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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**No. A-1-CA-43125**

**ADRIAN LUCERO on behalf of  
ELIJAH LUCERO and  
ALEXANDER LUCERO,**

Petitioner-Appellee,

v.

**MIGUEL GARCIA,**

Respondent-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY  
Jane C. Levy, District Court Judge**

Johnson Family Law PC  
Donny D. Johnson, Jr.  
Albuquerque, NM

for Appellee

Mitchell Law Offices, LLC  
Aaron Mitchell  
Albuquerque, NM

for Appellant

**MEMORANDUM OPINION**

**WRAY, Judge.**

{1} Respondent appeals following the district court's entry of a December 15, 2025 order, resolving his objections to a domestic violence special commissioner's order denying Respondent's motion to modify or reconsider the order of protection. [RP 79-80] This Court issued a calendar notice proposing to summarily affirm. Respondent filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} Our calendar notice proposed to affirm for several reasons. First, we proposed to conclude that Respondent stipulated to the August 5, 2025 order of protection, and thus Respondent had lost his right to appeal any issues related to that order. [CN 2-3] See *Kysar v. BP Am. Prod. Co.*, 2012-NMCA-036, ¶ 14, 273 P.3d 867 (“New Mexico . . . adheres to the general rule that a judgment by consent is not appealable.”); *Gallup Trading Co. v. Michaels*, 1974-NMSC-048, ¶ 5, 86 N.M. 304, 523 P.2d 548 (holding that when the appellant consented to the entry of summary judgment against them, they lost their right to appeal). Second, we proposed to conclude that Respondent did not file a notice of appeal or his motion to reconsider within thirty days of the August 5, 2025 order, and thus the issues presented in Respondent’s docketing statement as to that order were not appropriately before us. [CN 3] See *Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94 (explaining that the time and place of filing a notice of appeal is a mandatory precondition to appellate jurisdiction); Rule 12-201(A)(1)(b) NMRA (stating that a notice of appeal shall be filed “within thirty (30) days after the judgment or order appealed from is filed in the district court clerk’s office”). In addition to these two proposed conclusions, we also directly addressed Respondent’s three assertions of error contained in his docketing statement, including his contentions that the district court lacked subject matter jurisdiction to enter the order of protection. [CN 5-6]

{3} In his memorandum in opposition, Respondent abandons two of the three assertions of errors presented in his docketing statement, but continues to assert that the district court lacked subject matter jurisdiction to enter the order of protection because his stipulation to being a stepparent amounted to an impermissible stipulation to subject matter jurisdiction. [MIO PDF 6-7] Respondent’s stipulation, however, was not to the subject matter jurisdiction of the court. See *Best v. Marino*, 2017-NMCA-073, ¶¶ 19-21 (providing that NMSA 1978, “Section 40-13-3(A) [(2008)] confers jurisdiction to the district court in the judicial district in which an alleged victim of domestic abuse lives”). Instead, Respondent stipulated to a factual condition that is relevant to whether the relevant statute applied to the circumstances. See NMSA 1978, § 40-13-2(F) (2019); *State v. Gonzales*, 2017-NMCA-080, ¶ 15, 406 P.3d 534 (describing the statute’s applicability). Moreover, Respondent did not address either of the proposed conclusions articulated above, both of which provide a basis for affirmance. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact” and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Consequently, Respondent has not demonstrated that the calendar notice was in error.

{4} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm.

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

**KATHERINE A. WRAY, Judge**

**WE CONCUR:**

**J. MILES HANISEE, Judge**

**SHAMMARA H. HENDERSON, Judge**