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

2 Opinion Number: _____

3 Filing Date: July 25, 2023

4 **No. A-1-CA-39622**

5 **FOUR HILLS PARK GROUP, LLC**
6 **d/b/a FOUR HILLS PRIVATE**
7 **COMMUNITY,**

8 Plaintiff-Appellee,

9 v.

10 **LEOPOLO MASABARAKIZA,**

11 Defendant-Appellant.

12 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**
13 **COUNTY**

14 **Jason M. Jaramillo, Metropolitan Court Judge**

15 Vance, Chavez & Associates, LLC
16 James A. Chavez
17 Albuquerque, NM

18 for Appellee

19 New Mexico Legal Aid, Inc.
20 Thomas Prettyman
21 Albuquerque, NM

22 for Appellant

1 **OPINION**

2 **DUFFY, Judge.**

3 {1} In this appeal, we interpret two sections of the Mobile Home Park Act, NMSA
4 1978, §§ 47-10-1 to -23 (1983, as amended through 2007), to determine what is
5 required when serving a notice of nonpayment of rent on a mobile home park
6 resident. Defendant Leopolo Masabarakiza appeals from the metropolitan court’s
7 order granting restitution of the mobile home space to Plaintiff Four Hills Park
8 Group, LLC, as well as the court’s denial of Defendant’s two counterclaims.
9 Defendant argued below that Four Hills violated the requirements for serving notice
10 found in Section 47-10-3(B) when it posted a notice of nonpayment of rent on his
11 door but did not send a copy of the notice by certified mail. *See id.* (“If service is
12 made by posting the notice, a copy of the notice shall also be sent by certified mail
13 to the mobile home tenant.”). The metropolitan court held that the Mobile Home
14 Park Act does not require certified mailing of a nonpayment notice because the Act
15 contains a specific and separate provision concerning nonpayment of rent, Section
16 47-10-6, which allows for notice by service or posting.

17 {2} On appeal, Defendant renews his argument. We hold that a notice of
18 nonpayment of rent is subject to the service requirements set forth in Section 47-10-
19 3(B). Consequently, Four Hills was required to send the notice of nonpayment by
20 certified mail in addition to posting. Because it did not do so, we reverse the

1 judgment in favor of Four Hills on its petition for termination of tenancy. We affirm
2 the denial of Defendant’s two counterclaims.

3 **BACKGROUND**

4 {3} Four Hills posted a notice of nonpayment of rent on the front door of
5 Defendant’s mobile home. The notice was titled, “Three Day Notice of Non-
6 Payment of Rent” and stated that Defendant owed a total of \$397.86. The notice
7 stated, “If the Total Amount Due shown above is not paid within three (3) days from
8 the date of delivery set out below, the rental agreement is terminated.” There were
9 two boxes to check how the notice was served, either “personally delivered to
10 Resident” or “posted/taped to front door of home,” and the latter was checked.

11 {4} After the time for curing the overdue rent had passed, Four Hills filed a
12 petition in the metropolitan court seeking to evict Defendant. Three days after that,
13 Defendant gave Four Hills a money order for \$600. Four Hills accepted the money
14 order but declined to deposit it and proceeded with its petition. Before trial,
15 Defendant filed an answer and asserted as an affirmative defense that service of the
16 three-day notice was insufficient. Defendant also asserted two counterclaims based
17 on allegations that Four Hills had been overcharging Defendant. Following a bench
18 trial, the metropolitan court issued a final judgment in favor of Four Hills and denied
19 Defendant’s counterclaims. This appeal followed.

1 **DISCUSSION**

2 **I. Service of the Notice of Nonpayment Was Inadequate**

3 {5} At issue is whether the service requirements for notices of termination in
4 Section 47-10-3(B) of the Mobile Home Park Act apply to notices of nonpayment
5 of rent under Section 47-10-6. Resolution of this issue requires us to construe these
6 provisions of the Mobile Home Park Act. We review questions of statutory
7 construction de novo. *State v. Rivera*, 2004-NMSC-001, ¶ 9, 134 N.M. 768, 82 P.3d
8 939. “The chief aim of statutory construction is to give effect to the intent of the
9 [L]egislature.” *Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037,
10 ¶ 11, 121 N.M. 817, 918 P.2d 1317 (internal quotation marks and citation omitted).
11 “We start with the language itself, giving effect to its plain meaning where
12 appropriate.” *Benny v. Moberg Welding*, 2007-NMCA-124, ¶ 5, 142 N.M. 501, 167
13 P.3d 949. “When construing individual statutory sections contained within an act,
14 courts examine the overall structure of the act and consider each section’s function
15 within the comprehensive legislative scheme.” *Britton v. Off. of Att’y Gen.*, 2019-
16 NMCA-002, ¶ 27, 433 P.3d 320.

17 {6} We begin with the statutory sections at issue. Section 47-10-3(A) states that
18 “no tenancy in a mobile home park shall be terminated until a notice to quit has been
19 served upon the mobile home resident.” Subsection (B) lays out the service
20 requirements for a notice to quit:

1 The notice to quit shall be served by delivering the notice to the mobile
2 home tenant personally or by posting the notice at the main entrance of
3 the mobile home. If service is made by posting the notice, a copy of the
4 notice shall also be sent by certified mail to the mobile home tenant,
5 return receipt requested. The date of a posting shall be included on the
6 posted notice and on the copy mailed to the mobile home tenant and
7 shall constitute the effective date of the notice.

8 Section 47-10-3(B). Under the plain terms of this section, if a landlord chooses to
9 post the notice to quit, they must also send the notice by certified mail to the tenant.

10 *Id.*

11 {7} In addition to setting out the requirements for proper service, Section 47-10-3
12 identifies what the notice must state, including the reason for the termination of the
13 tenancy. *See* § 47-10-3(A)(5). The reasons justifying termination are found in other
14 sections of the Mobile Home Park Act. *See Mulvaney*, 1996-NMSC-037, ¶ 7. In
15 Section 47-10-5, the Legislature identified a list of reasons why a tenancy “shall” be
16 terminated. Failure to pay rent is not included in Section 47-10-5. Nonpayment is,
17 instead, addressed specifically in Section 47-10-6, which provides another
18 circumstance in which a lease “may” be terminated:

19 Any tenancy or other estate at will or lease in a mobile home park
20 may be terminated upon the landlord’s written notice to the tenant
21 requiring, in the alternative, payment of rent and utility charges or the
22 removal of the tenant’s unit from the premises, within a period of not
23 less than three days after the date notice is served or posted, for failure
24 to pay rent when due.

25 *Id.*

1 {8} Despite the permissive language in Section 47-10-6 that the tenancy “may”
2 be terminated if the overdue rent is not cured, landlords typically do not allow a
3 tenant to continue living on the premises without paying rent; consequently, a
4 tenant’s failure to pay the overdue amount within the time specified in the notice
5 places the tenant in jeopardy of having the lease terminated. The Mobile Home Park
6 Act does not require the landlord to send a separate notice to quit in the event the
7 overdue rent is not timely cured, and therefore, a notice of nonpayment under Section
8 47-10-6 functions as a notice of termination, i.e., a notice to quit, when the past-due
9 rent is not paid. As such, a notice of nonpayment falls under the umbrella of Section
10 47-10-3, which by its plain language applies broadly to all notices that terminate a
11 tenancy in a mobile home park. *See* § 47-10-3(A) (stating that “no tenancy in a
12 mobile home park shall be terminated until a notice to quit has been served upon the
13 mobile home resident”).

14 {9} This construction conforms with the historical understanding that a notice of
15 nonpayment is a notice to quit. *See El Dorado Inv. Co. v. Burrus*, 1923-NMSC-050,
16 ¶ 8, 28 N.M. 551, 215 P. 819 (noting that before an action of forcible entry or
17 unlawful detainer may be maintained, “three days’ notice to quit must be given in
18 writing to the defendant” by statute “to provide a short time within which a
19 defaulting tenant might pay past-due rent and thereby defeat or obviate a forfeiture
20 of his lease” (internal quotation marks omitted)); *N.M. Motor Corp. v. Bliss*, 1921-

1 NMSC-044, ¶ 11, 27 N.M. 304, 201 P. 105 (noting that a three-day notice to quit
2 upon nonpayment of rent “was evidently designed to take the place of the common-
3 law demand, and to provide a short time within which the tenant might pay the rent,
4 and thus save the forfeiture”).

5 {10} Likewise, this construction is also supported by the form approved by our
6 Supreme Court for use as a three-day notice of nonpayment of rent under the Mobile
7 Home Park Act. *See* Rule 4-921 NMRA (Form 4-921) (providing the civil form
8 approved for notice of nonpayment of rent). The form contains two boxes to indicate
9 how notice was served:

10 Service of notice:

11 [] personally delivered to resident

12 [] posted on the mobile home on _____ (date) and mailed
13 certified mail, return receipt requested

14 *Id.* (use note omitted). Form 4-921 also has a use note regarding service that states:

15 2. Section 47-10-3 . . . provides that service of a notice to quit shall
16 be served by delivering the notice to the tenant personally or by posting
17 the notice at the main entrance of the mobile home and sending a copy
18 to the tenant by certified mail, return receipt requested. If this notice is
19 personally delivered to the resident, mailing or posting is not required.
20 The date of posting must be included on the posted notice and on the
21 copy mailed to the mobile home tenant.

1 *Id.* use note 2. On its face, Form 4-921 and its use notes indicate that our Supreme
2 Court also views a notice of nonpayment as a notice to quit, subject to the service
3 requirements set forth in Section 47-10-3(B).¹

4 {11} Four Hills’ contrary argument is that a notice of nonpayment is not governed
5 by Section 47-10-3 because Section 47-10-6 is a separate provision with its own
6 service requirements. This is not the case. Section 47-10-6 states in relevant part that
7 the tenancy may be terminated if the tenant does not pay the overdue amount “within
8 a period of not less than three days after the date notice is served or posted, for failure
9 to pay rent when due.” Four Hills suggests that this language indicates that the
10 landlord may “serve *or* post” the notice without any requirement to mail the notice.
11 In context, however, Section 47-10-6 does not specify how service may be made,
12 but rather, when the three-day clock to cure begins to run.

13 {12} We also note that Four Hills’ construction would effectively result in different
14 service requirements depending on the reason for the termination—service of a
15 notice of nonpayment could be accomplished by posting alone, whereas a notice to
16 quit for any of the other reasons specified in the Mobile Home Park Act would
17 require posting plus certified mailing. To accept such a distinction, we would have

¹Four Hills states that it used Form 4-921 in this case, and the notice posted on Defendant’s door states that it was “Civil Form 4-921.” However, the form used by Four Hills had been modified from Form 4-921 to omit the language “and mailed certified mail, return receipt requested” from the checkbox for service by posting.

1 to conclude that our Legislature intended to provide less notice in situations where
2 termination is based on nonpayment of rent than in other scenarios that result in
3 termination of a tenancy. On the contrary, we believe this construction would
4 frustrate the Legislature’s intent of providing mobile home park tenants with
5 additional protections given their “inherent vulnerability as a person who owns a
6 home but leases the land on which that home is located.” *Mulvaney*, 1996-NMSC-
7 037, ¶ 12 (internal quotation marks and citation omitted). As our Supreme Court
8 recognized, “[t]he difficulty in relocating one’s home is not to be underestimated,
9 especially since many of the residents of mobile home parks can ill afford the cost
10 of moving the mobile home.” *Id.*

11 {13} Four Hills otherwise argues that Section 47-10-6 of the Mobile Home Park
12 Act is analogous to the section addressing nonpayment of rent in the Uniform
13 Owner-Resident Relations Act (UORRA), NMSA 1978, Section 47-8-13(D) (1995).
14 *See Mulvaney*, 1996-NMSC-037, ¶ 6 (stating that the Mobile Home Park Act
15 supplements the UORRA); *see also* § 47-10-18 (stating that “the provisions of the
16 [UORRA] shall apply to mobile home park owners and residents” unless they
17 directly conflict with a provision of the Mobile Home Part Act). Four Hills notes
18 that Section 47-8-13(D) of the UORRA allows an owner to “deliver, mail or post the
19 three-day non-payment notice,” i.e., that mailing is not required if the notice is
20 posted. However, the UORRA directly conflicts with the service requirements set

1 forth in Section 47-10-3(B) of the Mobile Home Park Act. As our Supreme Court
2 has previously noted, “[T]he Mobile Home Park Act prevails over the [UORRA]
3 when the provisions of the two acts conflict.” *Mulvaney*, 1996-NMSC-037, ¶ 8
4 (citing Section 47-10-18).

5 {14} Finally, Four Hills argues that Defendant had actual notice and therefore,
6 “[t]he goal of the notice delivery requirements has been met.” In support, Four Hills
7 notes that “[p]ursuant to the [U]ORRA, notice is accomplished when the party
8 intended to be put on notice has actual notice of the matter.” *See* § 47-8-13(A)(1),
9 (2) (stating that a person has notice of a fact “if he has actual knowledge of it [or] he
10 has received a notice or notification of it”). However, the same statutory provision
11 goes on to say that “[n]otwithstanding any other provisions of this section, notice to
12 a resident for nonpayment of rent shall be effective only when [it complies with the
13 service requirements specified by statute].” Section 47-8-13(D). Accordingly, the
14 UORRA does not support Four Hill’s position that actual notice will suffice in the
15 absence of proper service.

16 {15} What is more, our Supreme Court has previously determined that a landlord
17 must strictly comply with the requirements of Section 47-10-3 for a notice of
18 termination to be effective, even if the tenant has actual notice. *See Mulvaney*, 1996-
19 NMSC-037, ¶¶ 9-13. While *Mulvaney* was concerned with a notice that failed to
20 state the reason for the termination of the tenancy, the policy reasons that animated

1 the Court’s conclusion that strict compliance is required apply equally to service of
2 the notice. To give force to a notice where a landlord has provided less service than
3 required by the Mobile Home Park Act would fail to “provide the special protection
4 against unjustified eviction which is expressed by the clear language of Section[]
5 47-10-3 . . . for the benefit of inherently vulnerable mobile home tenants.”
6 *Mulvaney*, 1996-NMSC-037, ¶ 13. As in *Mulvaney*, we conclude that a landlord
7 must strictly comply with Section 47-10-3(B) of the Mobile Home Park Act for the
8 notice of nonpayment to be effective.

9 {16} It is undisputed in this case that Four Hills did not comply with the service
10 requirements in Section 47-10-3(B) because it posted the notice but did not also send
11 a copy of the notice by certified mail to Defendant. We therefore reverse the
12 judgment in favor of Four Hills on its petition for termination of tenancy.

13 **II. Defendant Has Not Shown Error in the Trial Court’s Denial of His**
14 **Counterclaims**

15 {17} Defendant asserted two counterclaims in the metropolitan court, one seeking
16 a civil penalty for unlawful utility charges under Section 47-10-23, and another for
17 violation of the Unfair Practices Act, NMSA 1978, § 57-12-2(D)(15) (2019) based
18 on allegedly false statements made in connection with Four Hills’ attempt to collect
19 a debt. On appeal, Defendant generally argues that the metropolitan court erred in
20 denying both counterclaims. However, Defendant’s briefing contains no more than
21 a bald claim that he had been charged unlawful fees. Defendant has not offered any

1 citation to the record demonstrating what evidence was offered in support of his
2 counterclaims and no argument or legal authority demonstrating why Defendant
3 believes the metropolitan court erred in light of the evidence presented at trial. *See*
4 *Farmers, Inc. v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶ 8, 111 N.M. 6,
5 800 P.2d 1063 (stating that the burden is on the appellant to clearly demonstrate that
6 the trial court erred); *State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981
7 P.2d 1211 (stating that there is a presumption of correctness in the rulings or
8 decisions of the trial court, and the party claiming error bears the burden of showing
9 such error). Defendant has not met his burden to demonstrate error on the part of the
10 metropolitan court.

11 **CONCLUSION**

12 {18} We reverse the judgment in favor of Four Hills on its petition for termination
13 of tenancy and affirm judgment in favor of Four Hills on Defendant’s counterclaims.

14 {19} **IT IS SO ORDERED.**

15 _____
16 **MEGAN P. DUFFY, Judge**

17 **WE CONCUR:**

18 _____
19 **J. MILES HANISEE, Judge**

20 _____
21 **JACQUELINE R. MEDINA, Judge**