IN THE SUPREME COURT OF THE STATE OF MONTANA

DA-22-0358

DAVID LOCKHART AND DOREEN LOCKHART
Plaintiffs/Appellants-Cross-Appellees,
v.
WESTVIEW MOBILE HOME PARK.
Defendant/Appellee-Cross-Appellant.

# *AMICUS CURIAE* BRIEF OF MONTANA ASSOCIATION OF REALTORS®

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

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## INTERESTS OF *AMICUS*

The Montana Association of REALTORS®, Inc. ("MAR") is appearing as *amicus curiae* in support of Defendant/Appellee/Cross-Appellant Westview Mobile Home Park ("Westview"). MAR is an association of Montana real estate professionals, including property managers of mobile home parks. MAR and its members are interested in protecting private property rights and advocating for the consistent and predictable interpretation of legal obligations in the Montana real estate industry. MAR is acutely interested in this case because its resolution may impact how MAR's members have understood and followed Montana law relative to the purchase, sale, rental and management of mobile home lots for many years, and may have profound implications on the existing contractual relationships of MAR's members and their clients.

## ARGUMENT

Plaintiffs/Appellants/Cross-Appellees David and Doreen Lockhart ("Lockharts") advocate for a construction of the Montana Residential Mobile Home Lot Rental Act, Mont. Code Ann. § 70-33-101, *et seq*. ("Act") that would contradict the Act's plain language and upend Montanans' long-held understanding of mobile home lot rental agreements. The Court should decline the invitation to rewrite the Act. The policy arguments advanced by the Lockharts and *amicus*

*curiae* NeighborWorks Montana can be presented to the Montana Legislature. They are inapposite to the Court's statutory analysis.

### A. The Lockharts' Interpretation Would Render Explicit Provisions of the Act Superfluous.

The Act expressly provides that a mobile home lot tenancy "is from month to month" unless the rental agreement provides otherwise. Mont. Code Ann. § 70-33-201(2)(e) (emphasis added). Pursuant to this provision, the Lockharts concede they have "a month-month [sic] lease." (App. Br. at 4.) However, the statutory interpretation they propose would render the fact of their month-to-month tenancy—or a mobile home lot tenancy of any duration—meaningless.

This Court "avoid[s] constructions that render any section of the statute superfluous or fail to give effect to all of the words used." *Mont. Indep. Living Project v. City of Helena*, 2021 MT 14, ¶ 11, 403 Mont. 81, 479 P.3d 961 (internal citations and punctuation omitted). *See also, e.g., Gannett Satellite Info. Network, Inc. v. State*, 2009 MT 5, ¶ 19, 348 Mont. 333, 201 P.3d 132 ("Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all."); *Formicove, Inc. v. Burlington N., Inc.*, 207 Mont. 189, 194, 673 P.2d 469, 471 (1983) ("We must assume that the legislature does not perform idle acts.").

If it were true that a mobile home lot tenancy could only be terminated for cause, then it would make no difference whether a tenancy was designated as

month-to-month, week-to-week, year-to-year, or for some other specified term. The designation would have no legal significance because all mobile home tenants would effectively possess a tenancy in perpetuity, terminable only upon one of the two specified grounds set forth in Mont. Code Ann. § 70-33-433 (i.e., noncompliance by the tenant or change of use by the landlord). This interpretation would render Mont. Code Ann. § 70-33-201(2)(e) (designating mobile home lot tenancies as "month to month" unless stated otherwise) superfluous.

The following subsection would also be rendered meaningless. That subsection expressly recognizes that a party to a mobile home lot rental agreement may "terminate[] the rental agreement without cause," but must pay monetary damages—"up to 1 month's rent or an amount that is agreed on in the rental agreement"—if the party terminates "prior to the expiration date of the lease term . . . ." Mont. Code Ann. § 70-33-201(2)(f) (emphasis added).

This Court should interpret the Act so as to give all its parts meaning. *E.g., Mont. Indep. Living Project*, ¶ 11. Montanans have relied for many years on the unambiguous statutory language that mobile home lot rental agreements are not perpetual, but are instead for a specific duration, with the default being month to month. Mont. Code Ann. § 70-33-201(2)(e). Montanans have likewise relied on the Legislature's promise that "[a] landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or

law." Mont. Code Ann. § 70-33-201(1). Adopting a construction that nullifies these statutory provisions would violate this Court's rules of statutory construction, its precedent upholding the constitutional right of freedom to contract, *e.g.*, *Arrowhead School District No. 75 v. Klyap*, 2003 MT 294, ¶ 20, 318 Mont. 103, 79 P.3d 250, and run counter to the goals of predictability and operational consistency in Montana law.

### B. The Lockharts' Interpretation Would Require the Court to Add Language to the Act That is Not There.

The premise of the Lockharts' argument is that Mont. Code Ann. § 70-33-433 provides the exclusive means to terminate a mobile home lot rental agreement. A plain reading of the statute dispels this notion. The statute sets forth the rules for termination in two specific circumstances only: (1) "if there is a noncompliance by the tenant" and (2) "if the landlord plans to change the use of all or part of the premises." *Id*. (emphasis added). The Lockharts concede these are "condition[s] precedent" for the statute to apply. (App. Br. at 10 (emphasis added).)

Nothing in Mont. Code Ann. § 70-33-433, or anywhere else in the Act, states or suggests that mobile home lot rental agreements are not terminable at the expiration of their term. To the contrary, as noted, the Act expressly provides that mobile home lot tenancies are "month to month" unless stated otherwise in the rental agreement. Mont. Code Ann. § 70-33-201(2)(e). The Act further states that, "[u]nless superseded by the provisions of this chapter, the principles of law and

equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of this chapter." Mont. Code Ann. § 70-33-105. Thus, far from displacing other law by declaring an exclusive means to terminate a rental agreement, the Act recognizes its application is limited by its specific terms, and that Montana's contract and real property law supplement its provisions.

The Montana Legislature could have easily required that the termination of a mobile home lot rental agreement be only for cause. Some state legislatures have done so. The Utah Mobile Home Park Residency Act provides, "[a] mobile home park or its agents may not terminate a lease or rental agreement upon <u>any ground other than as specified in this chapter</u>." Utah Code Ann. § 57-16-4 (emphasis added). Washington's Manufactured/Mobile Home Landlord Tenant Act states "[a] landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration <u>except for one or more of the following reasons</u>. . . ." Rev. Code Wash. § 59.20.080(1) (emphasis added). Vermont's Mobile Home Parks Act states "[a] leaseholder may be evicted <u>only</u> for nonpayment of rent or for a substantial violation of the lease terms of the mobile home park, or if there is a change in use of the park land or parts thereof or a

termination of the mobile home park. . . ." Vt. Stat. Ann. tit. 10, § 6237 (emphasis added).

Respectfully, the Lockharts brush over these critical distinctions, rushing to make the broad claim that "many other states have passed nearly identical laws using nearly identical language." (App. Br. at 15.) No specific example of "nearly identical language" is presented, however. Instead, a single case from the Supreme Court of Utah is cited, *Coleman v. Thomas*, 4 P.3d 783, 784 (Utah 2000), but it does not advance the Lockharts' cause.

The Utah statute analyzed in *Coleman* explicitly states a mobile home park may not terminate a tenancy "upon any ground other than as specified in this chapter." *See id.*, 4 P.3d at 785 (quoting Utah Code Ann. § 57-16-4(1) (Supp. 1999)). In other words, the statute unambiguously provides it is the exclusive means for termination of a rental agreement. *Id*. This is a far cry from Montana's Act, which sets forth the permissible grounds for termination "if there is a noncompliance by the tenant" and "if the landlord plans to change the use," and also recognizes a mobile home lot tenancy's term of duration and the common law rights attendant thereto. Mont. Code Ann. §§ 70-33-433, 70-33-105, 70-33-201(2)(e) (emphasis added).

Montana is not alone in choosing a middle ground, providing enhanced protections to mobile home lot tenants without abrogating the common law right to

terminate at the expiration of a contracted-for term. *See*, *e.g.*, *Comorford v. Jones*, 467 N.Y.S.2d 329, 331-32 (Cnty. Ct. 1983) (holding statutory good cause requirement only applied before expiration of the lease term and "[a]bsent any clear legislative or common-law mandate to impinge further on the park owner's freedom to contract, this court cannot hold that a renewal lease is mandatory.")

The State of Iowa, for example, has a statute that more closely resembles Montana's. The Iowa Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Law provides, "if there is a material noncompliance by the tenant with the rental agreement," then the landlord may terminate after providing the required notice and following the procedure outlined by statute. Iowa Code § 562B.25 (emphasis added). The Iowa Supreme Court held this statute does not "abrogate[] the landlords' common-law right to terminate without cause." *Sunset Mobile Home Park v. Parsons*, 324 N.W.2d 452, 453 (Iowa 1982). Like Mont. Code Ann. § 70-33-433, the Iowa statute, by its plain terms, does not apply unless the termination is based on the tenant's "noncompliance." *Id*. Also like Montana, Iowa recognizes that tenancies are for a default term (in Iowa's case, one year), unless otherwise specified in the rental agreement. *See id*. (citing Iowa Code § 562B.10).

The State of Indiana also has a statute more akin to Montana's. Rather than specifying the exclusive means to terminate a mobile home lot rental agreement,

the Indiana statute provides, "the owner, operator, or caretaker of a mobile home community may eject a person from the premises for any of the following reasons. . . ." Ind. Code Ann. § 16-41-27-30. In *Barber v. Echo Lake Mobile Home Cmty.*, 759 N.E.2d 253, 257 (Ind. Ct. App. 2001), the Indiana Court of Appeals found this statute does not prohibit no-cause terminations.

In *Barber*, as here, there was a month-to-month tenancy in place. *Id*., 759 N.E. at 255. The landlord terminated the tenancy at the end of the term after providing one-month written notice. *Id*. The plaintiffs argued the state statute listing the reasons a mobile home rental agreement could be terminated for noncompliance precluded a no-cause termination, but the appellate court disagreed:

> . . . If the legislature had intended to decree that a mobile home landlord could only terminate a tenant for cause and, further, had enacted Ind. Code § 16-41-27-30 to provide an exhaustive list of reasons that constituted justifiable cause for termination, then the legislature would surely have drafted the code section to provide just that. For example, the statute could have been written to provide that "an owner or operator of a mobile home park may only evict a tenant from the premises for the following four reasons." However, as this type of language was not used, we will not read such a broad intent into the statute. *See, e.g.*, *Guzman*, 654 N.E.2d 838 at 840-841 (refusing to read a term broadly because it would render other terms of the statute meaningless).

*Id*., 256-57.

Here too, if the Montana Legislature had wanted "to provide an exhaustive list of reasons that constituted justifiable cause for termination, then [it] would

surely have drafted the code section to provide just that." *Id*. State legislatures that have decided to take this step have had no problem drafting unambiguous language that relays their intent. *See* Utah Code Ann. § 57-16-4. Other states, like Montana, employ different language that provides enhanced protections to mobile home lot renters while also preserving the common law right to terminate at the expiration of a tenancy's term. *See id*.; Mont. Code Ann. §§ 70-33-105, 70-33-201(2)(e); Ind. Code Ann. § 16-41-27-30; Iowa Code § 562B.10. The Court should apply the statute's language as written, not as one party would have it written.

### C. The Court Should Decline to Speculate About Legislative Intent When Interpreting an Unambiguous Statute.

"A statute is to be construed according to its plain meaning, and if the language is clear and unambiguous, no further interpretation is required." *State v. Stiffarm*, 2011 MT 9, ¶ 12, 359 Mont. 116, 250 P.3d 300. Here, the Lockharts do not argue Mont. Code Ann. § 70-33-433 is ambiguous. In fact, far from offering an alternative reasonable interpretation of the subject language, the Lockharts acknowledge the statute's application is premised upon the fulfillment of one of two specified conditions precedent. (App. Br. at 10.) Because there is no dispute the language is unambiguous, the Court should interpret the language in accordance with its plain meaning, without resorting to extrinsic information or legislative history. *Stiffarm*, ¶ 12; *see also State v. Gregori*, 2014 MT 169, ¶ 13,

375 Mont. 367, 328 P.3d 1128 ("If the meaning of a statute is clear on its face, we will not resort to the statute's legislative history.").

Furthermore, the Lockharts ask this Court to rely on a different legislative act—Montana's Residential Landlord and Tenant Act of 1977, Mont. Code Ann. § 70-24-101, et seq. ("RLTA")—to draw speculative conclusions about the differences between the RLTA and the Act. It is true the RLTA expressly sets forth the required duration of notices for terminating a rental agreement at the expiration of a tenancy's term, Mont. Code Ann. § 70-24-441, whereas the Act does not. The absence of such language, the argument goes, demonstrates the Legislature intended to prohibit no cause terminations in the Act. This is a giant analytical leap, particularly when the Legislature could have easily drafted the Act to make this significant prohibition explicit, and chose not to do so. The Court should apply the plain language of the Act, rather than speculate about the absence of language contained in a separate set of statutes.

### D. The Lockharts' Interpretation Does Not Further the Purposes of the Act.

The Lockharts refer to the legislative history of the RLTA, and talk about the policies underlying the Utah statute discussed in *Coleman*, but say nothing about the purposes of the Act, which the Legislature took pains to set forth expressly:

> 70-33-102. Purpose -- liberal construction. (1) This chapter must be liberally construed and applied to promote the underlying purposes and policies of this chapter.
>
> (2) The underlying purposes and policies of this chapter are to:
>
> (a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; and
>
> (b) encourage landlords and tenants to maintain and improve the quality of housing.

Mont. Code Ann. § 70-33-102 (emphasis added).

Nothing about the Lockharts' proposed interpretation would further the legislative objectives set forth in the Act. In fact, their interpretation would run counter to the Legislature's stated objective to "simplify and clarify the law," as it would overturn Montanans' long-held understanding of "the rights and obligations of landlords and tenants concerning lot rentals" and insert language into the statute that is not there. *See id*.

MAR is not unsympathetic to the challenges faced by mobile home owners. Nor does it challenge the wisdom of providing enhanced legal protections to renters who own a mobile home. At the same time, every mobile home lot rental agreement involves at least two parties, and the renter is not the only party with important rights deserving of protection. At the most fundamental level, a landlord should be able to confidently rely on established law and an unambiguous statute in exercising his/her right to contract and protecting his/her interest in real

property. Finding otherwise flies in the face of the Act's stated objective to "simply and clarify the law."

There may be worthy arguments that different or additional legal protections should be enacted to assist mobile home owners, but that is an argument for a different day and a different branch of government. "What a court may think as to the wisdom or expediency of the legislation is beside the question," as is a belief "that statutes aimed at achieving the State's interest could have been implemented with greater precision." *Mont. Cannabis Indus. Ass'n v. State*, 2016 MT 44, ¶ 31, 382 Mont. 256, 368 P.3d 1131 (internal citations and quotation marks omitted). The Court's task here 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." Mont. Code Ann. § 1-2-101; *ALPS Prop. & Cas. Ins. Co. v. McLean & McLean, PLLP*, 2018 MT 190, ¶ 30, 392 Mont. 236, 425 P.3d 651. The Court's task here is straightforward: Interpreting the Act as written, Westview lawfully terminated the Lockharts' month to month lease at the expiration of its one-month term.

## CONCLUSION

For the reasons stated, MAR respectfully requests the Court interpret the Act in accordance with its plain language, giving meaning to all its parts and advancing its stated legislative objectives. The District Court should be affirmed.

DATED this 24th day of February, 2023.

BOONE KARLBERG P.C.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule M. R. App. P. 11(4)(E), I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 points, is double-spaced, and contains approximately 2,882 words.

DATED this 24th day of February, 2023.

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## CERTIFICATE OF SERVICE

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