

**MUSTAFANOS V. N.M. DEPARTMENT OF PUBLIC SAFETY**

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**YOSEF LE ROI MUSTAFANOS,**

Plaintiff-Appellant,

vs.

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY-MOTOR  
TRANSPORTATION DIVISION/MOTOR  
TRANSPORTATION POLICE and OFFICER  
LEON BEACHMAN,  
Defendants-Appellees.**

No. 33,428

COURT OF APPEALS OF NEW MEXICO

June 25, 2014

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, Jerry H. Ritter, Jr.,  
District Judge

**COUNSEL**

Yoself Le Roi Mustafanos, Silver Springs, NV, Pro Se Appellant

Barbara M. Smith, Roswell, NM, P. Cholla Khoury, Santa Fe, NM, for Appellees

**JUDGES**

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Judge, M. MONICA ZAMORA, Judge

**AUTHOR:** J. MILES HANISEE

**MEMORANDUM OPINION**

**HANISEE, Judge.**

{1} Plaintiff, who is self-represented, appeals from a district court order dismissing his civil suit against a police officer and the Department of Public Safety. We issued a calendar notice proposing to affirm. Plaintiff has filed a memorandum in opposition. We affirm.

{2} Plaintiff has raised four issues that we have consolidated as an argument that the district court erred in granting Defendants' motion to dismiss. Because the record includes matters outside of the pleadings, we review this as a summary judgment case. See *First Sw. Fin. Servs. v. Pulliam*, 1996-NMCA-032, ¶ 4, 121 N.M. 436, 912 P.2d 828 (stating that we review motions to dismiss as motions for summary judgment when the district court considered matters outside the pleadings in making its ruling). We review this issue de novo; see also *Self v. United Parcel Serv., Inc.*, 1998-NMSC-046, ¶ 6, 126 N.M. 396, 970 P.2d 582. "Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." *Id.* When reviewing a motion for summary judgment, a court must "view the facts in a light most favorable to the party opposing summary judgment and draw all reasonable inferences in support of a trial on the merits." *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280 (internal quotation marks and citation omitted).

{3} NMSA 1978, Section 41-4-4(A) (2001) provides that governmental entities and public employees, while acting within the scope of duty, are granted immunity from liability for any tort except where, as provided by specific statutory exceptions, immunity is waived. See *Ford v. N.M. Dep't of Pub. Safety*, 1994-NMCA-154, ¶ 26, 119 N.M. 405, 891 P.2d 546 ("[A]bsent a waiver of immunity under the Tort Claims Act, a person may not sue the state for damages for violation of a state constitutional right."). Among other exceptions, immunity granted under Section 41-4-4 does not apply to malicious prosecution, abuse of process, libel, slander, defamation, "or deprivation of any rights, privileges, or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties." NMSA 1978, § 41-4-12 (1977).

{4} Regardless of which specific exceptions apply to the allegations made in Plaintiff's amended complaint [RP 34], his lawsuit is predicated on the unsupported factual claim that Defendant/Officer Beachman issued a traffic citation despite Beachman's knowledge that no violation had occurred. Defendants relied [RP 90-91] on the traffic citation, which indicates that Plaintiff was speeding. [RP 7] The citation contains Defendant Beachman's signature, and otherwise complies with the statutory requirements for effectuating a traffic citation. See NMSA 1978, § 66-8-128 (2013). As such, Defendants established a prima facie showing for summary judgment, and Plaintiff was required to come forward with a sworn statement rebutting the validity of the citation. Notwithstanding Plaintiff's claim to the contrary, his assertion that Beachman knowingly issued a false citation and did not take corrective action thereafter is a predicate to any legal claim brought in this case. Because there is no indication that Plaintiff came forward with the requisite affidavit, we believe that the district court properly granted summary judgment. See *Bassett v. Sheehan*, 2008-NMCA-072, ¶ 5, 144 N.M. 178, 184 P.3d 1072 ("A defendant seeking summary judgment ... bears the

initial burden of negating at least one of the essential elements upon which the plaintiff's claims are grounded[,]” and “[o]nce such a showing is made, the burden shifts to the plaintiff to come forward with admissible evidence to establish each required element of the claim.”(omission in original) (internal quotation marks and citations omitted)).

**{5}** For the reasons set forth above, we affirm.

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

**J. MILES HANISEE, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Judge**

**M. MONICA ZAMORA, Judge**