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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

NICK HERVOL,

Plaintiff-Appellant,

v. **NO. 31,309**

RAYMOND COBOS, individually and as Sheriff of Luna County, New Mexico, JOHN SUTHERLAND, County Manager of Luna County, New Mexico, and the BOARD OF COMMISSIONERS of Luna County, New Mexico,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY
J. C. Robinson, District Judge

Santiago E. Juarez
Albuquerque, NM

for Appellant

Law Office of Jonlyn M. Martinez, LLC
Jonlyn Martinez
Albuquerque, NM

for Appellees

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Appellant Nick Hervol appeals the district court's order denying his motion for reconsideration and motion to amend the complaint. This Court filed a notice of proposed summary disposition proposing to affirm the district court. Appellant filed a response in opposition to proposed summary affirmance, and Appellees filed a motion in support, which we have given due consideration. Unpersuaded by Appellant's memorandum, we affirm the district court.

We clarify that based on the timing of the district court's grant of Appellees' motion to dismiss on January 18, 2011 [RP 47], and Appellant's filing of his motion for reconsideration and motion to amend the complaint on January 27 and 28, 2011 [RP 50 & 58], respectively, the district court was only required to reconsider its order granting dismissal based on the original complaint. Upon denial of the motion to reconsider, the district court was not required to consider whether Appellant should be permitted to amend his complaint, as principles of finality and preclusion had terminated Appellant's right to amend. *See Moffat v. Branch,* 2002-NMCA-067, ¶¶ 22-25, 132 N.M. 412, 49 P.3d 673. To the extent that our notice of proposed summary disposition suggested that this Court must apply an abuse of discretion standard to denial of a motion to amend the complaint, where the district court has already granted a motion to dismiss and denies a motion to reconsider dismissal, we clarify that the abuse of discretion standard is not applicable.

With the above clarification, we affirm the district court for the reasons stated in our notice of proposed summary disposition.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

LINDA M. VANZI, Judge

J. MILES HANISEE, Judge