

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

3 Filing Date: October 17, 2016

4 **NO. 34,180**

5 **MELISSA WILLIAMS,**

6 Plaintiff-Appellant,

7 v.

8 **TYLER MANN and FOUR CORNERS**

9 **FAMILY DENTAL, LLC,**

10 Defendants-Appellees.

11 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

12 **Sandra A. Price, District Judge**

13 Law Office of Monnica L. Garcia, LLC

14 Monnica L. Garcia

15 Albuquerque, NM

16 for Appellant

17 Law Offices of Michael E. Mozes

18 Michael E. Mozes

19 Albuquerque, NM

20 for Appellees

1 **OPINION**

2 **HANISEE, Judge.**

3 {1} Plaintiff appeals the district court’s dismissal on statute of limitations grounds
4 of her claim for quid pro quo discrimination on the basis of sex under the New
5 Mexico Human Rights Act (NMHRA), NMSA 1978, §§ 28-1-1 to -14 (1969, as
6 amended through 2007), and its subsequent judgment in Defendants’ favor after a
7 bench trial on her claim for unpaid overtime wages under the Minimum Wage Act
8 (MWA), NMSA 1978, §§ 50-4-19 to -30 (1955, as amended through 2013). We
9 reverse the district court’s dismissal of Plaintiff’s NMHRA claim against Defendant
10 Four Corners Family Dental, LLC, and affirm the district court’s judgment in all other
11 respects.

12 **BACKGROUND**

13 {2} Plaintiff’s statute of limitations argument turns on the convoluted procedural
14 history of this case that includes a related complaint Plaintiff filed in federal district
15 court. We have simplified our recitation of relevant procedural facts where possible
16 and separate our recitation of background facts into two sections: (1) facts relevant
17 to the district court’s dismissal of Plaintiff’s NMHRA claim on statute of limitations
18 grounds; and (2) facts relevant to the district court’s ruling in Defendants’ favor after
19 a bench trial on Plaintiff’s MWA claims. We provide additional facts and procedural

1 history where pertinent within our discussion of Plaintiff’s issues on appeal.

2 **Facts Relevant to the District Court’s Dismissal of Plaintiff’s NMHRA Claim on**
3 **Statute of Limitations Grounds**

4 {3} On May 27, 2011, Plaintiff filed a pro se complaint against Defendant Tyler
5 Mann in state district court. Plaintiff’s complaint sought damages for “destruction of
6 personal property, . . . unlawful eviction, . . . reimbursement for start-up capital funds
7 for business ventures[,] and punitive damages for severe emotional distress.” On June
8 28, 2011, Plaintiff (this time represented by counsel) filed a complaint in federal
9 district court against Defendant Four Corners Family Dental, LLC. The federal
10 complaint alleged that Plaintiff was hired by Tyler Mann (Defendant here, but not in
11 the federal case) to “open, manage[,] and operate his dental practices in Pagosa
12 Springs, Colorado and Farmington, New Mexico.” The federal complaint further
13 alleged that Plaintiff was not paid wages she was due under the terms of her
14 employment, was “consistently required to work in excess of forty (40) hours a
15 week,” and that her employment was terminated after she had refused Tyler Mann’s
16 sexual advances. The federal complaint sought damages for unlawful discriminatory
17 and retaliatory practices in violation of the NMHRA, quid pro quo sexual harassment
18 in violation of Title VII of the federal Civil Rights Act, 42 U.S.C. §§ 2000e-1 to -17
19 (2012), and unpaid regular and overtime wages under the Fair Labor Standards Act
20 of 1938, 29 U.S.C. §§ 201-219 (2012) and the MWA.

1 {4} On November 8, 2011, Plaintiff filed an opposed motion to dismiss her federal
2 complaint without prejudice. *See* Fed. R. Civ. P. 41(a). Plaintiff additionally filed an
3 unopposed motion to stay discovery pending the federal district court's resolution of
4 her motion to dismiss on December 19, 2011. No longer proceeding pro se in state
5 district court, on December 28, 2011, Plaintiff filed an opposed motion to amend her
6 pro se state complaint in order to incorporate the factual averments in her federal
7 complaint, and to bring claims against both Defendants for unlawful discriminatory
8 practices under the NMHRA and for unpaid regular and overtime wages under the
9 MWA. Before Defendants responded to Plaintiff's motion to amend, on January 27,
10 2012, the state district court granted Plaintiff leave to amend her complaint. As
11 amended, Plaintiff's state law action included the claims she previously asserted
12 federally and added Four Corners Family Dental, LLC, as a Defendant.

13 {5} The federal district court denied Plaintiff's motion to stay, and discovery and
14 discovery-related motions practice in federal court ensued without a ruling on
15 Plaintiff's request that her federal complaint be dismissed. Defendants filed a motion
16 for summary judgment on Plaintiff's federal and supplemental state law claims. But
17 on April 20, 2012, before Plaintiff filed a response to Defendants' motion for
18 summary judgment, the federal district court entered an order granting Plaintiff's
19 opposed motion to dismiss and dismissed all of the claims in Plaintiff's federal action

1 without prejudice.

2 {6} Back in state district court, Defendants filed a pretrial motion in limine to
3 exclude all evidence relevant to Plaintiff’s NMHRA claims at trial, arguing that those
4 claims were untimely because her motion to amend her state complaint was filed after
5 the applicable statute of limitations had expired. The district court treated
6 Defendants’ motion in limine as a motion to dismiss and granted it, dismissing
7 Plaintiff’s unlawful discriminatory practice claims with prejudice.

8 **Facts Relevant to Plaintiff’s MWA Claims**

9 {7} The district court held a bench trial on the two remaining claims in Plaintiff’s
10 amended complaint: (1) unpaid wages under Section 50-4-22(A), and (2) unpaid
11 overtime under Section 50-4-22(D). *See* § 50-4-26(C), (D) (providing that “an
12 employer who violates any provision of Section 50-4-22 . . . shall be liable to the
13 employees affected in the amount of their unpaid or underpaid minimum wages plus
14 interest, and in an additional amount equal to twice the unpaid or underpaid wages[,]”
15 and providing that “[a]n action to recover such liability may be maintained in any
16 court of competent jurisdiction”). During trial, Plaintiff testified that Defendant Mann
17 agreed to pay Plaintiff \$25 per hour when her employment began but never discussed
18 what Plaintiff’s job responsibilities would entail. Instead, Plaintiff testified that she
19 performed whatever duties Defendant Mann assigned to her. Those included

1 purchasing dental equipment at Defendant Mann’s direction, arranging for the
2 placement of paid advertisements in the telephone book, setting up LLC and phone
3 service at Defendant Mann’s Pagosa Springs office, and even calling Defendant
4 Mann’s alma mater to obtain a copy of Defendant Mann’s diploma.

5 {8} As the dental practice grew, Plaintiff’s job responsibilities shifted. Plaintiff
6 worked as a receptionist when other employees went out to lunch, processed
7 insurance claims at Defendants’ Pagosa Springs office, and also addressed problems
8 with insurance claims made through Defendants’ Farmington office. Plaintiff
9 executed contracts with various insurance companies at Defendant Mann’s direction
10 and researched dental office management software and assisted Defendant Mann
11 during negotiations over software license agreements.

12 {9} On cross examination, Plaintiff admitted that she understood herself to be an
13 “independent contractor” when she first began her employment relationship with
14 Defendants; that she performed “administrative” duties around the office; that she
15 held herself out on résumés and business cards as an “office manager” who had
16 “open[ed], operate[d], and manage[d]” Defendants’ dental practices; that she was paid
17 a flat salary of \$600 per week; and that her daily responsibilities involved managing
18 patient accounts, developing business plans, handling payroll for office employees,
19 acting as a signatory on Defendants’ financial accounts, arranging for the payment of

1 bills and invoices to suppliers, and maintaining employee personnel files.

2 {10} After taking evidence and hearing arguments from the parties, the district court
3 found that Defendants were liable to Plaintiff for \$625 in unpaid wages. The district
4 court doubled Defendants' liability to Plaintiff for these wages, added interest under
5 Section 50-4-26(C), and ordered that Defendants pay Plaintiff's attorney fees under
6 Section 50-4-26(E). The district court granted Defendants' motion for judgment as
7 a matter of law under Rule 1-050 NMRA on Plaintiff's claim for unpaid overtime
8 under Section 50-4-22(D), reasoning that Plaintiff was an administrative employee
9 and therefore exempt from overtime pay requirements. *See* § 50-4-21(C)(2) ("As used
10 in the [MWA,] . . . 'employee' includes an individual employed by an employer, but
11 shall not include . . . an individual employed in a bona fide executive, administrative
12 or professional capacity.").

13 **DISCUSSION**

14 {11} Plaintiff appeals the district court's dismissal of her unlawful discriminatory
15 practice claims on statute of limitations grounds as well as the district court's decision
16 (sitting as finder of fact at a bench trial) resolving Plaintiff's MWA claim against
17 Defendants for unpaid overtime wages against her. We address each issue in turn.

1 **The Statute of Limitations on Plaintiff's NMHRA Claim Against Defendant Four**
2 **Corners Family Dental, LLC, but Not Against Defendant Mann, Was Tolled**
3 **Throughout the Pendency of Her Federal Action**

4 {12} Before a lawsuit seeking damages for an unlawful discriminatory practice may
5 be filed, the putative plaintiff must exhaust a detailed grievance and administrative
6 reconciliation process set out in the NMHRA and administered by the Human Rights
7 Commission. *See* § 28-1-10(A), (B); *see also* *Luboyeski v. Hill*, 1994-NMSC-032, ¶ 7,
8 117 N.M. 380, 872 P.2d 353. A suit alleging an unlawful discriminatory practice
9 under the NMHRA must be commenced within 90 days of the termination of this
10 process. Section 28-1-13(A). In this case, Plaintiff filed a pro se complaint in state
11 district court against Defendant Mann, less than 90 days after she received a no
12 probable cause notice from the Commission, but her complaint did not include any
13 claims under the NMHRA. Also within 90 days, she filed a federal district court
14 complaint in which she pleaded a NMHRA claim and a federal Title VII claim against
15 Defendant Four Corners Family Dental, LLC.

16 {13} Title VII of the United States Code also prohibits discrimination on the basis
17 of sex, *see* 42 U.S.C. § 2000e-2(a)(2), and gives federal district courts jurisdiction
18 over such causes of action. 42 U.S.C. § 2000e-5(f)(3). Often enough (as in this case)
19 a plaintiff will bundle his or her claims under federal law with state NMHRA claims,
20 and a federal district court may exercise supplemental jurisdiction over both. *See* 28

1 U.S.C. § 1367(a) (2012) (providing that “in any civil action of which the district
2 courts have original jurisdiction, the district courts shall have supplemental
3 jurisdiction over all other claims that are so related to claims in the action within such
4 original jurisdiction that they form part of the same case or controversy under Article
5 III of the United States Constitution”). So what happens if—sometimes by a
6 plaintiff’s own doing, as happened here—the invocation of federal jurisdiction is
7 successfully withdrawn, the case ends up solely in state district court, and the
8 defendants raise a statute of limitations argument? Which claims are timely, and
9 against whom? To paraphrase the Bard, the course of litigation in such cases “never
10 [does] run smooth[.]” William Shakespeare, *A Midsummer Night’s Dream*, act 1, sc.
11 1.

12 {14} In this instance, it turns out answers are surprisingly straightforward. The
13 federal district court had jurisdiction over Plaintiff’s NMHRA claim under 28 U.S.C.
14 § 1367(a). And under 28 U.S.C. § 1367(d), the statute of limitations for any
15 applicable state law claim over which a federal district court exerts supplemental
16 jurisdiction under 28 U.S.C. § 1367(a) is “tolled while the claim is pending and for
17 a period of 30 days after it is dismissed unless [s]tate law provides for a longer tolling

1 period.”¹ Because Plaintiff brought her timely NMHRA claim against Defendant Four
2 Corners Family Dental, LLC in federal court, the statute of limitations on that claim
3 was tolled under 28 U.S.C. § 1367(d) through the pendency of her federal action and
4 for 30 days after the federal district court dismissed it pursuant to Rule 41 of the
5 Federal Rules of Civil Procedure. Because the district court granted Plaintiff’s motion
6 to amend her complaint to bring a NMHRA claim against Four Corners Family
7 Dental, LLC prior to the dismissal of her federal action, her NMHRA claim against
8 this Defendant was timely. Accordingly, the district court should not have dismissed
9 it.

10 {15} Defendants argue that 28 U.S.C. § 1367(d) operates only to toll supplemental
11 state law claims that are filed in state district court after federal law claims are
12 dismissed, and does not toll the statute of limitations for any claims filed in state
13 district court prior to their dismissal by the federal district court. That, however,
14 would be to say that 28 U.S.C. § 1367(a) gives federal district courts *exclusive*
15 jurisdiction over related state law claims, a contention that is unsupported by the text
16 of the statute itself, or New Mexico courts’ traditional understanding of tolling
17 statutes, which “operate[] to *suspend* the running of an otherwise applicable statute

18 ¹Because the parties neglected to cite 28 U.S.C. 1367(d) in their briefing, this
19 Court ordered supplemental briefing as to the provision’s applicability here.

1 of limitations when an action is timely commenced and later dismissed[.]” *Gathman-*
2 *Matotan Architects & Planners, Inc. v. State Dep’t of Fin. & Admin.*, 1990-NMSC-
3 013, ¶ 8, 109 N.M. 492, 787 P.2d 411 (emphasis added). If Plaintiff’s federal
4 complaint tolled the NMHRA’s statute of limitations throughout the pendency of her
5 federal case until the date of its dismissal, it stands to reason that her amended
6 complaint, filed before the federal district court dismissed that claim, was timely
7 filed.

8 {16} Finally, given that we raised the possibility that 28 U.S.C. § 1367(d) may
9 control the outcome of this issue ourselves, Defendant’s strongest argument against
10 reversal of the district court’s order is that Plaintiff’s failure to expressly cite 28
11 U.S.C. § 1367(d) at all before the district court meant that she failed to preserve any
12 argument for reversal based on that statute. But Rule 12-216(A) NMRA simply
13 requires that a party “invoke[] a ruling of the trial court on the same grounds argued
14 in the appellate court.” *Woolwine v. Furr’s, Inc.*, 1987-NMCA-133, ¶ 20, 106 N.M.
15 492, 745 P.2d 717. The purpose of the preservation rule is to enable “the trial court
16 . . . an opportunity to correct the mistake” and to give the opposing party “a fair
17 opportunity to meet the objection.” *Gracia v. Bittner*, 1995-NMCA-064, ¶ 18, 120
18 N.M. 191, 900 P.2d 351. Given the circumstances of this case, we think Plaintiff’s
19 argument that her NMHRA claim was tolled by the federal court’s assertion of

1 jurisdiction over it under 28 U.S.C. § 1367(a) was sufficient to preserve the issue and
2 to alert the district court to the question we have answered above. Also, Defendants
3 had an opportunity on appeal to address the more specific subsection of the same
4 statute Plaintiff cited when we ordered the parties to submit supplemental briefs.
5 Plaintiff's failure to specifically cite 28 U.S.C. § 1367(d) in her briefing below and
6 in her brief in chief on appeal is certainly unfortunate, but it does not mandate
7 deploying our rules governing preservation in an "unduly technical manner to avoid
8 reaching issues that would otherwise result in reversal." *Gracia*, 1995-NMCA-064,
9 ¶ 18. Indeed, Defendants can be said to share much of the blame for the district
10 court's apparent ignorance of 28 U.S.C. § 1367(d), since their statute of limitations
11 argument was first raised on the eve of trial in a motion in limine—not even a motion
12 for summary judgment or to dismiss—that makes no mention of 28 U.S.C. § 1367(d),
13 which plainly was enacted to apply to circumstances exactly such as this. In other
14 words, Defendants, like Plaintiff, had an obligation to alert the district court to its
15 existence. *See* Rule 16-303(A)(2) NMRA ("A lawyer shall . . . disclose to the tribunal
16 legal authority in the controlling jurisdiction known to the lawyer to be directly
17 adverse to the position of the client and not disclosed by opposing counsel[.]"). Here,
18 Plaintiff pointed to the body of federal law governing federal district courts' ability
19 to assert jurisdiction over claims brought under state law; under these circumstances,

1 we decline to hold that Plaintiff forfeited any argument for reversal based on a
2 specific provision contained within the same applicable statute. Accordingly, we
3 reverse the district court's dismissal of Plaintiff's NMHRA claim against Defendant
4 Four Corners Family Dental, LLC, the only defendant against whom the NMHRA
5 claim was pleaded in federal court.

6 {17} Turning to Plaintiff's NMHRA claim against Defendant Mann, we must reach
7 a contrary conclusion. While 28 U.S.C. § 1367(d) warrants reversal of the district
8 court's dismissal of Plaintiff's NMHRA claim against Defendant Four Corners
9 Family Dental, LLC, it is also sufficient to affirm the district court's dismissal of
10 Plaintiff's NMHRA claim against Defendant Mann. Because Defendant Mann was
11 not named as a defendant in Plaintiff's federal action,² the federal district court did
12 not exert supplemental jurisdiction over that claim under 28 U.S.C. § 1367(a). It
13 follows that the statute of limitations on that claim as to Defendant Mann was not
14 tolled under 28 U.S.C. § 1367(d). Having brought no NMHRA claim against

15 ²Our review of Plaintiff's federal complaint and the docket sheet of the short-
16 lived federal case indicate that Plaintiff sought only to hold Defendant Four Corners
17 Family Dental, LLC accountable for Defendant Mann's asserted NMHRA violations
18 under the doctrine of respondeat superior, despite the availability of individual
19 liability under the NMHRA had Plaintiff chosen to proceed directly against
20 Defendant Mann. *See Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 2007-
21 NMCA-122, ¶ 11, 142 N.M. 583, 168 P.3d 155 (stating that the doctrine of
22 respondeat superior is a theory of vicarious liability).

1 Defendant Mann in state or federal district court, Plaintiff’s claim against Defendant
2 Mann was not timely under the NMHRA, and the district court correctly dismissed
3 it.

4 {18} Plaintiff makes several arguments that her NMHRA claim against Defendant
5 Mann was timely despite her failure to name him as a defendant in her federal court
6 complaint. None of these arguments persuades us. First, noting that Rule 1-008(A)(2)
7 NMRA only requires “a short and plain statement of the claim showing that the
8 pleader is entitled to relief” and the liberal interpretive treatment we give pro se
9 pleadings, Plaintiff argues that her pro se complaint against Defendant Mann was
10 itself sufficient to state a claim for an unlawful discriminatory practice under Section
11 28-1-7(A), thereby rendering her NMHRA claim against Defendant Mann timely. But
12 “[pro se] pleadings, however inar[t]fully expressed, must tell a story from which,
13 looking to substance rather than form, the essential elements prerequisite to the
14 granting of the relief sought can be found or reasonably inferred.” *Birdo v. Rodriguez*,
15 1972-NMSC-062, ¶ 6, 84 N.M. 207, 501 P.2d 195. Plaintiff’s complaint references
16 “damages [for] destruction of personal property, . . . monies due for unlawful
17 eviction[,] . . . reimbursement for start-up capital funds for business ventures[,]
18 punitive damages for severe emotional distress[,]” and breach of contract. Plaintiff
19 argues that her conclusory request for punitive damages “for severe emotional

1 distress” in the complaint was sufficient to assert the necessary claim. But while her
2 request for punitive damages bespeaks a unique form of relief designed to punish a
3 tortfeasor, it does not by itself indicate *why* Defendant Mann should be punished. In
4 sum, no matter how charitably we read Plaintiff’s initial pro se complaint, its factual
5 allegations simply cannot support an inference that Defendant Mann had engaged in
6 an unlawful discriminatory practice: “refus[ing] to hire, to discharge, to promote or
7 demote or to discriminate in matters of compensation, terms, conditions or privileges
8 of employment against any person otherwise qualified because of race, age, religion,
9 color, national origin, ancestry, sex, physical or mental handicap or serious medical
10 condition[.]” Section 28-1-7(A).³

11 {19} Plaintiff next points out that the complaint references a letter sent by her
12 attorney to Defendants’ attorney and asserts that this letter contained an explanation
13 of Plaintiff’s claim for an unlawful discriminatory practice. But the letter was not
14 attached to the complaint, and it is not part of the record on appeal. “Upon a doubtful

15 ³Plaintiff also argues that Defendants’ reference to her prior accusation of
16 discrimination in their pro se answer to her pro se complaint means that Defendants
17 were on notice of her claim for a discriminatory practice. But Plaintiff cites no
18 authority in support of her implicit argument that an answer to a complaint can toll
19 the statute of limitations on a claim that is not asserted in the complaint. *See In re*
20 *Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (“Issues raised
21 in appellate briefs which are unsupported by cited authority will not be reviewed by
22 us on appeal.”).

1 or deficient record, every presumption is indulged in favor of the correctness and
2 regularity of the trial court’s decision, and the appellate court will indulge in
3 reasonable presumptions in support of the order entered.” *Reeves v. Wimberly*, 1988-
4 NMCA-038, ¶ 21, 107 N.M. 231, 755 P.2d 75. Accordingly, even if we agreed with
5 Plaintiff’s argument that a claim for relief set out in a letter to Defendant’s attorney
6 that is referenced but not attached to a pro se complaint is sufficient to state a claim
7 for relief under Rule 1-008, we must presume that the letter did not satisfy this rule,
8 given Plaintiff’s failure to include the letter in the record on appeal.

9 {20} Plaintiff additionally argues that her amended complaint relates back to her pro
10 se complaint under Rule 1-015(C) NMRA and is therefore timely. *See id.* (“Whenever
11 the claim or defense asserted in the amended pleading arose out of the conduct,
12 transaction or occurrence set forth or attempted to be set forth in the original
13 pleading, the amendment relates back to the date of the original pleading.”). But we
14 have already concluded that Plaintiff’s pro se complaint sets forth no allegations of
15 fact that give rise to a claim for an unlawful discriminatory practice under Section 28-
16 1-7(A). Thus, the amended complaint does not relate back under Rule 1-015(C). *See*
17 *DeVargas v. State ex rel. N.M. Dep’t of Corr.*, 1981-NMCA-109, ¶ 4, 97 N.M. 447,
18 640 P.2d 1327; *Raven v. Marsh*, 1980-NMCA-017, ¶ 7, 94 N.M. 116, 607 P.2d 654
19 (“The liberality with which Rule [1-015] is to be viewed applies mainly to the manner

1 in which the court’s discretion shall be exercised in permitting amended pleadings.
2 It does not permit us to so liberalize limitation statutes when new facts, conduct and
3 injuries are pleaded, that the limitation statutes lose their meaning.” (citation
4 omitted)).

5 {21} Plaintiff finally argues that under the procedural circumstances in this case,
6 Section 28-1-13(A)’s 90-day statute of limitations should be equitably tolled for her
7 untimely claim against Defendant Mann for an unlawful discriminatory practice. The
8 general rule for determining whether a statute of limitations should be equitably tolled
9 is whether “a litigant was prevented from filing suit because of an extraordinary event
10 beyond his or her control.” *Slusser v. Vantage Builders, Inc.*, 2013-NMCA-073, ¶ 13,
11 306 P.3d 524 (internal quotation marks and citation omitted). Here, Plaintiff contends
12 that “Defendants litigated this case for three years, with absolutely no indication until
13 a week before trial that they would proffer a [statute of limitations defense].”
14 Defendants’ conduct, Plaintiff urges, is an extraordinary event, beyond her control,
15 which prevented her from timely filing her NMHRA claim against Defendant Mann.
16 Initially, we note that Defendant’s conduct, even if we assume it was sufficiently
17 egregious, did not prevent Plaintiff from timely filing an NMHRA claim against
18 Defendant Four Corners Family Dental, LLC in federal district court. Even ignoring
19 this seemingly fatal fact, Plaintiff provides no chronologic explanation for how

1 Defendants’ conduct post-filing somehow prevented her from timely filing her
2 NMHRA claim against Defendant Mann. In short, this argument is simply too
3 confused, too riddled with internal contradictions, for us to give it any further
4 consideration. *See Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137
5 N.M. 339, 110 P.3d 1076 (observing that we do not review unclear or undeveloped
6 arguments that require us to guess at what parties’ arguments might be).

7 {22} Similarly, we reject Plaintiff’s argument that Defendant Mann should have
8 been estopped from raising a statute of limitations defense. As Plaintiff concedes, a
9 defendant’s actions must have some causal relationship with the plaintiff’s failure to
10 timely file a claim in order for equitable estoppel to apply. *Slusser*, 2013-NMCA-073,
11 ¶ 7. Here, Plaintiff argues that Defendant Mann’s failure to launch a statute of
12 limitations defense earlier means that the doctrine of equitable estoppel applies. But
13 again, Plaintiff does not explain why Defendants’ post-complaint acts have any
14 relationship with Plaintiff’s failure to timely file her NMHRA claim against
15 Defendant Mann prior to any of the complained-of conduct taking place.⁴

16 ⁴Plaintiff also raises a constitutional challenge to the notice she was provided
17 by the Human Rights Commission. But this argument was not raised in any way
18 before the district court and is thus forfeited as a basis for reversal on appeal. *See*
19 *Woolwine*, 1987-NMCA-133, ¶ 20 (“To preserve an issue for review on appeal, it
20 must appear that appellant fairly invoked a ruling of the trial court on the same
21 grounds argued in the appellate court.”).

1 {23} In sum, we hold that 28 U.S.C. § 1367(d) tolled the statute of limitations on
2 Plaintiff's NMHRA claim against Defendant Four Corners Family Dental, LLC. But
3 we affirm the district court's dismissal of her NMHRA claim against Defendant Mann
4 because he was not named in Plaintiff's federal complaint and because Plaintiff's
5 state complaint bore no direct or indirect relation whatsoever to the NMHRA claim
6 she now wishes to assert against Defendant Mann.

7 **The District Court's Finding That Plaintiff Was an Exempt Administrative**
8 **Employee Was Supported by Substantial Evidence; Accordingly, the Court Did**
9 **Not Err in Concluding That Defendants Were Not Liable to Plaintiff for**
10 **Overtime Pay Under the MWA**

11 {24} Plaintiff's next issue on appeal challenges the district court's decision in
12 Defendants' favor on her MWA claim after a bench trial. But before we can address
13 the merits of this issue, we must iron out a wrinkle in our standard of review. The
14 wrinkle comes from the confusing procedure the district court employed in deciding
15 Plaintiff's overtime wage claim. Before the bench trial, Defendants had filed a motion
16 for summary judgment on Plaintiff's MWA overtime claim, which the district court
17 denied. But at the close of Plaintiff's evidence at the bench trial, the district court
18 granted Defendant's motion for judgment as a matter of law under Rule 1-050. But
19 Rule 1-050 is by its own terms restricted to circumstances where a "party has been
20 fully heard on an issue during a *jury trial* and the court finds that a reasonable *jury*
21 would not have a legally sufficient evidentiary basis to find for the party on that

1 issue[.]” Rule 1-050(A)(1) (emphasis added). As the text of the rule makes clear, a
2 directed verdict is only to be used in a jury trial, and it employs a standard very
3 similar to the standard for evaluating motions for summary judgment under Rule 1-
4 056 NMRA. *Compare* Rule 1-050(A)(1), *with* Rule 1-056(C) (“[Summary judgment]
5 shall be rendered forthwith if the pleadings, depositions, answers to interrogatories
6 and admissions on file, together with the affidavits, if any, show that there is no
7 genuine issue as to any material fact and that the moving party is entitled to a
8 judgment as a matter of law.”). The district court did not explain or otherwise attempt
9 to reconcile its conclusion that there was sufficient evidence supporting Plaintiff’s
10 claims for unpaid and overtime wages to require a trial but insufficient evidence at
11 the end of that trial, and our own review of the record leaves us similarly unable to
12 reconcile the district court’s conflicting rulings.

13 {25} The district court’s erroneous use of Rule 1-050 to decide Plaintiff’s overtime
14 wage claim is problematic because we ordinarily review *de novo* the district court’s
15 decision to grant a motion for judgment as a matter of law under Rule 1-050,
16 resolving all conflicts in the evidence in the nonmoving party’s favor. *See McNeill*
17 *v. Rice Eng’g & Operating, Inc.*, 2003-NMCA-078, ¶ 31, 133 N.M. 804, 70 P.3d 794.
18 But when a district court holds a bench trial, we ordinarily give deference to the
19 district court’s findings of fact to the extent they are supported by substantial

1 evidence. *Skeen v. Boyles*, 2009-NMCA-080, ¶ 17, 146 N.M. 627, 213 P.3d 531.
2 Plaintiff suggests that we should simply reverse the district court and remand this
3 case for a new trial based on its use of an incorrect legal standard. Although we
4 believe that the confusing procedure employed by the district court in this case makes
5 our review more difficult, we disagree with Plaintiff that a new trial is required as a
6 result. Regardless of whether the district court’s decision on appeal is framed as a
7 grant of a motion for judgment as a matter of law under Rule 1-050 or as a conclusion
8 of law based on findings of fact, the standard of review we must apply is either de
9 novo (to the legal standard the district court employed, whether the standard is Rule
10 1-050 or the district court’s interpretation of the MWA) or a question of fact, which
11 we review deferentially for substantial basis in the record. In these circumstances, we
12 do not think the district court’s erroneous characterization of its ruling requires
13 automatic reversal.

14 {26} Our conclusion is supported by the interlocutory nature of the district court’s
15 decision to grant Defendants’ motion for judgment as a matter of law on Plaintiff’s
16 unpaid overtime wage claim. At the close of Defendants’ case, Plaintiff pointed out
17 to the district court that it had applied an incorrect legal standard given the conflicting
18 evidence presented at trial. The district court agreed that it had erroneously concluded
19 that Defendants were entitled to judgment as a matter of law on Plaintiff’s overtime

1 wage claim, but stated that its conclusion would be no different if it were couched as
2 a finding of fact and conclusion of law. Given the course of proceedings and the
3 district court’s corrective statement at the end of the bench trial, we conclude that
4 reversal on procedural grounds is not warranted.

5 {27} We now turn to the merits of Plaintiff’s overtime wage claim. We divide our
6 analysis of this issue into two parts: (1) the appropriate definition of “bona fide
7 executive, administrative or professional” under the MWA; and (2) whether the
8 district court’s conclusion that Plaintiff was a bona fide executive, administrative or
9 professional employee (and therefore exempt from the MWA’s overtime requirement)
10 was supported by substantial evidence.

11 **We Accept the Parties’ Stipulation That Department of Labor Regulations**
12 **Provide the Applicable Definition of Exempt Administrative Employees Under**
13 **the MWA**

14 {28} The MWA provides that “[a]n employee shall not be required to work more
15 than forty hours in any week of seven days, unless the employee is paid one and
16 one-half times the employee’s regular hourly rate of pay for all hours worked in
17 excess of forty hours.” Section 50-4-22(D). However, the MWA excludes from its
18 definition of “employee” any person who is employed in a “bona fide executive,
19 administrative or professional capacity.” *See* § 50-4-21(C)(2).

20 {29} The Fair Labor Standards Act (FLSA) contains a similar exemption. *See* 29

1 U.S.C. § 213(a)(1) (exempting “any employee employed in a bona fide executive,
2 administrative, or professional capacity” from maximum hour requirement). Unlike
3 the MWA, the FLSA includes a provision that delegates to the Federal Department
4 of Labor the authority to define the limits of these terms. *See id.*; *Perez v. Mortg.*
5 *Bankers Ass’n*, ___ U.S. ___, ___, 135 S. Ct. 1199, 1204 (2015). The parties agree
6 that we should adopt the Department of Labor’s regulatory definition of exempt
7 executive, administrative, or professional employees as providing the controlling
8 interpretation of Section 50-4-21(C)(2). The district court adopted the Department of
9 Labor regulations in its own discussion of whether or not Plaintiff was exempt from
10 the MWA’s overtime requirements.

11 {30} Ordinarily, we would not be bound by parties’ stipulations as to applicable law.
12 *See Tsiosdia v. Rainaldi*, 1976-NMSC-011, ¶ 10, 89 N.M. 70, 547 P.2d 553 (noting
13 that a court is not bound by stipulations as to the law). However, our Supreme Court
14 in *Valentine v. Bank of Albuquerque*, 1985-NMSC-033, ¶¶ 1, 4, 102 N.M. 489, 697
15 P.2d 489, has cited Department of Labor regulations in evaluating whether an
16 employee is qualified as an exempt administrative employee.⁵ Given the parties’

17 ⁵There are significant differences between the FLSA and the MWA with
18 respect to delegations of administrative rulemaking authority. Unlike the FLSA, *see*
19 29 U.S.C. § 213(a)(1), the MWA does not delegate authority to define the scope of
20 the administrative overtime exemption to any executive agency.

1 stipulation and *Valentine*'s use of Department of Labor Regulations to resolve a
2 dispute over whether an employee qualifies as an exempt administrative employee,
3 we accept the parties' stipulation that the Department of Labor's regulations defining
4 the MWA's exemption for administrative, executive, and professional employees
5 control our evaluation of Plaintiff's MWA claims.

6 {31} In this case, the district court found that Plaintiff was an "administrative"
7 employee, and Department of Labor regulations state that an employee is an exempt
8 administrative employee when three requirements are met. First, the employee must
9 be compensated "on a salary or fee basis at a rate of not less than \$455 per week . .
10 . exclusive of board, lodging or other facilities"; second, the employee's "primary
11 duty is the performance of office or non-manual work directly related to the
12 management or general business operations of the employer or the employer's
13 customers"; finally, the employee's "primary duty includes the exercise of discretion
14 and independent judgment with respect to matters of significance." 29 C.F.R. §
15 541.200(a)(1)-(3) (2016). With respect to the third requirement, the Department of
16 Labor has stated that "[i]n general, the exercise of discretion and independent
17 judgment involves the comparison and the evaluation of possible courses of conduct,
18 and acting or making a decision after the various possibilities have been considered."
19 29 C.F.R. § 541.202(a) (2016). Notwithstanding the requirement that an employee

1 exercise independent judgment and discretion with respect to possible courses of
2 conduct, “[a]n employee may qualify for the administrative exemption if the
3 employee’s primary duty is the performance of work directly related to the
4 management or general business operations of the employer’s customers.” 29 C.F.R.
5 § 541.201(c) (2016).

6 **Applying the Department of Labor’s Definition of Exempt Administrative**
7 **Employees, We Conclude That the District Court’s Determination That Plaintiff**
8 **Qualified as an Exempt Administrative Employee Is Supported by Substantial**
9 **Evidence**

10 {32} Since the district court found against Plaintiff on the merits of her overtime
11 wage claim, we recite the facts in a light most favorable to the district court’s
12 conclusion. *Tartaglia v. Hodges*, 2000-NMCA-080, ¶ 27, 129 N.M. 497, 10 P.3d 176.
13 We hold that the evidence at trial supported the district court’s ultimate conclusion
14 that Plaintiff was a bona fide executive, administrative, or professional employee
15 exempt from the MWA’s overtime requirement.

16 {33} The district court based its conclusion on the following findings of fact: (1)
17 Plaintiff’s \$600 weekly salary was higher than the minimum wage for non-exempt
18 employees under the MWA; (2) Plaintiff’s primary duties were related to management
19 or general office operations, and involved the exercise of discretion and independent
20 judgment with respect to matters of significance, including signing contracts with
21 vendors; (3) Plaintiff held herself out as an office manager; (4) Plaintiff dealt with

1 employee discipline and payroll issues; (5) Plaintiff managed patient information,
2 including bill collection, insurance collection and payments.

3 {34} Plaintiff contends that the evidence at trial “overwhelming[ly]” established that
4 Plaintiff “basically performed clerical work, answered phones, loaded equipment,
5 made phone calls, set appointments, and did routine data entry, [and] whatever tasks
6 [Defendants] instructed [her to perform].” Plaintiff also argues that Plaintiff’s job
7 responsibilities did not involve the exercise of discretion with respect to matters of
8 significance.

9 {35} In *Valentine*, the plaintiff’s duties “included . . . working with accounts
10 payable, preparing certain reports and the payroll, supervising personnel activities,
11 and performing various clerical functions relating to the duties above. [The plaintiff]
12 reported directly to her immediate supervisor, a bank officer holding the executive
13 position of vice president and cashier.” 1985-NMSC-033, ¶ 3. The trial court found,
14 and our Supreme Court agreed, that these responsibilities made the plaintiff an
15 exempt administrative employee under the MWA. *Id.* ¶¶ 8-11. Our Supreme Court
16 specifically noted that the plaintiff “assisted and reported directly to the vice
17 president and cashier, her duties directly related to management policies, and she was
18 expected to relieve the vice president and cashier of certain daily responsibilities.”
19 *Id.* ¶ 8.

1 {36} Here, Plaintiff argues that because Defendants dictated what tasks Plaintiff was
2 to perform, she did not exercise discretion or independent judgment as part of her job.
3 But *Valentine* made clear that it is not the ultimate result of an employee's job
4 responsibilities that dictates whether an employee is an exempt administrative
5 employee under Section 50-4-21(C)(2); what informs the inquiry is the amount of
6 independence and discretion the employee is afforded in the course of achieving a
7 result. *Valentine*, 1985-NMSC-033, ¶¶ 8-11. Although Defendants exercised final
8 authority over Plaintiff's decisions and assigned Plaintiff's job responsibilities such
9 as executing leases, managing payroll and personnel issues, and supervising the
10 procurement of office supplies and software systems, Plaintiff enjoyed broad
11 discretion and independence in regard to how she fulfilled the responsibilities she was
12 assigned. Like the plaintiff in *Valentine*, Plaintiff's job responsibilities can be broadly
13 characterized as providing assistance to Defendants in the operation of their business.
14 And again like the plaintiff in *Valentine*, the broad discretion and independence that
15 Plaintiff enjoyed with respect to how she provided this assistance furnished a
16 substantial evidentiary basis for the district court to conclude that Plaintiff was an
17 exempt administrative employee under the MWA. Accordingly, we affirm the district
18 court's judgment against Plaintiff on her claim for unpaid overtime under the MWA.

1 **CONCLUSION**

2 {37} The judgment of the district court in Defendants’ favor on Plaintiff’s MWA
3 claim is affirmed. The district court’s dismissal of Plaintiff’s NMHRA claim against
4 Defendant Four Corners Family Dental, LLC, is reversed. Its dismissal of Plaintiff’s
5 NMHRA claim against Defendant Mann is affirmed.

6 {38} **IT IS SO ORDERED.**

7
8

J. MILES HANISEE, Judge

9 **WE CONCUR:**

10
11

MICHAEL D. BUSTAMANTE, Judge

12
13

LINDA M. VANZI, Judge