

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

Filed 11/3/2025 9:15 AM

GURLEY PROPERTIES

c/o RE/MAX COMBINED INVESTMENTS,

Plaintiff-Appellee,

v.

No. A-1-CA-42172

ERUM MUSTAFA a/k/a ERUM ANIS

and GHULAM MUSTAFA,

Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY

Bradley L. Keeler, District Court Judge

Rosebrough, Fowles, & Foutz P.C.

McKade R. Loe

Gallup, NM

for Appellee

Erum Anis

Gallup, NM

Pro Se Appellant

MEMORANDUM OPINION

IVES, Judge.

{1} Defendants, self-represented litigants, appeal from the district court's entry of
a second writ of restitution awarding possession of the property at issue to Plaintiff
and evicting Defendants. Among the issues raised, Defendants assert that Plaintiff
failed to comply with the Uniform Owner-Resident Relations Act's (UORRA)

1 notice requirement by failing to properly service Defendants with the notice of
2 termination. This Court issued a calendar notice proposing to reverse, and declined
3 to address Defendants’ remaining issues. Plaintiff has filed a memorandum in
4 opposition and Defendants have filed a memorandum in support, both of which we
5 have duly considered. Unpersuaded, we reverse.

6 {2} Plaintiff first asserts that Defendants’ second appeal in this case is barred by
7 the doctrine of res judicata because of this Court’s previous dismissal of the first
8 appeal for lack of finality. [MIO 1-3] Plaintiff accuses this Court of “undermin[ing]
9 the . . . judicial system” and “erod[ing] faith in this Court’s process and the finality
10 of decisions and opinions” by now reaching the merits of Defendants’ second appeal.
11 [MIO 2] Plaintiff further claims that our proposed reversal promotes the use of a
12 “loophole” to prevent evictions, referencing UORRA’s statutory stay on writs of
13 execution under NMSA 1978, Section 47-8-47 (1999) (staying evictions so long as
14 the tenant continues to pay the monthly rental amount while the case is on appeal).
15 [MIO 2-3]

16 {3} Res judicata “bars relitigation of the same claim between the same parties or
17 their privies when the first litigation resulted in a final judgment on the merits.”
18 *Turner v. First N.M. Bank*, 2015-NMCA-068, ¶ 6, 352 P.3d 661 (internal quotation
19 marks and citation omitted). Plaintiff’s argument misunderstands the grounds for
20 this Court’s previous dismissal. This Court dismissed Defendants’ first appeal

1 because it appeared that this Court lacked jurisdiction to hear the appeal. This
2 decision does not amount to a “final judgement on the merits” of Defendants’ first
3 appeal, *see id.*, and does not prevent this Court from reviewing the same case at a
4 later date once our jurisdiction has been confirmed. In fact, a previous judgment does
5 not bar new litigation under res judicata “when the judgment is one of dismissal for
6 lack of jurisdiction, for improper venue, or for nonjoinder or misjoinder of parties.”
7 *City of Las Vegas v. Oman*, 1990-NMCA-069, ¶ 33, 110 N.M. 425, 796 P.2d 1121
8 (text only) (citation omitted).

9 {4} Additionally, despite Plaintiff’s burden to establish the elements of res
10 judicata, *see id.*, Plaintiff now fails to direct this Court to any authority that res
11 judicata applies to multiple appeals in the same underlying litigation, and we
12 therefore assume that none exists. *See Lee v. Lee (In re Adoption of Doe)*, 1984-
13 NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (explaining that where a party cites
14 no authority to support an argument, we may assume no such authority exists).
15 Rather, our review establishes that res judicata “only appl[ies] to successive
16 litigation and not to issues or claims raised in the same proceeding.” *Alba v. Hayden*,
17 2010-NMCA-037, ¶ 6, 148 N.M. 465, 237 P.3d 767.

18 {5} Lastly, we decline to describe our Legislature’s decision to protect tenants
19 through the ultimate conclusion of the eviction proceedings in Section 47-8-47 as a
20 “loophole.” Rather, New Mexico Courts have long enforced the language of a statute

1 through the plain language rule of statutory interpretation, “recognizing that when a
2 statute contains language which is clear and unambiguous, we must give effect to
3 that language and refrain from further statutory interpretation.” *Truong v. Allstate*
4 *Ins. Co.*, 2010-NMSC-009, ¶ 37, 147 N.M. 583, 227 P.3d 73. (text only) (citation
5 omitted).

6 {6} Plaintiff next argues that it did not need to comply with UORRA’s service
7 requirements for notice because Defendants had actual notice. [MIO 3] But as we
8 explained in our proposed summary reversal, NMSA 1978, Section 47-8-13(D)
9 (1995) requires “in all other cases [except notice of nonpayment of rent] where
10 written notice . . . is required, *even if there is [a] notice by posting*, there must also
11 be a mailing of the notice by first class mail or hand delivery of the notice to the
12 resident.” As we additionally explained, this Court has previously held that a
13 resident’s actual notice of an intent to terminate a lease agreement does not excuse
14 a landlord’s service requirements under UORRA. *See Four Hills Park Group, LLC*
15 *v. Masabarakiza*, 2024-NMCA-047, ¶ 14, 550 P.3d 851 (analyzing Section 47-8-
16 13(D) and explaining that “the UORRA does not support [the plaintiff]’s position
17 that actual notice will suffice in the absence of proper service”).

18 {7} Finally, Plaintiff claims that this appeal is now moot because Defendants have
19 since vacated the property and returned possession to Plaintiff. [MIO 3-4] *See*
20 *McAneny v. Catechis*, 2023-NMCA-055, ¶ 24, 534 P.3d 1007 (explaining that a case

1 is moot “when no actual controversy exists and the court cannot grant relief to the
2 parties”). But both the issue of damages—which relates directly to the writ of
3 restitution now being appealed from—and Defendants’ counterclaims remain
4 pending. We therefore disagree that Defendants’ appeal could be properly described
5 as moot.

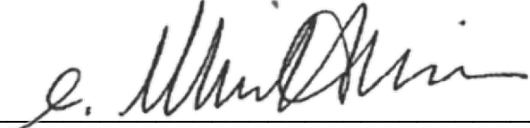
6 {8} As such, Plaintiff does not now direct this Court to any new fact, law, or
7 argument that persuades us that our notice of proposed disposition was incorrect.
8 *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our
9 courts have repeatedly held that, in summary calendar cases, the burden is on the
10 party opposing the proposed disposition to clearly point out errors in fact or law.”);
11 *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating
12 that “[a] party responding to a summary calendar notice must come forward and
13 specifically point out errors of law and fact,” and that the repetition of earlier
14 arguments does not fulfill this requirement), *superseded by statute on other grounds*
15 *as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We are therefore
16 unpersuaded by Plaintiff’s arguments now on appeal.

17 {9} For the foregoing reasons and for the reasons stated in our notice of proposed
18 disposition and herein, we reverse.

1 {10} IT IS SO ORDERED.

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4 
ZACHARY A. IVES, Judge

4 WE CONCUR:

5 
6 J. MILES HANISEE, Judge

7 
8 JENNIFER L. ATTREP, Judge