

CABALLERO V. HAINES

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ISABELLE CABALLERO,
Plaintiff-Appellant,
v.
BEN HAINES, and BRANDON HILL
HAINES, Personal Representative of the
ESTATE OF BRIAN DOUGLAS HAINES,
Defendants-Appellees.

NO. A-1-CA-37284

COURT OF APPEALS OF NEW MEXICO

December 13, 2018

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

COUNSEL

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JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: HENRY M. BOHNHOFF, Judge, EMIL J. KIEHNE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Plaintiff Isabelle Caballero appeals from the district court's award of summary judgment to Defendants. We previously issued a notice of proposed summary disposition in which we proposed to affirm. Defendants have filed a memorandum in support, and Plaintiff has filed a memorandum in opposition. After due consideration, we adhere to our initial assessment. We therefore affirm.

{2} Because the pertinent background information and relevant principles have previously been set forth, we will avoid reiteration at length here. Instead, we will focus on the substantive content of the memorandum in opposition.

{3} Plaintiff continues to assert that genuine issues of material fact exist, which preclude the award of summary judgment in this case. [MIO 10-17] We disagree. As explained at greater length in the notice of summary disposition, the circumstances under which a claim of equitable adoption is validly presented are quite narrow. In order to prevail, the claimant must present evidence capable of establishing the existence of an oral or written contract by which the decedent agreed to formally adopt, or evidence that the foster family's acts or omissions induced the child to believe that he or she was the foster parent's biological or formally adopted child. *Otero v. City of Albuquerque*, 1998-NMCA-137, ¶¶ 6-13, 19, 125 N.M. 770, 965 P.2d 354. Plaintiff failed to present adequate support for her claim under either theory.

{4} Plaintiff continues to assert that her claim should have been deemed viable under the contract theory. [MIO 11-16] See *In re Garcia's Estate*, 1940-NMSC-081, ¶ 26. 45 N.M. 8, 107 P.2d 866 (observing that an agreement to formally adopt may be established either as an express or implied contract, "provided the proof offered is of the convincing character required in cases of this kind"). However, we remain unpersuaded that Plaintiff presented evidence of the sort of conduct or representations that are required to establish a contract to adopt. Plaintiff continues to rely largely upon her mother's act of sending her to live with the decedent and Plaintiff's sister for a period of time when Plaintiff was a teenager, as well as the decedent's provision of economic support to Plaintiff. [MIO 13-15] However, the New Mexico Supreme Court has held that "[t]he mere fact that a child of another is received into a home, cared for, and educated cannot indicate that such a child has further claims upon those who took it in, and that there is an implied agreement to adopt the child." *In re Candelaria's Estate*, 1937-NMSC-015, ¶ 19, 41 N.M. 211, 67 P.2d 235. Plaintiff also continues to rely upon her close relationship with the decedent, his references to her as his "kid" and Plaintiff's family as his family, and their provision of mutual emotional support and assistance to each other. [MIO 13-15] However, as illustrated in *Candelaria*, such informal expressions and actions are insufficient to satisfy the "strict requirements" of the equitable adoption doctrine. *Otero*, 1998-NMCA-137, ¶ 6. Plaintiff makes no effort to meaningfully distinguish or even to address this case. We therefore remain of the opinion that it supports the disposition rendered below.

{5} Instead, Plaintiff asserts that her case should be deemed analogous to the situation presented in the case of *In re Garcia's Estate*, 1940-NMSC-081. [MIO 11-12, 16-17] However, in that case the child lived with the family from the age of seven until

she married, the family treated her as if she were their own child, the family provided for her education, she took the family's last name, they referred to her as their adopted daughter, the putative father orally agreed to adopt the child, and by her conduct the putative mother could also be said to have agreed. In this case, although the decedent provided for Plaintiff's education and Plaintiff lived with the decedent for a period of time while in high school, and although Plaintiff presented evidence of a close relationship, the similarities end there. Critically, there was no oral agreement to adopt. Accordingly, we remain unpersuaded that *Garcia* suggests a different result.

{6} To the extent that Plaintiff also continues to advance a theory of equitable adoption by estoppel, [MIO 10-17] we similarly conclude that the district court properly rejected her claim. "[T]he only finding essential to raise an estoppel is that the foster family's acts or omissions induced the child to believe that he [or she] was the foster parent's biological or formally adopted child." *Otero*, 1998-NMCA-137, ¶ 19 (internal quotation marks and citation omitted); see also *Chatterjee v. King*, 2012-NMSC-019, ¶ 65, 280 P.3d 283 (Vigil, J., specially concurring) (recognizing that the doctrine of equitable adoption is construed narrowly, and that "[t]he least needed for an equitable adoption is that acts or omissions induced the child to believe that the child was the foster parent's biological or formally adopted child" (alteration, internal quotation marks, and citation omitted)). Plaintiff does not assert that she held such a belief. [MIO 8] As a result, her claim is not viable.

{7} In her memorandum in opposition Plaintiff contends that both the district court and this Court have engaged in impermissible weighing of the evidence. [MIO 12, 17] However, we have merely considered the nature of the evidence presented, and concluded that it is insufficient to meet the threshold requirements of the narrow doctrine, in light of the existing jurisprudence. Moreover, the suggested disputes of material fact are irrelevant, [MIO 9] insofar as Plaintiff has been unable to provide evidentiary support for the essentials of her claim. We therefore conclude that the district court properly rejected Plaintiff's claim of equitable adoption by implied contract and/or estoppel.

{8} In closing, we acknowledge Plaintiff's suggestion that the strict requirements of the equitable adoption doctrine should be relaxed. [MIO 17-21] However, we previously observed, [CN 2, 6] the lion's share of the relevant authority was decided by our Supreme Court, and we remain bound by it. See generally *State ex rel. Martinez v. City of Las Vegas*, 2004-NMSC-009, ¶ 21, 135 N.M. 375, 89 P.3d 47 (stating that Supreme Court "decisions remain binding precedent until [the Supreme Court] see[s] fit to reconsider them" (internal quotation marks and citation omitted)); *Behrens v. Gateway Court, LLC*, 2013-NMCA-097, ¶ 16, 311 P.3d 822 (stating that the Court of Appeals is bound by Supreme Court precedent). Although Plaintiff continues to urge us to certify to the Supreme Court, it remains in our sense that review may be more efficiently and effectively sought by Plaintiff. See generally Rule 12-502 NMRA (stating that a party may seek review of final decisions of the Court of Appeals by petitioning the Supreme Court for a writ of certiorari).

{9} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{10} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

HENRY M. BOHNHOFF, Judge

EMIL J. KIEHNE, Judge