

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

2 **KATHY MILLER, Co-Trustee of the JOSEPH**  
3 **AND ALMA MILLER CONSERVATION TRUST**  
4 **U/D/A OCTOBER 5, 2020; J.F. MILLER**  
5 **RANCH, LLC; and J.F. MILLER SAND AND**  
6 **GRAVEL, LLC,**

Court of Appeals of New Mexico  
Filed 2/19/2025 10:14 AM

  
Ramon J. Maestas  
Chief Clerk

7 Plaintiffs/Counterdefendants-Appellees,

8 v.

**No. A-1-CA-41000**

9 **MATTHEW MILLER a/k/a MATT MILLER,**

10 Defendant/Counterclaimant-Appellant,

11 and

12 **VANESSA MATHEWS, JESSICA WESTFALL,**  
13 **MELISSA WESTFALL, CHARLOTTE DAVIS,**  
14 **STEVEN MARES, RACHEL MILLER, and**  
15 **ROSEANNA MILLER,**

16 Intervenors-Appellees.

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

18 **Francis J. Mathew, District Court Judge**

19 VanAmberg, Rogers, Yepa, Abeita, Gomez & Wilkinson, LLP

20 Ronald J. VanAmberg

21 Santa Fe, NM

22 for Appellees

23 Law Office of Augustine M. Rodriguez, LLC

24 Augustine M. Rodriguez

25 Albuquerque, NM

26 for Appellant

1 **MEMORANDUM OPINION**

2 **YOHALEM, Judge.**

3 {1} This is an action for injunctive relief and damages brought by Kathy Miller,  
4 as trustee of the three Miller Family Trusts and Personal Representative of the Estate  
5 of Joseph F. Miller (collectively, Plaintiff), against Matthew Miller (Defendant).  
6 Kathy Miller is Defendant’s sister, and Plaintiff and Defendant, along with other  
7 family members, are beneficiaries of the trusts and of the estate of their father,  
8 Joseph Miller. On appeal, Defendant challenges the district court’s dismissal of his  
9 counterclaims as a sanction for Defendant’s repeated failure to comply with court  
10 orders requiring him to vacate trust and estate property, as well as challenging  
11 contempt orders entered earlier in the case. We conclude that Defendant’s appeal of  
12 the contempt orders is untimely; that the order dismissing Defendant’s counterclaims  
13 is not a final appealable order; and that accordingly this Court does not have  
14 jurisdiction over this appeal. We, therefore, dismiss Defendant’s appeal, and remand  
15 to the district court.

16 **BACKGROUND**

17 {2} Plaintiff filed this action in her capacity as trustee of her father’s assets, and  
18 personal representative of his estate, to obtain court assistance in removing  
19 Defendant and his belongings—including large industrial equipment, dilapidated  
20 vehicles, and building materials—from the residence and surrounding ranchland that

1 were part of the three family trusts and their father's estate. Defendant responded by  
2 filing counterclaims for breach of fiduciary duty, fraud, and undue influence, seeking  
3 to invalidate the trust instruments appointing Plaintiff as trustee and to remove  
4 Plaintiff as personal representative of their father's estate.

5 {3} The district court, after a hearing, granted a preliminary injunction finding that  
6 Plaintiff was likely to prevail on her claims, and ordering Defendant to remove his  
7 property from the Miller Trust property and vacate the Miller Trust residence.  
8 Following the preliminary injunction, the district court issued orders over an  
9 extended period of time compelling Defendant to respond to discovery, and giving  
10 Defendant a deadline for the removal of his property from the residence and  
11 ranchland. Defendant repeatedly failed to comply with these orders and was held in  
12 contempt by the district court several times.

13 {4} Defendant appealed to this Court during the course of these proceedings. This  
14 Court previously dismissed Defendant's first appeal for lack of a final judgment. *See*  
15 *Order Dismissing Appeal as Premature and Denying Defendant's Pending Motion,*  
16 *Miller v. Miller*, A-1-CA-40296 (N.M. Ct. App. July 19, 2022) (dismissing  
17 Defendant's appeal of the district court's order granting Plaintiff's motion for  
18 preliminary injunction, and order denying reconsideration of that order for lack of  
19 jurisdiction). This Court decided Defendant's second appeal from orders of  
20 contempt after determining that this Court had jurisdiction, pursuant to NMSA 1978,

1 Section 39-3-15(A) (1966). *See Miller v. Miller*, A-1-CA-40392, mem. op. ¶ 1 (N.M.  
2 Ct. App. Oct. 3, 2022) (nonprecedential) (affirming remedial contempt order).

### 3 **DISCUSSION**

4 {5} Defendant’s notice of appeal seeks review by this Court of numerous district  
5 court orders. As relevant to our jurisdictional analysis below, Defendant challenges:  
6 (1) orders for contempt (6/27/2022, 7/25/2022); and (2) the order granting Plaintiff’s  
7 motion to dismiss counterclaims (1/13/2023). Defendant challenges approximately  
8 fifteen other district court orders that are plainly not final, and are outside our  
9 jurisdiction until a final order is entered. *See Carrillo v. Rostro*, 1992-NMSC-054,  
10 ¶ 59, 114 N.M. 607, 845 P.2d 130 (holding that the orders entered by the district  
11 court merge into the final judgment, “combin[ing] in one appeal all questions that  
12 effectively may be reviewed if and when a final judgment results (internal quotation  
13 marks and citation omitted)). We, therefore, do not discuss these orders.

14 {6} Although neither party has briefed the jurisdictional issues raised by this  
15 appeal, this Court is required to determine whether a case is properly before us prior  
16 to addressing the merits of the appeal. *See Thornton v. Gamble*, 1984-NMCA-093,  
17 ¶ 6, 101 N.M. 764, 688 P.2d 1268. It is the appellate court’s responsibility to  
18 determine whether it has jurisdiction, “regardless of the parties’ or the trial court’s  
19 beliefs.” *Santa Fe Pac. Tr., Inc. v. City of Albuquerque*, 2012-NMSC-028, ¶ 10, 285

1 P.3d 595. We conclude that this Court does not have jurisdiction on appeal. We  
2 dismiss and do not reach the merits of Defendant’s appeal. We explain.

3 **I. The Contempt Orders**

4 {7} We first address Defendant’s appeal of two district court’s orders of remedial  
5 contempt.<sup>1</sup> These orders were entered in June and July 2022. Each order found  
6 Defendant in remedial contempt for failing to comply with the district court’s  
7 preliminary injunction requiring that he remove himself and his personal property  
8 from the family residence and surrounding property.

9 {8} Our Legislature has provided a right of appeal from an order of remedial  
10 contempt. *See* § 39-3-15(A). Section 39-3-15(A) provides, in relevant part, as  
11 follows: “Any person aggrieved by the judgment of the district court in any  
12 proceeding for [remedial] contempt, and any person convicted of criminal contempt  
13 . . . may appeal within thirty days from the judgment [or] conviction to the supreme  
14 court or the court of appeals, as appellate jurisdiction may be vested by law in these  
15 courts.”<sup>2</sup> *See Kucel v. N.M. Med. Rev. Comm’n*, 2000-NMCA-026, ¶ 13, 128 N.M.

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<sup>1</sup>Per our Supreme Court’s holding in *In re Victor R. Marshall*, in this opinion we classify what was formerly “civil” contempt as “remedial,” and what was formerly “criminal” contempt as “punitive” to “more accurately reflect the distinctions between the different types of contempt.” 2023-NMSC-009, ¶ 23, 528 P.3d 670 (internal quotation marks omitted).

<sup>2</sup>We replace the current statute’s use of “of” with its original text of “or,” noting that *Kucel v. N.M. Med. Rev. Comm’n* clarifies that “the 1966 recompilation [of the statute] represents a typographical error rather than a deliberate substantive

1 691, 997 P.2d 823 (emphasizing that the Legislature has explicitly provided the right  
2 to appeal from judgments in remedial contempt proceedings in Section 39-3-15(A)).  
3 The time to appeal is stated in the statute as thirty days from the judgment. *See* § 39-  
4 3-15(A). This time period is consistent with the time allowed by the Supreme Court’s  
5 rules of procedure for the filing of an appeal. *See* Rule 12-201(A)(1)(b) NMRA. “[A]  
6 timely appeal is a mandatory precondition to the exercise of our appellate  
7 jurisdiction.” *State v. Upchurch*, 2006-NMCA-076, ¶ 2, 139 N.M. 739, 137 P.3d  
8 679.

9 ¶ Here, Defendant filed his notice of appeal on February 9, 2023, more than six  
10 months after the entry of the final orders of contempt, which were entered in June  
11 and July 2022. Defendant’s appeal is, therefore, untimely. Defendant cites no  
12 extraordinary circumstances that prevented him from timely filing. We, therefore,  
13 decline to reach the merits of Defendant’s appeal of the two contempt  
14 orders. *See Chavez v. U-Haul Co. of N.M., Inc.*, 1997-NMSC-051, ¶¶ 25-26, 124  
15 N.M. 165, 947 P.2d 122 (declining to exercise discretion to hear an untimely appeal  
16 where the notice of appeal was filed late and the party cited no unusual  
17 circumstances that would excuse the late filing).

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change in this provision.” 2000-NMCA-026, ¶ 13 n.1, 128 N.M. 691, 997 P.2d 823  
(internal quotation marks and citation omitted).

1 **II. The Order Dismissing Defendant’s Counterclaims**

2 {10} Because the district court’s order of January 13, 2023, dismissing Defendant’s  
3 counterclaims with prejudice was not a final judgment and did not contain the  
4 language required by Rule 1-054(B) NMRA certifying the order for immediate  
5 appeal as of right, this Court does not have jurisdiction over Defendant’s appeal from  
6 the remaining listed orders.<sup>3</sup> See *Carrillo*, 1992-NMSC-054, ¶ 59 (Baca, J., specially  
7 concurring).

8 {11} “An order striking a counterclaim has long been considered by New Mexico  
9 courts to be an interlocutory order and not a final judgment.” *B.L. Goldberg &*  
10 *Assocs., Inc. v. Uptown, Inc.*, 1985-NMSC-084, ¶ 3, 103 N.M. 277, 705 P.2d 683.  
11 Typically, the right to appeal is restricted to final judgments and decisions. See  
12 NMSA 1978, § 39-3-2 (1966); *Burris-Awalt v. Knowles*, 2010-NMCA-083, ¶ 8, 148  
13 N.M. 616, 241 P.3d 617. Additionally, “an order or judgment is not considered final  
14 unless all issues of law and fact have been determined and the case disposed of by  
15 the [district] court to the fullest extent possible.” *Kelly Inn No. 102, Inc. v. Kapnison*,  
16 1992-NMSC-005, ¶ 14, 113 N.M. 231, 824 P.2d 1033 (internal quotation marks and  
17 citation omitted). When a court disposes only of counterclaims, leaving the

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<sup>3</sup>We have reviewed the record and determined that no final, appealable order currently exists in the record.

1 plaintiff's claims unresolved, it clearly has not determined all issues or fully  
2 disposed of the case.

3 {12} Rule 1-054(B) permits an appeal from a nonfinal order “[i]f an action presents  
4 more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-  
5 party claim,” only if the court directs entry of a final judgment and “expressly finds  
6 no just reason for delay.” Absent such certification of the district court, multiple  
7 claims for relief, including counterclaims for relief, “are treated as a single judicial  
8 unit, and an adjudication of any less than all of the claims is not a final order.” *B.L.*  
9 *Goldberg & Assocs., Inc.*, 1985-NMSC-084, ¶ 4.

10 {13} Here, Defendant asserts that the district court's order granting Plaintiff's  
11 motion to dismiss Defendant's counterclaims (and denying Plaintiff's request for  
12 default judgment) is a final order and is “ripe for review.” We do not agree. The  
13 district court did not include in its order a certification indicating that it was final, as  
14 Rule 1-054(B) requires. We, therefore, do not have appellate jurisdiction at this time  
15 to review whether the district court properly dismissed Defendant's counterclaims,  
16 or to review any of the other nonfinal orders preceding the dismissal of Defendant's  
17 counterclaims entered by the district court.

## 18 **CONCLUSION**

19 {14} For the reasons stated above, we dismiss Defendant's appeal, and remand to  
20 the district court.



1 {15} IT IS SO ORDERED.

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JANE B. VOHALEM, Judge

4 WE CONCUR:

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JENNIFER L. ATTKER, Chief Judge

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JACQUELINE R. MEDINA, Judge