

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

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 unbridged 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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