

PADILLA V. ULIBARRI

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ARNOLD PADILLA,
Petitioner-Appellee,

v.

**LEE ULIBARRI, JERRY ULIBARRI,
ANTHONY ULIBARRI, and NIEVES
SCHEHL,**
Respondents-Appellants.

NO. 29,994

COURT OF APPEALS OF NEW MEXICO

March 19, 2010

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY, John W. Pope,
District Judge

COUNSEL

Arnold Padilla, Albuquerque, NM, Pro Se Appellee

Lee Ulibarri, Las Cruces, NM, Nieves Schehl, Titusville, FL, Pro Se Appellants

JUDGES

CYNTHIA A. FRY, Chief Judge. WE CONCUR: CELIA FOY CASTILLO, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Chief Judge.

Appellants (Respondents) appeal from the district court's order that denies their request for review and modification of the attorney's fee order. [RP Vol. II/685] The notice

proposed to dismiss for lack of a final order. Appellee filed a timely memorandum in support. Respondents filed a timely response to proposed summary disposition indicating that they do not oppose the proposed disposition, as well as an “amendment to non-opposition to summary dismissal.” Because the order is non-final, we dismiss.

On appeal, Respondents contest the district court’s ruling that the “partition of the property proceed immediately as provided for by the statute.” [RP Vol. II/685; DS 5-7] See NMSA 1978, § 42-5-1 (1907) (stating that “[w]hen any lands ... shall be owned in joint tenancy, tenancy in common or coparcenary . . . it shall be lawful for any one or more persons interested . . . to present to the district court their complaint . . . for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners”). As set forth in our notice and as recognized by Respondents in their response [DS 1], the order from which they appeal is interlocutory. See *Sims v. Sims*, 1996-NMSC-078, ¶¶ 1, 58-59, 122 N.M. 618, 930 P.2d 153 (providing that the order recognizing the agreement among the parties as to the percentages of ownership they each held in the two ranches is interlocutory in nature until there has been a final judgment partitioning the two ranches); *Prude v. Lewis*, 78 N.M. 256, 262, 430 P.2d 753, 759 (1967) (recognizing that a judgment “declaring the rights of the parties, ordering partition, and appointing commissioners is interlocutory” because “further judgment and decree to vest and divest title to the respective portions upon partition, or, in the event of a sale, to confirm the sale and distribute the proceeds is required”). Because the order from which Respondents appeal is interlocutory in nature and was not certified pursuant to Rule 12-203 NMRA, we dismiss for lack of a final order. See Rule 12-203 (setting forth requirements for interlocutory appeals); *Chapel v. Nevitt*, 2009-NMCA-017, ¶ 14, 145 N.M. 674, 203 P.3d 889 (recognizing that generally an order is not final unless all issues of law and fact have been determined and the case disposed of by the district court to the fullest extent possible). Lastly, to the extent Respondents continue to challenge the district court’s authority to partition the property in their “amendment to non-opposition to summary dismissal,” we decline to consider the merits of their argument given the lack of a final order. For the same reason, we similarly decline to address the effect of our previous opinion, on the merits of the present dispute. *In re Estate of Antonio Roybal*, 2008-NMCA-110, 144 N.M. 679, 191 P.3d 537. [RP Vol. I/339; MIS 1-2]

CONCLUSION

For reasons set forth herein and in our notice, we dismiss for lack of a final order.

IT IS SO ORDERED.

CYNTHIA A. FRY, Chief Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

TIMOTHY L. GARCIA, Judge