

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED December 16, 2024
Original Proceeding County Court, City and County of Denver, 2024C58400	
In Re:	Supreme Court Case No: 2024SA163
Plaintiff: Mercy Housing Management Group Inc,	
v.	
Defendant: Naomi Bermudez.	
ORDER OF COURT	

Upon consideration of Naomi Bermudez’s petition for rehearing, which she filed following the announcement of this Court’s opinion in this case on October 21, 2024, 2024 CO 68, and the responses submitted by Mercy Housing Management Group Inc. and the Denver County Court, and being sufficiently advised in the premises,

IT IS HEREBY ORDERED as follows:

The October 21 opinion was premised on the Court’s belief that Bermudez was personally served and that this case was therefore governed by section 13-40-115(2), C.R.S. (2024) (“subsection (2)”). Bermudez’s petition for rehearing informs the Court for the first time that she was served by posting and was not

personally served, and therefore, section 13-40-115(1) (“subsection (1)”), rather than subsection (2), controls in this case. Bermudez contends, however, that subsections (1) and (2) both confer a jury-trial right in forcible entry and detainer (“FED”) actions for possession. Bermudez accordingly requests that we conclude that she’s entitled to a jury trial under subsection (1).

Because the October 21 opinion rested on a factual premise that the Court has now been advised was inaccurate, the Court grants the petition for rehearing in part, withdraws its October 21 opinion, and now discharges without an opinion the May 17, 2024 order to show cause. *See* C.A.R. 21(o).

Based on the petition for rehearing and the responses thereto, the Court now concludes that section 13-40-115 does not make clear whether a party has a right to a jury trial in FED-possession actions, and if so, in what circumstances that right applies. The Court is unwilling to proceed by judicial fiat. Rather, it is up to the legislature to clarify its intent with respect to whether section 13-40-115 confers a jury-trial right in FED-possession actions, and if so, in what circumstances that right applies. The Court expresses no opinion on these questions.

Accordingly, the petition for rehearing is granted in part to reflect that Bermudez was served only by posting and that this case thus falls within the scope of subsection (1), not subsection (2); the petition for rehearing is otherwise denied.

Further, the Court's October 21 opinion is withdrawn, and the order to show cause is now discharged without an opinion.

This order is of no precedential value. *See* C.A.R. 21(o).

BY THE COURT, EN BANC, DECEMBER 16, 2024.

JUSTICE BOATRIGHT does not participate.