


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

Court of Appeals of New Mexico
Filed 5/17/2023 9:18 AM

2 **BRYCE FRANKLIN,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-40397

5 **HARLEY JARAMILLO and THE GEO**
6 **GROUP CORPORATION,**

7 Defendants-Appellees.

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

9 **Bryan P. Biedscheid, District Court Judge**

10 Bryce Franklin

11 Grants, NM

12 Pro Se Appellant

13 YLaw, P.C.

14 Michael S. Jahner

15 Albuquerque, NM

16 for Appellees

17 **MEMORANDUM OPINION**

18 **HANISEE, Judge.**

19 {1} Plaintiff appeals from a district court order denying various motions directed
20 at an order granting judgment against him on his complaint. We issued a calendar
21 notice proposing to affirm. Plaintiff has responded with a memorandum in
22 opposition. We affirm.

1 {2} As we set forth in our calendar notice, the final, appealable order was filed on
2 May 21, 2021. [RP 419] Plaintiff did not file a notice of appeal within thirty days.
3 See Rule 12-201(A) NMRA. Instead, Plaintiff filed three separate post-judgment
4 motions: a motion to reopen the matter to permit him to amend his complaint, a
5 motion to certify an issue for interlocutory appeal, and a motion to reconsider. [RP
6 422, 424, 478] All three of these motions were filed outside the time allowed for
7 filing a timely motion to reconsider or a notice of appeal. See Rule 12-201(D)(1)(c)
8 NMRA. Defendant then filed a notice of appeal from the district court order denying
9 these motions. [RP 562, 568] Our calendar notice therefore construed Plaintiff’s
10 motions as motions made pursuant to Rule 1-060(B) NMRA, and we limited our
11 appellate review accordingly. Cf. *Martinez v. Friede*, 2004 NMSC-006, ¶ 17, 135
12 N.M. 171, 86 P.3d 596 (noting that a district court’s power to reopen judgment and
13 grant a new trial under Rule 1-060(B) has “no effect on the parties’ ability to
14 calculate the time in which they must file their notice of appeal . . . because a motion
15 under Rule 1-060(B) does not affect the finality of a judgment or suspend its
16 operation” (internal quotation marks and citation omitted)), *superseded by rule on*
17 *other grounds as stated in State v. Moreland*, 2008-NMSC-031, 144 N.M. 192, 185
18 P.3d 363. We review the district court’s ruling for an abuse of discretion. See *James*
19 *v. Brumlop*, 1980-NMCA-043, ¶ 9, 94 N.M. 291, 609 P.2d 1247 (“An appeal from
20 the denial of a Rule [1-0]60(B) motion cannot review the propriety of the judgment

1 sought to be reopened; the trial court can be reversed only if it is found to have
2 abused its discretion in refusing to grant the motion.”).

3 {3} In his memorandum in opposition, Plaintiff contends that the motions should
4 be considered timely filed under Rule 1-005(H) NMRA, which states that the date
5 of filing will be considered to be the date that an inmate places the document in the
6 institution’s internal mailing system. Under Rule 1-005(H)(5), a presumption of
7 timeliness was created by Defendant’s sworn statement that he had satisfied this
8 provision for purposes of timeliness. However, Defendants challenged the veracity
9 of Plaintiff’s sworn statement, relying in particular on the failure to timely attempt
10 service. [RP 491] This created a fact dispute for the district court to resolve, and it
11 determined that the motions were not timely filed. [RP 562] We defer to the district
12 court. *See VanderVossen v. City of Española*, 2001-NMCA-016, ¶ 26, 130 N.M. 287,
13 24 P.3d 319 (explaining that this Court exercising appellate jurisdiction is not a fact
14 finding body). As such, we consider the merits of Plaintiff’s claims under Rule 1-
15 060(B).

16 {4} Rule 1-060(B)(1)-(6) sets forth a number of grounds for setting aside a
17 judgment. Our calendar notice proposed to hold that the district court did not abuse
18 its discretion in denying Rule 1-060(B) relief. [RP 422, 424, 478] Specifically,
19 Plaintiff’s motion to amend his complaint was based on his assumption that he could
20 rely on the rule that governs amendments to pleadings during the course of the

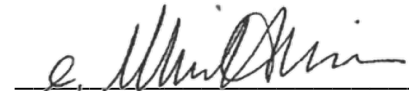
1 litigation, and not whether there was a ground that offered relief under Rule 1-
2 060(B). [RP 422] *See* Rule 1-015 NMRA. Similarly, Plaintiff’s request for
3 interlocutory relief was based on the wrong assumption that the case was still at the
4 interlocutory (i.e. non-final) stage. [RP 424] Finally, although Plaintiff’s motion for
5 reconsideration referred to Rule 1-060(B)(6), Plaintiff’s motion and its attachments
6 did not establish exceptional circumstances sufficient to show that the district court
7 abused its discretion in denying the motion. *See Meiboom v. Watson*, 2000-NMSC-
8 004, ¶ 33, 128 N.M. 536, 994 P.2d 1154 (stating that “parties seeking relief under
9 Rule 1-060(B)(6) must demonstrate the existence of exceptional circumstances and
10 reasons for relief other than those set out in Rule 1-060(B)(1)[-](5).”). Instead,
11 Plaintiff merely presented materials that could have been used to respond to
12 Defendants during the course of the litigation. *See* Rule 1-060(B)(2) (permitting
13 relief from a judgment or order based on “newly discovered evidence which by due
14 diligence could not have been discovered in time to move for a new trial”).

15 {5} Based on the above, our calendar notice proposed to hold that the district court
16 did not abuse its discretion in denying the motions to set aside the judgment. *See*
17 *Benz v. Town Ctr. Land, LLC*, 2013-NMCA-111, ¶ 11, 314 P.3d 688 (stating that
18 “[a]n abuse of discretion occurs when a ruling is clearly contrary to the logical
19 conclusions demanded by the facts and circumstances of the case”). Plaintiff’s
20 memorandum in opposition does not raise any Rule 1-060(B) basis for setting aside

1 the final judgment, and he has therefore not persuaded us that the calendar notice
2 was incorrect. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955
3 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the
4 burden is on the party opposing the proposed disposition to clearly point out errors
5 in fact or law.”).

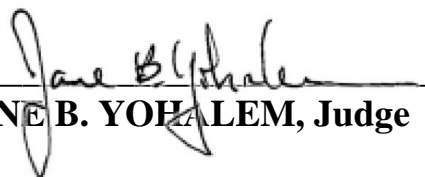
6 {6} For the reasons set forth above, we affirm.

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

8 
9 **J. MILES HANISEE, Judge**

10 **WE CONCUR:**

11 
12 **KRISTINA BOCARDUS, Judge**

13 
14 **JANE B. YOHALEM, Judge**