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

2 **US BANK NATIONAL ASSOCIATION,**

3 Plaintiff/Counterdefendant-Appellee,

4 v.

NO. 34,587

5 **PERRY A. KESLER,**

6 Defendant/Counterclaimant-Appellant,

7 and

8 **and if married, JANE DOE KESLER**

9 **(true name unknown), his spouse,**

10 **TAXATION AND REVENUE**

11 **DEPARTMENT OF THE STATE OF**

12 **NEW MEXICO; and UNITED STATES**

13 **OF AMERICA (IRS),**

14 Defendants.

15 **APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY**

16 **Abigail Aragon, District Judge**

17 Little, Bradley & Nesbitt, P.A.

18 Sandra A. Brown

19 Albuquerque, NM

20 for Appellee

21 Perry A. Kesler

1 Rowe, NM

2 Pro Se Appellant

3 **MEMORANDUM OPINION**

4 **VIGIL, Chief Judge.**

5 {1} Defendant Perry Kesler (Defendant) filed a docketing statement, appealing from
6 the district court’s order granting Plaintiff’s motion for summary judgment and
7 dismissing Defendant’s counterclaims with prejudice, entered on March 3, 2015. [RP
8 Vol. 5/484; DS 2] In this Court’s notice of proposed disposition, we proposed to
9 dismiss the appeal for lack of a final order. [CN 1, 4] Defendant filed a memorandum
10 in opposition and motion to amend his docketing statement. Defendant also filed a
11 notice of entry of the district court’s order along with a copy of the order denying
12 Defendant’s motion to reconsider, which we have duly considered. Remaining
13 unpersuaded, we dismiss the appeal for lack of a final order.

14 {2} As we stated in our notice of proposed disposition, Defendant filed a timely
15 motion to reconsider and, accordingly, the district court was not divested of its
16 jurisdiction. [CN 3–4] *See Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6,
17 147 N.M. 303, 222 P.3d 675 (explaining that, when a “motion that challenges the
18 district court’s determination of the rights of the parties[] is pending in the district
19 court, the judgment or order entered by the district court remains non-final. . . . and

1 [the] appeal is premature” (citation omitted)); *Grygorwicz v. Trujillo*, 2009-NMSC-
2 009, ¶ 8, 145 N.M. 650, 203 P.3d 865 (explaining that “if a party makes a
3 post-judgment motion directed at the final judgment pursuant to Section 39-1-1, the
4 time for filing an appeal does not begin to run until the district court enters an express
5 disposition on that motion”); *State v. Romero*, 2014-NMCA-063, ¶ 5, 327 P.3d 525
6 (“[T]he finality of a judgment may be suspended by the timely filing of a motion for
7 reconsideration.”). A district court retains jurisdiction to enter a final judgment on a
8 motion to reconsider. *See* Rule 12-201(D)(4) NMRA. We will dismiss an appeal
9 where no final order has been entered. *State v. Griego*, 2004-NMCA-107, ¶ 22, 136
10 N.M. 272, 96 P.3d 1192 (dismissing for lack of jurisdiction when no final judgment
11 had been entered); *see also* Rule 12-201(D) (addressing the effect of post-trial or post-
12 judgment motions as extending the time for appeal until entry of a final order
13 expressly disposing of the motions when there is no provision of automatic denial of
14 motion under applicable statute or rule).

15 {3} The district court did not deny Plaintiff’s motion to reconsider on its merits;
16 rather, the district court denied the motion on the court’s mistaken belief that it was
17 divested of jurisdiction, stating it “finds that a good cause for this motion does not
18 exist as the matter is currently stayed pending decision by the Court of Appeals[.]”
19 Thus, because the district court has not yet ruled on the merits of Defendant’s motion,

1 the underlying proceedings are deemed non-final, and Defendant’s appeal is
2 premature. *See Romero*, 2014-NMCA-063, ¶ 5 (“[T]he finality of a judgment may be
3 suspended by the timely filing of a motion for reconsideration.”); Rule 12-201(D)(4)
4 (stating that, until a motion for reconsideration is disposed of, the district court is not
5 divested of its jurisdiction).

6 {4} We note that Defendant is free to appeal from the final order of the district
7 court, once such order on the merits is entered. *See* Rule 12-201.

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

10 {6} **IT IS SO ORDERED.**

11 _____
12 **MICHAEL E. VIGIL, Chief Judge**

13 **WE CONCUR:**

14 _____
15 **JAMES J. WECHSLER, Judge**

16 _____
17 **M. MONICA ZAMORA, Judge**