

Filed
Court of Appeals of New Mexico
11/2/2017 9:04:29 AM
Office of the Clerk

FILED IN MY OFFICE
3TH JUDICIAL DIST. COURT
TAOS COUNTY, NM ON
2017 NOV -2 AM 10:34

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Mark Reynolds

**ALLAN MELTZER and LARRY MELTZER,
as Co-Personal Representatives of the Estate
of MARTIN J. MELTZER, Deceased,**

BERNARD P. STRUCK
CLERK OF THE
DISTRICT COURT

Plaintiffs-Appellees,

v.

**No. A-1-CA-36566
Taos County
D-820-CV-2007-00060**

KERRY KRUSKAL,

Defendant-Appellant.

NOTICE
PROPOSED SUMMARY DISPOSITION

You are hereby notified that the:

Record Proper

was filed in the above-entitled cause on **September 27, 2017.**

This case has been assigned to the **SUMMARY CALENDAR** pursuant to Rule 12-210(D) NMRA.

Summary affirmance is proposed.

Note: This is a *proposal* of how the Court views the case. It is not a final decision. You now have twenty (20) days to file a memorandum telling the Court any reasons why this proposed disposition should or should not be made.

See Rule 12-210(D) NMRA.

Defendant Kerry Kruskal, a self-represented litigant, appeals from two orders.

[RP 1916] The first order is the final order on judgment creditors' motion for orders (1) settling the judgment debt amount; (2) approving creditors' accountings; (3) approving post-judgment attorney fees for collection services with interest; and (4) awarding attorney fees, and was filed on March 28, 2017. [RP 1878-80] It appears that following the March 2017 order, Kruskal filed a timely motion to reconsider on April 5, 2017, which he characterized as an emergency expedited motion to reconsider. [RP 1882-99] On June 29, 2017, the district court entered an order denying the emergency motion to release liens, which appears to be a denial of Kruskal's motion to reconsider, and is the second order that Kruskal is appealing. [RP 1914-15]

Initially, we explain some long-standing principles required of appellate practice in this Court. We view pleadings by self-represented litigants with tolerance; however, a self-represented litigant, "having chosen to represent him [or her]self, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar." *Newsome, Jr. v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 708 P.2d 327 (internal quotation marks and citation omitted). This Court will review pro se arguments to the best of its ability, but cannot respond to unintelligible arguments. *See Clayton v. Trotter*, 1990-NMCA-078, ¶ 12, 110 N.M. 369, 796 P.2d 262. This Court has no duty to review an argument that is not adequately developed, and "[w]e will not review unclear arguments, or guess at what

[a party's] arguments might be." *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076. Litigants are encouraged to limit the number of issues they choose to raise on appeal in order to ensure that the issues presented are ones that can be adequately supported by argument, authority, and factual support in the record. *See Rio Grande Kennel Club v. City of Albuquerque*, 2008-NMCA-093, ¶¶ 54-55, 144 N.M. 636, 190 P.3d 1131 ("[W]e encourage litigants to consider carefully whether the number of issues they intend to appeal will negatively impact the efficacy with which each of those issues can be presented.").

In the current case, we have reviewed Kruskal's docketing statement [DS PDF 1-9] and what appears to be a motion within the docketing statement [DS PDF 10-11]. Although Kruskal claims that this is a case about how the district court erred in determining how much money he has paid toward the Meltzers' judgment lien [DS PDF 2 (¶ 5)], it is unclear what arguments Kruskal is actually raising on appeal [*see generally* DS PDF 3-6 (¶¶ 6-17), 8-9 (¶¶ 29-30)]. We also note that Kruskal has not complied with our Rules of Appellate Procedure, requiring his docketing statement to provide "a concise, accurate statement of the case summarizing all facts material to a consideration of the issues presented"; "a statement of the issues presented by the appeal, including a statement of how they arose and how they were preserved in the trial court, but without unnecessary detail"; and "for each issue, a list of authorities

believed to support the contentions of the appellant and any contrary authorities known by appellant and, where known, the applicable standard of review.” See Rule 12-208(D)(3)-(5) NMRA. Additionally, it appears that Kruskal intended to file a motion in this Court, which he included as pages 10 and 11 of his docketing statement. [See DS PDF 10-11]

As an appellate court, our role in this case is only to review error in certain rulings of the district court. We employ a presumption of correctness in the rulings of the district court, and the burden is on the appellant to clearly demonstrate error. See *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6, 800 P.2d 1063. “[W]e review the evidence in the light most favorable to support the trial court’s findings, resolving all conflicts and indulging all permissible inferences in favor of the decision below.” *Jones v. Schoellkopf*, 2005-NMCA-124, ¶ 8, 138 N.M. 477, 122 P.3d 844. “To the extent that [Kruskal] contends that there are errors of law in the trial court’s conclusions or in those findings that function as conclusions, we apply a de novo standard of review. When the facts are not in dispute, but the parties disagree on the legal conclusion to be drawn from those facts, we review the issues de novo.” *Id.* (internal citation omitted).

In this appeal, we are called to review the district court’s final order on judgment creditors’ motion for orders and the order on Kruskal’s motion to reconsider.

It appears that the final order sets forth the judgment balances due [RP 1878-80], and the order denying Kruskal's motion to reconsider provides that Kruskal "has failed to submit proof by a preponderance of the evidence that the Judgment has been satisfied" [RP 1914]. As the appellant, Kruskal bears the burden of clearly demonstrating how the trial court erred. *See Farmers, Inc.*, 1990-NMSC-100, ¶ 8. We are not persuaded that Kruskal has met this burden. *See* Rule 12-208(D)(4) (stating that "[t]he statement of the issues should be short and concise and should not be repetitious," and "[g]eneral conclusory statements such as 'the judgment of the trial court is not supported by the law or the facts' will not be accepted"). To the extent that Kruskal is asking this Court to have liens immediately released [DS PDF 10-11], we deny his request.

In any response Kruskal may wish to file, he must respond with a document that complies with our Rules of Appellate Procedure and demonstrates how the district court erred with respect to the two orders on appeal. Kruskal shall explain why the judgment figures are incorrect, and he must plainly and simply state what evidence he provided to the district court regarding payments he made towards the judgment. Failure to do so will result in affirmance. *See State v. Chamberlain*, 1989-NMCA-082, ¶ 11, 109 N.M. 173, 783 P.2d 483 (refusing to grant relief where the defendant's memorandum in opposition to our proposed summary disposition failed to provide this Court with a summary of all the facts material to our consideration of the issue raised

in the docketing statement); *see also Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.”).

Based on the foregoing, we propose to affirm.



MICHAEL E. VIGIL, Judge


Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

April 06, 2018

29

NO. S-1-SC-36930

ALAN MELTZER and LARRY MELTZER,
as Co-Personal Representatives of the
Estate of MARTIN J. MELTZER, Deceased,

Plaintiffs-Respondents,

v.

KERRY KRUSKAL,

Defendant-Petitioner.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed under Rule 12-502 NMRA, and the Court having considered said pleadings and being sufficiently advised, Chief Justice Judith K. Nakamura, Justice Petra Jimenez Maes, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED; and

IT IS FURTHER ORDERED that the Court of Appeals may proceed in *Meltzer v. Kruskal*, Ct. App. No. A-1-CA-36566 in accordance with the Rules of

1 Appellate Procedure.

2 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 6th day of April, 2018.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

By Madeline Garcia
Chief Deputy Clerk

I CERTIFY AND ATTEST:

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

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

3

**Additional material
from this filing is
available in the
Clerk's Office.**