

BANK OF NY V. MCDONALD

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**THE BANK OF NEW YORK MELLON f/k/a
THE BANK OF NEW YORK, as Trustee
for THE CERTIFICATEHOLDERS OF
CWMBBS, INC., CHL MORTGAGE PASS-
THROUGH TRUST 2001-15 MORTGAGE
PASS-THROUGH CERTIFICATE SERIES
2007-15,
Plaintiff-Appellee,
v.
TOBY P. GARCIA; BEATRICE GARCIA;
NEW MEXICO BANK & TRUST;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. (solely as a nominee for lender
and lenders' successors and assigns),
Defendants,
and
MATT MCDONALD, as Trustee for THE
3 QUIET LANE TRUST,
Proposed Intervenor-Appellant.**

No. A-1-CA-36853

COURT OF APPEALS OF NEW MEXICO

June 20, 2018

APPEAL FROM THE DISTRICT COURT SANDOVAL COUNTY, John F. Davis, District
Judge

COUNSEL

Weinstein & Riley, P.S., Jason Bousliman, Albuquerque, NM, for Appellee

Patrick Lopez, Albuquerque, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: HENRY M. BOHNHOFF, Judge, STEPHEN G. FRENCH, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Proposed Intervenor-Appellant Matt McDonald, as Trustee for the 2 Quiet Lane Trust (McDonald) appeals from the district court's denial of his motion to reconsider denial of his motion to intervene. [DS unnumbered 2] We issued a notice proposing to affirm. [CN 1, 5] McDonald has filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} McDonald continues to argue his motion to intervene should not have been denied on timeliness grounds. [MIO 1-2] In support, McDonald cites *Cooper v. Albuquerque City Commission*, 1974-NMSC-006, ¶ 22, 85 N.M. 786, 518 P.2d 275, in which our Supreme Court held the district court did not err in granting intervention where the intervenor filed his motion after the conclusion of the trial but before entry of the final judgment. Unlike in *Cooper*, however, McDonald filed his motion to intervene eight months after entry of the final judgment of foreclosure. [1 RP 213, 2 RP 253] Also unlike the facts of *Cooper*, McDonald fails to demonstrate the existence of any relationship between the parties which would have indicated to McDonald his interests were being protected during the foreclosure litigation obviating a need to intervene sooner. See *id.* ¶ 21. This Court has no duty to review an argument that is not adequately developed. See *Headley v. Morgan Mgmt. Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining to entertain a cursory argument that included no explanation of the party's argument and no facts that would allow this Court to evaluate the claim); see also *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments, or guess at what a party's arguments might be." (alteration, internal quotation marks, and citation omitted)). We therefore conclude McDonald has not demonstrated the district court abused its discretion in denying his motion to intervene.

{3} McDonald also continues to argue his counsel's new knowledge of a "No Deficiency Agreement" between McDonald, as trustee, and the former homeowner constitutes newly discovered evidence justifying reconsideration of his motion to intervene. [MIO 3] We first note the agreement, along with the quitclaim deed, was executed March 9, 2015, approximately a month after entry of the foreclosure judgment and seven months before the motion to intervene. [2 RP 289-91] Thus, we suggest the existence of the agreement, apparently signed by McDonald, himself, was not newly discovered evidence McDonald's counsel could not have found through the exercise of due diligence. Moreover, McDonald's memorandum in opposition does not adequately explain how the creation of the agreement and any resulting relationship would have affected the outcome of the foreclosure proceedings such that intervention was justified.

See *Elane Photography, LLC*, 2013-NMSC-040, ¶ 70. We therefore conclude McDonald has not demonstrated the district court erred in denying the motion to reconsider.

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

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

J. MILES HANISEE, Judge

WE CONCUR:

HENRY M. BOHNHOFF, Judge

STEPHEN G. FRENCH, Judge