

PURIFOY V. STONE

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FAIRY PURIFOY,
Plaintiff-Appellee,
v.
LEE STONE,
Defendant-Appellant.

No. 32,319

COURT OF APPEALS OF NEW MEXICO

February 27, 2013

APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY, David P. Reeb, Jr.,
District Judge

COUNSEL

John R. Hakanson, Alamogordo, NM, for Appellee

Lee Stone, San Jon, NM, Pro Se Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, M. MONICA ZAMORA, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

In this Court's second notice of proposed summary disposition, we proposed to reverse the district court's decision and remand to the district court to vacate the protective order only insofar as it pertains to Defendant. *See Classen v. Classen*, 119 N.M. 582, 584-85, 893 P.2d 478, 480-81 (Ct. App. 1995) (explaining that a court has no discretion

in ruling on a motion under Rule 1-060(B)(4) NMRA because if a judgment is void, it must be set aside). The proposed disposition was based on the fact that: (1) actual service on Defendant of the motion and subsequent pleadings was required, (2) Defendant's current address was easily ascertainable to Plaintiff's counsel from the record, (3) Plaintiff's counsel did not serve Defendant with any pleadings or notices relating to the protective order, and (4) this was not a situation where Defendant was difficult to locate. See *McLam v. McLam*, 81 N.M. 37, 39, 462 P.2d 622, 624 (1969) ("As a general rule, constructive service is insufficient where the object of the action is to determine the personal rights and obligations of the defendant." (internal quotation marks and citation omitted)); see also *Clark v. LeBlanc*, 92 N.M. 672, 673, 593 P.2d 1075, 1076 (1979) ("It is clear that due process prohibits the use of constructive service where it is feasible to give notice to the defendant in some manner more likely to bring the action to his attention."). Defendant filed a memorandum in opposition to the proposed disposition that was in his favor. Plaintiff did not file a memorandum in opposition, and the time for doing so has expired. See Rule 12-210(D)(3) NMRA.

Defendant's memorandum in opposition raises numerous contentions that are not essential to our proposed disposition and relate to issues outside the scope of the limited issue on appeal. Therefore, we reverse the district court's decision, and remand for the district court to vacate the protective order only insofar as it pertains to Defendant.

IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

CYNTHIA A. FRY, Judge

M. MONICA ZAMORA, Judge