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

2 **JUDY L. HICKS-LOVELACE,**

3           Petitioner-Appellee,

4 v.

**NO. 31,488**

5 **DARRELL E. LOVELACE,**

6           Respondent,

7 and

8 **KDR TRUCKING, LLC, and**

9 **INEZ PERKINS,**

10          Intervenors-Appellants.

11 **APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY**

12 **Daniel Viramontes, District Judge**

13 Kretek Law Office LLC

14 Charles C. Kretek

15 Deming, NM

16 for Appellee

17 Frederick H. Sherman

18 Deming, NM

19 Caren I. Friedman

1 Santa Fe, NM

2 for Appellants

3 **MEMORANDUM OPINION**

4 **GARCIA, Judge.**

5 {1} Third party intervenors appeal an order determining that they have no standing  
6 to protect their interest in property at issue in an underlying dissolution of marriage  
7 action. When the post-judgment rulings in this divorce proceeding materially affected  
8 the property interests of a third party, we conclude that joinder of all the interested  
9 parties was necessary to allow for finality and to alleviate any due process concerns.

10 We reverse.

11 **BACKGROUND**

12 {2} In the underlying dissolution case, the final decree of dissolution of marriage  
13 awarded the spouses' interest in a 2003 Kenworth W900L Semi Truck and a 2004  
14 Manic Flatbed Semi Trailer to Husband. The truck and trailer were subject to a lease-  
15 purchase agreement with the previous owner, Lehr & Son Livestock. Husband  
16 remained obligated to pay and satisfy the lease-purchase agreement. To equalize the  
17 property settlement in the divorce, Husband was ordered to pay Wife \$2,700 per  
18 month until the community debts were fully paid. Husband failed to pay the monthly  
19 payments of \$2,700, and Wife filed a motion for contempt of court.

1 {3} The district court ruled that Husband was in indirect contempt of court for  
2 failure to make the monthly payments. Husband was ordered to jail for a term of six  
3 months or until he purged his debt to Wife, whichever was first to occur. The district  
4 court also ruled that Husband could purge his debt through monetary payment or by  
5 delivering to Wife the title and possession of the truck and trailer. However, Husband  
6 had already failed to pay on the lease-purchase agreement for the truck and trailer, and  
7 the previous owner had already repossessed the vehicles. After repossessing the  
8 vehicles, the previous owner sold the truck and trailer to KDR Trucking, a trucking  
9 company owned by Husband's mother.

10 {4} Following the district court's contempt order against Husband, Wife requested  
11 a Writ of Execution (the Writ) for possession of the truck and trailer. After service and  
12 execution of the Writ, and despite the fact that Husband no longer retained any interest  
13 in the vehicles, Wife obtained possession of the truck and trailer. It is undisputed that  
14 Wife obtained possession of the vehicles after they had been resold to KDR Trucking.

15 {5} To address the taking of the vehicles by Wife, KDR Trucking and Husband's  
16 mother (Intervenors) filed a motion to intervene and for a restraining order. The  
17 district court granted the motion to intervene and issued a temporary restraining order.  
18 However, after reviewing the parties' briefs and holding oral argument on the issue  
19 of whether the truck and trailer were seized from Intervenors without due process of

1 the law, the district court determined that Intervenor's did not have standing in the  
2 domestic relations proceedings because they were not attacking the original judgment  
3 and final decree. On that basis, the court dismissed Intervenor's motions and awarded  
4 title to and possession of the truck and trailer to Wife. Intervenor's timely appealed the  
5 district court's dismissal of their pending motions and the award of title to the vehicles  
6 to Wife.

#### 7 **STANDARD OF REVIEW**

8 {6} We will uphold a district court's denial of a motion to intervene, absent a clear  
9 abuse of discretion. *Apodaca v. Town of Tome Land Grant*, 1974-NMSC-026, ¶ 5, 86  
10 N.M. 132, 520 P.2d 552. "An abuse of discretion occurs when a ruling is clearly  
11 contrary to the logical conclusions demanded by the facts and circumstances of the  
12 case." *Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153. "A court  
13 abuses its discretion when it misapplies the law to the facts; we review the application  
14 of the law de novo to determine whether an abuse of discretion has occurred." *Wilson*  
15 *v. Mass. Mut. Life Ins. Co.*, 2004-NMCA-051, ¶ 21, 135 N.M. 506, 90 P.3d 525,  
16 *overruled on other grounds by Schultz el rel. Schultz v. Pojoaque Tribal Police Dep't*,  
17 2010-NMSC-034, 148 N.M. 692, 242 P.3d 259.

#### 18 **ARGUMENT**

1 {7} Intervenor raise two issues on appeal. First, they argue that the district court  
2 erred in concluding that Intervenor lacked standing to protect their claimed  
3 ownership interest to the vehicles in the domestic relations proceedings and must  
4 instead protect their ownership interest by attacking the district court’s divorce decree  
5 under Rule 1-060(B) NMRA. Second, Intervenor contend that the district court’s  
6 order awarding title to the vehicles to Wife deprived them of their property without  
7 due process of law. Wife has not responded to Intervenor’s appellate arguments.  
8 Despite this lack of a response from Wife, this Court must determine whether the  
9 rulings by the district court were erroneous. *See Lozano v. GTE Lenkurt, Inc.*,  
10 1996-NMCA-074, ¶ 30, 122 N.M. 103, 920 P.2d 1057 (“Our [r]ules of [a]ppellate  
11 [p]rocedure do not require an answer brief to be filed; instead, where no brief is filed,  
12 the cause may be submitted upon the brief of the appellant.”).

13 **STANDING**

14 {8} We first address whether it was proper for the district court to dismiss  
15 Intervenor’s motions based on its finding that Intervenor lacked standing to challenge  
16 the Writ. A proposed intervenor has standing to intervene where: (1) it “claims an  
17 interest relating to the property or transaction which is the subject of the action,” (2)  
18 it “is so situated that the disposition of the action may as a practical matter impair or  
19 impede [intervenor’s] ability to protect that interest,” and (3) its interest is not

1 adequately represented by the existing parties to the litigation. Rule 1-024(A)(2)  
2 NMRA. Whether a party has standing to litigate a particular issue is a question of law,  
3 which we review de novo. *Forest Guardians v. Powell*, 2001-NMCA-028, ¶ 5, 130  
4 N.M. 368, 24 P.3d 803.

5 {9} Intervenor's do not challenge the final outcome of the divorce proceedings and  
6 concede that they do not have standing to bring such a challenge to the final decree.  
7 However, after the final decree was entered, Husband's ownership interest in the  
8 vehicles remained subject to the previous owner's security interest under the lease-  
9 purchase agreement. It is undisputed that Husband failed to meet his obligations under  
10 the lease-purchase agreement, and that Lehr & Son Livestock repossessed the vehicles  
11 and resold them to Intervenor's. It is also undisputed that the repossession and sale  
12 occurred before Wife initiated contempt proceedings against Husband for his failure  
13 to satisfy the monthly payment obligations under the final decree. Thus, the  
14 undisputed facts establish that Intervenor's had obtained a valid ownership interest in  
15 the truck and trailer before Wife's initiation of the post-judgment contempt  
16 proceedings.

17 {10} Despite the undisputed facts, the district court erroneously provided Husband  
18 an opportunity to satisfy his contempt citation and debt to Wife by the delivery of the  
19 vehicles to her. As a result, Wife was able to obtain possession of the truck and trailer.

1 Intervenor's third party interests were only jeopardized and ripe for adjudication upon  
2 the issuance and execution of the Writ, effectuating delivery of the vehicles to Wife.  
3 As such, a Rule 1-060(B) motion to set aside the final judgment in the domestic  
4 proceedings would not be the appropriate means for third parties to protect their  
5 claimed ownership interest in the vehicles seized after the judgment was entered.  
6 However, the law abhors multiplicity of actions, consuming the time of the court and  
7 entailing additional expense to the parties. Accordingly, this Court previously held  
8 that a third party claiming an interest in community property in a divorce action has  
9 standing to intervene in the dissolution proceedings. *See Malcolm v. Malcolm*, 1965-  
10 NMSC-138, ¶ 8, 75 N.M. 566, 408 P.2d 143 (“[E]ither party to a divorce action may  
11 bring in third parties who claim an interest in the property alleged to be community,  
12 or third parties themselves may intervene and have their rights therein determined.”  
13 (internal quotation marks and citation omitted)); *Greathouse v. Greathouse*, 1958-  
14 NMSC-032, ¶ 6, 64 N.M. 21, 322 P.2d 1075 (“Not only is the state greatly concerned  
15 with marriage and divorce, it has as well a definite interest in the orderly  
16 determination of property rights of the parties involved.”). It would be incongruous  
17 to hold that a third party whose claim to property involved in a divorce action may be  
18 made a party to the action in order to adjudicate his rights therein even though his  
19 claim may have arisen independently before the divorce action, but that a third party

1 who acquired an interest in the property during the time period the actual litigation is  
2 pending has no standing to adjudicate his or her interest.

3 {11} We conclude that upon the service of the Writ, Intervenors acquired standing  
4 to protect their property rights which were jeopardized by the ongoing domestic  
5 relations proceedings between Husband and Wife. Consequently, in order to properly  
6 dispose of all of the post-decree issues raised by the contempt proceedings and the  
7 issuance of the Writ, it was necessary for the district court to allow intervention so that  
8 Intervenors could timely adjudicate and protect their ownership interest in the truck  
9 and trailer. *See Ruggles v. Ruggles*, 1993-NMSC-043, ¶ 31, 116 N.M. 52, 860 P.2d  
10 182 (recognizing the importance of achieving finality in divorce proceedings and  
11 avoiding future strife and confrontations). Under the facts of this case, it was an abuse  
12 of discretion for the district court to dismiss Intervenors' claims for lack of standing.

### 13 **DUE PROCESS**

14 {12} We now address Intervenors' second argument that the district court's award  
15 of the truck and trailer to Wife violated their constitutional rights because it deprived  
16 them of their property without due process of law. When post-judgment proceedings  
17 raise issues relating to third party property rights, the district court must consider the  
18 due process implications upon all property interests being addressed by the court. *See*  
19 *Sanchez v. Saylor*, 2000-NMCA-099, ¶ 40, 129 N.M. 742, 13 P.3d 960 (noting "that



1 a post-judgment amendment to impose liability simultaneously with an amendment  
2 adding a party violated both the rules of civil procedure and due process of law.”).

3 This Court reviews due process constitutional claims de novo. *Los Chavez Cmty.*  
4 *Ass’n v. Valencia Cnty.*, 2012-NMCA-044, ¶ 12, 277 P.3d 475.

5 {13} “Due process requires that no person shall be deprived of life, liberty, or  
6 property, without due process of law.” *Tri-State Generation & Transmission Ass’n,*  
7 *Inc. v. D’Antonio*, 2012-NMSC-039, ¶ 37, 289 P.3d 1232 (alterations, internal  
8 quotation marks, and citations omitted). It requires notice and an opportunity to be  
9 heard before deprivation. *Sandia v. Rivera*, 2002-NMCA-057, ¶ 12, 132 N.M. 201,  
10 46 P.3d 108; *see Wirtz v. State Educ. Ret. Bd.*, 1996-NMCA-085, ¶ 16, 122 N.M. 292,  
11 923 P.2d 1177 (“It is elementary that one is not bound by a judgment in personam  
12 resulting from litigation in which he is not designated as a party or to which he has not  
13 been made a party by service of process. . . . Failure to give notice violates the most  
14 rudimentary demands of due process of law.” (emphasis, internal quotation marks and  
15 citations omitted)). “In order to assert a procedural due process claim, a plaintiff must  
16 establish deprivation of a legitimate liberty or property interest and that he was not  
17 afforded adequate procedural protections.” *Tri-State Generation*, 2012-NMSC-039,  
18 ¶ 37 (alteration, internal quotation marks, and citation omitted).

1 {14} As previously discussed, the undisputed facts established that Intervenor were  
2 deprived of a validly claimed ownership interest. The district court was therefore  
3 authorized to address this post-judgment issue raised by Intervenor as part of its  
4 power to enforce the final decree of dissolution. *See Hall v. Hall*, 1992-NMCA-097,  
5 ¶ 38, 114 N.M. 378, 838 P.2d 995 (explaining that a district court has jurisdiction to  
6 enforce its judgment after it enters judgment). During its post-judgment contempt  
7 proceedings and prior to Intervenor’s motion to intervene, the district court did not  
8 adjudicate the ownership interests of Intervenor, or of Husband and Wife, to the truck  
9 and trailer. The question here is whether Intervenor were afforded notice and an  
10 opportunity to be heard concerning their claimed ownership interest in the same  
11 vehicles. *See id.*

12 {15} After learning of Intervenor’s claimed ownership interest in the vehicles, Wife  
13 filed a separate lawsuit raising claims of a fraudulent conveyance against Intervenor.  
14 When Wife failed to obtain title to the vehicles in this way—her case against  
15 Intervenor was dismissed with prejudice—Wife again attempted to obtain title to the  
16 vehicles, this time through the execution and service of the Writ. It was then that  
17 Intervenor became aware that their claimed ownership interest in the vehicles was  
18 jeopardized in these domestic proceedings and formally asserted their ownership  
19 rights by moving to intervene. Although the district court was aware of these post-

1 judgment ownership issues and of the fact that third party rights had not been  
2 addressed prior to the issuance of the Writ, it did not allow evidence on the issue.  
3 Once raised, these issues should have been addressed and resolved after an evidentiary  
4 hearing. *See Bd. of Educ. v. Harrell*, 1994-NMSC-096, ¶¶ 31-32, 118 N.M. 470, 882  
5 P.2d 511 (discussing the importance of “an evidentiary hearing which comports with  
6 the minimum requirements of due process”). Instead, the district court entered  
7 findings, conclusions, and an order that addressed Husband’s debt to Wife by  
8 erroneously awarding ownership of the truck and trailer to Wife without allowing  
9 intervention or holding any hearings to address the ownership interest claimed by  
10 Intervenors.

11 {16} By denying Intervenors standing to address their claimed ownership interest in  
12 the vehicles, we determine that the district court violated Intervenors’ due process  
13 rights. Accordingly, we reverse the decision of the district court awarding ownership  
14 of the truck and trailer to Wife. We remand this matter to the district court to allow  
15 intervention and for further proceedings to address whether Intervenors established  
16 a priority ownership interest in the truck and trailer.

17 **CONCLUSION**

18 {17} For the foregoing reasons, we reverse the order of the district court and remand  
19 for further proceedings consistent with this Opinion.

1 {18} **IT IS SO ORDERED.**

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**TIMOTHY L. GARCIA, Judge**

4 **WE CONCUR:**

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6 **CYNTHIA A. FRY, Judge**

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8 **LINDA M. VANZI, Judge**