

FILED

05/12/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0154

# Appendix A

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**FILED**

FEB 09 2023

ANGIE SPARKS, Clerk of District Court  
By D.M. Insam 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)

1 Based on the foregoing, the Court concludes the justice court erred  
2 in granting judgment for Anzik and denying Agnes' claim for possession of the  
3 mobile home lot.

4 **ORDER**

5 **IT IS HEREBY ORDERED** the judgment of the Lewis and Clark  
6 County justice court of record is reversed. This matter is remanded to the justice  
7 court for further proceedings consistent with this Order.

8 DATED this 9<sup>th</sup> day of February 2023.

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11 MIKE MENAHAN  
12 District Court Judge  
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17 c: David B. Gallik, Esq., 1124 Billings Avenue, Helena MT 59601  
18 Mimi S. Wolok, Esq., 316 West Lawrence Street, Helena MT 59601  
19 Lewis & Clark County Justice Court, via courthouse mail

20 MM/sm/OrdOnAppealJusticeCourt  
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