

LVNV FUNDING LLC V. BUSTAMANTE

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LVNV FUNDING LLC,
Plaintiff-Appellee,
v.
ROSEMARIE P. BUSTAMANTE
AND JOHN DOE (IF MARRIED),
Defendant-Appellant.

No. 34,637

COURT OF APPEALS OF NEW MEXICO

January 6, 2016

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY, Matthew J.
Sandoval, District Judge

COUNSEL

Elizabeth V. Friedenstein, Albuquerque, NM, for Appellee

Rosemarie P. Bustamante, Las Vegas, NM, Pro Se Appellant

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: LINDA M. VANZI, Judge, TIMOTHY L.
GARICA, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Rosemarie Bustamante (Appellant) appeals from the district court's order awarding summary judgment in favor of LVNV Funding LLC (Appellee). This Court's notice proposed to dismiss because the notice of appeal was not filed with the district

court clerk and the time for doing so had expired. Appellant filed a memorandum in opposition to the proposed disposition. Not persuaded by Appellant's arguments, we dismiss the appeal.

{2} Appellant does not dispute the facts relied upon by this Court in its proposed disposition but asks this Court to apply the *Duran* presumption of ineffective assistance of counsel where the notice of appeal is not filed within the time limit required. [MIO 1-2] See *State v. Duran*, 1986-NMCA-125, ¶¶ 3, 6, 105 N.M. 231, 731 P.2d 374 (stating that there is a conclusive presumption of ineffective assistance of counsel where notice of appeal is not filed within the time limit required). However, the *Duran* presumption primarily applies to criminal cases and has not been extended to civil cases such as this.

{3} Recognizing that appellate requirements for the time and place of filing are mandatory preconditions absent error on the part of the court, Appellant asserts that the district court erred in failing to comply with Rule 12-209 NMRA, by not mailing her a copy of the docket sheet as a self-represented litigant. [MIO 5] See *Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94; see also *Santa Fe Pac. Trust, Inc. v. City of Albuquerque*, 2012-NMSC-028, ¶ 23, 285 P.3d 595 (“Only the most unusual circumstances beyond the control of the parties—such as error on the part of the court—will warrant overlooking procedural defects.” (internal quotation marks and citation omitted)). Rule 12-209 states: “The district court clerk shall send a copy of this docket sheet to all counsel of record.” However, we see no relation between this requirement and Appellant's failure to file a timely notice of appeal with the district court.

{4} For these reasons and those stated in the notice of proposed disposition, we dismiss the appeal.

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

M. MONICA ZAMORA, Judge

WE CONCUR:

LINDA M. VANZI, Judge

TIMOTHY L. GARICA, Judge