

KRUSKAL V. MELLIGER

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

KERRY KRUSKAL,
Plaintiff-Appellant,
v.
MIKE MELLIGER AND
SABROSO RESTAURANT,
d/b/a SABROSO L.L.C.,
Defendants-Appellees.

No. 34,229

COURT OF APPEALS OF NEW MEXICO

June 1, 2015

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, Sarah C. Backus, District
Judge

COUNSEL

Kerry Kruskal, Arroyo Seco, NM, Pro Se Appellant

Walcott & Henry P.C., Charles V. Henry, IV, Santa Fe, NM, for Appellees

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M.
MONICA ZAMORA, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Plaintiff Kerry Kruskal (Plaintiff), in a self-represented capacity, appeals from the district court's order dismissing with prejudice his complaint against Defendants Mike

Mellinger and Sabroso Restaurant (Defendants). [RP 38] This Court issued a calendar notice proposing to affirm. Plaintiff has filed a “response to proposed disposition,” which we duly considered. Unpersuaded, we affirm.

{2} In this Court’s calendar notice, we noted that the New Mexico Human Rights Act (NMHRA) does not provide for de novo trial in district court where a person has not first exercised the process available through the NMHRA. See NMSA 1978, § 28-1-10 (2005) (providing for trial de novo in district court in lieu of a hearing before the division); NMSA 1978, § 28-1-13 (2005) (providing for trial de novo in district court on an appeal from an order of the division). [CN 2] This Court further noted that the district court does not have jurisdiction of a NMHRA matter until Plaintiff has exercised the administrative remedies available to him under the NMHRA. See *Mitchell-Carr v. McLendon*, 1999-NMSC-025, ¶ 10, 127 N.M. 282, 980 P.2d 65 (providing that under the NMHRA, a plaintiff must exhaust his or her administrative remedies against a party before bringing an action in district court against that party); see also *In re Application of Angel Fire Corp.*, 1981-NMSC-095, ¶ 5, 96 N.M. 651, 634 P.2d 202 (“Jurisdiction of the matters in dispute does not lie in the courts until the statutorily required administrative procedures are fully complied with.”). [CN 2–3]

{3} In response, Plaintiff asserts that he has filed a complaint with an administrative agency other than the Human Rights Commission (Commission). [Response 1] Plaintiff does not, however, assert that he filed a complaint with the Commission and either completed the procedure to waive a hearing before the Commission in favor of a trial de novo in district court pursuant to Section 28-1-10, or sought a trial de novo in district court on appeal from an unfavorable decision by the Commission as permitted by Section 28-1-13. Plaintiff thus has not shown that he exhausted his administrative remedies and that the district court had jurisdiction of his claim.

{4} For the reasons set forth in our notice and above, we affirm.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

M. MONICA ZAMORA, Judge