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ADVANCE SHEET HEADNOTE
May 15, 2023

2023 CO 24

No. 23SA34, *In re Arvada Village Gardens, LP v. Garate*—Forcible Entry and Detainer—Statutory Interpretation—Federal Preemption.

Before landlords may evict tenants they must provide notice. Under Colorado law, the required notice period is ten days. During the COVID-19 pandemic, however, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which, in relevant part, requires a thirty-day-notice period before landlords of certain "covered" properties may file an eviction action. Looking at the plain language of the CARES Act, the Colorado Supreme Court holds that, although another provision of the CARES Act has expired, the thirty-day-notice provision is still in effect. Accordingly, before filing for forcible entry and detainer in Colorado, landlords of properties which are "covered" by the CARES Act must give thirty days' notice of a lease violation.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 24

Supreme Court Case No. 23SA34
Original Proceeding Pursuant to C.A.R. 21
Jefferson County Court Case No. 22C40982
Honorable Sara M. Garrido, Judge

In Re
Plaintiff:

Arvada Village Gardens LP,

v.

Defendant:

Ana Garate.

Rule Made Absolute
en banc
May 15, 2023

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No appearance on behalf of Plaintiff

JUSTICE HART delivered the Opinion of the Court, in which **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL, JUSTICE SAMOUR** and **JUSTICE BERKENKOTTER** joined.
JUSTICE BOATRIGHT did not participate.

JUSTICE HART delivered the Opinion of the Court.

¶1 Before landlords may evict tenants they must provide notice. Under Colorado law, the required notice period is ten days. During the COVID-19 pandemic, however, Congress passed a law requiring a thirty-day-notice period for eviction from certain rental properties. The question we confront here is whether that thirty-day-notice requirement is still in effect or whether it expired along with other aspects of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Looking at the plain language of the CARES Act, we conclude that the federal thirty-day-notice provision is still in effect for covered properties. We accordingly make absolute the rule to show cause.

I. Facts and Procedural History

¶2 Ana Garate is the tenant and Arvada Village Gardens LP ("Landlord") is the landlord of a property located at Arvada Village Apartments. Garate receives a federal Section 8 Housing Choice Voucher, which Landlord accepts as payment for rent. Accordingly, the property is "covered" by the CARES Act. *See* 15 U.S.C. § 9058(a)(2) (the CARES Act applies to any lease on a "covered property," such as a property that participates in a federally subsidized housing program).

¶3 On December 6, 2022, Landlord served an eviction notice on Garate, providing that she must "within Ten Days" either pay overdue rent and fees or

surrender the premises. Twenty-three days later, on December 29, Landlord filed a forcible entry and detainer ("FED") proceeding in Jefferson County Court.

¶4 In response, Garate filed an answer and a motion to dismiss, arguing that Landlord failed to satisfy the CARES Act's thirty-day-notice period, and accordingly, the case must be dismissed for lack of jurisdiction. The county court denied the motion to dismiss. The court concluded that the CARES Act's notice provision, 15 U.S.C. § 9058(c), had expired and that Colorado's ten-day-notice provision, § 13-40-104(1)(d), C.R.S. (2022), controlled instead.

¶5 This C.A.R. 21 petition followed.

II. Jurisdiction

¶6 The exercise of this court's original jurisdiction under C.A.R. 21 is discretionary, and any relief pursuant thereto is "an extraordinary remedy that is limited in both purpose and availability." *People in Int. of T.T.*, 2019 CO 54, ¶ 16, 442 P.3d 851, 855–56 (quoting *Villas at Highland Park Homeowners Ass'n v. Villas at Highland Park, LLC*, 2017 CO 53, ¶ 22, 394 P.3d 1144, 1151). We have previously exercised jurisdiction under that rule "when an appellate remedy would be inadequate, when a party may otherwise suffer irreparable harm, [or] when a petition raises 'issues of significant public importance that we have not yet considered.'" *People v. Kilgore*, 2020 CO 6, ¶ 8, 455 P.3d 746, 748 (citations omitted) (quoting *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001)).

¶7 Given these considerations, original jurisdiction is appropriate here for two reasons. First, an appeal would be an inadequate remedy for Garate if the eviction moves forward. Not only would she lose possession of her home, the eviction would mar her rental history and could lead to termination of her subsidized housing voucher. Second, this petition raises an issue of significant public importance that we have not yet considered. FED actions are very common, amounting to 26% of all county court cases in Colorado.[1] And county courts around the state have reached different conclusions about whether the CARES Act's notice provision remains in effect. For these reasons, we exercise our jurisdiction under C.A.R. 21 here.

¶8 We now turn to the merits of Garate's claim.

III. Analysis

¶9 We review issues of statutory interpretation de novo. *Est. of Brookoff v. Clark*, 2018 CO 80, ¶ 5, 429 P.3d 835, 837. In so doing, we aim to give effect to the legislature's intent, looking first to the language of the statute to ascertain its meaning. *Przekurat ex rel. Przekurat v. Torres*, 2018 CO 69, ¶ 8, 428 P.3d 512, 514.

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[1] *See* Colorado Judicial Department, *Colorado Judicial Branch Annual Statistical Report, Fiscal Year 2022*, 126 (County Court Civil Filings by Case Type): https://www.courts.state.co.us/userfiles/file/Administration/Planning_and_Analysis/Annual_Statistical_Reports/2022/FY2022%20Annual%20Report.pdf [https://perma.cc/76J9-AALZ].

We interpret statutory terms in accordance with their plain and ordinary meanings, *Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 14, 474 P.3d 46, 49, and don't add or subtract words from a statute, *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12, 488 P.3d 1140, 1143. If the language is clear and unambiguous, we apply it as written—nothing more. *Delta Air Lines, Inc. v. Scholle*, 2021 CO 20, ¶ 13, 484 P.3d 695, 699.

¶10 To resolve the dispute here, we must interpret section 9058 of the CARES Act:

> **§ 9058. Temporary moratorium on eviction filings**
>
> . . .
>
> **(b) Moratorium**
>
> During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling may not—
>
> (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges;
>
> . . .
>
> **(c) Notice**
>
> The lessor of a covered dwelling unit—
>
> (1) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate; and
>
> (2) may not issue a notice to vacate under paragraph (1) until after the expiration of the period described in subsection (b).

15 U.S.C. § 9058. If subsection 9058(c) (the "Notice Provision") is still in effect, it controls over Colorado's ten-day-notice requirement. *See Fuentes-Espinoza v. People*, 2017 CO 98, ¶ 26, 408 P.3d 445, 449 ("[U]nder the conflict preemption

doctrine, 'state laws are preempted when they conflict with federal law.'" (quoting *Arizona v. United States*, 567 U.S. 387, 399 (2012))).

¶11 Examining these provisions, the county court concluded that *all* parts of this statute expired on the date identified in subsection 9058(b) (the "Moratorium Provision"). It reasoned that the Notice Provision "is not independent or separate" from the Moratorium Provision. Rather, it continued, both provisions are "temporary as indicated by the title of Section 9058" and "both expire 120 days from March 27, 2020." For these reasons, the county court found that the notice here satisfied Colorado law and denied Garate's motion to dismiss.

¶12 The county court now raises a slightly different argument. It concedes that both provisions could not expire on the same day given that no eviction actions on covered properties could be filed until the expiration of the Moratorium Provision and the Notice Provision requires landlords to provide thirty days' notice *before* filing an eviction action. Instead, it argues that the Notice Provision must have expired thirty days after the expiration of the Moratorium Provision.

¶13 Neither of these constructions is consistent with the clear statutory language. By its terms, the Moratorium Provision expired on July 24, 2020, after the "120-day period beginning on March 27, 2020." 15 U.S.C. § 9058(b). But the Notice Provision includes no expiration date. We cannot insert an expiration date where Congress omitted one. *Nieto*, ¶ 12, 488 P.3d at 1143; *see also Martin v. Boyle*,

237 P.2d 110, 112 (Colo. 1951) ("What the legislature did not say is as unmistakable and important as what it did say."); *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1725 (2020) (courts "may not narrow a provision's reach by inserting words Congress chose to omit"). Rather, we must presume that Congress meant what it said—although the Moratorium Provision expired, the Notice Provision did not.

¶14 The statute's title, "Temporary moratorium on eviction filings," doesn't change anything. By its own terms, the Moratorium Provision *was* temporary. But just because the word "temporary" is in the title doesn't mean that the Notice Provision must receive the same treatment. To the contrary, a title cannot limit the plain meaning of a more specific provision within a statute. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 483 (2001). Instead, the title is useful for purposes of statutory interpretation only when it "shed[s] light on some ambiguous word or phrase in the statute itself." *Id.* (alteration omitted) (quoting *Carter v. United States*, 530 U.S. 255, 267 (2000)). Section 9058 contains no such ambiguity.

¶15 Courts in Washington, Oklahoma, and Connecticut (the only other jurisdictions that we are aware of to consider this issue) have come to the same conclusion. *See, e.g.*, *Sherwood Auburn LLC v. Pinzon*, 521 P.3d 212, 220 (Wash. Ct. App. 2022); *Nwagwu v. Dawkins*, No. BPHCV215004438S, 2021 WL 2775065, at *2 (Conn. Super. Ct. Mar. 2, 2021); *see also Watson v. Vici Cmty. Dev. Corp.*, No. CIV-20-1011-F, 2021 WL 1394477, at *11 (W.D. Okla. Apr. 12, 2021) (applying

the thirty-day Notice Provision to an FED action filed after the Moratorium Provision expired).

¶16 If Congress made a mistake and intended to include an expiration date for the entirety of section 9058, then it should amend the statute. We are not empowered to "rescue Congress from its drafting errors, and to provide for what we might think . . . is the preferred result." *Lamie v. U.S. Trustee*, 540 U.S. 526, 542 (2004) (alteration in original) (quoting *United States. v. Granderson*, 511 U.S. 39, 68 (1994) (Kennedy, J., concurring)).

IV. Conclusion

¶17 For these reasons, we make the rule to show cause absolute. A landlord of a property covered by the CARES Act must give thirty days' notice before filing for FED in Colorado. Because Landlord did not do so, the action is dismissed.