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

2 **TERRY GAFFNEY,**

3 Plaintiff-Appellant,

4 v.

NO. 34,152

5 **ROBIN HOOD WATER USERS**
6 **ASSOCIATION, INC.,**

7 Defendant-Appellee,

8 and

9 **JACK R. SHIREY, SECRETARY**
10 **TREASURER/RECORDS CUSTODIAN,**
11 **PRESTON STEVENS, PRESIDENT,**
12 **FRED LINDT, VICE PRESIDENT,**
13 **BOB BOLTON, DIRECTOR,**
14 **ED ARMSTRONG, DIRECTOR,**
15 **JACK LEEAH, DIRECTOR,**

16 Real Parties in Interest.

17 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

18 **Jerry H. Ritter Jr., District Judge**

19 Terry Gaffney
20 High Rolls, NM

21 Pro Se Appellant

1 John D. Wheeler & Associates
2 Arslan S. Umarov
3 Alamogordo, NM

4 for Appellee

5 **MEMORANDUM OPINION**

6 **GARCIA, Judge.**

7 {1} Appellant, Terry Gaffney, appeals from the district court's order granting
8 summary judgment in favor of Defendant. We issued a notice of proposed summary
9 disposition proposing to dismiss due to a late notice of appeal. Appellant has
10 responded with a timely memorandum in opposition. We have considered the
11 arguments made in the memorandum in opposition as well as the district court's
12 factual findings regarding the reason the notice of appeal was not timely filed. We
13 remain unpersuaded that our initial proposed summary disposition was incorrect, and
14 we therefore dismiss this appeal.

15 **DISCUSSION**

16 {2} Appellant's notice of appeal was not timely filed. To properly invoke this
17 Court's jurisdiction, a party must comply with the appellate rules governing the time
18 and place in which to file the notice of appeal. *See Govich v. North Am. Sys., Inc.*,
19 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94; *see also Trujillo v. Serrano*,
20 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871 P.2d 369 (establishing that the timely

1 filing of a notice of appeal is a mandatory precondition to our exercise of jurisdiction
2 to hear an appeal). Rule 12-201(A)(2) NMRA requires the appellant to file a notice
3 of appeal in the district court clerk's office within thirty days of the district court's
4 entry of its final judgment. Pro se litigants must comply with the rules and orders of
5 the court and will not be treated differently than litigants with counsel. *See Bruce v.*
6 *Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 980 P.2d 84.

7 {3} In this case, the district court's order granting summary judgment in favor of
8 Defendants was entered on August 26, 2014. [RP 104] Appellant therefore had thirty
9 days in which to file a notice of appeal in district court. *See* Rule 12-201(A)(2). Since
10 Appellant did not file a notice of appeal until September 26, 2014, the notice of appeal
11 is one day late. [RP 110] Only in exceptional circumstances beyond the control of the
12 parties will we entertain an untimely appeal.

13 {4} In his memorandum in opposition, Appellant argues that exceptional
14 circumstances exist to excuse the late filing because he was called to the scene of an
15 emergency involving a broken gas line. [MIO 1] On receipt of the memorandum in
16 opposition, we remanded this case for the district court to rule on Defendants'
17 outstanding motion to strike the notice of appeal and for factual findings regarding the
18 reason for the late notice of appeal. The district court's factual findings indicate that
19 Appellant was on his way to file the notice of appeal on the day that it was due when

1 he decided to turn around just miles before the courthouse in order to help a friend
2 with a personal construction project. The district court determined that this decision
3 was not an exceptional or unusual circumstance but merely a matter of convenience
4 to a friend. Appellant remained occupied with this project for the rest of the day, and
5 therefore did not file the notice of appeal until the next day. We agree with the district
6 court's determination that this does not constitute unusual or exceptional
7 circumstances that would justify excusing the late notice of appeal. *See Trujillo*,
8 1994-NMSC-024, ¶ 16 (holding that exceptional circumstances are those beyond the
9 control of the parties, such as delay caused by judicial error); *see also In re Estate of*
10 *Newalla*, 1992-NMCA-084, ¶ 21, 114 N.M. 290, 837 P.2d 1373 (stating that “[o]ne
11 such exceptional circumstance might be reasonable reliance on a precedent indicating
12 that the order not timely appealed was not a final, appealable order”); *State v.*
13 *Upchurch*, 2006-NMCA-076, ¶ 5, 139 N.M. 739, 137 P.3d 679 (“Because there is no
14 indication that unusual circumstances justify our discretion to entertain this untimely
15 appeal, we do not overlook this grave procedural defect.”). As a result, we do not
16 disagree with the district court's order striking Appellants notice of appeal or the
17 reasoning to support its decision.

18 {5} For these reasons, we dismiss the appeal.

19 {6} **IT IS SO ORDERED.**

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TIMOTHY L. GARCIA, Judge

3 **WE CONCUR:**

4

5 **MICHAEL D. BUSTAMANTE, Judge**

6

7 **JONATHAN B. SUTIN, Judge**