


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

Court of Appeals of New Mexico
Filed 4/3/2023 11:36 AM

2 **SHAWN VENEGAS, TERRI**
3 **SMITH, and MADISON SMITH,**



Mark Reynolds

4 Plaintiffs-Appellants,

5 v.

No. A-1-CA-40092

6 **REDROCK FOODS LTD. CO.,**

7 Defendant-Appellee.

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

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

10 Shawn Venegas

11 Terri Smith

12 Madison Smith

13 Carlsbad, NM

14 Pro Se Appellants

15 Gallagher, Casados & Mann, P.C.

16 Nathan H. Mann

17 Albuquerque, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **ATTREP, Chief Judge.**

21 {1} Plaintiff Shawn Venegas appeals from a district court order dismissing his

22 complaint. We issued a calendar notice proposing to dismiss based on an untimely

23 notice of appeal. *See Grygorwicz v. Trujillo*, 2009-NMSC-009, ¶ 7, 145 N.M. 650,

24 203 P.3d 865 (“Determining whether [an] appeal was timely involves the

1 interpretation of court rules, which we review de novo.”); *Rice v. Gonzales*, 1968-
2 NMSC-125, ¶ 4, 79 N.M. 377, 444 P.2d 288 (stating that “an appellate court has the
3 duty to determine whether it has jurisdiction of an appeal”). Plaintiff has responded
4 with a memorandum in opposition. Not persuaded, we dismiss the appeal.

5 {2} The district court entered its final judgment on September 27, 2021. [RP 176]
6 As a result, a notice of appeal should have been filed with the district court no later
7 than October 26, 2021. *See* Rule 12-201(A)(1)(b) NMRA (stating that a notice of
8 appeal shall be filed “within thirty (30) days after the judgment or order appealed
9 from is filed in the district court clerk’s office”). Plaintiff’s notice of appeal was filed
10 on November 3, 2021, past the deadline for filing a timely notice of appeal. [RP 194]

11 {3} The timely filing of a notice of appeal in the district court is a mandatory
12 precondition to our jurisdiction over an appeal. *See Govich v. N. Am. Sys., Inc.*, 1991-
13 NMSC-061, ¶ 12, 112 N.M. 226, 814 P.2d 94 (explaining that time and place of
14 filing a notice of appeal is a mandatory precondition to appellate jurisdiction). While
15 we may exercise our discretion to consider an untimely appeal in the event of
16 unusual circumstances beyond the control of a party—such as error on the part of
17 the court—no such circumstances are present in this case. *See Trujillo v. Serrano*,
18 1994-NMSC-024, ¶ 15, 117 N.M. 273, 871 P.2d 369. Although Plaintiff’s
19 memorandum in opposition is focused on the issue of whether his docketing
20 statement was timely filed, he does not point out any error in law or fact in our

1 calendar notice with respect to the timeliness of the filing of the notice of appeal.
2 *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683
3 (observing that “[o]ur courts have repeatedly held that, in summary calendar cases,
4 the burden is on the party opposing the proposed disposition to clearly point out
5 errors in fact or law”).

6 {4} For the reasons set forth above, we dismiss the appeal.

7 {5} **IT IS SO ORDERED.**

8 
9 **JENNIFER L. ATTREP, Chief Judge**

10 **WE CONCUR:**

11 
12 **ZACHARY A. IVES, Judge**

13 
14 **GERALD E. BACA, Judge**