

Exhibit "E"

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Court of Appeals of New Mexico
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FILED IN MY OFFICE
8TH JUDICIAL DIST. COURT
TAOS COUNTY, NM

2018 OCT 25 PM 3:30

BERNABE P. STRUCK
CLERK OF THE
DISTRICT COURT

Mark Reynolds

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

KERRY KRUSKAL,

Plaintiff-Appellant,

v.

No. A-1-CA-36718

PETER SPRUNT,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY

Sarah C. Backus, District Judge

Kerry Kruskal

Arroyo Seco, NM

Pro Se Appellant

Walcott, Henry & Winston, P.C.

Charles V. Henry

Santa Fe, NM

for Appellee

MEMORANDUM OPINION

HANISEE, Judge.

{1} Plaintiff is appealing from a district court order granting Defendant's motion to dismiss. We issued a calendar notice proposing to affirm. Plaintiff has responded with a memorandum in opposition. Not persuaded, we affirm the district court.

1 {2} Because the court considered matters outside the pleadings, the motion to
2 dismiss is considered one for summary judgment. *Knippel v. N. Commc'ns, Inc.*,
3 1982-NMCA-009, ¶ 2, 97 N.M. 401, 640 P.2d 507, *overruled on other grounds by*
4 *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't.*, 2013-NMSC-013, ¶ 37 n.2
5 ____ P.3d _____. "Summary judgment is appropriate where there are no genuine issues
6 of material fact and the movant is entitled to judgment as a matter of law." *Bank of*
7 *N.Y. Mellon v. Lopes*, 2014-NMCA-097, ¶ 6, 336 P.3d 443 (internal quotation marks
8 and citation omitted). "We review issues of law de novo." *Id.*

9 {3} The district court determined that Plaintiff's lawsuit is barred by res judicata.
10 [RP 96-98] In the context of claim preclusion, res judicata "precludes a subsequent
11 action involving the same claim or cause of action." *Brannock v. Lotus Fund*, 2016-
12 NMCA-030, ¶ 21, 367 P.3d 888 (internal quotation marks and citation omitted). The
13 elements of a claim preclusion-based res judicata claim are: "(1) identity of parties
14 or privies, (2) identity of capacity or character of persons for or against whom the
15 claim is made, (3) the same cause of action, and (4) the same subject matter." *Id.*
16 (internal quotation marks and citation omitted) As set forth in detail by the district
17 court's order [RP 96-98], all elements of res judicata are satisfied in this case.
18 Contrary to Plaintiff's assertion, issues relating to the "stored water right" were
19 previously litigated. [RP 96] We also conclude that the district court's chronology of

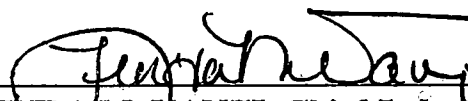
1 Plaintiff's repeated frivolous filings supports sanctions, including limits on further
2 litigation. *See In re Jade G.*, 2001-NMCA-058, ¶¶ 27-29, 130 N.M. 687, 30 P.3d 376
3 (noting that "a court's inherent authority extends to all conduct before that court and
4 encompasses orders intended and reasonably designed to regulate the court's docket,
5 promote judicial efficiency, and deter frivolous filings.")

6 {4} For the reasons set forth above, we affirm.

7 {5} **IT IS SO ORDERED.**

8 
9 **J. MILES HANISEE, Judge**

10 **WE CONCUR:**

11 
12 **LINDA M. VANZI, Chief Judge**

13 
14 **HENRY M. BOHNHOFF, Judge**

Exhibit G

G-1

Filed
Supreme Court of New Mexico
9/25/2018 9:15 AM
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Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
September 25, 2018

NO. S-1-SC-37147

KERRY KRUSKAL,

Plaintiff-Petitioner,

v.

PETER SPRUNT,

Defendant-Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon motion for reconsideration, and the Court having considered the foregoing and being sufficiently advised; Chief Justice Judith K. Nakamura, Justice Petra Jimenez Maes, Justice Charles W. Daniels, Justice Barbara J. Vigil, and Justice Gary L. Clingman concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for reconsideration is hereby DENIED.

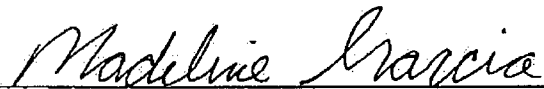
IT IS SO ORDERED.



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 25th day of September, 2018.

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

By



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

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