

Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.


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

2 Opinion Number: _____

Court of Appeals of New Mexico
Filed 9/18/2023 10:56 AM

3 Filing Date: **September 18, 2023**

4 **No. A-1-CA-40161**



Mark Reynolds

5 **CARLA VALDEZ,**

6 Plaintiff-Appellant,

7 v.

8 **BARBARA ERICKSON and RENTAL**
9 **MANAGEMENT SERVICES, INC.,**
10 **a domestic corporation,**

11 Defendants-Appellees,

12 and

13 **STATE FARM FIRE AND CASUALTY**
14 **INSURANCE COMPANY,**

15 Proposed Intervenor.

16 **APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY**

17 **James A. Noel, District Court Judge**

18 Weems Hazen Law

19 Bridget J. Hazen

20 Dathan L. Weems

21 Albuquerque, NM

22 for Appellant

1 O'Brien & Padilla, P.C.
2 Daniel J. O'Brien
3 Albuquerque, NM

4 for Appellees

5 Guebert Gentile & Piazza, P.C.
6 Elizabeth M. Piazza
7 Lawrence A. Junker
8 Albuquerque, NM

9 for Intervenor

1 **OPINION**

2 **BOGARDUS, Judge.**

3 {1} This appeal requires us to consider a threshold jurisdictional question arising
4 from an order granting an insurance company (Intervenor) leave to file a complaint
5 in intervention. Although the district court granted the leave request, Intervenor
6 never filed the complaint for declaratory relief that was attached to its intervention
7 motion, and the district court eventually rendered summary judgment in favor of
8 Defendants, which Plaintiff now seeks to appeal. Noting the presence of a party not
9 addressed in the district court’s judgment, this Court ordered Plaintiff to brief the
10 question of how the presence of an intervenor who has not filed its complaint in
11 intervention affects the finality of the judgment on appeal. *See Smith v. City of Santa*
12 *Fe*, 2007-NMSC-055, ¶ 10, 142 N.M. 786, 171 P.3d 300 (noting that “it is incumbent
13 upon the appellate court to raise jurisdiction questions sua sponte when the Court
14 notices them”); *see also State v. Lohberger*, 2008-NMSC-033, ¶ 25, 144 N.M. 297,
15 187 P.3d 162 (explaining “[t]he requirement of an unambiguous filed final order is
16 important to the orderly administration of the law”). Plaintiff has filed a brief
17 addressing that question, which we have duly considered.

18 {2} As more fully explained herein, recent changes to our rules governing finality,
19 along with a due consideration of the importance of certainty in the finality of orders
20 and judgments, requires us to conclude that the summary judgment in this case

1 adjudicated “the rights and liabilities of fewer than all the parties,” Rule 1-054(B)
2 NMRA, rendering it nonfinal for purposes of appeal. *See Lohberger*, 2008-NMSC-
3 033, ¶ 34 (noting that both “[t]he rights of litigants and the integrity of our system
4 of justice” require certainty with regard to finality).

5 **BACKGROUND**

6 {3} Plaintiff filed this suit against two named Defendants, alleging personal
7 injuries arising from the condition of a leased residential property. Defendants are
8 the owner of that property and the rental management company responsible for
9 maintenance of the leased premises. Following Defendants’ answers to Plaintiff’s
10 complaint, Intervenor filed a motion to intervene, asserting it had issued an insurance
11 policy to one of the defendants, that the other parties are potential third-party
12 beneficiaries of that policy, and seeking leave to file a complaint for declaratory
13 relief regarding its potential obligations to defend or indemnify Defendants. That
14 motion was unopposed, and the district court granted leave for Intervenor to file its
15 declaratory judgment complaint, a copy of which was attached to the motion.
16 Although Intervenor did not file the complaint, the litigation proceeded. Defendants
17 successfully filed a motion for summary judgment on grounds involving statutes of
18 limitation.

19 {4} In response to our order directing Plaintiff to brief the question of whether
20 judgment is final for purposes of appeal, Plaintiff informs us both that Intervenor

1 has since filed its complaint as a separate declaratory judgment action and that
2 Intervenor has no objection to this appeal moving forward. Plaintiff also asserts all
3 issues that needed to be decided with regard to her complaint were, in fact, decided,
4 and any questions involving Intervenor’s obligations under its insurance policy were
5 mooted by the district court’s summary judgment in favor of Defendants.

6 **DISCUSSION**

7 {5} Whether a judgment is final “is a jurisdictional question that an appellate court
8 is required to raise on its own motion.” *Khalsa v. Levinson*, 1998-NMCA-110, ¶ 12,
9 125 N.M. 680, 964 P.2d 844. In the absence of jurisdiction, this Court “must
10 dismiss.” *Thornton v. Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d
11 1268. The rule that appeals will lie only from final judgments “serves a multitude of
12 purposes, including the prevention of piecemeal appeals and the promotion of
13 judicial economy.” *Handmaker v. Henney*, 1999-NMSC-043, ¶ 7, 128 N.M. 328,
14 992 P.2d 879. Further, because this Court’s jurisdiction is limited to timely appeals
15 from final judgments or orders, uncertainty with regard to finality risks the
16 unintended forfeiture of appellate rights. *See Lohberger*, 2008-NMSC-033, ¶ 25.
17 Accordingly, we have long emphasized “the importance of requiring a clearly
18 recognizable final order that will serve its intended function as an avenue for
19 appellate review.” *Id.* ¶ 30. To the extent that Plaintiff asserts Intervenor has no
20 objection to this Court’s exercise of jurisdiction over this appeal, we note that subject

1 matter jurisdiction “cannot be waived or cured by the consent of the parties.” *El*
2 *Castillo Ret. Residences v. Martinez*, 2015-NMCA-041, ¶ 14, 346 P.3d 1164.

3 {6} The question of whether a judgment or order is final for appellate purposes is
4 governed by Rule 1-054, which underwent significant substantive revisions taking
5 effect on December 31, 2016. Before that revision, that rule contemplated entry of
6 separate final judgments with regard to different parties:

7 When multiple parties are involved, judgment may be entered
8 adjudicating all issues as to one or more, but fewer than all parties. Such
9 judgment shall be a final one unless the court, in its discretion,
10 expressly provides otherwise and a provision to that effect is contained
11 in the judgment.

12 Rule 1-054(B)(2) NMRA (2016); *see Rivera v. King*, 1988-NMCA-093, ¶ 4, 108
13 N.M. 5, 765 P.2d 1187 (holding, under prior rule, that the dismissal of all claims
14 against one of multiple defendants constituted a final judgment as to that defendant);
15 *see also Seaboard Fire & Marine Ins. Co. v. Kurth*, 1980-NMCA-112, ¶ 5, 96 N.M.
16 631, 633 P.2d 1229 (dismissing an appeal as untimely under the prior rule because
17 “a judgment dismissing all claims of one plaintiff [was] final at that time, and such
18 party [could not] wait until the remaining claims [were] concluded before
19 appealing”).

20 {7} As amended, however, the rule now contemplates the entry of a single final
21 judgment, even where multiple parties are involved, unless the district court

1 expressly certifies that a judgment resolving the rights and liabilities of a single party
2 should be treated by the appellate court as a final judgment.

3 If an action presents more than one claim for relief, whether as a claim,
4 counterclaim, cross[-]claim, or third-party claim, or if multiple parties
5 are involved, the court may direct entry of a final judgment about one
6 or more, but fewer than all, claims or parties, only if the court expressly
7 finds no just reason for delay. Otherwise, any order or other decision,
8 however designated, that adjudicates fewer than all the claims, or the
9 rights and liabilities of fewer than all the parties, does not end the action
10 for any of the claims or parties, and may be revised at any time before
11 the entry of a judgment adjudicating all the claims and all the parties’
12 rights and liabilities.

13 Rule 1-054(B). Following this amendment, the New Mexico rule now mirrors its
14 federal counterpart by requiring that final judgments address the claims of all parties
15 to the litigation. *See* Fed. R. Civ. P. 54(b) (declaring nonfinal a decision “that
16 adjudicates fewer than all the claims or the rights and liabilities of fewer than all the
17 parties”); *Camarena ex rel. Camarena v. Superior Contracting Corp.*, 2023-NMCA-
18 043, ¶ 15, ___ P.3d ___ (acknowledging the substantive similarity of the state and
19 federal finality rules), *cert. denied*, 2023-NMCERT-006 (S-1-SC-39836); *Cordova*
20 *v. Cline*, 2017-NMSC-020, ¶ 12 n.1, 396 P.3d 159 (explaining that the amendment
21 to Rule 1-054(B) avoids “the piecemeal litigation” that occurred prior to the
22 amendment).

23 {8} The summary judgment at issue in this appeal contains no certification that it
24 constitutes the final judgment in this case. During the case, Intervenor sought and
25 was granted leave to have its rights and liabilities arising from an insurance policy

1 determined by the district court. As a result, Intervenor became a party to this case.
2 *See Ruybalid v. Segura*, 1988-NMCA-084, ¶ 13, 107 N.M. 660, 763 P.2d 369
3 (explaining that intervention is the process by which “a person is permitted to
4 become a party in an action between other persons, after which the litigation
5 proceeds with the original and intervening parties”); 7C Charles Alan Wright, Arthur
6 R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1920 (database
7 updated April 2023) (noting that an “intervenor is entitled to litigate fully on the
8 merits once intervention has been granted”).

9 {9} Our conclusion that Intervenor is a party to this suit and thus its claims must
10 be adjudicated to establish finality is consistent with decisions from other
11 jurisdictions. *See White v. Tex. Am. Bank/Galleria, N.A.*, 958 F.2d 80, 83 (5th Cir.
12 1992) (noting that upon being permitted to intervene, intervenors “became parties to
13 the action, equal in status to the original parties”); *Narragansett Elec. Co. v.*
14 *Constellation Energy Commodities Grp., Inc.*, 526 F. Supp. 2d 260, 276 (D.R.I.
15 2007) (holding that an intervenor became a party to an action upon the grant of a
16 motion to intervene); *Petrosian v. Frizell*, 181 N.W.2d 10, 12 (Mich. Ct. App. 1970)
17 (noting that “[u]pon the compensation insurance carrier being permitted to intervene
18 it became a party to the litigation”); *Deutschmann v. Sears, Roebuck, & Co.*, 183
19 Cal. Rptr. 573, 575 (Ct. App. 1982) (“An intervener becomes an actual party to the
20 suit by virtue of the order authorizing him to intervene.” (alteration, internal

1 quotation marks, and citation omitted)); *In re J.D.*, 304 S.W.3d 522, 527 (Tex. App.
2 2009) (concluding that an appeal was “premature due to the presence of the
3 intervention”). Similarly, there is persuasive authority for the proposition that the
4 pendency of an unresolved motion to intervene prevents the entry of a final
5 judgment. *See Ligon v. City of N.Y.*, 743 F.3d 362, 365 (2d Cir. 2014) (remanding in
6 order that, inter alia, pending intervention motions could be adjudicated by the trial
7 court); *Applebaum v. State Farm Mut. Auto. Ins. Co.*, 109 F.R.D. 661, 663 (M.D. Pa.
8 1986) (treating a judgment as nonfinal because pending motions to intervene
9 amounted to “unfinished business” that must be addressed by the trial court).

10 {10} Because Intervenor did not proceed to file its complaint in this case, however,
11 the district court never had any occasion to declare its rights and liabilities. As a
12 result, we have a judgment before us that resolves all of the claims for relief asserted
13 below, but without adjudicating the rights and liabilities of all the parties. Summary
14 judgment in this case would have undoubtedly been a final judgment, pursuant to
15 the version of Rule 1-054 in effect prior to December 31, 2016. The current rule,
16 however, requires that Intervenor’s rights and liabilities be addressed in any final
17 order. *See* Rule 1-054(B).

18 {11} Plaintiff asserts that the district court’s summary judgment is final because it
19 resolves the issues of law and fact raised in her complaint. *See Cole v. McNeill*, 1984-
20 NMCA-126, ¶ 3, 102 N.M. 146, 692 P.2d 532 (explaining that judgments are final

1 when “all issues of law and fact necessary to be determined are in fact determined,
2 and the case is completely disposed of so far as the court has the power to dispose
3 of it”). Although we agree that the issues raised by Plaintiff’s complaint have, in
4 fact, been determined, the case has not been “completely disposed of so far as the
5 court has the power to dispose of it,” *see id.*, given the presence of a party who has
6 yet to assert claims it has been granted leave to assert. Stated in terms of Rule 1-054,
7 although the summary judgment adjudicates “all the claims” asserted, it nonetheless
8 adjudicates “the rights and liabilities of fewer than all the parties” because it fails to
9 address the status of a party—Intervenor—whose rights and liabilities have yet to be
10 adjudicated. *See* Rule 1-054(B). We note that there does not appear to be any
11 impediment to the entry of an order or judgment unambiguously resolving the
12 uncertain status of that party or certifying, if the district court deems it proper, that
13 there is “no just reason for delay.” *Id.*

14 {12} Plaintiff further asserts that shortly after the district court granted its motion
15 to intervene, Intervenor chose to file its complaint for a declaratory judgment as a
16 separate action. As a result, Plaintiff suggests, Intervenor has a full and fair
17 opportunity to litigate its declaratory judgment claim independent of this lawsuit.
18 The inquiry is not, however, whether Intervenor’s claims could be addressed in
19 another proceeding. The inquiry is whether the claims Intervenor was permitted to
20 bring in this proceeding have been addressed. It does not appear—either from the

1 record before us or otherwise—that anything prevents Intervenor from pursuing
2 declaratory relief in the present case, notwithstanding its apparent decision to seek
3 that relief elsewhere. These circumstances, which represent potential unfinished
4 business in the case tried below, may be easily resolved by the entry of an order or
5 judgment addressing Intervenor.

6 {13} Finally, Plaintiff asserts that if Intervenor were to pursue its declaratory relief
7 in this suit, the ruling contained in the summary judgment likely mooted any
8 question involving its duty to defend or indemnify Defendants. Whether the
9 summary judgment resolved the question Intervenor was granted leave to raise,
10 however, has not been addressed by the district court, and we decline to address that
11 question in the first instance.

12 {14} Accordingly, Rule 1-054(B) requires the entry of a judgment or order
13 addressing Intervenor’s claims, or making the appropriate certification, before the
14 summary judgment Plaintiff seeks to appeal will be final for appellate purposes.
15 Requiring certainty with regard to finality serves the beneficial purpose of removing
16 any doubt regarding the status of the claims and parties below. *See Lohberger*, 2008-
17 NMSC-033, ¶ 25 (noting that uncertainty “may unintentionally forfeit a party’s right
18 to appellate review”). In the present case, certainty requires that the leave granted to
19 Intervenor to file its complaint in intervention be addressed by the district court.
20 Because finality determinations demand certainty, and cannot be the subject of case-

1 by-case adjudication, *see id.* ¶ 22, it is incumbent upon the parties and the district
2 court to create an appellate record that demonstrates the finality of the judgment or
3 order on appeal. *See id.* ¶ 25 (“The requirement of an unambiguous filed final order
4 is important to the orderly administration of the law.”).

5 **CONCLUSION**


6 {15} Because the summary judgment at issue in this appeal adjudicates the rights
7 and liabilities of fewer than all of the parties below, we conclude that no final
8 judgment has yet been entered. Accordingly, this appeal is premature and must be
9 dismissed for lack of jurisdiction.

10 {16} **IT IS SO ORDERED.**

11 
12 KRISTINA BOGARDUS, Judge

13 **WE CONCUR:**

14 
15 JENNIFER L. ATTREP, Chief Judge

16 
17 KATHERINE A. WRAY, Judge