

SHARMA V. SHARMA

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ASHWANI SHARMA,
Petitioner-Appellant,
v.
SVETLANA SHARMA,
Respondent-Appellee.

NO. 30,250

COURT OF APPEALS OF NEW MEXICO

September 2, 2010

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Angela J. Jewell,
District Judge

COUNSEL

Law Offices of Lynda Latta, LLC, Lynda Latta, Linda L. Ellison, Albuquerque, NM, for
Appellant

Armand T. Carian, Albuquerque, NM, for Appellee

JUDGES

CELIA FOY CASTILLO, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge, LINDA
M. VANZI, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Judge.

Petitioner appeals from the district court's judgment and final decree of dissolution of marriage filed on January 11, 2010. [RP 673] Petitioner sought reconsideration of the district court's January 11th order by filing a motion for a new trial or to reconsider on

January 25, 2010. [RP 632] This Court issued a calendar notice proposing to dismiss the appeal for lack of a final order. Petitioner has filed a memorandum in support and request for mandate to the district court.

In this Court's calendar notice, we pointed out that when a post-judgment motion is filed that could alter, amend, or moot the judgment, the judgment is no longer final for purposes of appeal, and the time for filing a notice of appeal begins to run from the filing of the order disposing of the post-judgment motion. *See Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865; *Dickens v. Laurel Healthcare LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675. Based on this proposition, we proposed to conclude that Petitioner's act of requesting reconsideration of the district court's decision rendered the underlying order non-final. Further, because it appeared that the district court had not ruled on Petitioner's motion, we proposed to dismiss the appeal for lack of a final order.

To the extent Petitioner opposes this Court's decision to dismiss her appeal as premature [MIS 2 ("Appellant does oppose the proposed dismissal[.]")], we note that Petitioner has not provided any argument or authority to demonstrate that this matter is final for purpose of appeal. "Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law." *Hennessey v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683. We therefore dismiss Petitioner's appeal as premature, and request that the district court resolve the motions pending in this matter.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

LINDA M. VANZI, Judge