

STATE EX REL. HUMAN SERVICES DEP'T V. GARCIA

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**STATE OF NEW MEXICO ex rel.
HUMAN SERVICES DEPARTMENT
and NANCY GARCIA,
Petitioners-Appellees,
v.
ANTHONY GARCIA,
Respondent-Appellant.**

No. 33,941

COURT OF APPEALS OF NEW MEXICO

November 10, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alisa A. Hadfield,
District Judge

COUNSEL

New Mexico Human Services Department, Susan Sullivan, Special Assistant Attorney
General, Albuquerque, NM, for Appellee

Nancy Garcia, Albuquerque, NM, Pro Se Appellee

Anthony Garcia, Los Lunas, NM, Pro Se Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge,
CYNTHIA A. FRY, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Respondent appeals from the district court's adoption of the hearing officer report requiring Respondent to pay \$258 per month for child support. [DS 1; RP 41-43, 62] The district court entered its order on May 14, 2014. [RP 62] Respondent filed his notice of appeal with the district court on June 18, 2014. [RP 63] Because a notice of appeal must be filed "within thirty (30) days after the judgment or order appealed from is filed in the district court clerk's office," Rule 12-201(A)(2) NMRA, and the timely filing of a notice of appeal is a mandatory precondition to our exercise of jurisdiction, see *Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94, this Court issued a calendar notice proposing to dismiss Respondent's appeal as untimely.

{2} Respondent has filed a memorandum in opposition to this Court's proposed dismissal. Respondent, however, does not make any argument that would permit this Court to exercise our discretion to hear his untimely appeal. See *Romero v. Pueblo of Sandia*, 2003-NMCA-137, ¶ 6, 134 N.M. 553, 80 P.3d 490 (recognizing that this Court will not ordinarily entertain an appeal in the absence of a timely notice, but that unusual circumstances create an exception that "warrants permitting an untimely appeal" (alteration, internal quotation marks, and citation omitted)); *Trujillo v. Serrano*, 1994-NMSC-024, ¶ 19, 117 N.M. 273, 871 P.2d 369 ("Only the most unusual circumstances beyond the control of the parties—such as error on the part of the court—will warrant overlooking procedural defects."). Instead, in his memorandum in opposition, Respondent continues to argue the merits of the underlying action. However, given the lack of timely notice and lack of unusual circumstances that warrant overlooking Respondent's untimely notice, we decline to exercise jurisdiction to consider the merits of Respondent's appeal.

{3} For the reasons stated above, and in this Court's notice of proposed disposition, we dismiss Respondent's appeal.

{4} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

CYNTHIA A. FRY, Judge