

BOKF, N.A. V. METZGAR

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**BOKF, N.A., A NATIONAL BANKING
ASSOCIATION, d/b/a BANK OF
OKLAHOMA, AS SUCCESSOR IN
INTEREST BY MERGER TO BANK
OF OKLAHOMA, N.A.,
Plaintiff-Appellee,
v.
ROY A. METZGAR, YVONNE M.
METZGAR, EQUIFIRST CORPORATION,
Defendants,
and
MUKHTIAR KHALSA,
Putative Intervenor-Appellant.**

No. A-1-CA-36266

COURT OF APPEALS OF NEW MEXICO

February 28, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Nan G. Nash,
District Judge

COUNSEL

Richard M. Leverick, Albuquerque, NM, for Appellee

Mukhtiar Khalsa, Santa Cruz, NM, Pro Se Appellant

JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, STEPHEN
G. FRENCH, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Mukhtiar Khalsa appeals from the district court's order denying his motion to intervene following default judgment in favor of BOKF, N.A. (Plaintiff). [DS 2; RP 231, 244] This Court issued a notice proposing to summarily affirm. Khalsa has filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} Khalsa raises two primary contentions on appeal: (1) the district court improperly denied his motion to intervene, and (2) Plaintiff lacked standing to foreclose upon the subject property. [DS 3-4] This Court proposed to affirm on the grounds Khalsa failed to demonstrate how the district court erred in denying his motion to intervene, and Khalsa lacks standing to challenge the merits of the foreclosure judgment. [CN 2-3]

{3} Khalsa argues in his memorandum in opposition the district court erred in denying his motion to intervene because Plaintiff failed to respond to his motion. [MIO 6] In support of this argument, Khalsa cites Rule 1-058(D) NMRA, which addresses examination of an order by counsel before it is signed, and *Lujan v. City of Albuquerque*, 2003-NMCA-104, ¶¶ 15-17, 134 N.M. 207, 75 P.3d 423, in which this Court discussed a previous version of Rule 1-007.1(D) NMRA and the proper manner in which to request entry of summary judgment and dismissal with prejudice based on a failure to timely respond. We note the applicable version of Rule 1-007.1(D) states, "Unless otherwise specifically provided in these rules, any written response. . . shall be filed within fifteen (15) days after service of the motion. If a party fails to file a response within the prescribed time period the court may rule with or without a hearing." Therefore, the lack of Plaintiff's response to the motion to intervene does not provide a basis for granting Khalsa's motion. Thus, Khalsa has not demonstrated the district court erred in denying his motion.

{4} Accordingly, for the reasons set forth in our notice of proposed disposition and explained herein, we affirm.

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

LINDA M. VANZI, Chief Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

STEPHEN G. FRENCH, Judge