obligations and regulations to ensure that multiservice residential programs are operated safely. *See* NMSA 1978, §§ 24-1-1 et seq.; NMAC 7.8.3. Though the Courts have not specifically analyzed the applicability of the waiver as to facilities like Tierra Blanca Ranch, existing case law favors a finding that immunity is waived for the Plaintiffs' claims

in this case because of the statutes, regulations, contracts, and expenditure of public money on TBR, as discussed in Plaintiffs' Brief-in-Chief, all of which gave rise to the State's duty to operate and maintain multi service programs like TBR. *See Cobos v. Doña Ana Cnty. Hous. Auth.*, 1998-NMSC-049, ¶ 13, 126 N.M. 418 (holding that a "statute, regulations, and a triangle of contracts imposed specific duties to operate and maintain Plaintiff's home with due care.").

The New Mexico Supreme Court in *Cobos* noted that a "duty that falls within the building waiver may arise from sources other than the ownership status of real property" and "the determination of duty in any given situation involves an analysis of the relationship of the parties, the plaintiff's injured interest and the [public entity's] conduct; **it is essentially a policy decision based on these factors that the plaintiff's interests are entitled to protection.**" *Id.* ¶ 11 (emphasis added) (quoting *Calkins v. Cox Estates*, 1990-NMSC-044, 110 N.M. 59). In making these policy decisions, "[o]ur appellate courts regularly look to statutes, regulations, and contracts as sources of duties of ordinary care imposed on public employees that may bring them within a Tort Claims Act waiver." *Cobos*, 1998-NMSC-049, ¶ 12.

As Plaintiffs discussed at length in their Brief-in-Chief, the evidence uncovered before discovery demonstrates the State has undertaken a duty of care to the children living in multi-service homes, including those living at TBR. (Brief-

in-Chief at 19-35). Although the particular issue in this case has never been addressed by our appellate courts, the statutes, regulations, contracts, and public expenditures on TBR, as well as the nature of the program and the vulnerability of children in programs like TBR, all weigh in favor of a policy decision that the Plaintiffs' interests are entitled to protection. *Cobos*, 1998-NMSC-049, ¶ 11. The State makes no attempt to undertake the analysis that *Cobos* articulated as being the standard for determining the existence of a duty. *See id.* Despite characterizing the law on this issue as "well-settled," the State offers no legal authority showing that it does not have a duty to operate and maintain multi-service homes—even those that operate in wilderness areas. *See generally* Answer Brief. The State does not actually argue that it has no duty of care to children living in facilities like TBR. Instead, the State attempts to align this case with those holding that, *e.g.*, a negligent health inspection of a food store was not "operation and maintenance" because it did not involve a physical defect in a building. *See Martinez v. Kaune Corp.*, 1987-NMCA-131, 106 N.M. 489 (a decision that was premised on a now-rejected interpretation of the waiver, as noted in *Cobos*, 1998-NMSC-049, ¶ 10).

Cobos provides the analysis this Court should employ in determining whether immunity is waived for the claims in this case. *See id.* ¶¶ 11-12. Plaintiffs have shown that the State has a duty of care as a result of the extensive interplay

between TBR and the State and the regulations reflecting that the people of New Mexico have already voiced a position in support of the policy decision being advanced by the Plaintiffs. (Brief-in-Chief at 19-35). Defendants do not undertake the *Cobos* analysis and instead quote brief snippets from a variety of cases, which are not controlling, purporting to show that this issue is "settled"—but fail to show how any of those decisions are analogous to the case at hand.

The State cites cases rejecting negligence in the performance of "administrative functions" as a basis for a waiver of immunity, but does not actually address the meaning of that term as explained by our appellate courts. *Compare, e.g., Archibeque v. Moya*, 1993-NMSC-079, ¶ 11, 116 N.M. 616 *to Callaway v. N.M. Dep't of Corr.*, 1994-NMCA-049, ¶ 18, 117 N.M. 637. An analysis of whether that term applies here is important because it sheds light on the key distinction between this case and those relied upon by the State—the State's negligence in this case affected a segment of the public, rather than one individual injured person. *See id.* ¶ 18. This is all the more reason the Court should find that the Plaintiffs' interests are entitled to protection under the waiver in Section 41-4-6. *See Cobos*, 1998-NMSC-049, ¶ 11.

A. The narrow and formalistic interpretation of Section 41-4-6 advanced by the State has been rejected by our Supreme Court.

The State contends that *Bober v. N.M. State Fair*, 1991-NMSC-031, 111 N.M. 644, did not overrule *Martinez*, 1987-NMCA-131, and similar cases, but

Bober rejected the proposition for which the State cited those cases in the proceedings below: namely, that the buildings waiver does not apply absent some physical defect in a building. **[Tr. 11/3/4 at 12:12-24]** *Contra Bober*, 1991-NMSC-031, ¶ 27, as noted in *Cobos*, 1998-NMSC-049, ¶ 10. The "narrow and formalistic" interpretation of the building waiver rejected by *Bober* is exactly what the State seeks to advance in this case, and this Court should continue to reject that interpretation consistent with the reasoning in *Bober* and *Cobos*. Recent case law has established that Section 41-4-6 of the New Mexico Tort Claims Act applies not only when the state is physically operating a building, but when a dangerous condition exists on property that state employees have a duty to operate. *See, e.g., Callaway*, 1994-NMCA-049, ¶ 18.

B. Plaintiffs' claims are not based on mere "administrative functions."

As explained in Plaintiffs' Brief-in-Chief, the State's duties in this case are not "administrative functions." Defendants are unable to cite any legal authority to contrary. *See In re Doe v. Lee*, 1984-NMSC-024, ¶ 2, 100 N.M. 764. Despite characterizing Plaintiffs' claims as based on an alleged failure to perform administrative functions, the State avoids discussing the meaning of that term or attempting to apply that meaning to the case at bar. Our appellate courts in using the term "administrative function" are referring to *discrete decisions* that affect one individual, such as a single prisoner, as opposed to a portion of the public that may

be affected by the state's decisions. *See Archibeque*, 1993-NMSC-079, ¶ 14. *Cf. Callaway*, 1994-NMCA-049, ¶ 18 (discussing and distinguishing *Archibeque*).

Here, the duties giving rise to claims under Section 41-4-6 extend far beyond ministerial administrative duties. The State does not respond to many of the averments that form the bases of Plaintiffs' claims against the State, including one that summarizes the very essence of the State's relevant duties, that "CYFD was responsible for ensuring that schools and programs operating in the state of New Mexico for youth were operated safely and did not jeopardize the well-being of the youth in the program." First Am. Compl. ¶ 30 **[RP 233]** The Complaint more specifically details the ways in which the State was negligent, and those details go beyond "mere licensing and inspection." *See* First Am. Complt. ¶¶ 73-83. **[RP 240-242]** Defendants did not respond to Plaintiffs' discussion of the State's extensive duties with respect to multi-service homes, choosing to discuss only certain allegations and ignoring many others contained in the Complaint.

The State's conduct in this case created a dangerous condition for every child residing at TBR and did so with taxpayer money. At the inception of this case and though Plaintiffs' own investigation, it is known that the State gave TBR at least $100,000 in taxpayer funding. Based on all of the information known in the very early stages of the litigation, immunity is waived and the claims do not stem from negligence in an administrative function. The distinction is well-

illustrated by *Callaway*, 1994-NMCA-049, ¶ 18, where Section 41-4-6 applied to a plaintiff's claims that a failure to remove gang members from the general population of a prison created a dangerous condition for all of the inmates. That set the claims apart from those in *Archibeque*, 1993-NMSC-079, where the state entity's mistake resulted in a danger only to the plaintiff. *Callaway*, 1994-NMCA-049, ¶ 18. In this case, the alleged duties would be mere administrative functions if, *e.g.*, the Plaintiffs alleged that Juvenile Probation and Parole should not have placed a particular student in the program, and the student was later injured. *Cf. Archibeque*, 1993-NMSC-079, ¶ 8. In this case, the State's conduct endangered a whole segment of the population—TBR students and potential students—rather than an individual, so this case is more aligned with *Callaway*, 1994-NMCA-049.

This case is also sharply distinguished from those in which the waiver did not apply because the duties alleged were, in fact, purely administrative. In support of the "administrative functions" argument, the State cites two cases, neither of which is analogous to this case. The State makes no attempt to analogize those decisions to this case or otherwise discuss the facts of the case at bar, instead simply concluding without support that the State's duties were administrative.

First, the State cites *Espinoza v. Town of Taos*, 1995-NMSC-070, 120 N.M. 680. However, *Espinoza* does not support the argument that the acts at bar are

administrative; instead, it illustrates how the State's duties in this case were not merely administrative. *Espinoza* involved a child injured on playground equipment as the result of allegedly negligent supervision of children. *Id.* ¶¶ 1-4. Because no unsafe condition existed as a result of public employees' negligence, Section 41-4-6 did not apply. *Id.* ¶ 14. The court explained:

> the negligent conduct [of public employees] itself did not create the unsafe conditions. The playground was a safe area for children. There were no gangs threatening the children, no free-roaming dogs, no influx of traffic, no improperly maintained equipment.

Id. In other words, the alleged negligence in *Espinoza* stemmed from a "discrete administrative decision" rather than the type of "general condition of unreasonable risk" that results in a waiver of immunity. *See Callaway*, 1994-NMCA-049, ¶ 18. In this case, the negligent conduct of State employees—who knew what was occurring at TBR, knew the State was required to do something about it, yet did nothing—directly contributed to the unsafe conditions at TBR. Thus, the State's conduct in this case is more analogous to *Castillo v. City of Santa Fe*, 1988-NMSC-037, 107 N.M. 204, the case involving free-roaming dogs, or *Callaway*, 1994-NMCA-049, ¶ 18, where gang members represented an unsafe condition on the premises, than *Espinosa.*

Archibeque, 1993-NMSC-079, likewise does not support the State's position and illustrates why the State is incorrect in characterizing the duties alleged by the Plaintiffs as merely administrative. The determinative fact in *Archibeque* was that

the employee's conduct affected a single prisoner, unlike *Callaway*, 1994-NMCA-049, a case primarily distinguished from *Archibeque* by the fact that it involved a dangerous condition, gang members, threatening the general population of a prison, rather than a single inmate as was the case in *Archibeque*. *Callaway*, 1993-NMSC-079, ¶¶ 18-19. An analysis of the facts of this case, as known before discovery in the early stages of litigation, establishes that immunity is waived and the case should proceed to a trial on the merits.

C. The duties in this case go far beyond mere "licensing and inspection" functions that have been insufficient to constitute operation and maintenance.

The decisions cited by Defendants illustrate the difference between this case and those in which the courts referred to duties of mere "licensing" or "inspection" as being insufficient to meet the building waiver. In describing the State's duties as being simply to "register and issue licenses," the State overlooks what the licensing process would have entailed had the State lived up to its statutory and regulatory obligations, overlooks the State's responsibilities to shut down a facility that refuses to comply with state law, and overlooks the fact that TBR is partially funded by New Mexico taxpayers. *See* Brief-in-Chief at 26-44. In short, the State ignores the analysis, articulated in *Cobos*, of the relationship of the parties, the plaintiff's injured interest and the State's conduct, that determines whether the State owes a duty of care. 1998-NMSC-049, ¶ 11.

TBR is not like an ordinary business that can operate by simply registering with a county or municipality and obtaining a tax identification number. *See, e.g.*, Albuquerque Code § 13-1-1 et seq. TBR is a multi-service home, as defined by CYFD's own regulations, *see* NMAC 7.8.3.7 (L), (FF), and as such, the licensing process involves a great deal of State involvement. A partially state-funded multi-service home is subject to much more control by the State than, *e.g.*, a restaurant, which can maintain a permit pursuant to NMSA 1978, § 25-1-7 (1985) by passing health inspections. NMSA 1978, § 25-1-8 (1977). Unlike multi-service homes and programs, the State cannot take actions such as taking receivership of a restaurant when a restaurant fails a health inspection or refuses to apply for a permit. *Compare* NMSA 1978, §§ 25-1-1 *et seq.* (food service establishments) *to* NMSA 1978, § 24-1E-3(A)(1) (1996) (authorizing receivership proceedings for a facility like TBR being operated without a license). The Plaintiffs' claims go well beyond "licensing" and "inspection."

The State cites several cases stating that mere regulation and inspection for the public good is not operation and maintenance, but fails to show that the Plaintiffs' claims involve exclusively mere regulation and inspection. Moreover, the cases cited by Defendants do not support the State's argument and do not address the *Cobos* analysis, 1998-NMSC-049, ¶ 11.

First, the State cites *Cobos*, 1998-NMSC-049, for the "longstanding principle that 'a mere duty to inspect and regulate private property' did not waive immunity under [Section] 41-4-6." However, the State omits the fact that in *Cobos*, the defendants made the same argument made here—that "their relationship with the rented home [was] one of mere regulation and inspection of private property"—and that the court rejected that argument. *See id.* ¶ 15. *Cobos* supports a broader reading of the building operation waiver than the one being advanced by the State. *See id.* ¶¶ 8-10 (noting the waiver is tied to the "scope of duties" of public employees rather than ownership status of land and noting the movement away from a narrow interpretation of Section 41-4-6). Here, the State had specific duties to operate TBR with due care. *See*, *inter alia*, 7.8.3.1 NMAC et seq. As in *Cobos*, 1998-NMSC-049, Plaintiffs' claims here go well beyond a "mere duty to inspect and regulate private property."

Second, the State cites *Martinez*, 1987-NMCA-131, which held that the waiver in Section 41-4-6 did not apply because the claims did not involve any physical defect in a building, as the waiver at that time was thought to apply to "premises liability situations only." *Id.* ¶ 7. That "narrow and formalistic" interpretation of the waiver is no longer good law. *See Bober*, 1991-NMSC-031, ¶ 27 (expressly rejecting the *Martinez* interpretation of the waiver and noting that, contrary to the decision in *Martinez*, "the liability envisioned by [Section 41-4-6] is

not limited to claims caused by injuries occurring on or off a certain 'premises....'"). Regardless, *Martinez* would not control the decision in this case; it involved a claim that the State had failed to inspect, or negligently inspected, a private food-sale operation. 1987-NMCA-131, ¶ 1. In the case at bar, TBR operates in part, directly or indirectly, through public funds, and is subject to much more invasive regulations that bring the State's involvement to the level of "operation and maintenance" rather than simply inspection. Moreover, the State has engaged in a voluntary undertaking to effectuate the policies in NMSA 1978, § 24-1-5(B) (2005) (authorizing CYFD to "make inspections and investigations and to prescribe rules it deems necessary or desirable to promote the health, safety and welfare of persons using health facilities"). That undertaking gives rise to a specific relationship with the children at TBR and a duty of care that reaches much further than the Environment Department's duty to the general public to conduct health inspections. *See Cobos*, 1998-NMSC-049, ¶¶ 11, 15-16.

Similarly, *Armijo v. Dep't of Health & Environment*, 1989-NMCA-043, 108 N.M. 61, cited by Defendants, has no bearing on this issue. *Armijo* held that the Health and Environment Department's alleged failure to step into the clinical decision-making process of a clinic did not amount to operation of a health facility under NMSA 1978, § 41-4-9 (1977) because the plaintiff's allegations concerned medical negligence, and HED did not regulate that aspect of the facility. 1989-

NMCA-043, ¶¶ 12-13. In this case, CYFD has a duty to regulate the aspects of TBR giving rise to the Plaintiffs' claims (*see*, e.g., § 24-1-5(N)), so to the extent that *Armijo* is even relevant, it is inapposite.

Defendants cite four additional cases in an attempt to create the illusion that there is controlling precedent supporting the State's position. *Leithead v. City of Santa Fe*, 1997-NMCA-041, 123 N.M. 353 actually supports the Plaintiffs' interpretation. In *Leithead*, the court held that immunity may be waived despite the claim being unrelated to a physical defect on the premises, because a swimming pool without an adequate number of trained lifeguards creates a dangerous condition on the premises, which affects the swimming public at large. *Id.* ¶ 15. The other three cases are inapplicable – *M.D.R. v. State ex rel. Human Servs. Dep't*, 1992-NMCA-082, 114 N.M. 187; *Johnson ex rel. Estate of Cano v. Holmes*, 455 F.3d 1133 (10th Cir. 2006); and *Whitely v. CYFD*, 184 F.Supp.2d 1146, 1165 (D.N.M. 2001), finding no waiver of immunity under Section 41-4-9 or 41-4-10 because placement of a child into a foster home was not operation of a building, *Johnson*, 455 F.3d at 1139, or provision of "health care services," *M.D.R.*, 1992-NMCA-082, ¶ 5, or operation of a facility "like" a hospital, infirmary, mental institution, clinic, dispensary, or medical care home. *Id.* ¶ 10.

The issue in this case is not "well-settled," but the case law—particularly the analysis in *Cobos*, 1998-NMSC-049, ¶ 11, supports a finding that the relationship

of the parties, the Plaintiffs' injured interests and the State's conduct results in a policy decision that the Plaintiffs' interests are entitled to protection under Section 41-4-6.

II. PUBLIC POLICY SUPPORTS A HOLDING THAT IMMUNITY IS WAIVED.

Public policy supports a holding that, by providing public funding and choosing to allow this program to take children into its care without complying with the extensive regulations and statutes our lawmakers have put into place to govern these facilities, the State was negligent in the operation of the program. Defendant, unable to argue that public policy supports its position in this individual case, instead makes the slippery-slope argument that if the trial court had ruled otherwise, the scope of the waiver would "become almost limitless." However, the things that set a facility like TBR apart from, *e.g.*, a dairy or a restaurant are countless: the fact that the State owes a special duty to children, especially those who are away from their parents and in the custody of adults who do not have legal guardianship; the fact that the State has provided taxpayer money to TBR, directly or indirectly, to an as-yet undiscovered extent; the fact that government entities have worked with TBR to provide "education" at the facility; and the fact that and the fact that the Legislature and CYFD have undertaken a special commitment to impose broad, expansive requirements on facilities like TBR. A decision that the waiver applies to the State's negligence in failing to operate TBR would not

necessarily result in a waiver for claims that, *e.g.*, a person became ill after eating at a restaurant with a food permit.

Moreover, because of the extensive web of statutes, regulations, and contracts that already govern Tierra Blanca Ranch, the waiver already applies; a reversal of the trial court's decision would not represent an "expansion" of the waiver but simply an acknowledgement that the Plaintiffs' interests are entitled to protection. *See Cobos*, 1998-NMSC-049, ¶ 11. One of the State's most important duties is to protect children, including those who are placed in the care of privately run programs. Public policy mandates that individuals be permitted to hold the State accountable when it does not meet that duty.

III. IF THIS COURT IS NOT YET SATISFIED THAT THE WAIVER EXISTS, ADDITIONAL DISCOVERY SHOULD BE PERMITTED TO EXPLORE THE RELATIONSHIP BETWEEN THE STATE AND TIERRA BLANCA RANCH.

The State had a duty to operate and maintain TBR to prevent injuries and forced or uncompensated labor. *See* § 24-1-5; NMAC 7.8.3; NMSA 1978, §§ 50-6-1 *et seq*. Even in the early stages of discovery, Plaintiffs learned about numerous ways in which the State itself has acknowledged its duties to the children in New Mexico at TBR. According to an internal memo within CYFD dated February 24, 2007—which is not yet part of the record because it was obtained through a recent document production—when CYFD decided to back down from attempting to license TBR, it did so based on what CYFD's counsel thought was an inadvertent

revision to NMSA 1978, § 24-1-2 in 2003 where "shelter care homes" were not specifically included in the list of facilities falling under the purview of CYFD. Thus, CYFD halted its efforts to license TBR. The statute was amended again in 2007 to fix that mistake and add "shelter homes" back to that list, but it is believed that CYFD never again re-initiated its efforts.

The Legislature's quick move to amend the statute reflects the grave importance of operating programs like TBR, and if discovery is permitted, it is likely that Plaintiffs will discover much more revealing the relationship between the State and TBR that would give rise to a duty of care in the operation of the premises. Although unacknowledged by the State, the critical question remains whether State employees owed a duty of care to prevent a dangerous condition on the premises. *See Cobos*, 1998-NMSC-049, ¶¶ 11-13. Discovery would undoubtedly assist the trial court in answering that question, if it is not already clear that the State owes a duty of care. If, in the exercise of ordinary care, the State should have operated and maintained TBR but chose not to do so, then it was negligent. *See* UJI 13-1601; 13-1604 NMRA. "In deciding whether ordinary care has been used, the conduct in question must be considered in the light of all the surrounding circumstances," and "[a]s the risk of danger that should reasonably be foreseen increases, the amount of care required also increases." UJI 13-1603 NMRA. Thus, the extent of the State's knowledge about what was occurring at

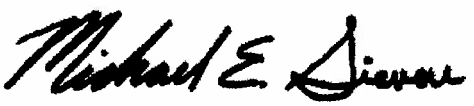
TBR is relevant to the issue of waiver of immunity for negligence in the operation and maintenance of TBR, and discovery would aid the Plaintiffs in uncovering those facts. Moreover, discovery of the full extent of public funding that enabled TBR to operate would shed light on the State's heightened duty of care in ensuring that taxpayer money is not being used to harm children.

CONCLUSION

The multiple regulations, statutes, contracts, and provision of citizen taxpayer money that occurred in this case support a finding that the State owed a duty of care to the children at TBR, and that is the determinative issue on appeal in this case. *See Cobos*, 1998-NMSC-049, ¶ 11. Because a jury should determine whether the State breached that duty, this case should be remanded to the District Court for trial. At a minimum, this case should be remanded for additional discovery exploring the relationship between the State entities and the Tierra Blanca Ranch individuals and businesses.

Respectfully submitted,

McGINN
CARPENTER
MONTOYA
& LOVE



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief-in-Chief was mailed to all counsel of record on this 20th day of November, 2015.

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