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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**JERALD WARWICK,**

Plaintiff-Appellee,

v. **NO. 31,378**

**BENARD WARWICK,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**
**James T. Martin, District Judge**

Thomas R. Erickson
Mesilla Park, NM

for Appellee

Benard Warwick
Long Beach, NY

Pro Se Appellant

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

Defendant-Appellant Benard Warwick appeals the district court's order

granting partial summary judgment in favor of Plaintiff-Appellee Jerald Warwick. On August 16, 2011, this court issued a notice of proposed summary disposition proposing to dismiss the appeal for lack of a final order. On October 11, 2011, Appellant filed a memorandum in opposition to proposed summary disposition, which we have given due consideration. We dismiss the appeal, and also deny Appellant's request for additional time to supply documentation to this Court.

"The general rule in New Mexico for determining the finality of a judgment is whether all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible." *State ex rel. Children, Youth & Families Dep't v. Frank G.*, 2005-NMCA-026, ¶ 40, 137 N.M. 137, 108 P.3d 543 (quoting *Kelly Inn No. 102 v. Kapnison*, 113 N.M. 231, 236, 824 P.2d 1033, 1038 (1992)).

As noted in the notice of proposed summary disposition, the order Appellant seeks to appeal expressly contemplates further action by the district court; specifically, that because of the inability of the parties to agree to the sale of the parcel of real estate at issue, the district court would appoint three commissioners to determine if the parcel could be partitioned. [RP 52-53] The commissioners would report to the district court, and if the parcel could not be partitioned, the district court would enter further orders directing that the parcel be sold. [Id.]

In his memorandum in opposition, Appellant informs this Court that the Doña

Ana Planning Department has indicated that the parcel is too small to be divided, and he asks for additional time to forward documentation to this Court. We are not informed whether this documentation has already been considered by the district court, but in any event that court as fact finder is in a better position than this Court to determine whether this documentation sufficiently supports Appellant's assertion, such that a determination by three commissioners would be unnecessary. "As a reviewing court we do not sit as a trier of fact; the district court is in the best position to resolve questions of fact[.]" *State v. Urioste*, 2002-NMSC-023, ¶ 6, 132 N.M. 592, 52 P.3d 964.

We deny Appellant's request for additional time to supply documentation to this Court, and we dismiss the present appeal because the district court has not yet entered a final order regarding the disposition of the real property in question.

**IT IS SO ORDERED.**

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Judge**

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**J. MILES HANISEE, Judge**