

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 23-0154

AGNES ADVENTURES, LLC,)
)
Plaintiff and Appellee,)
)
v.)
)
JORDI ANZIK,)
)
Defendant and Appellant.)
_____)

Appeal from the District Court of the First Judicial District of the State of Montana,
In and For the County of Lewis and Clark, Case No. ADV-2022-1071
The Honorable Judge Michael T. Menahan, Presiding.

APPELLEE’S REVISED RESPONSE BRIEF

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TABLE OF CONTENTS

Table of Contents..... I

Table of Cases and Statutes..... ii

Statement of the Issues Presented for Review..... 1

Statement of the Case..... 1

Statement of Relevant Facts..... 1

Standard of Review..... 3

Summary of Argument..... 3

Argument..... 4

Conclusion..... 7

Certificate of Service..... 8

Certificate of Compliance..... 9

TABLE OF STATUTES , RULES, AND CASES

70-33-201(2), MCA. 3, 4

70-33-106(1)(c), MCA. 3, 4, 5, 7

70-33-201(2)(e), MCA. 3, 5

70-33-427(1), MCA. 3

70-33-433, MCA. 4, 5, 6,7

70-33-429(1), MCA. 5

70-33-433(1), MCA. 6

1-2-101, MCA. 7

Clark Fork Coalition v. Tubbs, 2016 MT 229, ¶18, 384 Mont. 503, 380 P.3d 771. 3

Infinity Ins. Co. V. Dodson, 2000 MT287, ¶ 46, 302 Mont. 209, 14 P.3d 487. 7

Giacomelli v. Scottsdale Ins. Co., 2009 MT 418 ¶ 18, 354 Mont. 15, 221 P.3d 666. 7

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Agnes Adventures, LLC , the Appellee herein, the Appellant in Montana First Judicial District Court Case No. ADV 2022-1071, and the Plaintiff in Lewis & Clark County Justice Court Case No. *Cause No. CV-2022-000799*, agrees with the “Statement of the Issue” set forth in Appellant, Jordi Anzik’s Opening Brief.

STATEMENT OF THE CASE

Mobile home park owner, Agnes, rented a mobile home lot where Jordi Anzik’s mobile home is located without a written lease or rental agreement. Agnes gave Jordi Anzik 30 day’s written notice the tenancy would come to an end.

Jordi Anzik refused to vacate the mobile home lot arguing Agnes did not have the required grounds to terminate a month to month tenancy for a mobile home lot under Montana’s Mobile Home Lot Rental Act, Title 70, Chapter 33, Montana Code Annotated, specifically citing 70-33-433.

REVISED STATEMENT OF RELEVANT FACTS

The facts are not in dispute.

Agnes Adventures, LLC, referred to as “Agnes,” is a Montana Limited Liability Company having properly registered with the Montana Secretary of State and paid all required fees. *[Appellants Appendix Exhibit E; Agnes’ Justice Court Complaint, 1:15-19]*

Agnes owns and operates a mobile home rental park known as Western Skies Mobile Home Park, located at 5247 McHugh Lane, Helena, MT 59602. *[Appellants Appendix Exhibit E; Agnes' Justice Court Complaint, 1:15-19]*

Jordi Anzik rented a mobile home lot in Western Skies Mobile Home from Agnes. Jordi Anzik is the owner-occupant of the mobile home located at Western Skies Mobile Home Park. *[Appellants Appendix Exhibit E; Agnes' Justice Court Complaint, 1:15-19]*

There was no written rental agreement. *[Appellants Appendix Exhibit G; Justice Court Findings of Fact, Conclusions of Law and Judgment; FOF 4]*

On September 2, 2022, Agnes served Jordi Anzik, with a "30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT."
[Appellants Appendix Exhibit G; Justice Court Findings of Fact, Conclusions of Law and Judgment; FOF 6]

At trial in the Justice Court, Jordi Anzik testified she received the "30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT, and acknowledged she had actual notice the month-to-month rental agreement expiring in accordance with Appellant's written 30 day notice.

[Appellants Appendix Exhibit G; Justice Court Findings of Fact, Conclusions of Law and Judgment; FOF 6]

Jordi Anzik refused to vacate the mobile home lot. Agnes brought this action for possession thereof in the Lewis and Clark County Justice Court. *[Appellants Appendix Exhibit E; Agnes' Justice Court Complaint]*

Justice of the Peace Mark Piskolich, ruled in favor of Jodi Anzik holding Agnes was required to show a reason under 70-33-433, MCA, to end Anzik's tenancy. *[Appellants Appendix Exhibit G; Justice Court Findings of Fact, Conclusions of Law and Judgment; COL 6]*

Agnes appealed to the First Judicial District Court who reversed the Justice Court. *[Appellants Appendix Exhibit A; District Court Order on Appeal from Justice Court]*

Jodi Anzik then appealed the First Judicial District Court's decision to the Montana Supreme Court.

STANDARD OF REVIEW

Agnes agrees with Jordi Anzik's statement of the Standard of Review. This case involves the interpretation of a statute is a question of law which the Supreme Court reviews for correctness. *Clark Fork Coalition v. Tubbs*, 2016 MT 229, ¶ 18, 384 Mont. 503, 380 P.3d 771.

SUMMARY OF ARGUMENT

Because there is no rental agreement providing otherwise, Jordi Anzik's tenancy is from month to month pursuant to 70-33-201(2), MCA.

Jordi Anzik admitted receiving actual notice of the written Sept. 2, 2022, 30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT, from Agnes.

Jordi Anzki was given proper notice under 70-33-106 (1)(c) MCA, that her month-to-month tenancy at Western Skies Mobile Home Park Lot #3 ended on October 10, 2022, in accordance with 70-33-201(2)(e), MCA. As a matter of law, Jordi Anzik's month-to-month tenancy ended as of October 10, 2022 and pursuant to 70-33-427(1), MCA, Agnes has a claim for possession of the mobile home lot.

ARGUMENT

Under the Montana Residential Mobile Home Lot Rental Act, Title 70, Chapter 33 of the Montana Code Annotated, specifically, 70-33-201(2) (e) MCA, Jordi Anzik's mobile home lot tenancy was month-to-month at Agnes's Western Skies Mobile Home Park. That statute unequivocally and clearly states; "Unless the rental agreement provides otherwise ... the tenancy is from month to month."

There was no written rental agreement between Agnes and Jordi Anzik for this mobile home lot. Thus, as a matter of law Jordi Anzik's tenancy ended after she was properly given 30 days' notice.

At trial the Jordi Anzik admitted receipt of the above referenced Sept. 2, 2022, 30 DAY NOTICE TO QUIT AND TERMINATE THE RENTAL AGREEMENT. Therefore, Jordi Anzik's month-to-month tenancy expired as of October 10, 2022, as she was actual, proper and timely notice pursuant to 70-33-106 (1)(c) MCA.

Jordi Anzik has had a consistent argument, from her Answer to the Complaint in the Justice Court, through her Opening Brief on Appeal to the Montana Supreme Court; that being pursuant to 70-33-433, MCA, Agnes needed to show that it had grounds for termination of the rental agreement before ending Jordi Anzik's tenancy.

The Justice Court's Judgment in favor of Ms. Anzik found that in order to terminate and end her month to month tenancy Agnes was required to show cause or grounds pursuant to the requirement of 70-33-433, MCA.

Agnes admits it showed no grounds.

Agnes first moved the Justice Court for Relief from Judgement pursuant to Justice and City Court Civil Procedure rule 22 [Justice Court

Filing 02/09/2023] on the legal basis that the rental agreement does not provide otherwise so pursuant to 70-33-201(2(e) MCA, Jordi Anzik's tenancy is from month to month. This is the same statute the District Court cited when overruling the Justice Court decision. [Dist. Ct. Filing # 6]

Jordi Anzik admitted she had timely actual notice of the expiration date of this month-to-month tenancy. As indicated in the District Court's Agnes provided her with proper legal notice of the expiration of her tenancy pursuant to 70-33-106 (1)(c), MCA. Additionally, Jordi Anzik's Opening Brief on Appeal to the Supreme Court, (pg. 13-14) admits her tenancy is a month-to-month tenancy.

Jordi Anzik is now a holdover tenant, pursuant to 70-33-429(1) MCA, which states:

"If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession."

Jordi Anzik's argues according to 70-33-433(1), MCA, Agnes cannot terminate her tenancy without reason as that statute requires that the landlord of a mobile home rental lot must provide grounds for termination of the rental agreement pursuant to 70-33-433, MCA.

Agnes agrees with the District Court's reversal of the Justice Court where it indicates that Jodi Anzik's reliance on this statute is misplaced.

[Dist. Ct. Filing # 6, 5: 3-4]

The first words of 70-33-433(1), MCA, state; "If there is a noncompliance by the tenant with the rental agreement" This statute is not applicable to this case because Agnes has not made an allegation of noncompliance with the rental agreement against Jordi Anzik. " Rather the 30 day notice sent by Agnes to Jordi Anzik by certified mail on September 2, 2022, was to set the expiration date of the month-to-month tenancy.

Reinstatement of the Justice Court's Judgment would require the Montana Supreme Court to exclude the above referenced first words of 70-33-433(1), MCA, and would provide Ms. Anzik with a life estate so long as she timely pays her rent and does nothing to trigger the termination grounds under 70-33-433, MCA. This was not the intent of the statute. To interpret the Residential Mobile Home Lot Rental Act as did the Justice Court, requires the Court to give no effect to the manner in which the statute allows a mobile home landlord to set an expiration of the mobile home lot tenancy pursuant to 70-33-106 (1)(c) MCA.

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.” 1-2-101, MCA; *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.

CONCLUSION

The statutory scheme for providing notice of the expiration of a mobile home residential rental lot in Montana is very clear under Montana’s Mobile Home Lot Rental Act, Title 70, Chapter 33, of the Montana Code Annotated.

The result Jordi Anzki seeks is absurd. Her argument does not give effect to the legislature’s intent, and supplants such legislative intent with Ms. Anzik position that she has a life estate in this mobile home lot so long as it’s a mobile home park, she pays the rent, and follows the rules.

Based upon the foregoing, and the remainder of the record herein, Agnes respectfully requests the Montana Supreme Court enter an Order affirming the decision of the First Judicial District Court in this case.

Dated this 14th day of June, 2023.

David B. Gallik
Attorney for Appellee, Agnes Adventures, LLC

REVISED CERTIFICATE OF SERVICE

I hereby certify that on the day set forth below, I served the ***Appellee's Response Brief on*** interested parties in this action by placing e filing & e-service addressed to the following individual(s):

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Dated this 14th day of June, 2023.

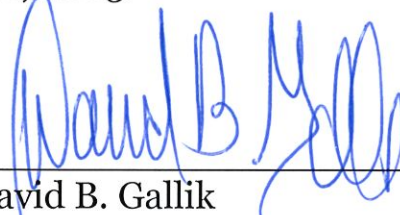
David B. Gallik
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REVISED CERTIFICATE OF COMPLIANCE

This brief is proportionately spaced using Georgia typeface, 14 point size and has 1,714 words, excluding the face page, table of contents, table of cases.

This document was typed using WORD word processing software and the information set forth herein was obtained from the word count of such software.

Dated this 14th day of June, 2023.



David B. Gallik
Attorney for Agnes Adventures, LLC

CERTIFICATE OF SERVICE

I, David B. Gallik, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-14-2023:

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Dated: 06-14-2023