

**U.S. BANK N.A. V. RIVAS**

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**U.S. BANK N.A. AS TRUSTEE FOR  
MASTER ASSET BACKED  
SECURITIES TRUST 2002-NC1  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2002-NC1,**  
Plaintiff-Appellee,

v.

**JOSE RIVAS, ROSARIO RIVAS, and  
YRENIA RIVAS, f/k/a YRENIA LARES,**  
Defendants-Appellants,

and

**ROBERTO LARES and MOUNTAIN  
STATES MUTUAL CASUALTY  
COMPANY,**  
Defendants.

No. 33,960

COURT OF APPEALS OF NEW MEXICO

December 23, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Valerie A.  
Huling, District Judge

**COUNSEL**

Johnson Law Firm LC, Thomas L. Johnson, Andrew L. Johnson, Albuquerque, NM, for  
Appellee

Law Office of Alvin R. Garcia LLC, Alvin R. Garcia, Albuquerque, NM, for Appellants

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge,  
J. MILES HANISEE, Judge

**AUTHOR: JONATHAN B. SUTIN**

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendants have appealed from an opinion and order denying their motion to set aside a default judgment pursuant to Rule 1-060(B) NMRA. We previously issued a notice of proposed summary disposition in which we proposed to dismiss for want of a final order. Defendants have filed no memorandum in opposition; Plaintiff has filed a response, which we have duly considered. Because we remain unpersuaded that this matter is properly before us, we dismiss the appeal.

{2} Because we previously described the pertinent background information in the notice of proposed summary disposition, we will not reiterate at length here. Suffice it to say, the district court's opinion and order appear to fully address all of the issues and arguments that had previously been presented, such that it would normally be regarded as a final, appealable decision. However, "at midnight after the district court filed its order and opinion" [Response 1-2], Defendants filed a "[Second] Supplemental Brief Regarding the Court's Lack of Subject Matter Jurisdiction . . . to Vacate Approved Plats[.]" [RP 305] This document contains both arguments and an attachment offered as evidence of the City of Albuquerque's position. [RP 308] Plaintiff timely filed a motion to strike the second supplemental brief. [RP 311] The record before us indicates that the district court has addressed neither the substance of Defendants' supplemental filing, nor Plaintiff's motion to strike.

{3} We previously noted in our notice of proposed summary disposition that although it is not entirely clear how Defendants' submission should be characterized, in light of the timing, as well as the absence of express prior authorization for the filing, it seems most appropriate to construe the document as a motion for reconsideration. See, e.g., *Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 9, 145 N.M. 650, 203 P.3d 865 (construing a claim of exemptions on execution as a post-judgment motion pursuant to NMSA 1978, Section 39-1-1 (1917)); *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶¶ 7-10, 142 N.M. 527, 168 P.3d 99 (illustrating that ambiguous post-judgment motions and submissions of indeterminate nature will be construed or classified so as to give them efficacy whenever possible). Until the district court has taken a formal position on the submission, the matter has not fully and finally been resolved; and accordingly, the instant appeal is premature. See, e.g., *Pruyn v. Lam*, 2009-NMCA-103, ¶¶ 6-7, 15-17, 147 N.M. 39, 216 P.3d 804 (observing that until the district court rules with finality on arguments advanced pursuant to Rule 1-060(B), this Court cannot properly consider the merits); see generally *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675 (observing that when a motion that challenges the district court's determination of the rights of the parties is pending in the district court, the judgment or order entered by that court remains non-final, such that appeal is premature).

**{4}** In its response, Plaintiff suggests that Defendants' twelfth-hour submission contains "[n]o new arguments . . . that were not adequately addressed by the district court's opinion and order entered earlier that day." [Response 2] However, we are not at liberty to engage in such a comparative analysis on the merits. To the extent that Defendants filed a document that may properly be construed as a timely motion for reconsideration, the underlying proceedings have not been fully and finally resolved until the district court expressly disposes of the motion. See Rule 1-054.1 NMRA comm. cmt. ("Because there no longer is an automatic denial of post-judgment motions, the time for filing notices of appeal will run 'from the entry of an order expressly disposing of the motion'." (quoting Rule 12-201(D) NMRA)).

**{5}** Accordingly, for the reasons stated in this Opinion and in the notice of proposed summary disposition, we conclude that the district court's order is not immediately reviewable. The appeal is therefore summarily dismissed.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**RODERICK T. KENNEDY, Chief Judge**

**J. MILES HANISEE, Judge**