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

2 **TU MY TONG,**

3 Plaintiff-Appellant,

4 **v.**

No. 35,653

5 **STATE OF NEW MEXICO,**
6 **D'ANTONIO HAGEN, an individual,**
7 **LOUIS MARTINEZ, an individual,**
8 **JOHN DOES 1-100, inclusive,**

9 Defendants-Appellees.

10 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

11 **Mary W. Rosner, District Judge**

12 Tu My Tong
13 Los Angeles, CA

14 Pro Se Appellant

15 Hector H. Balderas, Attorney General
16 Santa Fe, NM

17 for Appellees

18 **MEMORANDUM OPINION**

19 **ZAMORA, Judge.**

20 {1} Plaintiff, a self-represented litigant, appeals from the district court's order
21 dismissing her amended complaint with prejudice and the district court's subsequent

1 order denying Plaintiff's post-judgment motions that were filed within thirty days
2 under NMSA 1978, Section 39-1-1 (1917). Unpersuaded that Plaintiff demonstrated
3 error, we issued a notice of proposed summary disposition, proposing to affirm.
4 Plaintiff has responded to our notice with what she calls "Motion Summary Calendar."
5 It is a lengthy hand-written document that contains no clearly and concisely stated
6 issues, but seems responsive to the proposed analysis in our notice. We consider it to
7 be Plaintiff's memorandum in opposition to our notice. Plaintiff also filed a motion
8 that seems to request a further extension than she has already been granted, seeking
9 permission to file an amended docketing statement. Plaintiff has not stated what
10 additional information she would like to provide. After her extension had lapsed,
11 Plaintiff filed sixteen more pages of hand-written argument without a caption or title
12 for the document. We consider this document to be both an addendum to her
13 memorandum in opposition and a motion to amend the docketing statement. Plaintiff
14 will not be granted any more time to file any document in this Court relative to the
15 district court case from which she appeals. Plaintiff has had ample opportunity to raise
16 all of her arguments and file every pleading allowed by the appellate rules, and she
17 has filed even more. No other pleadings will be considered.

18 {2} We have considered Plaintiff's filings and have attempted to understand her
19 complaints to the best of our ability. *See Clayton v. Trotter*, 1990-NMCA-078, ¶ 12,

1 110 N.M. 369, 796 P.2d 262 (explaining that this Court will review pro se arguments
2 to the best of its ability, but cannot respond to unintelligible arguments); *see also*
3 *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d
4 1076 (stating that this Court has no duty to review an argument that is not adequately
5 developed, and “[w]e will not review unclear arguments, or guess at what [a party’s]
6 arguments might be”). We remain unpersuaded that Plaintiff demonstrated error in the
7 dismissal of her amended complaint. We, therefore, affirm.

8 **DISCUSSION**

9 {3} Because of our uncertainty about the precise arguments Plaintiff raised in her
10 docketing statement and numerous motions and the appearance that Plaintiff was
11 confused about the problems with her lawsuit, our notice explained the reasons
12 underlying the district court’s dismissal. [CN 4-5] Namely, Plaintiff’s allegations were
13 not distinguishing between state and federal government officials; Plaintiff did not
14 demonstrate that her alleged injuries were caused by any named New Mexico State
15 entities or individuals; and, therefore, Plaintiff did not show that the State’s actions
16 fell within any waiver of immunity under the New Mexico Tort Claims Act. [RP
17 1014-16] We also explained that Plaintiff filed a similar civil suit in federal court, and
18 the federal court dismissed all of her claims except her claim for malicious
19 prosecution. [CN 4; RP 1014] The federal court permitted that claim to proceed in

1 state court to allow Plaintiff to develop evidence that a person or agency employed by
2 the State of New Mexico had caused her injuries. [Id.] The district court ruled that
3 Plaintiff did not make the evidentiary connection between any actions by New Mexico
4 officials or a state agency and Plaintiff's injuries. [CN 4; RP 1014-16]

5 {4} We explained the standards Plaintiff is required to meet, our role as the
6 appellate court in reviewing the district court's decision, and set forth instructions for
7 Plaintiff's response to our notice. We stated that "[i]n any response Plaintiff may wish
8 to file, she must respond with a clearly legible document that clearly and concisely
9 states: (1) the evidence she produced to the district court of how the actions of each
10 named Defendant caused the injuries she received from the federal prosecution; and
11 (2) how she demonstrated to the district court that each of those actions fell within a
12 waiver of immunity under the Tort Claims Act." [CN 5]

13 {5} Plaintiff's responses to our notice are neither clearly legible nor concise.
14 Plaintiff continues to demonstrate that she equates New Mexico state government and
15 its employees with the federal government and its employees whose actions occurred
16 within the geographic boundaries of New Mexico. To be clear, the United States
17 Department of Justice (DOJ) is a federal agency, not a state agency, and agents from
18 the Federal Bureau of Investigation (FBI) are federal employees, not state employees.
19 The United States Attorneys are federal employees, not state employees. The actions

1 of federal agencies and federal employees are not relevant to this state court suit, in
2 which Plaintiff was permitted to only develop evidence that a person or agency
3 employed by the State of New Mexico had caused her injuries. [RP 1014]

4 {6} Plaintiff repeatedly asserts that she named New Mexico defendants and that she
5 alleged injuries from the actions of these people. [MIO 1-5, 9-10, 25-26] Plaintiff does
6 not describe, however, how the named Defendants are, in fact, state actors or state
7 entities. Nor does she describe what allegation or evidence she produced to the district
8 court to show that those named state actors or entities caused the injuries she allegedly
9 suffered as a result of the federal prosecution. Plaintiff is patently incorrect in her
10 assertion that “all claims against the United States are under [the] Tort Claims Act.”
11 [MIO 34] *See, e.g., Smith v. Cromer*, 159 F.3d 875, 879 (4th Cir. 1998) (“It is also
12 clear that an action seeking specific relief against a federal official, acting within the
13 scope of his delegated authority, is an action against the United States, subject to the
14 governmental privilege of sovereign immunity. Where an agency has not waived its
15 immunity to suit, the state court (and the federal court on removal) lacks jurisdiction
16 to proceed against a federal employee acting pursuant to agency direction.” (citation
17 omitted)).

18 {7} It also appears that Plaintiff raises competency issues related to her federal court
19 trial [MIO 7-8] and allegations of constitutional violations she suffered during the

1 federal court trial; including, violations of the Fifth Amendment, [MIO 19-22, 29-31]
2 the Sixth Amendment speedy trial right, [MIO 25-29] and the Eighth Amendment.
3 [RP 31-32] These are issues for the federal courts, not this Court. *See generally*
4 NMSA 1978, § 34-5-8 (1983) (setting forth the appellate jurisdiction of the New
5 Mexico Court of Appeals). To the extent these are new issues Plaintiff seeks to add
6 to her docketing statement, the motion to amend is denied. *See State v. Moore,*
7 1989-NMCA-073, ¶¶ 36-51, 109 N.M. 119, 782 P.2d 91 (explaining that this Court
8 will deny motions to amend that raise issues that are not viable, even if they allege
9 fundamental or jurisdictional error), *superceded by rule on other grounds as stated in*
10 *State v. Salgado*, 1991-NMCA-044, 112 N.M. 537, 817 P.2d 730.

11 {8} For the reasons stated above and in our notice, we affirm the district court's
12 order dismissing her amended complaint with prejudice. We emphasize to Plaintiff
13 that no further pleadings will be considered.

14 {9} **IT IS SO ORDERED.**

15
16

M. MONICA ZAMORA, Judge

17 **WE CONCUR:**

18

19 **JAMES J. WECHSLER, Judge**

1

2 **STEPHEN G. FRENCH, Judge**