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

2 **FEDERAL NATIONAL MORTGAGE**
3 **ASSOCIATION,**

4 **Plaintiff-Appellee,**

5 **vs.**

No. 35,946

6 **PATRICIA S. LEVEY a/k/a**
7 **PATRICIA LEVEY,**

8 **Defendant-Appellant,**

9 **and**

10 **WELLS FARGO BANK, N.A.,**

11 **Defendant.**

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

13 **Raymond Z. Ortiz, District Judge**

14 McCarthy & Holthus, LLP

15 Karen Weaver

16 Joshua T. Chappell

17 Albuquerque, NM

18 for Appellee

19 Gleason Law Firm, LLC

20 Deidre Gleason

21 Heath, MA

22 for Appellant

1 **MEMORANDUM OPINION**

2 **ZAMORA, Judge.**

3 {1} Defendant Patricia S. Levey seeks to appeal from the denial of a motion for
4 summary judgment. We previously issued a notice of proposed summary disposition
5 in which we proposed to dismiss for want of a final order. Defendant has filed a
6 memorandum in opposition, and Plaintiff has filed a memorandum in support, which
7 we have duly considered. Because we remain unpersuaded that this matter is properly
8 before us, we dismiss the appeal.

9 {2} We previously described the pertinent background information in the notice of
10 proposed summary disposition. We will not reiterate at length here. Suffice it to say,
11 although the denial of Defendant’s motion for summary judgment was not a final
12 appealable order, *see Doe v. Leach*, 1999-NMCA-117, ¶ 12, 128 N.M. 28, 988 P.2d
13 1252, the district court’s subsequent grant of Plaintiff’s cross-motion and entry of an
14 order of foreclosure, would normally be regarded as a final, appealable decision. *See*
15 *also Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 8, 145 N.M. 650, 203 P.3d 865.
16 However, Defendant subsequently filed a timely motion for reconsideration, which
17 suspended the finality of the district court’s preceding order. *See id.* (“[W]hen a party
18 makes a motion challenging the district court’s determination of the rights of the

1 parties contained in [a] foreclosure decree, the decree is not final . . . until the district
2 court disposes of the motion.”).

3 {3} In her memorandum in opposition Defendant makes no effort to address the
4 foregoing principles, or the authorities cited. Instead, she asserts that the district
5 court’s determination relative to standing should be immediately appealable on
6 grounds that, if the district court erred, the matter should not proceed further. [MIO
7 4-5] The only authority she cites as indirect support for this proposition is *Deutsche*
8 *Bank Nat’l Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 23, 369 P.3d 1046. However,
9 *Johnston* entailed an appeal from a decree of foreclosure; it did not indicate that an
10 interlocutory ruling on a question relative to standing is immediately appealable as a
11 matter of right. Further, *Johnston* analogized standing challenges, in the context of
12 foreclosure actions, to the defense of failure to state a claim. *Id.* ¶ 34. Of course, the
13 denial of a motion to dismiss for failure to state a claim generally constitutes an
14 interlocutory order, rather than a final determination that is immediately appealable
15 as a matter of right. *See, e.g., Smoot v. Physicians Life Ins. Co.*, 2004-NMCA-027,
16 ¶¶ 5-6, 135 N.M. 265, 87 P.3d 545 (reviewing the denial of a motion to dismiss for
17 failure to state a claim on interlocutory appeal); *Romero v. U.S. Life Ins. Co.*,
18 1986-NMCA-044, ¶ 1, 104 N.M. 241, 719 P.2d 819 (same). We therefore reject
19 Defendant’s argument.

1 {4} In the notice of proposed summary disposition we advised that if the parties
2 should obtain a written ruling on the pending motion, we would proceed to consider
3 the merits. [CN 5] Plaintiff has advised that no such order has been entered. [MIS 3]
4 Until the district court has taken a formal position on the submission, the matter has
5 not been fully and finally resolved; and accordingly, the instant appeal is premature.
6 *See Dickens v. Laurel Healthcare, LLC*, 2009-NMCA-122, ¶ 6, 147 N.M. 303, 222
7 P.3d 675 (observing that when a motion that challenges the district court’s
8 determination of the rights of the parties is pending in the district court, the judgment
9 or order entered by that court remains non-final, such that appeal is premature); *see*
10 *also* Rule 1-054.1 NMRA, committee cmt. (“Because there no longer is an automatic
11 denial of post-judgment motions, the time for filing notices of appeal will run ‘from
12 the filing of an order expressly disposing of the . . . motion’.” (quoting Rule
13 12-201(D)(1))).

14 {5} Accordingly, for the reasons stated above and in the notice of proposed
15 summary disposition, the appeal is summarily dismissed.

16 {6} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

1 **WE CONCUR:**

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3 **LINDA M. VANZI, Chief Judge**

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5 **JULIE J. VARGAS, Judge**