

**FRISBY V. LABOR CONCEPTS AND RELIANCE NATIONAL INSURANCE**

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**KENNETH GEORGE FRISBY,**  
Worker-Appellant,  
v.  
**LABOR CONCEPTS and RELIANCE**  
**NATIONAL INSURANCE,**  
Employer/Insurer-Appellees.

No. 33,543

COURT OF APPEALS OF NEW MEXICO

December 15, 2014

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION, Reginald C.  
Woodard, Workers' Compensation Judge

**COUNSEL**

Kenneth George Frisby, Albuquerque, NM, Pro Se Appellant

Katherine E. Tourek, Albuquerque, NM, for Appellees

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge,  
JAMES J. WECHSLER, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

{1} Kenneth George Frisby ("Worker") appeals three separate orders entered in proceedings before the Workers' Compensation Administration. This Court issued a notice of proposed summary disposition, proposing to affirm one of those orders as to

which Worker failed to preserve his argument on appeal and to dismiss this appeal as to the two remaining orders on the basis that Worker's notice of appeal is untimely as to both of those orders. [CN 6] Worker has filed a memorandum in opposition to that proposed disposition, which this Court has duly considered. As we do not find Worker's memorandum persuasive, we affirm and dismiss as described in our notice of proposed summary disposition.

{2} In his memorandum in opposition, Worker concedes that his first issue—concerning the disqualification of a Workers' Compensation Judge—was not raised below. [MIO 1] Instead, Worker asserts that he was unaware of the issue he now raises at the time of the judicial disqualification he seeks to challenge. [Id.] It thus appears that the court below had no opportunity to address the error Worker asserts, that other parties to this litigation had no opportunity to respond to that purported error, and that no record was developed below that would facilitate this Court's review of the issue Worker seeks to raise. See *Kilgore v. Fuji Heavy Indus. Ltd.*, 2009-NMCA-078, ¶ 50, 146 N.M. 698, 213 P.3d 1127 (describing the purposes served by the preservation rule). Thus, for the reasons stated in our notice of proposed summary disposition, we affirm the order entered below on January 15, 2014.

{3} Worker's remaining appellate issues involve orders entered on October 8, 2013, and October 30, 2009. In our notice of proposed summary disposition, we noted that Worker's notice of appeal was untimely as to both of those orders and proposed to dismiss his appeal of those orders on that basis. Worker's memorandum in opposition does not address the timeliness of his appeal from the order entered in 2009. With regard to the order entered in October of 2013, which dismissed all claims that Worker was attempting to assert against his prior counsel in this case, Worker asserts that within two days of the entry of that order, he was told by "the worker's compensation clerk of court [that] . . . there was no final order since [he] had a pending court date." [MIO 2]

{4} Worker does not suggest that any evidence of his conversation with a clerk appears in the record proper of this case. See *State v. Reynolds*, 1990-NMCA-122, ¶ 16, 111 N.M. 263, 804 P.2d 1082 (reciting that "[m]atters outside the record present no issue for review"). And, in any event, litigants are not entitled to rely upon court clerks for legal advice, particularly where the conclusion reached is clearly contrary to settled law. See *Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84 (noting that self-represented parties "must comply with the rules and orders of the court, and will not be entitled to greater rights than those litigants who employ counsel").

{5} New Mexico's rules of civil procedure explicitly recite that a judgment is final if it adjudicates "all issues as to one or more, but fewer than all parties." Rule 1-054(B)(2) NMRA. Similarly, our cases have consistently held that an order disposing of all claims against one of several defendants is a final order for purposes of appeal. See *Santa Fe Pac. Trust, Inc. v. City of Albuquerque*, 2012-NMSC-028, ¶ 1, 285 P.3d 595 (affirming this Court's dismissal of an appeal as to a defendant whose claims were resolved one year prior to notice of appeal); *Healthsource, Inc. v. X-Ray Assocs. of N.M.*, 2005-

NMCA-097, ¶ 14, 138 N.M. 70, 116 P.3d 861 (quoting rule and acknowledging jurisdiction over appeal by one of two defendants).

{6} Thus, for the reasons stated here and in our notice of proposed summary disposition, we affirm the Workers' Compensation order entered below on January 15, 2014, and dismiss as untimely Worker's appeal of the orders entered in October of 2009 and 2013.

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

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**RODERICK T. KENNEDY, Chief Judge**

**JAMES J. WECHSLER, Judge**