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

2 **PHILLIP ORTEGA,**

3 Plaintiff-Appellant,

4 v.

NO. 34,554

5 **GERALDINE C. JOHNSON, FIELD CLAIMS**
6 **REPRESENTATIVE and FARMERS INSURANCE**
7 **COMPANY OF ARIZONA,**

8 Defendants-Appellees,

9 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

10 **David K. Thomson, District Judge**

11 Phillip Ortega

12 Santa Fe, NM

13 for Appellant

14 O'Brien & Ulibarri, P. C.

15 Daniel O'Brien

16 Justin D. Goodman

17 Albuquerque, NM

18 for Appellees

19 **MEMORANDUM**

20 **ZAMORA, Judge.**

1 {1} Plaintiff is appealing, pro se, from a district court order denying his motion for
2 entry of a default judgment, an order dismissing his complaint without prejudice, and
3 permitting him to amend his complaint. We issued a calendar notice proposing to
4 dismiss for lack of finality. Plaintiff has responded with a memorandum in opposition.
5 We dismiss the appeal.

6 {2} “[O]ur appellate jurisdiction is limited to review of any final judgment or
7 decision, any interlocutory order or decision which practically disposes of the merits
8 of the action, or any final order after entry of judgment which affects substantial
9 rights.” *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2007-NMCA-011, ¶ 17, 140
10 N.M. 920, 149 P.3d 1017 (alteration, internal quotation marks, and citation omitted)).
11 An appellate court does not have jurisdiction when a final judgment has not been
12 entered. *See, e.g., State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d
13 1192 (dismissing for lack of jurisdiction when no final judgment had been entered);
14 *State v. Garcia*, 1983-NMCA-017, ¶¶ 29-30, 99 N.M. 466, 659 P.2d 918 (same).
15 When an appellate court does not have jurisdiction, it must dismiss. *See Thornton v.*
16 *Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268.

17 {3} This Court has previously held that an order dismissing a civil complaint
18 without prejudice is not a final, appealable order. *Montoya v. Anaconda Mining Co.*,
19 1981-NMCA-113, ¶ 12, 97 N.M. 1, 635 P.2d 1323. In this case, Plaintiff had filed his

1 notice of appeal prior to the entry of the order of dismissal. [RP 34] Normally, a
2 prematurely filed notice of appeal would be considered to be timely filed on the date
3 of the entry of the final order. *See* Rule 12-201(A) NMRA. However, in this case, the
4 district court apparently believed that the filing of the premature notice of appeal
5 divested the district court from taking any additional action. *But see Kelly Inn No. 102,*
6 *Inc. v. Kapnison*, 1992-NMSC-005, ¶ 32, 113 N.M. 231, 824 P.2d 1033 (noting that
7 district courts retain jurisdiction to perfect appeal). As a result, the district court’s
8 order of dismissal without prejudice gave Plaintiff thirty days to amend his complaint,
9 with the period to commence upon remand from this Court. [RP 40] Because that
10 language renders the order of dismissal non-final (because the thirty day period has
11 yet to commence), we dismiss this appeal.

12 {4} **IT IS SO ORDERED.**

13
14

M. MONICA ZAMORA, Judge

15 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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JONATHAN B. SUTIN, Judge