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

2 **BANK OF NEW YORK**
3 **MELLON TRUST COMPANY,**
4 **NATIONAL ASSOCIATION AS**
5 **GRANTOR TRUSTEE OF THE**
6 **PROTIUM MASTER GRANTOR**
7 **TRUST,**

8 Plaintiff-Appellee,

9 **v.**

NO. 35,710

10 **SCOTT ALLAN JORDAN and**
11 **TRACEY A. JORDAN,**

12
13 Defendants-Appellants,

14 **and**

15 **CRYSTAL MELISSA LOVATO,**
16 **ROSEMARY ANNE JORDAN,**
17 **NEW MEXICO EDUCATORS**
18 **FEDERAL CREDIT UNION, THE**
19 **UNKNOWN SPOUSE OF CRYSTAL**
20 **MELISSA LOVATO, IF ANY, and**
21 **THE UNKNOWN SPOUSE OF**
22 **ROSEMARY ANNE JORDAN,**
23 **IF ANY,**

24 Defendants.

1 **APPEAL FROM THE DISTRICT COURT OF TORRANCE COUNTY**
2 **Matthew G. Reynolds, District Judge**

3 Holland & Hart, LLP
4 Larry J. Montano
5 Santa Fe, NM

6 for Appellee

7 Scott Allan Jordan
8 Estancia, NM

9 Pro Se Appellant

10 **MEMORANDUM OPINION**

11 **VANZI, Chief Judge.**

12 {1} Defendants, who are self-represented litigants, appeal from the district court's
13 order denying their motion for reconsideration of the district court's denial of
14 Defendants' motion for relief from judgment. Unpersuaded by Defendants' docketing
15 statement that they demonstrated error, we issued a notice of proposed summary
16 disposition, proposing to affirm. Defendants have filed a memorandum in opposition
17 to our notice. We have duly considered Defendants' response and remain
18 unpersuaded. We, therefore, affirm.

1 {2} Defendants’ docketing statement listed ten issues, which broadly contested the
2 district court’s rulings on various motions and mostly disputed matters involving
3 Plaintiff’s standing. [DS 3-5] In our effort to address all of their concerns, we set forth
4 three principles we considered dispositive of their appeal. Defendants’ lengthy
5 response to our notice largely ignores our analysis, pursues all ten issues, and persists
6 in their challenge of Plaintiff’s standing. This does not persuade the Court that our
7 proposed analysis was incorrect.

8 {3} We briefly reiterate the grounds for affirmance. First, Defendants waived their
9 ability to challenge Plaintiff’s standing on appeal to this Court by the failure to timely
10 appeal from the district court’s previous final order of October 22, 2013, [RP vol. 6
11 1242] which denied Defendants’ timely motion that sought reconsideration of the
12 judgment of foreclosure. *See* Rule 1-059(E) NMRA (“A motion to alter, amend, or
13 reconsider a final judgment shall be filed not later than thirty (30) days after entry of
14 the judgment.”); Rule 12-201(D)(1) NMRA (explaining that timely motions for
15 reconsideration or a Rule 1-060(B) NMRA motion filed within thirty days of the
16 challenged order extends the time for filing a notice of appeal until an order is entered
17 expressly disposing of the motion). Our review is limited to whether Defendants
18 established grounds for relief from the foreclosure judgment under Rule 1-060(B).

1 {4} Second, a judgment is not voidable under Rule 1-060(B)(4) NMRA for lack of
2 standing. *See Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶ 34, 369
3 P.3d 1046 (clarifying that standing in a foreclosure action to enforce a promissory
4 note is prudential, not a jurisdictional requirement, and the lack of standing does not
5 render a foreclosure judgment voidable under Rule 1-060(B)). Because standing
6 cannot be the basis for the collateral attack under Rule 1-060(B), we do not consider
7 Defendants' continued challenge to Plaintiff's standing. *See Johnston*, 2016-NMSC-
8 013, ¶ 34.

9 {5} Third and lastly, to the extent that Defendants' issues relate to the authenticity
10 of the loan documents or to the Truth in Lending Act, the Unfair Practices Act or other
11 affirmative claims of wrongdoing, we are not persuaded for the reasons persuasively
12 set forth in Plaintiff's response of March 21, 2016: these issues are not properly before
13 us in this collateral attack insofar as they relate to standing; these issues are not
14 properly before us insofar as violations of the various statutes should have been raised
15 as counterclaims in the foreclosure proceeding; Defendants' rescission claim is not
16 properly before us insofar as it is time-barred; and Defendants' authenticity arguments
17 were unsupported. [RP vol. 8 1780-90] Our notice invited Defendants to clearly state
18 the legal or factual reasons they believe Plaintiff's response is incorrect and where in
19 the record it shows they preserved these reasons in district court. Defendants'
20 response has not clearly established any error.

1 {6} For the reasons stated in this opinion and in our notice, we affirm the district
2 court.

3 {7} **IT IS SO ORDERED.**

4 _____
5 **LINDA M. VANZI, Chief Judge**

6 **WE CONCUR:**

7 _____
8 **M. MONICA ZAMORA, Judge**

9 _____
10 **STEPHEN G. FRENCH, Judge**