

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 22-0498

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

v.

HYDI CUNNINGHAM,
Defendant and Appellant.

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

**BRIEF OF AMICI CURIAE MONTANA HOMEOWNERSHIP NETWORK
D/B/A NEIGHBORWORKS MONTANA AND THE NATIONAL
CONSUMER LAW CENTER**

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I. INTRODUCTION

Amicus Curiae the National Consumer Law Center (NCLC) is a non-profit national research and advocacy organization, founded in 1969, focusing on the legal needs of low-income consumers. NCLC provides legal and technical assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC attorneys also have provided extensive testimony to Congressional committees and state legislatures. NCLC staff attorneys write and publish twenty-one treatises on consumer protection law, including chapters that address manufactured home issues: Chapter 16 of *Consumer Warranty Law* (6th ed. 2021), which addresses standards and remedies for defects in manufactured homes, and Chapter 11 of *Home Foreclosures* (1st ed. 2019), which addresses repossession, foreclosure, and titling of manufactured homes. NCLC has advocated for protection of manufactured home community residents under state law and federal administrative agency law. It has published a number of policy guides on manufactured home community issues, found at <https://www.nclc.org/topic/manufactured-housing/>

Amicus Curiae Montana Homeownership Network d/b/a Neighborworks Montana (NWMT) is dedicated to strengthening Montana's communities through education and financing that gives every Montanan the opportunity to live in a home where they can thrive. NWMT wants every Montanan to have a safe and stable home.

A critical part of ensuring Montana has a consistent supply of affordable homes is having a strong portfolio of manufactured¹ homes, where homeowners cannot be evicted without cause. The decision the court makes in this case, or the companion case, will have statewide impacts on manufactured homeowners and lot owners. It is for that reason, that NWMT and NCLC support Ms. Cunningham’s position in this appeal.

II. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Montana Residential Mobile Home Lot Rental Act allows a lot-only landlord to terminate a home-owner tenant’s month-to-month lease, when the parties’ written lease allows no-cause termination upon 30 days’ notice.

III. STATEMENT OF THE CASE

NWMT and NCLC agree with the statement of the cause that will be provided by Defendant/Appellant Hydi Cunningham.

IV. STATEMENT OF FACTS

NWMT and NCLC agrees with the statement of the facts that will be provided by Defendant/Appellant Hydi Cunningham

V. SUMMARY OF AMICI’S ARGUMENT

¹ Because many “mobile” homes include built-on porches, decks, and outbuildings and cannot be moved without risking substantial structural damage, they are not truly “mobile.” In this motion and any future briefing, NWMT will use “manufactured” and “mobile” interchangeably.

Montana's mobile home or manufactures homes provide a crucial piece of Montana's affordable housing stock. They are less expensive than traditional site-built homes, but provide many of the same amenities. And despite the name, they are often immobile and have permanent fixtures like decks built onto, or incorporated with, the home. The functional difference from a site built home is that a mobile homeowner does not typically own the land, but instead leases it. Meaning, upon an eviction from the land, the homeowner is usually required to move the home. Since the home is immobile, though, moving is not feasible, or too expensive. As a result, when mobile homeowners are evicted from the land, they often can lose their home, including any built up equity, and suffer from the associated psychological effects of losing one's home. One simple way to protect affordable housing, and against the harms of eviction, is to limit evictions to those for cause. To that end, Amici Curiae support the Defendant-Appellant-Cross Appellee Hydi Cunningham.

VI. DISCUSSION

Montana has an affordable housing crisis. *See* Mont. Exec. Or. 5-2022 (July 14, 2022) (available at https://news.mt.gov/Governors-Office/_documents/EO-5-2022-Establishing-Housing-Advisory-Council.pdf). This crisis leaves essential workers – such as teachers, firefighters, grocers, and service providers – struggling to purchase their own homes. Freeman, Lori, *Community Land Trusts: Creative Solution to Housing Crisis*, 46 Montana Lawyer 14, 15 (Feb./Mar. 2021). To ensure adequate housing for

these workers, and many more, having a stable source of manufactured homes is critical. See, e.g., O'Sullivan, Rory and Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 Gonz. L. Rev. 285, 286-287; See Stoltz, Zoe Ann, *From Camping to Permanence: A history of Montana Mobile and Manufactured Homes*, Graduate Student Theses, Dissertations & Professional Papers, <https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1489&context=etd>, p. 86 (2011). And unlike residential tenants, manufactured homeowners who lease the land are in a more precarious position because they risk not only the loss of their rental lot but also the equity in their home. See 49 Gonz. L. Rev. at 287-88. This problem is exacerbated if they can be evicted from their lot without cause.

A. Manufactured homes are a central part of Montana's affordable housing portfolio.

The lowest cost and most affordable housing in Montana consists of manufactured homes. See Kennedy, Rand and Julie Flynn, *Mobile Home Decommissioning & Replacement And Mobile Home Park Acquisition: Strategies for Montana*, p. 1 (June 2006) (attached as Exhibit 1).

The upfront purchase price of manufactured homes are dramatically lower than their site-built counter parts. See Fannie Mae, *Manufactured Housing Landscape 2020*, <https://multifamily.fanniemae.com/news-insights/multifamily-market-commentary/manufactured-housing-landscape-2020#:~:text=The%20median%20annual%20household%20income,earn%20less%20than%20%245>

0%2C000%20annually (May 21, 2020) (“Fannie Mae Report”). Nationwide, the average sale price of a new manufactured home in 2018 was \$79,000. *Id.* A site-built home was more than triple that amount at \$300,000. *Id.* Since 2018, the price gap has increased significantly. As of 2021, the national average sale price was \$108,100 for a manufactured home and \$464,200 for a site built home. *See* U.S. Census Bureau, *Cost & Size Comparisons: New Manufactured Homes and new Single-Family Site-Built Homes* (June 2022) (available at <https://www.census.gov/data/tables/time-series/econ/mhs/annual-data.html>). In Montana, the with an average sale price of a manufactured home slightly higher \$133,400. *See* U.S. Census Bureau, *Average Sales Price of New Manufactured Homes Sold or Intended for Sale by Size of Home by State: 2014-21* (June 2022) (available at <https://www.census.gov/data/tables/time-series/econ/mhs/annual-data.html>). Whereas the average cost of all housing units in Montana is \$263,700. United States Census Bureau, *QuickFacts Montana*, <https://www.census.gov/quickfacts/MT> (last accessed Jan. 26, 2023) (this amount includes the costs of manufactured homes) (“QuickFacts Montana”)

Owners of manufactured homes typically earn less than owners of site built properties. Nationally, the median annual household income for manufacture homeowners is \$35,000, which is half of the median annual income for site-built homes. *See* Fannie Mae Report. More than a quarter of manufactured homeowners earn less than \$20,000 annually, and two-thirds earn less than \$50,000. *Id.* In other words, the vast majority of manufactured homeowners make less than the median family income

in Montana, which is \$60,560. *See QuickFacts Montana*. In contrast, only about a third of site-built homeowners earn less than \$50,000 annually. *See Fannie Mae Report*.

In addition to being less expensive to purchase, manufactured homes are also less expensive to maintain. The ongoing costs of owning a manufactured home are also significantly less, for manufactured homeowners as compared site-built homeowners (\$925 compared to \$1600 per month). *Id.*

Over 40 years ago, in 1982, this Court addressed the importance of manufactured homes during a housing shortage. *See, generally, Martz v. Butte-Silver Bow Gov't*, 196 Mont. 348, 641 P.2d 426 (1982). While *Martz* concerned Butte-Silver bow, the discussion is equally important now. *Id.* In its opinion, the Court referenced the district court's conclusion that "a municipality must insure that a fair share of housing is within the reach of persons of low and moderate incomes[,]” and that part of that housing is mobile homes. *Id.*, 196 Mont. at 353-54, 641 P.2d at 429-30; *See also, Oak Forest Mobile Home Park, Inc. v. Oak Forest*, 326 N.E.2d 473, 483 (1975) (“All of the experts called by both sides agreed that there is a shortage of low-cost housing of the type provided by mobile-home parks. This type of housing is unique in that it provides comfortable dwelling at low cost.”).

The United States Congress has also recognized the importance of manufactured homes in filling the housing needs of the U.S. In 1974, Congress adopted the National Manufactured Housing Construction and Safety Standards Act. 42 U.S.C. §§ 5401 *et seq.* While the main purpose of the act was to provide construction standard, Congress

made clear that “manufactured housing plays a vital role in meeting the housing needs of the Nation; and manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.” 42 U.S.C. § 5401(a).

Ultimately, manufactured housing has long served the important purpose of providing “unsubsidized affordable housing for low- and moderate-income people.”

Lemar, Anika Singh, *The Role of States in Liberalizing Land Use Regulations*, 97 N.C.L. Rev. 293, 318 (Jan. 2019).

B. Manufactured homes fill a unique space between site-built homes and rental homes.

Unlike tenants of an apartment or house, a mobile homeowner leasing a space cannot simply collect their belongings and move.

The U.S. Supreme Court recognized this problem thirty years ago in *Yee v. Escondido*, 503 U.S. 519, 523-24 (1992). In *Yee*, Justice O’Connor, writing for the Court, explained:

The term “mobile home” is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. A mobile home owner typically rents a plot of land, called a “pad,” from the owner of a mobile home park.. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.

Id. (citations omitted); *Marmion v. M.O.M., Inc.*, 541 A.2d 659, 661-62 (Md. App. 1988) (“the wheels are generally removed, they are anchored to the ground, because of forces of the wind, connections with electricity, water and sewerage are made, awnings are frequently attached.”).

Congress also recognized the relative immobility of mobile or manufacture homes a half-century ago. In 1974, Congress passed the National Manufactured Housing Construction and Safety Act, 42 U.S.C. §§ 5401 et seq. While the purpose of the act was to ensure affordability and safety of manufactured homes, Congress recognized that manufactured homes were more often than not immobile. To that end, it requires that that a home be built on a “permanent chassis” and “designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.” 42 U.S.C. § 5402(6). A permanent chassis, in turn, is a supporting frame with a removable axle. 49 Gonz. L. Rev. at 289-90. In practice, though, the wheels are most often removed and the home is affixed to the underlying property. *Id.*

Other factors also limit a manufactured home’s mobility. For example, an older home may be suitable for housing, but no longer road worthy. 49 Gonz. L. Rev. at 290. Or, “If the home is comprised of multiple units, it had to be delivered to its site in sections, then aligned, bolted, sealed, roofed, and carpeted; to be moved it must then be disassembled and re-assembled at a new site”. *Id.* (citations and quotations omitted).

This is often not feasible for the mobile homeowner. *Marmion*, 541 A.2d at 661-62 (“The removal from one park to another becomes more than a mere hitching to a truck or tractor and pulling it away. To a large degree, mobile homes are occupied by people in the lower income brackets who cannot spend several hundred dollars at the mere whim of a lessor park.”) Zoning restrictions, lack of lot space, and other legal limitations further limit the mobility of manufactured homes. 49 Gonz. L. Rev. at 290.

In light of these differences, many states prohibit no-cause evictions. By 2000, most states had enacted some sort of protection disallowing a lease termination without cause – including most western states. *Coleman v. Thomas*, 4 P.3d 783, 788 (Utah 2000) (collecting statutes)² Those laws are also routinely upheld and enforced by state appellate courts. *Id.* (collecting cases); *Yee*, 503 U.S. at 523; *Ridge v. Mares*, 2007 Wash. App. LEXIS 2504, at *7-8 (Aug. 23, 2007). In upholding laws prohibiting no-cause evictions, many courts noted the difference between traditional rentals and manufactured homes located on lease land. In *Coleman*, for example, the Court explained, “The cause requirement prevents a park owner from terminating residents' leases at whim and forcing them to undergo great expense uprooting their homes, along with their footings, skirting, decks, and landscaping, and attempting to secure another lease elsewhere.”

² The Court in *Coleman* cites to § 70-24-436 (1999), MCA. That law, however, was repealed and replaced with a separate law that is at issue in this case.

Coleman, 4 P.3d at 787-88; *See also Green Valley Mobile Home Park v. Mulvaney*, 918 P.2d 1317 (N.M. 1996) (eviction from lot requires good cause).

Put simply, “People who lease the land but own their home have neither the legal protections afforded homeowners, nor those afforded conventional renters. They fall between the cracks.” *See* Schmitz, Amy J., *Promoting the Promise Manufactured Homes Provide for Affordable Housing*, 13 J. Affordable Hous. & Cmty. Dev. L. 384, 388 (2004) (available at https://lawweb.colorado.edu/profiles/pubpdfs/schmitz/Schmitz_AHCDL.pdf.) To fill these cracks, this Court should require good cause to terminate a lot lease.

C. Evicting a mobile homeowner from the lot causes significant harm.

More than a century ago, the United States Supreme Court recognized, “Housing is a necessary of life.” *Block v. Hirsh*, 256 U.S. 135, 156 (1921). Stripping mobile homeowners of this necessity causes unique harms.

Mobile homeowners are often more vulnerable from the time they agree to lease the lot. As noted, many owners of manufactured home are low-income people. Roisman, Florence Wagman, *The Right to Remain: Common Law Protections for Security of Tenure*, 86 N.C.L Rev. 817, at 850-52 (Mar. 2008). They often live in manufactured communities as opposed to residential lots within a townsite, meaning the individual park owners can exert substantial influence over the mobile home community and owners. *Id.*; 13 J. Affordable Hous. & Cmty. Dev. L. at 388.

From the time they purchase the home, they are “inherent[ly] vulnerab[le].” *Marmion*, 541 A.2d at 661. Manufactured homeowners who are leasing lots generally have weak bargaining power, as compared to the “potentially abusive dominance” of the park owner, which can lead to unfair rental contract terms. *See* 13 J. Affordable Hous. & Cmty. Dev. L. at 388. This naturally can result in sometimes dramatic increases in rent, utility charges, or poor conditions within the park itself. *Id.*

This inherent vulnerability is further evidenced when no-cause terminations are allowed. Indeed, the economic loss caused by an eviction can be devastating for mobile homeowners who rent the land. Manufactured homeowners that do not own the land must either move or sell their manufactured home if they are evicted from the lot. If they cannot do either, they risk losing their home and any equity therein.

Following an eviction, the cost of moving a mobile home can be prohibitive. One author noted that it may cost a homeowner up to \$10,000 to move their home. *See* 86 N.C.L Rev. at 822-24 . And the Washington Supreme Court noted, “Eviction can often be more devastating for a mobile home plot tenant than for the traditional residential tenant because the tenant of a mobile home plot must not only move all of his or her personal possessions, but must also expend in the vicinity of \$ 1,000 - \$ 2,000 to move his or her mobile home and, what is sometimes even more difficult, find a mover and a new lot.” *W. Plaza, LLC v. Tison*, 364 P.3d 76, 82 (Wa. 2015); ; *Fuhrman v. Wright*, 871 P.2d 838, 840 (Id. Ct. App. 1994); *Marmion*, 541 A.2d at 661-62. In Montana, the cost is likely somewhat higher than the Court in *Tison* noted. *See also*

ProMatcher.com, <https://homemovers.promatcher.com/cost/hamilton-mt-homemovers-costs-prices.aspx> (last accessed Feb. 10, 2023) (cost of moving a manufactured home less than 50 miles in Hamilton, MT is between \$2,000-\$3,000)

This moving cost often does not include other relocation costs such as temporary storage, lodging, deposits for a new tenancy, or the higher cost of replacement housing. Roisman, Florence Wagman, *The Right to Remain: Common Law Protections for Security of Tenure*, 86 N.C.L Rev. 817, 822-24 (Mar. 2008). Nor does it account for potential damage to the home during the moving process. *Id.*

The economic price of eviction is not just related to the costs associated with moving the home, but also includes individualized economic damages. *See* Domestic Policy Council and National Economic Council, *The White House Blueprint for a Renters Bill of Rights*, pp 16-17, <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf> (Jan. 2023). Evictions can reduce earnings and cause additional debt to accumulate due to late fees, and potential court costs. *Id.* Being evicted also creates significant credit impacts and limits the homeowners' ability to find future housing because an eviction often appears on a background report use for tenant screening. *Id.*

For individuals of lower economic status, these costs can be insurmountable and may lead to homelessness. Homelessness, in turn, has calamitous impacts like division of families, or intense psychological harm. 86 N.C.L Rev. at 822-24.

New Jersey law makers have noted, in particular, that evictions result in unique harms to vulnerable seniors, the disabled, the frail, minorities, large families and single parents. N.J. Stat. § 2A:18-61.1a.d The harms include, “economic loss, time loss, physical and emotional stress, and in some cases severe emotional trauma, illness, homelessness or other irreparable harm resulting from strain of eviction controversy; relocation search and moving difficulties; anxiety caused by lack of information, uncertainty, and resultant planning difficulty; employment, education, family and social disruption; relocation and empty unit security hazards; relocation to premises of less affordability, capacity, accessibility and physical or environmental quality; and relocation adjustment problems, particularly of the blind or other disabled citizens.” N.J. Stat. § 2A:18-61.1a.e.; *see also*, 86 N.C.L. Rev at 850-52 (“Many owners of manufactured homes are low-income people and have generally weak bargaining power.”); *Blueprint for Renters Bill of Rights*, p. 16 (“evictions are associated with a broad set of negative outcomes, including short- and long-term negative impacts on health.”).

To address the significant harms from eviction that mobile homeowners face, the court should disallow evictions without cause. *Blueprint for Renters Bill of Rights*, p. 16 (“just- or good-cause eviction” requirements can mitigate the harms associated with evictions.”).

VII. CONCLUSION

Beyond the illegality of no-cause terminations, public policy strongly favors prohibiting no-cause terminations of mobile home lots. Montana is in a housing crisis,

and manufactured homes provide one important source of affordable housing. Allowing no-cause lease terminations exacerbates the housing crisis, and can cause irreparable harm to the individuals being evicted. And by extension the community and state. Requiring landlords to only evict for cause, in contrast, would have a minimal impact. For these reasons, and those stated herein, the NWMT respectfully requests the Court to reverse the District Court's judgment and hold that an eviction from a mobile home lot must be for cause pursuant to § 70-33-433, MCA.

DATED this 16th day of February, 2023.



Robert Farris-Olsen

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Garamond text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2016 is 3192 not averaging more than 280 words per page, excluding caption, tables, certificate of compliance, and certificate of service.

This 16th day of February, 2023.



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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Amici Curiae Montana Home Ownership Network d/b/a Neighborworks Montana and the National Consumer Law Center to be mailed to the following:

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This 16th day of February, 2023.



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I, Robert M. Farris-Olsen, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 02-16-2023:

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