

**RODARTE V. HOOVER**

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**RAYMOND RODARTE and NICANOR**

**“NICK” LOPEZ,**

Plaintiffs-Appellants,

v.

**MELISSA HOOVER aka MELISSA HOOVER**

**ROMERO, MATTHEW HOOVER, and**

**JESSICA HOOVER, individually and as personal**

**representatives of the Estate of MARY JANE**

**HOOVER, Deceased,**

Defendants-Appellees.

NO. 30,599

COURT OF APPEALS OF NEW MEXICO

January 13, 2011

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, Sam B. Sanchez, District  
Judge

**COUNSEL**

J. Ronald Boyd, Santa Fe, NM, for Appellees

Alan H. Maestas, Taos, NM, for Appellants

**JUDGES**

RODERICK T. KENNEDY, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,  
MICHAEL E. VIGIL, Judge

AUTHOR: RODERICK T. KENNEDY

**MEMORANDUM OPINION**

**KENNEDY, Judge.**

Plaintiffs are appealing from a district court order addressing Defendants' attempt to enforce an earlier judgment awarding attorney fees. We issued a calendar notice proposing to dismiss for lack of a timely filed notice of appeal. Plaintiffs have filed a memorandum in opposition. We dismiss the appeal.

Plaintiffs originally appealed the district court's order dismissing their complaint with prejudice. The district court's order was filed on November 19, 2009. [RP 116] Plaintiffs filed a timely notice of appeal on December 9, 2009. [RP 122] This Court then proceeded to calendar that appeal, ultimately affirming the district court in a memorandum opinion. [RP 194] In the interim, on January 11, 2010, the district court issued an order awarding Defendants' attorney fees. [RP 148] When there is a judgment on the merits and a prospective award of attorney fees, our Supreme Court has recognized a "twilight zone" of finality, permitting a party to either file an appeal prior to the entry of the attorney fees order, or to appeal after that order has been filed. *Trujillo v. Hilton of Santa Fe*, 115 N.M. 397, 398, 851 P.2d 1064, 1065 (1993). As indicated above, Plaintiffs chose to appeal from the judgment on the merits. As such, they were entitled to file a separate appeal from the subsequent attorney fees order. Because that order was entered on January 11, 2010, Plaintiffs had until February 10, 2010, to file a notice of appeal. See Rule 12-201(A)(2) NMRA. Even if they believed that they received late notice of the filing of the January 11, order [MIO 1], they were required to either immediately appeal before the deadline for filing ran, or seek an extension from the district court. No extension request was made and no notice of appeal was filed from that order. Instead, the district court subsequently entered an order that addressed Defendants' motion to "convert" the prior attorney fees order into a judgment. [RP 182] As a practical matter, it appears that the June 2010 judgment was seeking to enforce the prior final order as a result of this Court's resolution of the initial appeal. Regardless of how this June order is characterized, it did not affect the finality of the January 2010 attorney fees order. Because Plaintiffs never timely appealed from the January 2010 order they are now challenging, we propose to dismiss. See *Govich v. N. Am. Sys., Inc.*, 112 N.M. 226, 230, 814 P.2d 94, 98 (1991) (compliance with notice of appeal time and place requirements are mandatory preconditions to exercise of appellate jurisdiction).

For the reasons set forth above, we dismiss the appeal.

**IT IS SO ORDERED.**

**RODERICK T. KENNEDY, Judge**

**WE CONCUR:**

**CYNTHIA A. FRY, Chief Judge**

**MICHAEL E. VIGIL, Judge**