

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

PUEBLO OF POJOAQUE and  
BUFFALO THUNDER, INC.,

Plaintiffs,

vs.

No.: 1:20-CV-00166-KRS-GBW

HONORABLE BRYAN BIEDSCHEID, individually  
and in his official capacity as District Judge,  
New Mexico First Judicial District Division  
VI; and RUDY PENA,

Defendants.

**DEFENDANT RUDY PENA’S RESPONSE TO PLAINTIFFS’ MOTION TO  
RECONSIDER ORDER DENYING SUMMARY JUDGMENT**

DEFENDANT Rudy Pena, by and through his attorneys of record, RIOS LAW FIRM, P.C.  
(Linda J. Rios and Michael G. Solon), hereby submits the following Response to Plaintiffs’ Motion  
to Reconsider Order Denying Summary Judgment:

**I.  
BACKGROUND**

This case arises from an incident involving Defendant Rudy Pena that occurred on February 1, 2015 at Buffalo Thunder Casino. Immediately prior to the subject incident, Defendant Rudy Pena was seated at a slot machine and engaged in a “Class III” gaming activity. When a casino employee approached Defendant Rudy Pena and demanded that Defendant Rudy Pena move immediately in order to allow the casino employee to change out the slot machine’s cash box, Defendant Rudy Pena informed the casino employee that Defendant Rudy Pena was unable to move as Defendant Rudy Pena has multiple sclerosis and requires the use of a walker and/or cane to ambulate. Despite having actual notice of Defendant Rudy Pena’s above-mentioned disability and physical limitations, the casino employee again demanded that Defendant Rudy Pena

move immediately. In response to the casino employee's aggressive and unreasonable demands, Defendant Rudy Pena attempted to move out of the way as quickly as possible, at which time Defendant Rudy Pena lost his balance, fell to the floor, and suffered severe injuries as a result.

Defendant Rudy Pena filed his Complaint for Personal Injuries and Damages (hereinafter "Complaint") on January 25, 2017 in the First Judicial District of the State of New Mexico. Plaintiff Buffalo Thunder, Inc. (hereinafter "Buffalo Thunder") filed its Answer to Defendant Rudy Pena's Complaint on March 12, 2018. On October 11, 2019, over a year and a half after the filing of its Answer, Plaintiff Buffalo Thunder filed its Motion to Dismiss. On December 16, 2019, the First Judicial District Court held a hearing on Plaintiff Buffalo Thunder's Motion to Dismiss, at which time Plaintiff Buffalo Thunder's Motion to Dismiss was denied.

Plaintiff Buffalo Thunder subsequently filed an application for interlocutory appeal. However, the New Mexico Court of Appeals denied Plaintiff Buffalo Thunder's application. Plaintiff Buffalo Thunder then filed its Complaint for Declaratory Judgment (hereinafter "Complaint") in the United States District Court for the District of New Mexico on February 26, 2020 and its First Amended Complaint for Declaratory Judgment (hereinafter "First Amended Complaint") on August 13, 2020.

On June 25, 2021, Plaintiffs filed their Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment. The Court held a hearing on Plaintiffs' Motion for Summary Judgment on February 4, 2022. Subsequently, the Court entered its Order on March 17, 2022 and denied Plaintiffs' Motion for Summary Judgment.

## **II. ARGUMENT AND AUTHORITY**

In their Complaint, First Amended Complaint, and Motion for Summary Judgment, Plaintiffs requested both a declaratory judgment and injunctive relief from the Court. In its Order,

the Court concluded that Plaintiffs are not entitled to summary judgment because the Anti-Injunction Act, 28 U.S.C. § 2283, bars the Court from issuing the requested injunction, and that the Court must abstain from issuing a declaratory judgment under *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). *See* Order at 2, entered March 17, 2022 (Doc. 61). Accordingly, the Court denied Plaintiffs’ Motion for Summary Judgment. *See* Order at 14.

In their Motion to Reconsider Order Denying Summary Judgment (hereinafter “Motion to Reconsider”), Plaintiffs contend that the Court’s conclusion regarding the Anti-Injunction Act and *Younger* was erroneous. As such, Plaintiffs now request that the Court: (1) reconsider its Order denying Plaintiffs’ Motion for Summary Judgment; (2) grant Plaintiffs summary judgment as to their request for declaratory judgment; (3) hold that IGRA invalidates state court jurisdiction over Defendant Rudy Pena’s Complaint; and (4) deem *Younger* abstention inapplicable to Plaintiffs’ request for declaratory judgment. *See* Plaintiffs’ Motion to Reconsider at 9, filed April 4, 2022. However, Plaintiffs’ above-referenced request for relief is not appropriate in this matter for two reasons. First, the Court has properly abstained under *Younger*. Second, the Court has properly applied the Anti-Injunction Act.

**A. The Court has properly abstained under *Younger*.**

Without identifying any specific facts, Plaintiffs imply that the Court has “misapprehended” the facts and its abstention analysis has therefore gone “awry.” *See* Plaintiffs’ Motion for Reconsideration at 2. Plaintiffs then contend, yet again, that “with respect to slip and fall cases such as this, it has been finally determined that IGRA does not permit the shifting of jurisdiction over visitors’ personal injury suits to state court.” *Id.* at 3. In support of this non-existent legal principle, Plaintiffs cite *Dalley*. *Id.* However, it is again important to note that the Court in *Dalley* specifically applied its holding to the facts of that particular case, which involved

a slip and fall in a casino bathroom. *Navajo Nation v. Dalley*, 896 F.3d 1196, 1210 (10th Cir. 2018). The case at bar, on the other hand, involves a slip and fall in front of a slot machine. The Court's limited holding in *Dalley* simply does not apply to the case at bar. As a result, it has not been finally determined that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court in cases such as this, despite Plaintiffs' repeated assertions to the contrary. The application of *Dalley* is nowhere near as broad as Plaintiffs imagine it to be. Further, even if Judge Biedscheid does not have subject matter jurisdiction over Defendant Rudy Pena's state court lawsuit, something which Defendant Rudy Pena does not concede, it does not compute that the Court "must also reverse its *Younger* conclusion" because Plaintiffs have failed to demonstrate how those two propositions are sufficiently intertwined or interdependent. But perhaps most importantly, and as the Court articulated in its Order, all three (3) of the *Younger* conditions have been met in the case at bar. Accordingly, the Court has properly abstained under *Younger*.

**B. The Court has properly applied the Anti-Injunction Act.**

Plaintiffs also contend that "it was premature and wrong to focus *Younger* analysis on Plaintiffs' unripe claim for injunctive relief." *See* Plaintiffs' Motion for Reconsideration at 5. As stated previously, Plaintiffs requested injunctive relief from the Court in their Complaint, First Amended Complaint, and Motion for Summary Judgment. In light of the Court's conclusion regarding *Younger* and the Anti-Injunction Act, Plaintiffs now seek to minimize the effect of their own repeated requests for relief. Accordingly, the Court has properly applied the Anti-Injunction Act.

**III.  
CONCLUSION**

Plaintiffs contend that the Court's Order is erroneous and warrants reconsideration.

However, the Court has properly abstained under *Younger*. Additionally, the Court has properly applied the Anti-Injunction Act. Accordingly, the Court's Order is not erroneous, and Plaintiffs' Motion should be denied.

WHEREFORE Defendant Rudy Pena respectfully requests that the Court enter an Order denying Plaintiffs' Motion to Reconsider Order Denying Summary Judgment and for any other relief the Court deems just and proper.

Respectfully submitted,

RIOS LAW FIRM, P.C.

/s/ Linda J. Rios

Linda J. Rios

Michael G. Solon

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I hereby certify that a true and correct copy of the foregoing was emailed to all counsel of record on this 18<sup>th</sup> day of April, 2022.

/s/ Linda J. Rios

Linda J. Rios