

1 Santiago E. Juarez
2 Albuquerque, NM

3 for Appellant

4 **MEMORANDUM OPINION**

5 **VIGIL, Chief Judge.**

6 {1} Co-Respondent-Appellant Lauro Borunda (Appellant) seeks to appeal from a
7 final judgment in the underlying proceedings. We previously issued a notice of
8 proposed summary disposition, proposing to dismiss for failure to timely file notice
9 of appeal. Appellant has filed a memorandum in opposition. After due consideration,
10 we remain unpersuaded. We therefore dismiss.

11 {2} Appellant does not dispute the fact that he filed his notice of appeal in excess
12 of four months late. As we previously observed, appeals are not typically entertained
13 under such circumstances. *See, e.g., Chavez v. U-haul Co. of N.M., Inc.*, 1997-NMSC-
14 051, ¶¶ 19-23, 124 N.M. 165, 947 P.2d 122 (hearing an appeal where notice was filed
15 fifty-eight minutes late, but declining to hear an appeal filed thirty days late).

16 {3} We understand Appellant to suggest that a notice of appeal that was filed in
17 connection with a prior appeal should be regarded as sufficient. [MIO 2] However,
18 insofar as that appeal was previously dismissed and mandate was issued, it has no
19 bearing on the instant matter.

1 {4} Alternatively, we understand Appellant to contend that his filing of a motion
2 to reinstate should be deemed sufficient. [MIO 2] Although we occasionally give
3 other documents the effect of a notice of appeal, we only do so if the documents
4 comply with the time and place of filing requirements. *See generally* Rule 12-
5 201(A)(2) NMRA (providing that a notice of appeal must be filed within thirty days
6 after entry of the final judgment or order of the district court); Rule 12-202(A)
7 NMRA (providing that appeals “shall be taken by filing a notice of appeal with the
8 district court clerk”) *and see, e.g., Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061,
9 ¶ 12, 112 N.M. 226, 814 P.2d 94 (stating a “policy of facilitating the right of appeal
10 by liberally construing technical deficiencies in a notice of appeal *otherwise*
11 *satisfying the time and place of filing requirements*” (emphasis added)). Because
12 Appellant’s motion to reinstate was filed with this Court rather than the district court,
13 [MIO 2] and because we find no indication that the motion was filed within the
14 applicable thirty-day period, it is not an adequate substitute for a notice of appeal.

15 {5} We understand Appellant to further suggest that his failure to file a timely
16 notice of appeal with the district court should be characterized as a “technical”
17 violation of Rule 12-202 NMRA, such that Rule 12-312(C) NMRA should apply.
18 [MIO 2] However, violations of mandatory preconditions to the exercise of appellate
19 jurisdiction, such as the time and place of filing requirements, cannot be characterized

1 as “technical violations” to which Rule 12-312(C) is addressed. *See State v. Vasquez*,
2 2014-NMSC-010, ¶¶ 21-22, 326 P.3d 447 (distinguishing between mandatory
3 preconditions to the exercise of appellate jurisdiction and technical violations,
4 relative to the application of Rule 12-312(C)).

5 {6} Finally, Appellant urges the Court to consider the merits pursuant to its
6 inherent authority. [MIO 2-3] However, insofar as Appellant has failed to make the
7 requisite showing of “the most unusual circumstances beyond the control of the
8 parties.” *Clinesmith v. Temmerman*, 2013-NMCA-024, ¶ 37, 298 P.3d 458
9 (alterations, internal quotation marks, and citation omitted), we decline the invitation.

10 {7} Accordingly, for the reasons stated above and in the notice of proposed
11 summary disposition, we dismiss.

12 {8} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Chief Judge

15 **WE CONCUR:**

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MICHAEL D. BUSTAMANTE, Judge

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2 **TIMOTHY L. GARCIA, Judge**