IN THE SUPREME COURT OF THE STATE OF MONTANA
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.

OPENING BRIEF OF APPELLANT HYDI CUNNINGHAM

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

STATEMENT OF THE ISSUE

Whether the Montana Residential Mobile Home Lot Rental Act allows a lot-owner/landlord to terminate, without cause, a homeowner/lot-renter's month-to-month lease of the rented lot, when the parties' lease provides for termination upon thirty-days' notice.

STATEMENT OF THE CASE

At issue in this dispute is the right of possession of a rented mobile home lot. Without cause, the lot-owner/landlord seeks to evict Hydi Cunningham and her son from the mobile home lot they have occupied for fifteen years under a month-to-month lease.

In 2008, Hydi Cunningham ("Hydi") bought the mobile home which was located on the rented lot at 2629 (aka 2633) Dorothy Drive, Victor, Montana. On November 30, 2015, Greener Montana Property Management, LLC ("GMPM") presented Hydi with a month-to-month rental agreement ("rental agreement" and "lease" used interchangeably) for the lot, which she signed. (Appx B: Hydi Mot. Sum. Judg. at 258). The lease provides that either party may terminate it by giving at least thirty-days' written notice to the other. (Appx C: Lease ¶ 2.1, Br. Oppos. Mot. Sum. Judg. (Exh. 1) at 237).

Six years after signing the lease, on January 12, 2022, GMPM

hand-delivered and mailed to Hydi a "30-Day Notice to Quit and Terminate the Rental Agreement." (Appx C: Notice, Br. Oppos. Mot. Sum. Judg. (Exh. 2) at 249). The notice did not allege any grounds for termination, and demanded that Hydi vacate by March 1, 2022.

Hydi did not vacate the rented lot by March 1, 2022, and GMPM filed a Justice Court action for possession in Ravalli County on March 7, 2022. (Complaint, Doc. 1 at 356.) Hydi filed an answer on March 28, 2022, then an amended answer with counterclaims on April 7, 2022. (Doc. 1 at 333 and 213, respectively.)

On March 31, 2022, Hydi filed a motion for summary judgment on the issue of possession of the rented lot. (Appx B: Hydi Mot. Sum. Judg. at 258.) She asserted that the Montana Residential Mobile Home Lot Rental Act, Mont. Code Ann. § 70-33-101, et seq. (hereafter "Lot Rental Act" or "Act") does not allow termination of a lot rental agreement with only thirty-days' notice, without grounds, and the parties' lease cannot trump Montana law. (Appx B: Hydi Mot. Sum. Judg. at 257.) The Justice Court did not rule on Hydi's motion for summary judgment. (Appx H: Jstc. Ct. Order at 289.) After a summary possession hearing on May 10, 2022, the Justice Court granted GMPM possession of the rented lot and required Hydi to remove her mobile home from the lot. (Appx H: Jstc. Ct. Order at 289.)

Hydi appealed that decision to the Twenty-First Judicial District Court. (Doc. 1 at 1.) The District Court set a scheduling hearing for June 1, 2022. (Doc. 4.) The District Court stayed the execution of the justice court order of possession pending appeal. (Appx G: Tr. 6/1/2022 at 17, lines 10-12.) At the scheduling hearing, counsel for each party responded to questioning from the bench regarding summary judgment on the issue of possession of the lot. The parties informed the District Court that Hydi's motion for summary judgment was fully briefed and ripe for a ruling. (Appx G: Tr. 6/1/2022 at 5.) The District Court took the matter under advisement. (Appx G: Tr. 6/1/2022 at 17, lines 8-9.) No additional briefing was ordered.

On July 29, 2022, the District Court denied Hydi's motion for summary judgment and gave her thirty days to vacate the rented lot. (Appx A: D.C. Opinion, Doc. 17 at 12.)

Hydi moved to alter or amend the judgment pursuant to Mont. Code Ann. § 25-33-301, asserting that the District Court erred when it addressed argument raised by GMPM after the summary judgment briefing had closed. (Doc. 19 at 1.) Hydi also asserted an error of law in the court's conclusion that the month-to-month term of the parties' lease would be "*rendered meaningless if the term did not presumptively end unless extended at the end of each month*." (Doc. 19 at 2.) Hydi moved to suspend execution on the *Opinion and Order* pending the

ruling on her motion to alter or amend. (Doc. 20.)

On August 30, 2022, the District Court denied Hydi's motion to alter or amend, and initially denied her motion to suspend execution on the *Opinion and Order*. (Doc. 28.) After Hydi filed notice of appeal to this Court, the District Court granted Hydi's motion to suspend execution on the *Opinion and Order* pending appeal, and also granted Hydi's motion to waive the supersedeas bond for the appeal. (Doc. 35.)

Hydi filed notice of appeal to this Court on August 31, 2022.

STATEMENT OF FACTS

The facts are undisputed. (Appx A: D.C. Opinion, Doc. 17 at 7.) Hydi owns the mobile home. GMPM has no ownership interest in the home. Hydi rents the land upon which her home sits. GMPM is the property manager for the owner of the land.

In 2008, Hydi bought the subject mobile home, already located on the rented lot now in dispute. Hydi's home is a three-bedroom, two-bath home with a large deck on front, and a small storage building on back porch. (Appx I: photos of property, Doc.8 (Exh. D) at 1-3.) The home includes a single car carport and a storage shed. (Appx I: photos of property, Doc.8 (Ex. D) at 1-3.) Seven years after she purchased her home there, on November 30, 2015, GMPM had her sign a month-to-month lease to continue to rent the lot at 2629 (aka 2633) Dorothy Drive,

Victor, Montana, upon which her mobile home had sat since before she bought it. The lot-rental agreement provides that either party may terminate it by giving the other at least thirty-days' written notice. (Appx C: Lease ¶ 2.1 (Exh. 1) at 237.)

Six years later, on January 12, 2022, GMPM mailed Hydi a "30-Day Notice to Quit and Terminate the Rental Agreement," which demanded that Hydi vacate the lot by March 1, 2022. (Appx C: Notice (Exh. 2) at 249.) The notice does not allege any grounds for termination. (*Id.*) In February, Hydi contacted an attorney for advice, who provided her a draft letter to forward to GMPM. (Appendix B: Decl. of Hydi re Mot. Sum. Jdgt. at 351, ¶¶ 7-9.) The letter explains that the notice GMPM sent to Hydi did not meet the requirements of the Act. (Appx B: Hydi Mot. Sum. Judg. (Exh. C) at 274.) When Hydi did not vacate, GMPM filed a complaint for possession of the lot in Justice Court. (Doc. 1 at 371.) After hearing on May 10, 2022, the Justice Court granted GMPM a Writ of Possession over the rental property. (Appx H: Jstc. Ct. Order at 289.)

As a result of the Justice Court grant of the Writ of Possession over the lot, GMPM determined, without justification, that it had dominion over Hydi's home, which is owned by Hydi alone. In its execution of the Writ, GMPM locked Hydi and her two sons out of their home. Hydi's family was displaced for 18 days, from May 13, 2022, to June 1, 2022, when the District Court allowed Hydi's family back into the home. (Appx F: Hydi's Decl. of 2022.5.19 at 34-36, ¶ 4, and Tr.

2022.06.01. at 17, line 11.) While displaced, Hydi's family stayed in their car in a Walmart parking lot, and then in a tent in a campground. (Appx F: Hydi's Decl. of 2022.5.19 at 34-36, ¶ 8; Hydi's Rnwd Mtn. to Stay Exec., Doc. 8 at 5.) They did not have access to Hydi's diabetes prescriptions, which require refrigeration, or easy access to her son's school. (*Id.* at ¶¶ 10-12.)

On July 29, 2022, the District Court ordered Hydi to "vacate the premises and remove her mobile home" within 30 days. (Appx A: D.C. Opinion, Doc. 17 at 12.)

The District Court later granted Hydi's motion to stay its judgment pending this appeal. (Order, Doc. 35.) Hydi's family currently resides in their home on the rented lot.

STANDARD OF REVIEW

Hydi's appeal is authorized by Mont. R. App. P. 6(3)(h), which provides in relevant part:

> (3) Orders appealable in civil cases. In civil cases, an aggrieved party may appeal from the following, provided that the order is the court's final decision on the referenced matter:
>
> *****
>
> (h) From an order directing the delivery, transfer, or surrender of property.

M. R. App. P. 6(3)(h).

The District Court's dispositive order denying summary judgment to Hydi and

directing Hydi to remove her home and surrender the rented land to GMPM within thirty days is the Court's final decision on the issue of possession of the lot, which makes the decision appealable under Rule 6(3)(h).

Dispositive orders denying summary judgment are appealable, and have been allowed by this Court in other cases. *See, e.g., Doe v. Cmty. Med. Ctr., Inc.*, 2009 MT 395, ¶ 15, 353 Mont. 378, 221 P.3d 651.

This Court reviews a district court's denial of summary judgment *de novo*, applying the same criteria as the district court pursuant to Mont. R. Civ. P. 56(c). *Doe*, ¶ 15.

This appeal involves the interpretation and construction of a statute. This Court reviews *de novo* whether the district court correctly interpreted and applied a statute. *Hines v. Topher Realty, LLC*, 2018 MT 44, ¶ 12, 390 Mont. 352, 413 P.3d 813, citing *State v. Triplett*, 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819. When addressing an issue of first impression, this Court looks first to the construction of the statute itself, and then to interpretations by other states. *State v. Ray*, 2003 MT 171, ¶ 35, 316 Mont. 354, 71 P.3d 1247, *Scheidecker v. Mont. Dep't of Pub. Health & Human Servs.*, 2021 MT 158, ¶ 13, 404 Mont. 407, 490 P.3d 87.

SUMMARY OF THE ARGUMENT

The Lot Rental Act does not authorize a lot-owner to terminate the lease of a mobile homeowner/lot-renter without cause. The Act provides several grounds

for termination, but does not provide for termination for no cause. Even with a month-to-month lease, a lot-owner/landlord who seeks to terminate a homeowner/lot-renter's lease must comply with the Act.

Allowable grounds for termination are specified in Mont. Code Ann. § 70-33-433, which includes grounds for homeowner/lot-renter noncompliance, as well as grounds based on a lot-owner/landlord's change in use of land, and a lot-owner/landlord's legitimate business reason. Requiring a lot-owner/landlord to assert one of the various grounds specified in Mont. Code Ann. § 70-33-433, does not impermissibly limit GMPM's right to contract.

Notwithstanding the parties constitutionally protected rights to contract, contract terms may not violate State law. The lease provision that allows termination upon thirty-days' notice violates Montana law. Pursuant to Mont. Code Ann. § 70-33-202(1)(a), Hydi may not waive her rights or remedies to be terminated only for grounds provided in Mont. Code Ann. § 70-33-433. Because a termination without cause would have the unlawful effect of requiring Hydi to violate Mont. Code Ann. § 70-33-202(1)(a), by waiving or foregoing the protections afforded by the Grounds for Termination statute at Mont. Code Ann. § 70-33-433, the lease cannot be terminated for no cause.

According to this Court's well-established canons of statutory construction, the prohibition against no-cause terminations is manifest. Because the Grounds for

Termination statute at Mont. Code Ann. § 70-33-433, specifically provides for various grounds of termination, the doctrine of *expressio unius est exclusio alterius* the expression of one thing is the exclusion of another prohibits the lot-owner/landlord from terminating a lease for reasons not stated in Mont. Code Ann. § 70-33-433.

The parties' month-to-month lease creates a "periodic" tenancy. According to black letter law from the Restatement (Second) of Property: Landlord and Tenant § 1.5 (Am. L. In. 1977), a periodic tenancy does not naturally end every thirty days, and can only be terminated by proper lawful notice. GMPM's no-cause notice of termination was not lawful.

The District Court erred when it concluded that the Act's provision of a default term to a month-to-month lease (Mont. Code Ann. § 70-33-201(2)(e)), confers upon the lot-owner/landlord the right to terminate that lease with no cause. The Act's mere mention of a month-to-month lease term cannot invisibly authorize the landlord the right to terminate that lease with no cause. An authorization of a no-cause termination would be a stark departure from the Legislature's past actions since 1993, when the Legislature clearly stated its intent to deny no-cause terminations.

When the Act is read as a whole, according to this Court's well-established canons of statutory construction, the prohibition against no-cause terminations is

evident.

ARGUMENT

I. Although the Parties Have the Constitutional Freedom to Contract, that Freedom is Subject to Limits Imposed by Statute, and the Lot Rental Act Does Not Allow GMPM to Terminate Hydi's Lease Contract Without Cause.

The pivotal issue in this appeal is that the Lot Rental Act does not provide for a no-cause termination. The District Court erred when it concluded that the default provision of a month-to-month tenancy in the Lot Rental Act at Mont. Code Ann. § 70-33-201(2)(e), naturally creates the right to provide thirty-day notice of termination without cause. (Appx A: D.C. Opinion, Doc. 17 at 9.) A periodic tenancy may only be terminated with proper notice. *Boucher v. St. George*, 88 Mont. 162, 293 P. 315 (1930); Restatement (Second) of Property: Landlord and Tenant § 1.5 cmt. F.

As a threshold matter, the District Court erred when it invoked the parties' constitutional right to contract, to justify enforcement of the thirty-day no-cause termination. The constitutional prohibition against impairing the obligations of contracts is not absolute, as discussed in section I. A., below. The Lot Rental Act does not allow a lot-owner/landlord to circumvent the Act's prohibition of no-cause termination by inserting that provision into its contract. The lease contract, ¶ 2.1, provides:

> The term herein shall begin on 12/1/2015 and continue until 1/1/2016. This Rental Agreement shall automatically renew from month-to-month on the same terms and conditions as herein, and so on until terminated by either party giving to the other at least 30 days written notice prior to the expiration of the current term.

(Appx C: Lease ¶ 2.1, Br. Oppos. Mot. Sum. Judg. (Exh. 1) at 237). The lease requires any termination of tenancy to be done according to Montana law. (*Id.* at ¶ 8.4.) By terminating Hydi's lease without cause, the lease violates Montana law.

A. The Lot Rental Act is a Valid Limitation on GMPM's Contract Rights.

While both the federal and state constitutions protect a party's right to contract (U.S. Const. art. I, § 10, cl. 1; Mont. Const. art. II, § 31), that right is not absolute. The District Court quotes from *Arrowhead Sch. Dist. No. 75 v. Klyap,* 2003 MT 294, ¶ 20, 318 Mont. 103, 79 P.3d 250: "The fundamental tenet of modern contract law is freedom of contract; parties are free to mutually agree to terms governing their private conduct as long as those terms do not conflict with public laws." (emphasis added) (Appx A: D.C. Opinion, Doc. 17 at 11). The District Court erred when it concluded that the thirty-day no-cause termination provision of the lot-rental agreement did not conflict with the Lot Rental Act.

This Court has held that "private contracts must give way before a legitimate exercise of police power." *Western Energy Co. v. Genie Land Co*., 227 Mont. 74, 82, 737 P.2d 478, 483 (1987) (internal citations omitted). Further, "all business is conducted subject to the retained power of the state to protect public

welfare." *Id.*, 227 Mont. at 82, 737 P.2d at 483, *see also, Seven Up Pete Venture v. State*, 2005 MT 146, ¶ 40, 327 Mont. 306, 114 P.3d 1009.

This Court applies a three-step analysis when examining a statute's validity under the contract clause. *Western Energy*, 227 Mont. at 81, 737 P.2d at 478, citing *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed. 413 (1934), *et al*.:

> 1) First, the Court must determine whether the state law has, in fact, operated as a substantial impairment of the contractual relationship;
>
> 2) Second, if there is an impairment of contract rights, then "[t]he state, in justification, must have a significant and legitimate public purpose behind the regulation;
>
> 3) Third, the basis of the impairment must be based "upon reasonable conditions" of a character "appropriate to the public purpose" that justifies the legislation.

Western Energy, 227 Mont. at 83, 737 P.2d at 479.

Application of the three-step analysis manifests that the Lot Rental Act is a valid limitation on the parties' contract rights:

The first step examines whether there is a substantial impairment. Clearly, the Lot Rental Act limits the contractual rights of a lot-owner/landlord in various ways, *inter alia*, limiting the grounds for termination of tenancy in Mont. Code Ann. § 70-33-433, and by prohibiting a lease from requiring a party to waive

rights under the Act, in Mont. Code Ann. § 70-33-202(1)(a).

The second-step of the analysis examines whether there is a significant and legitimate public purpose for the impairment. The Legislature spoke directly and unambiguously to its "significant and legitimate legislative purpose" and intent in 1993 when it enacted the Grounds for Termination statute:

> 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 the potential for substantial damage to the mobile homes; and
>
> WHEREAS, under 70-24-441 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 an unreasonable amount of time (30 days pursuant to 70-24-441) in order to comply with the eviction.

(Appx E at 2: 1993 Mont. Session Laws 1665, Ch. 470) (emphasis added).

Step three analyzes whether the conditions imposed are reasonable and appropriate to the public purpose. Montana Code Annotated Section 70-33-433, does not unduly burden a lot-owner/landlord's right to terminate. It establishes thirteen grounds for termination, including two that do not require any homeowner/lot-renter noncompliance. Requiring a lot-owner/landlord to have

grounds limited to those contained in Mont. Code Ann. § 70-33-433, to properly terminate a lot-rental agreement is a reasonable condition imposed by the Legislature. Prohibiting no-cause terminations, even when the lease is month-to-month, is a reasonable condition that furthers the Act's public purpose of preventing homeowners from suffering a significant loss of the value of their home when evicted unfairly on short notice of thirty days.

B. Statutory Construction of the Lot Rental Act Supports the Legal Conclusion that No-Cause Terminations Are Not Allowed.

This Court has never decided whether the Lot Rental Act allows a no-cause eviction. When addressing an issue of first impression, this Court looks first to the construction of the statute itself, and then to interpretations by other states. *Ray*, ¶ 35; *Scheidecker*, ¶ 13. This Court's application of the canons of statutory construction compels the conclusion that the Act prohibits no-cause terminations. This Court routinely follows these well-established rules when construing a statute:

> …[W]e are bound by the more stringent mandate that "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." Section 1-2-101, Mont. Code Ann.; Further, statutory language must be construed according to its plain meaning and, if the language is clear and unambiguous, no further interpretation is required… In construing a statute, this Court must also read and construe each statute as a whole so as to avoid an absurd

result "and to give effect to the purpose of the statute.

Infinity Ins. Co. v. Dodson, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487 (internal citations omitted).

The District Court did not adhere to the principles that guide statutory interpretation, when it concluded that the Act allows no-cause terminations of month-to-month tenancies. The District Court's interpretation of the Act impermissibly inserts into the Act a provision that the Act does not include.

1. Plain Meaning

The Lot Rental Act is comprehensive in its regulation of residential mobile home lot rentals and does not allow no-cause terminations. The Act applies to all residential rental relationships "in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. This chapter applies to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home." Mont. Code Ann. § 70-33-104(1).

The Act contains four parts: I."General Provisions," including definitions; II."Rental Agreements," regulating leases; III."Rights and Duties of the Parties," regulating occupancy, maintenance, and repairs; and IV."Remedies," providing injunctive relief, damages, and dispossession. The four parts, considered together, regulate the entirety of the landlord-tenant relationship in a mobile home lot rental.

The Lot Rental Act provides the method of termination for a lot-owner/landlord who wants to end a homeowner/lot-renter's tenancy on the rented lot:

1) First, the landlord must give the homeowner/tenant a written notice "that the rental agreement terminates for one or more of the following reasons," pursuant to Mont. Code Ann. § 70-33-433. (Appx E at 4);
2) Next, if the rental agreement has been lawfully terminated, and the homeowner/lot-renter does not move by the date of termination specified in the lot-owner/landlord's written notice, the lot-owner/landlord can file a court action for possession of the rented lot. Mont. Code Ann. § 70-33-427.
3) The lot-owner/landlord may not take action in court or otherwise, for possession of the lot, unless the lot-owner/landlord complies with the provisions of the Lot Rental Act. Mont. Code Ann. § 70-33-428 (Appx E at 6).

The Grounds for Termination Statute, Mont. Code Ann. § 70-33-433, lists various grounds for termination of a tenancy, including grounds that do not require tenant noncompliance. GMPM's notice of termination to Hydi does not allege any of the grounds allowed by Mont. Code Ann. § 70-33-433. It does not allege any grounds at all. (Appx C: Notice at 249).

Plainly, the Act does not authorize a thirty-day no-cause termination of a mobile home lot rental agreement like the one GMPM sent to Hydi -- not in Mont. Code Ann. § 70-33-433, and not in any other section. The Act also does not authorize the landlord to include in its lease, a provision allowing a no-cause termination, or allowing any other grounds not specified in Mont. Code Ann. § 70-33-433. The Act contains an entire part – Title 70, Ch. 33, Part IV – on remedies. At no point in Part IV does the Act authorize a no-cause termination.

A plain meaning review of the Act compels the conclusion that a no-cause termination is not allowed, notwithstanding a lease clause that states otherwise. Plainly, the grounds for termination of a lot rental agreement are those set forth in the Act itself, in the Grounds for Termination statute at Mont. Code Ann. § 70-33-433.

2. The Expression of One Thing in a Statute is the Exclusion of Another

The rules of statutory construction are "straightforward." *Omimex Canada v. Montana Dept. Rev.*, 2008 MT 403, ¶ 21, 347 Mont. 176, 201 P.3d 3. "When construing statutes, the court "is simply to ascertain and declare what is in terms or in substance contained therein…The specific must prevail over the general. … Related to this is the canon of statutory construction known as *expressio unius est exclusion alterius* (the expression of one thing [in a statute] implies the exclusion of another)." *Id*.

"In determining legislative intent, an express mention of a certain power or authority implies the exclusion of nondescribed powers." *State ex rel. Jones v. Giles*, 168 Mont. 130, 133, 541 P.2d 355, 357 (1975), 82 *C.J.S. Statutes* § 333. "When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred." *In Re: Donovan's Estate*, 169 Mont. 278, 282, 546 P.2d 512, 514, (1976). When a provision "does not in terms prohibit" a specified thing or person, but gives recognition only to a specified thing or things or person(s), "the provision may be said fairly to indicate a legislative intent" that the specified things or persons the provision "shall not be extended further, upon the familiar maxim, *expressio unius est exclusio alterius*." *State ex rel. Faragner v. Moulton*, 68 Mont. 219, 216 P. 804, 806 (1923) (emphasis added).

This Court recognizes that adding limiting language vitiates or voids the rule of *expressio unius est exclusio alterius*. Using phrases such as "including, but not limited to" or "without limitation," are how the Legislature indicates that a specified thing or things in a statute are not exclusive. The use of either phrase voids the application of the maxim *expressio unius est exclusio alterius*. *State v. Good*, 2004 MT 296, ¶ 17, 323 Mont. 378, 100 P.3d 644. This Court explained in *Mitchell v. University of Montana,* 240 Mont. 261, 265, 783 P.2d 1337, 1339 (1989), that:

> If so intended, the legislature could have easily used the phrase 'includes, but is not limited to' in defining governmental entities. Because the legislature chose not to use such language, we apply the familiar maxim of statutory construction: *expressio unius est exclusio alterius*." (The expression of one thing is the exclusion of another.)

Mitchell, 240 Mont. at 265, 783 P2d at 1339.

The Legislature enacted the Grounds for Termination statute in the Lot Rental Act four years after the *Mitchell* decision. "The legislature is presumed to know how this Court has interpreted its statutes." *Sampson v. Nat'l Farmers Union Prop. & Cas. Co.*, 2006 MT 241, ¶ 20, 333 Mont. 541,144 P.3d 797.

In *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 122, 303 Mont. 306, 16 P.3d 1002, this Court held that the Legislature's silence indicates an intent not to include that option in statute. In *Schuff,* the issue was whether every type of Social Security payment, including survivors' benefits, should be counted as collateral sources in a wrongful death action, rather than just the two specific types of benefits (medical expenses and disability) provided in the applicable statutory definition at Mont. Code Ann. § 27-1-307. *Schuff,* ¶ 122. In construing the relevant statute, the *Schuff* Court held:

> In the context of § 27-1-307, MCA, entitled "Definitions," if the Legislature had truly wished to characterize any and all kinds of Social Security payments as a collateral source, rather than just the two specific kinds [medical expenses and disability payments], it could have easily said so--and, under our rules, plainly chose to remain

> silent. Therefore, because the Legislature specifically included these terms, a court should properly exclude all other kinds of Social Security as collateral sources in construing the statute as a whole--i.e., the expression of these specific kinds of Social Security payments in subpart (1)(a) excludes other types of Social Security payments not mentioned (*expressio unius est exclusio alterius*).

Schuff, ¶122 (emphasis added).

In *Schuff,* the defendant/electrical contractor Klemens had argued that the inclusion of the more general term, "any other public program," in the definition section at Mont. Code Ann. § 27-1-307, was intended to encompass Schuff's Social Security survivor benefits. *Id.* This Court rejected that approach, noting that Klemens had failed to "cite any authority that supported such an approach to statutory construction" and instead ruled that the general phrase "any other public program" is limited by the more specific reference in Mont. Code Ann. § 27-1-307, to "medical expenses and disability payments." *Schuff*, ¶ 123.

Similarly, in the instant case, the expression of specific grounds for termination of mobile home lot rentals in Mont. Code Ann. § 70-33-433, excludes any other grounds for termination not listed. The maxim of statutory construction *expressio unius est exclusio alterius* -- the expression of one thing is the exclusion of another – controls. *See, e.g., Schuff* at ¶ 116.

Because all other potential grounds for termination are excluded, GMPM may legally terminate Hydi's lease only for grounds in Mont. Code Ann. § 70-

33-433. Because the Legislature did not use the phrase "including but not limited to" when listing the grounds for termination, the grounds stated in Mont. Code Ann. § 70-33-433, must not be extended. *See Moulton*, 68 Mont. at 223, 216 P. at 806.

The District Court concluded that the no-cause termination clause in the lot-rental agreement was enforceable because the Act did not explicitly forbid a no-cause termination. (Appx A: D.C. Opinion, Doc. 17 at 8.) The District Court acknowledged that Mont. Code Ann. § 70-33-433 details grounds for termination, but concluded that the statute only applies to termination "prior to the expiration of a rental agreement term due to noncompliance by the tenant." (Appx A: D.C. Opinion. Doc. 17 at 9.) The District Court overlooked two grounds that do not involve tenant noncompliance -- subsection (1)(l) for the landlord's change in use of land, and subsection (1)(m) for any legitimate business reason. Mont. Code Ann. § 70-33-433.

Unless a court inserts language into Mont. Code Ann. § 70-33-433 authorizing a no-cause termination, there is no ability for a lot-owner/landlord to terminate a mobile homeowner's month-to-month lease without cause. A court may not "insert what has been omitted…" Mont. Code Ann. § 1-2-101.

3. The Specific Must Prevail over the General, § 1-2-102.

The District Court erred when it concluded that a general statute trumped a

specific statute. The District Court's approval of GMPM's no-cause termination relied on the broad and general language of Mont. Code Ann § 70-33-201, which provides that unless the lease states otherwise, the default term in a lot-rental agreement is a month-to-month tenancy, and further provides that a lease may include "terms and conditions not prohibited by the Act or other rule or law." Notably, Mont. Code Ann.§ 70-33-201, is in the "Rental Agreements" part of the Act, not the "Remedies" part, and does not authorize any remedies such as termination. Yet the District Court concluded that this statute, which merely addresses the default term of a lease, should prevail over the specific, highly detailed, and exhaustive list of Grounds for Termination at Mont. Code Ann § 70-33-433. (Appx A: D.C. Opinion, Doc. 17 at 9).

The District Court's conclusion runs afoul of this Court's rule of statutory construction that a specific provision prevails over a more general one. *See, e.g., Schuff*, ¶ 125. The District Court's interpretation "would upset the very legislative scheme that the Legislature chose to enact by its enumeration of the specific" grounds for termination in Mont. Code Ann. § 70-33-433. *Schuff*, ¶ 125.

4. An Absurd Result Must be Avoided

The District Court concluded that a lot-rental agreement may include a ground for termination that is not contained within the exhaustive list of Grounds for Termination in Mont. Code Ann. § 70-33-433. (Appx A: D.C. Opinion, Doc. 17

at 9). The District Court failed to apply the rules of statutory construction, and as a consequence, errantly concluded that "there is no statute within the Mobile Home Act preventing" the parties from contracting for terms that permit no-cause notice of termination. The District Court reasoned that:

> [I]t would be an absurd interpretation of the Mobile Home Act if a landlord and mobile home tenant did not have the ability to contract a month-to-month lease with a no-cause termination at the conclusion of its term if there is no statute within the Mobile Home Act preventing them from doing so. Parties have the freedom to contract, pursuant to the confines of the statutes and laws.

(Appx A: D.C. Opinion, Doc.17 at 9.) In its order denying Hydi's motion to amend the Opinion, the Court cited to *Boucher v. St. George*, 88 Mont. 162, 293 P. 315 (1930), "Montana has long recognized the common law understanding of a month-to-month tenancy to be one in which a monthly tenancy may continue through nonaction of either landlord or tenant but can be terminated by lawful notice." (D.C. Order Den. Mtn. Alter, Doc. 28 at 2). The District Court seems to lose sight of the "confines of the statutes and laws" as applied to a termination "by lawful notice." The confines are the structure of the Grounds for Termination statute, Mont. Code Ann. § 70-33-433. To "terminate with lawful notice" requires compliance with that statute and also requires compliance with Mont. Code Ann. § 70-33-202, which prevents the parties from waiving or foregoing the rights or remedies the Act provides.

Lawful notice is provided in the Lot Rental Act, within the Grounds for Termination statute at Mont. Code Ann.§ 70-33-433. The rule of *expressio unius est exclusio alterius* establishes that the Grounds for Termination statute prohibits any other ground or notice provision not listed. The District Court erred when it concluded that the general language in the Act (that permits the parties to contract for terms and conditions not prohibited by the Act or other rule or law) was not subject to the prohibitions provided inherently within the Grounds for Termination statute at Mont. Code Ann. § 70-33-433. The District Court aptly lamented that it "is not a law-making body; it cannot 'supply deficiencies in legislation,' and it does not decide the 'accuracy or wisdom' of legislation, as 'the policy of the law is a matter for legislative control and does not concern the courts.' " (internal citation omitted) (Appx A: D.C. Opinion, Doc. 17 at 11).

The District Court erred in its application of the rules of statutory construction, which led to the error in its dispositive conclusion that "nothing in the Act prohibited the parties" from contracting for terms that are not provided in the Grounds for Termination statute. When a court applies the rules of statutory construction, it is not acting as a "law making body." The error in the District Court's reasoning was addressed in a U.S. Supreme Court case from 1892:

> It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases

> illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such a broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.

Church of the Holy Trinity v. United States, 143 U.S. 457, 459, 12 S.Ct. 511, 512, 36 L.Ed. 226, 228 (1892)(emphasis added).

The District Court's conclusion that the Mobile Home Lot Rental Act does not prohibit the parties from contracting for terms that circumvent the exhaustive list of grounds for termination, renders the legislative enactment of the Grounds for Termination statute at Mont. Code Ann. § 70-33-433, a useless act. The District Court's interpretation allows lot-owner/landlords to include any desired grounds for termination in their leases, no matter how arbitrary or absurd. "Such an interpretation invokes yet another rule of statutory construction: The legislature does not perform useless acts." *Schuff*, ¶ 125. Under Mont. Code Ann. § 70-33-433, a lot-owner either must have grounds for termination based upon the homeowner/lot-renter's violation of the lease or based upon a change in the use of the land or legitimate business reason.

5. The Act Must be Read Holistically.

"Statutory construction is a 'holistic endeavor' and must account for the statute's text, language, structure, and object." *State v. Heath*, 2004 MT 126, ¶ 24,

321 Mont. 280, 90 P.3d 426 (internal citations omitted). The Court strives to avoid a myopic focus when construing a statute holistically: "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 District Court relied, myopically, on one sentence in the lot-rental agreement (¶ 2.1) and one isolated provision of the Act (§ 70-33-201(2)(e)), as opposed to the entirety of the Act, to justify the no-cause termination of Hydi's lot rental. (Appx A: D.C. Opinion, Doc. 17 at 9-10). The District Court erred when it concluded that ¶ 2.1 of the lease, which allows for a termination upon thirty-days' notice, is enforceable because, "*Nowhere in the Act does it state that a rental agreement does not terminate at the end of its term, nor does the Act forbid termination for no cause*." The District Court also erred when it concluded "*No forbidden terms were included in the Rental Agreement as nothing therein required a party to waive or forego a right or remedy available under the Act*." (Appx A: D.C.Opinion, Doc. 17 at 9).

The Act states a lot-rental agreement may use "terms and conditions not prohibited by this chapter or other rule or law," Mont. Code Ann. § 70-33-201(1). Because the Lot Rental Act is comprehensive legislation and encompasses all of the obligations, rights, and remedies of the lot-owner/landlord and the

homeowner/lot-renter, the parties' lease cannot conflict with the Act. The District Court isolated the term "month-to-month" in Mont. Code Ann. § 70-33-201(2)(e), from its context within the Lot Rental Act and broadened that term's meaning from that intended by the Legislature. In construing the Act, this Court cannot infer that the month-to-month length of a rental agreement as mentioned in Mont. Code Ann. § 70-33-201, invisibly authorizes termination of a lease without cause.

Montana Code Annotated § 70-33-202, provides in pertinent part: "(1) A rental agreement may not require a party to: (a) waive or forego rights or remedies under this chapter [Title 70, Chapter 33]." Because a no-cause termination is not authorized in § 70-33-433, the lease between a landlord and tenant cannot contract for that provision. The District Court's order requires Hydi to waive her right under § 70-33-202 to only be terminated for the grounds and in the manner provided in the Act.

In *Summers* v. *Crestview Apartments,* 2010 MT 164, 357 Mont. 123, 236 P.3d 586, this Court construed Mont. Code Ann § 70-24-202, the provision of the MRLTA which is identical to Mont. Code Ann. § 70-33-202, in the Lot Rental Act. In *Summers,* this Court held that a lease provision regarding attorney's fees was unconscionable and unenforceable. *Summers*, ¶ 34. That lease provision gave the landlord broader rights to recover attorney's fees than the MRLTA allowed, by requiring the tenant to pay the landlord's legal fees in the event of a breach, and

requiring the tenant to waive the possibility of receiving an award of attorney fees if the tenant prevailed. *Summers,* ¶ 32. This Court held that enforcing the attorney's fee provision of the lease against the tenant would have resulted in a forced waiver of the tenant's rights concerning attorney fees as set out in Mont. Code Ann. § 70-24-442. *Summers,* ¶ 33.

The District Court erred when it distinguished *Summers* from the instant case. The District Court reasoned that in *Summers,* the "plain terms" of the MRLTA at Mont. Code Ann. § 70-24-442, prohibited adding a clause to the lease which negated the right of the prevailing party to pursue an award of attorney fees. (Appx A: D.C. Opinion: Doc. 17 at 9-10.) Here, the District Court found there were no such "plain terms" in the Lot Rental Act prohibiting the no-cause termination of a lot-rental agreement. *Id.* The District Court further erred in its conclusion that because the Act provided a default to a month-to-month tenancy (also known as a periodic tenancy) in Mont. Code Ann. § 70-33-201, a month-to-month tenancy automatically provides the option of a no-cause termination. *Id.*

In accordance with this Court's analysis in *Summers,* enforcing the provision of the parties' lease that authorizes a thirty-day notice to terminate a month-to-month rental agreement without cause, would be contrary to the "plain terms" of Mont. Code Ann. § 70-33-433, which provides the exhaustive list of grounds for termination available to lot-owner/landlords. As addressed in Section II below, the

statutory mention of a month-to-month term by default, does not automatically authorize a no-cause termination of that tenancy. Accordingly, the lot-rental agreement provision that the lot-rental agreement could be terminated on thirty-days' notice, without cause, is unenforceable. The lot-rental agreement between the parties may be terminated, if at all, in accordance with Mont. Code Ann. § 70-33-433.

In addition to *Summers,* this Court's decision in *Solem v. Chilcote*, 274 Mont. 72, 906 P.2d 209 (1995), supports Hydi's assertion that a lease term that conflicts with Montana law is prohibited. In *Solem*, the landlord-tenant lease provided that "[a]cceptance of a refund of all or a portion of the deposit by tenant shall constitute a full and final release of landlord from any claims of tenant of any nature whatsoever." *Id.* at 213. The tenant argued that that provision conflicted with Mont. Code Ann. § 70-24-442, which allowed recovery of attorney fees to the prevailing party. *Id.* at 214. This Court upheld the district court holding that the attorney-fee-claim-waiving lease provision was prohibited by Mont. Code Ann. § 70-24-202(1) because it required the tenant to waive or forego rights provided under the MRLTA. *Id.*

Similarly, here, the lot-rental agreement provision for no-cause termination upon thirty days' notice conflicts with the provisions of Mont. Code Ann. § 70-33-433. Because ¶ 2.1 of the lot-rental agreement requires Hydi to waive or forgo

rights or remedies provided in the Act, it is prohibited by Mont. Code Ann. § 70-33-202(1)(a), and is illegal. Montana law only allows a lot-owner to terminate a lot-renter's lot-rental agreement pursuant to the grounds listed in Mont. Code Ann.§ 70-33-433. Pursuant to Mont. Code Ann. § 70-33-202(1), the lot-rental agreement cannot force the lot-tenant to waive that statutory protection.

When viewed in its entirety, the Lot Rental Act does not allow termination of a lot-rental agreement without grounds. The Act does not permit a lot-rental agreement to add a clause which permits a thirty-day no-cause termination.

C. Alternatively, if the Court Finds that the Lot Rental Act is Ambiguous Concerning No-Cause Termination, then the Legislative History of the Act Manifests the Legislative Intent to Prevent No-Cause Terminations.

Hydi contends that the Lot Rental Act plainly and unambiguously precludes a no-cause, thirty-day termination. However, if this Court determines that the Act is ambiguous, the legislative history manifests continuous legislative intent to prohibit no-cause terminations for mobile homeowners from the 1993 enactment of the Grounds for Termination statute through today.

Prior to the passage of the Lot Rental Act in 2007 (Mont. Code Ann. Title 70, Chapter 33), mobile home lot-rental statutes were intermixed within the MRLTA (Mont. Code Ann. Title 70, Chapter 24). Then in 1993, the Legislature declared the "reasonable and justifiable" grounds for termination of a mobile home lot rental when it enacted the Grounds for Termination statute and inserted it into

Chapter 24.

The Legislature unequivocally stated that it intended to prevent thirty-day no-cause evictions when it enacted the exhaustive list of grounds for termination. (Preamble, *supra*, section I. A.). Consequently, the list of authorized grounds did not include a no-cause termination. (Appx E at 2).

In 2001, the Legislature spelled out that which is structurally implicit in the Grounds for Termination statute: thirty-day no-cause evictions do not apply to mobile homeowners renting a lot. In 2001, the Legislature added subpart (4) to the "Termination by landlord or tenant" statute at Mont. Code Ann. § 70-24-441 (2001):

> 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 the 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.
>
> *********
>
> (4) <u>The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home.</u>

Mont. Code Ann. § 70-24-441 (2001) (emphasis added) (Appx E at 8).

In 2007, the Legislature recodified all of the statutes that applied to mobile

home lot rentals into their own chapter of the Montana Code, at Title 70, Chapter 33. (See, generally, Appx E: Mont. HB 456, 60th Leg. (April 26, 2007); pp. 9-36.) The recodification of these statutes is known as The Montana Residential Mobile Home Lot Rental Act, Mont. Code Ann. § 70-33-101, *et seq.*, as authorized by House Bill 456.

In 2007, Representative Walter McNutt, himself a mobile home park owner, testified in support of his bill, HB 456, that the recodification was not intended to change anything regarding the rights and obligations of mobile home lot-owners/landlords and homeowner/lot-renters, as those rights and obligations existed under the MRLTA. (Appx E at 7: time-stamped references to Rep. McNutt's testimony in the legislative hearing recordings.) Thus, no change was intended to the existing prohibition of no-cause terminations for mobile home lot rentals as stated in MRLTA, Mont. Code Ann. § 70-24-441(4) (2001). House Bill 456 deleted entirely subsection 4 of Mont. Code Ann. § 70-24-441, in the MRLTA, because it no longer belonged in Chapter 24 after mobile home lot rentals were moved from Chapter 24 to Chapter 33. At the same time, HB 456 removed any reference to no-cause terminations of mobile home lot tenancies, because no-cause terminations were not authorized in Chapter 33.

II. GMPM's Lease Creates a Periodic Tenancy That Can Only Be Terminated By Proper Notice, and a Notice Without Cause is Not Proper.

The District Court concluded that a "month-to-month term would be rendered meaningless if the term did not presumptively end unless extended at the end of each month." (Appx A: D.C. Opinion, Doc.17 at 9). In its Order denying Hydi's motion to alter or amend its Opinion, the District Court cited *Boucher v. St. George*, 88 Mont. 162, 293 P. 315 (1930), stating, "Montana has long recognized the common law understanding of a month-to-month tenancy to be one in which a monthly tenancy may continue through nonaction of either landlord or tenant but can be terminated by lawful notice." (D.C. Order Den. Mot. Amend, Doc. 28 at 2). The District Court's conclusion, however, contradicts *Boucher* and the black letter law from the Restatement: a periodic tenancy does not naturally expire at the end of each month, but rather continues indefinitely "through nonaction of either landlord or tenant" and only ends upon the receipt of proper "lawful" notice. Restatement (Second of Property): Landlord and Tenant § 1.5.

A. Periodic Tenancy "Continues Through Nonaction of Either Landlord or Tenant."

The parties' lease establishes a month-to-month tenancy and requires termination of tenancy to be done according to Montana law. (Appx C: *Lease* ¶¶ *2.1 and 8.4*, at 237 and 240.) The rental agreement "shall automatically renew from month-to-month on the same terms and conditions…" (*Id. ¶ 2.1.)* This kind of

month-to-month lease is known as a "periodic" tenancy which can only be terminated with proper notice. See Restatement (Second) of Property: Landlord and Tenant, § 1.5 cmt. f. "This Court has, on numerous occasions, cited sections of the Restatements as persuasive authority, or has adopted certain sections outright." *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, ¶ 21, note 1, 364 Mont. 390, 276 P.3d 867 (ten internal citations omitted). GMPM acknowledged Hydi's tenancy is a "periodic" tenancy in its oral argument to the District Court. (Appx G: Tr. 6/1/2022 at 5, lines 18-19.)

There are two common types of leases in U.S. property law: a periodic tenancy and a tenancy for years. Restatement (Second) of Property: Landlord and Tenant at §1.4. A tenancy for years lasts for a "fixed or computable" period of time and has traditionally been referred to as a tenancy for years, regardless of the length of the fixed period. *Id.* A tenancy for years terminates at the end of the term specified in the lease. A periodic tenancy, such as a week-to-week or a month-to-month tenancy, continues successively from one period to the next. *Id*. at §1.5.

Hydi's lease is a periodic tenancy, as opposed to a term for years. The lease is not for a fixed period of time, such as one year. It is a month-to-month rental agreement, which reflects "a continuing relationship" and does not have a lease term that expires. *Id*. at comment c. This Court cited favorably to §1.5 of the Restatement, in dicta that noted a periodic tenancy has no fixed ending term.

Grenfell v. Anderson, 1999 MT 272, ¶ 30, 296 Mont. 474, 989 P.2d 818.

When addressing an issue of first impression, this Court looks first to the construction of the statute itself, and then to interpretations by other states. *Ray*, ¶ 35; *Scheidecker*, ¶ 13. The majority of other states have protections for mobile homeowners and a number of them have addressed periodic, or month-to-month, tenancy in the context of their lot-rental statutes.

Florida addressed cases similar to Hydi's, where lot-owners/landlords used their lot-rental agreement to circumvent the statutory protections provided to mobile homeowners/lot-renters. In *Artino v. Cutler*, 439 So.2d 304 (Fla. 2d DCA 1983), the lot-owner/landlord required current and new homeowners/lot-renters to sign written leases that permitted eviction, without cause, on twelve months' notice. There, the intermediate appeals court of the Florida Second District Court of Appeals discussed Florida Supreme Court precedent and a case similarly decided by the Florida Fourth District Court of Appeals, and concluded:

> Our holding in this case is compatible with the holding of our sister court in *Peterson v. Crown Diversified Industries Corp*., 429 So.2d 713 (Fla. 4th DCA 1983). In that case, the court disapproved a rule adopted by a mobile home park owner permitting it to evict any tenant without cause on twelve months' notice. We agree with that holding, and take it one step further--<u>just as a rule permitting eviction on twelve months' notice without cause is improper, so is a rule requiring a tenant to sign a lease containing such a provision.</u>

Artino, 439 So.2d at 306 (emphasis added).

Similarly, this Court should conclude that the Act does not permit the lot-owner/landlord to provide a lease to a homeowner/lot-renter that has provisions which circumvent the Act. Mont. Code Ann. § 70-33-202.

In *Green Valley Mobile Home Park v. Mulvaney*, 121 N.M. 187, 918 P.2d 1317 (1996) the New Mexico Supreme court refused to enforce a thirty-day no-cause notice to terminate a lot-renter's month-to-month lease. Just as the District Court did in Hydi's case, the New Mexico district court concluded that a no-cause termination was not prohibited by statute, and that the parties' lease provided for termination after thirty days. *Id.* at ¶¶ 4-5. In reversing that district court decision, the New Mexico Supreme Court ruled that the New Mexico Mobile Home Park Act established the grounds for termination in one section (like Mont. Code Ann. § 70-33-433), and in another section, required the termination notice to state the reason for the termination. *Id*. at ¶¶ 7-8. Because the lot-owner/landlord had not stated any reason for termination in its notice, the New Mexico Supreme Court held the lot-owner/landlord had not complied with the statute and remanded the case for judgment in the homeowner/lot-renter's favor. *Id*. at ¶¶ 7 and 14.

In a case precisely on point, the Utah Supreme Court applied the Restatement (Second) Property: Landlord and Tenant and held that a periodic, month-to-month, mobile home lot tenancy could not be terminated for no reason:

A periodic tenancy, in contrast [to a term for years], involves a

> continuous succession of "periods" — one-month periods in the case of a month-to-month lease — and lasts for an indefinite time. *See* Restatement (Second) of Property, supra ¶ 12, § 1.5 cmt. c. Periodic tenancy does not terminate and renew itself at the beginning of each period; rather, each new period is simply an extension of the original period. *See Id*.; *2 Powell on Real Property, supra* ¶ 12, § 16.04[1]. Moreover, "periodic tenancies never expire automatically because they are continuous by definition." *4 Thompson on Real Property, supra* ¶ 11, § 39.06(b)(1), at 526. A periodic tenancy may be terminated only when one party gives proper notice to terminate it. *See* Restatement (Second) of Property*, supra* ¶ 12, § 1.5 cmt. F …
>
> A month-to-month lease, or any other periodic tenancy, does not simply "expire," as the [trial] court concluded. As discussed above, it must be "terminated," and it is the act of giving notice that triggers the termination of the lease.

Coleman v. Thomas, 2000 UT 53, ¶¶ 13-14, 4 P.3d 783 (Utah 2000) (emphasis added).

In *Coleman*, the Utah Supreme Court overturned the trial court's conclusion that the parties' month-to-month lease naturally expired at the end of each month. *Id.* at ¶¶ 13-14. In the instant case, the District Court made a similar finding: "A month-to-month term would be rendered meaningless if the term did not presumptively end unless extended at the end of each month." (Appx A: D.C. Opinion, Doc. 17 at 9.). The Utah Supreme Court held that the parties' month-to-month lease, as with any periodic tenancy, did not simply expire, but must be terminated by proper, lawful notice. *Coleman*, ¶¶ 13-14.

The facts of *Coleman* are very similar to the facts of the instant case. In *Coleman*, the mobile homeowner/lot-renter and the lot-owner/landlord signed a

month-to-month rental agreement, which stated that either party could terminate the agreement by giving fifteen days' notice prior to the end of the rental period. *Id.* at ¶ 2. The lot-owner/landlord gave the homeowner/lot-renter a thirty-day notice to vacate, without specifying any reason for the termination. *Id.* at ¶ 3. The tenant claimed that Utah law precluded the landlord from terminating the lease without cause. *Id.* at ¶ 7. The Utah statute at issue in *Coleman* (Utah Code Ann. § 57-16-5(1) (Supp. 1999)) is similar to Mont. Code Ann. § 70-33-433, and authorized termination for various grounds of noncompliance by the homeowner/lot-renter, and for the lot-owner/landlord's change in use of the land, as well as by mutual agreement of the parties. *Id.* at ¶ 17.

The *Coleman* court found that the parties did not mutually agree to terminate the lease and the lot-owner/landlord did not terminate the lease for any of the grounds listed in Utah Code Ann. § 57-16-5(1). It held that the lot-owner/landlord could not terminate the lease without cause, notwithstanding the parties' month-to-month lease. *Id*. The lease provision that allowed for termination without cause was unenforceable because the tenant could not be forced to waive their protections under Utah's Mobile Home Park Residency Act, which required that termination be based on statutory grounds. *Id.* at ¶ 21.

B. Proper Notice Triggers Termination and Notice Without Cause is Not Proper.

The *Coleman* court's analysis and reasoning should be applied to Hydi's

case. GMPM's lease provides that Hydi's term began on December 1, 2015 and continued until January 1, 2016, and "automatically renew[s] from month-to-month on the same terms and conditions as herein, and so on until terminated by either party giving to the other at least 30 days written notice prior to the expiration of the current term." (Appx C: Lease, ¶ 2.1 at 237). Thus, to terminate Hydi's periodic tenancy, GMPM must give Hydi a written notice of termination, and that notice must be in compliance with Montana law. (Appx C: Lease, ¶ 8.4 at 240). The lease provision is unenforceable because it violates Mont. Code Ann. § 70-33-433 and § 70-33-202, by requiring Hydi to waive or forego the protections the Act provides to her.

Sections I. B. 4-5 of the brief, *supra*, discuss avoiding absurd results and reading the Act holistically. The analysis there also addresses the requirement of proper notice in order to trigger termination, and the inability to waive or forego proper notice under the Act and is reincorporated here by reference.

This Court should reject the District Court's conclusion that Hydi's month-to-month lease would "presumptively end unless extended at the end of each month" (Appx A: D.C. Opinion, Doc. 17 at 9), for at least these reasons:

1) GMPM's lease is subject to the Lot RentalAct, which does not allow termination for no reason; and

2) Pursuant to the Restatement (Second) of Property: Landlord and

Tenant, GMPM's month-to-month lease establishes a periodic tenancy which does not expire every thirty days; the lease lasts indefinitely unless lawfully terminated; and

3) GMPM did not lawfully terminate Hydi's lease.

A month-to-month, or periodic lease, does not naturally or automatically grant the right to terminate without grounds. To lawfully terminate Hydi's lease, according to its terms, GMPM must give Hydi notice of grounds for termination that were allowed in the lease and in the Lot Rental Act, and the Act does not authorize a termination for no cause.

CONCLUSION

GMPM cannot lawfully terminate Hydi's month-to-month lease without cause. Hydi's lease has not terminated because GMPM has not given her a notice that complies with Montana law. The Lot Rental Act authorizes several grounds for termination but does not authorize termination for no cause. Thirty years ago, the Legislature explicitly prohibited no-cause terminations when it enacted the Grounds for Termination statute.

The Grounds for Termination statute omits all reference to terminating a lot rental for no cause, and courts may not insert what the Legislature has omitted. The Act prohibits the parties from waiving or foregoing the rights and remedies it provides.

The District Court erred in its interpretation of the Lot Rental Act, and its judgment should be reversed. Hydi asks that this cause be remanded to District Court for further proceedings and for costs and attorney fees in bringing this appeal, pursuant to the lease agreement and Montana law.

Respectfully submitted this 2nd day of March 2023.

S. Chase Rosario
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and

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately-spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word is 9,731, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

\s\ S. Chase Rosario

CERTIFICATE OF SERVICE

I, Amy E. Hall, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-02-2023:

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