

IVEY V. JENNINGS

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ROSALIE IVEY,
Petitioner-Appellant,
v.
CATHY JENNINGS,
Respondent-Appellee.

No. 33,458

COURT OF APPEALS OF NEW MEXICO

March 12, 2014

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, Karen L. Parsons,
District Judge

COUNSEL

William N. Griffin, Ruidoso, NM, For Appellant

H. John Underwood, LTD., H. John Underwood, Alexandra Bobbit, Ruidoso, NM, for
Appellee

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, J. MILES
HANISEE, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Petitioner seeks to appeal from the district court's order granting trial judgment in favor of Respondent and another unnamed order, both filed on November 13, 2013. [RP 460-66] Petitioner filed a timely post-judgment motion, pursuant to Rule 1-052(D)

NMRA, asking “the court to make findings of fact and conclusions of law and to amend the trial judgment.” [RP 494-97] Petitioner also filed notices of appeal from the district court’s orders. [RP 502-03, 505-06]

{2} We issued a notice of proposed summary disposition, proposing to dismiss on grounds that the motion could alter, amend, or moot the district court’s final orders; and thus, the orders are no longer final for purposes of appeal. See Rule 12-201(D)(1) NMRA (stating that “[i]f any party timely files a motion under Section 39-1-1 NMSA 1978, . . . Rule 1-052(D) NMRA, or Rule 1-059 NMRA, . . . the full time prescribed in this rule for the filing of the notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the . . . motion.”); *Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865 (holding that “when a party makes a motion challenging the district court’s determination of the rights of the parties contained in the [final order, the order is no longer] final, and the time for filing an appeal does not begin to run, until the district court disposes of the motion”).

{3} Respondent and Petitioner have filed responses to our notice, agreeing that the orders are not final for purposes of appeal, in light of Petitioner’s post-judgment motion. [Ct. App. file] We continue to believe that Petitioner’s post-judgment motion renders the district court’s orders non-final and renders Petitioner’s appeal premature. See *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675 (observing that “when a Rule 1-059(E) motion, or other motion that challenges the district court’s determination of the rights of the parties, is pending in the district court, the judgment or order entered by the district court remains non-final” such that appeal is premature). We, therefore, dismiss Petitioner’s appeal for lack of a final, appealable order and remand for further proceedings. See *id.* ¶¶ 6-7.

{4} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

J. MILES HANISEE, Judge