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

2 **JOHN BASSETT,**

3                   Petitioner-Appellant,

4 v.

**No. 34,756**

5 **NEW MEXICO RACING**  
6 **COMMISSION,**

7                   Respondent-Appellee.

8 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
9 **Denise Barela Shepherd, District Judge**

10 J. Preston Paschall  
11 Las Cruces, NM

12 for Appellant

13 Hector H. Balderas, Attorney General  
14 Richard B. Word, Assistant Attorney General  
15 Santa Fe, NM

16 for Appellee

17                                   **MEMORANDUM OPINION**

18 **KENNEDY, Judge.**

1 {1} Appellant John H. Bassett (Petitioner) appeals from a district court order  
2 affirming an administrative decision of the New Mexico Racing Commission. Our  
3 calendar notice proposed to dismiss. Petitioner has responded with a memorandum in  
4 opposition. We dismiss the appeal.

5 {2} In his memorandum in opposition, Defendant concedes that Rule 12-505  
6 NMRA governs this Court's review of the district court's decision. *See* Rule 1-075(V)  
7 ("An aggrieved party may seek further review of an order or judgment of the district  
8 court in accordance with Rule 12-505 NMRA of the Rules of Appellate Procedure.").  
9 Rather than a direct appeal, Rule 12-505(B), (C) requires a party to seek discretionary  
10 review in this Court by filing a petition for writ of certiorari in this Court within thirty  
11 days after entry of the final action by the district court.

12 {3} In this case, Petitioner did not file a petition for writ of certiorari within thirty  
13 days of entry of the final order. Instead, he filed a notice of appeal in district court [RP  
14 487], and then a docketing statement in this Court. In *Wakeland v. New Mexico*  
15 *Department of Workforce Solutions*, 2012-NMCA-021, ¶ 13, 274 P.3d 766, we held  
16 that a notice of appeal alone is not an adequate substitution for a petition for writ of  
17 certiorari. We did, however, hold that a non-conforming document, such as a  
18 docketing statement, will be considered as a petition for writ of certiorari where the

1 document provides sufficient information to allow assessment of the merits of the  
2 petition and was filed in this Court within the time limits for filing a petition for writ  
3 of certiorari. *Id.* ¶¶ 7, 16, 18. In this case, the docketing statement was not filed within  
4 the thirty days required for a petition for certiorari. *See* Rule 12-505(C) (stating that  
5 a petition for writ of certiorari shall be filed within thirty days after entry of the final  
6 action by the district court); *see also See Gulf Oil Corp. v. Rota-Cone Field Operating*  
7 *Co.*, 1973-NMSC-107, ¶ 2, 85 N.M. 636, 515 P.2d 640 (per curiam) (holding that, as  
8 with the time requirement for a notice of appeal, the timely filing of a petition for writ  
9 of certiorari is a mandatory precondition to the exercise of an appellate court's  
10 jurisdiction that will not be excused absent unusual circumstances). Accordingly, our  
11 calendar notice proposed to dismiss the appeal.

12 {4} In his memorandum in opposition, Petitioner argues that we should overlook  
13 the deficiencies in this case because counsel's failure to file a timely petition was due  
14 to excusable neglect. Petitioner refers us to *Kinder Morgan CO2 Co., L.P. v. State*  
15 *Taxation & Revenue Dep't*, 2009-NMCA-019, 145 N.M. 579, 203 P.3d 110, for the  
16 proposition that the excusable neglect of a party's counsel may be considered.  
17 However, that case involved Rule 1-060(B)(1) NMRA, which expressly provides for  
18 excusable neglect to be a basis for setting aside a judgment, and does not apply to

1 appeals. *Kindermorgan*, 2009-NMCA-019, ¶ 13. We may excuse the late filing if it  
2 was due to unusual circumstances. *Mascarenas v. City of Albuquerque*, 2012-NMCA-  
3 031, ¶ 23, 274 P.3d 781. Unusual circumstances that justify the untimely filing of a  
4 petition for writ of certiorari exist when “(1) there is error on the part of the court, or  
5 (2) when the filing is not very late, and there are other unusual circumstances that  
6 were not caused by the court system but that were not within the control of the party  
7 seeking appellate review.” *Id.* The first ground does not apply here, and Petitioner’s  
8 excusable neglect argument by its very nature does not satisfy the second prong.  
9 Finally, to the extent that Petitioner is referring us to recently filed case law in this  
10 Court which is relevant to the underlying merits [MIO 6], we do not deem it necessary  
11 to address this in light of our dismissal of the notice of appeal, and its implicit denial  
12 of any attempt to file a Rule 12-505 petition.

13 {5} Based on the foregoing discussion, we dismiss.

14 {6} **IT IS SO ORDERED.**

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**WE CONCUR:**

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**RODERICK T. KENNEDY, Judge**

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**JAMES J. WECHSLER, Judge**

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2 **M. MONICA ZAMORA, Judge**