

**ATENCIO V. PENA**

This memorandum opinion was not selected for publication in the New Mexico Appellate 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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.

**ANDREW ATENCIO, JEFFREY ATENCIO,  
and MELISSA ATENCIO,**  
Plaintiffs-Appellees,  
v.  
**DEBBIE PENA and RICHARD MARTINEZ,**  
Defendants-Appellants.

No. 32,052

COURT OF APPEALS OF NEW MEXICO

October 10, 2012

APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY, Sheri A.  
Raphaelson, District Judge

**COUNSEL**

Andrew Atencio, Jeffrey Atencio, Melissa Atencio, Santa Cruz, NM, Pro Se Appellees  
New Mexico Legal Aid, Inc., Amy L. Propps, Santa Fe, NM, for Appellants

**JUDGES**

RODERICK T. KENNEDY, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,  
MICHAEL E. VIGIL, Judge

**AUTHOR:** RODERICK T. KENNEDY

**MEMORANDUM OPINION**

**KENNEDY, Judge.**

Debbie Pena and Richard Martinez (Defendants) appeal from the district court's February 9, 2012, order denying Defendants' motion for reconsideration and motion to strike (order). [RP Vol.II/332] Our notice proposed to dismiss for lack of a final order,

and Defendants filed a memorandum in opposition. We are not persuaded by Defendants' arguments and, therefore, dismiss for lack of a final order.

In relevant part, the February 9, 2012, order from which Defendants appeal states the following:

[B]ecause the [c]ourt is aware that the mobile home at issue in this lawsuit has been the subject of a separate lawsuit brought by a purchase-money creditor, and the [c]ourt has issued an order in that case authorizing repossession, the previous order in this case authorizing judgment against . . . Defendants shall be amended.

[RP Vol.II/332] Because the referenced passage in the February 9th order indicates that the district court will amend the underlying judgment against Defendants, the order is not final for purposes of appeal. *See generally Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992) (providing that an order or judgment is not considered final unless all issues of law and fact have been determined, and the case disposed of by the trial court to the fullest extent possible), *limited on other grounds by Trujillo v. Hilton of Santa Fe*, 115 N.M. 397, 398, 851 P.2d 1064, 1065 (1993) (providing that an order or judgment is not considered final unless all issues of law and fact have been determined and the case is disposed of by the trial court to the fullest extent possible).

While the district court entered orders on June 13, 2011 and December 7, 2011, which addressed outstanding damages, [MIO 1] these orders do not transform the otherwise non-final February 9 order into a final order. As it is now, the February 9 order provides that the district court will be amending the underlying judgment in light of a separate lawsuit brought by a purchase-money creditor. Given that further action by the district court is contemplated, we dismiss for lack of a final order.

**IT IS SO ORDERED.**

**RODERICK T. KENNEDY, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**MICHAEL E. VIGIL, Judge**