

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

2 **TANOAN COMMUNITY ASSOCIATION,**
3 **INC., a New Mexico non-profit corporation,**

4 Plaintiff,

5 v.

6 **BECKY ELLIS and DOUGLAS BARR,**

7 Defendants,

8 and

9 **COLONIAL SAVINGS F.A.,**

10 Defendant-Appellee,

11 and

12 **JAMES M. CURRY,**

13 Non-Party-Appellant.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

15 **Elaine P. Lujan, District Court Judge**

16 Rose L. Brand & Associates, P.C.

17 Elizabeth M. Dranttel

18 Eraina M. Edwards

19 Albuquerque, NM

20 for Appellee

21 James M. Curry

22 Albuquerque, NM

23 Pro Se Appellant

Court of Appeals of New Mexico
Filed 6/27/2023 10:33 AM



Mark Reynolds

No. A-1-CA-40624

1 **MEMORANDUM OPINION**

2 **DUFFY, Judge.**

3 {1} Non-Party Appellant, James Curry (Appellant), seeks review of the district
4 court’s order denying his Rule 1-060(B) NMRA motion. We issued a notice of
5 proposed summary disposition proposing to affirm, and Appellant has responded
6 with a timely memorandum in opposition. We remain unpersuaded that our initial
7 proposed disposition was incorrect, and we therefore affirm.

8 {2} Because the relevant background information has previously been set forth,
9 we avoid undue reiteration here, and instead focus on the content of the
10 memorandum in opposition.

11 {3} Appellant first argues that he was improperly designated a non-party by the
12 district court, and in this Court as well. [MIO 2] However, as explained in the notice
13 of proposed summary disposition, the final judgment of foreclosure was entered by
14 the district court in this matter on August 8, 2019, and the order confirming the
15 judicial sale was entered on May 20, 2020. [RP 497, 692] *See Speckner v. Riebold*,
16 1974-NMSC-029, ¶ 9, 86 N.M. 275, 523 P.2d 10 (stating that in a foreclosure case,
17 there are two final, appealable orders: the foreclosure decree and the later order
18 confirming the judicial sale). Appellant’s outstanding motions or pleadings by which
19 he sought to insert himself into the litigation were denied when the district court
20 entered its final judgment. *See Stinson v. Berry*, 1997-NMCA-076, ¶ 8, 123 N.M.

1 482, 943 P.2d 129 (“Where there has been no formal expression concerning a
2 motion, a ruling can be implied by entry of final judgment or by entry of an order
3 inconsistent with the granting of the relief sought.”). Appellant did not seek to appeal
4 from either of these final orders in a timely manner, and we therefore do not have
5 jurisdiction to review whether Appellant was properly denied intervention in the
6 matter. *See* Rule 12-201(A)(2) NMRA (stating that an appeal must be filed within
7 thirty days of a final order); *see also* *Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061,
8 ¶ 12, 112 N.M. 226, 814 P.2d 94 (stating that a timely notice of appeal is a mandatory
9 precondition to the exercise of this Court’s jurisdiction).

10 {4} We next understand Appellant to contend that the August 8, 2019 stipulated
11 order of foreclosure was deficient because neither Ironshore nor Becky Ellis (Ellis)
12 were signatories. [MIO 2-3] In our notice of proposed summary disposition we noted
13 that Appellant had advanced no basis in law by which he had standing to assert
14 Ellis’s interests. [CN 10-11] In response, Appellant states that he asserts Ellis’s
15 interests “on the grounds that Ellis did not sign and would not have if she had been
16 asked, because the order contains a deficiency judgment risk when she had been told
17 in writings in the record that it would not.” [MIO 3] Appellant’s speculations
18 regarding what Ellis would or would not have done are insufficient to establish third-
19 party standing. *See generally* *N.M. Right to Choose/NARAL v. Johnson*, 1999-
20 NMSC-028, ¶ 13, 127 N.M. 654, 986 P.2d 450 (discussing the requirements to

1 establish standing to assert an interest of a third party). Additionally, Appellant has
2 not established that Ironshore’s consent, as the purported successor in interest to
3 Tanoan Community Association, Inc. (Tanoan), was required. As discussed in the
4 notice of proposed summary disposition, the district court denied Tanoan’s motion
5 to substitute Ironshore as a party, and such a decision was within the district court’s
6 discretion. *See* Rule 1-025(C) NMRA (stating that in case of any transfer of interest
7 the action may be continued by or against the original party); *see also Daniels Ins.,*
8 *Inc. v. Daon Corp.*, 1987-NMCA-110, ¶ 15, 106 N.M. 328, 742 P.2d 540 (stating
9 that Rule 1-025(C) is the applicable provision where a party commences an action
10 but subsequently transfers its interests by assignment and stating that “[s]ubstitution
11 of a successor in interest under Rule 1-025(C) is within the sound discretion of the
12 trial court”). Accordingly, we reject these assertions of error.

13 {5} Appellant also continues to challenge the district court’s determination of the
14 priority of interests. [MIO 2, 3, 5-6] As explained in the notice of proposed summary
15 disposition, this case involves an appeal from a denial from a Rule 1-060 (B) NMRA
16 motion. Our review is therefore limited to the question whether the denial of the
17 motion was erroneous, and we will not review the merits of the underlying judgment.
18 *See James v. Brumlop*, 1980-NMCA-043, ¶ 9, 94 N.M. 291, 609 P.2d 1247 (“An
19 appeal from the denial of a Rule [1-060(B)] motion cannot review the propriety of
20 the judgment sought to be reopened; the trial court can be reversed only if it is found

1 to have abused its discretion in refusing to grant the motion.”); *see generally Resol.*
2 *Tr. Corp. v. Ferri*, 1995-NMSC-055, ¶ 9, 120 N.M. 320, 901 P.2d 738 (explaining
3 that Rule 1-060(B) “should not be used as a substitute for appeal”). We therefore do
4 not address Appellant’s arguments that the district court erred in determining the
5 priority of interest in the underlying foreclosure case.

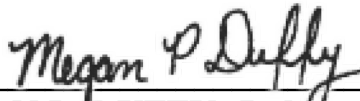
6 {6} We also reject Appellant’s argument that he was improperly denied a right of
7 redemption. [MIO 2, 6-7] A right of redemption is exercised through compliance
8 with the requirements of NMSA 1978, Section 39-5-18 (2007), which governs the
9 process by which a junior lienholder may redeem real estate following its sale
10 pursuant to a judgment of foreclosure. Appellant has not established that he
11 complied with the requirements of Section 39-5-18. Therefore the district court did
12 not err in refusing address Appellant’s redemption claim. *See Chapel v. Nevitt*, 2009-
13 NMCA-017, ¶¶ 1, 27-30, 145 N.M. 674, 203 P.3d 889 (determining that in the
14 absence of compliance with Section 39-5-18, the district court is not required to hold
15 a hearing and issue a certificate of redemption).

16 {7} Finally, we reject Appellant’s argument that the district court erred in denying
17 his Rule 1-060(B) motion. [MIO 2] Appellant has not responded to our proposed
18 disposition of this issue with any persuasive facts, law, or argument. *See generally*
19 *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our
20 courts have repeatedly held that, in summary calendar cases, the burden is on the


1 party opposing the proposed disposition to clearly point out errors in fact or law.”).
2 Accordingly, we adhere to our initial assessment of this matter, and reject this
3 assertion of error.

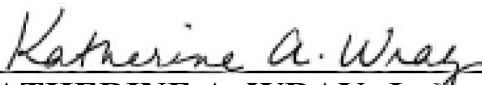
4 {8} For these reasons, and those stated in our notice of proposed summary
5 disposition, we affirm the district court’s order denying Appellant’s Rule 1-060(B)
6 motion.

7 {9} **IT IS SO ORDERED.**

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9 _____
MEGAN P. DUFFY, Judge

10 **WE CONCUR:**

11 
12 _____
J. MILES HANISEE, Judge

13 
14 _____
KATHERINE A. WRAY, Judge