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

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

4           Plaintiff-Appellee,

5 v.

**NO. 34,871**

6 **STANLEY Z. PEPLINSKI,**

7           Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**  
9 **Denise Barela Shepherd, District Judge**

10 Shannon Robinson  
11 Albuquerque, NM

12 for Appellee

13 Stanley Z. Peplinski  
14 Albuquerque, NM

15 Pro Se Appellant

16   **MEMORANDUM OPINION**

17 **KENNEDY, Judge.**

1 {1} Defendant Stanley Z. Peplinski, a self-represented litigant, appeals from four  
2 orders: (1) an order for sanctions against him for discovery violations, entered on  
3 December 17, 2013 [RP 92]; (2) an order designating Plaintiff Tanoan East  
4 Community Association, Inc.'s requests for admission deemed admitted by  
5 Defendant, entered on August 6, 2014 [RP 155]; (3) an order denying Defendant's  
6 second motion to reconsider the court order for sanctions, entered August 6, 2014 [RP  
7 167]; and (4) an order granting summary judgment in favor of Plaintiff, entered May  
8 19, 2015 [RP 221]. In our notice of proposed summary disposition, we proposed to  
9 affirm. Additionally, we denied Defendant's motion to drop the supersedeas bond  
10 requirement. In response to this Court's notice, Defendant filed a memorandum in  
11 opposition, which we have duly considered. We remain unpersuaded by Defendant's  
12 arguments and therefore affirm.

### 13 **Issues 1 and 5**

14 {2} In his docketing statement, Defendant argued that Judge Denise Barela  
15 Shepherd erred when she failed to disqualify herself from this case and when she  
16 failed to disclose that she presided over a case in metropolitan court, filed in 2000, in  
17 which Defendant was the plaintiff (Issue 1). [DS 3] Additionally, Defendant asserted  
18 that the judge created a hostile environment and demonstrated judicial bias against  
19 him because she did not allow him to call witnesses on his behalf, despite the fact that  
20 the witnesses were physically present in the courtroom; she chastised him during a

1 hearing; she favored Plaintiff’s attorney during a hearing; and she brought a sheriff  
2 into the courtroom while the proceedings were still ongoing (Issue 5). [DS 4-5]

3 {3} In our notice of proposed disposition, we noted that it did not appear that  
4 Defendant preserved these issues for appellate review, and even if he could  
5 demonstrate that he preserved these issues for appellate review, we proposed to hold  
6 that his claims lacked merit. [CN 3-5] More specifically, we stated that we were not  
7 persuaded that Judge Barela Shepherd was required to disqualify herself from this  
8 district court case, simply because she was the judge in a different case filed in 2000  
9 in metropolitan court in which Defendant was the plaintiff. [CN 4-5] We also  
10 proposed to hold that Defendant’s assertions were insufficient to substantiate claims  
11 of judicial bias or hostility. [CN 5] *See United Nuclear Corp. v. Gen. Atomic Co.*,  
12 1980-NMSC-094, ¶¶ 424-25, 96 N.M. 155, 629 P.2d 231 (stating that adverse rulings  
13 and criticism of counsel by the court do not demonstrate bias).

14 {4} In his memorandum in opposition, Defendant continues to argue that the judge  
15 erred and demonstrated bias. [MIO 2-4] We note, however, that Defendant has not  
16 pointed out errors in fact or law with our proposed disposition. *See Hennessy v.*  
17 *Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have  
18 repeatedly held that, in summary calendar cases, the burden is on the party opposing  
19 the proposed disposition to clearly point out errors in fact or law.”). Therefore, we

1 remain unconvinced that the district court erred in this case with respect to Issues 1  
2 and 5.

3 **Issue 2**

4 {5} In his docketing statement, Defendant claimed that the district court erred by  
5 allowing substitution of Plaintiff's counsel when neither original counsel nor  
6 substitute counsel followed court rules for withdrawal and substitution of counsel. [DS  
7 3-4] Defendant asserted that he informed the district court regarding the improper  
8 substitution of counsel orally and in writing; however, it did not appear that Defendant  
9 asked the district court to take any action based on the alleged erroneous substitution  
10 of counsel. [DS 5] Therefore, we proposed to hold that this issue was not preserved  
11 for appellate review. [CN 5] In our notice of proposed disposition, we also stated that  
12 even if Defendant could demonstrate that he preserved this issue for appellate review,  
13 substitute counsel filed an entry of appearance on behalf of Plaintiff in the district  
14 court. [CN 5; RP 82] We suggested that we were not persuaded that Defendant was  
15 prejudiced by any alleged errors relating to substitution of counsel. [CN 5-6]

16 {6} In response, Defendant continues to assert that he informed the district court  
17 about the improper substitution and he was prejudiced because substituted counsel,  
18 Shannon Robinson, did not have standing to propound discovery in this case. [MIO  
19 4-9] The record reflects that Mr. Robinson filed an entry of appearance on behalf of  
20 Plaintiff on July 11, 2013, and he certified that the first set of interrogatories, requests

1 for production, and requests for admission were mailed to Defendant on August 21,  
2 2013. [RP 82-83] Given this information, we are not persuaded by Defendant’s  
3 arguments. *See City of Albuquerque v. Westland Dev. Co.*, 1995-NMCA-136, ¶ 34,  
4 121 N.M. 144, 909 P.2d 25 (“The appellant has the burden to point out clearly and  
5 specifically the error it asserts on appeal.”).

6 **Issue 3**

7 {7} In his docketing statement, Defendant argued that the district court erred with  
8 respect to various discovery issues, including whether substitute counsel had standing  
9 to propound discovery. [DS 4] He claimed that he preserved these issues orally and  
10 in writing, particularly via a motion to reconsider, filed on January 16, 2014. [DS 5;  
11 RP 96] We proposed to hold that Defendant did not demonstrate error or prejudice  
12 with respect to these issues. [CN 6-7]

13 {8} Defendant’s memorandum in opposition does not point out errors in fact or law  
14 with this Court’s proposed disposition. Instead, Defendant quotes allegations set forth  
15 in his motion to reconsider, filed January 16, 2014, and his answer to Plaintiff’s  
16 amended motion for summary judgment, filed May 12, 2015. [MIO 10] This does not  
17 satisfy Defendant’s burden on appeal. *See Hennessy*, 1998-NMCA-036, ¶ 24.

1 **Issue 4**

2 {9} In his docketing statement, Defendant argued that the district court erred in  
3 granting summary judgment in favor of Plaintiff. [DS 4] In support of this assertion,  
4 he claimed that Plaintiff failed to meet the standards for summary judgment and failed  
5 to properly support its motion for summary judgment with admissible evidence. [DS  
6 4] In our calendar notice, we stated that Defendant failed to provide this Court with  
7 sufficient information to review this alleged claim of error, so we presumed the  
8 correctness of the district court's actions. [CN 7-8]

9 {10} In response to our proposed disposition, Defendant refers to and quotes material  
10 from his answer to Plaintiff's amended motion for summary judgment. [MIO 10-11]  
11 As discussed above, this does not satisfy Defendant's burden on appeal. *See id.*

12 **Motion to Amend**

13 {11} In his memorandum in opposition, Defendant raises an issue that was not  
14 previously raised in his docketing statement. He asserts that Plaintiff lacked standing  
15 to file the complaint and collect on the judgment in this case. [MIO 11-15] Although  
16 Defendant did not move to amend his docketing statement to add this issue, we will  
17 consider the issue as if it had been raised pursuant to a proper motion to amend the  
18 docketing statement.

19 {12} This Court "may, upon good cause shown, allow for the amendment of the  
20 docketing statement." Rule 12-208(F) NMRA. We will deny motions to amend,

1 however, where the amendment seeks only to raise issues that are not viable. *State v.*  
2 *Moore*, 1989-NMCA-073, ¶ 42, 109 N.M. 119, 782 P.2d 91, *superceded by statute on*  
3 *other grounds as stated in State v. Salgado*, 1991-NMCA-044, 112 N.M. 537, 817  
4 P.2d 730.

5 {13} Despite Defendant’s assertions that there was no valid contract between  
6 Plaintiff and Defendant [MIO 11-15], the record establishes otherwise. At all material  
7 times to this lawsuit, Defendant owned property that was subject to the Declaration  
8 of Covenants, Conditions and Restrictions for Tanoan Community East Master  
9 Restrictions (Declaration), and as an owner of the property, Defendant was  
10 responsible for paying fees assessed by the Tanoan Community East Association, as  
11 well as penalties for violations of the Declaration. [RP 155-66] Thus, we deny the  
12 motion to amend.

13 {14} Accordingly, for the reasons stated here and in our notice of proposed summary  
14 disposition, we affirm.

15 {15} **IT IS SO ORDERED.**

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**RODERICK T. KENNEDY, Judge**

18 **WE CONCUR:**

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2 **JAMES J. WECHSLER, Judge**

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4 **MICHAEL D. BUSTAMANTE, Judge**