

**ORTEGA V. JOHNSON**

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**PHILLIP ORTEGA,  
Plaintiff-Appellant,**

**v.**

**GERALDINE C. JOHNSON, FIELD CLAIMS  
REPRESENTATIVE and FARMERS INSURANCE  
COMPANY OF ARIZONA,  
Defendants-Appellees,**

NO. 34,554

COURT OF APPEALS OF NEW MEXICO

September 17, 2015

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, David K. Thomson,  
District Judge

**COUNSEL**

Phillip Ortega, Santa Fe, NM, for Appellant

O'Brien & Ulibarri, P. C., Daniel O'Brien, Justin D. Goodman, Albuquerque, NM, for  
Appellees

**JUDGES**

M. MONICA ZAMORA, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,  
JONATHAN B. SUTIN, Judge

**AUTHOR:** M. MONICA ZAMORA

**MEMORANDUM**

**ZAMORA, Judge.**

{1} Plaintiff is appealing, pro se, from a district court order denying his motion for entry of a default judgment, an order dismissing his complaint without prejudice, and permitting him to amend his complaint. We issued a calendar notice proposing to dismiss for lack of finality. Plaintiff has responded with a memorandum in opposition. We dismiss the appeal.

{2} “[O]ur appellate jurisdiction is limited to review of any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action, or any final order after entry of judgment which affects substantial rights.” *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2007-NMCA-011, ¶ 17, 140 N.M. 920, 149 P.3d 1017 (alteration, internal quotation marks, and citation omitted). An appellate court does not have jurisdiction when a final judgment has not been entered. See, e.g., *State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d 1192 (dismissing for lack of jurisdiction when no final judgment had been entered); *State v. Garcia*, 1983-NMCA-017, ¶¶ 29-30, 99 N.M. 466, 659 P.2d 918 (same). When an appellate court does not have jurisdiction, it must dismiss. See *Thornton v. Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268.

{3} This Court has previously held that an order dismissing a civil complaint without prejudice is not a final, appealable order. *Montoya v. Anaconda Mining Co.*, 1981-NMCA-113, ¶ 12, 97 N.M. 1, 635 P.2d 1323. In this case, Plaintiff had filed his notice of appeal prior to the entry of the order of dismissal. [RP 34] Normally, a prematurely filed notice of appeal would be considered to be timely filed on the date of the entry of the final order. See Rule 12-201(A) NMRA. However, in this case, the district court apparently believed that the filing of the premature notice of appeal divested the district court from taking any additional action. *But see Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 32, 113 N.M. 231, 824 P.2d 1033 (noting that district courts retain jurisdiction to perfect appeal). As a result, the district court’s order of dismissal without prejudice gave Plaintiff thirty days to amend his complaint, with the period to commence upon remand from this Court. [RP 40] Because that language renders the order of dismissal non-final (because the thirty day period has yet to commence), we dismiss this appeal.

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**MICHAEL D. BUSTAMANTE, Judge**

**JONATHAN B. SUTIN, Judge**