NEW MEXICO CONSOL. CONSTR. SERVS., LLC V. SANTA FE CITY COUNCIL

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NEW MEXICO CONSOLIDATED
CONSTRUCTION SERVICES, LLC,
Plaintiff-Appellant,
v.
CITY COUNCIL of the CITY OF SANTA FE,
REBECCA WURZBERGER, Personally, and
as Mayor Pro Tem of the CITY OF SANTA FE,
PATTI J. BUSHEE, CHRIS CALVERT,
ROSEMARY ROMERO, MICHAEL M. CHAVEZ,
CARMICHAEL A. DOUGLAS, MATTHEW F. ORTIZ,
and RONALD S. TRUJILLO, Members of the
CITY COUNCIL of the CITY OF SANTA FE,
personally, as as Officials of the CITY OF SANTA FE,
and SHARON WOODS, KAREN WALKER,
CECILIA RIOS, DEBORAH SHAPIRO,
DAN FEATHERINGILL, JOHN KANTNER,
ROD COLLIER ACTON, FRANK D. KATZ,
DAVID COSS, BILL DIMAS, PETER N. IVES,
CHRISTOPHER M. RIVERA and
CHRISTINE MATHER, personally
and as Members of the SANTA FE HISTORIC
DESIGN REVIEW BOARD,
Defendants-Appellees.

No. 33,096

COURT OF APPEALS OF NEW MEXICO

December 16, 2013

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, Sarah M. Singleton, District Judge

COUNSEL

John. R. Polk, David A. Archuleta, Albuquerque, NM, for Appellant

Coppler Law Firm, P.C., Gerald A. Coppler, Thomas R. Logan, Santa Fe, NM, Tucker Law Firm, P.C., Steven L. Tucker, Santa Fe, NM, for Appellees

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, CYNTHIA A. FRY, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Plaintiff is appealing from a district court order imposing attorney fees and costs relating to an earlier order that had limited the scope of discovery and ordered the referenced payments paid once they became ascertained. We issued a calendar notice proposing to dismiss. Plaintiff has responded with a memorandum in opposition. Not persuaded, we dismiss the appeal.

{2} Our calendar notice indicated that the two district court orders relating to this appeal involved discovery. [RP 1991, 2525] This Court's jurisdiction lies from final, appealable orders. *See Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 21, 113 N.M. 231, 824 P.2d 1033; *see also Montoya v. Anaconda Mining Co.*, 1981-NMCA-113, ¶ 20, 97 N.M. 1, 635 P.2d 1323 (observing that an appellate court will raise jurisdictional questions on its own motion), *overruled on other grounds as recognized by San Juan 1990-A., L.P. v. El Paso Prod. Co.*, 2002-NMCA-041, 132 N.M. 73, 43 P.3d 1083. An order is final if all issues of law and fact necessary to be determined have been determined and the case is disposed of by the district court to the fullest extent possible. *See Kelly Inn*, 1992-NMSC-005, ¶ 14.

{3} The general rule is that discovery orders are not considered final and appealable. *See In re Estate of Pino*, 1993-NMCA-087, ¶ 5, 115 N.M. 759, 858 P.2d 426. "[A]ppellate review of non-final orders is allowed only in limited circumstances" when the district court certifies the order pursuant to NMSA 1978, Section 39-3-4 (1999). *See Candelaria v. Middle Rio Grande Conservancy Dist.*, 1998-NMCA-065, ¶ 5, 107 N.M. 579, 761 P.2d 457. The fact that the discovery order includes attorney fees does not render the order final. *See Gonzales v. Surgidev Corp.*, 1995-NMSC-047, ¶ 22, 120 N.M. 151, 899 P.2d 594 (stating that discovery sanctions "clearly are collateral to or separate from the decision on the merits and fall outside the construct of 'finality'"). The orders are subject to future review, and therefore are not subject to direct appellate review under the rule governing writs of error. *See* Rule 12-503(E)(2)(C) NMRA. Accordingly, whether we considered the orders appealed from broadly as discovery orders, or more specifically as discovery orders involving attorney fees, we proposed to hold that the orders are not final and appealable.

{4} In its memorandum in opposition, Plaintiff tries to characterize this as a matter involving contempt under Rule 1-045(E) NMRA. However, that rule applies to a party refusing to obey a subpoena. In addition, the district court's orders do not more broadly involve the exercise of the district court's contempt power because Plaintiff did not fail to obey the lower court. *See generally State v. Cherryhomes*, 1992-NMCA-111, ¶ 15, 114 N.M. 495, 840 P.2d 1261 (discussing the district court's inherent contempt power). To the contrary, the parties took their discovery dispute to the district court, and it fashioned a remedy to reasonably compensate Defendants for the burden imposed by the discovery, as authorized by Rule 1-045(C)(3)(a)(iv). In other words, it allowed Plaintiff to pursue what was arguably an overly-broad discovery request, so long as it would compensate Defendants. Although Plaintiff attempts to isolate out the attorney fees provision of the discovery orders, we believe that they were an integral part of the discovery ruling, as contemplated by Rule 1-045, and should not be separated out for purposes of defining finality.

{5} For the reasons set forth above, we dismiss the appeal.

{6} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

CYNTHIA A. FRY, Judge