

STATE OF NEW MEXICO UNINSURED EMPLOYERS' FUND V. GALLEGOS

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**STATE OF NEW MEXICO UNINSURED
EMPLOYERS' FUND,
Petitioner-Appellee,**

v.

**GREG GALLEGOS, aka
GREG McCOOL d/b/a
MONSTER CONSTRUCTION
& ROOFING,
Respondent-Appellant.**

No. A-1-CA-36705

COURT OF APPEALS OF NEW MEXICO

April 23, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alan M. Malott,
District Judge

COUNSEL

New Mexico Uninsured Employers' Fund, Richard P. Bustamante, Albuquerque, NM, for
Appellee

Greg Gallegos, Albuquerque, NM, Pro Se Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: J. MILES HANISEE, Judge, EMIL J.
KIEHNE, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

{1} Respondent Greg Gallegos, a self-represented litigant, appeals from the district court's order of default judgment to enforce a Workers' Compensation Administration's (WCA's) judgment. We issued a notice of proposed summary disposition in which we proposed to affirm, and we denied Petitioner's motion to dismiss the appeal. Respondent did not file a timely memorandum in opposition to this Court's notice of proposed disposition. Accordingly, we issued a memorandum opinion affirming. Subsequently, Respondent filed a timely motion for rehearing, which we granted. Having granted the motion for rehearing, we withdraw the opinion filed on January 29, 2018, and substitute the following in its place. Consistent with our order granting the motion for rehearing, Respondent filed a timely response (Response) to our notice of proposed disposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} As discussed in our notice of proposed disposition, the WCA entered a supplemental compensation order of default on March 15, 2017, against Respondent; Petitioner filed a petition in the district court to enforce the WCA's order, pursuant to NMSA 1978, Section 52-5-10(B) (1990); and on August 17, 2017, the district court entered a default judgment to enforce the WCA's order. [CN 2] It is this latter order that is the subject of this appeal. [CN 2-3]

{3} In our notice of proposed disposition, we suggested that the time for appealing the WCA order had expired, and Respondent has no right to challenge the underlying compensation order in this appeal, see NMSA 1978, Section 52-5-8 (1989). [CN 3] We further suggested that Respondent had not demonstrated how the district court erred with respect to the order of enforcement from which he is appealing. [CN 5-6] Therefore, we proposed to affirm. [CN 6]

{4} In response, Respondent argues that Petitioner took too long to prosecute this case against him. [See generally Response] This appears to be a challenge to orders entered by the WCA. We note, however, that the only issue before this Court is whether the district court erred in entering a default judgment to enforce the WCA's order, and Respondent has not demonstrated error in this regard. See *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063 (stating that the appellate courts presume that the trial court is correct and the burden is on the appellant to clearly demonstrate that the lower court erred). Respondent may not use his appeal from the district court's order of enforcement as a mechanism to circumvent a timely notice of appeal from a WCA order. Cf. *Resolution Tr. Corp. v. Ferri*, 1995-NMSC-055, ¶¶ 6, 9, 120 N.M. 320, 901 P.2d 738 (stating that Rule 1-060(B) NMRA should not be used as a substitute for appeal nor as a means of circumventing the appeals process); *Deerman v. Bd. of Cty. Comm'rs*, 1993-NMCA-123, ¶ 16, 116 N.M. 501, 864 P.2d 317 (stating that it is well-settled in New Mexico law that Rule 1-060(B)(1) is not to be used as a substitute for appeal).

{5} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{6} IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

J. MILES HANISEE, Judge

EMIL J. KIEHNE, Judge