

**DZULA V. DZULA**

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**JOHN M. DZULA,**  
Petitioner-Appellant,  
v.  
**ELIZABETH E. DZULA,**  
Respondent-Appellee.

NO. 30,505

COURT OF APPEALS OF NEW MEXICO

December 1, 2010

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Angela J. Jewell,  
District Judge

**COUNSEL**

John M. Dzula, Albuquerque, NM, Pro se Appellant

Elizabeth E. Dzula, Albuquerque, NM, Pro se Appellee

**JUDGES**

CELIA FOY CASTILLO, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,  
RODERICK T. KENNEDY, Judge

**AUTHOR:** CELIA FOY CASTILLO

**MEMORANDUM OPINION**

**CASTILLO, Judge.**

Petitioner is appealing from a district court order addressing child support. [RP 256; 264] We proposed to dismiss based on an outstanding motion to reconsider. Petitioner has responded with a memorandum in opposition. We dismiss the appeal.

The order appealed from in this case was filed on April 20, 2010. [RP 256; 264] On May 17, 2010, Petitioner filed in district court a motion to reconsider the order. [RP 258] Because Petitioner's motion for reconsideration was filed outside the time limit to file under Rule 1-059(E) NMRA, we construe it as a motion filed pursuant to NMSA 1978, § 39-1-1 (1917) and Rule 1-054.1 NMRA. However, there is no order in the record proper that addressed Petitioner's motion to reconsider. Despite the language in Section 39-1-1, the district court was required to rule on the post-judgment motion and it was not deemed denied by the passage of time. See *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 15, 142 N.M. 527, 168 P.3d 99 (holding that changes to the rules of civil procedure superceded Section 39-1-1 and eliminated the automatic denial of post-judgment motions). Thus, our calendar notice proposed to hold that Petitioner's appeal is premature without an order denying his motion. See Rule 12-201(D) NMRA (providing that if a party files a motion pursuant to Section 39-1-1, the time for filing a notice of appeal begins to run from entry of an order disposing of the motion); see also *Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865 (recognizing in the context of a foreclosure judgment that when a party makes a motion challenging the judgment, the judgment is not final until the district court rules on the motion).

In his memorandum in opposition, Petitioner states that he received a telephone call on May 18 from the district court informing him that the motion had been ruled on. [MIO 2] However, there is no written order in the record, and Defendant has not supplemented the record with any written order. It is the duty of the appellant to provide a record adequate to review the issues on appeal. See *Dillard v. Dillard*, 104 N.M. 763, 765, 727 P.2d 71, 73 (Ct. App. 1986); see also *State v. Reynolds*, 111 N.M. 263, 267, 804 P.2d 1082, 1086 (Ct. App. 1990) ("Matters outside the record present no issue for review."). To the extent that the district court may have orally ruled on the motion, this does not constitute a final order, because a party may only appeal from a written order. *Harrison v. ICX, Illinois-California Express, Inc.*, 98 N.M. 247, 249, 647 P.2d 880, 882 (Ct. App. 1982), *abrogated on other grounds by Martinez v. Friede*, 2004-NMSC-006, ¶¶ 25-26, 135 N.M. 171, 86 P.3d 596. If Petitioner believes that the district court mistakenly failed to enter a written order [MIO 3], then he may ask the district court to enter an order and may take a separate appeal therefrom.

For these reasons, we dismiss Petitioner's appeal as premature.

**IT IS SO ORDERED.**

**CELIA FOY CASTILLO, Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**RODERICK T. KENNEDY, Judge**