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

7 **PATRICIA KINNEY, ELIZABETH**
8 **HOFFMAN, JAMES SALOPEK, and**
9 **CHRISTINE BROWN,**

10 Plaintiff-Appellees,

11 v.

NO. 30,715

12 **KEVIN J. HANRATTY,**

13 Defendant-Appellant.

14 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

15 **Valerie Mackie Huling, District Judge**

16 The Pickett Law Firm

17 Keith S. Burns

18 Las Cruces, NM

19 for Appellees

20 Kevin J. Hanratty

21 Artesia, NM

22 Pro Se Appellant

23 **MEMORANDUM OPINION**

24 **KENNEDY, Judge.**

25 Defendant appeals pro se from Judge Malott's order denying Defendant's

1 motion to recuse, imposing sanctions on Defendant pursuant to Rule 1-011 NMRA,
2 and then sua sponte recusing himself because he could not be impartial or, at the least,
3 there was an appearance of impropriety. [RP 583-585] We proposed to dismiss for
4 lack of a sufficiently final order in a notice of proposed summary disposition.
5 Defendant filed a memorandum in opposition characterizing our proposed disposition
6 as “summary affirmance” instead of dismissal. After reviewing Defendant’s
7 memorandum, which fails to address our concerns as to finality, we are unconvinced
8 that our proposed disposition is in error, and thus we dismiss Defendant’s appeal for
9 lack of a sufficiently final order.

10 As discussed more fully in our notice of proposed summary disposition, the
11 right to appeal is restricted to final judgments and decisions. *See* NMSA 1978,
12 § 39-3-2 (1966); *Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 234-40, 824 P.2d
13 1033, 1036-42 (1992). In this case, Plaintiffs’ claims against Defendant for legal
14 malpractice in connection with a probate proceeding and a challenge to the will of
15 Plaintiffs’ father are still pending. Furthermore, there are ongoing discovery issues,
16 pending summary judgment motions, and a possible trial on the merits. [*See generally*
17 RP 671-780] Therefore, our notice of proposed summary judgment proposed to
18 conclude that Judge Malott’s order is not a final order because Defendant is still a
19 party to the proceedings, and Plaintiffs’ claims are still ongoing. We proposed to

1 dismiss because, in light of the numerous matters pending before the district court,
2 resolving the issues raised in Defendant’s appeal at this juncture would conflict with
3 our policy against fragmenting issues and piecemeal appeals. *See Kelly Inn No. 102,*
4 *Inc.*, 113 N.M. at 239, 824 P.2d at 1041.

5 In our previous notice, we also considered Defendant’s contention that a writ
6 of error should issue because Judge Malott allegedly admitted “to personal animus by
7 a party before he was appointed to the bench.” [DS 10] We were unconvinced
8 because there is no indication that Judge Malott admitted to any personal animus by
9 anyone before he was appointed to the bench. [RP 585] Moreover, to the extent
10 Defendant was challenging Judge Malott’s authority to impose sanctions at a point
11 when he admittedly could not act with impartiality towards Defendant, [RP 585] we
12 proposed to hold that this matter was not appropriate for review by writ of error. *See*
13 *Rule 12-503(E)(2) NMRA* (noting the requirements for a writ of error which include
14 a showing that the order appealed from “(a) conclusively determines the disputed
15 question; (b) resolves an important issue completely separate from the merits of the
16 action; and (c) would be effectively unreviewable on appeal from a final judgment
17 because the remedy by way of appeal would be inadequate”); *King v. Allstate Ins. Co.*,
18 2004-NMCA-031, ¶ 16, 135 N.M. 206, 86 P.3d 631 (observing that collateral orders
19 in civil cases have historically been restricted to orders denying motions to dismiss

1 based on claims of immunity).

2 In his memorandum in opposition, Defendant fails to address, much less
3 dispute, the analysis contained in our proposed disposition. [MIO 1-25] Instead, he
4 merely provides additional background information regarding Plaintiffs' malpractice
5 action and Defendant's motion seeking to recuse Judge Malott, and he restates his
6 arguments contending that Judge Malott's actions were in error. [MIO 2-14] He also
7 provides an informal transcript of a portion of the hearing before Judge Malott on July
8 9, 2010. [MIO 15-25]

9 In light of Defendant's failure to address any of the reasoning contained in our
10 notice of proposed summary disposition, we remain convinced that Defendant is
11 seeking to appeal from an order which is interlocutory in nature and thus not
12 sufficiently final for purposes of appeal. We also remain convinced that Defendant
13 has failed to state a claim that is appropriate for consideration pursuant to a petition
14 for writ of error.

15 **CONCLUSION**

16 Therefore, for the reasons set forth above and those discussed in our notice of
17 proposed summary disposition, we dismiss Defendant's appeal because it is not
18 sufficiently final for purposes of appellate review, and to the extent Defendant seeks
19 review pursuant to a petition for writ of error, we deny his petition.

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IT IS SO ORDERED.

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RODERICK T. KENNEDY, Judge

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WE CONCUR:

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JAMES J. WECHSLER, Judge

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CYNTHIA A. FRY, Judge