

BAILEY V. BRAISER

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**CHER BAILEY and
KEVIN BAILEY, a
married couple,
Plaintiffs-Appellants,**

v.

**ROBERT BRAISER and
LINDA BRAISER, a married
couple, LEO J. ANDAVAZO, a
single man, BETTY B. GARCIA,
a single woman, JOHN DOE, an
unidentified man, and SCHWAN'S
HOME SERVICES INC., a
Minnesota corporation registered
to do business in New Mexico,
Defendants-Appellees.**

No. 35,372

COURT OF APPEALS OF NEW MEXICO

April 20, 2017

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY, J. C. ROBINSON,
District Judge

COUNSEL

Law Offices of John Warner Widell, John Warner Widell, Santa Fe, NM, for Appellants

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Robert and Linda Braisier

McCoy Leavitt Laskey, LLC, H. Brook Laskey, Albuquerque, for Appellee Schwan's
Home Service Inc.

Leo J. Andavazo, Mimbres, NM, Pro Se Appellee

Betty B. Garcia, Mimbres, NM, Pro Se Appellee

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, HENRY M. BOHNHOFF, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Cher and Kevin Bailey (Appellants) appealed from the district court's summary judgment order. This Court's first calendar notice proposed to summarily affirm. After Appellants filed a memorandum in opposition to the first calendar notice, it became apparent that there was no final order from which to appeal, as a motion for reconsideration was filed below after the notice of appeal, but within the time for filing a motion to reconsider. [1st MIO 12-13; RP 283, 293, 295] It did not appear from the record that the motion had been expressly ruled upon by the district court, so this Court's second calendar notice proposed to dismiss the appeal for lack of a final order. Appellants filed a second memorandum in opposition essentially requesting that we defer acting on the appeal until the district court holds a hearing on their motion for reconsideration and enters a ruling. [2nd MIO 2-3] It appears from the record below that no such hearing has occurred, nor is there any way to determine when a hearing will be scheduled and a final decision entered. For this reason, and those stated in the second calendar notice, we dismiss the appeal. Appellants can appeal again, if necessary, following entry of the district court's decision.

{2} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

HENRY M. BOHNHOFF, Judge