

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

2 **SKI VALLEY ROAD PROPERTIES, LLC,**  
3 **a New Mexico limited liability company,**

Court of Appeals of New Mexico  
Filed 4/3/2024 10:06 AM



Cynthia A. Hernandez-Madrid  
Acting Chief Clerk

4 Plaintiff-Appellee,

5 v.

**No. A-1-CA-40584**

6 **KERRY KRUSKAL,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY**

9 **Jason Lidyard, District Court Judge**

10 De Stefano Law Firm, LLC

11 Richard De Stefano

12 Taos, NM

13 for Appellee

14 Kerry Kruskal

15 Arroyo Seco, NM

16 Pro Se Appellant

17 **MEMORANDUM OPINION**

18 **MEDINA, Judge.**

19 {1} Defendant Kerry Kruskal appeals pro se the district court's denial of his  
20 motion to reconsider the accounting of Plaintiff Ski Valley Road Properties, LLC's  
21 deficiency lien against Defendant. Defendant's brief is, at best, difficult to  
22 understand. Defendant fails to provide an adequate, relevant factual background with  
23 citations to the record or relevant legal authorities that support his arguments.

1 Defendant appears to argue that (1) he already paid off the deficiency lien as  
2 previously ordered by the district court and the lien should be released; (2) that  
3 Plaintiff cannot collect attorney fees for the post-judgment motion practice; (3) that  
4 the district court failed to enter findings of fact and conclusions of law on specific  
5 allegations Defendant made over the course of his thirty motions requesting release  
6 from the lien; and (4) the district court improperly enjoined him from filing  
7 additional motions. We affirm.

## 8 **BACKGROUND**

9 {2} In January 2009, Plaintiff filed a complaint against Defendant seeking  
10 damages for unpaid debt, unjust enrichment, and foreclosure, alleging Defendant  
11 failed to pay off his mortgage. Plaintiff moved for partial summary judgment in June  
12 2009. In February 2011, the district court partially granted Plaintiff's motion for  
13 summary judgment on the foreclosure, reserving the issues of interest rates and the  
14 deficiency amount. Ultimately, in September 2011 the district court set the post-  
15 judgment interest rate at 15 percent due to Defendant's bad faith; ordered that  
16 Plaintiff was entitled to recover attorney fees as costs in addition to other recoverable  
17 costs; and established the deficiency lien as the difference between the debt, attorney  
18 fees, costs, interest, and the sale of the foreclosed property. Plaintiff also requested  
19 the district court grant additional attorney fees for the post-judgment motions. The

1 district court denied the requested amount, but found that Plaintiff's request was  
2 reasonable under the circumstances.

3 {3} Defendant appealed the district court's grant of attorney fees and this Court  
4 affirmed. On appeal, Defendant did not challenge what services could qualify for  
5 attorney fees, but only the timeliness of Plaintiff's request of attorney fees related to  
6 the motion for summary judgment on the foreclosure. In May 2013, after remand  
7 from this Court, the district court entered a minute order closing the case because all  
8 issues had been resolved and no further action was necessary.

9 {4} Almost four years later, in February 2017, Defendant—now appearing pro  
10 se—filed a motion seeking relief from the deficiency lien and an accounting of the  
11 debt because Defendant claimed he had fully paid off the accumulated amount.  
12 Plaintiff responded with a recent calculation of Defendant's debt and requested  
13 additional attorney fees for having to respond to Defendant's motion. Defendant then  
14 filed seven additional motions continuing to argue that Defendant had completed  
15 payment on the deficiency lien and that the district court orally ordered the lien  
16 released, challenging the grant of any additional attorney fees, requesting damages  
17 and reimbursement for his overpayment on the lien, and asking that the district court  
18 grant default in his favor on the motions, Plaintiff did not respond to. Defendant  
19 additionally asked for leave to file both a counterclaim and amend a counterclaim,  
20 and to join additional parties.

1 {5} The district court entered an order on the accounting of Defendant’s debt in  
2 August 2019. The district court found that (1) it had not previously released  
3 Defendant from the deficiency lien; (2) Plaintiff’s request for attorney fees was  
4 reasonable; and that Defendant had not paid off the deficiency lien. The district court  
5 concluded that Defendant still owed “\$13,612.02, plus interest at 15 [percent] per  
6 annum” and denied all of Defendant’s outstanding motions.

7 {6} In response Defendant filed twenty-two motions collectively requesting the  
8 district court reconsider its August 2019 accounting order. Comparable to his  
9 original eight motions requesting an accounting, Defendant argued that he had  
10 already paid off the lien as orally ordered by the district court, challenged the grant  
11 of attorney fees, requested damages because Defendant alleged Plaintiff’s attorney  
12 was misleading the district court about Defendant’s previous payments, and that the  
13 district court failed to enter findings of fact and conclusions of law in Defendant’s  
14 favor and should also grant default in Defendant’s favor.

15 {7} In July 2022, the district court denied Defendant’s collective motion to  
16 reconsider. The district court found that “Defendant’s pleadings and oral arguments  
17 were rehashes of arguments previously made, and did not include new authority or  
18 newly discovered facts which could not have reasonably been discovered prior” to  
19 the August 2019 accounting order. The district court additionally stated that  
20 Defendant failed to show Plaintiff’s request for attorney fees “are unreasonable in

1 amount, and has not articulated any specific claim of unreasonableness.” As such,  
2 the district court ordered that, “Plaintiff shall have judgment accordingly in the  
3 amount of \$9,665.30, plus interest thereon at the rate of 15 [percent] per annum” and  
4 Defendant’s objections to the August 2019 accounting order were denied. The  
5 district court further ordered that all of Defendant’s motions, whether expressly  
6 mentioned in the order or not, were denied. The district court ordered that Plaintiff  
7 “shall not be entitled to any further recovery of attorney[’]s fees” because the district  
8 court considered its order the final order resolving the case. The district court further  
9 ordered that

10 [e]xcept for a direct appeal of this [o]rder or the [a]ccounting [o]rder,  
11 [D]efendant is hereby restrained and enjoined from filing pro se in this  
12 [c]ourt (a) any motion or other pleading herein; (b) seeking  
13 reconsideration of this order; (c) seeking any extension of the time to  
14 file a notice of appeal; and, (d) in any other manner seeking to litigate  
15 any issues addressed in this [o]rder.

16 {8} This appeal followed.

## 17 **DISCUSSION**

18 {9} As a preliminary matter, Defendant argues that we should review his appeal  
19 with leniency because he is appealing pro se. This Court will review pro se  
20 arguments to the best of its ability on appeal. *See Clayton v. Trotter*, 1990-NMCA-  
21 078, ¶ 17, 110 N.M. 369, 796 P.2d 262. In any appeal before this Court “it is the  
22 appellant’s burden to demonstrate, by providing well-supported and clear  
23 arguments, that the district court has erred.” *Premier Tr. of Nev., Inc. v. City of*

1 *Albuquerque*, 2021-NMCA-004, ¶ 10, 482 P.3d 1261. “This Court requires that the  
2 parties adequately brief all appellate issues to include an argument, the standard of  
3 review, and citations to authorities for each issue presented.” *Elane Photography,*  
4 *LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53. Contrary to Rule 12-318(A)  
5 NMRA, Defendant fails to set out comprehensible arguments, explain how the  
6 authority he cites might support his argument, or consistently cite to the record for  
7 factual support of his arguments. *See* Rule 12-318(A)(4) (requiring that the brief in  
8 chief include “an argument which, with respect to each issue presented, shall contain  
9 a statement of the applicable standard of review, the contentions of the appellant,  
10 and a statement explaining how the issue was preserved in the court below, with  
11 citations to authorities, record proper, transcript of proceedings, or exhibits relied  
12 on”); *see also Newsome v. Farer*, 1985-NMSC-096, ¶ 18, 103 N.M. 415, 708 P.2d  
13 327 (“Although pro se pleadings are viewed with tolerance, a pro se litigant, having  
14 chosen to represent himself, is held to the same standard of conduct and compliance  
15 with court rules, procedures, and orders as are members of the bar.” (emphasis and  
16 citation omitted)); *Crutchfield v. N.M. Dep’t of Tax’n & Revenue*, 2005-NMCA-022,  
17 ¶ 14, 137 N.M. 26, 106 P.3d 1273 (stating that “this Court will not search the record  
18 when a party fails to provide citations”).

1 **The District Court’s Denial of Defendant’s Motion to Reconsider**

2 {10} “We review the denial of a motion for reconsideration for abuse of discretion.”  
3 *Unified Contractor, Inc. v. Albuquerque Hous. Auth.*, 2017-NMCA-060, ¶ 77, 400  
4 P.3d 290. “This Court has held that a district court does not abuse its discretion in  
5 denying a motion for reconsideration that was merely a restatement of the arguments  
6 the defendants had already advanced.” *Id.* (internal quotation marks and citation  
7 omitted).

8 {11} Defendant asserts that the district court erred by denying his motion to  
9 reconsider the August 2019 accounting order and entering the final judgment on July  
10 2022. The only record proper citation Defendant provides to support his argument is  
11 a statement from the district court at the September 2017 hearing. Defendant  
12 blatantly mischaracterizes the statement. Defendant claims the district court ordered  
13 “that the lien should be released.” The district court actually stated, “[Defendant] if  
14 you are requesting, which you are, to have the court rule that you’ve paid off the  
15 balance, and *that the lien should be released*, I’m requesting that you file a  
16 supplement to your motion or motions with some evidence.” Defendant’s arguments  
17 on appeal do not address the district court’s denial of his motion for reconsideration.  
18 Rather, our review shows Defendant is attempting to relitigate issues already decided  
19 by the district court since Defendant moved for the initial accounting in February  
20 2017. Defendant fails to explain how this recitation of arguments demonstrates that

1 the district court erred when it denied his motion for reconsideration. Without  
2 citation to additional evidence or legal argument, Defendant failed to meet the  
3 requirements for reconsideration before the district court. Therefore, we hold that  
4 the district court did not abuse its discretion by denying Defendant’s motion for  
5 reconsideration. *See Unified Contractor, Inc.*, 2017-NMCA-060, ¶ 77.

### 6 **The District Court’s Sanctions Against Defendant**

7 {12} Defendant argues that the district court’s decision enjoining Defendant from  
8 further filing in the case “must be overturned.” We review a district court’s decision  
9 to impose sanctions for an abuse of discretion. *See State ex rel. N.M. State Highway*  
10 *& Transp. Dep’t v. Baca*, 1995-NMSC-033, ¶ 26, 120 N.M. 1, 896 P.2d 1148.

11 {13} The record in this case consists of more than 1,300 pages, spanning over  
12 fifteen years, where the brunt of the filings are motions and pleadings made by the  
13 Defendant—whether during the district court’s grant of Plaintiff’s request for  
14 foreclosure, or during the district court’s accounting of Defendant’s remaining debt.  
15 During the foreclosure action, the district court found that Defendant acted in bad  
16 faith in an attempt to delay the litigation by asserting claims without factual basis  
17 and filing improper pleadings. After moving to reopen the case, Defendant continues  
18 to distort this case through repeated, unsupported arguments in his thirty post-  
19 judgment filings that he has already paid off the deficiency lien and the district court  
20 ordered that the lien be released.



1 {14} Defendant fails to show how the district court erred outside of one  
2 unexplained citation to out-of-state authority. Courts have “inherent power to  
3 impose a variety of sanctions on both litigants and attorneys in order to regulate their  
4 docket, promote judicial efficiency, and deter frivolous filings.” *Id.* ¶ 11 (internal  
5 quotation marks and citation omitted). Our review shows that the district court  
6 properly restricted Defendant’s further filing of pro se pleadings in this case. While  
7 we “recognize that every individual in our society has a right of access to the courts  
8 . . . the exercise of that right cannot be allowed to rise to the level of abuse, impeding  
9 the normal and essential functioning of the judicial process.” *State ex rel. Bardacke*  
10 *v. Welsh*, 1985-NMCA-028, ¶ 18, 102 N.M. 592, 698 P.2d 462 (internal quotation  
11 marks and citations omitted). The district court’s ability “to command the obedience  
12 of litigants” is necessary for the effective performance of judicial function and  
13 ultimately end litigation on issues already decided—like the case before us. *See*  
14 *Baca*, 1995-NMSC-033, ¶ 11. Therefore, we conclude that the district court did not  
15 abuse its discretion and affirm the district court’s decision to enjoin Defendant from  
16 further filing in this case.

17 **CONCLUSION**

18 {15} For the foregoing reasons, we affirm.

1 {16} IT IS SO ORDERED.

2 *Jacqueline R. Medina*  
3 JACQUELINE R. MEDINA, Judge

4 WE CONCUR:

5   
6 SHAMMARA H. HENDERSON, Judge

7   
8 GERALD E. BACA, Judge