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

Court of Appeals of New Mexico
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Mark Reynolds

**PHIL SANCHEZ and TESSIE SANCHEZ,**

Plaintiffs/Counterdefendants-Appellees,

v. **No. A-1-CA-42716**

**DAVID SANCHEZ and BARBARA SANCHEZ,**

Defendants/Counterclaimants-Appellants.

**APPEAL FROM THE DISTRICT COURT OF RIO ARRIBA COUNTY**
**Matthew J. Wilson, District Court Judge**

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for Appellees

David Sanchez
Barbara Sanchez
Chama, NM

Pro Se Appellants

## MEMORANDUM OPINION

**WRAY, Judge.**

**{1}** Defendants David and Barbara Sanchez appeal multiple orders of the district court in this action brought by Plaintiffs Phil and Tessie Sanchez, the parents of Defendant David Sanchez, to partition ownership of two parcels (the Monero parcel

and the Las Nutrias parcel).[1] Defendants' arguments relate to the impact of a prior quiet title proceeding (the QT proceeding) and family agreements, the right to a jury trial, collateral estoppel, res judicata, the weight of financial contributions to the combined subject properties (the Properties), the fairness of the division of the Properties, the sufficiency of the district court's orders, the appointment of commissioners under NMSA 1978, Section 42-5-6 (1907), and judicial bias. Having reviewed the entirety of the proceedings, we affirm.

**DISCUSSION**

**{2}** Because the parties are familiar with the factual background, we proceed to our discussion and provide background as it becomes necessary to our analysis. Defendants raise nine issues on appeal. Before we consider each in turn, we first address our jurisdiction.

**{3}** After Defendants filed the present appeal, the litigation continued in the district court related to a variety of ongoing disputes. By April 2026, the district court had entered orders that resolved the remaining motions and granted Plaintiffs attorney fees. Because the matter became final before this Court addressed the issues on appeal, we have jurisdiction to review the matter. *See Healthsource, Inc. v. X-Ray*

[1]We refer to the parties as "Plaintiffs" and "Defendants," by first name, or by their full name—because all of the parties have the same last name. Plaintiff Phil Sanchez died during the proceedings in the district court, but we nevertheless refer to "Plaintiffs" for consistency.

*Assoc. of N.M.*, 2005-NMCA-097, ¶ 15, 138 N.M. 70, 116 P.3d 861 ("[I]t is this Court's practice, when a notice of appeal is filed prematurely, to take jurisdiction if the final order is entered during the early pendency of the appeal."); *see also* Rule 12-201(A)(3) NMRA ("A notice of appeal filed after the announcement of a decision, or return of the verdict, but before the judgment or order is filed in the district court clerk's office shall be treated as filed after that filing and on the day of the filing.").

## I. Issue One: The District Court's Subject Matter Jurisdiction

**{4}** Defendants first argue that the district court did not have subject matter jurisdiction to order partition because the partition order was contrary to both the decision in the QT proceeding and certain family agreements. In the QT proceeding, the district court entered a final judgment in 2017 quieting title to the Properties (the QT judgment), based on a 2005 warranty deed. The 2005 warranty deed stated: "This property and the rest of the undivided properties purchased by Nick Sanchez, Phil Sanchez[,] and Fidel Sanchez . . . may not be sold to others; but only one of the three above-named owners for what the land was originally bought for, unless the other owners do not wish to buy said lands."[2] Defendants refer to this language as "the family agreements." In the QT judgment, the district court determined that (1) David was the owner in fee simple of an undivided one-half interest in the Properties; (2)

[2]Nick Sanchez was Phil's father and Fidel Sanchez was Phil's brother.

Phil and Tessie were "barred and forever estopped from having or claiming any lien upon or any right or title to the . . . [P]roperties adverse to David Sanchez's undivided one-half interest"; and (3) Phil and Tessie were permanently enjoined from interference with David's "peaceful use and enjoyment, as co[]tenant, of the . . . [P]roperties." Based on the QT judgment and the family agreements, Defendants contend the district court was without jurisdiction to partition the Properties.

{5} Neither of the two cases that Defendants cite support their argument. Both cases indicate that partition may be denied in some circumstances and defenses may exist, but neither suggests that the district court lacks jurisdiction to adjudicate the request for partition. *See Martinez v. Martinez*, 1982-NMSC-097, ¶ 17, 98 N.M. 535, 650 P.2d 819 (explaining that "[a] cotenant is entitled to a partition as a matter of right, not merely as a matter of grace within the discretion of the court" and that "[a]lthough this right is sometimes said to be absolute, it can be denied where the partition would be against public policy, legal principles, equitable principles or is waived by an agreement of the parties"); *Prude v. Lewis*, 1967-NMSC-174, ¶¶ 29-34, 42, 78 N.M. 256, 430 P.2d 753 (considering jurisdiction to enter a judgment of partition before appointment of commissioners and separately noting that an agreement not to partition operates as an "objection or defense to a partition"). We therefore hold that the district court had jurisdiction to partition the Properties. *See*

N.M. Const. art. VI, § 13 (establishing the original jurisdiction of district courts); NMSA 1978, § 42-5-1 (1907) (establishing jurisdiction over partition claims).

## II. Issue Two: Jury Trial

{6} Defendants argue that the district court improperly held a bench trial and thereby denied them the constitutional right to a jury trial. As we explain, we disagree. The Seventh Amendment to the United States Constitution and Article II, Section 12 of the New Mexico Constitution do not "create[] an absolute right to a jury trial in all civil cases, but instead merely preserve[] the existing common law right to have the facts of a case tried by a jury." *N.M. Law Group, P.C. v. Byers*, 2018-NMCA-023, ¶ 3, 413 P.3d 875 (emphasis, internal quotation marks, and citation omitted). No "historical right" to a jury trial exists for claims in equity and so, "in civil actions seeking only equitable remedies, as opposed to legal remedies, there is no right to a trial by jury." *Id.* ¶ 5. The only matter tried in the present case was whether the Properties should be partitioned according to the Partition Act, NMSA 1978, §§ 42-5-1 to -9 (1907, as amended through 1965), which is an equitable proceeding. *See Sims v. Sims*, 1996-NMSC-078, ¶¶ 42, 51, 122 N.M. 618, 930 P.2d 153 (holding that the Partition Act is "a vehicle for equitable partition" (emphasis omitted)).

{7} Defendants maintain that trial by jury is required because independent legal issues were also present, including requests to determine ownership, title,

contributions, offsets, and accounting. *See Blea v. Fields*, 2005-NMSC-029, ¶¶ 6-7, 138 N.M. 348, 120 P.3d 430 (explaining that "[a] party is entitled to have a jury determine any disputed fact issues that are material to disposing of both the equitable and legal claims" but the equitable claims always remain for the district court to decide). None of the legal issues that Defendants reference are separate legal claims that require a jury trial. Rather, they are facts that are relevant to the equitable inquiry into "the respective rights of the parties" who own property that is subject to partition. *See* § 42-5-1; *Sims*, 1996-NMSC-078, ¶ 44 (explaining that partition is "intrinsically equitable" because "[a] court of law is inherently unable to adjust the often complicated rights of the parties, as where one co[]tenant had laid out large sums for improvements, or had erected valuable buildings, or had been in receipt of all the rents and profits" (internal quotation marks and citation omitted)).

**{8}** The district court made no explicit determination that the partition claim was equitable, and Defendants maintain that the absence of findings, analysis, or explanation "alone is reversible error." Defendants cite *Sims* to support this proposition, but the *Sims* Court did not address the right to a jury trial or the necessity of findings, analysis, or explanation. The district court's denial of Defendants' motion to reconsider, which asserted the right to a jury trial, was a rejection of Defendants' argument. *Cf. Landskroner v. McClure*, 1988-NMSC-091, ¶ 9, 107 N.M. 773, 765 P.2d 189 (considering the implications of the district court's implicit

rejection of requested findings). Defendants do not persuade us that more was required. *See Firstenberg v. Monribot*, 2015-NMCA-062, ¶ 57, 350 P.3d 1205 (noting the burden of the appellant to demonstrate error on appeal).

## III. Issues Three and Four: Preclusion

**{9}** Defendants' issues three and four are related to whether Plaintiffs were precluded from seeking partition by the family agreements and/or the QT judgment. Defendants maintain that because the district court did not explicitly conduct a preclusion analysis, we cannot read the record to infer that Defendants' preclusion arguments were appropriately rejected. Absent authority that an explicit explanation was required, we consider the district court's order for partition to be a rejection of Defendants' affirmative defense of preclusion and multiple preclusion arguments. We therefore turn to consider whether that rejection of Defendants' preclusion arguments was appropriate. *Cf. Landskroner*, 1988-NMSC-091, ¶ 9.

**{10}** The preclusion doctrines of res judicata and collateral estoppel both "promote[] judicial economy and protect[] parties from endless relitigation." *Deflon v. Sawyers*, 2006-NMSC-025, ¶ 13, 139 N.M 637, 137 P.3d 577. On the merits, Defendants specifically argue that (1) the claims and the parties were the same in both cases; and (2) the QT proceeding interpreted the family agreements, decided title to the Properties, and enjoined Plaintiffs from "interfering with David Sanchez's peaceful use and enjoyment, as co[]tenant, of the" Properties. As a result, Defendant

argues that the doctrines of res judicata and collateral estoppel preclude Plaintiffs' claims. We first consider res judicata.

**{11}** It is well established that res judicata "precludes a subsequent action involving the same claim or cause of action" and "bars not only claims that were raised in the prior proceeding, but also claims that could have been raised." *Bank of Santa Fe v. Marcy Plaza Assocs.*, 2002-NMCA-014, ¶¶ 13, 14, 131 N.M. 537, 40 P.3d 442. A party asserting res judicata must demonstrate that "(1) there was a final judgment in an earlier action, (2) the earlier judgment was on the merits, (3) the parties in the two suits are the same, and (4) the cause of action is the same in both suits." *See Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54. Even when these elements are satisfied, res judicata will preclude a claim "only if the claim reasonably could and should have been brought during the earlier proceeding." *Id.* The parties dispute two of these elements: (1) whether the causes of action were the same, and (2) whether the partition claim could or should have been brought as part of the QT proceedings. *See id.* We apply our Supreme Court's three-part "transactional approach" to res judicata and consider (1) how the facts "are related in time, space, or origin"; (2) whether the facts "form a convenient trial unit"; and (3) whether the treatment of the facts "as a single unit conforms to the parties' expectations or business understanding or usage." *Id.* ¶ 11 (internal quotation marks and citation omitted). After first considering the facts involved in the QT proceeding and the partition case,

followed by the convenience of the trial unit and the parties' expectations, we conclude that the causes of action in the two proceedings were not the same. *See id.*

**{12}** The QT proceeding was to quiet title. To resolve the dispute, the original district court determined that (1) a 2005 deed transferred title from just Phil and Tessie to Phil, Tessie, and David; (2) family discussions and dynamics communicated to David that he had an ownership interest in the Properties; (3) David and Barbara invested money in the Properties; and (4) David and Barbara lived on the Properties. These facts are all related to what happened before the partition case began in 2016, and the district court relied on those facts to decide that the parties owned the Properties as tenants in common.

**{13}** In comparison, the present case is a partition action. Partition is available to tenants in common, and in the partition action, the district court accepted the QT proceeding determination that the parties were tenants in common. *See Rodriguez v. La Cueva Ranch Co.*, 1913-NMSC-033, ¶ 6, 17 N.M. 246, 134 P. 228 (explaining that partition is "a separation of undivided interests in a tract theretofore owned by the parties in common" (internal quotation marks and citation omitted)). To resolve the partition dispute, the district court considered different facts that were related to whether "a breakdown in the relationships between those who share possession of [the Properties]" had occurred and whether going forward, the parties' ownership interests should be severed in order to "secure[] peace, promote[] the enjoyment of

property, and advance[] industry and enterprise." *See Sims*, 1996-NMSC-078, ¶ 46. The facts of the two proceedings indicate separate causes of action.

**{14}** The final two considerations also suggest that the causes of action were not the same. While quiet title and partition might form a convenient trial unit, in the QT proceeding, both parties sought to quiet title on their own behalf. Neither the QT decision nor the judgment indicate that the parties contemplated tenancy in common or division of the Properties. For this reason, a request for partition would not have conformed to the parties' expectations in the QT proceeding.

**{15}** Defendants point to the reference in the QT judgment to David's right to peaceful enjoyment, the reference in the QT decision to David's financial investments in the Properties, and the family agreements. The QT judgment states as follows:

> Phil Sanchez and Tessie Sanchez are barred and forever estopped from having or claiming any lien upon or any right to title to the [Properties] adverse to David Sanchez's undivided one-half interest, and David Sanchez's title thereto is forever quieted and set at rest.
>
> . . . .
>
> Phil Sanchez and Tessie Sanchez are permanently enjoined from interfering with David Sanchez's peaceful use and enjoyment, as co[]tenant, of the . . . [P]roperties.

The QT decision noted that Plaintiffs did not specifically refute Defendants' "claim that over the years they spent in excess of $1.8 million dollars improving the ranch property and countless hours of time on the ranching operations." And as we have

noted, the family agreements restricted to whom the owners could sell their interests in the Properties.

**{16}** These facts do not establish that the QT proceeding and the present partition case arose from the same cause of action. The QT judgment only prevents Plaintiffs from interfering with David's peaceful use and enjoyment "as co[]tenant" and the QT decision explains that the parties "are all owners in common" of the Properties. *See Northcutt v. McPherson*, 1970-NMSC-099, ¶ 7, 81 N.M. 743, 473 P.2d 357 (explaining that "[t]enants in common are each entitled to the reasonable use, occupancy, benefit and possession of the common property"). The interests at the end of the partition are the same as they were after the QT proceeding, but they have a different character. *See Rodriguez*, 1913-NMSC-033, ¶¶ 4-8 (explaining that the partition of property does not diminish ownership rights and is a procedure available to tenants in common to sever property interests); § 42-5-1 (providing that partition is "lawful" when lands are "owned in . . . tenancy in common"). Defendants do not explain how the QT decision's observation about financial investments would preclude an action for partition. *See Sims*, 1996-NMSC-078, ¶ 44 (noting that investments may be part of the "formulae for dividing property"). The family agreements limit to whom the owners can sell the property, but do not waive the right to physical partition. *See Prude*, 1967-NMSC-174, ¶¶ 38-40 (distinguishing between a forced sale and a physical partition). As a result, although the QT

judgment language prevented Plaintiffs from challenging David's title to the Properties, it did not preclude an action to partition the parties' shared interests in the Properties.

**{17}** The transactional approach to res judicata demonstrates that the causes of action are different. *See Potter*, 2015-NMSC-002, ¶ 11. Because the two actions were not the same and res judicata does not preclude the partition action, we need not decide whether Plaintiffs "could and should have brought the claim in the former proceeding." *See id.* ¶ 15 (addressing this inquiry "[e]ven if two actions are the same under the transactional test"). Nor, as we explain, does collateral estoppel bar the partition suit.

**{18}** "[C]ollateral estoppel does not require that both suits be based on the same cause of action." *Deflon*, 2006-NMSC-025, ¶ 13 (internal quotation marks and citation omitted). Of the required collateral estoppel elements, two are in dispute: whether "the issue was actually litigated in the prior adjudication" and whether "the issue was necessarily determined in the prior litigation." *See Shovelin v. Cent. N.M. Elec. Co-op., Inc.*, 1993-NMSC-015, ¶ 10, 115 N.M. 293, 850 P.2d 996. Relying on the same facts and issues raised in relation to res judicata, Defendants argue that the issues were actually litigated and necessarily decided in the QT proceeding. *See id.* We disagree. As we have set forth, the issue of property division and the facts related to partition were not litigated or necessarily decided in the QT proceeding. *See Sims*,

1996-NMSC-078, ¶ 46 (explaining that partition involves the division of property to account for the breakdown of relationships). Nor did Plaintiffs have a "full and fair opportunity to litigate" property division, because the issue before the district court in the QT proceeding was ownership interests. *See Shovelin*, 1993-NMSC-015, ¶ 10. Accordingly, collateral estoppel also does not apply.

## IV. Issues Five and Six: Adoption of the Commissioners' Report and Evaluation of Financial Contributions

**{19}** In these arguments, Defendants challenge the district court's order that adopted the commissioners' report on the division of the Properties. *See* § 42-5-6 (requiring the appointment of commissioners). Specifically, Defendants argue that the district court ignored evidence of their financial contributions to the Properties and that partition without considering these contributions was inequitable. When the district court decided that partition was appropriate, its order directed that the appointed commissioners consider "the property taxes paid by the different parties, any liens on the properties, as well as the improvements made on the lands by each party, including the installation of utilities, the well, and any structures or buildings." The commissioners' report later explained that when they asked for evidence about both parties' financial contributions to the Properties, neither party substantiated expenditures with receipts or documentation. As a result, the commissioners did not account for any financial investments. The district court adopted the commissioners' report and made no additional reference to either party's financial investments in the

Properties. Defendants point to tax payments, a list of financial contributions (the list), and the QT decision's reference to $1.8 million in investments. Based on this evidence, Defendants argue that the district court (1) abused its discretion when it adopted the commissioners' report without specifically addressing evidence related to improvements and financial contributions; (2) disregarded Defendants' rights when ordering the Properties partitioned and did not "conduct a proper equitable analysis"; and (3) did not enter findings of fact and conclusions of law and as a result, the partitioning order was not supported by substantial evidence and was an abuse of discretion.

**{20}** As to Defendants' first and second claims, we have reviewed the record and conclude that the district court appropriately did not consider financial contributions. Defendants did not establish an "increase in value such as would shock the conscience or present a grave inequity" regarding the equitable adjustment of the parties' interests in the Properties. *See Smith v. Borradaile*, 1922-NMSC-071, ¶ 43, 30 N.M. 62, 227 P. 602; *see also Sims*, 1996-NMSC-078, ¶ 44 (describing the equitable adjustment of interests in partition). The commissioners accounted for the tax contributions. Otherwise, the commissioners explained that the QT decision's reference to Defendants' claim of $1.8 million in investments was related to a different legal inquiry and that the commissioners were "not provided with information which would enable [them] to quantify [the] improvements [made to the

Properties] or to know if they were made in the relevant time frame." To contradict the commissioners' report regarding the documentation submitted, Defendants filed objections with some attachments, including the list. But the vast majority of the itemized list has no accompanying documentation. Attached to the filing are tax bills and receipts from January 2022 and May 2023, many photographs, an electric bill, a 2008 receipt for seed in the amount of $5,000, information related to an attorney lien, and a letter from the state engineer. Neither this documentation, nor the QT decision, established an "increase in value such as would shock the conscience or present a grave inequity" if not credited in the partition balance. *See Smith*, 1922-NMSC-071, ¶ 43. Under these circumstances, we conclude that the decision not to consider the parties' investments was neither inequitable or unconscionable. *See id.*

**{21}** Defendants contend that disregarding this evidence was inequitable and cite *Gonzales v. Gonzales*, 1993-NMCA-159, 116 N.M. 838, 867 P.2d 1220. *See id.* ¶ 26 (noting that a party's conduct "may preclude a party from relying on a deed"). This Court in *Gonzales* explained that

> [e]quitable estoppel is the effect of the voluntary conduct of a party whereby [they are] absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change [their] position for the worse, and who on [their] part acquires some corresponding right, either of property, of contract, or of remedy.

*Id.* (internal quotation marks and citation omitted). We understand Defendants to argue that Plaintiffs should be precluded from seeking the division of the Properties because Defendants relied on shared ownership to make financial investments, they have been denied "equitable compensation or adjustment," and the district court's decision "completely disregarded" Defendants' rights.

**{22}** We disagree. We have already determined that the expenditures were not substantiated, and Defendants do not identify what "equitable compensation or adjustment" they should have received to account for the expenditures that they claim. Nor do they acknowledge the complexities of evaluating contributions made by cotenants "to the betterment of the common interest." *See Chance v. Kitchell*, 1983-NMSC-012, ¶ 7, 99 N.M. 443, 659 P.2d 895 (describing the claims and defenses related to tenancy in common and "funds expended for the betterment of the common interest"); *Sims*, 1996-NMSC-078, ¶ 44 (characterizing the rights of tenants in common as "often complicated"); *see also* 20 Am. Jur. 2d *Cotenancy & Joint Ownership* § 45 (2026) ("A cotenant is not ordinarily entitled to compensation for services rendered in managing, operating, or taking care of the common property in the absence of an express agreement or a mutual understanding that the services should be paid for."). Nor did the district court disregard Defendants' rights so much as reject their arguments. The district court heard Defendants' objections to the commissioners' actions at four of the twelve hearings held after the trial to determine

whether partition was appropriate. In the order adopting the commissioners' report, the district court stated that it had "considered objections filed by the parties" and "entertained oral argument."

**{23}** Ultimately, the district court adopted the commissioners' report that recommended granting the 109-acre Las Nutrias property entirely to Plaintiffs along with 705 acres of the Monero property, to account for the difference in value between the two properties and other financial obligations. Defendants then received a little over 800 acres of the Monero property, including the portions with residences. Defendants have not explained what it is about the commissioners' recommended division of the Properties that is unfair to them, how it will create a hardship, or what the unfair benefit to Plaintiffs will be. On this record, we therefore decline to rely on equitable estoppel principles to reverse the district court's decision. *See Sandoval v. Sandoval*, 1956-NMSC-027, ¶ 2, 61 N.M. 38, 294 P.2d 278 (holding that the report of commissioners regarding the division of property is "presumptively correct" and when the report is challenged based on inequality of division, it "should not be set aside on the grounds of unequal allotment except in extreme cases, as where made on wrong principle or where partition is grossly unequal").

## V. Issue Seven: The May 25, 2025 Order

**{24}** Defendants also challenge the sufficiency of the district court's May 15, 2025 order that finalized the plats and conveyances.[3] Defendants argue that the order did not make statutorily required findings, prevented finality, did not address the improvements to the Properties, and departed from the normal proceedings. First, the statute that Defendant cites identifies considerations the district court must make but does not require written findings. *See* NMSA 1978, § 42-5A-9 (2017) ("Considerations for partition in kind."). Second, the challenged order was final, *see Prude*, 1967-NMSC-174, ¶ 27, but finality was muddied by motions filed after its entry—by all parties. While the district court retained jurisdiction to consider fees that were collateral to the legal determinations, finality was impacted by the pending intervenor's motion, Plaintiffs' motion for sanctions, and Defendants' motion to reconsider. *See Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 21, 113 N.M. 231, 824 P.2d 1033 (addressing the "twilight zone" of finality). Third, Defendants did not request findings under Rule 1-052(A) NMRA, and regardless,

[3]Defendants argue in reply that because Plaintiffs did not respond to their argument regarding the sufficiency of this order, the issue is conceded. Appellees, however, are not required to file an answer brief at all. *See* Rule 12-318(B) NMRA ("The appellee *may* file an answer brief[.]" (emphasis added)). Regardless, it is this Court's role to determine whether Defendants have met their burden on appeal to demonstrate error. *See Lozano v. GTE Lenkurt, Inc.*, 1996-NMCA-074, ¶ 30, 122 N.M. 103, 920 P.2d 1057 (declining to reverse when "an answer brief has been filed but a particular issue is not addressed"); *Firstenberg*, 2015-NMCA-062, ¶ 57 (discussing the appellant's burden on appeal).

by not including findings about Defendants' asserted improvements and investments, the district court rejected any such findings. *See Landskroner*, 1988-NMSC-091, ¶ 9. Fourth, we are not persuaded that the district court did not adhere to the "normal proceedings." Nearly three and a half years passed between the entry of the judgment partitioning the properties on November 18, 2021, and the order finalizing the plats and conveyance decrees on May 15, 2025. While this is not the norm for many actions, proceedings to partition are different:

> The judgment and decree of the court declaring the rights of the parties, ordering partition, and appointing commissioners is interlocutory. It constitutes a final declaration of the rights, titles and interests of the respective parties, but further judgment and decree to vest and divest title to the respective portions upon partition, or, in the event of a sale, to confirm the sale and distribute the proceeds is required.

*Prude*, 1967-NMSC-174, ¶ 27 (citations omitted). We therefore find no basis to reverse the partition proceedings based on the district court's May 15, 2025 order.

## VI. Issue Eight: Selection and Appointment of the Commissioners

{25} Defendants argue that the district court abused its discretion by appointing the commissioners selected by Plaintiffs, without "seeking consensus" from Defendants or "ensuring impartiality," resulting in bias against Defendants. In the order granting partition, the district court required the parties to either submit an "agreed upon list of three commissioners within [fourteen] days" or separate lists within twenty-one days. Plaintiffs submitted a list of proposed commissioners. The record does not reflect any list submitted by Defendants. On December 15, 2021, the district court

appointed three of the commissioners proposed by Plaintiffs. Of the record citations that Defendants provide to support their objection to the commissioners' appointment, the first objections that raised the issue were filed more than three years later, on March 5, 2025. Because Defendants did not identify their own commissioners or object to the individuals selected by Plaintiffs before they were appointed, they waived any objection to their appointment. *See C & H Constr. & Paving Co., Inc. v. Citizens Bank*, 1979-NMCA-077, ¶ 30, 93 N.M. 150, 597 P.2d 1190 ("[A] waiver is the intentional relinquishment or abandonment of a known right, and the act of waiver may be evidenced by conduct as well as by express words." (omission, internal quotation marks, and citation omitted)).

**{26}** Nor do Defendants establish that bias resulted from the appointment of Plaintiffs' proposed commissioners. To suggest that these commissioners were biased, Defendants argue that the commissioners immediately requested to have the property surveyed.[4] In support of this argument, Defendants cite Section 42-5-6,

[4]In reply, Defendants also point out that (1) one of the commissioners was a former partner of Plaintiffs' attorney and that their firm had previously represented David's brother (and Plaintiffs' son); and (2) Plaintiffs selected the surveyor long before partition was ordered. We do not address issues raised for the first time in reply. *See Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 23, 110 N.M. 314, 795 P.2d 1006 (declining to address an issue raised for the first time in reply). Further, Defendants do not identify where in the record they either brought the partnership to the district court's attention in this case or that they argued that the commissioners were biased based on the commissioners' selection of the surveyor that Plaintiffs had waiting in the wings. Defendants therefore did not invoke a ruling from the district court regarding whether these facts created bias that should have resulted in

*Sandoval*, and *Griffin v. Tomlinson*, 154 S.E. 483 (Va. 1930). We are unpersuaded. No evidence suggests that the commissioners were connected to Plaintiffs by consanguinity or were anything less than "entirely disinterested." *See* § 42-5-6 (requiring that appointed commissioners are "not connected with any of the parties either by consanguinity or affinity and entirely disinterested"). Like our Supreme Court stated in *Sandoval*, "we fail to see any prejudicial conduct." 1956-NMSC-027, ¶ 4. Unlike the cotenant in *Griffin*, the Defendants do not assert or establish that Plaintiffs "entertained" the commissioners after their appointment or that they were "shown undue courtesies" by Plaintiffs. 154 S.E. at 484. Instead, by hiring a surveyor, it appears that the commissioners immediately attempted to start the work they were appointed to do—preparing a recommendation to divide the Properties. We are therefore not persuaded that Defendants have established that the commissioners were biased.

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the appointment of different commissioners. *See* Rule 12-321(A) NMRA (requiring that "[t]o preserve an issue for review, it must appear that a ruling or decision by the trial court was fairly invoked"); *Hinger v. Parker & Parksley Petroleum Co.*, 1995-NMCA-069, ¶ 24, 120 N.M. 430, 902 P.2d 1033 (explaining that "[f]airness underlies the rule of preservation of error" such that "[e]ach party to a lawsuit has only one opportunity to present its case and challenge the case of its opponent," which "occurs at trial, and not for the first time on appeal"). While Defendants may have discovered the facts about the survey only when reviewing Plaintiffs' request for costs, Defendants do not point to where they asked the district court to reconsider its adoption of the report based on late-discovered bias regarding the selection of the surveyor. We therefore do not consider these issues.

## VII. Issue Nine: External Influences on the Court

{27} Last, Defendants argue that the district court did not address Defendants' position that external influences impacted the court and denied the right to an impartial tribunal. Defendants maintain that (1) three cases related to these Properties were all "[s]electively" assigned by the chief judge to the district court judge who presided over the partition; (2) the chief judge is the wife of an attorney who is a partner at the firm where Defendants' prior attorney practiced; (3) Defendants' prior firm recorded an attorney lien against the Properties, which was pleaded as an encumbrance on the Properties in the present case; and (4) Defendants' prior attorney's firm donated to the assigned district court judge's campaign. Defendants contend that this combination of facts "reflects at a minimum a perception of bias involving matters affecting the adversarial process."

{28} We need not consider Defendants' first three arguments that the chief judge stood to gain by the consolidation of cases involving these Properties because her husband's firm might collect its lien. In none of Defendants' citations to the record does it appear that Defendants argued to the district court that the judge should recuse based on any consolidation by the chief. Nor does the record show any consolidation or that assignment to the particular district judge was at the direction of the chief judge. Because the record does not support it, we consider this issue no further.

**{29}** Defendants' final argument is that the appearance of outside influence arose because the outcome of the case could permit attorneys who contributed to the judge's past campaign to collect on their lien. But, in accordance with rules governing judicial participation in campaign financing, the district court judge confirmed that he had not known who contributed to his campaign until Defendants disclosed the information in a pleading. *See* Rule 21-402(A)(2), (E) NMRA (limiting judges' participation in campaign contribution solicitation and preventing disclosure of contributions to the judicial candidate); Rule 21-404(A) NMRA (providing for contributions to be made to a committee). As a result, the district court judge's acts did not "convey the impression that any person or organization [was] in a position to influence the judge." *See* Rule 21-204(C) NMRA.

**{30}** Instead, as the district court found, it was Defendants who conveyed that impression. No authority suggests that parties may force recusal by alerting assigned judges to the identity of campaign contributors that were otherwise unknown to the judge. *Cf. State v. Riordan*, 2009-NMSC-022, ¶ 13, 146 N.M. 281, 209 P.3d 773 ("[A]s a matter of policy, a defendant does not create a disqualifying interest and cannot choose [their] prosecutor for an underlying offense by the use of threats." (alteration, internal quotation marks, and citation omitted)). We discern no abuse of discretion in the district court's denial of Defendants' motion to recuse. *See id.* ¶ 6.

## CONCLUSION

{31} We affirm.

{32} **IT IS SO ORDERED.**

**KATHERINE A. WRAY, Judge**

**WE CONCUR:**

**JACQUELINE R. MEDINA, Chief Judge**

**KRISTOPHER N. HOUGHTON, Judge**