

DA 18-0573

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 249N

GEO R. PIERCE, INC.,

Plaintiff and Appellee,

v.

PAMELA JO POLEJEWSKI,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. DDV 18-0201(b)
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Pamela Jo Polejewski, Self-represented, Great Falls, Montana


For Appellee:

Kelly J. Varnes, Hendrickson Law Firm, P.C., Billings, Montana

Submitted on Briefs: September 25, 2019

Decided: October 15, 2019

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Pamela Jo Polejewski, appearing pro se, appeals the September 5, 2018 Order Affirming Justice Court Ruling from the Eighth Judicial District Court, Cascade County. Geo R. Pierce, Inc., sued Polejewski for damages and to recover possession of a storage container, when Polejewski failed to make monthly payments on a two-year purchase option lease agreement for the storage container. The Justice Court issued its Findings of Fact and Conclusions of Law and Judgment on March 9, 2018. Polejewski raises various claims challenging the award of \$3,850 in damages, plus attorney fees and costs, as well as awarding possession of the storage container at issue to Geo R. Pierce, Inc.

¶3 The provisions regarding default in the contract allowed Pierce to repossess the property "in the event of nonpayment." Further, it provided that upon default, Pierce "may declare immediately due and payable all rent due and to become due for the full term of the lease." Polejewski does not contest the fact that she has failed to make any payments on the storage container since August 2016. She simply argues that Pierce engaged in bad faith when it refused to renegotiate the contract with her when she became unable to pay. The Court cannot rewrite Polejewski's contract. *See* 1-4-101, MCA ("In the construction

of an instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.”). Under the terms of the contract, the Justice Court properly awarded Pierce damages, as well as possession of the storage container.

¶4 Polejewski’s challenge to the award of attorney fees likewise fails. While Polejewski is correct that Montana follows the “American Rule” for attorney fees, under that rule the court will not award attorney fees to the prevailing party in a lawsuit “absent statutory or *contractual* authority.” *City of Helena v. Svee*, 2014 MT 311, ¶ 18, 377 Mont. 158, 339 P.3d 32 (emphasis added). The contract between Polejewski and Pierce provided that “Lessee will pay all costs and expenses (including attorneys fees) where recovery of same is not prohibited by law incurred by Lessor in enforcing any of the terms, provisions, covenants, and indemnities provided herein.” Given the express terms of the contract, the Justice Court properly awarded \$1,549.62 in attorney fees and costs to Pierce.

¶5 Polejewski also challenges whether she was properly credited with the \$950 worth of payments she did make. Pierce submitted invoices for twenty-seven months of payments for a two-year lease before the Justice Court. Pierce credited Polejewski with five months of payments—the total of Polejewski’s sporadic payments (plus the \$75 initial “mobilization” fee)—and sought twenty-two months of payments or \$3,850. Neither side contends that Polejewski’s payments did not total five months’ worth of payments. The terms of the contract call for “monthly rental.” There are only twenty-four months in two years. Therefore, Pierce is only owed nineteen more months of payments on a two-year

lease or \$3,325. We reverse the award and remand to the District Court with instructions to remand to the Justice Court to amend the judgment to \$3,325 in damages and \$1,549.62 in attorney fees and costs, for a total of \$4,874.62.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. Affirmed in part and reversed and remanded in part with instructions to amend the judgment against Polejewski to \$4,874.62.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ JIM RICE