IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

BRUNI-KARR AGENCY,

Plaintiff-Appellee,

v. **No. A-1-CA-41964**

JOHN SHERIDAN,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Daniel E. Ramczyk, District Court Judge

Moses, Farmer, Glenn, Gutierrez & Werntz, P.C.
Eraina M. Edwards
Jared A. Armijo
Albuquerque, NM

for Appellee

John Sheridan
Albuquerque, NM

Pro Se Appellant

MEMORANDUM OPINION

YOHALEM, Judge.

{1} This is a landlord-tenant case under New Mexico's Uniform Owner-Resident Relations Act (UORRA), NMSA 1978, §§ 47-8-1- to -52 (1975, as amended through 2025). Landlord Bruni-Karr Agency originally filed this case in metropolitan court. Tenant John Sheridan appealed to the district court, which, in a de novo proceeding, granted Landlord's request to terminate Tenant's lease, rejected Tenant's retaliation

defense, and required Tenant to vacate the premises. Tenant claims that the proceedings in the district court denied him the trial de novo that he was entitled to on appeal under UORRA, and thereby denied him due process. We conclude that the procedures in the district court satisfied the statutory requirement for a trial de novo and the federal and state constitutional requirement for due process of law. We therefore affirm.

BACKGROUND

{2} In May 2023, Landlord gave Tenant written notice of Owner's intent to terminate his lease on October 31, 2023, providing notice six months prior to the termination date. Landlord filed this action in metropolitan court on November 7, 2023, seeking restitution of the premises when Tenant refused to vacate the premises on October 31, 2023. Tenant counterclaimed, seeking an order continuing his tenancy on the basis that Landlord was terminating his lease in retaliation for complaints made by Tenant about safety issues. Retaliation by ending a lease based on a tenant's complaints about safety issues or on a tenant's action abating rent is prohibited by Section 47-8-39(A) of UORRA. Section 47-8-39(A) prohibits an owner from retaliating for such action by a tenant "by increasing rent, decreasing services or by bringing or threatening to bring an action for possession."

{3} Tenant appealed to the district court from the decision of the metropolitan court granting Landlord a writ of restitution. NMSA 1978, Section 34-8A-6(C)

(2019) provides that appeal of actions under UORRA from metropolitan court to district court shall be heard by the district court de novo. Prior to the trial de novo scheduled in the district court in this case, Tenant prepared and filed with the district court an extensive statement of appellate issues that explained his retaliation defense, listed exhibits that Tenant intended to present at trial, and identified an expert witness that Tenant intended to call at trial.

{4} At the date set for trial, Tenant appeared without counsel and represented himself. He had subpoenaed the expert witness identified in his pretrial statement of appellate issues. Owner and Landlord appeared with counsel.

{5} Because this is a memorandum opinion and the parties are familiar with the facts, we reserve our review of the trial procedures challenged by Tenant for our discussion.

DISCUSSION

{6} Tenant's argument on appeal concerns the manner in which the district court conducted the required trial de novo and the impact on his ability to present evidence. *See* § 34-8A-6(C) (providing that an appeal from the metropolitan court brought pursuant to UORRA "shall be de novo"); *Padilla v. Torres*, 2024-NMSC-007, ¶¶ 8, 14, 548 P.3d 31 (holding that as of 2019, UORRA appeals from metropolitan to district court are de novo).

{7} Tenant argues that the district court improperly limited his ability to present the evidence in support of his retaliatory termination claim by conducting the trial in a conversational style, with the district court judge questioning Tenant and Owner about their claims after swearing them in as witnesses. In addition to the style used by the district court to elicit evidence, Tenant specifically challenges the district court's failure to allow him to introduce the exhibits listed in his pretrial statement of appellate issues, and to question the expert witness that he subpoenaed. Tenant argues that the district court's procedure at trial both violated the statutory requirement for a trial de novo and denied him his constitutional right to due process under the federal and state constitutions.

{8} Landlord responds by first arguing that Tenant's challenge on appeal to the procedures employed by the district court was not preserved. Landlord then addresses the merits of Tenant's due process claim, arguing that the district court gave Tenant a meaningful opportunity to present his evidence and his legal arguments, thereby meeting the essential requirements of due process that define a trial de novo.

{9} We begin by addressing Landlord's preservation argument. We agree with Tenant that any lack of preservation is excusable because Tenant was denied an opportunity to object to the court's method of proceeding. Having decided that we can consider Tenant's due process claim, we then turn to the merits of that claim.

We conclude that the district court proceedings provided Tenant with a full opportunity to present all of the evidence relevant and material to his retaliation claim and to make his legal arguments based on that evidence. Because due process at a trial does not require anything more, we affirm.

I. Tenant's Failure to Preserve His Due Process Claim Is Excused by a Lack of Opportunity

{10} "Due process claims are not exempt from the fundamental requirement of preservation." *Moody v. Stribling*, 1999-NMCA-094, ¶ 45, 127 N.M. 630, 985 P.2d 1210. Tenant acknowledges that he failed to preserve his due process objection, or indeed any objection to the procedure used by the district court at trial. He argues, however, that his failure to preserve should be excused by this Court because he had no opportunity to object to the district court's method of proceeding.

{11} Rule 12-321(A) NMRA creates a narrow exception to the requirement of preservation for review on appeal when "a party has no opportunity to object to a ruling or order at the time it is made." We agree with Tenant that the circumstances here satisfy this requirement. In the proceedings below, the district court announced that an hour had been allocated for trial and that the proceedings were going to have to be efficient. The court then swore in Tenant and Owner as witnesses, and, without pausing, plunged directly into questioning each of them. The court's questions focused on what the court needed to know to decide the case under the relevant principles of law.

{12} For a self-represented litigant like Tenant, it would have been extraordinarily difficult to predict how the proceedings would unfold, and equally difficult to interrupt the court to object. Tenant attempted to refer to his proposed exhibits in responding to the court's initial questions, and was told by the court to leave the exhibits alone and just answer the court's questions. There was no point before the ruling was made near the end of the hour set for trial when Tenant could have reasonably made his due process objection without disregarding the court's question or disregarding a direction from the court.

{13} Because Tenant was not afforded an opportunity to preserve his due process claim, and the parties do not dispute the relevant facts necessary for our review, we address Tenant's claim on the merits. *See Morga v. Fedex Ground Package Sys., Inc.*, 2018-NMCA-039, ¶ 39, 420 P.3d 586 (noting that one of the purposes of the preservation rule is "to create a record sufficient to allow this Court to make an informed decision regarding the contested issue" (internal quotation marks and citation omitted)).

II. Tenant Received the Trial De Novo Required by Due Process

{14} The standard of review in determining whether a district court afforded a litigant procedural due process is a question of law that we review de novo. *State ex rel. Child. Youth & Fams. Dep't v. Mafin M.*, 2003-NMSC-015, ¶ 17, 133 N.M. 827, 70 P.3d 1266. We also review issues of statutory construction de novo. *See Bank of*

N.Y. v. Romero, 2014-NMSC-007, ¶ 52, 320 P.3d 1 ("We review issues of statutory and constitutional interpretation de novo." (internal quotation marks and citation omitted)).

{15} As already noted, Tenant complains about the format of the district court bench trial and about whether he was provided due process by this format. We review whether a trial provided procedural due process by looking to whether the procedures used provided the complaining litigant with adequate notice and, if facts are in dispute, an opportunity to present evidence relevant to resolving the factual dispute as well as an opportunity to present their legal arguments. *See Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-062, ¶¶ 87-88, 133 N.M. 669, 68 P.3d 909 (holding that due process requires a reasonable opportunity to present evidence to establish material facts that are in dispute).

{16} We bear in mind that procedural due process is a flexible concept: the procedures required depend upon the circumstances. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands."). Some of the many procedural safeguards found in a criminal prosecution, for example, are generally not required to provide due process in a civil bench trial. *See State v. Houidobre*, 2025-NMSC-007, ¶ 26, 563 P.3d 890 ("Our case law instructs that due process is flexible and calls for such procedural protections as the particular situation demands and not all

situations calling for procedural safeguards call for the same kind of procedure." (internal quotation marks and citation omitted)).

{17} Important to our decision in this case is the fact that a trial is primarily a method of presenting evidence on contested facts, allowing the fact-finder to resolve the factual disputes, and then having the court apply the law to the factual findings. *See Cunningham v. Gross*, 1985-NMSC-050, ¶ 13, 102 N.M. 723, 699 P.2d 1075 (holding that when there are facts in dispute, "the resolution of facts may not be determined by the judge [as a matter of law] but must be resolved upon a trial of those factual issues"). In contrast, when facts are not in dispute, summary judgment by the court applying the law to those undisputed facts provides adequate due process. *See* Rule 1-056 NMRA (permitting summary judgment, without trial, when there are no material facts in dispute).

{18} Importantly, even when a trial is required to resolve a dispute of fact, the parties are not entitled to introduce all evidence they wish to offer. The court serves as a gatekeeper, reviewing the evidence offered, and admitting into evidence only testimony and exhibits that are relevant and material to the resolution of the dispute between the parties. *See Progressive Cas. Ins. Co. v. Vigil*, 2018-NMSC-014, ¶ 33, 413 P.3d 850 ("We conclude that the district court properly fulfilled the function of gatekeeper by filtering the evidence presented at trial to ensure that the . . . conclusions were not based on improper considerations or evidence."

(internal quotation marks and citation omitted)). Our rules of evidence define "relevant evidence," admissible at trial, as evidence that "has any tendency to make a fact more or less probable than it would be without the evidence," and requires as well that the fact that is made more or less probable be a fact "of consequence in determining the action." Rule 11-401 NMRA. Evidence that is not relevant is not admissible. *Id.*

{19} The record shows that, prior to the bench trial in this case, the district court carefully reviewed Tenant's written statement of the issues on appeal. Tenant's statement of appellate issues included Tenant's argument in support of his retaliation defense, a list and brief description of the nature of the exhibits Tenant sought to introduce (all of which related to his discovery of a new mold problem on the premises in July 2023), and his witness list, which in addition to Tenant himself, identified a single expert witness whose proposed testimony was described as relating to the new mold problem that arose in July 2023.

{20} As already noted, when the bench trial began, the district court informed the parties that this was a trial de novo that had been set for one hour. The court told the parties that it would proceed by having a conversation with each of the parties (both of whom intended to testify as witnesses) to elicit the issues that each party was raising and the evidentiary support for the issues raised. The court first swore in as

witnesses both Owner and Tenant, ensuring that the answers to the court's questions were testimony under oath.

{21} The court questioned Landlord, and then Tenant about the nature of their respective claims. Tenant testified to the history of his complaints to Landlord about mold in the building in 2020, three years earlier. Tenant claimed that his 2020 complaints of mold had never been fully resolved, and that he believed Landlord and Owner were retaliating against him for having complained in 2020. The court explained to Tenant that UORRA's retaliation section, the provision Tenant was relying on in his defense, was time-limited. By its plain terms, the retaliation statute applies to retaliation for complaints, or for the withholding of rent, by a tenant during *the six months* preceding the taking of any action to terminate the tenant's lease. Section 47-8-39, titled "Owner retaliation prohibited," reads in relevant part as follows:

> A. An owner may not retaliate against a resident who is in compliance with the rental agreement and not otherwise in violation of any provision of [UORRA] by increasing rent, decreasing services or by bringing or threatening to bring an action for possession *because the resident has within the previous six months:* [complained, abated rent, or taken some other protected action].

The court repeatedly asked Tenant if he had any evidence that he had complained to Landlord or Owner during *the six months prior* to receiving notice of termination of the lease. Tenant offered no evidence that he took any action more recently than 2020 related to the original mold problem.

{22} When the court asked Tenant if he had evidence of other actions he took that could be the basis for a claim of retaliation by Landlord or Owner, Tenant testified that he had discovered a new source of mold *after* receiving the notice to vacate in May 2023 and that he had brought this new problem to Landlord's attention in June or July 2023. Tenant made two legal arguments: (1) Landlord had violated UORRA by retaliating against him based on this new mold complaint; and (2) UORRA did not permit Landlord to terminate Tenant's lease until Landlord remediated the new mold problem.

{23} The court told Tenant it would accept as true Tenant's testimony that he had discovered a new source of mold on the premises in June or July 2023, and would accept as well that the new mold source posed a danger to health. The court then explained that, even accepting these facts as true, UORRA, as a matter of law, did not recognize as retaliation prohibited by Section 47-8-39 actions taken by a Landlord *prior* to a complaint by the tenant. The court explained that the action taken by a tenant that is the basis for a claim of retaliation must have been taken within the six months *before* the owner or landlord provided notice of intent to terminate the lease. "Retaliation" is defined as "[t]he act of doing someone harm in return for actual or perceived injuries or wrongs; an instance of reprisal, requital, or revenge." *Retaliation*, *Black's Law Dictionary* (12th ed. 2024). By definition, the court explained, "retaliation" as used by the Legislature in UORRA means an action taken

by a landlord *in response* to a tenant's action, to punish the Tenant for taking an action that is lawful under UORRA. The district court concluded, and we agree, that under the plain language of Section 47-8-39, a tenant's complaint *after* the tenant is on notice of the owner's decision to repossess the premises cannot support a claim of retaliation. The court also concluded that as a matter of law no provision of UORRA allowed a tenant to remain in possession of the premises until a problem identified *after* notice of termination of the lease was given was fixed.

{24} The district court, during the course of its questioning of Tenant and explaining the court's reasoning under the law, asked Tenant seven or eight times if there was anything else Tenant wished to present. Tenant did not ask to call any witnesses, to introduce any exhibits, or to make any additional arguments.

{25} We note that had Tenant called his expert witness and offered his listed exhibits, neither the testimony nor the exhibits would have been admissible. The testimony and exhibits were aimed at proving that Tenant had discovered a new mold problem in July 2023 that affected Tenant's health and safety—more than a month after receiving Landlord's six-month notice to vacate in May 2023.

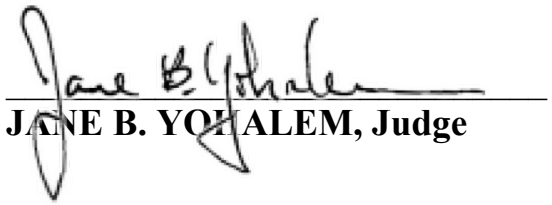
{26} Having carefully reviewed Tenant's pretrial statement of the issues on appeal, the transcript of the trial, the district court's findings of fact and conclusions of law, and the briefs on appeal, we conclude that the district court's method of conducting the trial de novo under the circumstances of this case satisfied minimum due process

requirements for notice, an opportunity to present relevant and material evidence and argument on the factual disputes and legal issues. We emphasize that no litigant in any trial has the right to present evidence that is irrelevant to the legal issues before the court and, therefore, find no error in the exclusion of Tenant's exhibits and expert witness.

CONCLUSION

{27} Finding no error in the procedures provided to Tenant in the district court, we affirm.

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



JANE B. YOHALEM, Judge

WE CONCUR:

ZACHARY A. IVES, Judge

SHAMMARA H. HENDERSON, Judge