

**MACLELLAN V. EYERMANN**

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**JOANN M. MACLELLAN, Individually  
and as Guardian and Trustee of DAVID  
TIMOTHY KING, DANIEL J. KING, and  
JOHN R. KING,  
Claimants-Appellants,  
v.  
VIRGINIA N. EYERMANN,  
Personal Representative-Appellee,  
IN THE MATTER OF THE ESTATE OF  
PHILLIP TIMOTHY KING, Deceased.**

No. 33,123

COURT OF APPEALS OF NEW MEXICO

February 3, 2014

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, J.C. Robinson, District  
Judge

**COUNSEL**

Scott Hulse P.C., Casey S. Stevenson, El Paso, TX, for Appellants

M. Yvonne Gonzalez, Silver City, NM, for Appellee

**JUDGES**

MICHAEL E. VIGIL, Judge. WE CONCUR: LINDA M. VANZI, Judge, M. MONICA  
ZAMORA, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Judge.**

**{1}** Appellant, JoAnn M. MacLellan, Individually and as Guardian and Trustee of David Timothy King, Daniel J. King, and John R. King, seeks to appeal from the district court's amended order, dated July 31, 2013, denying her request to vacate the district court's order, dated July 2, 2013, denying her claims. [DS 2, RP 397, 357] We issued a notice proposing to summarily remand to allow the district court to consider an outstanding motion for relief from judgment filed by MacLellan in the district court on August 1, 2013. MacLellan did not file a response to our proposed disposition, but the Personal Representative of the Estate of Phillip Timothy King, Virginia N. Eyermann, filed a timely memorandum in opposition.

**{2}** We continue to believe that MacLellan's post-judgment motion should be construed as a motion under NMSA 1978, Section 39-1-1 (1953), and that in the interests of judicial economy, this case should be remanded to the district court so that it can rule on this motion. Accordingly, we remand this case to the district court.

**{3} IT IS SO ORDERED.**

**MICHAEL E. VIGIL, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Judge**

**M. MONICA ZAMORA, Judge**