

KITTELL V. KITTELL

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FRANCES E. LOVETT, f/k/a
FRANCES E. KITTELL,
Petitioner-Appellee,
v.
LEE C. KITTELL,
Respondent-Appellant.

NO. 29,693

COURT OF APPEALS OF NEW MEXICO

November 19, 2009

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

COUNSEL

Emma Whitley, Albuquerque, NM, for Appellee

Lee C. Kittell, Albuquerque, NM, Pro Se Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: CELIA FOY CASTILLO, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Appellant attempts to appeal from the district court's order on spousal support. This Court filed a calendar notice proposing to dismiss the appeal for lack of a timely

notice of appeal. Appellant filed a memorandum in opposition to the proposed disposition. We are not persuaded by Appellant's arguments and dismiss the appeal.

Appellant argues that his notice of appeal should be accepted as timely because his ankle was re-injured five days before the time for filing the notice of appeal expired, and due to the effects of his medication, he was unable to timely file his notice of appeal. This Court has previously addressed the issue of whether it should invoke its inherent power to relieve against accidents and excusable mistakes, and its authority to add parties to allow the appeal to proceed. *Russell v. Univ. of N. M. Hosp.*, 106 N.M. 190, 192, 740 P.2d 1174, 1177 (Ct. App. 1987). However, these cases involved a late service of notice. *Id.* This is a case in which there was a complete failure to serve the notice of appeal.

"[T]he timely filing of a notice of appeal is a mandatory precondition to jurisdiction. Late filing of a notice of appeal is excused in cases of court-caused error or unusual circumstances beyond the control of the parties." *San Juan 1990-A., L.P. v. El Paso Prod. Co.*, 2002-NMCA-041, ¶ 23, 132 N.M. 73, 43 P.3d 1083 (citing *Chavez v. U-Haul Co.*, 1997-NMSC-051, ¶ 26, 124 N.M. 165, 947 P.2d 122; *Trujillo v. Serrano*, 117 N.M. 273, 277, 871 P.2d 369, 373 (1994); *Hyden v. N.M. Human Servs. Dep't*, 2000-NMCA-002, ¶ 15, 128 N.M. 423, 993 P.2d 740)). We hold that Appellant's injury does not present the kind of unusual circumstances found in those cases to justify the late filing of a notice of appeal. Appellant cites to no other authority authorizing this Court to extend the time for filing a notice of appeal. *Cf.* Rule 12-201(E)(1) & (2) NMRA (authorizing the district court to extend the time for filing under certain circumstances).

For this reason, and those stated in the first notice, we dismiss the appeal.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

TIMOTHY L. GARCIA, Judge