

**WEISNER V. SAN JUAN COUNTY**

This memorandum opinion was not selected for publication in the New Mexico Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**KENT M. WEISNER,**  
Plaintiff-Appellant,

v.

**SAN JUAN COUNTY NM BOARD  
OF COUNTY COMMISSIONERS and  
OFFICE OF COUNTY CLERK,**  
Defendant-Appellee.

No. 31,832

COURT OF APPEALS OF NEW MEXICO

March 14, 2012

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Judge Thomas J.  
Hynes, District Judge

**COUNSEL**

Kent M. Weisner, Kirtland, NM, Pro se Appellant

Douglas A. Echols, Aztec, NM, for Appellee

**JUDGES**

TIMOTHY L. GARCIA, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, LINDA M.  
VANZI, Judge

**AUTHOR:** TIMOTHY L. GARCIA

**MEMORANDUM OPINION**

**GARCIA, Judge.**

Plaintiff is appealing, pro se, from a district court order dismissing his complaint. We issued a calendar notice proposing to dismiss. Plaintiff has responded with a

memorandum in opposition. Not persuaded by Plaintiff's arguments, we dismiss the appeal.

Plaintiff is appealing from a district court order dismissing his complaint. The judgment was filed on December 1, 2011. [RP 63] On December 7, 2011, Plaintiff filed a motion to reconsider that order. [RP 64] Plaintiff filed a notice of appeal from the underlying order on December 1, 2011. [RP 67] There is no indication in the record proper that the district court ruled on Plaintiff's motion to reconsider, and Plaintiff's memorandum in opposition indicates that no ruling has been entered. The district court was required to rule on the post-judgment motion and it was not deemed denied by the passage of time. See Rule 1-059(E) NMRA; *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶ 15, 142 N.M. 527, 168 P.3d 99 (holding that a Rule 1-059(E) motion is not subject to automatic denial). Thus, we conclude that Plaintiff's appeal is premature without an order denying his motion. See generally *Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992) (discussing principles of finality).

For these reasons, we dismiss Plaintiff's appeal as premature.

**IT IS SO ORDERED.**

**TIMOTHY L. GARCIA, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Judge**

**LINDA M. VANZI, Judge**