UNIVERSITY VILLAGE MOBILE HOME PARK LLC V. CALDERON

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UNIVERSITY VILLAGE MOBILE HOME PARK LLC,
Plaintiff-Appellee,
v.
JOHN CALDERON and MARGARET PARKS,
Defendants-Appellants.

No. A-1-CA-34331

COURT OF APPEALS OF NEW MEXICO

December 18, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Denise Barela-Shepherd, District Judge

COUNSEL

Vance, Chavez & Associates, LLC, James A. Chavez, Albuquerque, NM, for Appellee

New Mexico Legal Aid, Inc., Thomas Prettyman, Albuquerque, NM, for Appellants

JUDGES

JULIE J. VARGAS, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, MICHAEL E. VIGIL, Judge

AUTHOR: JULIE J. VARGAS

MEMORANDUM OPINION

VARGAS, Judge.

{1} Defendants appeal the district court’s decision affirming the metropolitan court’s judgment of eviction against them. Following a trial on the merits, the metropolitan court

concluded that Defendants breached a settlement agreement between the parties by failing to insure that the nephews of one of the defendants did not enter onto the mobile home park property. As the plain language of the settlement agreement does not impose an obligation on Defendants to keep the nephews off the mobile home park property, we conclude that there is not substantial evidence that Defendants violated the settlement agreement. We reverse.

I. BACKGROUND

{2} John Calderon and Margaret Parks (collectively, Tenants) are tenants of the University Village Mobile Home Park (the Park) where they rent a space on which their mobile home is located. Early in 2013, University Village Mobile Home Park LLC (Landlord), sued to terminate Tenants' tenancy under the Mobile Home Park Act (MHPA), NMSA 1978, §§ 47-10-1 to -23 (1983, as amended through 2007), alleging that Tenant Parks' nephews were causing problems at the Park. The parties agreed to mediate the dispute, and in May 2013, entered into a "Resolution" (settlement agreement) that allowed Tenants to remain at the Park. The settlement agreement contained two provisions relevant to this appeal: (1) the "nephews will be notified that they are no longer allowed to be on the mobile home property"[;] and (2) "[t]here will be no more reported incidents and no activity after 10 p[.]m." These provisions, according to the language of the settlement agreement, resolve "all issues between the parties[.]" After the settlement agreement was finalized, Landlord sent Tenants a notification confirming it had issued a no trespass order to the nephews.

{3} Eight months after the settlement agreement was finalized, Landlord served Tenants with a thirty-day notice to quit the property (the notice), notifying Tenants that their tenancy had been terminated. As grounds for termination, the notice alleged that Tenants "violated the lease and rules of the [P]ark" by "allow[ing the] nephews to enter [the Park] premises." Tenants did not comply with Landlord's demand that they remove their home and property from the Park and Landlord filed a second petition to terminate Tenants' tenancy in the metropolitan court.

{4} The metropolitan court held a hearing on the petition, at which time Landlord's employee testified that she had seen the nephews on the property. The employee did not alert the police of the nephews' trespass on the property, though she was aware that Landlord had issued a no trespass order to the nephews. Following the testimony of Landlord's employee, the metropolitan court commented that it seemed "pretty clear" that Tenants' ability to reside at the [P]ark "hinged" on the premise that the nephews were not welcome on the Park property. Before allowing Tenants to call their first witness, the metropolitan court opined that the facts pointed to a conclusion that the settlement agreement had been violated. Tenant Calderon then testified that since entering into the settlement agreement, he had not invited the nephews to his home or had them in his home. He also testified that the nephews were friends with another resident of the Park. Tenant Parks testified that she told the nephews that they were not welcome in or near Tenants' mobile home. She also testified that she had not invited

the nephews on the property and that they had not come into her home since the parties entered into the settlement agreement.

{5} At the conclusion of the evidence, the metropolitan court acknowledged that "[i]t seems pretty clear that [the nephews] were notified[,]" pointing to the no trespass order issued by Landlord and Tenant Parks' testimony that she warned the nephews not to come near her home as support. In light of the employee's testimony that the nephews were seen on the Park property after the settlement agreement was finalized, the metropolitan court found Tenants had violated the settlement agreement and entered judgment for Landlord. The metropolitan court based its ruling on its conclusion that Tenants "have an obligation to keep the nephews off the property at the risk of losing their space." Tenants appealed that judgment, filing an on-record appeal to the district court pursuant to Rule 1-073 NMRA.

{6} In a memorandum opinion, the district court affirmed the metropolitan court's judgment, finding no error in its conclusion that Tenants understood the settlement agreement "imposed on them the obligation to keep the nephews off the property" and that the evidence demonstrated that the nephews were on the property in February 2014. The district court concluded that "substantial evidence supports that a violation of the [settlement a]greement occurred giving rise to good cause for termination under the statute." Tenants appealed their case to this court.

II. DISCUSSION

{7} The MHPA provides that a tenancy in a mobile home park can only be terminated for one of the enumerated reasons set out in the MHPA. Section 47-10-5 ("A tenancy shall be terminated pursuant to the [MHPA] *only* for one or more of the following reasons[.]" (Emphasis added.)). Among the reasons for termination cited in the MHPA is the tenant's failure "to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy . . . or amended subsequently thereto without the consent of the tenant[.]" Section 47-10-5(C).

{8} Tenants argue that the reasons set out in Landlord's notice were insufficient to demonstrate good cause to terminate their tenancy for any of the reasons listed in Section 47-10-5. *See Green Valley Mobile Home Park v. Mulvaney*, 1996-NMSC-037, ¶ 14, 121 N.M. 817, 918 P.2d 1317 (permitting termination only for one of the enumerated reasons set out in the MHPA). Landlord argues that the settlement agreement was an amendment to the rules of the Park or the rental agreement between the parties, that a violation of the settlement agreement constitutes good cause for terminating the tenancy under Section 47-10-5(C) of the MHPA and that the evidence was sufficient to prove that a violation occurred.[1] Because we find no violation of the settlement agreement, we need not decide whether the settlement agreement constituted a proper amendment to the Park rules or the rental agreement between the parties.

A. Standard of Review

{9} We review on-record appeals from the metropolitan court for legal error. *See Serna v. Gutierrez*, 2013-NMCA-026, ¶ 13, 297 P.3d 1238; *see also State v. Bell*, 2015-NMCA-028, ¶ 2, 345 P.3d 342 (stating that, where the metropolitan court acts as trial court of record and district court reviews for legal error, this Court applies the same standard for subsequent appeals as that of the district court). To the extent our determination of legal error requires interpretation of the settlement agreement and MHPA , our review is de novo. *See Hedicke v. Gunville*, 2003-NMCA-032, ¶ 24, 133 N.M. 335, 62 P.3d 1217 ("Contract and statutory interpretations are issues of law which this Court reviews de novo.").

B. The Settlement Agreement

{10} A settlement agreement arising from mediation proceedings "is enforceable in the same manner as any other written contract." NMSA 1978, § 44-7B-6(A) (2007). "The purpose, meaning[,] and intent of the parties to a contract is to be deduced from the language employed by them; and where such language is not ambiguous, it is conclusive." *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23, 299 P.3d 844 (internal quotation marks and citation omitted). Further, "[w]hen discerning the purpose, meaning, and intent of the parties to a contract, the court's duty is confined to interpreting the contract that the parties made for themselves, and absent any ambiguity, the court may not alter or fabricate a new agreement for the parties." *CC Hous. Corp. v. Ryder Truck Rental, Inc.*, 1987-NMSC-117, ¶ 6, 106 N.M. 577, 746 P.2d 1109.

{11} In this case, the settlement agreement between the parties imposed two responsibilities upon them. First, the parties agreed that the nephews would be notified that they are no longer allowed to be on the mobile home property. Second, the parties agreed that there would be "no more reported incidents and no activity after 10 p[.]m."

{12} While Landlord argues that Tenants breached the settlement agreement by failing to insure that the nephews did not enter the Park, and the metropolitan court based its decision on its conclusion that Tenants had an obligation to keep the nephews off the Park property at the risk of losing their space, nothing in the settlement agreement imposes an obligation on Tenants to guarantee that the nephews will not enter the Park.

{13} Instead, the settlement agreement merely imposes an obligation to "notif[y the nephews] that they are no longer allowed to be on the mobile home property." The parties do not dispute that the required notification was given by both parties. Landlord testified that it had issued a no trespass order to the nephews, and Tenant Parks testified that she told the nephews that they were not welcome in or near the mobile home. As both parties notified the nephews that they were no longer allowed on the mobile home property and no other obligation was imposed on Tenants, we cannot conclude that tenants breached this provision of the settlement agreement. It is not the role of the court to rewrite the terms of the parties' agreement, and absent specific language in the settlement agreement imposing an obligation on Tenants to enforce the

nephews' ban from Park property, we will not impose one. *See Twin Forks Ranch, Inc. v. Brooks*, 1998-NMCA-129, ¶ 20, 125 N.M. 674, 964 P.2d 838 (stating that this Court will not rewrite the terms of the parties' agreement).

{14} The settlement agreement next provides that there would be "no more reported incidents and no activity after 10 p[.]m." Because the parties chose to separate the possible violations into two categories—incidents and activities—one with a time constriction and one without, we consider each provision separately.

{15} First, we note that Landlord's thirty-day notice to quit indicates that the nephews were seen at the Park on January 29, 2014, at noon. Because the reported activity of the nephews was before 10 p.m., and the record contains no evidence of activity after 10 p.m., Tenants did not violate the prohibition against activity after 10 p.m.

{16} Finally, we consider whether the nephews' presence at the Park constitutes an "incident"as described in the settlement agreement. Unfortunately, the settlement agreement fails to define the meaning of the term "incident," and the metropolitan court failed to address it, instead basing its ruling on its conclusion that Tenants were obligated to keep nephews off the property at the risk of losing their space. The thirty-day notice to quit attached to Landlord's petition indicates that "[the nephews] have been seen on the premises as recently as January 29, 2014 around noon coming from [Tenants'] home. . . . T[he nephews'] vehicles have been seen parked at [Tenants'] home site." At the trial on the merits in the metropolitan court, Landlord's employee testified that she saw one of the nephews at the Park, she confronted him and he immediately left. We cannot conclude that this brief and uneventful encounter, following which the nephew immediately left the Park, constitutes an "incident" as described in the settlement agreement. Indeed, at the trial on the merits, Landlord's counsel advised the metropolitan court that Landlord's original complaint was the result of reports that the nephews were breaking into houses and cars, having parties, and being disruptive to the community. Landlord's employee testified that she recognized the nephews because she had talked to them once "before all the incidents had started." Based on this information, it is reasonable to conclude that the term "incidents" as it is used in the settlement agreement refers to the break-ins, parties, and other disruptive behavior that motivated Landlord's original complaint. *See C.R. Anthony Co. v. Loretto Mall Partners*, 1991-NMSC-070, ¶ 15, 112 N.M. 504, 817 P.2d 238 ("[A] court may hear evidence of the circumstances surrounding the making of the contract and of any relevant usage of trade, course of dealing, and course of performance" to determine whether a term or expression to which the parties have agreed is unclear.). As the nephew left the Park immediately after the employee confronted them, we conclude that the encounter did not constitute an "incident" as the term is used in the settlement agreement and cannot form the basis for a breach of the settlement agreement and the termination of tenants' tenancy.

III. CONCLUSION

{17} Because we conclude that, pursuant to the terms of the settlement agreement, tenants had no obligation to insure that nephews did not come onto the Park property and one nephew's brief encounter with the Park employee after which he immediately left the Park was not an "incident" as defined in the settlement agreement, Tenants did not breach the settlement agreement between the parties and their tenancy could not be terminated on these bases. The judgment against Defendants is reversed.

{18} IT IS SO ORDERED.

JULIE J. VARGAS, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

MICHAEL E. VIGIL, Judge

1Landlord cites to filings made in the district court in order to "incorporate the arguments" in its briefing before this Court. Noting that our appellate rules do not provide for incorporation of arguments contained in other pleadings, we caution counsel against the practice. *See* Rule 12-318 NMRA; *United Nuclear Corp. v. State ex rel. Martinez*, 1994-NMCA-031, ¶ 5, 117 N.M. 232, 870 P.2d 1390; *State v. Aragon*, 1990-NMCA-001, ¶ 4, 109 N.M. 632, 788 P.2d 932.