

**BAC V. WILSON**

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**BAC HOME LOANS SERVICING,  
Plaintiff-Appellee,  
v.  
PETER WILSON and GURU DARSHAN WILSON,  
Defendants-Appellants,  
and  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
Defendant.**

NO. 34,223

COURT OF APPEALS OF NEW MEXICO

December 8, 2016

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY, Sheri A.  
Raphaelson, District Judge

**COUNSEL**

Little, Bradley & Nesbitt, P.A., Lucinda R. Silva, Albuquerque, NM, Snell & Wilmar, LLP,  
Sandra A. Brown, Phoenix, AZ, for Appellee

JRSPC, LLC, Joshua R. Simms, Albuquerque, NM, for Appellants

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, J.  
MILES HANISEE, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

{1} Appellants Peter Wilson and Guru Darshan Wilson appeal the district court's grant of summary judgment in favor of Appellee BAC Home Loan Servicing. On April 7, 2015, this Court filed a proposed summary disposition, which proposed to dismiss this appeal due to Appellant's failure to comply with Rule 12-201(A)(2) NMRA. Proposed Summary Disposition at 2-4 (Apr. 7, 2015). Appellee filed a memorandum in support. Plaintiff-Appellee's Memorandum in Support of Proposed Summary Disposition (Apr. 27, 2015). Appellants did not file a memorandum in opposition. We nevertheless placed this appeal on our general calendar to further investigate the possibility that exceptional circumstances justified our entertaining an untimely appeal. Finding none, we dismiss.

## **BACKGROUND**

{2} This appeal arises from a foreclosure action in which Appellants were pro se litigants.<sup>1</sup> Appellee's complaint, filed on January 20, 2011, attached an unindorsed copy of the note on Appellants' property. Appellants filed a motion to dismiss for lack of standing, which the district court denied. Appellants filed a motion to reconsider, which the district court also denied. Appellants then filed a notice of appeal and docketing statement to this Court seeking review of the district court's denial of their motion to dismiss. We dismissed this appeal for lack of a final, appealable order and remanded to the district court.

{3} On February 13, 2014, Appellee filed a motion for summary judgment. The motion attached an indorsed copy of the note on Appellants' property. Appellants did not respond. On March 31, 2014, Appellee filed a notice of non-response and completion of briefing related to its motion for summary judgment, and, on April 10, 2014, the district court granted summary judgment in favor of Appellee.

{4} On April 17, 2014, Appellants retained counsel and subsequently filed a motion to reconsider summary judgment. Appellants, through counsel, asserted that the district court's grant of summary judgment merited reconsideration given "new controlling law." On July 24, 2014, Appellants' counsel withdrew from the case. The district court had not yet acted on Appellants' motion to reconsider.

{5} On September 17, 2014, the district court denied Appellants' motion to reconsider its grant of summary judgment. Appellants then filed a notice of appeal on October 22, 2014—thirty-five days later. Appellants' notice of appeal states that it was submitted to the district court and mailed to opposing counsel on October 22, 2014.

## **RULE 12-201**

{6} To properly invoke this Court's jurisdiction, a party must comply with the appellate rules governing the time and place in which to file a notice of appeal. *Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94; see *Trujillo v. Serrano*, 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871 P.2d 369 (establishing that the timely filing of a notice of appeal is a mandatory precondition to our exercise of jurisdiction to hear an appeal). Rule 12-201(A)(2) requires that an appellant file a notice

of appeal in the district court clerk's office within thirty days of the district court's entry of its final judgment. Pro se litigants must comply with the rules and orders of the court and will not be treated differently than litigants with counsel. *Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84.

{7} This Court may entertain an untimely appeal under unusual or exceptional circumstances. See, e.g., *Trujillo*, 1994-NMSC-024, ¶ 16 (“One unusual circumstance which would warrant permitting an untimely appeal might arise if the delay was the result of judicial error.”); *In re Estate of Newalla*, 1992-NMCA-084, ¶ 21, 114 N.M. 290, 837 P.2d 1373 (“One such exceptional circumstance might be reasonable reliance on a precedent indicating that the order not timely appealed was not a final, appealable order.”). Appellants argue that this Court's dismissal of their initial appeal on the issue of standing could constitute such a circumstance. However, Appellants' motion to dismiss and Appellee's motion for summary judgment—and the proceedings associated with each—are analytically and temporally distinct. Appellants also indicate the possibility that their counsel's withdrawal might have resulted in confusion as to the timing of the district court's denial of Appellants' motion to reconsider summary judgment. The record indicates, however, that notice of the district court's scheduled hearing on Appellants' motion to reconsider was mailed to Appellants' address of record. Furthermore, numerous courses of action exist for litigants—pro se or otherwise—to clarify the procedural posture of a case and comply with appellate rules. See *Maples v. State*, 1990-NMSC-042, ¶ 6, 110 N.M. 34, 791 P.2d 788 (suggesting that confusion as to the filing date of an order can be remedied by (1) filing an immediate appeal, (2) calling the adjudicatory body to clarify, or (3) moving for an extension to file notice of appeal).

## **CONCLUSION**

{8} “Because there is no indication that unusual circumstances justify our discretion to entertain this untimely appeal, we do not overlook this grave procedural defect.” *State v. Upchurch*, 2006-NMCA-076, ¶ 5, 139 N.M. 739, 137 P.3d 679. Accordingly, we dismiss this appeal.

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

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Chief Judge**

**J. MILES HANISEE, Judge**

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1As discussed below, Appellants were represented by counsel for the brief period of time between April 17, 2014 and July 24, 2014 and are represented by counsel on appeal.