

CASTRO-MONTANEZ V. MILK-N-ATURAL

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**JOSE CASTRO-MONTANEZ,
Worker-Respondent,
v.
MILK-N-ATURAL, LLC,
Employer-Petitioner,
and
NEW MEXICO UNINSURED EMPLOYERS' FUND,
Statutory Third Party-Respondent.**

NO. S-1-SC-35609

SUPREME COURT OF NEW MEXICO

August 4, 2016

ORIGINAL PROCEEDING ON CERTIORARI

COUNSEL

Hinkle Shanor LLP, Chelsea Balzano Green, Alyssa Dawn Fugitt, Roswell, NM, for
Petitioner

New Mexico Center on Law and Poverty, Timothy M. Davis, Albuquerque, NM, for
Worker-Respondent

JUDGES

EDWARD L. CHÁVEZ, Justice. CHARLES W. DANIELS, Chief Justice, PETRA
JIMENEZ MAES, Justice, BARBARA J. Vigil, Justice, JUDITH K. NAKAMURA, Justice

AUTHOR: EDWARD L. CHÁVEZ

DISPOSITIONAL ORDER OF REVERSAL

CHÁVEZ, Justice.

{1} This Court granted Milk-N-Atural, LLC's (Milk-N-Atural) petition for writ of certiorari and held it in abeyance pending the outcome of *Rodriguez v. Brand West Dairy (Rodriguez I)*, 2016-NMSC-____, ____ P.3d ____ (Nos. S-1-SC-35426 & S-1-SC-35438, June 30, 2016). See *Castro-Montanez v. Milk-N-Atural, LLC*, No. S-1-SC-35609, order 1-2 (N.M. Sup. Ct. Jan. 19, 2016). On June 30, 2016, we filed an opinion in *Rodriguez II* holding that the farm and ranch laborer exclusion contained in NMSA 1978, Section 52-1-6(A) (1990) of the New Mexico Workers' Compensation Act is unconstitutional and directed that our holding be prospectively applied to any injury that manifests after the date that our mandate issued in *Rodriguez II* pursuant to Rule 12-402(B) NMRA. *Rodriguez II*, 2016-NMSC-____, ¶¶ 2, 51. Because the injury alleged by Castro-Montanez manifested itself before the date we issued the mandate in *Rodriguez II*, our holding in *Rodriguez II* does not inure to his benefit.

{2} All of the Justices having concurred that there is no reasonable likelihood that a written decision or opinion would affect the disposition of this appeal or advance the law in New Mexico, we enter this dispositional order of reversal of the Court of Appeals and affirm the entry of summary judgment in favor of Milk-N-Atural by the worker's compensation judge (WCJ). *Castro-Montanez v. Milk-N-Atural, LLC*, No. 34,772, mem. op. ¶¶ 3-4 (N.M. Ct. App. Oct. 28, 2015) (non-precedential).

{3} Castro-Montanez alleges that on November 22, 2014, he injured his shoulder and knee after being thrown by a bull while employed as a milker and pusher at Milk-N-Atural's dairy. Castro-Montanez filed a complaint seeking workers' compensation on January 2, 2015. On April 17, 2015, Milk-N-Atural filed a motion for summary judgment claiming that Castro-Montanez's claim was barred by the farm and ranch laborer exclusion. On May 28, 2015, the WCJ granted Milk-N-Atural's motion for summary judgment. Castro-Montanez subsequently filed a notice of appeal with the Court of Appeals on June 18, 2015. Several days later, on June 22, 2015, the Court of Appeals issued its decision holding that the farm and ranch laborer exclusion was unconstitutional in *Rodriguez v. Brand West Dairy (Rodriguez I)*, 2015-NMCA-097, ¶ 7, 356 P.3d 546, cert. granted, 2015-NMCERT-008. The workers in *Rodriguez I* had filed workers' compensation complaints two years prior to Castro-Montanez's complaint, in February and March 2013 respectively.

{4} On October 28, 2015, the Court of Appeals reversed the WCJ's decision to grant Milk-N-Atural's motion for summary judgment based on the Court of Appeals's decision in *Rodriguez I*. *Castro-Montanez*, No. 34,772, mem. op. ¶ 2 (non-precedential). This Court issued a writ of certiorari to the Court of Appeals and ordered that *Castro-Montanez* be held in abeyance pending our resolution of *Rodriguez II*.

{5} This Court's opinion in *Rodriguez II* will apply prospectively to all injuries suffered by farm and ranch laborers that manifest *after* the date that the mandate in *Rodriguez II* issues, with the exception of the workers' claims in *Rodriguez II*. 2016-NMSC-____, ¶ 51. Therefore, the farm and ranch laborer exclusion applies to the claim filed by Castro-Montanez, and the WCJ was correct to grant summary judgment to Milk-N-Atural.

IT IS THEREFORE ADJUDGED THAT:

{6} The Court of Appeals is reversed and the summary judgment entered by the WCJ in favor of Milk-N-Atural is affirmed.

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

EDWARD L. CHÁVEZ, Justice

CHARLES W. DANIELS, Chief Justice

PETRA JIMENEZ MAES, Justice

BARBARA J. Vigil, Justice

JUDITH K. NAKAMURA, Justice