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

2 **JOSE CASTRO-MONTANEZ,**

3 Worker-Appellant,

4 v.

NO. 34,772

5 **MILK-N-ATURAL, LLC,**

6 Employer-Appellee,

7 and

8 **UNINSURED EMPLOYERS' FUND OF**
9 **NEW MEXICO (UEF),**

10 Statutory Third Party-Appellee.

11 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

12 **Leonard J. Padilla, District Judge**

13 New Mexico Center on Law & Poverty

14 Gail Evans

15 Tim Davis

16 Albuquerque, NM

17 for Appellant

18 Hinkle Shanor LLP

19 Chelsea R. Green

20 Roswell, NM

21 for Appellee

1 **MEMORANDUM OPINION**

2 **ZAMORA, Judge.**

3 {1} Plaintiff-Appellant Jose Castro-Montanez (Worker) appeals from the workers’
4 compensation judge’s (WCJ) order granting Employer Milk-N-Atural’s motion for
5 summary judgment on the basis that the Workers’ Compensation Act categorically
6 excludes farm and ranch laborers from coverage. Based on our recent decision in
7 *Rodriguez v. Brand West Dairy*, 2015-NMCA-097, 356 P.3d 546, we issued a notice
8 of proposed summary disposition, proposing to reverse. Employer has filed a
9 memorandum in opposition, requesting that we reconsider our holding in *Rodriguez*
10 regarding the farm and ranch laborer exclusion or find that the holding should be
11 applied prospectively. [MIO 7] Employer also requests that we stay this appeal,
12 explaining that the New Mexico Supreme Court may “reverse or refine” our Opinion.
13 [MIO 11] Unpersuaded, we reverse.

14 **Retroactive Application of *Rodriguez***

15 {2} Employer continues to argue that the holding of *Rodriguez* should not be
16 applied retroactively to workers’ claims pending on or after March 30, 2012, *id.* ¶ 37,
17 which encompasses the present claim. [DS 1; MIO 8] Employer’s memorandum in
18 opposition concedes that *Rodriguez* controls the outcome of the instant case, but
19 invites this Court to reconsider our holding in *Rodriguez* and its retroactive
20 application. [MIO 8] We decline to do so. After an analysis of the three pertinent

1 factors to determine whether retroactive application is justified, *Rodriguez* expressly
2 concluded that the “Opinion’s holding shall apply to workers’ claims that were
3 pending as of March 30, 2012.” *Id.* A case is defined as pending until all appeals have
4 been exhausted. *State v. Nunez*, 2000-NMSC-013, ¶ 114, 129 N.M. 63, 2 P.3d 264 (“A
5 case is finalized when a judgment of conviction has been rendered, the availability of
6 appeal exhausted, and the time for a petition for certiorari elapsed or a petition for
7 certiorari finally denied.” (internal quotation marks and citation omitted)). This case
8 falls within the purview of *Rodriguez*. Our notice of proposed summary disposition
9 explained that we perceived no factual basis for distinguishing this Court’s decision
10 in *Rodriguez*. [CN 3] Accordingly, we reverse.

11 **Motion to Stay**

12 {3} As Employer acknowledges, [MIO 11] neither the filing of a petition for writ
13 of certiorari, or an order granting a petition suspends the precedential value of this
14 Court’s opinions. *See* Rule 12-405(C) NMRA (“A petition for a writ of certiorari filed
15 pursuant to Rule 12-502 NMRA or a Supreme Court order granting the petition does
16 not affect the precedential value of an opinion of the Court of Appeals, unless
17 otherwise ordered by the Supreme Court.”). Employer argues, however, that there is
18 “uncertainty that still exists” and a stay would conserve the time and resources of the

1 parties and the judiciary. [MIO 11] We decline to stay the instant appeal and instead
2 rely on *Rodriguez* to reverse the WCJ's order.

3 {4} Accordingly, for the reasons stated above and in our notice of proposed
4 summary disposition, we reverse.

5 {5} **IT IS SO ORDERED.**

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7

M. MONICA ZAMORA, Judge

8 **WE CONCUR:**

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CYNTHIA A. FRY, Judge

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LINDA M. VANZI, Judge