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

**MARGETTE WEBSTER a/k/a  
MARGARET WEBSTER, as named  
in judgment; and DAVID WEBSTER,**

Plaintiffs-Appellees,

v.

**EMMA R. SERNA, Individually and as  
Trustee of the MIKE R. SERNA  
IRREVOCABLE LIVING TRUST DATED  
NOVEMBER 17, 2016; and MIKE R.  
SERNA,**

Defendants-Appellants.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY  
Benjamin Chavez, District Court Judge**

Askew & White, LLC  
Charles Lakins  
Daniel A. White  
Albuquerque, NM

for Appellees

Emma R. Serna  
Mike R. Serna  
Albuquerque, NM

Pro Se Appellants

Court of Appeals of New Mexico  
Filed 1/30/2024 11:12 AM



Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

**No. A-1-CA-40132**

1 **DECISION**

2 **IVES, Judge.**

3 {1} Plaintiffs Margette Webster and David Webster sued Emma Serna and Mike  
4 Serna in the present litigation (Case No. D-202-CV-2019-04800), seeking to  
5 enforce—via foreclosure on real property—a judgment that had been entered in the  
6 underlying litigation (Case Nos. D-202-CV-2007-00641 and D-202-CV-2007-  
7 09594). In the present litigation, the district court entered summary judgment against  
8 the Sernas, allowing the Websters to foreclose on 10812 Olympic Street Northwest  
9 in Albuquerque, New Mexico. Defendants appeal, raising various claims of error.  
10 Unpersuaded, we affirm.

11 {2} We begin by discussing the claims of error that are not properly before us and  
12 that we therefore decline to address on the merits. The Sernas challenge three orders  
13 and two writs entered by the district court in the underlying litigation, none of which  
14 may be appealed at this juncture. Ms. Serna was a party to the underlying litigation,  
15 and if she wished to appeal decisions made by the district court in that litigation—  
16 including the final judgment entered July 23, 2015, and a subsequent order in which  
17 the court ruled that “the judgment is against Emma Serna personally”—she could  
18 have done so by filing a timely notice of appeal in the district court in that litigation.  
19 *See* Rule 12-202 NMRA (stating that notice of appeal must be filed in the district  
20 court); Rule 12-201(A)(1)(b) NMRA (stating that notice of appeal must be filed

1 within thirty days from the date that the judgment being appealed was filed). Because  
2 Ms. Serna did not do so, the judgment in the underlying case is final and binding in  
3 this litigation. *See Trujillo v. Serrano*, 1994-NMSC-024, ¶ 14, 117 N.M. 273, 871  
4 P.2d 369 (recognizing generally that appellate “subject matter jurisdiction is  
5 dependent upon such prerequisites as the proper filing of a notice of appeal”). To the  
6 extent that the Sernas seek to use the present litigation to relitigate rulings made  
7 against them in the underlying litigation, the doctrine of collateral estoppel precludes  
8 them from doing so. *See Reeves v. Wimberly*, 1988-NMCA-038, ¶ 6, 107 N.M. 231,  
9 755 P.2d 75 (“Collateral estoppel works to bar the relitigation of ultimate facts or  
10 issues actually and necessarily decided in the prior suit by a valid and final  
11 judgment.”). We therefore decline to address the merits of any of the Sernas’  
12 challenges to the underlying judgment or to any other orders or rulings in the  
13 underlying case.

14 {3} We also decline to address the merits of the Sernas’ challenge to the  
15 foreclosure sale by the special master, who they allege sold the property for less than  
16 two-thirds of its value contrary to NMSA 1978, Section 39-5-5 (1884). This issue is  
17 not properly before us because the sale occurred well after the notice of appeal was  
18 filed in the present appeal, and the Sernas did not take the steps necessary to seek  
19 appellate review of the sale or any orders related to the sale.

1 {4} Nor will we address the merits of what appear to be claims of professional  
2 negligence and defamation against the Websters' counsel. The Sernas did not pursue  
3 these claims in the district court, which, as a court of general jurisdiction, is the court  
4 that could consider and resolve such claims. *See* N.M. Const. art. VI, § 13. The  
5 Sernas pursue their claims for the first time in this Court, but this Court does not  
6 have any original jurisdiction, *see* N.M. Const. art. VI, § 29, and we are therefore  
7 unable to consider their claims.

8 {5} We now turn to the claims of error that are properly before us—those  
9 pertaining to the summary judgment order entered against the Sernas in the present  
10 litigation. First, the Sernas argue that the district court erroneously allowed  
11 foreclosure on the property because the subject property is owned by a trust, not by  
12 the Sernas, and Ms. Serna, as the trustee, is immune from suit. We believe this  
13 argument lacks merit. The Sernas contend that in November 2016, Ms. Serna  
14 transferred her interest in the property to Mr. Serna and that Mr. Serna then  
15 transferred ownership to a trust. However, transfers that occurred in November 2016  
16 have no bearing on the validity of the foreclosure; what matters instead is who owned  
17 the property on September 2, 2015, the date when the transcript of judgment was  
18 recorded in the underlying litigation, because that recordation placed a lien on all  
19 real estate owned by Ms. Serna on that date. *See* NMSA 1978, § 39-1-6 (1983). And  
20 the district court found that on September 2, 2015, Ms. Serna had an ownership

1 interest in the subject property. That finding could have been challenged on appeal,  
2 but the Sernas made no such challenge and the finding is therefore binding on appeal.  
3 *See Seipert v. Johnson*, 2003-NMCA-119, ¶ 26, 134 N.M. 394, 77 P.3d 298. We  
4 therefore reject the Sernas’ theory that any changes of ownership after September 2,  
5 2015, prevented the Websters from foreclosing on the property based on the lien.  
6 *See F & S Co., Inc. v. Gentry*, 1985-NMSC-065, ¶ 6, 103 N.M. 54, 702 P.2d 999  
7 (recognizing that the rights of the creditor are fixed by the circumstances at the time  
8 of the inception of the lien).

9 {6} We also reject their theory that Ms. Serna, as a trustee, is immune from suit.  
10 The Sernas appear to rely on NMSA 1978, Section 47-2-6(A) (1973), which places  
11 certain limits on a trustee’s individual liability “for the acts, omissions, debts or  
12 obligations of the real estate trust.” But this statute does not insulate Ms. Serna from  
13 liability because the Websters obtained the foreclosure judgment against Ms. Serna  
14 based on her individual debt to the Websters, not based on the acts, omissions, debts,  
15 or obligations of a trust.

16 {7} Second, the Sernas make several allegations of prejudicial misconduct by the  
17 district court and by the Websters and their counsel. These allegations include,  
18 among others, that the district court judge was biased and prejudiced against them  
19 and in favor of the Websters; that the Websters altered the judgment in the  
20 underlying case; and that the Websters presented a phony writ of garnishment to a

1 bank. But the Sernas fail to support any of their allegations with citations to evidence  
2 in the record, *see* Rule 12-318(A)(3) NMRA, and we will not reverse the judgment  
3 on the basis of unsupported allegations of misconduct.

4 {8} Third, the Sernas contend that they did not receive notice of a hearing that  
5 occurred on November 4, 2021. We decline to reverse on this basis because any such  
6 lack of notice could not have been prejudicial to the Sernas. The district court did  
7 not make any substantive rulings during the November 4 hearing; instead, the court  
8 continued the hearing until December to allow the Sernas to prepare for the hearing  
9 and seek counsel.

10 {9} Fourth, the Sernas contend that the judgment does not reflect a credit they  
11 should have received for a \$10,000 payment they claim to have made to the  
12 Websters. Again, the Sernas fail to cite any evidence in the record to support their  
13 allegation. The only document that potentially supports the Sernas' allegation—a  
14 copy of what appears to be a \$10,000 cashier's check—is attached to the Sernas'  
15 notice of appeal, but the Sernas have not demonstrated that the document was  
16 presented to the district court. They therefore have not established that they  
17 preserved the issue of whether they should have received credit for a payment they  
18 allege that they made, *see* Rule 12-321(A) NMRA, and they have not established  
19 that the cashier's check is part of the record on appeal. *See* Rule 12-209(A) NMRA

1 (“The papers and pleadings filed in the district court (the court file), or a copy thereof  
2 shall constitute the record proper.”). We therefore reject this claim of error.

3 {10} Finally, to the extent that the Sernas seek to raise additional claims of error in  
4 their appellate briefs, the Sernas have not developed sufficiently clear arguments in  
5 support of those claims of error, and we therefore decline to specifically address  
6 them. *See Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53.

7 {11} Because we are not persuaded that any reversible error occurred, we affirm.

8 {12} **IT IS SO ORDERED.**

9  
10   
**ZACHARY A. IVES, Judge**

11 **WE CONCUR:**

12   
13 **J. MILES HANISEE, Judge**

14   
15 **MEGAN P. DUFFY, Judge**