

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0154

AGNES ADVENTURES, LLC,

Plaintiff and Appellee,

v.

JORDI ANZIK,

Defendant and Appellant.

OPENING BRIEF OF APPELLANT JORDI ANZIK

On Appeal from the Montana First Judicial District Court,
Lewis & Clark County, the Hon. Mike Menahan, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 7

STANDARD OF REVIEW 9

SUMMARY OF THE ARGUMENT 9

ARGUMENT 12

 I. The parties’ month-to-month lot rental agreement does not expire every thirty days and must be terminated in accordance with the Lot Rental Act..... 12

 II. Statutory construction of the Lot Rental Act supports the conclusion that no-cause terminations of mobile home lot rental agreements are not allowed. 19

 A. By approving Agnes’ no-cause termination, the District Court has misconstrued the plain meaning of the words and inserted into the Lot Rental Act a remedy that does not exist in statute. 21

 1. The Lot Rental Act is comprehensive legislation that precludes a lot-owner/landlord from terminating a rental agreement for a reason not authorized in statute. 21

 2. Montana Code Annotated § 70-33-433 provides the exclusive grounds for terminating a rental agreement and a lot-owner/landlord may not terminate for a ground not listed in § 70-33-433..... 27

B.	To avoid an absurd result, the Lot Rental Act and Montana Code Annotated § 70-33-433 must be construed to prohibit no-cause terminations.....	32
C.	Alternatively, if the Court finds that the Lot Rental Act is ambiguous concerning no-cause terminations, then the legislative history of the act shows the legislative intent to prevent no-cause terminations.	37
III.	Requiring Agnes to comply with Montana law concerning termination does not create a life estate in Anzik.....	39
	CONCLUSION.....	41
	CERTIFICATE OF COMPLIANCE.....	43
	APPENDIX A	

TABLE OF AUTHORITIES

MONTANA CASES

<i>City of Missoula v. Fox</i> , 2019 MT 250, 397 Mont. 388, 450 P.2d 898.....	20, 32, 34
<i>Clark Fork Coalition v. Mont. Dep't of Natural Res. & Conservation</i> , 2021 MT 44, 403 Mont. 225, 481 P.3d 198.....	22
<i>Clark Fork Coalition v. Tubbs</i> , 2016 MT 229, 384 Mont. 503, 380 P.3d 771.....	9
<i>Collier v. Kinchelow</i> , 2008 MT 100, 342 Mont. 314, 180 P.3d 1157	41
<i>Giacomelli v. Scottsdale Ins. Co.</i> , 2009 MT 418, 354 Mont. 15, 221 P.3d 666.....	20
<i>Grenfell v. Anderson</i> , 1999 MT 272, 296 Mont. 474, 989 P.2d 818.....	14
<i>Hines v. Topher Realty, LLC</i> , 2018 MT 44, 390 Mont. 352, 413 P.3d 813.....	9
<i>In re Estate of Donovan</i> , 169 Mont. 278, 546 P.2d 512 (1976)	28
<i>Infinity Ins. Co. v. Dodson</i> , 2000 MT 287, 302 Mont. 209, 14 P.3d 487	20, 32
<i>Johnson v. Marias River Elec. Coop.</i> , 211 Mont. 518, 687 P.2d 668 (1984). .	32, 34
<i>Leichtfuss v. Dabney</i> , 2005 MT 271, 329 Mont. 129, 122 P.3d 1220.....	40
<i>MacMillan v. State Compensation Ins. Fund</i> , 285 Mont. 202, 947 P.2d 75 (1997).....	24, 25, 26, 27
<i>Mitchell v. University of Montana</i> , 240 Mont. 261, 783 P.2d 1337 (1989)	30
<i>Progressive Direct Ins. Co. v. Stuiivenga</i> , 2012 MT 75, 364 Mont. 390, 276 P.3d 867	13
<i>Schuff v. A.T. Klemens & Son</i> , 2000 MT 357, 303 Mont. 274, 16 P.3d 1002	28, 29, 30

<i>State ex rel. Faragner v. Moulton</i> , 68 Mont. 219, 216 P. 804 (1923).....	28
<i>State v. Heath</i> , 2004 MT 126, 321 Mont. 280, 90 P.2d 326.....	33
<i>State v. Triplett</i> , 2008 MT 360, 346 Mont. 383, 195 P.3d 819.....	9
<i>Thompson v. Flynn</i> , 95 Mont. 484, 27 P.2d 505 (1933).....	40

OTHER CASES

<i>Coleman v. Thomas</i> , 2000 UT 53, 4 P.3d 783 (Utah 2000)	15, 16, 17, 18
<i>Green Valley Mobile Home Park v. Mulvaney</i> , 121 N.M. 187, 918 P.2d 1317 (1996).....	14

MONTANA STATUTES

Mont. Code Ann. § 1-2-101	20, 22, 27, 28
Mont. Code Ann. § 1-3-223	36
Mont. Code Ann. § 2-9-11	30
Mont. Code Ann. § 7-32-221	25, 26
Mont. Code Ann. § 27-1-307	29, 30
Mont. Code Ann. § 39-2-904	25
Mont. Code Ann. § 39-71-2317	25, 26, 27
Mont. Code Ann. § 70-24-441	passim
Mont. Code Ann. § 70-33-101	3, 4, 21
Mont. Code Ann. § 70-33-201	1, 7, 24
Mont. Code Ann. § 70-33-202	18

Mont. Code Ann. §70-33-427.....	23
Mont. Code Ann. § 70-33-428.....	23
Mont. Code Ann. § 70-33-433.....	passim
Mont. Code Ann. § 70-33-434.....	22
Mont. Code Ann. § 70-33-401.....	22
Montana Residential Landlord and Tenant Act.....	passim
Montana Residential Mobile Home Lot Rental Act.....	passim
Title 70, Ch. 33, Pt. 4.....	22, 23

OTHER STATUTES

Utah Code Ann. § 57-16-5 (Supp. 1999).....	17
--	----

LEGISLATIVE HISTORY

Preamble, 1993 Mont. Session Laws 1665, Ch. 470.....	17, 37, 38
HB 456, 60th Leg. (Mont. 2007).....	38, 39
HB 559, 57th Leg. (Mont. 2001).....	38
Mont. Code Ann. § 70-24-441 (2001) (<i>amended in 2007</i>).....	38

<i>Minutes of Senate Judiciary Committee: Hearing on HB 559, 57th Leg. (Mont. 2001) 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”]</i>	38
--	----

OTHER AUTHORITIES

2 Richard R. Powell, *Powell on Real Property*, § 16 (1994)..... 14, 15

4 *Thompson on Real Property*, § 39 (David A. Thomas ed., 1994)..... 14, 15

Restatement (Second) of Property: Landlord and Tenant
(Am. L. In. 1977) passim

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 unwritten month-to-month rental agreement.

STATEMENT OF THE CASE

This case stems from the right of possession of a mobile home lot rental in Helena. Agnes Adventures, LLC ("Agnes"), the lot-owner/landlord, seeks to evict without cause Jordi Anzik ("Anzik"), the homeowner/lot-renter, from the mobile home lot that her home occupies under an unwritten month-to-month rental agreement.

Anzik owns the mobile home, which is located at 5427 McHugh Lane, Lot 3, Helena, Montana in the Western Skies Mobile Home Park. App. C, Jordi Anzik's District Court Answer Brief (hereafter "Anzik Brief"), p. 4, ¶ 4. Agnes owns Western Skies Mobile Home Park and the lot occupied by Anzik's mobile home. App. B, Agnes Adventures' District Court Brief of Appellant (hereafter "Agnes Brief"), p. 2.

There is no written rental agreement between Anzik and Agnes. App. B, Agnes Brief at 2. Anzik pays rent on a monthly basis, and the parties agree that they have a month-to-month rental agreement for the lot, pursuant to Mont. Code Ann. § 70-33-201(2)(e). App. E, Complaint, ¶ 3.

On September 2, 2022, Agnes mailed to Anzik a “30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT” that did not allege any grounds for termination. App. B, Agnes Brief, pp. 2-4; App. J, Agnes Notice of Termination. The notice provided that Anzik’s month-to-month tenancy would terminate on October 10, 2022. App. J, Agnes Notice of Termination.

Anzik received the 30-day notice. App. B, Agnes Brief, p. 3.

Anzik did not vacate the rented lot by October 10, 2022, and continues to reside in her mobile home on the rented lot. App. B, Agnes Brief, p.3.

Agnes filed its court complaint in the Lewis and Clark County Justice Court, a court of record, on October 11, 2022, which was more than thirty-three days after Anzik received the 30-day notice. App. E, Complaint, ¶ 5.

On October 27, 2022, Anzik filed a *pro se* answer arguing that she is entitled to possession because she has paid all her rent and Agnes Adventures did not have any cause for termination. Answer, pp. 1-4, Justice Court record (hereafter “J. Ct. R.”). Attorney Mimi Wolok on November 4, 2022, entered a notice of appearance to represent Anzik. Def.’s Notice of Appearance, p. 1, J. Ct. R.

The Justice Court held a judge trial on November 9, 2022, at which both parties appeared. App. G, Findings of Fact, Conclusions of Law, Order for Judgment (hereafter “J. Ct. Judgment”), p. 1. Agnes argued that it could lawfully terminate Anzik’s month-to-month lot rental agreement with a 30-day no-cause

notice because the rental agreement was month-to-month and had expired at the end of the 30-day notice, and Agnes was not required to allege one of the grounds for termination provided in Mont. Code Ann. § 70-33-433. J. Ct. Trial Recording at 8:01-9:00; App. B, Agnes Brief, p. 5.

Anzik argued that the Montana Residential Mobile Home Lot Rental Act, Mont. Code Ann. § 70-33-101, *et seq.* (hereafter “Lot Rental Act”), does not allow a termination without cause, even if the rental agreement is month-to-month, and that the landlord was required to assert one of the grounds for termination provided at Mont. Code Ann. § 70-33-433. App. G, J. Ct. Judgment, p. 1.

On November 15, 2022, the Justice Court ruled in favor of Anzik and dismissed Agnes’ complaint for possession. App. G, J. Ct. Judgment, pp. 1-2. The Justice Court concluded as a matter of law that Agnes “made no qualifying claim under MCA § 70-33-433, Grounds for Termination of a Rental Agreement.” *Id.* at 2.

Agnes filed a motion for relief from judgment, which Anzik opposed. Pl.’s Mot. for Relief from Judgment (Nov. 14, 2022), J. Ct. R.; Def.’s Resp. to Pl.’s Mot. for Relief from Judgment (Nov. 18, 2022), J. Ct. R. On November 21, 2022, the Justice Court denied Agnes’ motion for relief from judgment. App. F, J. Ct. Ord. Den. Pl.’s Mot. Relief. The Justice Court noted that because the rental property at issue was a mobile home lot, the case was governed by the Lot Rental Act and not

the Montana Residential Landlord and Tenant Act, Mont. Code Ann. § 70-24-101

et seq. (hereafter “MRLTA”). *Id.* The Justice Court also noted:

It appears clear to the Court the Montana Legislature recognized the differences inherent in directing someone to vacate an apartment, or, for that matter, mobile home, and directing someone to move an entire mobile home off a lot. The latter, as argued by the Respondent [homeowner/lot-renter Anzik], requires great effort and expense and, apparently for those reasons, an entirely separate section of law under which to seek guidance.”

Id. at p.1.

The Justice Court rejected Agnes’ argument that requiring grounds for termination of a month-to-month mobile home lot rental agreement under Mont. Code. Ann. § 70-33-433 created a “life estate” for Anzik. *Id.* at 2.

On December 7, 2022, Agnes Adventures appealed the Justice Court decision to the First Judicial District Court. Agnes Notice of Appeal to Dist. Ct., J. Ct. R. Agnes filed its District Court appeal brief on December 14, 2022. App. B, Agnes Brief. Anzik filed her District Court answer brief on December 28, 2022. App. C, Anzik Brief. Agnes argued that it was not required to provide grounds for termination under Mont. Code Ann. § 70-33-433 because the parties’ unwritten month-to-month lot rental agreement had expired at the end of the notice period as a result of Agnes’ 30-day no-cause notice of termination to Anzik. App. B, Agnes Brief, pp. 3-5. Anzik argued that statutory construction and legislative intent of the Lot Rental Act supported the Justice Court’s ruling that the Lot Rental Act does

not allow for termination of a lot rental agreement without cause, and that Agnes must allege one of the grounds for termination provided in Mont. Code Ann. § 70-33-433. App. C, Anzik Brief, pp. 9-15.

On February 9, 2023, based on the parties' briefing, the District Court entered its "Order on Appeal From Justice Court" reversing and remanding the Justice Court's decision. App. A, Dist. Ct. Order. The District Court dispensed with Anzik's argument that a lot-owner/landlord must comply with Mont. Code Ann. § 70-33-433 concerning the grounds for termination. App. A, Dist. Ct. Order, pp. 4:22-25, 5:1-11. The District Court agreed with Agnes that the Justice Court decision had created a life estate for Anzik in the mobile home park because, as long as Anzik continued to pay rent and did not do anything to provide the landlord with one of the grounds for termination under Mont. Code Ann. § 70-33-433, "the Justice Court holding would allow her [Anzik] to remain on the lot indefinitely." *Id.* at p. 3-11.

The District Court Order's "Discussion" section includes only two paragraphs that summarily mention Mont. Code Ann. § 70-33-433. *Id.* at pp. 4:22-25, 5:1-11. The Order does not include any discussion of how a life estate could be created given that the Lot Rental Act includes two grounds for termination in § 70-33-433 which do not require any tenant noncompliance -- § 70-33-433(1)(l) for a landlord's change in the use of land, which requires a 180-day notice to the tenant,

and -433(1)(m) for a landlord's legitimate business reason, which requires a 90-day notice. *Id.*

The District Court's order addresses one issue which Anzik is no longer contesting: Anzik is not claiming that Agnes' notice is invalid because it cites the wrong statute. *Id.* at pp. 4:1-4, 5:2-21. Instead, Anzik claims that Agnes' notice is invalid because Montana law does not allow a no-cause termination of a mobile home lot rental agreement.

On February 14, 2023, Montana Legal Services Association filed a notice of substitution of counsel for Anzik in District Court. Notice of Substitution of Counsel for Appellee. Attorney Mimi Wolok no longer represents Anzik.

On February 15, 2023, Anzik filed a motion to certify the "Order on Appeal from Justice Court" as a final judgment for purpose of this appeal. Mot. to Cert. Order as Final for Appeal, pp. 1-8. On February 15, 2023, the District Court granted Anzik's motion. Order Certifying as Final "Order on Appeal from Justice Court," pp.1-6 (hereafter "Dist. Ct. Certifying Order"). In the certifying order, the District Court finds that "there is no just reason for delaying the Supreme Court's determination of this important legal issue [whether a no-cause notice is lawful under the Lot Rental Act], which is an issue of first impression and which will have impacts statewide." *Id.* at p. 4.

Anzik filed notice of appeal to this Court on March 7, 2023. Anzik Notice of Appeal to the Supreme Court.

On March 14, 2022, this Court approved the District Court's certification order and allowed Anzik's appeal to proceed.¹

STATEMENT OF FACTS

The facts are largely undisputed. Anzik owns and resides in her 1970s mobile home located at 5427 McHugh Lane, Lot 3, Helena, Montana. App. D, Anzik Declaration, ¶¶ 1, 4. Agnes owns the rented lot. App. B, Agnes Brief, p. 2.

Anzik bought the home in November 2020, already located on Lot 3. App. D, Anzik Declaration, ¶ 2. Anzik invested thousands of dollars, adding insulation and sheetrock to the home, remodeling the kitchen, bedrooms and bathroom, and redoing the electrical wiring. App. D, Anzik Declaration, ¶ 3.

There is no written rental agreement between Anzik and Agnes Adventures. App. B, Agnes Brief, p. 2. Anzik pays rent on a monthly basis, and the parties agree they have a month-to-month rental agreement for the lot, pursuant to Mont. Code Ann. § 70-33-201(2)(e). App. E, Complaint, ¶ 3.

On September 2, 2022, Agnes Adventures mailed to Anzik a "30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT" that did

¹ There are two other appeals currently pending that involve no-cause terminations of mobile home lot rentals: *Westview Mobile Home Park v. Lockhart*, No. DA 22-0358, and *Greener Montana Prop. Mgt v. Cunningham*, No. DA 22-0498.

not allege any grounds for termination. App. B, Agnes Brief, p. 4. The notice provided that Anzik's month-to-month tenancy would terminate on October 10, 2022. App. J, Agnes Notice of Termination.

Anzik received the 30-day notice. App. B, Agnes Brief, p. 3. Anzik did not vacate the rented lot by October 10, 2022, and continues to reside in her mobile home on the rented lot. App. E, Complaint, p. 2.

Anzik estimates that she would have to spend at least \$5,000 to move the mobile home off the lot, and fears that the home is not structurally sound enough to survive a move. App. D, Anzik Declaration, ¶ 7; J. Ct. Trial Recording at 6:33-6:53. Anzik knows that it is hard to find a mobile home park that would accept an old 1970s home like hers. App. D, Anzik Declaration, ¶¶ 4, 7.

After Agnes filed a Justice Court complaint for possession of the lot, the Justice Court entered judgment for Anzik, finding Agnes was required to assert one of the grounds for termination provided in Mont. Code Ann. § 70-33-433 and could not terminate Anzik's month-to-month lot rental agreement for no reason. App. G, J. Ct. Judgment, p. 2.

Agnes appealed to District Court. The District Court entered judgment for Agnes, without extensive analysis of the Lot Rental Act. App. A, Dist. Ct. Order.

Anzik appealed to this Court. While this appeal is pending, Anzik has continued to pay rent and reside in her mobile home on the rented lot.

STANDARD OF REVIEW

This case involves the interpretation and construction of a statute. The interpretation of a statute is a question of law that this Court reviews for correctness. *Clark Fork Coalition v. Tubbs*, 2016 MT 229, ¶ 18, 384 Mont. 503, 380 P.3d 771 (citations omitted). 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).

SUMMARY OF THE ARGUMENT

The Lot Rental Act does not authorize a lot-owner/landlord to terminate without cause the month-to-month rental agreement of a mobile homeowner/lot-renter. The Lot Rental Act comprehensively regulates mobile home lot rentals in Montana and provides grounds for termination of all rental agreements, including month-to-month rental agreements, in one statute—Mont. Code Ann. § 70-33-433.

A lot-owner/landlord may only terminate a month-to-month lot rental agreement for one of the thirteen grounds provided in the Lot Rental Act and must provide proper notice of the termination to the homeowner/lot-renter in accordance with the notice requirements of § 70-33-433. The thirteen grounds include two grounds within the landlord's control that do not require any tenant noncompliance: 1) termination based on the change in the use of land, and 2)

termination for any legitimate business reason. § 70-33-433(1)(l), (m). Because Agnes's notice of termination did not allege one of the thirteen grounds for termination specified by the Lot Rental Act, the parties' rental agreement was not terminated, and Anzik may maintain possession of the lot.

The month-to-month nature of the parties' unwritten rental agreement does not allow Agnes to circumvent the termination requirements of the Lot Rental Act and terminate Anzik's tenancy for a reason not provided in § 70-33-433. The parties' lot rental agreement creates a periodic tenancy comprised of a continuous succession of one-month periods that can only be terminated by proper, lawful notice. Agnes' no-cause termination notice was not lawful under the Lot Rental Act.

The Lot Rental Act does not contain any provision authorizing the no-cause termination of a month-to-month rental agreement upon thirty days' notice. The well-established canons of statutory construction show that the Lot Rental Act prohibits a lot-owner/landlord from terminating a rental agreement for a reason not expressed in the Lot Rental Act's plain language. Because the Lot Rental Act in § 70-33-433 specifically provides various grounds of termination, the doctrine of *expressio inius est exclusio alterius* -- the expression of one thing is the exclusion of another -- prohibits the landlord from terminating a rental agreement for reasons not provided in § 70-33-433.

The District Court's decision allowing Agnes' no-cause termination of Anzik's rental agreement leads to the absurd result of allowing a lot-owner/landlord to terminate a lot rental agreement for grounds not contemplated in statute. Under the District Court's interpretation, a lot-owner/landlord could terminate a month-to-month rental agreement for any reason, no matter how arbitrary or absurd, and could arbitrarily decide the number of days' notice to give the homeowner/lot-renter. This is not reasonable. A reasonable interpretation of the Lot Rental Act, after applying the fundamental canons of statutory construction, leads to the conclusion that the Lot Rental Act prohibits a landlord from terminating a month-to-month rental agreement without cause, and must terminate for one of the grounds and with the number of days' notice provided in § 70-33-433.

Requiring Agnes to terminate the rental agreement as provided in § 70-33-433 does not give Anzik a life estate in the rented lot. Agnes may terminate Anzik's tenancy at any time with lawful notice for one of the grounds provided in the Lot Rental Act, including for any legitimate business reason. Agnes may not terminate Anik's tenancy without cause because a no-cause termination is not authorized by the Lot Rental Act.

ARGUMENT

I. The parties' month-to-month lot rental agreement does not expire every thirty days and must be terminated in accordance with the Lot Rental Act.

It is undisputed that Agnes, a Montana lot-owner/landlord, must comply with Montana law concerning its rental property. The District Court ruled that Montana law allows terminations without cause of lot rentals. *See* App. A, Dist. Ct. Order. Anzik disagrees. Montana law does not allow a landlord to terminate a lot rental agreement without cause, whether that rental agreement is month-to-month or a term for years. 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 section within the Lot Rental Act authorizes a no-cause termination. Because no-cause terminations are not authorized by Montana law, Agnes' no-cause notice of termination to Anzik did not result in termination of her lot rental agreement.

The District Court erred when it ruled that Agnes did not have to comply with § 70-33-433 to terminate Anzik's month-to-month lot rental tenancy. App. A, Dist. Ct. Order, p. 5. The District Court's conclusion that Agnes lawfully terminated Anzik's tenancy with its thirty-day no-cause notice contradicts the Lot Rental Act and black letter law from the Restatement (Second) of Property: Landlord and Tenant (Am. L. In. 1977) and other sources. This Court has

recognized the Restatements as persuasive authority. *See, e.g., Progressive Direct Ins. Co. v. Stuvenga*, 2012 MT 75, ¶ 21, note 1, 364 Mont. 390, 276 P.3d 867 (internal citations omitted).

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 §§1.4, 1.5. 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.* at §1.4. A tenancy for years terminates at the end of the term specified in the lease. *Id.* A periodic tenancy, such as a week-to-week or a month-to-month tenancy, continues successively from one period to the next. Restatement (Second) of Property: Landlord and Tenant § 1.5. The Restatement states 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. *Id.* Illustration 1 at cmt. d provides: “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.” *Id.* Proper notice of mobile home lot rental terminations in Montana is governed by the Lot Rental Act, which does not authorize a termination without cause.

Anzik’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. Restatement (Second) of Property: Landlord and Tenant §1.5 at comment c. This Court has cited favorably to § 1.5 of the Restatement, and in dicta noted that a periodic tenancy has no fixed ending term. *Grenfell v. Anderson*, 1999 MT 272, ¶ 30, 296 Mont. 474, 989 P.2d 818.

This Court has not yet determined the issue of whether the Lot Rental Act allows a no-cause termination. Courts in other states have examined whether month-to-month lot rental agreements expire every thirty days and whether such tenancies can be terminated without grounds authorized by statute.

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. Because the lot-owner/landlord had not stated any reason for termination in its notice, the 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, 14.

In a case precisely on point, the Utah Supreme Court applied three sources of black letter law – the Restatement (Second) Property: Landlord and Tenant, 2 Richard R. Powell, *Powell on Real Property*, § 16 (1994), and

4 Thompson on Real Property, § 39 (David. A. Thomas ed., 1994) – to reverse a trial court decision in favor of the landlord and rule that a periodic, month-to-month mobile home lot tenancy does not expire every thirty days, and 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. The foregoing discussion exposes the fundamental flaw in the trial court's reasoning. The court reasoned that the month-to-month lease "naturally expired at the end of each month," taking Coleman's action outside the scope of the MHPRA [Utah's lot rental act], which deals with "terminating" a lease. This is not the case. A month-to-month lease, or any other periodic tenancy, does not simply "expire," as the 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, 785-86 (Utah 2000) (emphasis added).

Like the trial court in *Coleman*, the District Court here agreed with Agnes that there was nothing unlawful about Agnes' termination of Anzik's tenancy with a 30-day no-cause notice, because Mont. Code Ann. § 70-33-433 does not apply to a no-cause month-to-month termination. App. A, Dist. Ct. Order, p. 5. The

District Court’s order does not explicitly state that a month-to-month termination falls outside the Lot Rental Act, but that conclusion is implicit in its holding that Anzik became “a holdover tenant who remained on the lot without Agnes’ consent after the lease expired” as a result of Agnes’ termination notice, and that compliance with § 70-33-433, the Grounds for Termination statute, was not required. *Id.*

In *Coleman*, the Utah Supreme Court overturned the trial court’s conclusion that the parties’ month-to-month mobile home lot rental agreement naturally expired at the end of each month. *Coleman*, ¶¶ 13-14. In the instant case, the District Court made a similar finding, that Anzik’s lease expired thirty days after receiving Agnes’ 30-day no-cause notice. App. A, Dist. Ct. Order, p. 5. 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 *Coleman* Court reasoned that its decision to prohibit no-cause terminations was “in harmony with the overall purpose” of Utah’s Mobile Home Park Residency Act (“MHPRA”):

...protecting against termination without cause serves the twofold purpose of protecting both park residents and park owners. The cause requirement prevents a park owner from terminating residents' leases at whim and forcing them to undergo great expense uprooting their homes, along with their footings, skirting, decks, and landscaping, and attempting to secure another lease elsewhere. The protection that the

MHPRA provides to a park owner is the power to "promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park," *id.* § 57-16-7(1)(a) (Supp. 1999), and to terminate a resident's lease if the resident fails to abide by any of the park rules, see *id.* § 57-16-5(1). Thus, while the MHPRA protects a park resident from sudden, unjustifiable eviction, it provides a park owner speedy remedies against a tenant who violates reasonable rules.

Coleman, ¶ 19.

Similarly, the Montana Legislature has stated its public purpose for prohibiting no-cause terminations. Its Preamble to the 1993 bill which enacted the Grounds for Termination statute states that its purpose 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. App. H, Preamble, 1993 Mont. Session Laws 1665, Ch. 470.

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, as well as for the lot-owner/landlord's change in use of the land. *Coleman*, ¶ 17. The *Coleman* court found that the lot-owner/landlord did not terminate the lease for any of the grounds listed in Utah Code Ann. § 57-16-5. *Id.* at ¶ 21. The court held that the lot-owner/landlord could not terminate the lease without cause, notwithstanding the parties' month-to-month lease that allowed such termination. *Id.* The parties' written lease provision that allowed for termination without cause was

unenforceable because the tenant could not be forced to waive their protections under Utah's MHPRA, which required that termination be based on statutory grounds. *Id.* at ¶ 21.

Applying *Coleman's* reasoning to the instant case, the parties' month-to-month rental agreement is subject to the Lot Rental Act, just as a term lease would be. The Lot Rental Agreement sets forth thirteen grounds for termination in Mont. Code Ann. § 70-33-433 and does not authorize termination for no reason. Pursuant to the Restatement (Second) of Property: Landlord and Tenant and the Lot Rental, Anzik has a periodic tenancy which does not expire every thirty days; the rental agreement continues from month-to-month unless lawfully terminated, and Agnes did not lawfully terminate Anzik's rental agreement.

The District Court's holding effectively requires Anzik to waive or forgo her right to have her tenancy lawfully terminated according to the provisions of the Lot Rental Act, simply because the rental agreement is month-to-month. However, as in Utah, Montana law provides that the rental agreement cannot require the tenant to waive or forego rights or remedies under the Lot Rental Act. Mont. Code Ann. § 70-33-202(1)(a). Thus, the month-to-month agreement cannot require Anzik to waive her right to be terminated only for one of the grounds provided in Mont. Code Ann. § 70-33-433.

The District Court's order seems premised on the faulty notion that a month-to-month rental agreement, just by its nature of being month-to-month, naturally or

automatically grants the landlord the authority to terminate the tenancy without any grounds. This is incorrect. Notably, neither the District Court nor Agnes have cited to any Montana statute which would allow a mobile home lot rental agreement to be lawfully terminated by the landlord on a 30-day no-cause notice. While the MRLTA in Mont. Code Ann. § 70-24-441 allows such terminations of non-mobile rentals, the Lot Rental Act does not. To lawfully terminate Anzik's rental agreement, Agnes must give Anzik a notice alleging grounds for termination that are authorized in the Lot Rental Act, and the Act does not authorize a termination for no cause.

Because Agnes did not provide proper notice to terminate Anzik's month-to-month rental agreement under Montana law, Anzik's rental agreement was not lawfully terminated, and she was not a holdover tenant when she stayed past the termination date given in Agnes' notice.

II. Statutory construction of the Lot Rental Act supports the conclusion that no-cause terminations of mobile home lot rental agreements are not allowed.

Resolution of this appeal requires this Court to engage in statutory construction of the Lot Rental Act. This court's canons of statutory construction support the conclusion that the Lot Rental Act prohibits no-cause terminations of lot rental agreements.

In interpreting a statute, a court must construe the statute as written by the legislature and may not “insert what has been omitted or omit what has been inserted.” Mont. Code Ann. § 1-2-101; *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487. “Statutory language must be construed according to its plain meaning, and if the language is clear and unambiguous, no further interpretation is required.” *Dodson*, ¶ 46. The goal of statutory interpretation “is to give effect to the legislature’s intent, begin[ning] with the text of the statute.” *Giacomelli v. Scottsdale Ins. Co.*, 2009 MT 418, ¶ 18, 354 Mont. 15, 221 P.3d 666. Further, “statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 395, 450 P.2d 898, 903 (internal citations omitted). Finally, if the plain words of a statute are ambiguous, the next step in statutory interpretation is to examine the legislative history of the statute to determine the legislative intent. *Dodson*, ¶ 46.

The District Court erred when it construed the Lot Rental Act to allow no-cause terminations of month-to-month rental agreements. The District Court’s interpretation ignores the Lot Rental Act’s plain meaning by effectively inserting language into the Lot Rental Act that the Legislature omitted. Furthermore, the District Court’s interpretation leads to the absurd result of allowing a lot-owner/landlord to terminate a mobile home lot rental agreement without cause

when the Lot Rental Act contains no statutory provision authorizing no-cause termination.

- A. By approving Agnes’ no-cause termination, the District Court has misconstrued the plain meaning of the words and inserted into the Lot Rental Act a remedy that does not exist in statute.**

The plain meaning of the Lot Rental Act’s language does not authorize terminations of month-to-month rental agreements without cause. In the entire statutory scheme regulating mobile home lot rentals, the Lot Rental Act contains only one statute that provides the grounds for termination of a mobile home lot rental agreement -- Mont. Code Ann. § 70-33-433, entitled “Grounds for termination of rental agreement.” Section 70-33-433 contains no terms that authorize a lot-owner/landlord to terminate a month-to-month rental agreement without cause. Therefore, the District Court erred in concluding the Lot Rental Act authorizes a lot-owner/landlord to terminate a month-to-month rental agreement without cause.

- 1. The Lot Rental Act is comprehensive legislation that precludes a lot-owner/landlord from terminating a rental agreement for a reason not authorized in statute.**

The Lot Rental Act, contained in Title 70, Ch. 33 of the Montana Code Annotated, is comprehensive legislation that governs mobile home lot rental agreements and provides the obligations, rights, and remedies of the lot-

owner/landlord and homeowner/lot-renter within the landlord-tenant relationship. The Lot Rental Act contains four Parts that regulate the entirety of the landlord-tenant relationship: 1. “General Provisions,” which includes definitions; 2. “Rental Agreements,” which regulates the content of rental agreements; 3. “Rights and Duties of Parties,” which regulates rules of occupancy, maintenance, and repairs; and 4. “Remedies,” which sets out remedies including injunctive relief, damages, and rental agreement termination.

Nowhere within any of the four Parts does the Lot Rental Act authorize a lot-owner/landlord to terminate a month-to-month rental agreement without cause.

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in the 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. When construing a statute, a court must “effect the manifest intent of the Legislature in accordance with the clear and unambiguous language of its enactments, without resort to other means of construction.” *Clark Fork Coalition v. Mont. Dep’t of Natural Res. & Conservation*, 2021 MT 44, ¶ 36, 403 Mont. 225, 481 P.3d 198.

The Lot Rental Act’s absence of any statutory language expressly authorizing no-cause terminations is particularly glaring in Part 4, Remedies. *See* Mont. Code Ann. §§ 70-33-401 through -434. Consistent with the Lot Rental

Act's regulatory scheme, Part 4 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, pursuant to Mont. Code Ann. § 70-33-433, the landlord must give the homeowner/lot-renter a written notice stating, "that the rental agreement terminates for one or more of the following reasons . . .";
- 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.

Mont. Code Ann. § 70-33-433, entitled Grounds for Termination of a Rental Agreement, is the only statute in the Lot Rental Act that contains express terms regulating the grounds by which a landlord may terminate a rental agreement. Section 70-33-433(1)(a)-(m) specifies thirteen reasons that a landlord/lot-owner may terminate a rental agreement. For each termination reason, § 70-33-433 provides the parameters for the notice required to terminate a

rental agreement. For example, § 70-33-433(1) provides that a “rental agreement terminates” for “(m) any legitimate business reason not covered elsewhere in subsection (1) if the landlord meets the following requirements: (i) the termination does not violate a provision of this section or any other state statute; and (ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days’ written notice of termination.”

Absent from § 70-33-433 is any provision stating that a lot-owner/landlord may terminate a month-to-month month rental agreement without cause upon 30 days’ notice. While Mont. Code Ann. § 70-33-201(2)(e) of the Lot Rental Act provides that a lot rental agreement is month-to-month unless the rental agreement states otherwise, the Lot Rental Act does not contain a statute or any other express language providing that lot-owner/landlord may terminate a month-to-month rental agreement without cause or that a no-cause termination of a month-to-month rental agreement is exempt from the requirements of Mont. Code Ann. § 70-33-433.

If the Legislature intended to allow no-cause terminations of lot rental agreements or intended to exempt no-cause terminations of month-to-month tenancies from § 70-33-433, it would have said so. In *MacMillan v. State Compensation Ins. Fund*, 285 Mont. 202, 206-08, 947 P.2d 75, 77-78 (1997), this Court held that a statute did not authorize termination of a management employee

without cause because the statute lacked express terms authorizing termination without cause. The Court concluded that “when the legislature intends to authorize termination without cause or to provide for an exception to, or exemption from, an otherwise applicable statute, it manifests that intent clearly in express terms.” *Id.* at 208.

The issue in *MacMillan* was whether the plain language of Mont. Code Ann. § 39-71-2317 allowed the State Fund to terminate MacMillan, a management employee, without “the ‘good cause’ generally required to prevent an employee discharge from being ‘wrongful’ under the WDEA [Wrongful Discharge from Employment Act].” *Id.* at 205-206 (citing the WDEA, Mont. Code Ann. § 39-2-904(2)). Although § 39-71-2317 did not contain express language authorizing the State Fund to terminate management staff without cause or exempting no-cause terminations of management staff from the WDEA, the State Fund argued that the statute’s language providing that a management employee “serves at the pleasure of the executive director” effectively created an exemption from the WDEA’s applicability to the State Fund’s no-cause termination of MacMillan. *Id.*

In construing whether § 39-71-2317 authorized the no-cause termination of MacMillan and thus precluded him from bringing a WDEA claim, the *MacMillan* Court compared § 39-71-2317 to a similar statute regarding employee terminations, Mont. Code Ann. § 7-32-221, which also contained the phrase “serve

at the pleasure.” *Id.* at 206. The Court emphasized that § 7-32-221 contained the additional phrase “termination . . . without any cause.” *Id.* The Court reasoned that the additional “terminate . . . without any cause” language in § 7-32-221 would be surplusage if the “serve at the pleasure of” language alone allowed an employer to terminate an employee without cause. *Id.* Because Mont. Code Ann. § 39-71-2317 contained no “terminate . . . without any cause” language like Mont. Code Ann. § 7-23-221, or any similar language, the Court determined the Legislature did not intend to authorize termination of State Fund management staff without cause and, thus, it did not intend to exempt the no-cause termination of State Fund management staff from WDEA. *Id.* at 206-208.

Just as Mont. Code Ann. § 39-71-2317 contains no express language authorizing the State Fund to terminate a management staff member without cause, the Lot Rental Act and Mont. Code Ann. § 70-33-433 contain no express language authorizing a lot-owner/landlord to terminate a month-to-month rental agreement without cause. Similar to the *MacMillan* Court’s reasoning that the Legislature authorized employee terminations without cause through express language in other statutes, the Legislature authorized no-cause terminations of month-to-month residential rental agreements through express terms in Mont. Code Ann. § 70-24-441(2) of the MRLTA, which applies to residential tenancies other than mobile home lot rentals, by providing that a landlord “may terminate a month-to-month

tenancy by giving . . . at least 30 days' notice in writing prior to the date designated . . . for termination of the tenancy.”

No such language exists in the Lot Rental Act. If the Legislature intended the Lot Rental Act to authorize no-cause terminations of month-to-month mobile home lot rental agreements or to exempt no-cause terminations of month-to-month rental agreements from the applicability of Mont. Code Ann. § 70-33-433, it would have manifested that intent clearly with express terms like it did in the MRLTA.

Just as the *MacMillan* Court refused to insert statutory language into Mont. Code Ann. § 39-71-2317 authorizing no-cause terminations of State Fund management staff, language authorizing no-cause terminations of month-to-month rental agreements should not be inserted into the Lot Rental Act. *See MacMillan*, 285 Mont. at 208, 947 P.2d at 78-79 (citing Mont. Code Ann. § 1-2-101).

2. Montana Code Annotated § 70-33-433 provides the exclusive grounds for terminating a rental agreement and a lot-owner/landlord may not terminate for a ground not listed in § 70-33-433.

A lot-owner/landlord may not terminate a month-to-month rental agreement without cause because the Lot Rental Act provides the grounds for termination of a rental agreement in Mont. Code Ann. § 70-33-433 and that section does not contain any language authorizing month-to-month terminations without cause. This Court has held that when the Legislature remains silent concerning an available

option, that silence indicates the Legislature’s intent to not include that option in the statute. *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 122, 303 Mont. 274, 16 P.3d 1002. Because § 70-33-433 is silent concerning no-cause terminations of month-to-month lot rental agreements, Agnes may not lawfully terminate Anzik’s rental agreement without cause.

To avoid a statutory construction that inserts language the Legislature omitted, this Court applies the long-standing doctrine *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another. *See Schuff*, ¶ 122 (citing Mont. Code Ann. § 1-2-101). Under *expressio unius est exclusio alterius*, a statutory provision that does not expressly prohibit a specified thing but gives recognition only to a specified thing and not others, indicates a legislative intent that the specified thing “may not be extended further.” *State ex rel. Faragner v. Moulton*, 68 Mont. 219, 225, 216 P. 804, 806 (1923); *see In re Estate of Donovan*, 169 Mont. 278, 282, 546 P.2d 512, 514 (1976) (noting that “when certain things are specified in law . . . an intention to exclude all others from the law’s operation may be inferred” (internal citation omitted)). Although the Lot Rental Act does not expressly prohibit no-cause terminations of month-to-month rental agreements, the Lot Rental Act only recognizes the thirteen grounds for termination listed in § 70-33-433, none of which authorize no-cause terminations of month-to-month rental agreements.

In *Schuff*, the Court applied *expressio unius est exclusio alterius* to hold that because the Legislature included specific, express terms in the statute at issue, Mont. Code Ann. § 27-1-307, the statute excluded all other terms not provided for in the statute. *Schuff*, ¶ 122. The issue in *Schuff* was whether every type of Social Security payments, including survivor’s benefits, should be counted as collateral sources in a wrongful death action, rather than just the two types of collateral sources specifically provided for in § 27-1-307. *Id.* at ¶¶ 112-121. Section 27-1-307, entitled “Definitions,” listed two specific kinds of social security benefits -- medical expenses and disability payments -- but did not include other types of social security payments, like survivor’s benefits. *Id.* at ¶¶ 121-122.

The *Schuff* Court held that “because the Legislature specifically included these terms [medical expenses and disability payments], a court should properly exclude all other kinds of Social Security as collateral sources in construing the statute as a whole.” *Schuff*, ¶ 122. The Court reasoned that “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*).” *Id.* This Court noted that if the Legislature had intended to include social security benefits other than the two kinds specifically listed, it could have “easily said so-- and, under our rules, plainly chose to remain silent.” *Id.*

The reason in *Schuff* applies here. Here, Mont. Code Ann. § 70-33-433(1)(a)-(m) lists thirteen specific grounds of termination for mobile home lot rental agreements, including two grounds that do not involve tenant noncompliance, and does not authorize any termination without cause. Like the *Schuff* Court determined in interpreting Mont. Code Ann. § 27-1-307, the maxim *expressio unius est exclusio alterius* requires that Mont. Code Ann. § 70-33-433's expression of specific grounds for termination excludes all other types of termination not listed, such as Agnes' no-cause termination of Anzik's month-to-month rental agreement. *See* App. J, Agnes Notice of Termination.

The Lot Rental Act also does not include any expansive language that would allow a landlord to depart from § 70-33-433 in a tenancy termination. In *Mitchell v. University of Montana*, 240 Mont. 261, 265, 783 P.2d 1337, 1339, (1989), this Court found that the absence of the expansive phrase “includes, but is not limited to” in a statute's text signaled the Legislative intent to exclude all things not listed in the statute. The *Mitchell* Court held that the statute defining governmental entities, Mont. Code Ann. § 2-9-11, excluded the Board of Regents, because the Board of Regents was not specifically listed in the statute and the statute did not include an expansive phrase. *Id.* Like the *Schuff* Court, the *Mitchell* Court applied the “familiar maxim of statutory construction: *expressio unius est exclusio alterius*” in its determination. *Id.*

Similarly, Mont. Code. Ann. § 70-33-433 does not contain the phrase “including, but is not limited to” or any variation thereof when it states “[t]he rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions: . . .” § 70-33-433(1) (emphasis added). The absence of any such expansive phrase indicates the legislative intent to limit the grounds for termination of a rental agreement to those specifically listed in § 70-33-433.

The District Court’s ruling would expand the grounds for termination of a rental agreement in § 70-33-433 to include no-cause terminations of month-to-month rental agreements. App. A, Dist. Ct. Order. Such an interpretation runs afoul of this Court’s statutory construction maxim *expressio unius est exclusio alterius* and erroneously inserts language providing for a no-cause termination of a month-to-month rental agreement as a ground for termination into § 70-33-433 and the Lot Rental Act.

Agnes may not terminate Anzik’s month-to-month rental agreement without cause because § 70-33-433 provides the exclusive grounds for termination of a rental agreement and a no-cause termination of a month-to-month rental agreement is not a ground authorized by § 70-33-433.

B. To avoid an absurd result, the Lot Rental Act and Mont. Code Ann. § 70-33-433 must be construed to prohibit no-cause terminations.

In statutory construction, this Court relies heavily on two guiding principles:

1) where the statute contains contradictory provisions, the preferred approach is to give effect to all; and 2) statutory construction “should not lead to absurd results” where a reasonable interpretation of the statute can avoid it. *City of Missoula v. Fox*, 2019 MT 250, ¶ 18 (internal citations omitted). Further, “the unreasonableness of the result produced by one interpretation is reason for rejecting it in favor of another that would produce a reasonable result.” *Johnson v. Marias River Elec. Coop.*, 211 Mont. 518, 524, 687 P.2d 668, 671 (1984).

Admittedly, Mont. Code Ann. § 70-33-433(1) is not the epitome of precise drafting. Section 70-33-433(1) begins with the phrase “If there is a noncompliance by the tenant” but then as part of the second sentence lists two grounds of termination, in -433 (1)(l) and -(m), that do not require any noncompliance by the tenant.

This Court reads and construes “each statute as a whole so as to avoid an absurd result ‘and to give effect to the purpose of the statute.’” *Dodson*, ¶ 46 (internal citations omitted). Further, “[s]tatutory 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.2d 326 (internal citations omitted).

The purpose of § 70-33-433 is to provide the landlord with a menu of grounds for terminating a lot rental tenancy. Section 70-33-433 allows a landlord to terminate the rental agreement for eleven grounds involving a tenant's noncompliance with the rental agreement or Montana law and allows termination for two grounds that do not involve noncompliance. Those two grounds are found at § 70-33-433(1)(l) and -(1)(m) and allow termination for "changes in the use of the land," and for "any legitimate business reason not covered elsewhere in subsection (1)."

Agnes argues that § 70-33-433 does not apply to Anzik's termination because -433 only applies to terminations involving tenant noncompliance, which does not apply to Anzik. App. B, Agnes Brief, pp. 5-6. The District Court agrees with Agnes that "Anzik's reliance on Montana Code Annotated § 70-33-433 is misplaced." App. A, Dist. Ct. Order, p. 5:3-11.

Agnes and the District Court ignore the plain language of the statute. While the first sentence of § 70-33-433(1) is qualified by the phrase "If there is a noncompliance by the tenant," the second sentence is not. The second sentence of § 70-33-433(1) provides:

The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

* * * * *

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1)

Mont. Code Ann. § 70-33-433 (emphasis added).

The statute clearly provides that a rental agreement may be terminated for the two reasons provided in subsections (l) and (m), and the wording of those subsections clearly does not require any noncompliance by the homeowner/lot-renter. *Id.* An interpretation concluding that subsections (l) and (m) require noncompliance by the tenant simply because they fall after the phrase found at the beginning of § 70-33-433(1)—“If there is a noncompliance by the tenant”—is an unreasonable interpretation of the plain language of the statute. Instead, this Court may interpret § 70-33-433(1) “to produce a reasonable result” as required by *Johnson v. Marias River Elec. Coop.*, 211 Mont. at 524, 687 P.2d at 671, and hold that the statute allows for termination based on a tenant’s noncompliance in subsections (a) through (k), and for the landlord’s own reasons in subsections (l) and (m). This construction of the statute gives effect to the plain meaning of each of the thirteen grounds for termination provided by the Legislature and does not render any provision superfluous. *See, e.g., Fox*, ¶ 22 (internal citations omitted).

The District Court interprets the Lot Rental Act in a way that allows the lot-owner/landlord to not be constrained by the grounds of termination provided in § 70-33-433. *See* App. A, Dist. Ct. Order, p. 5. Under the District Court's interpretation, a lot-owner/landlord could terminate a month-to-month rental agreement for any reason, no matter how arbitrary or absurd, and a lot-owner/landlord could arbitrarily decide the number of days' notice to give the homeowner/lot-renter. For instance, a lot-owner/landlord could terminate a month-to-month rental agreement on the absurd grounds that the homeowner/lot-renter buys a foreign-made car or works the night shift and could give the renter less than 30 days' notice of such absurd termination. Even though such grounds are not encompassed by § 70-33-433 or elsewhere in the Lot Rental Act, a lot-owner/landlord could proceed with that arbitrary termination of a month-to-month rental agreement since the District Court's interpretation would allow a lot-owner/landlord to operate outside the confines of the grounds and the notice-period requirements of § 70-33-433. *See* App. A, Dist. Ct. Order, p. 4-5.

It is absurd to interpret the Lot Rental Act in a way that allows Agnes to terminate on grounds not listed in § 70-33-433, and to allow such termination to take effect after 30 days' notice when a 30-day notice period is not specified in statute. Each of the thirteen grounds listed in § 70-33-433 includes a specified notice period. *See, e.g.,* § 70-33-433(1)(a) (which requires 7 days' notice for

nonpayment of rent); §70-33-433(1)(b) (which requires 14 days' notice for rule violation). When there is no statute governing the method of termination, the lot-owner/landlord is free to make any arbitrary decision about the grounds or the number of days' notice, no matter how absurd.

If the Legislature had intended to allow no-cause terminations of mobile home lot rentals, it would have done so expressly, and would have provided the number of days' notice required. Compare for example, Mont. Code Ann. § 70-24-441(2) of the MRLTA which expressly provides that a landlord may terminate a month-to-month rental agreement, and expressly requires "at least 30 days' notice." If this Court were to affirm the District Court's ruling and find that no-cause terminations of month-to-month rental agreements are allowed by the Lot Rental Act without an express provision, then § 70-24-441(2) of the MRLTA would be a useless act because, under the District Court's interpretation, a month-to-month rental agreement can presumptively be terminated without cause and such termination does not require any authorizing statute concerning the number of days' notice required. *See* App. A, Dist. Ct. Order, pp. 4-6. Such a conclusion runs afoul of the maxim of jurisprudence that "the law neither does nor requires idle acts." Mont. Code Ann. § 1-3-223.

The District Court's holding that a lot-owner/landlord may terminate a homeowner/lot-renter's rental agreement for a reason not contained within Mont.

Code. Ann. § 70-33-433 or anywhere else in the Lot Rental Act inserts a ground for termination that the Legislature omitted, and such holding would lead to absurd results. In contrast, Anzik’s interpretation that a month-to-month rental agreement must be terminated in accordance with the express terms of § 70-33-433 is a reasonable interpretation that leads to reasonable results.

C. Alternatively, if the Court finds that the Lot Rental Act is ambiguous concerning no-cause terminations, then the legislative history of the act shows the legislative intent to prevent no-cause terminations.

Anzik contends that the Lot Rental Act plainly and unambiguously precludes a no-cause, thirty-day termination. However, if this Court determines that the Lot Rental Act is ambiguous, the legislative history shows 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). In 1993, after declaring the “reasonable and justifiable” grounds for termination of a mobile home lot rental and not including no-cause terminations, the Legislature for the first time enacted the Grounds for Termination statute, which was added to Chapter 24. App. H, Preamble, HB 245, 1993 Mont. Session Laws 1665, Ch. 470.

For at least the last thirty years, since 1993, Montana has prohibited no-

cause terminations of lot rental agreements. There are several indicators from legislative history that reflect the intent to prohibit no-cause terminations:

- 1) the legislative preamble to HB 245 (App. H), which enacted the Grounds for Termination statute now at Mont. Code Ann. § 70-33-433;
- 2) the 2001 legislative history of HB 559, 57th Leg. (Mont. 2001) , which resulted in various amendments to the Grounds for Termination statute, and where the bill sponsor 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;²
- 3) Mont. Code Ann. [§ 70-24-441 \(2001\)](#) (*amended in 2007*), which existed before the Lot Rental Act was enacted in 2007, and which in subsection (4) specifically exempted mobile home lot rentals from the 30-day no-cause termination that applies to other month-to-month rentals;

² *Minutes of Senate Judiciary Committee: Hearing on HB 559, 57th Leg.* (Mont. 2001) 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”].

4) the 2007 legislative history of HB 456, 60th Leg. (Mont. 2007), which enacted the Lot Rental Act, and where the bill sponsor testified that the recodification of the mobile home lot rental statutes into their own chapter of the Code 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. App. I, time-stamped references to the sponsor's testimony on HB 456 in the 2007 legislative hearing recordings.

Notably, [House Bill 456 \(2007\)](#), which enacted the Lot Rental Act, deleted entirely from the MRLTA subsection 4 of Mont. Code Ann. § 70-24-441, 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 rentals in Chapter 33, because no-cause terminations were not authorized, which kept the lot rental termination law the same as it was in Chapter 24.

III. Requiring Agnes to comply with Montana law concerning termination does not create a life estate in Anzik.

The District Court, in the space of one paragraph and without analysis or citation to any authority, accepts Agnes' argument that denying the landlord the option of a no-cause termination would create a life estate for Anzik, reasoning

that Anzik would be able to remain on the lot indefinitely as long as she paid rent and did not do anything that would establish grounds for termination under Mont. Code. § 70-33-433. App. A, Dist. Ct. Order, p. 5:3-11. To be clear, Anzik has never argued that her month-to-month lease gives her the right to occupy the mobile home lot for her lifetime. Anzik acknowledges that her rental agreement is subject to termination by the lot-owner/landlord in compliance with the Lot Rental Act, which provides various grounds for termination.

The District Court's discussion of a life estate fails to acknowledge that § 70-33-433 provides two grounds for termination that do not involve tenant noncompliance: 1) the landlord's change in use of the land, and 2) the landlord's legitimate business reason. § 70-33-433 (1)(l), (m). Those two grounds are totally within Agnes' control and do not depend on any noncompliance by the homeowner/lot-renter. Thus, pursuant to the Lot Rental Act, Anzik's lot rental tenancy is not perpetual and could be terminated if Agnes were to comply with § 70-33-433.

A life estate is not created by requiring a lot-owner/landlord to terminate a month-to-month rental agreement in accordance with § 70-33-433. Anzik's tenancy lacks many of the markers of a life estate. First, a 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. Second,

individuals with life estates must pay taxes on the real property. *Collier v. Kinchelow*, 2008 MT 100, ¶ 13, 342 Mont. 314, 180 P.3d 1157. Third, life estate owners are entitled to the property's rent and profits during their lifetime. *Thompson v. Flynn*, 95 Mont. 484, 494, 27 P.2d 505, 507 (1933). Anzik does not have a lifetime interest in the real property she is renting; she only has a possessory interest to reside on the lot during her tenancy. Anzik does not pay taxes on the lot, nor is she entitled to the rent or profits that flow from the rented lot.

Anzik does not assert that she has the right to occupy the rented lot until she dies. Anzik knows that her rental agreement is subject to termination under Montana law. Agnes has not lawfully terminated Anzik's rental agreement in compliance with the Lot Rental Act, and for that reason Anzik's tenancy has not ended.

CONCLUSION

The Lot Rental Act is plain and unambiguous and does not allow a no-cause termination of Anzik's month-to-month mobile home lot rental agreement. The District Court's decision allowing Agnes to terminate Anzik's rental agreement without cause would have the effect of inserting into the Lot Rental Act a ground for termination that the Legislature chose to omit.

Prohibiting Agnes' no-cause termination of Anzik's rental agreement advances the intent of the Legislature. The Lot Rental Act contains no indication

whatsoever that the Legislature intended to allow no-cause terminations of lot rental agreements, and Montana's legislative history for the last thirty years supports the conclusion that no-cause terminations are not allowed.

Requiring cause for termination prevents a lot-owner/landlord from terminating a resident's lease at whim and forcing the homeowner to undergo great risk and expense in uprooting their home and trying to find another lot to rent. Requiring cause for termination does not result in the lot-owner/landlord being stuck with the resident for life; instead, Mont. Code. Ann. § 70-33-433 allows termination for various grounds, including a landlord's legitimate business reason. While the Lot Rental Act protects Anzik from the turmoil generated by an eviction without cause, it also provides Agnes with viable termination options, even against a resident who has not committed any noncompliance.

Jordi Anzik is not a holdover tenant. Her lot rental agreement has not been lawfully terminated, and she may maintain possession of the lot. The District Court erred in its interpretation of the Lot Rental Act, and its judgment should be reversed and remanded to district court to consider the issue of attorney fees.

Respectfully submitted this 12th day of May, 2023.

MONTANA LEGAL SERVICES ASSOCIATION

By: \s\ Daniel Webster
Attorney for Appellant

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 9,839, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

\s\ Daniel Webster

Appendix A

FILED

FEB 09 2023

ANGIE SPARKS, Clerk of District Court
By *D.M. [Signature]* Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

AGNES ADVENTURES, LLC,

Plaintiff/Appellee,

v.

JORDI ANZIK,

Defendant/Appellant.

Cause No.: ADV-2022-1071

**ORDER ON APPEAL FROM
JUSTICE COURT**

Plaintiff/Appellant Agnes Adventures, LLC (Agnes) appeals the judgment entered in the Lewis and Clark County Justice Court of Record, Case No. CV-515-LT-2022-0000799. David B. Gallik represents Agnes. Mimi S. Wolok represents Defendant/Appellee Jordi Anzik.

PROCEDURAL BACKGROUND

This case arises from an action for possession of a mobile home lot under the provisions of the Montana Residential Mobile Home Lot Rental Act. Mont. Code Ann. §§ 70-33-101 through -434. Agnes is the owner/operator of real property known as Western Skies Mobile Home Park located in Helena,

1 Montana. Anzik is a tenant, entitled under a rental agreement to occupy the lot
2 on a month-to-month tenancy pursuant to Montana Code Annotated
3 § 70-33-201(2)(e). Anzik began renting the lot in March 2022. There is no
4 rental agreement between the parties.

5 On September 2, 2022, Agnes' designated agent and manager,
6 John Schaffer, served Anzik by certified mail a "30 DAY NOTICE TO QUIT
7 AND TERMINATE THE RENTAL AGREEMENT." Schaffer used a form
8 prepared by the Montana Association of Realtors for Big Sky Brokers Real
9 Estate (Exhibit 1). The form mistakenly indicated Anzik's month-to-month
10 tenancy was "hereby terminated according to the provision of M.C.A.
11 70-24-441," citing the notice provision of the Residential Landlord and Tenant
12 Act of 1977. Mont. Code Ann. §§ 70-24-101 through -442. In subsequent
13 briefing before the justice court, Agnes noted it was proceeding pursuant to
14 Montana Code Annotated § 70-33-106(1)(c), which establishes the notice
15 requirements under the Montana Residential Mobile Home Lot Rental Act. In
16 any event, Agnes provided notice of its intent to terminate Anzik's month to
17 month tenancy.

18 On October 11, 2022, Agnes filed the present action for possession
19 of the mobile home lot, and for attorney fees and any additional expenses and
20 damages resulting from the removal and storage of the mobile home and damage
21 to the lot. In its complaint, Agnes noted Anzik's tenancy expired on October 10,
22 2022.

23 The parties appeared before the justice court for a bench trial on
24 November 9, 2022. The justice court noted the parties did not have a written
25 rental agreement and there was no evidence Anzik failed to pay lot rent. In its

1 order dated November 15, 2022, the justice court concluded Agnes failed to
2 provide notice of its intent to terminate the rental agreement, because the notice
3 Agnes sent Anzik referred to the statutory notice requirement of the Residential
4 Landlord and Tenant Act—not the Residential Mobile Home Lot Rental Act.
5 Further, relying upon Montana Code Annotated § 70-33-433, which establishes
6 grounds for termination of rental agreement, the justice court concluded there
7 was no evidence Anzik was noncompliant with the rental agreement or otherwise
8 met the conditions for termination set forth in the statute. Accordingly, the
9 justice court entered judgment for Anzik and dismissed Agnes’ complaint for
10 possession of the mobile home lot.

11 STANDARD OF REVIEW

12 A party may appeal a judgment or order from justice court to
13 district court pursuant to Montana Code Annotated § 3-10-115(1). “The appeal is
14 confined to a review of the record and questions of law.” *Id.* The district court
15 reviews any factual findings under the clearly erroneous standard, any
16 discretionary rulings for abuse of discretion, and both legal conclusions and
17 mixed questions of law and fact under the de novo standard. *Stanley v. Lemire*,
18 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643.

19 The Montana Uniform Municipal Court Rules of Appeal to District
20 Court also apply to appeals from justice court to district court. *State v. Frazier*,
21 2005 MT 99, ¶ 4, 326 Mont. 524, 111 P.3d 215; Mont. Code Ann. § 3-10-115(4).
22 The record on appeal is confined to an electronic recording and all documents
23 filed in the justice court. Mont. Code Ann. § 3-10-115(2). The district court may
24 “affirm, reverse, or amend” any judgment or may “direct that a new trial or
25 further proceeding” be held in justice court. Mont. Code Ann. § 3-10-115(3).

1 provisions identified in this statute, Agnes cannot terminate Anzik's mobile home
2 lot tenancy without reason.

3 Agnes argues Anzik's reliance on Montana Code Annotated
4 § 70-33-433 is misplaced. According to Agnes, the justice court has created a
5 life estate for Anzik in the mobile home park. As long as Anzik continues to pay
6 rent and does not take any action to establish grounds for termination under the
7 statute, the justice court holding would allow her to remain on the lot indefinitely.
8 Agnes claims that Anzik is a holdover tenant, as she has remained on the
9 property after Agnes terminated the lease. Thus, Agnes can bring an action for
10 possession pursuant to Montana Code Annotated § 70-33-429(1). The Court
11 agrees.

12 Anzik began renting the lot in March 2022. As there is no rental
13 agreement between the parties, the tenancy is from month-to-month pursuant to
14 Montana Code Annotated § 70-33-201(2)(e). Shaffer served Anzik the notice to
15 quit and terminate the rental agreement on September 2, 2022. By October 11,
16 2022, the day Agnes filed its complaint for possession of the mobile home lot,
17 Anzik was a holdover tenant who remained on the lot without Agnes' consent
18 after the lease expired. The remedies for Agnes are set forth in Montana Code
19 Annotated § 70-33-429(1), which provides:

20 If the tenant remains in possession without the landlord's
21 consent after expiration of the term of the rental agreement or other
22 termination of the rental agreement, the landlord may bring an action
23 for possession. If the tenant's holdover is purposeful and not in good
24 faith, the landlord may recover an amount of not more than three
25 months' rent or treble damages, whichever is greater.

Mont. Code Ann. § 70-33-429(1)

CERTIFICATE OF SERVICE

I, Daniel Elliott Webster, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-12-2023:

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Dated: 05-12-2023