

**KIM V. DESHONE**

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**HYON KIM,**  
Plaintiff-Appellee,  
**v.**  
**CRAIG DESHONE,**  
Defendant-Appellant.

NO. 30,150

COURT OF APPEALS OF NEW MEXICO

April 28, 2010

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, David P. Reeb, Jr.,  
District Judge

**COUNSEL**

Garrett Law Firm, P.A., Michael T. Garrett, Clovis, NM, for Appellee

Marna N. Pyle-Trammell, Clovis, NM, for Appellant

**JUDGES**

CYNTHIA A. FRY, Chief Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,  
MICHAEL E. VIGIL, Judge

**AUTHOR:** CYNTHIA A. FRY

**MEMORANDUM OPINION**

**FRY, Chief Judge.**

Appellant is appealing from a district court order appointing a permanent guardian and conservator. We issued a calendar notice proposing to dismiss the appeal. Appellant has responded with a memorandum in opposition. We dismiss the appeal.

The order appealed from was filed on December 18, 2009. [RP 216] Accordingly, the notice of appeal was due on January 19, 2010, after the Martin Luther King holiday. See Rule 12-201(A)(2) NMRA. The notice of appeal was not filed in the district court until February 17, 2010. [RP 220] Although a notice of appeal had been filed with this Court on January 14, 2010, the notice should have been filed with the district court clerk. See Rule 12-202(A) NMRA. Because Appellant did not timely file a notice of appeal with the district court clerk, our calendar notice proposed to dismiss the appeal. See *Govich v. N. 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).

In her memorandum in opposition, Appellant makes the claim that she did in fact timely file a notice of appeal with the district court on January 14, 2010, but they mistakenly did not find it. Appellant correctly notes that this Court should overlook an untimely appeal where a late filing is due to court error. See *Trujillo v. Serrano*, 117 N.M. 273, 278, 871 P.2d 369, 374 (1994). However, there are no facts in the record to support Appellant's claim. Because Appellant's February 17 notice of appeal was filed within the time for the district court to grant an extension, see Rule 12-201(E)(2) NMRA, we believe that the appropriate avenue of relief for Appellant is to seek an extension of time from the district court. In the event that the district court grants that request, Appellant may renew her appeal. Finally, we note that this Court has received affidavits on this matter. Because this Court is not a fact finding court, we do not consider such documents. The district court, however, may consider these as part of its ruling on the extension request.'

## **CONCLUSION**

For the reasons set forth above, we dismiss the appeal.

**IT IS SO ORDERED.**

**CYNTHIA A. FRY, Chief Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**MICHAEL E. VIGIL, Judge**