

  
Joey D. Moya

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

2   **Filing Date:** \_\_\_\_\_

3   **ROD FORSYTHE, Individually and as the**  
4   **Duly Appointed Personal Representative for the**  
5   **Wrongful Death of his Daughter, ASHLEY FORSYTHE;**  
6   **CHRISTINE FORSYTHE, Mother; and**  
7   **DANISHA GOLDBERG, Sister,**

8           Plaintiffs-Petitioners,

9   v.

**NO. S-1-SC-37761 & S-1-SC-37762**

10 **FORD MOTOR COMPANY,**  
11 **a Delaware corporation,**

12           Defendant-Respondent,

13 and

14 **THE ESTATE OF ROBERT MARTINEZ;**  
15 **DENISE DEAGUERO;**  
16 **WHITEFORD E. MCCRACKEN;**  
17 **JAY WALTON AUTOMOTIVE, INC.;**  
18 **E. JAY WALTON, Individually and as**  
19 **Corporate Director of JAY WALTON AUTOMOTIVE, INC.;**  
20 **RANDY LUCE, Individually;**  
21 **TRW, INC., an Ohio Corporation;**  
22 **MORTON INTERNATIONAL, INC., as Successor to**  
23 **AUTOLIV NORTH AMERICA, INC., a Delaware Corporation;**  
24 **BREED TECHNOLOGIES, INC.; a Florida corporation;**  
25 **SIEMENS CORPORATION, a Delaware corporation; and**  
26 **DOES 1-10,**

I CERTIFY AND ATTEST:

A true copy was served on all parties  
or their counsel of record on date filed.

Gina Salazar

Clerk of the Supreme Court  
of the State of New Mexico

1 Defendants.

2 **ORIGINAL PROCEEDING ON CERTIORARI**

3 **John F. Davis, District Judge**

4 Durham, Pittard & Spalding, LLP

5 Caren Ilene Friedman

6 Santa Fe, NM

7 for Petitioners

8 Snell & Wilmer LLP

9 Todd E. Rinner

10 Albuquerque, NM

11 Patrick X. Fowler

12 Phoenix, AZ

13 Miller, Canfield, Paddock and Stone PLC

14 Paul D. Hudson

15 Kalamazoo, MI

16 for Respondent

17 **DECISION**

18 **THOMSON, Justice.**

19 {1} Plaintiffs-Petitioners Rod Forsythe, Ashley Forsythe, Christine Forsythe, and

20 Diana Goldberg (collectively “Forsythe”) filed two petitions for writ of certiorari in

21 this Court, which we granted. The first case, *Forsythe v. Ford Motor Co.*, S-1-SC-

22 37761, asked us to reverse the Court of Appeals and affirm the district court’s order

1 granting Forsythe an extension to file a notice of appeal. The second case, *Forsythe*  
2 *v. Ford Motor Co.*, S-1-SC-37762, asked us to reverse the Court of Appeals’  
3 procedural dismissal of the appeal for being untimely filed. We herein grant Forsythe  
4 the relief requested and briefly address the error to provide guidance by non-  
5 precedential decision. *See* Rule 12-405(B) NMRA (allowing for disposition by non-  
6 precedential decision when the issues have already been decided by New Mexico  
7 appellate courts).

#### 8 **I. BACKGROUND**

9 {2} Forsythe filed a lawsuit asserting a number of claims including wrongful death  
10 resulting from the death of their daughter and sister, Ashley Forsythe, who was killed  
11 in a motor vehicle accident. Ford Motor Company (“Ford”) was one of multiple  
12 named defendants.

13 {3} Ford moved for summary judgment. The district court did not immediately  
14 rule on the motion but ultimately entered summary judgment in favor of Ford.

15 {4} Two days after the deadline to file a notice of appeal, Forsythe’s trial counsel  
16 filed a motion for extension of time to file appeal, a request for hearing, and a notice  
17 of appeal. As grounds, the motion for extension stated, “Due to a clerical error, the  
18 date for filing the Notice of Appeal was docketed thirty days from the date of receipt  
19 versus the date of filing the Order.” Following full briefing and a hearing on the

1 merits of the motion, the district court granted the extension of time and accepted  
2 the notice of appeal as timely filed. Ford filed a motion to reconsider that was denied.  
3 Ford appealed the denial of its motion to reconsider. A Court of Appeals calendaring  
4 judge placed Forsythe's appeal, *Forsythe v. Ford Motor Co.*, A-1-CA-36702, on the  
5 General Calendar. A different calendaring judge placed Ford's appeal, *Forsythe v.*  
6 *Ford Motor Co.*, A-1-CA-37367, on the Summary Calendar. Forsythe's appeal was  
7 stayed pending the outcome of Ford's appeal.

8 {5} The Court of Appeals summarily dismissed Ford's appeal and then dismissed  
9 Forsythe's appeal. *See Forsythe*, A-1-CA-37367, mem. op. (May 24, 2019) (non-  
10 precedential) (reversing the district court's extension of time to appeal); *Forsythe*,  
11 A-1-CA-36702, order of dismissal (May 24, 2019) (stating that Forsythe's "notice  
12 of appeal was untimely"). Forsythe filed two petitions for writ of certiorari: (1)  
13 challenging the reversal of the district court order extending the time to file a notice  
14 of appeal and (2) challenging the dismissal because the notice of appeal was  
15 untimely. We granted certiorari and ordered consolidated briefing.

## 16 **II. DISCUSSION**

17 {6} We review the grant or denial of a party's motion for an extension of time to  
18 file an appeal for an abuse of discretion. *See Shultz v. Pojoaque Tribal Police Dep't.*,  
19 2010-NMSC-034, ¶ 19, 148 N.M. 692, 242 P.3d 259. The policy in New Mexico is

1 “to construe both statutes and court rules in favor of deciding an appeal on the merits  
2 whenever possible.” *Id.* (internal quotation marks and citation omitted). “In  
3 particular, notices of appeal, even where technically defective, should be liberally  
4 construed to allow consideration of the case on the merits.” *Id.*

5 {7} Rule 12-201(E)(3) NMRA gives a district court authority to grant an extension  
6 of time if a party files a motion for an extension of time “within thirty (30) days after  
7 the expiration of the time . . . for filing the notice of appeal . . . on a showing of  
8 *excusable neglect* or circumstances beyond the control of the appellant.” (Emphasis  
9 added.) Although “excusable neglect” is often discussed as grounds for relief from  
10 a judgment pursuant to Rule 1-060(B) NMRA, there is no reason to apply a different  
11 standard of “excusable neglect” when determining whether it is grounds to extend  
12 the time to file an appeal pursuant to Rule 12-201(E)(3).

13 {8} The district court correctly determined that circumstances in this case  
14 constituted excusable neglect under Rule 12-201(E)(3) and granted Forsythe a  
15 retroactive two-day extension to file a notice of appeal. The Court of Appeals  
16 reversed the district court by narrowly construing excusable neglect to categorically  
17 exclude “routine clerical error,” which it reasoned “is not considered unique or  
18 unable to be anticipated.” *Forsythe*, A-1-CA-37367, mem. op. ¶ 2. The Court of  
19 Appeals opined that “the rule regarding requests for an extension outside of the

1 thirty-day deadline ‘should be strictly construed so as to prevent the progressive  
2 erosion of the rule to the point that attorneys will assume that they have sixty days  
3 within which to file notices of appeal.’” *Id.* ¶ 3 (quoting *Guess v. Gulf Ins. Co.*, 1980-  
4 NMSC-040, ¶ 17, 94 N.M. 139, 607 P.2d 1157).

5 {9} Even though we note that preventing the progressive erosion of procedural  
6 rules is laudable, the Court of Appeals applied *Guess* to give greater weight to  
7 procedural formalities than to basic rights of appeal. *See Trujillo v. Serrano*, 1994-  
8 NMSC-024, ¶ 9, 117 N.M. 273, 871 P.2d 369 (stating that “[p]rocedural formalities  
9 should not outweigh basic rights where the facts present a marginal case which does  
10 not lend itself to a bright-line interpretation”). In overruling the district court’s  
11 proper exercise of discretion, the Court of Appeals erroneously substituted its  
12 judgment for that of the trial court. It did so by categorizing the circumstances  
13 presented as “routine clerical error” and stating that such matters can never be  
14 considered excusable neglect.

15 {10} New Mexico adopted the definition for “excusable neglect” from the United  
16 States Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd.*, 507 U.S.  
17 380, 395 (1993). *Kinder Morgan CO2 Co., L.P. v. N.M. Taxation & Revenue Dep’t*,  
18 2009-NMCA-019, ¶ 13, 145 N.M. 579, 203 P.3d 110. Under that definition

19 [t]he determination is at bottom an equitable one, taking account of all  
20 relevant circumstances surrounding the party's omission. These include

1 . . . the danger of prejudice to the [non-moving party], the length of the  
2 delay and its potential impact on judicial proceedings, the reason for  
3 the delay, including whether it was within the reasonable control of the  
4 movant, and whether the movant acted in good faith.

5 *Kinder Morgan*, 2009-NMCA-019, ¶ 12 (second alteration and omission in  
6 original). The *Kinder Morgan* Court also recognized that the “district court’s  
7 intimate familiarity with [the] circumstances puts it in a better position than an  
8 appellate court to [make the determination].” *Id.* ¶ 13. An appellate court should  
9 deferentially review the grant or denial of an extension based on this flexible,  
10 equitable standard. *Id.* ¶¶ 12-13; *Schultz*, 2010-NMSC-034, ¶ 19; *accord Pioneer*,  
11 507 U.S. at 394-95 (“Inflexibly [construing excusable neglect] to exclude every  
12 instance of an inadvertent or negligent omission would ignore the most natural  
13 meaning of the word ‘neglect.’”).

14 {11} The district court could have reasonably concluded that (1) the two-day  
15 extension would not prejudice Ford, (2) there would not be an unacceptable impact  
16 on judicial proceedings, (3) although the reason for the delay was within the  
17 reasonable control of Forsythe, it was nonetheless excusable, and (4) Forsythe was  
18 acting in good faith. Therefore, we cannot conclude as a matter of law that the district  
19 court abused its discretion.

1 **III. CONCLUSION**


2 {12} Because the Court of Appeals failed to apply the proper deferential standard  
3 of review to the district court's ruling, we remand for the Court of Appeals to  
4 reinstate the appeal.

5 {13} **IT IS SO ORDERED.**

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7 \_\_\_\_\_  
**DAVID K. THOMSON, Justice**

8 **WE CONCUR:**

9   
10 \_\_\_\_\_  
**MICHAEL E. VIGIL, Chief Justice**

11   
12 \_\_\_\_\_  
**BARBARA J. VIGIL, Justice**

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14 \_\_\_\_\_  
**C. SHANNON BACON, Justice**