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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 WANDA GREEN, JOHN E. GREEN, 3 L. BALLARD, (minor child),

Plaintiffs-Appellants,

5 v. **NO. 34,393**

6 CASA BELLA APARTMENTS
7 (a.k.a Plaza Dorado), THE NEIDERS
8 COMPANY,

Defendants-Appellees.

10 APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY 11 Alan M. Malott, District Judge

12 Derek V. Garcia

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- 13 Albuquerque, NM
- 14 for Appellants
- 15 Ada B. Priest
- 16 Justin D. Goodman
- 17 Peter J. Eicker
- 18 Albuquerque, NM
- 19 for Appellees

20 MEMORANDUM OPINION

GARCIA, Judge.

- Plaintiffs appeal from the district court's order denying reconsideration of its order granting summary judgment in favor of Defendants and dismissing Plaintiffs' complaint with prejudice. We issued a notice of proposed summary disposition, proposing to reverse in part and affirm in part. We proposed to summarily reverse summary judgment as to (1) the negligence claim brought by Plaintiff minor child (grandchild of the tenants), who was separately named, and (2) the claim brought by the Greens Plaintiffs, the tenants, for the return of their security deposit. We proposed to summarily affirm summary judgment as to all the other claims the Greens Plaintiffs raised relative to their occupancy and lease, on the basis that the rescission was an effective waiver of those claims. No memorandum opposing summary reversal or summary affirmance has been filed, and the time for doing so has expired.
- For the reasons set forth in the notice, summary judgment is reversed in part and affirmed in part. We remand for further proceedings relative to the claim brought by Plaintiff minor child and the claim brought by the Greens Plaintiffs for return of their security deposit.
- 17 (3) **IT IS SO ORDERED.**

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TIMOTHY L. GARCIA, Judge

1	WE CONCUR:
2 3	MICHAEL E. VIGIL, Chief Judge
5	RODERICK T. KENNEDY, Judge