

No. 49836-7-II

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COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

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EDNA ALLEN, an individual,

and

MHDRP, CONSUMER PROTECTION DIVISION, OFFICE OF THE  
ATTORNEY GENERAL,

Petitioners,

v.

DAN & BILL'S RV PARK,

Respondent.

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AMICUS CURIAE BRIEF OF MANUFACTURED HOUSING  
COMMUNITIES OF WASHINGTON

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**A. IDENTITY AND INTEREST OF AMICI.**

Manufactured Housing Communities of Washington (“MHCW”) is the Washington association for manufactured housing owners, and has been for over 50 years. It has lobbied on issues pertaining to the Manufactured/Mobile Home Landlord Tenant Act, RCW 59.20, (“MHLTA”) before the Washington legislature, and has participated in prior litigation and appeals pertaining to the Act. Its members have an abiding and personal interest in the construction of that Act because they must comply with it on a daily basis in the management of their manufactured housing communities.

The interpretation of the term “recreational vehicle” at issue here affects more than just the litigants in this matter. It impacts manufactured housing community landlord-tenant relationships statewide. MHCW’s members have a significant interest in this Court’s interpretation of the statutory term “recreational vehicle” and “mobile home lot” in this appeal because they are who must implement these statutes in practice.

**B. STATEMENT OF THE CASE.**

The facts in this case are articulated in the briefing of the respective parties, and are incorporated by reference. On November 9, 2015, the Administrative Law Judge (“ALJ”) at the Office of Administrative Hearings issued a Final Order concluding that Dan &

Bill's RV Park was not subject to the MHLTA. The Manufactured Housing Dispute Resolution Program ("MHDRP") appealed the Final Order to the Thurston County Superior Court. On December 16, 2016, the Superior Court entered Findings of Fact and Conclusions of Law which reversed the prior ALJ ruling and found that Dan & Bill's RV Park is a manufactured/mobile home park subject to the MHLTA. Findings of Fact, Conclusions of Law and Order, para. 2.4.

C. **ARGUMENT.**

1. **The MHLTA Applies Only to Rental Agreements Regarding Mobile Home Lots Designated as the Location of One Manufactured/Mobile Home or Park Model.**

The ALJ issued a Final Order that analyzed the issue as "whether the Park contains two or more park models." ALJ Final Order, para. 5.14; cp. 5.16; Brief of Petitioner, 12. The ALJ agreed with Dan & Bill's and concluded that it was not a mobile home park having found only one park model, and hence was not subject to the MHLTA.

The Manufactured Housing Dispute Resolution Program ("MHDRP") adopts a similar analysis but contends that when a recreational vehicle is used as a primary residence, the tenancy is subject to the MHLTA simply by virtue of the fact that there are two or more

manufactured homes or park models in the community. Brief of Petitioner, 19.

MHCW asserts that the parties' analysis, although partially correct as statutory inquiries, the inquiry does not end there. The ALJ's and MHDRP's analysis fails to recognize that the MHLTA applies only to rental agreements regarding *mobile home lots*. RCW 59.20.040. The ALJ's analysis that "[t]he MHLTA regulates landlord-tenant relationships regarding mobile home parks" incorrectly states the statute. ALJ Final Order, para. 5.16. The MHLTA regulates "mobile home lots." The terms are not synonymous.

A Mobile Home Lot "means a portion of a mobile home park or manufactured housing community *designated* as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home." RCW 59.20.030(9). [Emphasis added].

Thus, when RCW 59.20.040 is read in conjunction with the definition of a "mobile home lot", then in order for the MHLTA to apply in this case, the "lot" must be designated as the location for the placement of a park model. In other words, the lot must be designated as the location for the placement of "a recreational vehicle intended for permanent or semi-permanent installation." RCW 59.20.030(14). There is no

prohibition in the MHLTA precluding a manufactured home community from designating certain lots or portions of the community as recreational vehicle spaces.

Manufactured home community landlords often designate certain lots for use only by smaller recreational vehicles due to current lot setbacks and infrastructure constraints which preclude placement of a larger manufactured home. Other landlords may also designate a segregated portion of their property for recreational vehicles. In some cases, a landlord may temporarily fill a space with a recreational vehicle where a manufactured home has been removed until such time as another manufactured home is placed upon the lot.

However, under the legal analysis adopted by the trial court and the MHDRP, any recreational vehicle renting any lot in a manufactured housing community would be classified as a Park Model without regard to the physical characteristics of the recreational vehicle nor whether the lot is designated as a mobile home lot. Indeed, their analysis does not even consider the intention of the tenant, or whether the tenant even wants the perpetual one-year tenancy which the MHLTA mandates. *See* RCW 59.20.050; RCW 59.20.090(1). Instead, both the ALJ and the MHDRP concluded that simply because there are two or more other park models or mobile homes on the same parcel of property, the MHLTA must apply.

This is not the intent of the MHLTA, or what the above statutory definitions provide. This Court should therefore reject the Superior Court's analysis, and affirm the ALJ's ruling on the above grounds.

2. **The MHDRP's Statutory Interpretation Upsets the Balance That the Legislature Has Struck Between the Right of Tenants to Stable, Long-Term Lease Agreements and the Rights of Park Owners to Reasonably Designate How They May Utilize Their Property To Sustain Their Businesses.**

The MHLTA regime for handling property issues is an unusual one, which is severely restrictive of community owners' customary property rights, and therefore the MHLTA must be strictly construed. The community owner, as a private property owner, has a constitutional right to the fundamental attributes of ownership (the right to possess, exclude others, and to dispose of property). *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 355, 13 P.3d 183, 187 (2000). Statutes in derogation of the common law are strictly construed. *State ex rel. McDonald v. Whatcom County Dist. Court*, 92 Wn.2d 35, 593 P.2d 546 (1979); *In re Tyler's Estate*, 140 Wash. 679, 250 P. 456 (1926). (Statutes are to be construed in reference to common laws since it must not be presumed that Legislature intended to make any innovation upon common law further than a case absolutely requires).

If allowed, the MHDRP's interpretation would further restrict the ability of a manufactured housing community owner to designate how portions of its property will be used. However, over the years, both the Legislature and the Courts of Appeal have sought to achieve a practical balance between the needs of tenants and owners of manufactured housing communities. One purpose of the MHLTA is to "promote long-term and stable mobile home lot tenancies." *Holiday Resort Community Association v. Echo Lake Associates, LLC, supra*, 134 Wn. App. 210, 224. Another purpose of the MHLTA is to give low income seniors and citizens stable, affordable housing. Washington State Bar Association, Washington Real Property Deskbook §15.3 (3d ed. 1997).

But, Washington courts have issued a number of rulings identifying another important goal of MHLTA: the encouragement of quality, privately owned and sustainable parks that can provide tenants the stability they need. See *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, review denied, 144 Wn.2d 1004 (2001); *Seashore Villa Ass'n. v. Hagglund Family Ltd. P'ship.*, 163 Wn. App. 531, 260 P.3d 906 (2011), review denied, 173 Wn.2d 1036 (2012); and *Little Mountain Estates Tenants Ass'n. v. Little Mountain Estates MHC, LLC*, 169 Wn.2d 265, 236 P.3d 193 (2010).

These prior rulings strike an important balance between the rights of community owners and tenants under MHTLA. Courts interpreting the statute must strive not only to protect manufactured housing community residents. They must also practically balance the competing interests of the tenants of a manufactured home community, and the owner of the manufactured home community. *See e.g., McGahuey*, 104 Wn. App at 183.

The MHDRP's legal analysis upsets the balance that the Legislature and our courts have struck between the rights of tenants to stable, long-term lease agreements and the rights of park owners to reasonably designate how they may utilize their property to sustain their businesses. Rather than encouraging the intent and purpose of the MHLTA to provide affordable housing in such cases, the MHDRP's interpretation will dissuade manufactured housing community landlords from offering recreational vehicle owners space to rent at all.

Instead, rather than subject themselves to a tenancy in perpetuity under RCW 59.20.090(1) for a transient recreational vehicle, landlords will keep their affordable spaces vacant for long periods of time until a manufactured home owner elects to rent a landlord's "mobile home lot" for placement of a new higher quality and safer manufactured home. That result will not promote the rights of tenants to stable, long-term lease

agreements. That result will not promote the rights of community owners to reasonably designate how they may utilize their property to sustain their businesses. This Court should therefore reject the superior court's reasoning, and affirm the ALJ's ruling on the above alternative grounds.

**3. The Statutory Distinction between "Park Model" and "Recreational Vehicle" is Objective, and Should Not Be Applied Subjectively or Retroactively.**

At issue in this appeal is a community owner's statutory property right to designate whether it offers recreational lots or manufactured home lots to its residents, and whether that property right can be taken merely because a resident lives in a transient recreational vehicle as a primary residence. Recreational vehicles are designed to be used recreationally, not permanently. Indeed, unless the recreational vehicle is immobilized or permanently affixed to a mobile home lot, it can be towed or driven off immediately after it is unplugged from power and its water hose is unscrewed the same way one would a garden hose.

The Superior Court's reasoning turned on its reconciliation of the MHLTA's ambiguous and inconsistent definitions of "park model" and "recreational vehicle." *See* Findings of Fact and Conclusions of Law, at p. 3. According to the Superior Court's interpretation of these terms, a tenant's retroactive and subjective intent to use a recreational vehicle as a primary residence controls whether the MHLTA applies, rather than

whether the recreational vehicle is objectively immobilized or permanently installed and therefore more difficult to remove. Because there were two recreational vehicles in Dan & Bill's RV Park which were used as primary residences and "intended for permanent or semi-permanent installation on the premises (meaning they are settled in there and hooked up to utilities), and they are not immobilized or permanently affixed to the lot", the Superior Court concluded that the two recreational vehicles were "Park Models" that are governed by the MHLTA.

There is no evidence that any portion of Dan & Bill's RV Park was designated as a "mobile home lot." To the contrary, Dan & Bill's RV Park elected to designate itself as an RV park and offer recreational vehicle lots for rent to its customers. According to the MHLTA's respective definitions of "park model" and "recreational vehicle":

"Park model" means a recreational vehicle *intended* for permanent or semi-permanent installation and is used as a primary residence;

"Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

*Compare* RCW 59.20.030(14) *with* RCW 59.20.030(17). *See also* RCW 46.70.011(12); RCW 46.04.302.

This Court should begin its analysis of the distinction between a Park Model and a Recreational Vehicle by considering RCW 59.20.050, which prohibits a landlord from “offer[ing] a mobile home lot for rent” without “offering a written rental agreement for a term of one year or more.” It is at this point in time that any landlord and tenant must elect whether to offer or rent a lot for placement of a recreational vehicle, in which case the MHLTA would not apply. It is at this point that any landlord and tenant should agree whether a recreational vehicle will be immobilized or permanently affixed to the landlord’s lot, in which case the MHLTA would apply. Even under the MHLTA, a landlord and tenant must have the freedom to negotiate certain terms of their rental agreement. *Little Mountain Estates Tenants Ass’n. v. Little Mountain Estates MHC LLC*, 169 Wn.2d 265, 268, 236 P.3d 193, 194 (2010).

In considering this analysis, this Court should focus on both the physical characteristics of the recreational vehicle and its physical attachment to the lot, and whether the intent of the MHLTA is furthered. The issue on appeal is not simply whether the RV is used as a primary residence. The MHLTA requires more than merely parking a recreational vehicle in a mobile home park for the MHLTA to apply. For example, if two identical recreational vehicles occupy lots in a manufactured housing community, and one is permanently affixed to the landlord’s lot and used

as a primary residence, while the other is not immobilized because it is used as a primary residence by snowbirds who reside in Washington for its summers and Arizona for its winters, it should be the physical characteristics of the recreational vehicle and the permanency of its installation that govern whether the MHLTA applies. The tenant's subjective intent to permanently reside in the recreational vehicle should not be the lynchpin to whether the MHLTA applies or not.

A recreational vehicle is designed and intended to be transient and used on roadways; they are self-propelled or mounted on and towed by another vehicle. *See* RCW 59.20.030(17). Recreational vehicles have safety lights, brake lights, brakes, an attachment device and wheels. Its statutory definition incorporates tangible physical characteristics consistent with the intention of the manufacturer. Unlike a manufactured home or park model, which are designed to be immobilized and permanently affixed to a mobile home lot, and are designed for use as a primary residence, a recreational vehicle is both defined and designed to be transient.

The MHDRP's citations to facts such as whether an RV with wheels is resting on cinderblocks with skirting, plugged in to septic or cable TV connections, has a current license and registration, or landscaping are not determinative of whether the RV is "intended for

permanent or semi-permanent installation” or whether it “is primarily designed and used as temporary living quarters.” Petitioner’s Brief, p.27-30. In contrast, manufactured homes and park models are single-family dwellings that are designed and built for permanent residency. Recreational vehicles are not.

The legislature and courts have recognized the physical differences between a recreational vehicle and a park model in several other contexts. The distinction between park models and recreational vehicles has been recognized in the context of land use cases. *See Brotherton v. Jefferson Cty.*, 160 Wn. App. 699, 701 n. 1, 249 P.3d 666, 667 (2011) (“Park Model RVs are manufactured dwellings designed to be towed to sites such as mobile home parks to serve as full or part-time residences. Unlike other RVs, they lack self-contained holding tanks and require a sewer connection or external method of waste disposal”). In *Lawson v. City of Pasco*, 168 Wn.2d 675, 681–82, 230 P.3d 1038, 1041–42 (2010), the Supreme Court also recognized differences between installation requirements for manufactured homes and those for recreational vehicles.

In addition, manufactured homes are subject to both state and federal installation and safety standards, which do not apply to or regulate recreational vehicles. RCW 43.22.440; 42 U.S.C. §§ 5401–5426; 24 C.F.R. § 3282.8(g). The Legislature, in the public interest, recognizes

that different standards apply to manufactured homes and recreational vehicles, and has empowered the Department of Labor and Industries to promulgate rules governing the safety of manufactured homes, recreational vehicles, and park models. RCW 43.22.340 (“A119.1 for mobile homes and commercial coaches, A119.2 for recreational vehicles, and A119.5 for park trailers”).

Further, this Court should consider whether the protections intended by the MHLTA are served or whether the protections offered under the Residential Landlord Tenant Act, Ch. 59.18 RCW are sufficient. *See e.g.* RCW 59.20.080(3). The Legislature has not applied enhanced protections, for example, to apartments which are also used as primary residences; neither has the Legislature applied enhanced protections to recreational vehicles not immobilized or permanently affixed to a mobile home lot.

When first enacted in 1977, the MHLTA sought primarily to prevent unfair retaliatory evictions, which could be very costly for tenants. SB 2268 Judiciary Committee Report, March 25, 1977. The Legislature recognized the unique factual circumstances of the manufactured/mobile home landlord-tenant relationship: the tenant owns a manufactured home as personal property, but rents the land upon which it sits from the owner of the real property. *Id.*

The enhanced protections provided under the MHLTA apply because of the difficulty and expense of moving a mobile home. Thus, the MHLTA differentiates between permanent and immovable residences and recreational vehicles. The purpose of the MHLTA is not served when a recreational vehicle owner elects to stay in an RV Park or a KOA Campground as a primary residence, or even a mobile home park, when the owner need only unplug an electrical cord, untwist a water hose, and turn an ignition key to remove the recreational vehicle. In construing the MHLTA, “a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003). The protections of the MHLTA do not apply to recreational vehicles which are not immobilized or permanently affixed to a manufactured home lot, whether or not they are used as a primary residence.

Here, to balance the competing interests of both landlords and tenants, the parties should be allowed to designate whether a lot is to be rented as a manufactured home lot or as a recreational vehicle lot at the commencement of the tenancy, depending on whether the parties agree that the recreational vehicle will be used as a primary residence and will be immobilized or permanently affixed to the lot at the commencement of the tenancy. If a tenant uses a recreational vehicle as a primary residence,

but does not immobilize or permanently affix the RV to a lot, the tenant should be allowed to sign a recreational vehicle rental agreement which does not automatically renew in perpetuity for one-year terms by virtue of RCW 59.20.050 and RCW 59.20.090(1).

Alternatively, if a tenant uses a recreational vehicle as a primary residence, the tenant should be allowed to at least voluntarily waive any right they may have under the MHLTA, and allow either the landlord or tenant to terminate any recreational vehicle tenancy upon proper notice under Ch. 59.18 RCW.

Either legal conclusion would promote long-term and stable mobile home lot tenancies to low income seniors and citizens, based on the parties' voluntary agreement at the commencement of the tenancy. In addition, by affording the parties the legal right to agree whether the MHLTA applies to their rental agreement at the commencement of their tenancy, the landlord may continue to offer quality, privately owned and sustainable manufactured housing communities that can provide stability based on the parties' voluntary agreement.

The Superior Court's interpretation of the MHLTA is inconsistent with its statutory scope, its statutory definitions, and its legislative intent. This Court should therefore reject the Superior Court's reasoning, and affirm the ALJ's ruling on the above alternative grounds.

**D. CONCLUSION.**

The MHLTA applies only to rental agreements regarding mobile home lots designated as the location of one manufactured/mobile home or park model. The Legislature has attempted to strike a balance between the rights of tenants to stable, long-term lease agreements and the rights of park owners to reasonably designate how they may utilize their property to sustain their businesses. A recreational vehicle should not be subject to the MHLTA unless it is both intended as a primary residence and immobilized or permanently affixed to a manufactured home lot, as confirmed by the parties' voluntary agreement at the commencement of the tenancy.

Here, the MHDRP and the Superior Court incorrectly ruled that Dan & Bill's RV Park was subject to the MHLTA merely because two RVs were allegedly used as primary residences and "intended for permanent or semi-permanent installation on the premises (meaning they are settled in there and hooked up to utilities), and they are not immobilized or permanently affixed to the lot." The test of whether the MHLTA applies is not whether there are two or more park models in a community. Rather, it is whether the space has been designated as the location of one mobile home, manufactured home, or park model.

Further, if a recreational vehicle is not immobilized or permanently affixed to a lot, it is an RV under RCW 59.20.030(17). If a recreational vehicle is “settled in there and hooked up to utilities”, it remains a recreational vehicle which is not subject to the MHLTA. *See* RCW 59.20.030(17).

This Court should reverse the trial court’s legal conclusions and render a published decision which:

(1) affirms the property owner’s right to designate a portion of its property for recreational vehicles;

(2) affirms the ALJ’s decision, and rules that a recreational vehicle must be both intended as a primary residence and immobilized or permanently affixed to a manufactured home lot, for the recreational vehicle to be subject to the MHLTA; and

(3) affirms the parties’ freedom of contract to enter into a voluntary agreement at the commencement of the tenancy which confirms whether the recreational vehicle will be intended as a primary residence and immobilized or permanently affixed to a manufactured home lot, and

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thereby voluntarily agree whether the recreational vehicle will be subject to the MHLTA or not.

DATED this 25<sup>th</sup> day of August, 2017.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

On said date below, I eServed a true and accurate copy of the *Amicus Curiae Brief of Manufactured Housing Communities of Washington* in Court of Appeals Cause No. 49836-7-II to the following parties:

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DATED this 25<sup>th</sup> day of August 2017, at Puyallup, Washington.

  
\_\_\_\_\_  
Janice L. Munson, Paralegal

**OLSEN LAW FIRM PLLC**

**August 25, 2017 - 9:56 AM**

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**Comments:**

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