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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

DUSTY STONE,

Plaintiff-Appellant,

v. **NO. 32,583**

ROBIN H. SMITH and ALETA SMITH,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF QUAY COUNTY
Albert J. Mitchell, District Judge

Dusty Stone
San Jon, NM

Pro Se Appellant

Donald C. Schutte
Tucumcari, NM

for Appellees

MEMORANDUM OPINION

VANZI, Judge.

Plaintiff seeks to appeal from an order awarding summary judgment to Defendants. We issued a notice of proposed summary disposition, proposing to dismiss on the ground that the district court's order is not final. Plaintiff has filed a memorandum in opposition, which we have duly considered. Because we remain unpersuaded that this matter is properly before us, we dismiss the appeal.

As we observed in the notice of proposed summary disposition, the right to appeal is generally restricted to final judgments and decisions. *See* NMSA 1978, § 39-3-2 (1966); *Kelly Inn No. 102 v. Kapnison*, 113 N.M. 231, 235-36, 824 P.2d 1033, 1037-38 (1992). Insofar as Defendants' counterclaims remain unresolved, the order from which appeal has been taken is not final. *See Watson v. Blakely*, 106 N.M. 687, 691, 748 P.2d 984, 988 (Ct. App. 1987) ("An order disposing of the issues contained in the complaint but not the counterclaim is not a final judgment."), *overruled on other grounds by Kelly Inn*, 113 N.M. at 239, 824 P.2d at 1041; *and see, e.g.*, *Healthsource, Inc. v. X-Ray Assocs. of N.M.*, 2005-NMCA-097, ¶¶ 11-15, 138 N.M. 70, 116 P.3d 861 (observing that appeal may only be taken if all issues have been resolved by the order under consideration; where counterclaims remain, immediate appeal is generally unavailable).

In his memorandum in opposition, we understand Plaintiff to argue that the district court's order should be regarded as final because it contains an award of

summary judgment. [MIO 1-3] However, not all awards of summary judgment are final. In a case such as this, where an award of summary judgment resolves all claims associated with the complaint but leaves one or more counterclaims unresolved, the judgment cannot be regarded as final. *See, e.g.*, *City of Albuquerque v. Jackson*, 101 N.M. 457, 458-59, 684 P.2d 543, 544-45 (Ct. App. 1984) (holding that although an award of summary judgment disposed of all issues in connection with the original complaint, insofar as it left a counterclaim unresolved, it was not a final judgment).

We perceive no basis for departing from the numerous previously-cited authorities, which clearly reflect that the underlying decision is not directly appealable as a matter of right. Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we conclude that the district court's order is not immediately reviewable. The appeal is therefore summarily dismissed.

IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

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J. MILES HANISEE, Judge