

**ABEITA V. NORTHERN RIO ARRIBA ELEC. COOP., 1997-NMCA-097, 124 N.M. 97,
946 P.2d 1108**

**PATRICIA W. ABEITA, Individually and as the Widow and
Personal Representative of the Estate of JOSE I. ABEITA,
Deceased, and as the natural mother and next friend of AMY
ABEITA, CATHERINE ABEITA, and MAUREEN ABEITA, minors, and
JACKLYN BITSIE, as the natural mother and next friend of
MEREDITH ABEITA, a minor,
Plaintiffs-Appellees/Cross-Appellants,
vs.
NORTHERN RIO ARRIBA ELECTRIC COOPERATIVE, a New Mexico
Corporation, Defendant-Appellant/Cross-Appellee.**

Docket No. 17,088

COURT OF APPEALS OF NEW MEXICO

1997-NMCA-097, 124 N.M. 97, 946 P.2d 1108

August 15, 1997, Filed

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY. JOHN W. POPE,
District Judge.

The Publication Status of this Document has been Changed by the Court from
Unpublished to Published August 15, 1997 on Grant of Rehearing.

COUNSEL

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JUDGES

HARRIS L HARTZ, Chief Judge. WE CONCUR: RICHARD C. BOSSON, Judge,
JAMES J. WECHSLER, Judge.

AUTHOR: HARRIS L HARTZ

OPINION

{*111}

ON REHEARING

HARTZ, Chief Judge.

{1} Our original opinion in this case was filed on January 7, 1997. On March 19, 1997 we granted NORA's motion for rehearing on its contention that the jury should have been instructed with respect to the comparative fault of Jolene Velarde. While that matter was pending, the parties notified the Court that they had resolved their dispute. Consequently, we dismiss the appeal and remand to the district court to conduct proceedings necessary to effectuate the settlement.

{2} The question arises whether our previously filed opinion, which we had directed to be published, should be published for its precedential value alone. **See First Nat'l Bank in Albuquerque v. Sanchez**, 112 N.M. 317, 326, 815 P.2d 613, 622 (1991) (parties advised court of settlement while opinion was being prepared in final form for filing; appeal dismissed but opinion published); **Riesenecker v. Arkansas Best Freight Sys.**, 110 N.M. 451, 453, 796 P.2d 1147, 1149 (before opinion was filed, parties had settled without notifying court); **Stewart v. Southern Ry. Co.**, 315 U.S. 283, 86 L. Ed. 849, 62 S. Ct. 616, **judgment vacated**, 315 U.S. 784, 62 S. Ct. 801, 86 L. Ed. 1190 (1942) (on petition for rehearing it appeared that case had settled). We decide that the opinion should be published, at least in part. Our opinion can have precedential effect, because it was rendered while the case was within our jurisdiction. **See In re Smith**, 964 F.2d 636, 638 (7th Cir. 1992). The opinion issued after full briefing and thorough consideration by this panel. The provision of precedent is a matter of public interest, not just a concern of the parties to the litigation. Even when the parties to the appeal agree that an opinion should not be published, the court need not oblige. **See Oklahoma Radio Assocs. v. FDIC**, 3 F.3d 1436 (10th Cir. 1993); **cf. United States Bancorp. Mortgage Co. v. Bonner Mall Partnership**, 513 U.S. 18, 130 L. Ed. 2d 233, 115 S. Ct. 386 (1994) (settlement by parties while case is pending after grant of certiorari does not require Supreme Court to vacate lower court judgment).

{3} We note, however, that full publication is not appropriate. On this appeal we were sufficiently concerned about one issue addressed in the opinion that we granted a motion for rehearing on that issue. We believe it appropriate not to publish the portion of the original opinion addressing that issue. Accordingly, we order publication of our original opinion, except for the discussion of failure to instruct with respect to the comparative fault of Mrs. Velarde.

{4} IT IS SO ORDERED.

HARRIS L HARTZ, Chief Judge

WE CONCUR:

RICHARD C. BOSSON, Judge

JAMES J. WECHSLER, Judge