

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**Supreme Court Cause No. DA-22-0358**

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DAVID LOCKHART AND DOREEN  
LOCKHART,

Appellants/Cross-Appellees,

vs.

WESTVIEW MOBILE HOME PARK,

Appellee/Cross-Appellant.

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**APPELLANT'S OPENING BRIEF**

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On appeal from the Montana Fourth Judicial District Court,  
County of Missoula, Cause No. DV-32-2022-0000545  
Honorable Judge Shane Vannatta

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*Bostwick Props., Inc. v. Dep’t Nat. Res. & Conserv.*, 209 P3d 1115, 1159 (Mont. 2013).

*City of Missoula v. Cox*, 2008.

*City of Missoula v. Mt Water Co*, 2018 MT 114.

*Coleman v. Thomas*, 2000 UT 53,398, Utah Adv. 12, 4 P.3d 783 (Utah 2000).

*Gulbrandson v. Carey*, 901 P.2d 573,577 (Mont. 1995).

*Hartshorne v. City of Whitefish*, 486 P.3d 693,702 (Mont. 2021).

*Huston v. Lakeshore Tract Owners Against Annexation, Inc. v. City of Whitefish*, 391 P.3d 86,89 (Mont. 2017).

*Rosendale v. Victory Insurance Co.*, 432 P.3d 114, 431 (Mont. 2013).

*State v. Maddison*, 317 P.3d 806,807 (Mont. 2013).

*State v. Price*, 2002 MT 229, 47,311 Mont. 439,57 P.3d 42.

### **STATUTES**

Mont. Code Ann. 1-2-101.

Mont. Code Ann. 70-24-103 (1994).

Mont. Code Ann. 70-33-106.

Mont. Code Ann. 70-24-441 (2005 Version).

Mont. Code Ann. 70-24-433.

Mont. Code Ann. 70-33-433.

Mont. Code Ann. -43 (1) (a) – (k).

Mont. Code Ann. -43 (1) (i) – (m).

### **OTHER AUTHORITIES**

A Guide To Statutory Interpretation in Montana, by Greg Overstreet, Montana State Bar Association (2022).

Montana Residential Landlord Act of 1977.

APPELLANT’S OPENING BRIEF.

Montana Residential Mobile Home Lot Rental Act, 2007.

Montana Sessions Laws, 1993, Chapter 470, HB 245 (1993).

## I. STATEMENT OF ISSUES

1. Whether a landlord may terminate a tenancy and evict a tenant who owns their mobile home and only rents the land, for no reason and without cause.
2. Whether terminating the Lockhart's lease without cause violated the Lockhart's Due Process Right to contest the claims alleged in Westview's original Complaint for Possession.

## II. STATEMENT OF THE CASE.

This matter is a case regarding the statutory meaning of the *Montana Residential Mobile Home Lot Rental Act*, and whether a landlord can terminate a lease or evict a tenant who owns their mobile home and only rents the lot-space, for no reason, specifically, Montana Title 70. Property. 70-33-433. Grounds for termination of rental agreement. This is a case of first impression for the Supreme Court.

70-33-433 (1) reads:

*“If there is noncompliance* by the tenant with the rental agreement or with a provision of 70-33-321, the landlord may deliver a written notice to the tenant pursuant to 70-33-106 specifying the acts or omissions

constituting the noncompliance and stating that the rental agreement will terminate upon a date specific in the notice that may not be less than the minimum number of days after receipt of the notice provided in this section. The rental agreement terminates as provided in the notice for *one or more of the following reasons and subject to the following conditions:*” (emphasis added)

### III. STATEMENT OF FACTS

Westview Mobile Home Park LLC (hereinafter “Westview” or “the park”) operates a mobile home park within the County of Missoula. Westview leased a mobile home lot to David and Doreen Lockhart (the “Lockhart’s”) on or about June of 2015. The Lockhart’s have a month-month lease. The Lockhart’s and their family have resided at Westview for approximately seven (7) years. In October, 2021, Westview alleged that the Lockhart’s submitted their lot rent payment late. The Lockhart’s disputed the allegation, claiming their lot payment was not late according to their lease agreement. Without discussion, Westview threatened to terminate the Lockhart’s lease if late fees and penalties were not paid in full. On or about January 1, 2022, without notice, Westview substantially raised the Lockhart’s lot rent (highest in the park of more than 360 lots). On or about January 10, 2022, Westview terminated the Lockhart’s lease, effective February 13, 2022

(Exhibit A). On or about February 14, Westview filed for possession of the mobile home lot, alleging unpaid rent and other violations of the lease (Exhibit B). The Lockhart's responded in a timely fashion, disputing the allegations of non-payment of lot rent and other allegations made in Westview's Complaint. The Lockhart's counter-claimed against Westview for harassment and retaliation (Exhibit C). The Lockhart's later amended their claim to include additional defenses and claims (Exhibit D). A hearing was held in the Justice Court of Record in which the Court inquired whether Montana law allowed the Lockhart's to be evicted with simply a 30-day-notice, without cause. Westview's attorneys agreed with the proposition that a 30-day-notice without cause was sufficient to evict the Lockhart's. Attorneys for Westview effectively changed their theory contained in their pleadings to a no-cause theory to evict. The Lockhart's objected to a no-cause eviction, in part because Westview had not claimed such within any of their pleadings. The Justice Court continued the matter to April 25, 2022. At the April hearing, the Lockhart's brought witnesses and exhibits in order to dispute the claims alleged in Westview's Complaint for Possession. However, the Court ruled that it was proceeding solely upon the no-cause theory, which denied the Lockhart's from presenting a defense to Westview's Complaint for Possession. The Court ruled it would only take testimony on the issue of retaliatory eviction.

The Justice Court of Record ruled in favor of Westview.

On April 27, 2022, the Missoula County Justice Court of Record issued an Order granting possession of the mobile home lot to Westview, effectively evicting the Lockhart's and their family without cause (Exhibit E, Order and Notice of Entry of Order). On or about May 5, 2022, the Lockhart's appealed to the Fourth Judicial District Court, Missoula County (Exhibit F). On May 18, 2022, the District Court issued a Briefing Schedule. Pursuant to the Briefing Schedule, the Lockhart's opening Brief would be due 20 days from the date of the Order (Exhibit G). On or about May 18, the Lockhart's filed an Emergency Motion in District Court to Stay the Judgement of possession from the Justice Court, pending resolution of their appeal in the District Court (Exhibit H). On May 20<sup>th</sup>, the District Court scheduled a hearing for May 31<sup>st</sup> to consider the Lockhart's request to stay the judgement order of the Justice Court for possession of the property. The District Court scheduled the hearing for one hour; 30 minutes for each side (Exhibit I). On May 31, 2022, at 3:00, the court convened to hear argument, presumably on the Issue of the Lockhart's *Motion for a Stay of Possession*. The Court inquired of both parties their position in reference to the request for a stay, as well as their respective positions in reference to the appeal. The Lockhart's argued that under the *Montana Residential Mobile Home Lot Act*, Westview was

required to have reason (show cause) in order to terminate their lease and evict them. The Lockhart's also argued that by evicting them without cause, Westview violated their right to Due Process by not allowing them to challenge Westview's claims and to present their evidence that Westview's claims were false and without merit. (District Court Transcript, Page.7, P.8, P.18, P.19, P.27) Westview's attorneys stood by their belief that a no-cause eviction was proper. (Tr. P.13, P.14,). The District Court opined that it had never had one of these before, and that they were unable to find direction on the issue from other courts. (Tr. P.14, P.15, P.20, P.25, P.28.) The District Court then proceeded to rule on the merits of the appeal itself, without having received briefing pursuant to the Court's own scheduling order. The Lockhart's repeatedly asked the Court that they should be permitted to file their Brief on the matter pursuant to the Courts scheduling order (Tr. P10, P.12, P.13, P.23, P.27). Instead, the Court made its ruling without briefing (Exhibit J, District Court Transcript)(*Please see entire 31 page District Court Transcript*). The District Court upheld the Justice Court's Judgement for Possession (Exhibit K, Order and Minute Entry). The Lockhart's then filed their Notice of Appeal to the Montana Supreme Court, on July 1, 2022.

The Lockhart's filed an Emergency Motion to Stay the Order of Possession in the District Court, pending appeal to the Supreme Court (Exhibit L). On or about,

August 9, the District Court denied the Lockhart's Motion. Westview ordered the Lockhart's to vacate their Mobile home lot and further trespassed them from the property. Westview summarily declared the Lockhart's mobile home abandoned, in disregard for the Lockhart statements and have since moved to dispose of it by public auction.

Westview's attorneys later filed a Motion to Dismiss the Lockhart's Appeal to the Supreme Court on the grounds of Mootness and unreasonable delay.

Westview's Motion to Dismiss was denied.

#### **IV. SUMMERY OF ARGUMENT**

A landlord must comply with Section 70-33-433, MCA, to terminate a mobile home lot rental. Section -433 is entitled "Grounds for Termination of Rental Agreement," and allows for termination based on various acts of noncompliance by a tenant [*see* -433 subsections (1)(a)-(k)], and also based on other reasons that are totally in control of the landlord and do not require any noncompliance by the tenant [*see* -433 subsections (1) (1)-(m)]. Section 70-33-433(1)(1) allows a landlord to terminate a rental agreement based on a change in use of the land, and -433(1)(m) allows a landlord to terminate a rental agreement based on "any legitimate business reason" so long as the termination does not violate state law, and the landlord has given the tenant at least ninety (90) days' written notice.

## V. STANDARD OF REVIEW

The interpretation of a statute is reviewed De novo. The interpretation of a statute is a question of law the Supreme Court reviews for correctness (*City of Missoula v. Mt Water Co*, 2018 MT 114).

## VI. ARGUMENT

### 1. THE PLAIN MEANING OF 70-24-433 MCA IS CLEAR PURSUANT TO THE MONTANA RULES OF STATUTORY INTERPRETATION

“A Court’s function is to determine legislative intent, and where that can be determined from the plain meaning of the words used, the plain meaning controls and a court need not go further or apply other means of interpretation.” *State v Madison*, 317 P.3d 806, 807 (Mont. 2013). Once the plain meaning has been ascertained, the analysis stops. *Gulbrandson v. Carey*, 901 P.2d 573, 577 (Mont 1995). (“If the legislature’s intent can be determined by the plain language of the words used, we may go no further and apply other means of interpretation). See also *MONT. CODE. ANN. 1-2-101(2019)*. See also *City of Missoula v. Cox*, 2008.

#### 1. Legislative Intent/Plain Meaning

The “plain meaning” being sought is the meaning the Legislature intended. See *Houston Lakeshore Tract Owners Against Annexation, Inc. v. City of Whitefish*, 391 P.3d 86, 89 (Mont. 2017). Additionally, “Terms and words are intended to be

understood in their ordinary sense, and this Court assumes a legislative body used particular words for a particular reason.” *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021). A significant difference is articulated in 70-33-433, and whether it prohibits a landlord from terminating a lease for no reason. In the statute at hand, the language used, is that “*If there is a noncompliance with the tenant....*” The word “*if*” indicates a condition precedent, or limitation, to the termination of the mobile home lease. A no-cause termination is clear on its face, that a “noncompliance” is not necessary. Under the Residential Landlord Act of 1977, no such conditional or limited language is present. The landlord may terminate for any reason, so long as it is not contrary to Montana Law. The mobile home rental act additionally states that “the landlord may deliver a written notice to the tenant pursuant to 70-33-106 specifying the acts or omissions constituting the noncompliance...” and that “the rental agreement terminates as provided in the notice for *one or more of the following reasons and subject to the following conditions:*” The plain language of the particular words chosen by the Legislature have clear and obvious meaning. The Legislature is presumed to have used the language it did for a reason. See *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021) (“this Court assumes a legislative body used particular words for a particular reason”). The landlord must have a *noncompliance of one or more of*

the reasons articulated in the statute in order to terminate their lease,

The Supreme Court of Montana has stated “When Construing a statute, *it must be read as a whole*, and its terms should not be isolated from the context in which they were used by the Legislature” *State v. Price*, 2002 MT 229, 47, 311 Mont. 439, 57 P.3d 42. The Statute must be read as a whole. *Bostwick Props., Inc. v. Dep’t Nat. Res. & Conserv.*, 296 P.3d 1154, 1159 (Mont. 2013). *See also, A Guide To Statutory Interpretation In Montana, by Greg Overstreet, Montana State Bar Association (2022)* (“a Court gives effect to every provision of a statute whenever possible. To do otherwise would render portions of the statute superfluous, which would violate the judicial presumption that the legislature does not enact meaningless provisions.”). *see Rosendale v. Victory insurance Co.*, 432 P.3d 114, 431 (Mont. 2018). The requirement to give effect to each provision is a codified rule of interpretation. Mont. Code Ann. 1-2-101 (2019).

The Montana Residential Mobile Home Lot Rental Act’s legislative history supports the conclusion that the Act does not allow the termination of a lease for no reason. When the *Residential Landlord and Tenant Act of 1977* was enacted, it allowed for no-cause terminations of regular landlord-tenant agreements. However, the Act specifically did not apply to mobile home owners, where they did not rent their mobile home, and only rented the land. The 2005 version of the *Residential*

*Landlord and Tenant Act of 1977*, MCA 70-24-441, reads as follows:

70-24-441. Termination by landlord or tenant – applicability. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

(4) The provisions of this section do not apply to a tenant who rents space for a mobile home but does not rent the mobile home.

Note that subsection 4 was removed from the *Residential Landlord And Tenant Act of 1977*, after the passage of the *Montana Residential Mobile Home Lot Rental Act* in 2007, as it was no longer applicable. Furthermore, legislative intent is declared in the preamble attached to the 1993 amendments to the *Montana Residential Landlord and Tenants Act*, which reads:

“WHEREAS, Montana residents currently face a housing crisis that includes a lack of affordable housing and a lack of available mobile home park spaces; and

WHEREAS, mobile homes are not “mobile” without substantial moving costs and potential for substantial damage to the mobile homes; and

WHEREAS, under 70-24-441 [in the MRLTA, before enactment of the Lot Rental Act] landlords of mobile home parks may, without supplying a reason, evict tenants who rent space in mobile home parks; and

WHEREAS, if evicted unfairly, mobile home owners who rent space in mobile home parks may be forced to sell their mobile homes at a fraction of their costs and within unreasonable amount of time (30 days pursuant to 70-24-441) in order to comply with the eviction.

THEREFORE, the Legislature of the State of Montana finds it necessary to define justifiable and reasonable grounds on which landlords may evict mobile home owners who rent space in mobile home parks.”

*Annotated Annotations, MCA 70-24-103 (1994). See also Montana Sessions Laws, 1993, Chapter 470, HB 245 (1993).*

The Montana Residential Mobile Home Lot Rental Act is not unique. Most states and nearly every Western state has similar statutes to protect mobile home owners. While not binding in Montana, other states provide persuasive information to assist Montana in its interpretation. The Utah Supreme Court, in *Coleman v. Thomas*, 2000 UT 53, 398 Utah Adv. 12, 4 P.3d 783 (Utah 2000), is similar and analogous to the instant case on the issue of terminating a lease in a mobile home park without cause. (Exhibit M). Utah’s Mobile Home Park Residency Act, Utah Code Ann. 57-16-1 et seq., provides that a landlord may not terminate a lease without cause. *Coleman, paragraph 7*. In *Coleman*, the tenant, Michael Thomas, owned his mobile home and leased a lot in a mobile home park. Thomas received a notice terminating his lease without cause and ordering him to remove his mobile home from Coleman’s mobile home park. *Coleman par. 3*. Thomas argued that under Utah’s Mobile Home Park Residency Act, Coleman could not lawfully terminate his lease without cause. The lower courts ruled in favor of Coleman.

Thomas appealed to the Supreme Court. The Utah Supreme Court reversed the judgement of the lower courts. Colman par. 23 The Supreme Court found that “in light of the plain language of the MHPRA, it is clear that absent a mutual agreement to terminate the lease, cause is necessary to terminate a lease for a mobile home space.” Additionally, park residents could not waive these protections. *Coleman par. 18*. The Court also cited the high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of lot preparation. *Coleman par. 19*. The Court further mentions the great expense uprooting their homes and attempting to secure another lease elsewhere. “these statutes have been routinely upheld and enforced by appellate courts, which cite the importance of protecting mobile home park residents from the expense, difficulty, and unfairness of being required to move solely at the whim of park owners” *Coleman par. 20*. The Legislators in the instant case, as well as nearly all of the other states, use the same or similar language to justify their enactment of mobile home statutes across the states. The Court in *Coleman* ruled that “Coleman failed to establish that he was entitled to terminate the lease for any of the causes listed in (the statute) *Coleman par. 21*. In the instant case, Westview did not establish its claim of non-payment of rent or other lease violations which the Lockhart’s disputed. Although Westview’s initial Complaint for possession alleged

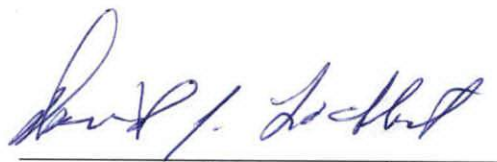
reasons to terminate the Lockhart's lease, their attorneys elected to go the "no-cause" route and thus denying the Lockhart's right to show by evidence that the park's claims were false. Westview's attorneys have stated they alleged cause in their pleadings. However, they chose to proceed on a no-cause theory. Westview cannot have it both ways. The Utah Supreme Court concluded that "The plain language of the MHPRA forbids a park owner to terminate a lease without cause. Coleman's attempt to terminate the lease in this case without cause violated the MHPRA" *Coleman par. 23*.

## VII. CONCLUSION

Interpretation of a statute is a question of law that the Supreme Court reviews for correctness. It is clear that in applying the rules of statutory interpretation to the Montana Residential Mobile Home Lot Rental Act 70-33-433, a landlord is required to have a reason (or "cause") in order to terminate a lease. The Plain Meaning of 70-33-433(1) is clear and unambiguous. It is further supported by Legislative intent, as well as other rules of statutory interpretation. Furthermore, while not binding upon this Court, many other states have passed nearly identical laws using nearly identical language to protect tenants who do not rent their mobile

home, and rent only the mobile home lot. The Lockhart's own their mobile home and rent only the lot space from Westview. The Montana Residential Mobile Home Lot Rental Act applies to the Lockharts. The lower Court erred by finding, as a matter of law, that the Mobile home act did not require a reason to evict the Lockharts. When the lower Court denied the Lockhart's right to challenge the allegations in Westview's Complaint for Possession, it obliterated the Lockhart's right to present evidence and testimony to disprove Westview's claims and allegations. The Lockhart's request that the Supreme Court reverse the judgment of the lower Court and Vacate the Judgement and Order for possession.

DATED this 26<sup>th</sup> day of October, 2021

A handwritten signature in blue ink, appearing to read "David J. Lockhart", written over a horizontal line.

David J. Lockhart

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I, the undersigned hereby certify that the foregoing Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word is less than 10,000 words (total word count: 3,339) excluding the caption, Certificate of Compliance, and Certificate of Service.

DATED this 26<sup>th</sup> day of October, 2022.



David J. Lockhart  
David J. Lockhart

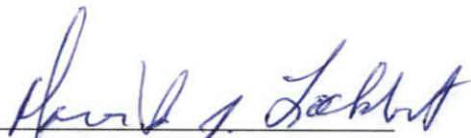
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the forgoing Opening Brief was served upon counsel of record for Westview Mobile Home Park, Inc., by placing in the mail, first class, pre-paid, and addressed as follows:

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DATED this 28<sup>th</sup> day of October, 2022

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