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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date : December 3, 2024

No. A-1-CA-41415

**R&R, LLC, a New Mexico limited
liability company,**

Plaintiff-Appellee,

v.

**NEW MEXICO DEPARTMENT OF
TRANSPORTATION,**

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY

Ellen R. Jessen, District Court Judge

John D. Wheeler & Associates, P.C.

John D. Wheeler

Elizabeth K. Watson

Alamogordo, NM

for Appellee

Carrillo Law Firm, P.C.

Raúl A. Carrillo, Jr.

Las Cruces, NM

for Appellant

OPINION

MEDINA, Judge.

{1} The New Mexico Department of Transportation (NMDOT) appeals the district court's declaratory judgment and award of damages in favor of Plaintiff, R&R, LLC (R&R), the prevailing party in an inverse condemnation action. NMDOT argues that it presented sufficient admissible evidence to create a question of material fact about an alleged prescriptive easement on a piece of property, informally known as the "Tularosa Triangle" (the Property), and therefore the district court's entry of partial summary judgment on that issue was reversible error. NMDOT also argues that the district court committed reversible error by excluding evidence related to the alleged prescriptive easement at trial, by taking judicial notice of a prior quiet title suit, and by not precluding the slander of title and intentional interference with contractual relations claims. For the reasons set forth below, we affirm the district court on all grounds.

BACKGROUND

{2} R&R, a New Mexico limited liability company, acquired the Property in 2011. The Property is located in the middle of the intersection of U.S. Highways 54 and 70 in Tularosa, New Mexico, consists of 2.016 acres, and contains two buildings and a parking lot. At the time of R&R's purchase of the Property, the buildings on the

1 Property were used as a gas station and restaurant. In 2016, the district court granted
2 R&R free and clear title to the Property in a quiet title action.

3 {3} In 2021, R&R entered into a purchase and sale agreement with Maverik, Inc.
4 (Maverik), a national convenience store owner for the Property, at a purchase price
5 of \$720,000. In its good-faith investigation, Maverik reached out to NMDOT, and
6 NMDOT claimed that it owned 90 percent of the Property. Maverik requested
7 documentary proof of NMDOT's claimed ownership of the Property but, after
8 several failed requests for proof of ownership, Maverik terminated the purchase
9 agreement with R&R.

10 {4} In 2022, R&R filed a complaint for inverse condemnation, slander of title,
11 declaratory judgment, and intentional interference with contractual relations against
12 NMDOT alleging that NMDOT did not have an interest in any portion of the
13 Property and NMDOT's misrepresentation of its ownership of the Property resulted
14 in an interference with R&R's property rights. NMDOT answered stating that
15 NMDOT has rights to "easements or rights-of-way [that] go across the Property."

16 {5} R&R moved for partial summary judgment asserting that NMDOT did not
17 have an easement or right-of-way across the Property. R&R attached three affidavits
18 to its memorandum in support of partial summary judgment. Each affiant asserted
19 that none of the documents produced by NMDOT during discovery supported the

1 existence of an easement or right-of-way that encroached beyond the adjacent
2 roadways into the Property.

3 {6} NMDOT asserted in its response in opposition to the motion for summary
4 judgment that “it has acquired a right[-]of[-]way and easement which traverses,
5 crosses, or otherwise passes over the [P]roperty through prescriptive use of the
6 [P]roperty post 1960.” NMDOT attached an affidavit of Michael Smelker, an
7 employee at NMDOT, to its response. Smelker asserted, in part, that “[p]ublic
8 highway rights-of-way include the total land area acquired for the construction and
9 maintenance of a public highway and may include prescriptive rights-of-way
10 acquired by public use and reasonably necessary maintenance areas”; “[t]he width
11 of a public right-of-way accommodates all the elements of a roadway cross section,
12 including but not limited to, the travelling path/roadway itself, traffic safety clear
13 zones, drainage features, maintenance use and access, pedestrian facilities, bike
14 paths, and public utility facilities and infrastructure”; “[p]ublic rights-of-way often
15 include areas/widths which may be used for future widening of a road and for any
16 other improvements necessary for highway maintenance”; that a public right-of-way
17 includes “clear zone[s]” and defines “clear-zone” as “an unobstructed, traversable
18 roadside area that allows a driver to stop safely, or regain control of a vehicle that
19 has left the roadway”; that some factors considered in determining the width of clear
20 zones include average daily traffic and the speed limit of the roadway; that “[t]he

1 highway area in dispute in this litigation . . . is subject to the foregoing requirements
2 for clear zones and maintenance activities on both sides of the centerline of each
3 highway” and speaks to NMDOT right-of-way maps indicating widths of the subject
4 rights-of-way that encroach into the Property; “[t]he use of the right[-]of[-]way by
5 the traveling public and by the NMDOT for maintenance and safety has been open
6 and continuous for more than one (1) year”; and “NMDOT has maintained the public
7 right-of-way in question . . . as supported by regularly kept maintenance business
8 records in the [d]istrict [o]ffice for more than one (1) year.” Four pages of project
9 maps alone, one showing a hashed line area allegedly indicating a public right-of-
10 way that encroaches into the Property at issue are attached to Smelker’s affidavit.

11 {7} R&R filed a reply arguing that no portion of the Property has ever been used
12 for highway purposes and therefore the State did not acquire prescriptive rights to
13 the Property. In particular, R&R asserted NMDOT presented no evidence that “a
14 clear zone was ever established upon the Property,” “any highway maintenance has
15 ever taken place on the Property,” and “it was incumbent upon [NMDOT] to produce
16 [records establishing that it maintained the Property at some point in the past] to
17 oppose summary judgment.” R&R also contended that “nothing [in the right-of-way
18 maps attached to Smelker’s affidavit] amounts to anything more than a depiction of
19 the distance from the centerline of the nearby highway to the buildings on the
20 Property. . . . [NMDOT does] not set forth the basis for the claim [of the existence

1 of an easement and/or right-of-way] or offer any evidence establishing facts
2 necessary to form the foundation for such a claim.”

3 {8} R&R attached a supplemental affidavit by Larry Sterling, a New Mexico
4 registered surveyor, to its reply. Sterling stated in part, “It is my express opinion, to
5 a reasonable degree of professional certainty, based upon our firm’s survey of the
6 Property, that all the curbs along the highway near the Property are *not* actually
7 located within the exterior boundaries of the Property, but rather are located on land
8 owned by the State or someone else nearby”; “[i]t is my express opinion, to a
9 reasonable degree of professional certainty, based upon our firm’s survey of the
10 Property, that all the inlets along the highway near the Property are *not* actually
11 located within the exterior boundaries of the Property, but rather are located on land
12 owned by the State or someone else nearby”; and “[i]t is my express opinion, to a
13 reasonable degree of professional certainty, based upon our firm’s survey of the
14 Property, that all the shoulders along the highway near the Property are *not* actually
15 located within the exterior boundaries of the Property, but rather are located on land
16 owned by the State or someone else nearby.”

17 {9} Based on these motions and evidence and arguments presented during a
18 hearing on the motion, the district court granted partial summary judgment in favor
19 of R&R. The district court concluded that NMDOT had no prescriptive easement or
20 right-of-way interest in the Property as a matter of law because NMDOT had not

1 presented admissible evidence of a written easement or of actual use of the disputed
2 area.

3 {10} On the morning of trial, NMDOT argued that the district court did not have
4 jurisdiction to hear either the slander of title or intentional interference with
5 contractual relations claims. R&R conceded that, generally, one cannot sue the state
6 for slander of title and neither can one sue the state for intentional interference with
7 contractual relations when they are bringing an inverse condemnation claim. R&R
8 informed the district court and NMDOT that it was going “forward on an inverse
9 condemnation theory supported by the tortious interference with contractual
10 relations and supported by the slander of title.” R&R explained that the facts
11 supporting the inverse condemnation claim were NMDOT’s initial representation to
12 Maverik that it owned 90 percent of the Property, thereby interfering with its
13 property rights.

14 {11} During trial, the district court took judicial notice of R&R’s prior quiet title
15 action in which it was determined that R&R had title to the Property in fee simple.
16 NMDOT argued that the State was not a party to the quiet title action and did not
17 have an opportunity “to provide its opinion . . . to the district court with regard to the
18 quiet title action.” The district court recognized that R&R could not have brought a
19 quiet title action against the State.

{12} At the conclusion of trial, the district court determined that the State was liable for inverse condemnation of the Property. NMDOT now appeals.

DISCUSSION

{13} We begin our review with the district court's grant of partial summary judgment as to the issue of a prescriptive easement because it is dispositive to the issue of whether the district court's exclusion of evidence regarding the claimed prescriptive easement during trial was error. *See Found. Minerals, LLC v. Montgomery*, 2024-NMCA-008, ¶ 11, ___ P.3d ___ (recognizing by implication, in a determination on the application of a de novo standard of review relating to a summary judgment ruling, that it is not inappropriate for a district court to determine an issue on summary judgment and avoid the admission of evidence on that issue at trial). We then address NMDOT's remaining claims.

I. Partial Summary Judgment Was Appropriate Because NMDOT Did Not Present Sufficient Admissible Evidence to Create a Genuine Issue of Material Fact as to the Existence of a Prescriptive Easement

{14} NMDOT argues that the district court erred in granting partial summary judgment because there was a genuine issue of material fact as to whether it had a prescriptive easement. NMDOT contends that it sufficiently presented a dispute of material fact by way of the Smelker affidavit along with the post-1960 right-of-way project maps that were attached to the affidavit. In particular, NMDOT argues that the right-of-way project maps reference the width of the easement acquired as 100

1 feet from the centerline of the highway and show that the easement encroaches on
2 the Property. NMDOT asserts this is sufficient evidence that a prescriptive easement
3 was acquired and maintained as needed by the State for highway construction
4 maintenance. R&R responds that the Smelker affidavit did not allege that it used the
5 Property for any highway purposes, either for a clear zone or for maintenance
6 activities, and therefore NMDOT failed to put forward evidence sufficient to raise a
7 question of fact, so judgment as a matter of law was appropriate on the issue of a
8 prescriptive easement.

9 {15} We review the grant of summary judgment de novo. *Romero v. Philip Morris*
10 *Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713, 242 P.3d 280. “[S]ummary judgment is
11 a drastic remedial tool which demands the exercise of caution in its application, and
12 we review the record in the light most favorable to support a trial on the merits.”
13 *Woodhull v. Meinel*, 2009-NMCA-015, ¶ 7, 145 N.M. 533, 202 P.3d 126 (internal
14 quotation marks and citation omitted). “Summary judgment is appropriate where
15 there are no genuine issues of material fact and the movant is entitled to judgment
16 as a matter of law.” *Bank of N.Y. Mellon v. Lopes*, 2014-NMCA-097, ¶ 6, 336 P.3d
17 443 (internal quotation marks and citation omitted). “On appeal from the grant of
18 summary judgment, we ordinarily review the whole record in the light most
19 favorable to the party opposing summary judgment to determine if there is any
20 evidence that places a genuine issue of material fact in dispute.” *City of Albuquerque*

1 *v. BPLW Architects & Eng'rs, Inc.*, 2009-NMCA-081, ¶ 7, 146 N.M. 717, 213 P.3d
2 1146. “However, if no material issues of fact are in dispute and an appeal presents
3 only a question of law, we apply de novo review and are not required to view the
4 appeal in the light most favorable to the party opposing summary judgment.” *Id.*

5 {16} The movant has the initial burden of making a prima facie showing that they
6 are entitled to summary judgment, which constitutes “such evidence as is sufficient
7 in law to raise a presumption of fact or establish the fact in question unless rebutted.”
8 *Romero*, 2010-NMSC-035, ¶ 10 (internal quotation marks and citation omitted).
9 Once the movant establishes this prima facie case for summary judgment, “the
10 burden shifts to the non[]movant to demonstrate the existence of specific evidentiary
11 facts which would require trial on the merits.” *Kreutzer v. Aldo Leopold High Sch.*,
12 2018-NMCA-005, ¶ 27, 409 P.3d 930 (internal quotation marks and citation
13 omitted). “If the non[]movant fails to do so, summary judgment, if appropriate, shall
14 be entered against [them].” *Id.* (internal quotation marks and citation omitted).

15 {17} As a preliminary issue, we clarify the slight distinction between the terms
16 “easement” and “right-of-way” for two reasons. First, intermingling of the two terms
17 persisted throughout the proceedings in the district court and continued in the
18 briefing before this Court. Second, in order “[t]o determine whether a party has made
19 a prima facie showing of entitlement to summary judgment, the court must look to

1 the substantive law governing the dispute.” *Freeman v. Fairchild*, 2018-NMSC-023,
2 ¶ 33, 416 P.3d 264 (internal quotation marks and citation omitted).

3 {18} The vesting of title of highway rights-of-way is addressed by statute. The
4 statute, NMSA 1978, Section 67-2-5 (1929), reads:

5 When any state highway in the state of New
6 Mexico, is continuously used by, or open for use to the
7 public, as such, for a period of one year from and after the
8 time this act goes into effect, or for a period of one year at
9 any time thereafter, and the same has not been so used or
10 occupied under any lease, contract or agreement
11 recognizing the ownership of the right-of-way thereof in
12 any person, firm or corporation, other than the state, *such*
13 *right-of-way shall be and become the property of and fee*
14 *thereto shall vest in the state of New Mexico* for such
15 highway purposes, and the title thereto shall not thereafter
16 be divested by adverse possession or in any other manner
17 except with the consent of the state of New Mexico, so
18 long as such right-of-way is so used for highway purposes.

19 (Emphasis added.)

20 {19} An “easement,” on the other hand, grants a “right to use or control” property
21 and the holder of the right established by easement does not have title to the property.
22 *Easement, Black’s Law Dictionary* (12th ed. 2024). The party that owns the property
23 maintains title, and their interest in the property is encumbered by the easement. *See*
24 *id.*

25 {20} In NMDOT practice and in some contexts, “right-of-way” and “easement”
26 may be used interchangeably, because their meanings overlap to some or even to a
27 great extent. This appears to be the basis of some of the interchangeable use of these

1 terms in the record. Still, Section 67-2-5 refers to the vesting of title for the land used
2 for the purposes of a highway right-of-way, not merely the establishment of a right
3 to use or control the land. Therefore, Section 67-2-5 does not result in the
4 establishment of easements by prescription, because a right to use or control, not
5 title to the land, is granted by an easement by prescription. Rather, where the
6 requirements of an easement by prescription for highway purposes are met, the
7 statute dictates that the area of land in the easement would thereby qualify as a “right-
8 of-way” under the statute, such that title to that area of land vests in the state. *See*
9 *State ex rel. State Highway. & Transp. Dep’t v. City of Sunland Park*, 1999-NMCA-
10 143, ¶¶ 14-15, 128 N.M. 371, 993 P.2d 85 (reasoning that “all conditions necessary
11 for the [s]tate’s acquiring title had been satisfied” under the statute by use of a
12 roadway); *Santa Fe Cnty. Bd. of Cnty. Comm’rs v. Town of Edgewood*, 2004-
13 NMCA-111, ¶ 9, 136 N.M. 301, 97 P.3d 633 (characterizing Section 67-2-5 where
14 all conditions necessary for the state’s acquiring title had been satisfied as providing
15 “what amounted to equitable title” that was superior to title acquired under a real
16 estate contract (internal quotation marks and citation omitted)).

17 {21} Here, R&R does not dispute that the roadways of U.S. Highways 54 and 70,
18 the shoulders of those roadways, the inlets of those roadways, and the curbs on the
19 edge of those roadways are rights-of-way that belong to the State. The disputed area
20 is the land that spans between the non-roadway side of the curbs and the buildings

1 in the middle of the triangular lot bordered by the roadways, representing a large
2 portion of the 2.016-acre lot R&R attempted to sell. By relying on a prescriptive use
3 theory, NMDOT effectively conceded that the State has no right to this land by
4 express easement or title. Thus, the substantive law governing the summary
5 judgment dispute is that of prescriptive easements: whether the elements of a
6 prescriptive easement were met for the disputed portion of the Property such that the
7 portion became a highway “right-of-way” thereby belonging to the State under the
8 statute.

9 {22} “[A]n easement by prescription is created by an adverse use of land, that is
10 open or notorious, and continued without effective interruption for the prescriptive
11 period.” *Algermissen v. Sutin*, 2003-NMSC-001, ¶ 10, 133 N.M. 50, 61 P.3d 176.
12 For prescriptive easements generally, a showing of actual use of the area within the
13 alleged easement is required. *See Maloney v. Wreyford*, 1990-NMCA-124, ¶ 13, 111
14 N.M. 221, 804 P.2d 412 (reasoning “the prescriptive right encompasses only the
15 portion of the servient estate actually used”). Public highways, and some amount of
16 land around the roadways, may be established “by prescription” via the common
17 law. *See Hall v. Lea County Elec. Coop*, 1968-NMSC-040, ¶ 10, 78 N.M. 792, 438
18 P.2d 632.

19 {23} The determination of what area of land denotes the extent of the “highway
20 established by prescription” is a factual question that considers whether the land is

continuously used by or open to use by the public. *See* § 67-2-5; *Hall*, 1968-NMSC-040, ¶ 10 (acknowledging a private party’s concession that “a public highway established by prescription is not, as a matter of law, restricted in width to the track of actual travel, but includes the travelled track and whatever lands as are necessarily used and incidental thereto for highway purposes”); *cf. Maloney*, 1990-NMCA-124, ¶ 13 (reasoning “the prescriptive right encompasses only the portion of the servient estate actually used”). NMDOT does not contest the absence of a written or express easement as to the disputed Property and relies exclusively on a prescriptive easement theory. R&R provided, in its reply to NMDOT’s response to the summary judgment motion, the Sterling affidavit stating there is “no evidence that the Property has been used for safety clear zones, maintenance area zones, or shoulders.” Hence, the dispositive question becomes whether NMDOT presented any specific evidentiary facts that the State or the public has used the disputed area beyond the curb for highway purposes or whether the disputed area was open for use by the public. *See Lopes*, 2014-NMCA-097, ¶ 6 (“The movant need only make a prima facie showing that [they are] entitled to summary judgment. Upon the movant making a prima facie showing, the burden shifts to the party opposing the motion to demonstrate the existence of specific evidentiary facts which would require trial on the merits.” (internal quotation marks and citation omitted)).

1 {24} To demonstrate the existence of specific evidentiary facts requiring a trial on
2 the merits, “[a] party may not simply argue that such evidentiary facts might exist,
3 nor may it rest upon the allegations of the complaint.” *Horne v. Los Alamos Nat’l*
4 *Sec., L.L.C.*, 2013-NMSC-004, ¶ 15, 296 P.3d 478 (alteration, internal quotation
5 marks, and citations omitted). “[U]nsupported arguments . . . are not evidence upon
6 which a trial court can rely in a summary judgment proceeding.” *Vigil v. Taintor*,
7 2020-NMCA-037, ¶ 19, 472 P.3d 1220 (internal quotation marks and citation
8 omitted).

9 {25} Smelker’s affidavit, and the maps attached thereto, fall short of presenting
10 admissible evidence tending to show actual use of the disputed area or that the
11 disputed area was open for use by the public. *See Maloney*, 1990-NMCA-124, ¶ 13
12 (reasoning “the prescriptive right encompasses only the portion of the servient estate
13 actually used”). The Smelker affidavit presents generalities as to NMDOT standards
14 of practice and does not speak to specific evidentiary facts that the disputed area
15 beyond the curbs has ever been used to store maintenance or construction equipment.
16 Nor does the affiant speak to specific evidentiary facts that the public used the
17 disputed area to pull off the roadway for safety reasons. Facts of these or similar
18 activities would tend to show actual use of the disputed area. The maps provided
19 merely indicate that NMDOT believes it has a right-of-way, apparently by

1 prescriptive easement, which goes beyond the curbs while providing no basis for
2 that belief.

3 {26} NMDOT indicates that these “[r]ight[-]of[-]w[ay] maps show that the
4 prescriptive easement encroaches on the property at issue, because the NMDOT is
5 required to maintain ‘clear zones’ for public safety and maintenance.” NMDOT
6 justifies its belief that its highway right-of-way extends beyond the roadway by
7 indicating this additional area is required to maintain “clear zones.” However, this
8 justification is betrayed by its own affiant, who, speaking generally, states that “a
9 clear zone is an unobstructed, traversable roadside area that allows a driver to stop
10 safely, or regain control of a vehicle that has left the roadway.” The facts before the
11 district court here showed that access to the Property at issue from the roadway is
12 not unobstructed: it is obstructed by curbs. As spoken to above, the consideration of
13 the viability of the “clear zone” logic aside, NMDOT provides no specific
14 evidentiary facts that the Property has *actually* been used as a clear zone or for other
15 public safety or maintenance purposes at any time. Even in a favorable light,
16 NMDOT effectively establishes only that the disputed area could possibly be used
17 in such a way based on NMDOT standards of practice and asserts that this possibility
18 indicates the alleged rights-of-way demonstrated on the map are established by
19 prescription.

1 {27} The creation of a highway right-of-way by an easement by prescription
2 requires a showing of continuous use by the public or being open to use by the public.
3 See § 67-2-5. Drawing from easement by prescription terminology outside of a
4 highway context, “the portion of the servient estate actually used” may qualify under
5 the statute to establish a highway right-of-way by prescription. See *Maloney*, 1990-
6 NMCA-124, ¶ 13 (reasoning “the prescriptive right encompasses only the portion of
7 the servient estate actually used”). The mere possibility of a hypothetical future use
8 is therefore legally insufficient under a prescriptive easement theory for purposes of
9 the State acquiring title by the statute. A map with dashed lines indicating an alleged
10 right-of-way does not tend to show actual use for the purposes of establishing an
11 easement by prescription. Thus, NMDOT presents an unsupported legal argument
12 in place of admissible evidence that creates a disputed material fact.

13 {28} NMDOT relies on *City of Sunland Park*, 1999-NMCA-143, ¶ 15, and urges
14 that it stands for the proposition that Section 67-2-5 grants equitable title to the state
15 for roadways that satisfy the requirements of the statute. We agree with this
16 characterization of *City of Sunland Park*. However, as described above, the title of
17 the roadway and the surrounding roadway indicators (the shoulders, curbs, and
18 inlets) are not at issue in this case. The dispute revolves around the area of land
19 between the curb of the roadway and the buildings. Accordingly, *City of Sunland*
20 *Park* is not informative here and does not dispose of NMDOT’s burden to present

admissible evidence of actual use to the district court in order to proceed to trial on a theory of an easement by prescription.

{29} For these reasons, we hold that the district court did not err in concluding that there were no material facts in dispute and as a matter of law no prescriptive easement extended into the Property.

II. The District Court Did Not Err in Taking Judicial Notice of the Quiet Title Action

{30} NMDOT contends that the district court committed reversible error at trial when it concluded that the quiet title action determined the rights of the parties in this matter. NMDOT reasons that it had no opportunity to litigate the issue of property rights relating to the Property in the prior case so it's inappropriate for the district court to determine NMDOT's rights based on that suit here. R&R responds that it was not a viable option for R&R to bring a quiet title claim against the state there, that it never claimed that the quiet title action implicated the State's rights to the Property here, and that the district court did not find as much here. We agree with R&R's characterization of the matter. The district court did not determine the rights of NMDOT based upon the quiet title action, only the rights of those that were party to the action to the extent that was appropriate at the time of the action. Therefore, there is no basis for this Court to reverse on this ground.

1 **III. The District Court Did Not Err in Regard to the Slander of Title and**
2 **Intentional Interference With Contractual Relations Claims**

3 {31} NMDOT claims the district court committed reversible error by not
4 precluding the slander of title and intentional interference with contractual relations
5 claims. NMDOT emphasizes that the state is immune to slander of title tort claims,
6 pursuant to NMSA 1978, Section 41-4-4 (2001) of the Tort Claims Act, and has not
7 waived immunity. Further, NMDOT highlights that “inverse condemnation provides
8 the exclusive remedy for the property owner if the condemnor takes or damages
9 property without paying just compensation or without initiating proceedings to
10 condemn.” *North v. Pub. Serv. Co. of N.M.*, 1983-NMCA-124, ¶ 10, 101 N.M. 222,
11 680 P.2d 603. R&R responds that the district court did not draw the legal conclusion
12 that the State is liable for slandering R&R’s title here, nor did the district court draw
13 the legal conclusion that the State is liable for intentionally interfering with R&R’s
14 contractual relations. R&R claims it presented facts relating to slander of title and
15 interference with contractual relations for the district court to be able to determine
16 whether NMDOT’s actions amounted to an interference with R&R’s property rights
17 such to constitute inverse condemnation.

18 {32} We are satisfied that, in effect, R&R proceeded only on an inverse
19 condemnation theory. On the morning of trial, R&R agreed that slander of title and
20 interference with contractual relations could not be brought against the State and
21 asserted that it was “prepared to go forward on an inverse condemnation theory

1 supported by the tortious interference with contractual relations and supported by
2 the slander of title” in characterizing inverse condemnation as “the main claim.” As
3 a result, the district court was not asked to rule on those former independent claims
4 and did not find the State liable for slander of title or intentional interference with
5 contractual relations in its findings of fact and conclusions of law. Accordingly, the
6 district court’s ruling was not in error and was not inconsistent with the sovereign
7 immunity or common law principles that NMDOT raises.

8 **CONCLUSION**

9 {33} For the foregoing reasons, we affirm.

10 {34} **IT IS SO ORDERED.**

11
12

JACQUELINE R. MEDINA, Judge

13 **WE CONCUR:**

14
15

J. MILES HANISEE, Judge

16
17

JANE B. YOHALEM, Judge