

NEW MEXICO BANK & TRUST V. CORLISS

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**NEW MEXICO BANK & TRUST, Plaintiff-Appellee,
v.
GLADYS CORLISS, Defendant-Appellant.**

Docket No. 29,446

COURT OF APPEALS OF NEW MEXICO

August 19, 2009

APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY, Matthew Sandoval,
District Judge.

COUNSEL

Doerr & Knudson, P.A., Randy Knudson, Portales, NM, David Romero, Las Vegas, NM,
for Appellee.

Gladys Corliss, Tucumcari, NM, Pro Se Appellant.

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: ROBERT E. ROBLES, Judge, LINDA M.
VANZI, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Appellant is appealing, pro se, from an order granting summary judgment. We issued a calendar notice proposing to dismiss. Appellant has responded with a memorandum in opposition. Not persuaded that our calendar notice was incorrect, we dismiss the appeal.

A judgment is not final and appealable unless it practically disposes of the merits of the underlying controversy, leaving only issues collateral to and separate from that underlying controversy to be resolved. See *Kelly Inn No. 102 v. Kapnison*, 113 N.M. 231, 236-37, 824 P.2d 1033, 1038-39 (1992); Rule 12-201(A) NMRA. Appellant is appealing from several district court orders, including an order granting New Mexico Bank & Trust's (NMBT) motion for summary judgment on its complaint for declaratory judgment. [RP 1205] Appellant timely filed a notice of appeal on April 3, 2009. [RP 1237] However, the district court had consolidated a separate civil suit that had been brought by Appellant against NMBT, having the effect of creating an outstanding counterclaim against NMBT. [RP 1209] Appellant's beliefs that NMBT's complaint was filed in bad faith, was legally defective, or should not have been consolidated with this action, do not affect our review for purposes of finality in the absence of any indication that the claim has been dismissed. Pursuant to Rule 1-054(B)(1) NMRA, this outstanding claim against NMBT makes the underlying summary judgment order non-final. Accordingly, we dismiss the appeal.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

ROBERT E. ROBLES, Judge

LINDA M. VANZI, Judge