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4 deviations from the official paper version filed by the Court of Appeals and does not include the
5 filing date.

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

7 **JESSIE LUCERO, A widow and**
8 **successor in interest of LENORE**
9 **SEVILLE OTERO, deceased;**
10 **THE ANDERSON LIVING TRUST,**
11 **Dated January 25, 2001, DONALD**
12 **L. ANDERSON and MELA**
13 **ANDERSON, Trustees,**

14 **Plaintiffs-Appellees,**

15 **v.**

NO. 29,885

16 **ALFRED LUNA,**

17 **Defendant-Appellant.**

18 **APPEAL FROM THE DISTRICT COURT OF TORRANCE COUNTY**

19 **Matthew G. Reynolds, District Judge**

20 Catherine F. Davis

21 Albuquerque, NM

22 for Appellees

23 Alfred Luna

24 Estancia, NM

25 Pro Se Appellant

26 **MEMORANDUM OPINION**

1 **BUSTAMANTE, Judge.**

2 Defendant appeals the denial of his Rule 1-060(B) NMRA motion to reopen the
3 quiet title judgment decided on May 14, 2007. We proposed to affirm in a calendar
4 notice, and Defendant has responded to that notice with a memorandum in opposition.
5 We have duly considered Defendant’s arguments, but we are unpersuaded by them.
6 We therefore affirm.

7 The quiet title judgment was appealed to this Court. We affirmed the judgment
8 and mandate issued from this Court on May 28, 2008. Defendant filed a Rule 1-
9 060(B) petition on February 9, 2009, claiming that there was evidence of fraud “that
10 was discovered during the trial,” and the evidence was not heard by the district court.
11 [RP 478] Defendant claimed that the fraud had continued for many years and
12 continued during the trial. [RP 479] Defendant claimed that the fraud evidence was
13 not presented because his attorney did not wish to bring up issues regarding fraud.
14 [Id.] In our calendar notice, we explained that Rule 1-060(B)(2) allows for the
15 reopening of a judgment for newly-discovered evidence “which by due diligence
16 could not have been discovered in time to move for a new trial under Rule 1-059
17 NMRA.” In this case, because Defendant knew of the evidence during trial, there was
18 no support for Defendant’s Rule 1-060(B) motion. *See Hill v. Burnworth*, 85 N.M.

1 615, 617-18, 514 P.2d 1312, 1314-15 (Ct. App. 1973) (discussing rule for reopening
2 a judgment and stating that evidence discoverable by due diligence precludes a new
3 trial).

4 Defendant now claims that his Rule 1-060(B) motion could have been viewed
5 as a motion under Rule 1-059 NMRA. We disagree with Defendant's claim. A
6 motion under Rule 1-059 must be filed within 10 days of the judgment. Defendant's
7 Rule 1-060(B) motion was filed over two and one-half years after judgment was
8 entered. The motion was not timely filed as a motion for new trial.

9 For the reasons discussed above and in our calendar notice, we affirm the denial
10 of Defendant's Rule 1-060(B) motion.

11 **IT IS SO ORDERED.**

12
13

MICHAEL D. BUSTAMANTE, Judge

14 **WE CONCUR:**

15

CELIA FOY CASTILLO, Judge

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MICHAEL E. VIGIL, Judge