

  
Mark Reynolds

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

**STATE OF NEW MEXICO, ex rel.  
NEW MEXICO STATE ENGINEER,**

**Plaintiff-Appellee,**

**v.**

**ROSETTE, INC., et al.,**

**Defendants**

**and**

**J & C VICTOR 2006 TRUST,**

**Defendant-Appellant.**

FILED 6th JUDICIAL DISTRICT COURT  
Hidalgo County  
4/1/2020 3:03 PM  
ANGELA M. RODRIGUEZ  
CLERK OF THE COURT

Angela Rodriguez

**No. A-1-CA-38093  
Hidalgo County  
D-623-CV-2005-00054**

D-623-AUB-011-0001A  
D-623-AUB-011-0001B  
D-623-AUB-011-0001C  
D-623-AUB-011-0001D  
D-623-AUB-011-0004B  
D-623-AUB-012-0004  
D-623-AUB-012-0014  
D-623-AUB-013-0003A

**NOTICE**  
**PROPOSED SUMMARY DISPOSITION**

You are hereby notified that the:

**Record Proper**

was filed in the above-entitled cause on **June 11, 2019**.

This case has been assigned to the **SUMMARY CALENDAR** pursuant to Rule 12-210(D) NMRA.

Summary dismissal is proposed for lack of a final, appealable order.

---

**Note:** This is a *proposal* of how the Court views the case. It is not a final decision. You now have twenty (20) days to file a memorandum telling the Court any reasons why this proposed disposition should or should not be made.

**See Rule 12-210(D) NMRA.**

---

“This Court’s jurisdiction lies from final, appealable orders.” *Coulston Found. v. Madrid*, 2004-NMCA-060, ¶ 7, 135 N.M. 667, 92 P.3d 679. Whether an order is final is a jurisdictional question this Court is required to raise on its own motion. *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 12, 125 N.M. 680, 964 P.2d 844. “Generally, a civil action may only be appealed . . . if a ‘final order’ or a ‘final judgment’ has been entered by the [trial] court.” *Gates v. N.M. Tax. & Rev. Dep’t*, 2008-NMCA-023, ¶ 8, 143 N.M. 446, 176 P.3d 1178. Also, generally, “an order or judgment is not considered final unless all issues of law and fact have been determined and the case disposed of by the trial court to the fullest extent possible.” *Executive Sports Club, Inc. v. First Plaza Trust*, 1998-NMSC-008, ¶ 5, 125 N.M. 78, 957 P.2d 63 (internal quotation marks and citation omitted).

Defendant J & C Victor 2006 Trust (JCV) seeks to appeal [RP 202-209<sup>1</sup>] from the district court’s order [RP 196] denying JVC’s motion to set aside a 2013 order of summary judgment [RP 12-109]. JVC provides no reason for this Court to believe that

---

<sup>1</sup>All record proper cites are to the record in Subfile No. AUB-013-0003A.

the order denying its motion to set aside summary judgment finally resolves all issues of law and fact between the State Engineer and JVC, individually, or JVC and any other claimants or between the State Engineer and all the claimants in the larger Animas Underground Water Basin Adjudication.

We recognize the Supreme Court has held that certain subfile orders in global water-rights adjudications are final; specifically, orders that adjudicate all water-rights issues between the state and the claimant and the appealing claimant and other claimants, and therefore constitute “a declaration of water rights upon which persons rely in the use and transfer of such rights for decades before a final resolution of the universal questions at issue *inter se*.” *State ex rel. State Engineer v. Parker Townsend Ranch Co.*, 1994-NMSC-125, ¶ 5, 118 N.M. 780, 887 P.2d 1247; *see also id.* ¶¶ 6-7.

We make two material distinctions between the subfile order in the current case and the final subfile orders described above from *Parker Townsend*. First, there is no indication that the subfile order denying JVC’s motion to set aside a 2013 judgment finally resolves all the water-rights issues between the State Engineer and JVC or JVC and all the other claimants, if any such inter-claimant issues exist. As a practical matter, if the order denying JCV’s motion to set aside a 2013 judgment were a final determination of JCV’s water rights, then it seems the 2013 judgment would have ended the adjudication as to JCV, and this case would not have been ongoing since

2013. Any ongoing adjudication of water rights between JVC and the State Engineer or the other parties would preclude finality in the subfile order from which JCV seeks to appeal, in the absence of the district court's express certification that there is no just reason for delay under Rule 1-054(B) NMRA.

Second, even if the subfile order at issue adjudicates all of JCV's water-rights issues, Rule 1-054 has been amended since *Parker Townsend* was decided and no longer provides that orders adjudicating all claims as to one party in a multi-party action are final and immediately appealable. Compare Rule 1-054(B)(2) NMRA (2015) ("When multiple parties are involved, judgment may be entered adjudicating all issues as to one or more, but fewer than all parties. Such judgment shall be a final one unless the court, in its discretion, expressly provides otherwise and a provision to that effect is contained in the judgment."); with Rule 1-054(B) (current) (stating that in an action involving multiple claims or parties, an order disposing of less than all the claims or fewer than all the parties is not final unless "the court expressly determines there is no just reason for delay").

The district court in this case has not directed entry of a final order and made the appropriate certification. We further note that this Court reviews a district court's certification that there is no just reason for delay for abuse of discretion, which may occur where we determine that "the issues decided by the judgment are intertwined,

legally or factually, with the issues not yet resolved.” *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 20, 125 N.M. 680, 964 P.2d 844.

In any response JVC may file, it must demonstrate that the subfile order from which it seeks to appeal is final and immediately appealable or this Court will dismiss for lack of jurisdiction. *See, e.g., State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d 1192 (dismissing for lack of jurisdiction where no final judgment had been entered).

Based on the foregoing, we propose to dismiss at this time.

  
LINDA M. VANZI, Judge