

BARELA V. DIAZ

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**NANCY E. BARELA and
JOSE ANGEL DIAZ,
Petitioners-Appellees,
v.
CARLOS L. DIAZ,
Respondent-Appellant.**

No. 34,509

COURT OF APPEALS OF NEW MEXICO

February 18, 2016

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY, Allen R. Smith,
District Judge

COUNSEL

Elias Barela, Los Lunas, NM, for Appellees

Carlos L. Diaz, Albuquerque, NM, Pro Se Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE Judge.

{1} Self-represented Respondent Carlos L. Diaz appeals from various orders entered by the district court. [DS 1; see *also* RP Vol. 1/72, 82, 216-20, 255-56, 437-40, 443-44, 456, 472-73] In this Court's notice of proposed disposition, we proposed to dismiss the

appeal for lack of a final order. [CN 1, 8-9] Respondent filed a memorandum in response to our proposed disposition (MIO), which we have duly considered. Remaining unpersuaded, we dismiss the appeal for lack of a final order.

{2} In his memorandum in response, Respondent has not raised any arguments that refute our proposed conclusions that the underlying proceedings are non-final, that Respondent's appeal is premature, and that the appeal should be dismissed for lack of a final order. [See CN 7-8] See *State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d 1192 (dismissing for lack of jurisdiction when no final judgment had been entered); *State v. Garcia*, 1983-NMCA-017, ¶¶ 29-30, 99 N.M. 466, 659 P.2d 918 (same); see also *State v. Romero*, 2014-NMCA-063, ¶ 5, 327 P.3d 525 (“[T]he finality of a judgment may be suspended by the timely filing of a motion for reconsideration.”); Rule 12-201(D)(4) NMRA (stating that the district court retains jurisdiction to dispose of one of the types of motions for reconsideration listed in Rule 12-201(D)(1), (2), upon the filing of such a motion). Rather, Respondent contends that the district court has “taken the position to ignore any all [sic] Motions filed,” and therefore asks this Court to hold the appeal in abeyance pending the district court's entry of a final order. [MIO 3] However, as we explained in our notice of proposed disposition, this Court does not have jurisdiction when no final judgment has been entered. See *Griego*, 2004-NMCA-107, ¶ 22 (dismissing for lack of jurisdiction when no final judgment had been entered); *Garcia*, 1983-NMCA-017, ¶¶ 29-30 (same). As such, we decline to take any actions in this Court, other than dismissing for lack of jurisdiction, while the district court still retains jurisdiction. See Rule 12-201(D)(4) (stating that the district court retains jurisdiction to dispose of one of the types of motions for reconsideration listed in Rule 12-201(D)(1), (2), upon the filing of such a motion).

{3} Moreover, we note that, since this Court entered its notice of proposed disposition, Respondent has filed yet another motion for reconsideration. As the district court has not ruled on Respondent's motions to vacate or reconsider various orders, the underlying proceedings are deemed non-final, and Respondent's appeal is premature. See *Romero*, 2014-NMCA-063, ¶ 5; Rule 12-201(D)(4); see also *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675 (explaining that, when a “motion that challenges the district court's determination of the rights of the parties[] is pending in the district court, the judgment or order entered by the district court remains non-final . . . and [the] appeal is premature” (citation omitted)).

{4} Accordingly, for the reasons stated in our notice of proposed disposition and herein, Respondent's appeal is dismissed for lack of a final order.

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

J. MILES HANISEE, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

RODERICK T. KENNEDY, Judge