

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0498

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GREENER MONTANA PROPERTY MANAGEMENT, LLC, TRAVIS  
MARTINEZ, Individually and KRISTYN MARTINEZ, Individually,

Plaintiffs and Appellees,

v.

HYDI CUNNINGHAM,

Defendant and Appellant.

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**MOTION TO CONSIDER TOGETHER THE TWO PENDING APPEALS  
INVOLVING THE SAME LEGAL ISSUE**

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On Appeal from the Montana Twenty-First Judicial District Court,  
Ravalli County, the Honorable Howard F. Recht, Presiding

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Pursuant to Mont. R. App. P. 4(3)(b), and the efficient administration of justice, Appellant Hydi Cunningham (“Hydi”) respectfully moves the Court to consider together the two appeals currently pending before this Court involving the same legal issue. The instant appeal, and a previous appeal -- *Westview Mobile Home Park, LLC v. David Lockhart and Doreen Lockhart*, No. DA 22-0358, which is currently on appeal from the Montana Fourth Judicial District Court -- involve the same legal issue -- whether a month-to-month mobile home lot-only tenancy may be lawfully terminated upon thirty days’ notice.

The briefing in *Westview* is further along than the briefing in the instant appeal. The appellee’s response brief in *Westview* is currently due on February 27, 2023. In the instant appeal, Hydi’s opening brief will not be due until 30 days after the transcript is filed, and the deadline for the transcript filing is currently set for January 15, 2023.

Rule 4(3)(b), Mont. R. App. P., provides: “Appeals or cross-appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party or parties.” Hydi is asking this Court to consolidate the two appeals only to the extent that the Court would consider the full briefing in each case before ruling on either appeal. Hydi is not asking this Court to set a common briefing schedule for the two cases, or to allow the parties from the *Westview* appeal to respond to briefing in the instant appeal or vice versa. Hydi is not asking the Court to

combine the two separate cause numbers into this cause number. Hydi is asking that each appeal maintain its own briefing schedule and its own separate cause number, and that this Court delay its final ruling in each appeal until both cases are fully briefed.

Consideration of these two appeals together is appropriate because each appeal involves the same legal issue -- whether a month-to-month mobile home lot-only tenancy may be lawfully terminated upon thirty days' notice. The parties in the two cases are distinct and unrelated -- *Westview* involves a lot rental in Missoula County with David and Doreen Lockhart as tenants, and the instant appeal involves a lot rental in Ravalli County with Hydi Cunningham as tenant. It is the legal issue not the relationship of the parties that forms the basis of this motion.

In each appeal, the Court must construe the Montana Residential Mobile Home Lot Rental Act, Title 70, Ch. 33, MCA. The relevant facts of each appeal vary somewhat, but each appeal involves a month-to-month rental agreement and a 30-day notice to vacate. The Montana Board of Realtors has been granted leave to file an amicus brief supporting the landlord's position in *Westview*, and NeighborWorks Montana will be seeking leave of court to file an amicus brief supporting the homeowner/tenant's position in the instant case. Consideration of these two appeals together would allow the Court to consider the complete briefing

in both cases before construing the Montana Residential Mobile Home Lot Rental Act, and would promote the efficient administration of justice.

### **Certificate of Conference**

The undersigned counsel has contacted the attorneys involved in these two appeals about this motion:

- David Lockhart, attorney, is the appellant and appellant's counsel in *Westview*, and he consents to this motion and has filed a similar motion in Case No. DA 22-0358.
- Eric R. Henkel and W. Bridger Christian are counsel for the appellee/cross-appellant in *Westview*, and they don't object to this motion to the extent that both appeals involve the question of "whether a month-to-month mobile home lot-only tenancy may be lawfully terminated upon thirty days' notice."
- Katherine C. Holliday is appellee's counsel in the instant case and she does not oppose this motion, as long as the issues that Hydi addresses in her future opening brief remain similar to the issues discussed on January 4: (a) whether the Lot Rental Act allows for a 30-day no-cause termination, and (b) whether a periodic tenancy expires every period (per the Utah case cited in the District Court proceedings).

## **Conclusion**

Accordingly, Hydi respectfully requests that the Court: (1) delay ruling on *Westview* (Case No. DA 22-0358) until after considering the full briefing in the instant case; and (3) grant such further relief as the Court finds appropriate.

Respectfully submitted this 11th day of January, 2023.

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## Certificate of Service

I, the undersigned, certify that a true and correct copy of the foregoing has been served to the following on 1/11/23:

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## **CERTIFICATE OF SERVICE**

I, Amy E. Hall, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 01-11-2023:

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