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

2 **LVNV FUNDING LLC,**

3 Plaintiff-Appellee,

4 v.

NO. 34,637

5 **ROSEMARIE P. BUSTAMANTE**

6 **AND JOHN DOE (IF MARRIED),**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY**

9 **Matthew J. Sandoval, District Judge**

10 Elizabeth V. Friedenstien

11 Albuquerque, NM

12 for Appellee

13 Rosemarie P. Bustamante

14 Las Vegas, NM

15 Pro Se Appellant

16 **MEMORANDUM OPINION**

17 **ZAMORA, Judge.**

18 {1} Rosemarie Bustamante (Appellant) appeals from the district court's order

19 awarding summary judgment in favor of LVNV Funding LLC (Appellee). This

1 Court's notice proposed to dismiss because the notice of appeal was not filed with the
2 district court clerk and the time for doing so had expired. Appellant filed a
3 memorandum in opposition to the proposed disposition. Not persuaded by Appellant's
4 arguments, we dismiss the appeal.

5 {2} Appellant does not dispute the facts relied upon by this Court in its proposed
6 disposition but asks this Court to apply the *Duran* presumption of ineffective
7 assistance of counsel where the notice of appeal is not filed within the time limit
8 required. [MIO 1-2] *See State v. Duran*, 1986-NMCA-125, ¶¶ 3, 6, 105 N.M. 231, 731
9 P.2d 374 (stating that there is a conclusive presumption of ineffective assistance of
10 counsel where notice of appeal is not filed within the time limit required). However,
11 the *Duran* presumption primarily applies to criminal cases and has not been extended
12 to civil cases such as this.

13 {3} Recognizing that appellate requirements for the time and place of filing are
14 mandatory preconditions absent error on the part of the court, Appellant asserts that
15 the district court erred in failing to comply with Rule 12-209 NMRA, by not mailing
16 her a copy of the docket sheet as a self-represented litigant. [MIO 5] *See Govich v. N.*
17 *Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94; *see also Santa Fe*
18 *Pac. Trust, Inc. v. City of Albuquerque*, 2012-NMSC-028, ¶ 23, 285 P.3d 595 (“Only
19 the most unusual circumstances beyond the control of the parties—such as error on

1 the part of the court—will warrant overlooking procedural defects.” (internal
2 quotation marks and citation omitted)). Rule 12-209 states: “The district court clerk
3 shall send a copy of this docket sheet to all counsel of record.” However, we see no
4 relation between this requirement and Appellant’s failure to file a timely notice of
5 appeal with the district court.

6 {4} For these reasons and those stated in the notice of proposed disposition, we
7 dismiss the appeal.

8 {5} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

11 **WE CONCUR:**

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LINDA M. VANZI, Judge

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TIMOTHY L. GARICA, Judge