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

2 **NANCY E. BARELA and**
3 **JOSE ANGEL DIAZ,**

4 **Petitioners-Appellees,**

5 **v.**

No. 34,509

6 **CARLOS L. DIAZ,**

7 **Respondent-Appellant..**

8 **APPEAL FROM THE DISTRICT COURT OF VALENCIA**
9 **COUNTY**

10 **Allen R. Smith, District Judge**

11 Elias Barela
12 Los Lunas, NM

13 for Appellees

14 Carlos L. Diaz
15 Albuquerque, NM

16 Pro Se Appellant

17 **MEMORANDUM OPINION**

18 **HANISEE Judge.**

1 {1} Self-represented Respondent Carlos L. Diaz appeals from various orders
2 entered by the district court. [DS 1; *see also* RP Vol. 1/72, 82, 216-20, 255-56, 437-
3 40, 443-44, 456, 472-73] In this Court’s notice of proposed disposition, we proposed
4 to dismiss the appeal for lack of a final order. [CN 1, 8-9] Respondent filed a
5 memorandum in response to our proposed disposition (MIO), which we have duly
6 considered. Remaining unpersuaded, we dismiss the appeal for lack of a final order.

7 {2} In his memorandum in response, Respondent has not raised any arguments that
8 refute our proposed conclusions that the underlying proceedings are non-final, that
9 Respondent’s appeal is premature, and that the appeal should be dismissed for lack of
10 a final order. [*See* CN 7-8] *See State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M.
11 272, 96 P.3d 1192 (dismissing for lack of jurisdiction when no final judgment had
12 been entered); *State v. Garcia*, 1983-NMCA-017, ¶¶ 29-30, 99 N.M. 466, 659 P.2d
13 918 (same); *see also State v. Romero*, 2014-NMCA-063, ¶ 5, 327 P.3d 525 (“[T]he
14 finality of a judgment may be suspended by the timely filing of a motion for
15 reconsideration.”); Rule 12-201(D)(4) NMRA (stating that the district court retains
16 jurisdiction to dispose of one of the types of motions for reconsideration listed in Rule
17 12-201(D)(1), (2), upon the filing of such a motion). Rather, Respondent contends that
18 the district court has “taken the position to ignore any all [sic] Motions filed,” and
19 therefore asks this Court to hold the appeal in abeyance pending the district court’s

1 entry of a final order. [MIO 3] However, as we explained in our notice of proposed
2 disposition, this Court does not have jurisdiction when no final judgment has been
3 entered. *See Griego*, 2004-NMCA-107, ¶ 22 (dismissing for lack of jurisdiction when
4 no final judgment had been entered); *Garcia*, 1983-NMCA-017, ¶¶ 29-30 (same). As
5 such, we decline to take any actions in this Court, other than dismissing for lack of
6 jurisdiction, while the district court still retains jurisdiction. *See* Rule 12-201(D)(4)
7 (stating that the district court retains jurisdiction to dispose of one of the types of
8 motions for reconsideration listed in Rule 12-201(D)(1), (2), upon the filing of such
9 a motion).

10 {3} Moreover, we note that, since this Court entered its notice of proposed
11 disposition, Respondent has filed yet another motion for reconsideration. As the
12 district court has not ruled on Respondent’s motions to vacate or reconsider various
13 orders, the underlying proceedings are deemed non-final, and Respondent’s appeal is
14 premature. *See Romero*, 2014-NMCA-063, ¶ 5; Rule 12-201(D)(4); *see also Dickens*
15 *v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222 P.3d 675
16 (explaining that, when a “motion that challenges the district court’s determination of
17 the rights of the parties[] is pending in the district court, the judgment or order entered
18 by the district court remains non-final . . . and [the] appeal is premature” (citation
19 omitted)).

1 {4} Accordingly, for the reasons stated in our notice of proposed disposition and
2 herein, Respondent's appeal is dismissed for lack of a final order.

3 {5} **IT IS SO ORDERED.**

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J. MILES HANISEE, Judge

7 **WE CONCUR:**

8

MICHAEL D. BUSTAMANTE, Judge

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RODERICK T. KENNEDY, Judge

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