

J PERRY V. GEO GROUP

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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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

JOSEPH C. PERRY, Plaintiff-Appellant,
v.
**THE GEO GROUP, INC., LEA COUNTY CORRECTIONAL FACILITY, STIU
COORDINATOR E. SANDOVAL, MAJOR VINCENT HORTON, SANDRA MILLER,
and JOSIE ENRIQUEZ, Defendants-Appellees.**

Docket No. 28,982

COURT OF APPEALS OF NEW MEXICO

February 4, 2009

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Gary L. Clingman, District
Judge.

COUNSEL

Joseph C. Perry, Santa Fe, NM, Pro Se Appellant.

Yenson, Lynn, Allen & Wosick, P.C., Matthew L. Connelly, Albuquerque, NM, for
Appellees.

JUDGES

CELIA FOY CASTILLO, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, LINDA
M. VANZI, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Judge.

Plaintiff appeals an order granting Defendants' motion to dismiss entered on July 10, 2008, and a second order denying Defendants' motion to dismiss entered on July 22, 2008. [DS unnumbered page 1; RP 351, 362] We proposed to dismiss for lack of a

final order and, in the alternative, because Plaintiff failed to file a timely notice of appeal. Plaintiff filed a “memorandum motion” contending that the order denying his motion to dismiss is the controlling order. [Memorandum 1-2] We agree with Plaintiff’s contention and therefore dismiss the appeal for lack of a final order.

As stated in our notice of proposed summary dismissal, the right to appeal is restricted to final judgments and decisions. 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), limited on other grounds by *Trujillo v. Hilton of Santa Fe*, 115 N.M. 397, 398, 851 P.2d 1064, 1065(1993). Whether an order is final for purposes of appeal is a jurisdictional question that this Court is required to raise on its own motion. *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 12, 125 N.M. 680, 964 P.2d 844.

A final order is commonly defined as an order that decides all issues of fact and law necessary to be determined or which completely disposes of the case to the extent that the court had the power to dispose of it. See *B.L. Goldberg & Assocs., Inc. v. Uptown, Inc.*, 103 N.M. 277, 278, 705 P.2d 683, 684 (1985). In this case, the district court’s most recent order denied Defendants’ motion to dismiss. [RP 362] This is the order that controls. See *Nichols v. Nichols*, 98 N.M. 322, 326-27, 648 P.2d 780, 784-85 (1982) (recognizing the “rule that when there are two conflicting judgments rendered by a court upon the same rights of the same parties that which is later in time prevails”); cf. NMSA 1978, § 39-1-1 (1917) (stating that the district court retains control over final judgments for a period of thirty days after entry of the order).

Generally, an order denying a “motion to dismiss is not an appealable, final order.” *King v. Allstate Ins. Co.*, 2007-NMCA-044, ¶ 8, 141 N.M. 612, 159 P.3d 261; see *Gutierrez v. Gutierrez*, 116 N.M. 86, 86, 860 P.2d 216, 216 (Ct. App. 1993). In light of the fact that the district court’s most recent order denies Defendants’ motion to dismiss, Plaintiff is appealing from a non-final order and thus we dismiss Plaintiff’s appeal because the order is not final for the purposes of appeal.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

LINDA M. VANZI, Judge