

**DISCOVER BANK V. McGEE**

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**DISCOVER BANK,**  
Plaintiff-Appellant,  
v.  
**JONATHAN N. McGEE,**  
Defendant-Appellee,

No. 32,257

COURT OF APPEALS OF NEW MEXICO

February 6, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alan M. Malott,  
District Judge

**COUNSEL**

Travis J. White, Albuquerque, NM, for Appellant

Jonathan N. McGee, Albuquerque, NM, Pro Se Appellee

**JUDGES**

CYNTHIA A. FRY, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge, J.  
MILES HANISEE, Judge

**AUTHOR:** CYNTHIA A. FRY

**MEMORANDUM OPINION**

**FRY, Judge.**

Plaintiff is appealing from a district court order denying its motion for reconsideration of a judgment dismissing its civil complaint with prejudice. We issued a calendar notice proposing to dismiss. Plaintiff has responded with a timely memorandum in opposition. Not persuaded, we dismiss the appeal.

As we observed in our calendar notice, Plaintiff is appealing from a district court order denying its motion for reconsideration of a judgment dismissing its complaint with prejudice. The order denying the motion for reconsideration was filed on June 12, 2012. [RP 116] Pursuant to Rule 12-201(D) NMRA, Plaintiff had thirty days from that date to file its notice of appeal. Our calendar notice proposed to dismiss because Plaintiff filed its notice of appeal in the district court on July 13, 2012, one day late. [RP 118]

In its memorandum in opposition, Plaintiff asserts that it timely filed its notice of appeal on July 12, 2012. However, that file date is taken from the copy served on this Court. As noted, the district court's file stamp reads July 13, 2012. [RP 118] See Rule 12-202(A) NMRA (stating that the notice of appeal should be filed with the district court clerk). As such, Plaintiff has not complied with a mandatory precondition to the exercise of our appellate jurisdiction to consider the merits of the appeal. See *Govich v. North Am. Sys., Inc.*, 112 N.M. 226, 230, 814 P.2d 94, 98 (1991) (compliance with notice of appeal time and place requirements are mandatory preconditions to exercise of appellate jurisdiction). Accordingly, we dismiss the appeal.

**IT IS SO ORDERED.**

**CYNTHIA A. FRY, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**J. MILES HANISEE, Judge**