

SPENGLER V. SPENGLER

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JACK G. SPENGLER, Petitioner-Appellant,
v.
CYNTHIA M. SPENGLER, Respondent-Appellee.

Docket No. 28,927

COURT OF APPEALS OF NEW MEXICO

August 26, 2009

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, .Jerry H. Ritter, Jr.,
District Judge.

COUNSEL

Jack G. Spengler, Lynchburg, VA, Pro Se Appellant.

Roger E. Yarbro, Cloudcroft, NM, for Appellee.

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,
CELIA FOY CASTILLO, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

In this case, the final decree was entered on June 10, 2008. [RP 1365] On June 18, 2008, Petitioner filed a motion for a new trial pursuant to Rule 1-059 NMRA. [RP 1383] Petitioner's motion for a new trial was filed within ten days of the judgment and it asked the court to reconsider various conclusions of a law. Such a motion is deemed a Rule 1-059(E) motion to alter or amend the judgment. *See Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶¶ 7-10, 142 N.M. 527, 168 P.3d 99 (stating

that a motion challenging a judgment, filed within ten days of the judgment, should be considered a Rule 1-059(E) motion to alter or amend a judgment). On August 19, 2008, believing that the Rule 1-059(E) motion was deemed denied by operation of law after thirty days, Petitioner filed a Notice of Appeal. [DS 1] The district court has not yet ruled on Petitioner's motion.

We issued a calendar notice proposing to dismiss the appeal based on the lack of a final order. See *Dickens v. LaurelHealth Care LLC*, No. 29,239, slip op. at ¶ 4, 7 (N.M. Ct. App. Jun. 18, 2009) (holding that the filing of a Rule 1-059(E) motion renders a judgment non-final for purposes of appeal and dismissing the appeal for lack of a final order). Petitioner has responded to our calendar notice and indicated that he does not oppose dismissal of the appeal so that the district court can enter a final order.

For these reasons, we dismiss the appeal.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

CELIA FOY CASTILLO, Judge