

BIRKLEY V. NORTHUP

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WILLIAM BIRKLEY,
Plaintiff-Appellant,
v.
JEFFERY NORTHUP,
Defendant-Appellee.

NO. 30,832

COURT OF APPEALS OF NEW MEXICO

March 10, 2011

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, Sam B. Sanchez, District
Judge

COUNSEL

William Birkley, Albuquerque, NM, Pro se Appellant

Baker Law Office, LLC, Adam S. Baker, Taos, NM, for Appellee

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Plaintiff appeals pro se from the district court's September 14, 2010 "order denying motion to vacate and reinstate" (order). (Emphasis omitted.) **[RP 64]** Our notice proposed to dismiss and Plaintiff filed a timely memorandum in opposition. We are unpersuaded by Plaintiff's arguments and therefore dismiss.

As set forth in our notice, subsequent to entry of the order and prior to the filing of his notice of appeal, **[RP 68]** Plaintiff filed a September 23, 2010, “request for specific findings of fact and conclusions of law” (request). (Emphasis omitted.) **[RP 65]** We view this request as tantamount to a motion for reconsideration. See *generally* NMSA 1978, § 39-1-1 (1953). If the district court granted Plaintiff’s requested conclusion that the case be reinstated, **[RP 67]** then it would be affording Plaintiff relief from its order. Because the district court has not yet ruled on Defendant’s post-judgment motion, we dismiss for lack of a final judgment. See *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675 (holding that because resolution of the post-judgment motion could alter, amend, or moot the order that is challenged, the order is not final and the appeal is premature).

We note that upon our dismissal for lack of finality, the district court will have jurisdiction to consider Plaintiff’s post-judgment request. While Plaintiff expresses frustration that this Court does not address the merits of his appeal, **[MIO 1-4]** Plaintiff’s act of filing the post-judgment motion precludes this Court from doing so.

Based on our notice and on the foregoing discussion, we dismiss for lack of finality.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

RODERICK T. KENNEDY, Judge