

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

2 **DAVID J. TERNLUND,**

3 Plaintiff and Counterdefendant and
4 Third-Party Defendant-Appellant/
5 Cross-Appellee,

Court of Appeals of New Mexico

Filed 2/12/2024 11:13 AM



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

6 v.

No. A-1-CA-39865

7 **JEAN J. DANON and TARA L. DANON**
8 **Trustees of the JEAN J. DANON and**
9 **TARA L. DANON LIVING TRUST,**

10 Defendants and Counterclaimants-
11 Appellees/Cross-Appellants,

12 and

13 **JEAN J. DANON and TARA L. DANON,**
14 **as individuals,**

15 Third-Party Plaintiff-Appellees/Cross-
16 Appellants.

17 **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

18 **Emilio J. Chavez, District Court Judge**

19 Egolf + Ferlic + Martinez + Harwood, LLC

20 Luke Pierpont

21 Brian Egolf

22 Santa Fe, NM

23 for Appellant

24 New Mexico Legal Center, P.C.

25 Lee Boothby

26 Taos, NM

27 for Appellees

1 **DECISION**

2 **DUFFY, Judge.**

3 {1} Plaintiff appeals from a stipulated final judgment entered into by the parties,
4 and Defendants cross-appeal from the district court’s denial of their post-judgment
5 motion to quash the appeal and sanction Plaintiff. We conclude the stipulated final
6 judgment is not appealable because Plaintiff did not expressly reserve the right to
7 appeal. Accordingly, we affirm and decline to reach the merits of either party’s
8 appeal.

9 **BACKGROUND**

10 {2} The underlying case involved a dispute regarding Defendants’ use of an
11 easement across Plaintiff’s land. Plaintiff filed a suit seeking a declaratory judgment
12 and damages for breach of contract, while Defendants asserted various
13 counterclaims. Both parties filed cross-motions for partial summary judgment on the
14 declaratory judgment claim, and the district court granted summary judgment in
15 favor of Defendants. In the summary judgment order, the district court certified the
16 matter for interlocutory appeal. Plaintiff did not seek an interlocutory appeal. The
17 district court later dismissed the case without prejudice for lack of prosecution after
18 an extended period of inactivity.

19 {3} Plaintiff moved for reinstatement and the district court set the matter for a
20 hearing. In the interim, Plaintiff contacted Defendants and the parties agreed to enter

1 into a stipulated final judgment that dismissed all of both parties’ remaining claims
2 with prejudice. The district court approved the parties’ stipulated order of final
3 judgment and dismissal and entered the final order on March 3, 2020. Plaintiff then
4 appealed, seeking appellate review of the district court’s summary judgment ruling.
5 Defendants filed a motion seeking to quash the appeal, reinstate the case, and
6 sanction Plaintiff. The district court denied the motion and Defendants appeal from
7 that ruling.

8 **DISCUSSION**

9 {4} New Mexico follows the general rule that “a party cannot appeal from a
10 judgment entered with its consent.” *Kysar v. BP Am. Prod. Co.*, 2012-NMCA-036,
11 ¶ 13, 273 P.3d 867. *Kysar* recognized an exception to the general rule that will allow
12 a party to appeal from a consent judgment when four conditions occur: “(1) rulings
13 are made by the district court, which the parties agree are dispositive; (2) a
14 reservation of the right to challenge those rulings on appeal; (3) a stipulation to entry
15 of judgment; (4) approval of the stipulation by the district court.” *Id.* ¶ 17. In this
16 case, the parties agree that the *Kysar* framework governs our review of whether
17 Plaintiff may appeal from the parties’ stipulated final judgment. Applying *Kysar*
18 here, we observe that three of the four conditions are satisfied, and the only matter
19 at issue is whether Plaintiff reserved the right to challenge the district court’s rulings
20 on appeal.

1 {5} Plaintiff asserts only that he reserved the right to appeal by expressly
2 incorporating the order on summary judgment in the stipulated final judgment. We
3 are not persuaded. The stipulated final judgment states,

- 4 1. The Court finds that [Plaintiff]’s claim, set forth in the Complaint at
5 Count One, that the [Defendants]’ use of the roadway for access to
6 their short-term property is a commercial use of the roadway and
7 violates the existing Easement Agreement is DENIED as set forth
8 in its Order on [Plaintiff]’s and [Defendants]’ Summary Judgment
9 Motions.
- 10 2. The Court finds that its Order on [Plaintiff]’s and [Defendants]’
11 Summary Judgment Motions did not resolve all outstanding claims
12 . . . and counterclaims that were not resolved by summary judgment.
- 13 3. The Court finds that all remaining claims and counterclaims of
14 [Plaintiff] and [Defendants] asserted in this litigation, which have
15 not been resolved by this Court’s Order on [Plaintiff]’s and
16 [Defendants]’ Summary Judgment Motions, are hereby dismissed
17 upon the stipulation of the parties.

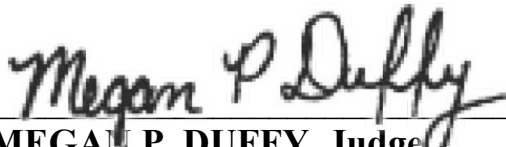
18 We perceive no express or implied reservation of the right to appeal in this language,
19 and the incorporation of this document into the stipulated judgment does not alone
20 reflect any intention to appeal from it. Therefore, because Plaintiff has not
21 demonstrated that the *Kysar* exception is satisfied, we apply the general rule and
22 conclude Plaintiff is not entitled to appeal the stipulated final judgment. *See id.* ¶ 13.

23 {6} Because our ruling on this point is dispositive, we do not address the
24 remaining contentions raised in Plaintiff’s appeal or Defendants’ cross-appeal.

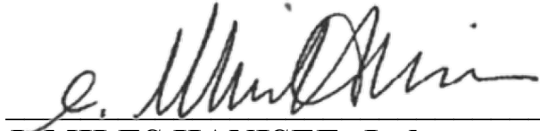
25 **CONCLUSION**

26 {7} We affirm.

1 [8] IT IS SO ORDERED.

2 
3 _____
MEGAN P. DUFFY, Judge

4 WE CONCUR:

5 
6 _____
J. MILES HANISEE, Judge

7 
8 _____
ZACHARY A. IVES, Judge