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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

DAVID DERRINGER,

Plaintiff-Appellant,

v. **NO. 30,616**

JOHN CURTIS CHAPEL, MICKEY CHAPEL, and JENNIFER CHAPEL,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Theresa M. Baca, District Judge

David Derringer
Albuquerque, NM

Pro Se Appellant

Joseph Manges
Santa Fe, NM

for Appellees

MEMORANDUM OPINION

KENNEDY, Judge.

Plaintiff seeks to appeal an order dismissing his complaint. We proposed to dismiss the appeal as premature. Plaintiff has timely responded. We have considered his arguments and not being persuaded, we dismiss.

In our notice, we pointed out that prior to filing his notice of appeal, Plaintiff had timely filed a motion for reconsideration of the district court's order dismissing his complaint. Citing to recent authority on the issue, we pointed out that the filing of a motion for reconsideration makes the order being appealed from no longer final for purposes of appeal. We stated that Plaintiff must wait for a ruling on his motion for reconsideration before filing his notice of appeal.

Plaintiff suggests that this Court is attempting to catch him in a trap so that he will never be able to appeal the district court's ruling. Citing to a number of older cases, Plaintiff argues that he is required to file his notice of appeal within thirty days of the order even if he has filed a motion for reconsideration as such motions are deemed denied if not ruled on within thirty days. The cases upon which Plaintiff relies are no longer persuasive on this issue because the Rules of Civil Procedure have been amended so that such motions are no longer deemed denied after thirty days. *See* Rule 1-059 NMRA (amended in 2006 to eliminate provision regarding "deemed denied"). The rules now provide that the district court must actually rule on the motion. *See* Committee Commentary to Rule 1-054.1 NMRA.

Our calendar notice cited to the most recent authority regarding timely notices of appeal and motions for reconsideration. The rules of procedure have changed since the time that Plaintiff first came before the courts. Because of those changes in

procedure, Plaintiff's notice of appeal is premature. Once Plaintiff gets a written order ruling on his motion for reconsideration, he will have a final order from which to appeal. Until that time, his appeal is premature and this Court declines to address the merits of his complaints.

For the reasons stated herein and in the notice of proposed disposition, we dismiss the appeal.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

TIMOTHY L. GARCIA, Judge