

State of New Mexico
County of Sandoval
Thirteenth Judicial District

Kenneth and Kathleen DeHoff,
Appellants

vs.

No. D-1329-CV-2023-1382

Linda Gallegos in her role as Sandoval County Assessor
Appellee

Motion to Dismiss Cross Appeal for lack of standing

In response to Appellee Notice of Service of Cross Appeal Appellants received electronically on September 26 (hidden with other motions). Authorities claimed by Appellee as a right to cross appeal expressly restrict the right of Appeal to aggrieved property owners only, NMSA 7-38-28 , NMSA 39-3-1.1. The maxim of expressio unius est exclusio alterius establishes that aggrieved government officials who are not property owners are not enumerated hence have no standing from which to appeal. Further we state that Rule 1-074 NMRA grants no standing and NMSA 39-3-1.1(C) establishes NMSA 7-38-28 assertion of the Property Owner appeal rights as controlling. Controlling Statutes: NMSA 7-38-28(A) A property owner may appeal an order made by a hearing officer or a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. NMSA 39-3-1.1(C) Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision.

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STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

KENNETH DeHOFF &
KATHLEEN DeHOFF,

Appellants/Cross-Appellees/
Respondents,

Case No. D-1329-CV-2023-01382

versus

LINDA P. GALLEGOS,
in her official capacity as
SANDOVAL COUNTY ASSESSOR,

Judge Martinez

Appellee/Cross-Appellant/
Petitioner.

**APPELLEE/CROSS-APPELLANT/PETITIONER
SANDOVAL COUNTY ASSESSOR'S OPPOSITION TO
APPELLANTS/CROSS-APPELLEES/RESPONDENTS'
MOTION TO DISMISS CROSS-APPEAL FOR LACK OF STANDING**

Appellee/cross-appellant/petitioner Linda P. Gallegos, in her official capacity as Sandoval County Assessor, opposes the "Motion to Dismiss Cross-Appeal for Lack of Standing" filed by appellants/cross-appellees/respondents Kenneth and Kathleen DeHoff.

The DeHoffs had filed a protest of the valuation placed on their property by Gallegos. Their protest was heard by the Sandoval County Valuation Protests Board. The DeHoffs filed an appeal of the Board's decision to this Court. Gallegos then filed a cross-appeal. Subsequent to the filing of the DeHoff's motion, Gallegos filed a petition for a writ of certiorari under Rule 1-075, NMRA.

The DeHoffs claim that the Sandoval County Assessor lacks standing to file a cross-appeal by citing NMSA § 7-38-28, NMSA § 39-3-1.1, and Rule 1-074, NMRA. There is support in caselaw for this position. *Giddings v. SRT-Mountain Vista, L.L.C.*, 2019-NMCA-025, ¶ 13, 458 P.3d 596. But the New Mexico Constitution provides that an aggrieved party shall have an absolute right to one appeal.” N.M. Const., Art. VI, Sec. 2. An “aggrieved party is one whose personal interests are adversely affected.” *State v. Castillo*, 1980-NMCA-020, ¶ 4, 94 N.M. 352, 610 P.2d 756. The right of appeal accorded by the New Mexico Constitution cannot be abridged by statutes or rules of court. *State v. Montoya*, 2011-NMCA-009, ¶ 5, 149 N.M. 242, 247 P.3d 1127 (2010). It is “an absolute, constitutional right.” *State v. Heinsen*, 2005-NMSC-035, ¶ 9, 138 N.M. 441, 121 P.3d 1040. The valuation placed on property by county assessors is presumed to be correct. NMSA 1978, § 7-38-6 (1981). When a valuation protests board rules against an assessor’s valuation, as happened here, then the assessor is an aggrieved party for the purpose of an appeal. See *Giddings*, 2019-NMCA-025, ¶¶ 13–16.

Another division of this Court earlier this year ruled on a cross-appeal filed by Gallegos in another appeal from the Sandoval County Valuation Protests Board. *RR Premiere Realty, L.P. v. Gallegos*, 13th Dist. No. D-1329-CV-2022-01364 (Aug. 14, 2023). A copy of decision is attached as exhibit A. In that case, the notice of appeal cited the same authorities as the notice of appeal in this case. A copy of the notice of appeal is attached as exhibit B. Neither the appellant—who was represented by counsel—nor the Court took issue with Gallegos’s notice of appeal. Gallegos’s cross-appeal was considered on the merits.

That is because in New Mexico, “notices of appeal, even where technically defective, should be liberally construed to allow consideration of the case on the merits.”

Schultz ex rel. Schultz v. Pojoaque Tribal Police Dept., 2010-NMSC-034, ¶19, 148 N.M. 692, 242 P.3d 259. The prime directive of the Civil Rules is that they “shall be construed and administered to secure the just, speedy and inexpensive determination of every action.” Rule 1-001, NMRA. The New Mexico Supreme Court has elaborated on this philosophy vis-à-vis appeals:

The courts must ensure that the procedural rules expedite rather than hinder this right [to appeal]. Behind every evaluation of judicial procedure is the recollection that our modern system evolved in response to the involuted procedures of the courts of England in which the substantive issues of a case could be lost in a labyrinth of procedural rules. Modern rules promote expedience and uniformity and attempt to balance constitutional rights with the need for the efficient administration of justice. As we have previously stated, it is the policy of this court to construe its rules liberally to the end that causes on appeal may be determined on the merits, where it can be done without impeding or confusing administration or perpetrating injustice. Procedural formalities should not outweigh basic rights where the facts present a marginal case which does not lend itself to a bright-line interpretation. Where there are two possible interpretations relating to the right to an appeal, that interpretation which permits a review on the merits rather than rigidly restricting appellate review should be favored.

Trujillo v. Serrano, 1994-NMSC-024, ¶9, 117 N.M. 273, 871 P.2d 369 (cleaned up).

Even if the Court were inclined to grant the DeHoffs’ motion, it has been mooted by Gallegos filing a timely petition for a writ of certiorari directed to the Sandoval County Valuation Protests Board. The petition was filed under the terms of Rule 1-075, NMRA. County assessors such as Gallegos may appeal decisions of valuation protests boards to District Court under Rule 1-075, NMRA, as the assessors are “aggrieved parties” for purposes of the constitutional right to appeal in Article VI, Section 2. *Giddings v. SRT-Mountain Vista, L.L.C.*, 2019-NMCA-025, ¶¶ 13–16, 458 P.3d 596.

The motion should be denied.

(Signature Page Follows)

Respectfully submitted:

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Certificate of Service

I certify that on October 4th, 2023, I e-mailed a copy of this document to:

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/s/Michael Eshleman
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Sandoval County Attorney

State of New Mexico
County of Sandoval
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Linda Gallegos in her role as Sandoval County Assessor
Appellee

Appellant Response to Appellee's Opposition to Motion to Dismiss Cross Appeal for Lack of Standing

On September 11, 2023 Appellants filed a notice of appeal for the valuation of their residential property by Appellee. On September 26, 2023 Appellee responded with a notice of cross appeal to Appellants. On October 2, 2023 Appellants filed a Motion to Dismiss Cross Appeal for lack of standing. On October 4, 2023 Appellee submitted an analysis of law in justification to continue the Cross Appeal.

Appellants summarize their position: Appellees have no statutory or constitutional right to appeal the valuation protest board's decisions to the court under NM Const Art VI, Sec 2, 1-074 NMRA, NMSA 7-38-28 and NMSA 39-3-1.1 and ask our motion to dismiss cross appeal for lack of standing to stand. Appellants provide in-depth review of Appellee October 4 arguments to demonstrate those arguments as expressed by Appellees lack merit.

Assertions of Appellees that lack merit.

1. There is case law that supports the right to file cross-appeals by county assessors against orders of valuation protest boards.
2. NM Constitution Art VI Sec 2 grants an unabridged guaranteed right to one appeal to the Appellee
3. An unperfected petition for writ of certiorari moots Appellant's motion to dismiss
4. Appellee may appeal decisions of valuation protest boards under rule 1-075 "for purposes of the constitutional right to appeal in article VI Section 2"

Facts dispelling Appellee Arguments

1. Case Law provided by Appellees for this argument blatantly contradicts Appellee's own assertion of a right to Appeal under NMSA 7-38-28. The cited case *Giddings v. SRT-Mountain Vista, L.L.C.*, 2019-NMCA-025, states that the path for county assessors is the filing of a writ of certiorari. '*Giddings* ¶ 13' states 'Indeed, interpreting a prior version of Section 7-38-28, we squarely held that "[t]he county assessor may not appeal the order of the [valuation protests board]; only the property owner may appeal.'" *Addis*, 1977-NMCA-122' ... 'We view the unavailability of a direct appeal on the Assessor's behalf as an essential element of her right to pursue a writ of certiorari'.

In regard to Appellee's reference to the case they provided, RR Premiere Realty, L.P. v. Gallegos case, it is important to clarify the context and applicability of cross-appeal ruling. While Appellee correctly points out that a ruling was made on a cross-appeal in that case, it is necessary to clarify that the ruling pertained to a cross-appeal against the Sandoval County Valuation Protests Board, not a cross-appeal against the appellants in this case. The crucial distinction is that it was the Valuation Protests Board itself that motioned to dismiss their involvement in that case, a fact not present in the current matter, the ruling providing no relevant weight to the instant case.

Furthermore, the reference to a lack of challenge to Gallegos's notice of appeal in the RR Premiere Realty case is not analogous to the present situation. It is essential to recognize that each legal case is unique, with its own set of circumstances, arguments, and procedural aspects. The absence of an available statutory challenge in a separate case does not establish a precedent that directly applies to this appeal.

Therefore, the RR Premiere Realty case should not be considered controlling or directly applicable to the issues at hand in this appeal. Instead, it is essential to focus on the specific facts, arguments, and legal principles that pertain to this case, as well as the applicable statutes and precedents that govern the matter before this Court.

2. A plain text review of NM Const. Art VI Sec 2 in VANDERVOSSEN V. CITY OF ESPANOLA, 2001-NMCA-016, 130 N.M. 287, 24 P.3d 319 established this constitutional right to be limited to appeals of matters within a District Court's original jurisdiction and does not apply to appeals from statutorily created tribunals such as valuation protest boards. In 'Vandervossen ¶¶ 10-16' they state 'The opening phrase of the second sentence of section 2, "in all other cases, criminal and civil," takes its meaning from the context provided by the first sentence: "appeals from a judgment of the district court" acting in the exercise of its original jurisdiction. It is from the district court's exercise of original jurisdiction, therefore, that an aggrieved party is guaranteed "the absolute right to one appeal" in the manner prescribed by law, whether to the Supreme Court or the Court of Appeals. Nothing in article VI, section 2 indicates that an aggrieved party is guaranteed an appeal from the district court acting in its appellate jurisdiction, or an appeal from an appeal. Such an interpretation would stretch the subject matter of article VI, section 2 beyond its limits.'
3. We will address Appellee's Petition for Writ of Certiorari as a separate matter. No case law or legal precedent Appellants can find links the statutory granting of the right to appeal with the filing of a petition for writ of certiorari and Appellee states no case law in support of their argument to moot. The petition has not been perfected and consequently can bear no weight on any decisions.
4. The specific assertion by Appellee of their declared right to appeal under the constitution is invalid based on the argument Appellants provide as item 2.

Regarding Appellee's final statement: "County assessors such as Gallegos may appeal decisions of valuation protests boards to District Court under Rule 1-075, NMRA, as the assessors are "aggrieved parties" for purposes of the constitutional right to appeal in Article VI, Section 2. Giddings v. SRT Mountain Vista, L.L.C., 2019-NMCA-025, ¶¶ 13-16, 458 P.3d 596. Appellants are confident Appellees are aware rule 1-075 NMRA applies only to the petition for a writ of certiorari and is not involved in the matter of appeals.

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Completion of Briefing Motion Packet on Motion to dismiss Cross Appeal for Lack of Standing

Per Rule 1-007.1(H) NMRA, LR13-118 herein contains the original motion to dismiss Appellee Cross Appeal, Appellee's response in opposition to the motion to dismiss and Appellant's final response to Appellee's challenge. Appellants have nothing further to add to the motion and note it is ripe for decision and ask the judge to dismiss Appellee's cross appeal.

Appellants certify a copy of this document was emailed to Appellee representative's email Meshleman@sandovalcountynm.gov

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