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

2 **JOANN M. MACLELLAN, Individually**  
3 **and as Guardian and Trustee of DAVID**  
4 **TIMOTHY KING, DANIEL J. KING, and**  
5 **JOHN R. KING,**

6                   Claimants-Appellants,

7 **v.**

**No. 33,123**

8 **VIRGINIA N. EYERMANN,**

9                   Personal Representative-Appellee,

10 **IN THE MATTER OF THE ESTATE OF**  
11 **PHILLIP TIMOTHY KING, Deceased.**

12 **APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY**  
13 **J.C. Robinson, District Judge**

14 Scott Hulse P.C.  
15 Casey S. Stevenson  
16 El Paso, TX

17 for Appellants

18 M. Yvonne Gonzalez  
19 Silver City, NM

20 for Appellee

1 **MEMORANDUM OPINION**

2 **VIGIL, Judge.**

3 {1} Appellant, JoAnn M. MacLellan, Individually and as Guardian and Trustee of  
4 David Timothy King, Daniel J. King, and John R. King, seeks to appeal from the  
5 district court's amended order, dated July 31, 2013, denying her request to vacate the  
6 district court's order, dated July 2, 2013, denying her claims. [DS 2, RP 397, 357]  
7 We issued a notice proposing to summarily remand to allow the district court to  
8 consider an outstanding motion for relief from judgment filed by MacLellan in the  
9 district court on August 1, 2013. MacLellan did not file a response to our proposed  
10 disposition, but the Personal Representative of the Estate of Phillip Timothy King,  
11 Virginia N. Eyermann, filed a timely memorandum in opposition.

12 {2} We continue to believe that MacLellan's post-judgment motion should be  
13 construed as a motion under NMSA 1978, Section 39-1-1 (1953), and that in the  
14 interests of judicial economy, this case should be remanded to the district court so that  
15 it can rule on this motion. Accordingly, we remand this case to the district court.

16 {3} **IT IS SO ORDERED.**

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**MICHAEL E. VIGIL, Judge**

19 **WE CONCUR:**

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2 **LINDA M. VANZI, Judge**

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4 **M. MONICA ZAMORA, Judge**