

IN RE CRUZ-CALDERON

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**IN THE MATTER OF THE GUARDIANSHIP
and CONSERVATORSHIP of LILLIAN
CRUZ-CALDERON, an (alleged)
Incapacitated Person,
Petitioner-Appellant,
SHARON N. OCASIO,
Counter/Petitioner-Appellant.
v.
MIGUEL PIRELA-CRUZ,
Petitioner-Appellee.**

NO. 29,545

COURT OF APPEALS OF NEW MEXICO

September 23, 2009

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Fernando R.
Macias, District Judge

COUNSEL

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Guardian Ad Litem

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Sandenaw & Anderson, P.C., Caralyn Banks, Las Cruces, NM, for Appellee

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,
MICHAEL D. BUSTAMANTE, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Appellant appeals from the district court order appointing permanent co-guardians and a conservator for Lillian Cruz-Calderon. We issued a Calendar Notice proposing to dismiss the appeal for lack of a final order. Appellant has filed a timely memorandum in opposition, which we have considered. We remain unpersuaded and dismiss this appeal.

This Court's jurisdiction arises from final, appealable orders. See NMSA 1978, § 39-3-2 (1966); *Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 234-40, 824 P.2d 1033, 1036-42 (1992). Whether an order is final, such that appeal is statutorily authorized, is a jurisdictional question that this Court is required to raise on its own motion. See *Britt v. Phoenix Indem. Ins. Co.*, 120 N.M. 813, 815, 907 P.2d 994, 996 (1995); *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 12, 125 N.M. 680, 964 P.2d 844 (Ct. App. 1998).

In this case, the district court entered its amended order appointing permanent co-guardians and a conservator for Lillian Cruz-Calderon on March 30, 2009. **[RP 203-206]** On April 9, 2009, Appellant filed a motion for reconsideration and requested a hearing on the motion. **[RP 207-217, 226]** On April 29, 2009, Appellant filed a Notice of Appeal. **[RP 228]** The district court has not yet ruled on Appellant's motion for reconsideration.

Appellant's motion for reconsideration was filed within ten days of the judgment. Such a motion is deemed a Rule 1-059(E) NMRA motion to alter or amend the judgment. See *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶¶ 7-10, 142 N.M. 527, 168 P.3d 99 (stating that "a motion challenging a judgment, filed within ten days of the judgment, should be considered a Rule 1-059(E) motion to alter or amend a judgment"). Because Appellant's motion for reconsideration remained outstanding when she filed her notice of appeal, the notice of appeal was filed before there was a final order in the case. See *Dickens v. Laurel Health Care, LLC*, No. 29,239, slip op. at ¶¶ 4, 7 (N.M. Ct. App. Jun. 18, 2009) (holding that the filing of a Rule 1-059(E) motion renders a judgment non-final for purposes of appeal and dismissing the appeal for lack of a final order). Accordingly, the notice of appeal was premature.

Until the district court rules on the motion for reconsideration, there is no final order in the case from which to appeal, and this appeal must be dismissed for lack of jurisdiction. In her memorandum in opposition, Appellant states that she has requested a hearing from the district court on the motion to reconsider. **[MIO 1]** We note that once the district court has issued a written ruling on the motion for reconsideration, Appellant is free to file a notice of appeal. See *Albuquerque Redi-Mix*, 2007-NMSC-051, ¶¶ 3-5 (determining that the notice of appeal was timely filed from the district court's denial of the Rule 1-059(E) motion to alter or amend the judgment).

For these reasons, we dismiss the appeal.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

MICHAEL D. BUSTAMANTE, Judge