

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1685**

Constance M Johnson, et al.,
Respondents,

vs.

Joseph Chris Hernandez,
Appellant,

unknown tenants,
Defendants.

**Filed July 14, 2025
Reversed
Bratvold, Judge**

Washington County District Court
File No. 82-CV-24-3836

Patrick C. Smith, St. Paul, Minnesota (for respondents)

David R. Mortensen, Kretsch Law Office, PLLC, Lakeville, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Segal,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant buyer seeks review of an eviction judgment entered in favor of respondent sellers for recovery of premises. The district court determined that appellant held over after respondents terminated the parties' contract for deed. Appellant argues that the district court erred because the contract for deed was not terminated as to appellant. Because record evidence does not establish that respondents' notice of termination of the contract for deed was served on appellant as required by Minn. Stat. § 559.21, subd. 4 (2024), we agree that the district court erred by determining that the contract for deed was terminated. Thus, we reverse.

FACTS

The following summarizes the procedural history and evidence submitted at the eviction bench trial.

In September 2021, appellant Joseph Chris Hernandez and his partner, A.H., entered into a contract for deed with respondents Constance M. and Thomas Johnson (collectively, the Johnsons) for the purchase of real property including a home located in Lakeland (the property). The contract for deed provided that the purchase price was \$395,000, including a \$10,000 down payment and five percent interest on the balance. Under the contract for deed, Hernandez and A.H. agreed to pay \$2,000 per month for three years, then pay the remaining "balance in full"; Hernandez and A.H. also agreed to pay the insurance, taxes, and assessments on the property. The contract for deed was recorded in October 2021.

Hernandez and A.H. resided at the property. Sometime before March 2024, a district court issued an order for protection (OFP) that prohibited Hernandez from contacting A.H. and Hernandez moved out of the property.

The Johnsons prepared a notice of termination of the contract for deed (termination notice), which stated that Hernandez and A.H. defaulted on payments owed under the contract for deed. According to the termination notice, the Johnsons had “not received any money towards the home” since August 1, 2023. The termination notice also stated that Hernandez and A.H. “neglected to pay taxes or home insurance.” Finally, the termination notice provided that Hernandez and A.H. had 60 days to cure the default or obtain a court order suspending the termination.

On March 18, 2024, a deputy sheriff personally served A.H. with the termination notice at the property and executed an affidavit of service.

On March 14 and 18, 2024, a deputy sheriff attempted to personally serve Hernandez with the termination notice at the property. The deputy sheriff later executed a certificate of nonservice, which stated that he was “unable to find or make service of said process in the County of Washington” on Hernandez. The certificate of nonservice included comments that Hernandez “no longer live[d]” at the property and that there was an “OFP in place.”

The Johnsons recorded the termination notice on August 2, 2024.

On August 6, 2024, the Johnsons commenced an eviction action against Hernandez by summons and complaint. The complaint alleged that Hernandez “was served by [the] Washington County sheriff [with] notice of [termination] of contract for deed [on]

March 14 & 18” and that “A.H. was served [on] March 18, 2024,” at the property. The complaint also alleged that the Johnsons “gave written notice to [Hernandez] on March 14 & 18, 2024 . . . to vacate the property by Sheriff” and that Hernandez “failed to vacate the property.” The summons stated that the case would be heard on August 23, 2024.¹ On August 23, 2024, Hernandez appeared at the eviction hearing.

The district court conducted a two-day bench trial in the eviction proceeding on September 10 and October 8, 2024.² On day one, the Johnsons presented their case. On day two, Hernandez, who was self-represented, testified that A.H. vacated the property in June 2024, the Johnsons “sold the property to another party,” and in July 2024, Hernandez again resided at the property. Hernandez also testified that he was never served with the termination notice and that he intended to cure any default under the contract for deed.

Hernandez’s testimony appeared to dispute the Johnsons’ claim that he had not made payments on the home since August 2023. The Johnsons’ attorney called A.H., however, who testified that the last monthly payment A.H. and Hernandez made on the property was “July or August of 2023.” A.H. testified that the “insurance was canceled for nonpayment in August” and that there was “about a \$5,000” unpaid utility bill. A.H.

¹ On August 12 and 13, 2024, the deputy sheriff attempted to personally serve Hernandez with the eviction summons and complaint at the property and executed an affidavit of “not found.” The deputy sheriff averred that “no service could be made.” On August 14, the Johnsons’ attorney filed an affidavit of service, averring that they sent Johnson the eviction summons and complaint by mail. On August 15, the deputy sheriff again attempted to serve Hernandez at the property. Personal service was unsuccessful, and the sheriff’s certificate of posting stated that the eviction summons, complaint, and termination notice were posted on the property that same day.

² The record includes a transcript for day two but not day one of trial.

testified that, other than “the first month or two when [they] moved in,” she and Hernandez “never paid the property taxes.”

At the close of the trial, Hernandez argued that he “was never served” with the termination notice for the contract for deed and that both he and A.H. “were on the contract for deed and had interest in the property.” He concluded that he “would like the same opportunity [as A.H.] to give [the Johnsons] the money that is owed to them including the fees” and that he was “prepared to do that.”

The Johnsons’ attorney responded that they “complied with all things” to terminate the contract for deed. The Johnsons disputed Hernandez’s argument that he was entitled to service: “The idea that we are supposed to go on a fishing expedition to try and find him is not in the statute.”³ The Johnsons acknowledged that they had entered into a new contract for deed with another buyer and asked the district court “to immediately provide a writ of recovery of the property” so the sheriff’s department could “remove” Hernandez.

The district court took the matter under advisement. On October 9, 2024, the district court issued written findings of fact, conclusions of law, and an order. The district court found that Hernandez “defaulted on the contract for deed by failing to 1) make the requisite payments after August 1, 2023, 2) pay taxes, and 3) pay insurance.” The district court also found that the termination notice “was appropriately recorded” and that Hernandez was “holding over after proper” termination of the contract for deed. The district court directed

³ Earlier in the hearing, the Johnsons’ attorney stated that “the seller may terminate the contract by serving [notice] upon the purchaser or the [purchaser’s] personal representatives or assigns.”

entry of an eviction judgment for the Johnsons, awarded the recovery of the property to the Johnsons, and ordered Hernandez to vacate the property. It also awarded the Johnsons “allowable costs and disbursements.”

Hernandez appeals.

DECISION

An individual “entitled to [a] premises may recover possession by eviction when . . . any person holds over real property . . . after termination of [a] contract to convey the property,” including a contract for deed. Minn. Stat. § 504B.285, subd. 1(a)(1)(ii) (2024).

On appeal, Hernandez argues that the district court erred by entering an eviction judgment for the Johnsons because the contract for deed was not properly terminated. Hernandez maintains that he was not served with the termination notice as required by statute and that, therefore, “the Johnsons did not have a legal basis to obtain a judgment for eviction.” The Johnsons respond that Hernandez and A.H. breached the contract for deed, as found by the district court, A.H. was properly served with the termination notice, and Hernandez vacated the property.

Hernandez appears to be challenging the district court’s factual findings and application of the law. Appellate courts review a district court’s factual findings in an eviction order for clear error. *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 864-65 (Minn. App. 2022). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). Appellate courts

“review a district court’s application of the law de novo.” *Harlow v. State, Dep’t of Hum. Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

During trial, Hernandez maintained that he had no opportunity to cure the default under the contract for deed because he was not served with the termination notice before the eviction proceedings. Before examining the merits of Hernandez’s argument, we consider whether it is properly before us. “Eviction actions are summary proceedings that are intended to adjudicate only the limited question of present possessory rights to the property.” *Deutsche Bank Nat’l Tr. Co. v. Hanson*, 841 N.W.2d 161, 164 (Minn. App. 2014). A party generally cannot raise claims and defenses in an eviction action if they could be raised in an alternate civil proceeding. *Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. App. 2002). “Defendants may, however, raise defenses and counterclaims that fit within the limited scope of an eviction proceeding,” including those that affect present possessory interests in the property. *Deutsche Bank*, 841 N.W.2d at 164. Here, service of the termination notice is within the scope of this eviction proceeding.

If a buyer defaults on the conditions of a contract for deed, “that gives the seller a right to terminate it,” and “the seller may terminate the contract by serving upon the purchaser or the purchaser’s personal representatives or assigns, within or outside the state, a notice specifying the conditions in which default has been made.” Minn. Stat. § 559.21, subd. 2a (2024). “The notice must state that the contract will terminate 60 days . . . after the service of the notice, unless prior to the termination date the purchaser,” among other things, (1) “complies with the conditions in default,” including “mak[ing] all payments due and owing to the seller under the contract through the date that payment is made,” or

(2) obtains a court order to suspend the termination until final disposition of their claims and defenses. *Id.*, subds. 2a, 3 (2024). “[O]nce statutory notice has been served and cancellation effected, all rights between the parties under a contract for deed are terminated.” *Shields v. Goldetsky (In re Butler)*, 552 N.W.2d 226, 230 (Minn. 1996).

A termination notice must be served “within the state in the same manner as a summons in the district court, and outside of the state, in the same manner, and without securing any sheriff’s return of not found.” Minn. Stat. § 559.21, subd. 4(a). In district court, a summons generally may be served on a natural person in one of two ways: first, “by delivering a copy to the individual personally” or, second, “by leaving a copy at the individual’s usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 4.03(a). “Usual place of abode” means “a person’s customary dwelling place or residence.” *State v. Briard*, 784 N.W.2d 421, 430 (Minn. App. 2010) (quotation omitted). “Rule 4.03 mandates strict compliance with its terms.” *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 609 (Minn. 2016). “Whether service of process was proper presents a question of law” that is reviewed de novo, but “the residency of an individual presents a question of fact” that is reviewed for clear error. *Id.* at 606-07.

Although Hernandez contested service of the termination notice at trial, the district court did not find that the Johnsons served, or failed to serve, Hernandez. The district court found that Hernandez defaulted on the contract for deed—a finding Hernandez does not challenge on appeal—and that the termination notice “was appropriately recorded.” The district court also determined that Hernandez was “holding over after proper” termination of the contract for deed. The district court erred in three respects.

First, the district court appears to have equated recording of the termination notice with termination of the contract for deed. This is a legal error. Minnesota Statutes section 559.213 (2024) provides that “prima facie evidence” of termination of a contract for deed includes “[t]he recording . . . of the copy of notice of default, *proof of service thereof*, and the affidavit showing that the purchaser has not complied with the terms of the notice.” (Emphasis added.) Thus, recording the termination notice is only one part of a prima facie case that a contract for deed has been terminated.

Second, the district court appears to have rejected Hernandez’s testimony that the Johnsons failed to serve him with the termination notice and implicitly determined that Hernandez was properly served. This is also error because no record evidence shows effective service of the termination notice on *Hernandez*. To the contrary, the certificate of nonservice shows that the deputy sheriff *attempted* service of the termination notice on Hernandez twice in March 2024 but that the deputy sheriff was “unable to find or make service of said process in the County of Washington.”

The Johnsons emphasized during district court proceedings that the deputy sheriff personally served A.H. While the Johnsons’ argument is not entirely clear, they appear to suggest that Hernandez received substitute service. It is true that Minn. R. Civ. P. 4.03 authorizes substitute service upon an individual by serving a “person of suitable age and discretion” at the individual’s “usual place of abode.” But the certificate of nonservice states that Hernandez “no longer live[d]” at the property at the time the sheriff attempted service and that there was an “OFP in place.” Thus, the record evidence does not support a finding that the property was Hernandez’s “usual place of abode” at the time the sheriff

attempted service, and therefore, the provisions allowing substitute service do not apply. *Briard*, 784 N.W.2d at 430 (defining “usual place of abode” as “a person’s customary dwelling place or residence” (quotation omitted)).

Third, the district court erred in determining that “proper” termination of the contract for deed occurred and supported an eviction judgment for the Johnsons. *See* Minn. Stat. § 504B.285, subd. 1(a)(1)(ii) (providing that a person “entitled to the premises may recover possession by eviction” when a person holds over after “termination of [a] contract to convey the property”). Termination of a contract for deed requires service of the termination notice “upon the purchaser or the purchaser’s personal representatives or assigns.” Minn. Stat. § 559.21, subd. 2a. Because no record evidence shows that Hernandez (or his personal representatives or assigns) received service of the termination notice, the contract for deed was not terminated *as to him*. *See Guider v. Mayco, Inc.*, 252 N.W.2d 601, 602-04 (Minn. 1977) (affirming a district court’s determination that a mortgage assignee’s interest in a contract for deed was not terminated because they were not served with a notice of termination).

On appeal, the Johnsons argue that Hernandez “evaded service of process” and that “Minn. Stat. § 559.21, subd. 4(a) & (b) have been complied with via publication.”⁴

⁴ Minnesota Statutes section 559.21 (2024) has specific provisions for service on a “resident individual who has departed from the state, or cannot be found in the state” and specifies that service of the termination notice “may be made by publication.” *Id.*, subd. 4(b) (outlining the procedural requirements for service by publication of a notice of termination of a contract for deed). “If an address of a person to be served is known, then within 30 days after the first date of publication of the notice a copy of the notice must be mailed to the person’s last known address by first class mail.” *Id.*

Hernandez counters that these arguments “were not made to the eviction court or facts contained in the record” and thus should not be considered on appeal. We agree with Hernandez. Appellate courts generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because the Johnsons raise these arguments for the first time on appeal, we decline to consider them.⁵

In his reply brief, Hernandez adds that “any reliance on [him] receiving a copy of” the termination notice “with the eviction documents is misplaced because the eviction proceedings were served by posting and mailed,” which is not proper service of a termination notice. We agree. Although service by mail and posting can satisfy service procedure for eviction, Minn. Stat. § 504B.331(d) (Supp. 2023), it does not satisfy service requirements for terminating a contract for deed. Minnesota Statutes section 559.21, subdivision 4(a), provides that service of the termination notice must be “in the same manner as a summons in the district court.” And a summons must be served on a person in-state by delivering a copy to the individual personally or by leaving a copy at the individual’s “usual place of abode with some person of suitable age and discretion then residing therein.” Minn. R. Civ. P. 4.03(a).

Because the record does not support the district court’s implicit determination that Hernandez was served with the termination notice, the district court erred in concluding

⁵ The Johnsons also argue that Hernandez vacated the property without providing written notice under Minn. Stat. § 504B.181, subd. 5 (2024). But this statute addresses landlord or agent disclosures in a tenancy and does not affect the statutory requirement to serve a termination notice as provided in Minn. Stat. § 559.21.

that Hernandez held over after “proper” termination of the contract for deed. The district court therefore erred by entering an eviction judgment for the Johnsons. Thus, we reverse the judgment of eviction and any award of costs and disbursements against Hernandez.

Reversed.