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

2 **STATE OF NEW MEXICO UNINSURED**
3 **EMPLOYERS' FUND,**

4 Petitioner-Appellee,

5 v.

No. A-1-CA-36705

6 **GREG GALLEGOS, aka**
7 **GREG McCOOL d/b/a**
8 **MONSTER CONSTRUCTION**
9 **& ROOFING,**

10 Respondent-Appellant.

11 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
12 **Alan M. Malott, District Judge**

13 New Mexico Uninsured Employers' Fund
14 Richard P. Bustamante
15 Albuquerque, NM

16 for Appellee

17 Greg Gallegos
18 Albuquerque, NM

19 Pro Se Appellant

20 **MEMORANDUM OPINION**

21 **VIGIL, Judge.**

1 {1} Respondent Greg Gallegos, a self-represented litigant, appeals from the district
2 court's order of default judgment to enforce a Workers' Compensation
3 Administration's (WCA's) judgment. We issued a notice of proposed summary
4 disposition in which we proposed to affirm, and we denied Petitioner's motion to
5 dismiss the appeal. Respondent did not file a timely memorandum in opposition to this
6 Court's notice of proposed disposition. Accordingly, we issued a memorandum
7 opinion affirming. Subsequently, Respondent filed a timely motion for rehearing,
8 which we granted. Having granted the motion for rehearing, we withdraw the opinion
9 filed on January 29, 2018, and substitute the following in its place. Consistent with
10 our order granting the motion for rehearing, Respondent filed a timely response
11 (Response) to our notice of proposed disposition, which we have duly considered.
12 Remaining unpersuaded, we affirm.

13 {2} As discussed in our notice of proposed disposition, the WCA entered a
14 supplemental compensation order of default on March 15, 2017, against Respondent;
15 Petitioner filed a petition in the district court to enforce the WCA's order, pursuant to
16 NMSA 1978, Section 52-5-10(B) (1990); and on August 17, 2017, the district court
17 entered a default judgment to enforce the WCA's order. [CN 2] It is this latter order
18 that is the subject of this appeal. [CN 2-3]

1 {3} In our notice of proposed disposition, we suggested that the time for appealing
2 the WCA order had expired, and Respondent has no right to challenge the underlying
3 compensation order in this appeal, *see* NMSA 1978, Section 52-5-8 (1989). [CN 3]
4 We further suggested that Respondent had not demonstrated how the district court
5 erred with respect to the order of enforcement from which he is appealing. [CN 5-6]
6 Therefore, we proposed to affirm. [CN 6]

7 {4} In response, Respondent argues that Petitioner took too long to prosecute this
8 case against him. [*See generally* Response] This appears to be a challenge to orders
9 entered by the WCA. We note, however, that the only issue before this Court is
10 whether the district court erred in entering a default judgment to enforce the WCA's
11 order, and Respondent has not demonstrated error in this regard. *See Farmers, Inc. v.*
12 *Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063
13 (stating that the appellate courts presume that the trial court is correct and the burden
14 is on the appellant to clearly demonstrate that the lower court erred). Respondent may
15 not use his appeal from the district court's order of enforcement as a mechanism to
16 circumvent a timely notice of appeal from a WCA order. *Cf. Resolution Tr. Corp. v.*
17 *Ferri*, 1995-NMSC-055, ¶¶ 6, 9, 120 N.M. 320, 901 P.2d 738 (stating that Rule
18 1-060(B) NMRA should not be used as a substitute for appeal nor as a means of
19 circumventing the appeals process); *Deerman v. Bd. of Cty. Comm'rs*,

1 1993-NMCA-123, ¶ 16, 116 N.M. 501, 864 P.2d 317 (stating that it is well-settled in
2 New Mexico law that Rule 1-060(B)(1) is not to be used as a substitute for appeal).

3 {5} Accordingly, for the reasons stated above and in the notice of proposed
4 summary disposition, we affirm.

5 {6} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

8 **WE CONCUR:**

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J. MILES HANISEE, Judge

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EMIL J. KIEHNE, Judge