

FILED IN MY OFFICE  
8TH JUDICIAL DIST. COURT  
TAOS COUNTY, NM

BK

2018 OCT 25 PM 3:30

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**2 **KERRY KRUSKAL,**BERNABE P. STRUCK  
CLERK OF THE  
DISTRICT COURT

3 Plaintiff-Appellant,

4 v.

No. A-1-CA-36718

5 **PETER SPRUNT,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**8 **Sarah C. Backus, District Judge**9 **Kerry Kruskal**10 **Arroyo Seco, NM**11 **Pro Se Appellant**12 **Walcott, Henry & Winston, P.C.**13 **Charles V. Henry**14 **Santa Fe, NM**15 **for Appellee**16 **MEMORANDUM OPINION**17 **HANISEE, Judge.**

18 (1) Plaintiff is appealing from a district court order granting Defendant's motion  
19 to dismiss. We issued a calendar notice proposing to affirm. Plaintiff has responded  
20 with a memorandum in opposition. Not persuaded, we affirm the district court.

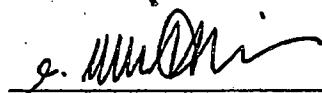
1 {2} Because the court considered matters outside the pleadings, the motion to  
2 dismiss is considered one for summary judgment. *Knippel v. N. Commc'ns, Inc.*,  
3 1982-NMCA-009, ¶2, 97 N.M. 401, 640 P.2d 507, *overruled on other grounds by*  
4 *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't.*, 2013-NMSC-013, ¶37 n.2  
5 P.3d \_\_\_\_\_. "Summary judgment is appropriate where there are no genuine issues  
6 of material fact and the movant is entitled to judgment as a matter of law." *Bank of*  
7 *N.Y. Mellon v. Lopes*, 2014-NMCA-097, ¶6, 336 P.3d 443 (internal quotation marks  
8 and citation omitted). "We review issues of law de novo." *Id.*

9 {3} The district court determined that Plaintiff's lawsuit is barred by res judicata.  
10 [RP 96-98] In the context of claim preclusion, res judicata "precludes a subsequent  
11 action involving the same claim or cause of action." *Brannock v. Lotus Fund*, 2016-  
12 NMCA-030, ¶21, 367 P.3d 888 (internal quotation marks and citation omitted). The  
13 elements of a claim preclusion-based res judicata claim are: "(1) identity of parties  
14 or privies, (2) identity of capacity or character of persons for or against whom the  
15 claim is made, (3) the same cause of action, and (4) the same subject matter." *Id.*  
16 (internal quotation marks and citation omitted) As set forth in detail by the district  
17 court's order [RP 96-98], all elements of res judicata are satisfied in this case.  
18 Contrary to Plaintiff's assertion, issues relating to the "stored water right" were  
19 previously litigated. [RP 96] We also conclude that the district court's chronology of

1 Plaintiff's repeated frivolous filings supports sanctions, including limits on further  
2 litigation. *See In re Jade G.*, 2001-NMCA-058, ¶¶ 27-29, 130 N.M. 687, 30 P.3d 376  
3 (noting that "a court's inherent authority extends to all conduct before that court and  
4 encompasses orders intended and reasonably designed to regulate the court's docket,  
5 promote judicial efficiency, and deter frivolous filings.")

6 {4} For the reasons set forth above, we affirm.

7 {5} **IT IS SO ORDERED.**



8  
9  
J. MILES HANISEE, Judge

10 WE CONCUR:



11  
12 LINDA M. YANZI, Chief Judge



13  
14 HENRY M. BOHNHOFF, Judge

Exhibit G

6-1

Supreme Court of New Mexico

9/25/2018 9:15 AM

## Office of the Clerk

Joey D. Moya

4 NO. S-1-SC-37147

6 KERRY KRUSKAL,

8 Plaintiff-Petitioner,

10 | *y*

12 PETER SPRUNT.

14 Defendant-Respondent.

## ORDER

16 WHEREAS, this matter came on for consideration by the Court upon motion for  
17 reconsideration, and the Court having considered the foregoing and being sufficiently  
18 advised; Chief Justice Judith K. Nakamura, Justice Petra Jimenez Maes, Justice Charles  
19 W. Daniels, Justice Barbara J. Vigil, and Justice Gary L. Clingman concurring;

20 NOW, THEREFORE, IT IS ORDERED that the motion for reconsideration is  
21 hereby DENIED.

22 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 25th day of September, 2018.

Joey D. Moya, Clerk of Court  
Supreme Court of New Mexico

By Madeline Bracia  
Chief Deputy Clerk

I CERTIFY AND ATTEST-

A true copy was served on all parties or their counsel of record on date filed.

Madeline Garcia

Clerk of the Supreme Court  
of the State of New Mexico

**Additional material  
from this filing is  
available in the  
Clerk's Office.**