

BREWER V. NIEMYJSKI

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**WILLIE H. BREWER and
ANNA NITA BREWER,**
Plaintiffs-Appellees,
v.
TADEUSZ NIEMYJSKI,
Defendant-Appellant.

NO. 29,688

COURT OF APPEALS OF NEW MEXICO

November 24, 2009

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY, John W. Pope,
District Judge

COUNSEL

Steider & Associates, P.C., Timothy D. Steider, Albuquerque, NM, for Appellees

Tadeusz Niemyjski, Meadow Lake, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Defendant Tadeusz Niemyjski appeals the district court's judgment ordering him to vacate real property and to pay damages, costs, and attorney fees. On September 1, 2009, this Court filed a notice of proposed summary disposition proposing to affirm the

district court. Defendant filed a memorandum in opposition to summary disposition, which we have given due consideration. We affirm the district court.

Defendant argues that it was error for the district court to allow Plaintiffs Willie H. and Anna Nita Brewer to sue him as individuals rather than as trustees of the Brewer Family Trust. Rule 1-017(A) NMRA provides: “Every action shall be prosecuted in the name of the real party in interest; but [a] trustee of an express trust . . . may sue in that person’s own name without joining the party for whose benefit the action is brought.”

“Interpretation of both a court rule and a statute are questions of law that we review de novo on appeal.” *State v. Romero*, 2006-NMCA-126, ¶ 5, 140 N.M. 524, 143 P.3d 763, *aff’d*, 2007-NMSC-030, 141 N.M. 733, 160 P.3d 914. “In interpreting a Supreme Court rule of procedure, we look first to the rule’s plain language.” *Gates v. State, Taxation & Revenue Dept.*, 2008-NMCA-023, ¶ 10, 143 N.M. 446, 176 P.3d 1178. “If the rule is unambiguous, we give effect to its language and refrain from further interpretation.” *In re Michael L.*, 2002-NMCA-076, ¶ 9, 132 N.M. 479, 50 P.3d 574. “[The rules of civil procedure] shall be construed and administered to secure the just, speedy and inexpensive determination of every action.” Rule 1-001(A) NMRA.

We conclude that the language of Rule 1-017(A) is unambiguous, and thus the Brewers, who are trustees of an express trust, could sue in their own names without specifying their capacity as trustees. Accordingly, we affirm the district court.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

RODERICK T. KENNEDY, Judge