

REYES V. DOT

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MARCELINO REYES,
Plaintiff-Appellant,
v.
STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION,
Defendant-Appellee.

No. 28,502

COURT OF APPEALS OF NEW MEXICO

September 9, 2009

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, James A. Hall,
District Judge

COUNSEL

Donald R. Sears Jr., Albuquerque, NM, for Appellant

Montgomery & Andrews PA, Holly Agajanian, Santa Fe, NM, for Appellee

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: CELIA FOY CASTILLO, Judge,
MICHAEL E. VIGIL, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

Summary affirmance was proposed for the reasons stated in the notice of proposed summary disposition. No memorandum opposing the disposition was filed. As a result, a memorandum opinion was filed in this case on March 26, 2009, affirming the district

court. Appellant filed a motion for rehearing on April 14, 2009. On April 21, 2009, because Appellant's counsel represented that he had not received the calendar notice of proposed summary disposition, this Court granted the motion for rehearing, and our March 26, 2009, memorandum opinion was withdrawn. No memorandum opposing summary affirmance was timely filed in response to this Court's April 21, 2009, order, which set a response time for May 11, 2009.

Appellant's counsel did file a memorandum opposing this Court's proposed summary disposition on June 25, 2009. Because of this late filing, this Court filed an Order to Show Cause on August 11, 2009, requiring counsel to respond to the order no later than August 19, 2009. Upon consideration of counsel's response, this Court has held that Appellant's untimely memorandum in response to the calendar notice would not be considered for the reasons expressed in this Court's order filed simultaneously with this opinion.

We affirm the district court.

IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

MICHAEL E. VIGIL, Judge