

**GINKO V. ALBUQUERQUE HEALTH PARTNERS**

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**ROSEMARY GINKO,**  
Plaintiff-Appellant,  
v.  
**ALBUQUERQUE HEALTH PARTNERS,**  
**LOVELACE HEALTH SYSTEM, INC.,**  
Defendants,  
and  
**BRAD CUCCHETTI, DO.,**  
Defendant-Appellee.

NO. 32,561

COURT OF APPEALS OF NEW MEXICO

April 18, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Valerie Mackie  
Huling, District Judge

**COUNSEL**

Trujillo Dodd, Torres, O'Brien, Sanchez, LLC, Donna S. Trujillo Dodd, Albuquerque,  
NM, for Appellant

Miller Stratvert, P.A., Todd Schwarz, Albuquerque, NM, for Defendants/Appellee

**JUDGES**

LINDA M. VANZI, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge,  
JONATHAN B. SUTIN, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Judge.**

**{1}** Appellant Rosemary Ginko (Plaintiff) appeals from the district court's dismissal of all her claims with prejudice as a sanction for her discovery abuses, including "the willful and intentional nature of Plaintiff's conduct and deception." [RP Vol.III/1321] Our notice proposed to dismiss for lack of a final order, in light of Plaintiff's pro se "affidavit" [RP Vol.III/1328], which we view as tantamount to an outstanding motion to reconsider. Our notice provided, however, that in the event Plaintiff should secure a final order ruling on the outstanding motion and provide this Court with a copy thereof in the time for filing a memorandum in opposition, we would proceed to calendar this case on the merits. Plaintiff was unable to secure a final order, and for this reason we dismiss her appeal for lack of a final order. See *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675 (holding that because resolution of the post-judgment motion could alter, amend, or moot the order that is challenged, the order is not final and the appeal is premature).

**{2}** While Plaintiff did not secure a final judgment from the district court, we note that we are in receipt of the district court's March 6, 2013, "order on motion to withdraw and motion for ruling on outstanding matters" (order). [Ct.App.File, pink clip] In pertinent part, this order acknowledges the filing of Plaintiff's pro se affidavit, prohibits Plaintiff from filing any more pro se pleadings in district court until further order of the district court, and indicates that a notice of hearing will be sent to Plaintiff's counsel, at which time the district court will address—among other matters—the motion for ruling on outstanding matters. As relevant to our dismissal for lack of finality, this order acknowledges that matters remain to be decided below, thereby precluding finality.

**{3}** For reasons discussed herein and in our notice, we dismiss for lack of a final order.

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

**LINDA M. VANZI, Judge**

**WE CONCUR:**

**RODERICK T. KENNEDY, Chief Judge**

**JONATHAN B. SUTIN, Judge**