

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.

REPLY 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

PREFACE.....	1
ARGUMENT	1
I. Throughout this dispute, Hydi has maintained that the parties’ month-to-month lease does not allow GMPM to terminate Hydi’s lease without cause, because a no-cause termination would violate Montana law.....	1
A. The lease contract cannot trump Montana law, and Montana law only allows a lot owner/landlord to terminate a tenancy pursuant to the grounds provided in the Lot Rental Act.....	1
B. In the interest of public policy, it is permissible for the legislature to constrain the constitutional rights of the parties to contract, and the Montana Legislature has done so by enacting the Lot Rental Act.....	4
C. The provision of damages to the non-breaching party in Mont. Code Ann. § 70-33-201 (2)(f) does not authorize a lot-owner/landlord to terminate without cause.....	6
II. GMPM’s purported concern for establishing a “perpetual” lease is a distraction without merit; Hydi has never argued for such a result.....	11
CONCLUSION	14
CERTIFICATE OF COMPLIANCE	15

TABLE OF AUTHORITIES

CASES

<i>Coleman v. Thomas</i> , 2000 UT 53, 4 P.3d 783 (Utah 2000).....	13
<i>Collier v. Kinchelow</i> , 2008 MT 100, ¶ 13, 342 Mont. 314, 180 P.3d 1157.....	12
<i>Infinity Ins. Co. v. Dodson</i> , 2000 MT 287, 302 Mont. 209, 14 P.3d 487.....	10
<i>Leichtfuss v. Dabney</i> , 2005 MT 271, ¶ 34, 329 Mont. 129, 122 P.3d 1220.....	12
<i>Thompson v. Flynn</i> , 95 Mont. 484, 494, 27 P.2d 505, 507 (1933).....	12
<i>Western Energy Co. v. Genie Land Co.</i> , 227 Mont. 74, 737 P.2d 478 (1987).....	5

STATUTES

Mont. Code Ann. § 70-33-202.....	1
Mont. Code Ann. § 70-24-441.....	2, 6, 10
Mont. Code Ann. § 70-33-201.....	passim
Mont. Code Ann. § 70-33-433.....	passim

OTHER AUTHORITIES

Restatement (Second) of Property: Landlord and Tenant (Am. L. In. 1977)....	3, 13
Preamble, 1993 Mont. Session Laws 1965, Ch. 470.....	5, 6, 10

House Bill 456 (2007).....	6
House Bill 541 (2021).....	8
Merriam-Webster.com.....	9
HB 559 (2001) and Minutes of Senate Judiciary Committee.....	11

PREFACE

This is an appeal from an eviction judgment. The District Court erred when it ordered the eviction of the family of Hydi Cunningham, the mobile homeowner/lot-renter, after the lot-owner/landlord sent Hydi a no-cause termination notice of her month-to-month lot rental agreement. Montana law does not allow a termination without cause of a lot rental agreement. Hydi seeks a reversal on that basis.

ARGUMENT

I. Throughout this dispute, Hydi has maintained that the parties' month-to-month lease does not allow GMPM to terminate Hydi's lease without cause, because a no-cause termination would violate Montana law.

A. The lease contract cannot trump Montana law, and Montana law only allows a lot owner/landlord to terminate a tenancy pursuant to the grounds provided in the Lot Rental Act.

A Montana lot-owner/landlord cannot lawfully contract for the option of a no-cause termination, because the Lot Rental Act (Mont. Code Ann. § 70-33-433, *et seq*) does not allow for termination without cause. Further, Mont. Code Ann. § 70-33-202 prohibits a lease from requiring a party to waive or forego rights or remedies under the Lot Rental Act, including the homeowner/lot-renter's right to face termination only for grounds authorized by the Act.

The parties' lease began December 1, 2015. (Appx C at 237: Lease ¶ 2.1)

The Lot Rental Act did not then, and does not now, allow a no-cause termination. The District Court found that even though the Act does not specifically allow a no-cause termination, GMPM could terminate Hydi's lease without cause because the parties' rental agreement allowed such termination, and the Act did not specifically prohibit it. (Appx A at pp. 8-9).

Hydi points out that the lease, by its own written terms, "shall automatically renew from month to month on the same terms and conditions as herein, and so on until terminated by either party..." (Appx C at 237: Lease ¶ 2.1) and shall only be terminated "in accordance with Montana and other applicable Law." (Appx C at 240: Lease ¶ 8.4). Thus, the lease cannot be terminated without cause on thirty days' notice unless Montana law allows such terminations. The Lot Rental Act does not contain any section comparable to Mont. Code Ann. § 70-24-441, which allows terminations without cause for all renters except mobile homeowner/lot-renters.

The grounds for termination of a mobile home lot rental agreement are set out in Mont. Code Ann. § 70-33-433 and do not include a no-cause termination. Further, no other statute within the Lot Rental Act allows for a no-cause termination. Because no-cause terminations are not allowed by Montana law, GMPM's no-cause notice of termination to Hydi did not result in termination of her lot rental tenancy.

This Court should reject GMPM's argument at p. 21 of its Response Brief, that GMPM's 30-day no-cause notice of termination is valid because it was given at the end of one of the month-long periods specified in the month-to-month lease and no cause was required. The parties' lease did not begin and end every thirty days for the last eight years; instead, by its own terms it "automatically renewed." (Appx C at 237 Lease ¶ 2.1) Further, Montana law requires cause for any termination, and such cause may be grounded on the tenant's noncompliance, or on two other allowable grounds not involving tenant noncompliance -- the lot-owner/landlord's change in land use or legitimate business reason. Mont. Code Ann. § 70-33-433.

GMPM in its Response Brief at p. 21 is mistaken when it asserts that its no-cause termination of Hydi's tenancy is consistent with the Restatement of Property. The Restatement states clearly that a periodic, month-to-month tenancy creates a continuing relationship of successive periods of one month which can only be terminated by proper notice. *See*, Restatement (Second) of Property: Landlord and Tenant § 1.5 cmt. d, illustration 1: "L leases a residence to T on July 1 'to continue from month to month.' The lease creates a tenancy continuing for successive periods of one month until proper notice is given." Under Montana law, a termination without cause is not proper or lawful.

B. In the interest of public policy, it is permissible for the legislature to constrain the constitutional rights of the parties to contract, and the Montana Legislature has done so by enacting the Lot Rental Act.

In its Response Brief on page 13, GMPM misconstrues Hydi's position concerning the lease contract. GMPM states that "Neither party has claimed that the Act substantially impairs the rights of a party to contract." In fact, Hydi does assert that the Lot Rental Act impairs the rights of a party to contract. Hydi asserts that the lot-owner/landlord is constrained by and must comply with the Lot Rental Act when it terminates a homeowner/lot-renter's lease. Even the parties' lease, which is on a form provided by GMPM, states that any termination must be done according to Montana law. (Appx C at 240: Lease ¶ 8.4: "This Rental Agreement may be terminated by either Party in accordance with Montana and other applicable law.") While acknowledging the parties' constitutional rights to contract (as did the District Court), Hydi argues that the right to contract is constrained by the grounds for termination provided in the Lot Rental Act.

The District Court's decision explicitly relies on the contracts clause of the U.S. and Montana Constitutions to support its conclusion that GMPM and Hydi were free to contract for a no-cause termination even though the Lot Rental Act does not expressly authorize a no-cause termination. (Appx A: D.C. Opinion, Doc. 17 at 9-10). Hydi urges this Court to follow established precedent as argued in her Opening Brief, Section I. A, in holding that the constitutional right to contract can

be abridged by the Legislature based on public policy objectives. 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). The Lot Rental Act’s § 70-33-433 plainly constrains the lot-owner/landlord’s right to contract concerning the grounds for termination of a lot rental agreement. Such constraint on the parties’ right to contract is allowable because Montana has a significant and legitimate public purpose behind its disallowance of no-cause terminations of lot rentals, and the impairment on the parties’ right to contract is reasonable and appropriately tailored to the State’s public purpose. *Western Energy*, 227 Mont. at 83, 737 P.2d at 479. Montana’s public purpose, as stated in the legislative Preamble to the 1993 bill which enacted the Grounds for Termination statute, is to address the affordable housing crisis and to protect homeowner/lot-renters from having to sell their homes at a fraction of their costs if forced to move for no reason in 30 days. (Appx E at 2: 1993 Mont. Session Laws 1665, Ch. 470).

This Court should reject GMPM’s position (Response Brief, p. 13) that the analysis set out in *Western Energy*, *supra*, does not apply here. Even though neither GMPM nor Hydi raised the constitutional right to contract in their trial court briefing, the district court relied on the right to contract in its decision.

This Court should reject GMPM’s assertion in its Response Brief (pp. 15-

16) that the 1993 Preamble to the Grounds for Termination statute has “no application” to the Lot Rental Act. The recordings of the 2007 legislative hearings, when HB 456 was passed to move the statutes applicable to mobile home lot rentals from Title 70, Chapter 24, into the new Lot Rental Act which HB 456 established as Title 70, Chapter 33, manifest the Legislature’s clear intent not to make any substantive changes to the statutes then governing the landlord-tenant relationship between lot owners and mobile homeowners. When HB 456 was passed in 2007, Montana law (Mont. Code Ann. §70-24-441(4)) prohibited no-cause terminations of mobile home lot rentals, and the legislature did not intend to make any change to that law. (Appx E at 7). Thus, the legislative history of the Grounds for Termination statute (which is now found at Mont. Code Ann. § 70-33-433), as well as the other mobile home lot-rental statutes formerly located within Chapter 24 and now found in Chapter 33, are relevant to the contested issue in the instant case – whether a month-to-month mobile home lot rental agreement may be terminated upon thirty days’ notice without cause.

C. The provision of damages to the non-breaching party in Mont. Code Ann. § 70-33-201 (2)(f) does not authorize a lot-owner/landlord to terminate without cause.

The pivotal legal issue in this court action is whether Montana law allows a lot-owner/landlord to terminate a mobile home lot rental agreement without cause. GMPM, the agent for the owner of the rented mobile home lot that is the subject of

this court action, argues that a termination without cause is allowed by Montana law. Hydi, the mobile homeowner and renter of the mobile home lot, argues that a no-cause termination is not allowed.

GMPM argues that resolution of the parties' dispute turns on the Court's interpretation of Mont. Code Ann. § 70-33-201(2)(f). That is the only statute that GMPM has cited as authority for its no-cause termination notice to Hydi. However, that section does not specifically authorize a lot-owner/landlord to terminate a rental agreement without cause.

Mont. Code Ann. § 70-33-201, provides in full:

70-33-201. Rental agreements.

- (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law.
- (2) Unless the rental agreement provides otherwise:
 - (a) the tenant shall pay as rent the rental value for the use and occupancy of the lot as determined by the landlord;
 - (b) rent is payable at the landlord's address or using electronic funds transfer to an account designated for the payment of rent by the landlord;
 - (c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;
 - (d) rent is uniformly apportionable from day to day;
 - (e) the tenancy is from month to month; and

- (f) if either party terminates the rental agreement without cause prior to the expiration date of the lease term, the aggrieved party is entitled to monetary damages up to 1 month's rent or an amount that is agreed on in the rental agreement, which may not exceed 1 month's rent. Landlords shall follow 70-33-426(2) and are entitled to rent from defaulting tenants up to the date a new tenancy starts or the date the rental agreement term expires.
- (3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

Mont. Code Ann. Section 70-33-201 (emphasis added).

Mont. Code Ann. Section 70-33-201(2)(f) was added to the Lot Rental Act in 2021 as part of HB 541, which amended several landlord-tenant statutes. *See* <http://leg.mt.gov/bills/2021/billhtml/HB0541.htm>.

HB 541 also made changes to Mont. Code Ann. § 70-33-433, the Grounds for Termination statute. Notably, HB 541 did not propose any change that would allow a termination without cause. Thus, the only reference to a no-cause termination in the Lot Rental Act is Mont. Code Ann. § 70-33-201(2)(f), which treats a no-cause termination as a breach of the rental agreement and provides for damages to the non-breaching party. Mont. Code Ann. § 70-33-201(2)(f).

It strains credibility for GMPM to assert that -201(2)(f) authorizes a no-cause termination. If the legislature in 2021 had intended to make that stark departure from long-standing legislative history which opposed no-cause terminations, it could have easily included such language in HB 541 in its

proposed amendments to Mont. Code Ann. § 70-33-433, and chose not to do so.

As is evident from its wording, Mont. Code Ann. § 70-33-201(2)(f) does not provide a lot-owner/landlord with any grounds for termination of a homeowner/lot-renter's lot rental agreement. GMPM argues at pp. 16-17 of its Response Brief, that -201(2)(f) authorizes a termination without cause. That is not true. One only has to read that subsection to see that it does not state that a no-cause termination is allowed. That subsection basically states that if a party chooses to terminate the rental agreement for no cause, then that party will be punished for that breach, in the amount of one month's rent. While Section -201(2)(f) does not explicitly say that a no-cause termination is prohibited, the fact that it provides for damages to the party "aggrieved" by that no-cause termination indicates that no-cause terminations are not allowed. A party can only be "aggrieved" if they suffer an infringement or denial of rights. (*See* the definition of "aggrieved" - <https://www.merriam-webster.com/dictionary/aggrieved>). Thus, by allowing damages to a homeowner/lot-renter whose lot-owner/landlord terminates their lot rental agreement without cause, the legislature is acknowledging that such termination is an infringement or denial of the homeowner/lot-renter's rights.

Section -201(2)(f) only applies when one party (here, GMPM) has breached the parties' rental agreement by terminating the agreement without cause. The lot-owner/landlord's no-cause termination represents a breach of the parties' rental

agreement and a breach of the law that results in damages to Hydi, pursuant to Mont. Code Ann. § 70-33-201(2)(f).

This Court has urged courts to avoid absurd results when construing a statute: “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). This Court should reject GMPM’s absurd interpretation that Mont. Code Ann. § 70-33-201(2)(f) authorizes a no-cause termination.

It cannot be reasonably disputed that Montana law has for many years prohibited no-cause terminations of lot rental agreements. Provided in Hydi’s previously filed Appendix are two indicators from legislative history that reflect the intent to prohibit no-cause terminations of lot rentals: 1) the legislative preamble to the 1993 bill (HB 245) which enacted the Grounds for Termination statute (now at Mont. Code Ann. § 70-33-433), and which states that the Legislature “finds it necessary to define justifiable and reasonable grounds on which landlords may evict mobile home owners...” (emphasis added); and 2) Mont. Code Ann. § 70-24-441 (2005), which existed before the Lot Rental Act was created in 2007, and which specifically exempted mobile home lot rentals from the 30-day no-cause termination that applies to other month-to-month rentals. (Appx E

at pdf pp. 99 and 105). Another indicator is the 2001 legislative history of HB 559, which resulted in various amendments to the Grounds for Termination statute. The sponsor of HB 559 (2001) testified that the bill did not eliminate the requirement for just cause when a person is evicted from a mobile home park, and that there needs to be a reason for the landlord to terminate a tenant's home from the mobile home park. *Minutes of Senate Judiciary Committee*, March 12, 2001, p. 2, available at <https://leg.mt.gov/laws/bills/2001/MinutesPDF/Senate> [in the list of pdf files, ordered numerically, click on "010312JUS_Sm1.pdf"].

GMPPM argues that in 2021 the Legislature passed Mont. Code Ann. § 70-33-201(2)(f) intending for that one phrase – “if either party terminates the rental agreement without cause” -- to effect a complete turnaround from Montana's long-standing prohibition of no-cause lot rental terminations. GMPPM's argument lacks credibility, and should be rejected.

II. GMPPM's purported concern for establishing a “perpetual” lease is a distraction without merit; Hydi has never argued for such a result.

Hydi has never argued that her month-to-month lease gives her the right to occupy the mobile home lot in perpetuity or as a life estate. Hydi has always acknowledged that her lease is subject to termination by the lot-owner/landlord, and that any termination must comply with Montana law. Currently, Montana law provides that the lease may be terminated for various grounds involving tenant

noncompliance, and two other grounds not involving tenant noncompliance – the landlord’s change in land use, and legitimate business reason. Mont. Code Ann. § 70-33-433.

Hydi’s tenancy is not “perpetual” and could be terminated at any time if GMPM were to establish grounds allowed by Mont. Code Ann. § 70-33-433.

A life estate is not created by requiring a lot-owner/landlord to terminate a rental agreement in accordance with Mont. Code Ann. § 70-33-433. Hydi’s tenancy lacks many of the markers of a life estate, such as: 1) the person must have an interest in real property, the duration of which is limited by the life of some person (*Leichtfuss v. Dabney*, 2005 MT 271, ¶ 34, 329 Mont. 129, 122 P.3d 1220); 2) the person with the life estate must pay taxes on the property (*Collier v. Kinchelow*, 2008 MT 100, ¶ 13, 342 Mont. 314, 180 P.3d 1157); 3) the person with the life estate is entitled to the property’s rent and profits during their lifetime (*Thompson v. Flynn*, 95 Mont. 484, 494, 27 P.2d 505, 507 (1933)).

The parties’ lease is a month-to-month lease that has no fixed end date, in contrast with a twelve-month lease (for example) which would end on the date specified. The parties’ lease itself provides for automatic renewal. (Appx C at 237: Lease ¶ 2.1) Yet GMPM states in its Response Brief p. 15 that “GMP issued a no-cause termination at the end of the lease’s month term” (emphasis added). That is not accurate. The parties’ month-to-month lease has no end date, and has not ended

every thirty days since it was signed in 2015. The lease automatically renews each month, and GMPM's no-cause termination notice in 2022 did not lawfully terminate Hydi's lease.

If the parties' lease were a term lease, it would have terminated at the end of its fixed term without notice. (Restatement (Second) of Property: Landlord and Tenant § 1.4, cmt e.) However, it is a month-to-month, periodic lease that is ongoing and continuous, and can only be terminated in compliance with Montana law. *Id.* at §1.5; *see also, Coleman v. Thomas*, 2000 UT 53 ¶ 14, 4 P.3d 783, 786 (Utah 2000) [finding a “fundamental flaw in the trial court’s reasoning” that the parties’ month-to-month lease naturally expired at the end of each month].

The issue presented for this Court’s review is the discrete issue of whether a lot owner may terminate a month-to-month lot rental agreement without cause. This Court need not address the Lot Rental Act’s effect upon a term lease. *See, Coleman*, ¶ 14 at fn 3 [“The issue presented for our review is the extent to which the MHPRA [Utah Mobile Home Park Residency Act] limits a park owner's ability to terminate a month-to-month lease. We do not address today the MHPRA's effect upon a term-of-years lease — during or after the expiration of the lease term.”]

In a gross misinterpretation of Hydi's position, GMPM states that “[i]f Hydi's interpretation were adopted, it would mean that no lease contract could ever end on its own terms...” (Response Brief p. 16). Hydi has never taken that position.

Instead Hydi's position is and has always been that no mobile home lot rental lease contract can end except for grounds allowed by the Lot Rental Act. If GMPM had lawfully terminated Hydi's lease for one of the grounds allowed by the Act, then Hydi's lease would have ended. But GMPM attempted to terminate her lease based on a thirty-day no-cause notice, and no-cause terminations are not allowed under the Lot Rental Act, so Hydi's contract has not ended.

This Court is only required to decide this case based on the facts presented – whether GMPM may terminate Hydi's lot rental agreement without cause on thirty days' notice. This Court should not allow GMPM to broaden the issue presented to whether a lease contract “could ever end on its own terms.” Hydi has never argued for such a conclusion.

Conclusion

Hydi urges this Court to find that the language of the Lot Rental Act is plain and unambiguous and does not allow a no-cause termination. The Court need not rely on legislative history for its decision, but the legislative history from 1993 forward confirms the intent of the legislature to prohibit no-cause terminations of mobile home lot rentals. The statutes have been revised several times since 1993, and at no time has the legislature authorized a no-cause termination.

Respectfully submitted this 5th day of May 2023.

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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 3,396, excluding Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

\s\ Amy Hall

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