

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TONYA MICHELLE MAHONE, as
Personal Representative of the Estate of
GERARD WATSON, Deceased,

Plaintiff,

vs.

No. 1:15-cv-01009-PJK-KBM

GARY EDEN, JACQUELINE R.
FLETCHER, and CRST EXPEDITED,
INC.,

Defendants.

MINUTE ORDER

At the Direction of the Hon. Paul J. Kelly, Jr.:

Defendant CRST Expedited Inc.'s Motion to Seal Its Motion to Enforce Settlement filed July 23, 2020 (ECF No. 227) is before the court. Plaintiff Mahone has appealed the judgment in this case only insofar as Defendant CRST Expedited, Inc. She is not appealing the judgment against Defendants Eden and Fletcher. Whether Plaintiff Mahone filed a timely notice of appeal is before the Tenth Circuit. A notice of appeal divests the district court of jurisdiction, except for collateral matters not on appeal or matters in aid of the appeal. United States v. Madrid, 633 F.3d 1222, 1226–27 (10th Cir. 2011); McKissick v. Yuen, 618 F.3d 1177, 1196 (10th Cir. 2010). The court lacks

jurisdiction to consider enforcement of a post-mediation settlement in this case while the matter is on appeal for several reasons. First, the appeal including the jurisdictional issue, is proceeding before the Tenth Circuit and briefing has begun. Although Defendant CRST suggests that it will file a motion to enforce the settlement under Fed. R. Civ. P. 62.1 and seek an indicative ruling, filing of such a motion appears contingent on a favorable ruling on its motion to seal. The court cannot pass on what it does not have before it. Finally, the court is reluctant to proceed without an indication from the Tenth Circuit that it should consider both matters. The grounds for both the motion to seal and an eventual motion to enforce the settlement appear to be intertwined with the Tenth Circuit's mediation process and the requisite confidentiality of that process. See 10th Cir. R. 33.1(D). Accordingly, the instant motion is denied and the Unopposed Motion for Extension of Time for Defendant Jacqueline R. Fletcher to Respond to Defendant CRST Expedited, Inc.'s Motion to Seal filed August 6, 2020 (ECF No. 230) is moot.

/s/MITCHELL R. ELFERS
Clerk of Court