

OGDEN V. TORRES

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**CARLOS OGDEN and
HENRY BURK FLEMING,**
Plaintiffs-Appellees,

v.

**PETE Q. TORRES and
ROSEMARY MACDONALD,**
Defendants-Appellants.

NO. 29,746

COURT OF APPEALS OF NEW MEXICO

December 11, 2009

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY, Gary Jeffreys, District
Judge

COUNSEL

Jeffrey W. Smith, Deming, NM, for Appellees

Peter A. Keys, Silver City, NM, for Appellants

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
JONATHAN B. SUTIN, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Pete Torres and Rosemary McDonald (Defendants) seek to appeal from an amended default judgment and order denying relief pursuant to Rule 1-060(B) NMRA.

We issued a notice of proposed summary disposition, proposing to dismiss the appeal principally for want of a final order. Defendants have filed a memorandum in opposition. After due consideration, we remain unpersuaded that this matter is properly before us. We therefore dismiss.

As we explained in the notice of proposed summary disposition, the right to appeal is generally restricted to final judgments and decisions. See NMSA 1978, § 39-3-2 (1966); see also *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. *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 12, 125 N.M. 680, 964 P.2d 844. “[F]or purposes of appeal, an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” *B.L. Goldberg & Assocs., Inc. v. Uptown, Inc.*, 103 N.M. 277, 278, 705 P.2d 683, 684 (1985).

As we previously indicated, the order from which Defendants seek to appeal does not resolve the underlying issues to the fullest extent possible. To the contrary, the question of damages, which was specifically and repeatedly raised in the complaint, [RP 1-15] remains pending for decision “at a later date.” [RP 60] Under such circumstances, the underlying order cannot be regarded as final and appealable. See *Principal Mut. Life Ins. Co. v. Straus*, 116 N.M. 412, 416, 863 P.2d 447, 451 (1993) (observing that, “when a request for damages is part of a declaratory action... the judgment is not final until the damage award is quantified,” and holding that an order addressing liability was not final because the amount of the damages and attorney fees had not been determined); *Cole v. McNeill*, 102 N.M. 146, 148, 692 P.2d 532, 534 (Ct. App. 1984) (holding that an order denying a motion to set aside a default judgment was not final and appealable when a question of damages remained unresolved).

In their memorandum in opposition, Defendants provide no response to our stated concerns about the lack of a final, appealable order. Instead, they focus exclusively on the question of Rosemary McDonald’s standing. [MIO 1-4] Although her apparent lack of standing remains a concern, the absence of a final order renders this issue superfluous.

Accordingly, for the reasons stated above and in our notice of proposed summary disposition, this appeal is dismissed.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

JONATHAN B. SUTIN, Judge