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

2 **STEPHEN ROSENBLATH,**

3 Plaintiff-Appellant,

4 v.

No. A-1-CA-36852

5 **GARRET VENEKLASEN and**

6 **ANNIE D. VENEKLASEN,**

7 Defendants-Appellees.

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

9 **Jeff McElroy, District Judge**

10 Stephen Rosenblath

11 Taos, NM

12 for Appellant

13 Stranahan Law Firm, LLC

14 Robert Allen Stranahan, IV

15 Santa Fe, NM

16 for Appellees

17 **MEMORANDUM OPINION**

18 **HANISEE, Judge.**

1 {1} Plaintiff Stephen Rosenblath appeals the final order in his lawsuit seeking to
2 establish the existence of an easement across the property of a neighbor. [DS 1] This
3 Court issued a notice of proposed summary disposition proposing to affirm that order,
4 and Plaintiff has filed a memorandum in opposition to that disposition, which he
5 subsequently amended. [amended MIO unnumbered page 1]¹ Having duly considered
6 Plaintiff's amended memorandum in opposition to summary disposition, we remain
7 unpersuaded and affirm.

8 {2} Plaintiff continues to assert that the district court judge who heard this case
9 should have recused. [amended MIO unnumbered pages 2-3, 8] In his memorandum,
10 however, Plaintiff still does not assert any constitutional, statutory, or ethical basis for
11 a recusal. [Id.] Absent any specific allegation of impropriety or prejudice suffered at
12 trial, we cannot determine that the district court judge abused his discretion by not
13 recusing himself from this case.

14 {3} Plaintiff similarly continues to assert that Defendants did not establish facts
15 necessary to their counterclaim and that damages awarded on a counterclaim as well
16 as attorney fees were both excessive. [amended MIO unnumbered pages 8-9, 6-7, 5,
17 4, 10-11] However, as we explained in our notice of proposed summary disposition:

19 ¹It appears that the pages of Plaintiff's amended memorandum in opposition to
20 summary disposition, which bear no page numbers, were filed out of order. Citations
21 in this opinion refer to the pages in the order they appear as docketed in this appeal.

1 to the extent that Plaintiff asks this Court to review whether there was
2 evidence to support any factual finding of the district court, Plaintiff
3 must provide us with a summary of whatever relevant evidence was
4 offered in support of the challenged fact. *See* Rule 12-208(D)(3) NMRA
5 (requiring appellants to provide a “concise, accurate statement of the
6 case summarizing all facts material to a consideration of the issues
7 presented”); *Thornton v. Gamble*, 1984-NMCA-093, ¶ 18, 101 N.M.
8 764, 688 P.2d 1268 (noting that in order to review factual findings on
9 appeal, the docketing statement must “recite any evidence which
10 supports the trial court’s findings”).

11 [CN 4-5]

12 And we further instructed Plaintiff that, should he choose to file a memorandum in
13 opposition:

14 he should identify the specific fact or facts that he believes were not
15 supported by any evidence, along with a summary of any evidence
16 considered or relied upon by the district court in connection with such
17 fact or facts. *See State v. Sisneros*, 1982-NMSC-068, ¶ 7, 98 N.M. 201,
18 647 P.2d 403 (“[t]he opposing party to summary disposition must come
19 forward and specifically point out errors in fact and in law”); *See also*
20 *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8,
21 111 N.M. 6, 800 P.2d 1063 (stating that the burden is on the appellant to
22 clearly demonstrate that the trial court erred).

23 [CN 5]

24 {4} Unfortunately, Plaintiff’s amended memorandum in opposition to summary
25 disposition does not summarize any of the evidence relied upon by the district court
26 or otherwise material to the district court’s decision regarding the existence, or non-
27 existence, of an easement in this case. As a result, this Court remains in the same
28 position it was in prior to receiving Plaintiff’s amended memorandum: “we cannot say

1 whether the district court erred in finding that Plaintiff failed to carry his burden of
2 proving the existence of an easement or that Defendants successfully proved a trespass
3 resulting in damages.” [CN 6] Ultimately, Plaintiff has not met his burden of
4 establishing and explaining the error he would have us correct, leaving us in no
5 position to reverse the district court’s findings of fact.

6 {5} Similarly, Plaintiff fails to inform this Court what evidence was actually before
7 the district court when it assessed damages and awarded attorney fees, leaving us in
8 no position to review that court’s calculation of those damages. Instead, Plaintiff
9 directs us to photographs and documents that may or may not have been offered in
10 evidence at trial.[amended MIO unnumbered page 5] Because this Court does not
11 make factual findings, but instead reviews factual findings made below on the basis
12 of the evidence offered at trial, appellants are required to provide this Court with a
13 summary of the trial evidence in order to facilitate our review of the sufficiency of that
14 evidence. *See* Rule 12-208(D)(3) NMRA (requiring appellants to provide a “concise,
15 accurate statement of the case summarizing all facts material to a consideration of the
16 issues presented”); *Thornton*, 1984-NMCA-093, ¶ 18 (noting that in order to review
17 factual findings on appeal, the docketing statement must “recite any evidence which
18 supports the trial court’s findings”); *Farmers*, 1990-NMSC-100, ¶ 8 (stating that the
19 burden is on the appellant to clearly demonstrate that the trial court erred).

1 {6} Thus, our notice of proposed summary disposition explicitly instructed Plaintiff
2 that “any memorandum in opposition that he chooses to file should include a concise
3 summary of the evidence before the district court when the damages and attorneys
4 fees were calculated.” [CN 6] Plaintiff’s memorandum makes no attempt to inform
5 this Court what evidence the district court considered in awarding damages and
6 attorney fees. As a result, there is no basis before this Court upon which to reverse the
7 district court’s determination of damages or fees.

8 {7} Thus, for the foregoing reasons, as well as the reasons provided in our notice
9 of proposed summary disposition, we affirm the final order entered by the district
10 court below.

11 {8} **IT IS SO ORDERED.**

12 _____
13 **J. MILES HANISEE, Judge**

14 **WE CONCUR:**

15 _____
16 **JULIE J. VARGAS, Judge**

17 _____
18 **JENNIFER L. ATTREP, Judge**