

1 {1} Plaintiff Roylene Whatley filed a docketing statement, appealing from the
2 district court's order granting Defendants' motion for summary judgment and
3 dismissing Plaintiff's complaint with prejudice, entered on November 12, 2014. [RP
4 317; DS 1] In this Court's notice of proposed disposition, we proposed to dismiss the
5 appeal for lack of a final order. [CN 1, 4] Plaintiff filed a memorandum in opposition,
6 which we have duly considered. Remaining unpersuaded, we dismiss the appeal for
7 lack of a final order.

8 {2} In his memorandum in opposition, Plaintiff contends that the summary
9 judgment entered by the district court was a final order and that his notice of appeal
10 gave full jurisdiction over to this Court. [MIO 1] However, as we stated in our notice
11 of proposed disposition, Plaintiff filed a timely motion to alter or amend and a timely
12 motion for relief from judgment and, accordingly, the district court was not divested
13 of its jurisdiction. [CN 3] *See* Rule 12-201(D)(4) NMRA (stating that *the district court*
14 *retains jurisdiction* to dispose of one of the types of motions for reconsideration listed
15 in Rule 12-201(D)(1)-(2), upon the filing of such a motion); *State v. Griego*, 2004-
16 NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d 1192 (dismissing for lack of jurisdiction
17 when no final judgment had been entered); *see also* Rule 12-201(D) (addressing the
18 effect of post-trial or post-judgment motions as extending the time for appeal until

1 entry of a final order expressly disposing of the motions when there is no provision
2 of automatic denial of motion under applicable statute or rule); *Grygorwicz v. Trujillo*,
3 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865 (explaining that “if a party makes
4 a post-judgment motion directed at the final judgment pursuant to Section 39-1-1, the
5 time for filing an appeal does not begin to run until the district court enters an express
6 disposition on that motion”); *Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122,
7 ¶ 6, 147 N.M. 303, 222 P.3d 675 (explaining that when a “motion that challenges the
8 district court’s determination of the rights of the parties[] is pending in the district
9 court, the judgment or order entered by the district court remains non-final. . . . and
10 [the] appeal is premature”).

11 {3} As we noted in our notice of proposed disposition, the district court did not
12 deny Plaintiff’s motions on the merits of such motions; rather, the district court denied
13 the motions on the court’s mistaken belief that it was divested of jurisdiction. [See RP
14 326 (¶¶ 5–6)] Thus, because the district court has not yet ruled on the merits of
15 Plaintiff’s motions, the underlying proceedings are deemed non-final, and Plaintiff’s
16 appeal is premature. *See State v. Romero*, 2014-NMCA-063, ¶ 5, 327 P.3d 525 (“[T]he
17 finality of a judgment may be suspended by the timely filing of a motion for

1 reconsideration.”); Rule 12-201(D)(4) (stating that, until a motion for reconsideration
2 is disposed of, the district court is not divested of its jurisdiction).

3 {4} We additionally note that, with regard to Plaintiff’s implication that he will be
4 denied his constitutional right to appeal if the present appeal is dismissed, as we
5 indicated in our notice of proposed disposition [CN 4], Plaintiff is free to appeal from
6 the final order of the district court, once such order is entered. *See* Rule 12-201.

7 {5} Therefore, for the reasons stated in our notice of proposed disposition and
8 herein, the appeal is dismissed for lack of a final order.

9 {6} **IT IS SO ORDERED.**

10
11 _____
MICHAEL E. VIGIL, Chief Judge

12 **WE CONCUR:**

13 _____
14 **MICHAEL D. BUSTAMANTE, Judge**

15 _____
16 **J. MILES HANISEE, Judge**