

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

Court of Appeals of New Mexico
Filed 5/6/2024 11:14 AM

2 **KIMBERLY BUSICH,**



Ramon J. Maestas
Chief Clerk

3 Petitioner-Appellee,

4 v.

No. A-1-CA-41747

5 **MATTHEW BUSICH,**

6 Respondent-Appellant.

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

8 **Cheryl H. Johnston, District Court Judge**

9 Border Law Office

10 Dean E. Border

11 Albuquerque, NM

12 for Appellee

13 Frazier & Ramirez Law

14 Sean S. Ramirez

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **DUFFY, Judge.**

19 {1} Respondent appealed following the entry of a final disposition in the
20 underlying matter. We issued a notice of proposed summary disposition in which we
21 proposed to reverse and remand. Petitioner has filed a memorandum in opposition.
22 After due consideration, we remain unpersuaded. We therefore reverse and remand
23 for further proceedings.

1 {2} The relevant background information has previously been set forth. To briefly
2 summarize, Respondent filed objections sixteen days after the hearing officer issued
3 a report containing recommendations. Roughly, an hour later the district court
4 entered an order inaccurately indicating that no objections had been filed, and
5 adopting the hearing officer’s report. Respondent filed a timely motion for
6 reconsideration, requesting consideration of the objections on the merits. The district
7 court denied the motion, based upon its determination that Respondent’s objections
8 had not been filed in a timely fashion. The instant appeal followed.

9 {3} Rule 1-053.2(F) NMRA specifies that “objections may be filed within
10 fourteen (14) days after service of the [domestic relations hearing officer’s]
11 recommendation.” Importantly, Rule 1-006(C) NMRA further provides,
12 “When[ever] a party may or must act within a specified time after service . . . three
13 (3) days are added after the period would otherwise expire[.]” In this case, applying
14 Rule 1-053.2(F) in conjunction with Rule 1-006(C) renders Respondent’s objections
15 timely.

16 {4} The district court declined to apply Rule 1-006(C) below, on the theory that
17 the filing of objections pursuant to Rule 1-053.2 is analogous to the filing of an
18 appeal. [RP 585] Petitioner similarly urges that Rule 1-006(C) should not apply.
19 [MIO 2] We disagree. The scope of Rule 1-006(C) is made clear within Subsection
20 (A) of the same rule, which provides for universal application in relation to the

1 computation of any time period specified in the Rules of Civil Procedure, unless
2 another applicable rule of procedure contains a computation provision that *expressly*
3 *supersedes* Rule 1-006. Neither Rule 1-053.2 nor any other applicable rule of which
4 we are aware expressly supersedes Rule 1-006 in this context. We therefore conclude
5 that Rule 1-006(C) applies to the situation at hand. *See generally Gates v. N.M.*
6 *Taxation & Revenue Dep't*, 2008-NMCA-023, ¶ 10, 143 N.M. 446, 176 P.3d 1178
7 (“In interpreting a Supreme Court rule of procedure, we look first to the rule’s plain
8 language. If the rule is unambiguous, we give effect to its language and refrain from
9 further interpretation.” (internal quotation marks and citations omitted)).

10 {s} Insofar as Respondent’s objections were filed in a timely fashion, it was
11 incumbent upon the district court to consider them. *See generally Rawlings v.*
12 *Rawlings*, ___-NMSC-___, ¶¶ 8-17, ___ P.3d ___ (S-1-SC-39107, Feb. 19, 2024)
13 (holding that Rule 1-053.2(H) requires the district courts to review and consider the
14 recommendations of domestic relations hearing officers and associated objections;
15 although, neither particular procedures such as in-person hearings nor additional
16 specificity relative to the basis for decisions ultimately rendered in accordance with
17 hearing officers’ recommendations are required); *Buffington v. McGorty*, 2004-
18 NMCA-092, ¶ 30, 136 N.M. 226, 96 P.3d 787 (explaining that in this context,
19 although the nature of the review to be conducted by the district court is dependent

1 upon the nature of the objections being considered, the district courts must consider
2 objections). To that end, we conclude that we must reverse and remand.

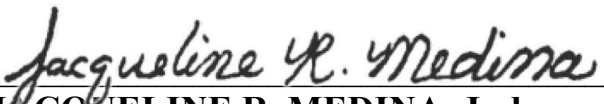
3 {6} In closing, Petitioner contends that Respondent’s litigation conduct has been
4 consistently interposed for purposes of delay and obstruction, in light of which she
5 suggests that the underlying disposition should be upheld. [MIO 2-3] However, as
6 an appellate tribunal we cannot entertain the premise in the first instance; and
7 consequently, the argument does not supply a basis for affirmance. *See, e.g., Paz v.*
8 *Tijerina*, 2007-NMCA-109, ¶ 24, 142 N.M. 391, 165 P.3d 1167 (declining to affirm
9 on a “right for any reason” basis, where the district court made no findings that the
10 appellees were acting in bad faith or engaging in misconduct, and the district court
11 never reached that argument).

12 {7} Accordingly, for the reasons stated in our notice of proposed summary
13 disposition and above, we reverse and remand for further proceedings.

14 {8} **IT IS SO ORDERED.**

15 
16 **MEGAN P. DUFFY, Judge**

17 **WE CONCUR:**

18 
19 **JACQUELINE R. MEDINA, Judge**

20 
21 **KATHERINE A. WRAY, Judge**