IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

No. 24-ICA-3

THE ESTATE OF MICHELLE WILLIAMS-BILLINGS,

Petitioner, Plaintiff below,

v.

DIAMOND FIELD LLC,
d/b/a MAPLE ACRES ESTATES,

Respondent, Defendant below.

APPEAL FROM THE CIRCUIT COURT OF MERCER COUNTY

PETITIONER'S APPEAL BRIEF

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I. Introduction

To the Honorable Judges of the Intermediate Court of Appeals of West Virginia:

This appeal involves the illegal operation of a forty-five-lot factory-built home rental community in Mercer County known as Maple Acres Estates by its owner, Diamond Field LLC. In Maple Acres Estates, the residents own their homes but rent the land upon which they sit in a factory-built home rental community. Factory-built homes, or manufactured homes, commonly referred to as mobile homes or house trailers, are in fact not so mobile. Once a manufactured home is situated on a home site, or lot, in a community, the difficulty and expense of moving the home gives the community owner disproportionate power in the dynamics of the landlord/tenant relationship. On balance with the investment of purchasing one's home, the law does not provide many protections for these homeowning tenants above and beyond those afforded to any tenant. However, chapter 37, article 15 of the West Virginia Code provides minimal protection to these

heavily invested homeowning tenants like those in Maple Acres Estates. Although not technically a remedial statute, the law acknowledges the unique and precarious position homeowning tenants like those of Maple Acres Estates live.

The statute requires the landlord/tenant relationship be governed by a written lease agreement and specifies certain required provisions and prohibits others; the statute prescribes minimal residency requirements upon locating a home in a community like Maple Acres Estates including a minimum one-year term for single-wide homes and a minimum five-year term for double-wide homes.[1] The statute prohibits certain charges and restrictions a landlord may seek to implement against these homeowner tenants.[2] The statute provides the circumstances and notice requirements for a landlord to terminate a lease agreement[3] and provides special heightened notice requirements if a landlord terminates the lease agreements of more than twenty-five residents in any single eighteen-month period.[4] Finally, the statute prohibits certain retaliatory conduct by a landlord.[5] Article 15 of Chapter 37 embodies the legislature's acknowledgement of the unique and precarious position tenants in communities like Maple Acres Estates occupy and the legislature's efforts to protect these homeowning tenants from abuse.

Ms. Williams-Billings alleged several violations of the statute in the case below in addition to violations of the landlord's well-established duty to warrant the habitability of leased premises. The trial court dismissed all of her claims at the summary judgment stage. Now, the case at bar presents the first opportunity for an appellate court to analyze and apply the statutory notice requirements contained in the statute. Additionally, Petitioner asks this Court to clearly and

[1] W. Va. Code § 37-15-3.
[2] W. Va. Code § 37-15-5.
[3] W. Va. Code § 37-15-6.
[4] W. Va. Code § 37-15-6a.
[5] W. Va. Code § 37-15-7.

specifically apply the implied warranty of habitability contained in all residential property leases to tenants who own their homes but reside in a factory-built home rental community.

II. Assignments of Error

The Petitioner asserts the following assignments of error in the trial court's grant of summary judgment in favor of Respondent:

A.

The trial court erred in granting summary judgment by concluding Respondent had not breached warranties of habitability as a matter of law despite clear issues of material fact.

B.

The trial court erred in granting summary judgment in favor of Respondent by concluding W. Va. Code § 37-15-6a does not apply to unwritten leases, allowing a party to avoid § 37-15-6a notice requirements by violating other provisions of the statute.

III. Statement of the Case

Petitioner submits the following statement of the case including relevant undisputed facts, a summary of the procedural posture, and the standard that this Court must employ in reviewing the decision of the trial court.

A. Statement of Undisputed Facts

The following uncontested facts are established in the record from the Court's fact-finding in the Order on appeal, or the verified pleading and evidential materials filed by the parties during the summary judgment proceedings ordered by the circuit court.

Diamond Field LLC purchased Maple Acres Estates on March 31, 2023.[6] At that time, the tenants resided in Maple Acres Estates pursuant to verbal agreements—there were no written lease agreements—with the previous owner.[7] Ms. Williams-Billings was one of forty-two households

[6] Billings-Appx.Vol.1.p.000003; Billings-Appx.Vol.2.p.000304.
[7] Billings-Appx.Vol.1.p.000003; *id.* at 000049.

of such residents residing at Maple Acres Estates on March 31, 2023.[8] For approximately three years, she had paid $170 per month in rent to locate her home and occupy the space at 136 Jodi Street pursuant to her oral agreement with the previous owner of Maple Acres Estates.[9] The lot rents paid by the Maple Acres tenants under the previous unwritten rental agreements ranged from $155.00 to $170.00 per month.[10]

While Ms. Williams-Billings resided at Maple Acres Estates, the community suffered from unrepaired conditions that affected the health and safety of every tenant in the forty-two occupied lots. Ms. Willams-Billings' complaints as to the conditions are two-fold: the sewage system and the drainage system. The sewage system, which at the time of Diamond Field LLC's purchase of Maple Acres Estates, was in such disrepair that raw sewage would at times back-up into tenants' homes and appear at the surface in the community.[11] Likewise, the drainage of the community was poor. This resulted in standing water throughout the community and all the threats that standing water presents, including damage to the tenants' homes and insect infestations.[12] Mercer County Health Department Inspector Matthew Bragg verified the existence of such unhealthy conditions at Maple Acres Estates when he conducted an initial inspection for Diamond Field LLC on June 1, 2023.[13] It was not until June 27, 2023—about three[14] months after Diamond Field LLC gave notice it was operating the community—that Mr. Bragg certified these unhealthy conditions had been remedied.[15]

[8] Billings-Appx.Vol.2.p.000305.
[9] Billings-Appx.Vol.1.p.000003; Billings-Appx.Vol.2.p.000304.
[10] Billings-Appx.Vol.2.p.000304.
[11] Billings-Appx.Vol.1.p.000056.
[12] *Id*.
[13] Billings-Appx.Vol.1.p.000004; Billings-Appx.Vol.2.p.000305, 000511, 000514.
[14] Billings-Appx.Vol.1.p.000004, Billings-Appx.Vol.2.p.000305.
[15] Billings-Appx.Vol.2.p.000512.

On the same day it closed on its purchase of Maple Acres Estates, March 31, 2023, Diamond Field LLC gave a written notice to each homeowning tenant that it was now managing the community.[16] This notice further stated:

> We have a strict policy as far as the payment of rent . . . . If your rent is not paid on time, there will be a late fee enforced and you will be subject to eviction. . . . As of May 1st, your lot rent will be $299. This is in line with what other parks in the areas are charging, and we believe this is a good value. However, if you would like to sell your mobile home, please contact us, as the park can assist you in selling it, or may be interested in purchasing it from you.[17]

Every homeowning tenant but Ms. Williams-Billings began paying it $299 per month in lot rent effective May 1, 2023, in response to this notice.[18]

After receiving this notice, Ms. Williams-Billings, on her own behalf and on behalf of the other homeowning tenants in Maple Acres Estates, filed suit against Diamond Field LLC. Ms. Williams-Billings asserted five counts against Diamond Field LLC. Relevant to this appeal, Count I of her verified class complaint alleged that, by giving notice that the lot rent would be increased from $155-$170 to $299 across the board, Diamond Field LLC had terminated the unwritten rent agreements under which all forty-two households had been residing at the community, demanding the tenants consent to new rental agreements or move out. Ms. Williams-Billings claimed in Count I of her verified complaint[19] that Diamond Field LLC had thereby violated W. Va. Code § 37-15-6a because it was purporting to terminate the existing rental agreements of more than 25 tenants without providing six months' prior notice as the statute required. Ms. Williams-Billings also asserted that, from the date it purchased Maple Acres Estates and continuing through the date she filed her complaint, Diamond Field LLC had breached the

[16] Billings-Appx.Vol.1.p.000003.
[17] Billings-Appx.Vol.1.p.000068.
[18] *Id.* at p.000003; *id.* at Vol.2.p.000305.
[19] Billings-Appx.Vol.1.p.000058-59; *see also* Billings-Appx.Vol.2.p.000335-37 (Count II of the Amended Complaint).

implied warranty of habitability owed the tenants of Maple Acres Estates due to the conditions of the community.[20]

B. Procedural Posture

On May 25, 2023, Petitioner, on her own behalf and on behalf of all other homeowning tenants similarly situated in Maple Acres Estates, filed a verified complaint against Diamond Field LLC in the Circuit Court of Mercer County.[21] In her complaint, Petitioner asserted five counts against Respondent:

Count I: Unlawful termination of twenty-five or more tenancies under W. Va. Code § 37-15-6a;

Count II: Illegality under W. Va. Code § 37-15-3 for operating Maple Acres Estates without written leases;

Count III: Illegality under W. Va. Code St. R. § 64-40-5.2 for operating Maple Acres Estates without the required permit to do so;

Count IV: Fraud based on its false and fraudulent representations to Plaintiff and residents of Maple Acres Estates regarding Defendant's legal authority to impose, collect, and enforce rent and other obligations against the residents; and

Count V: Breach of the Warranty of Habitability for operating Maple Acres Estates in an inhabitable condition.[22]

On May 25, 2023, Petitioner also filed a motion for temporary restraining order and preliminary injunction seeking to pause the noticed rent increases and maintain the status quo until her claims could be fully adjudicated.[23] The trial court ordered a hearing on this motion for August 1, 2023.

[20] Billings-Appx.Vol.1.p.000064; *id.* at Vol.2.p.000340-42.
[21] Billings-Appx.Vol.1.p.000045-111.
[22] *Id.*
[23] *Id.* at p.000143-289.

At that hearing, the trial court did not rule on the motion for preliminary injunction. Rather, the trial court ordered the parties to file dispositive motions on three issues:

a. Whether Respondent is barred from receiving an operating permit for a manufactured home community because it failed to apply for an operating permit at least 15 days before it commenced operating the Park.

b. Whether Respondent's raising tenant rents constitutes constructive eviction so as to trigger W. Va. Code § 37-15-6a.

c. Whether the health department failed to conduct a proper inspection of the Park under W. Va. C.S.R. §§ 64-40-1, *et seq.*[24]

The trial court also strongly urged Petitioner to amend her complaint to include the health department as a party.

On August 15, 2023, Petitioner filed an Amended Complaint naming Bonnie Allen in her capacity as Administrator of the Mercer County Health Department as an additional Defendant.[25] The Amended Complaint did not specifically add counts against the health department and otherwise asserted the same operative facts and counts against Diamond Field LLC as in the original verified complaint.[26] On September 29, 2023, the parties submitted the ordered dispositive motions and briefing[27] addressing the questions posed by the trial court at the August 1, 2023, hearing. This briefing was followed by response briefs[28] filed on October 13, 2023, and replies[29] filed on October 23, 2023. The trial court heard oral argument from the parties regarding the dispositive motions on October 30, 2023. The trial court issued its order denying Petitioner's

[24] Billings-Appx.Vol.2.p.000377-379.
[25] *Id.* at 000318-344.
[26] *Id.*
[27] *Id.* at 000381-475, 000477-735.
[28] Billings-Appx.Vol.3.p.000737-800; *id.* at 000802-814.
[29] *Id.* at 000816-25, *id.* at 000827-39.

motion for partial summary judgment and granting summary judgment on all counts in favor of Respondent on December 6, 2023.[30] It is this final judgment order that Petitioner appeals.

During the pendency of the case below, Michelle Williams-Billings tragically passed away on August 27, 2023. A suggestion of death was filed with the trial court on October 13, 2023.[31] On October 16, 2023, a motion to file a second amended complaint to substitute plaintiff was filed with the trial court.[32] That motion was not ruled on prior to the trial court's order on summary judgment disposing of the case. Accordingly, this appeal is brought on behalf of Ms. Williams-Billings' estate by the administrator of her estate.

Petitioner timely filed a notice of appeal on January 5, 2024. On March 1, 2024, Petitioner contacted counsel for Respondent by email seeking agreement on the contents of the appendix. Counsel for Respondent has indicated its agreement that the appendix identified by Petitioner is a complete record for the matter of the appeal. Accordingly, the appendix Petitioner is filing contemporaneous with this opening brief perfecting the appeal may be treated as an agreed joint appendix.[33]

C. Standard of Review

A trial court's grant of summary judgment is reviewed *de novo*.[34] In weighing summary judgment, the Court must construe all facts and reasonable inferences in the light most favorable to Petitioner. Furthermore, at the summary judgment stage, a court's role is not to weigh the evidence or discern the truth, but rather it is to determine whether there are genuine issues of

[30] Billings-Appx.Vol.1.p.000002-41.
[31] *Id.* at Vol.3.p.000841-41.
[32] *Id.* at 000845-47.
[33] *See generally* Billings-Appx.Vols.1-3.
[34] *Farley v. Worley*, 215 W. Va. 412, 599, S.E.2d 835 (2004).

material fact.[35] If there is a genuine issue as to any material fact, summary judgment must be denied.[36]

IV. Summary of the Argument

The trial court ordered dispositive briefing on four issues concerning three of Ms. Williams-Billings' five counts. After argument, the trial court granted summary judgment in favor of Diamond Field LLC on all counts. In doing so, Petitioner asserts that the trial court erred in two substantive ways: disposing of Ms. Williams-Billings' claim that the conditions at Maple Acres Estates breached the landlord's implied warranty of habitability and the damages available to Petitioner even after unhabitable conditions have been remedied, when clear issues of fact precluded such conclusions; and in disposing of Ms. Williams-Billings' unlawful termination without proper notification claim by concluding W. Va. Code § 37-15-6a is only enforceable when tenancy is pursuant to a written contract.

The trial court erred as a matter of law in granting summary judgment on Ms. Willams-Billings' Count V alleging breach of the warranty of habitability count. The evidence of record presented by Diamond Field LLC itself established that unhealthy conditions existed at Maple Acres Estates when it began managing the community on March 31, 2023, and that those conditions were not ameliorated before June 27, 2023, the time of the Mercer County Health Department's final inspection.

By Diamond Field LLC's own affidavits and evidence, the first inspection by the health department on June 1, 2023, concluded non-compliance with health department regulations and necessitated remediation before the health department would issue a permit for

[35] Syl. Pt. 3, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994); *see also Goodwin v. Shaffer*, 246 W. Va. 354, 873 S.E.2d 885 (2022) (summary judgment reversed where trial court weighed the evidence and addressed credibility of some witnesses).
[36] Syl. Pt. 4, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co.*, 148 W. Va. 160, 133 S.E.2d 770 (1963).

Diamond Field LLC to operate Maple Acres Estates.[37] The record further indicates that at the time of Diamond Field LLC's purchase, Maple Acres Estates was running a sewage system which failed to prevent the surface collection of raw sewage and the noxious odors associated therewith, and at times the sewage backed up into tenants' homes.[38] Additionally, Maple Acres Estates suffered from drainage issues resulting in standing water in tenants' leased lots and infestations of flies and mosquitos.[39] The trial court concluded, "that a proper inspection of the Park under W. Va. Code §§ 64-40-4, *et seq.* leading to the issuance of an operating permit is evidence that the Park is in a habitable condition" and granted summary judgment on Count V for Respondent.[40] However, the fact that the Health Department issued a permit on June 27, 2023 does not change the fact that the homeowning tenants of Maple Acres Estates suffered the effects of unhealthy conditions in the community before then, and thus had a claim for breaches of the warranty of habitability that had already occurred. "[I]n all written or oral leases of residential premises, [is] an implied warranty that the landlord shall at the commencement of a tenancy deliver the dwelling unit and surrounding premises in a fit and habitable condition and shall thereafter maintain the leased property in such condition."[41] When the warranty of habitability is breached, the tenant is entitled to damages of the difference between the fair rental value of the property in its unhabitable state versus the fair rental value of the property in a habitable state as well as damages for annoyance and inconvenience.[42] Even if the uninhabitable conditions effecting the forty-two occupied lots in Maple Acres Estates when Diamond Field LLC assumed its management on March 31, 2023 were remedied by June 27, 2023, each tenant retained a claim for damages suffered

[37] Billings-Appx.Vol.1.p.000004; *id.* at Vol.2.p.000305, 000514.
[38] Billings-Appx.Vol.1.p.000056.
[39] *Id.*
[40] *Id.* at 000008.
[41] Syl. Pt. 1, *Teller v. McCoy*, 162 W. Va. 367, 253 S.E.2d 114 (1978).
[42] Syl. Pt 5, *id.*

during those dates for breach of the legally-implied warranty of habitability. Accordingly, for both these reasons the trial court erred in summarily granting summary judgment dismissing Ms. Williams-Billings' Count V with prejudice.

The trial court also erred as a matter of law in granting summary judgment to Diamond Field LLC on Ms. Williams-Billings' claim under W. Va. Code § 37-15-6a. It was undisputed below that the forty-two occupied lots at Maple Acres Estates were occupied by homeowning tenants under unwritten agreements with the prior owner on the day Diamond Field LLC closed its purchase of the community.[43] No claim was made by Diamond Field LLC or the trial court that Ms. Williams-Billings or any of the other 41 homeowning tenants were mere trespassers or squatters. Diamond Field LLC's own member agreed that at the time of purchase, those tenants were paying between $155-$170 per month as rent to the owner from whom it purchased Maple Acres Estates.[44]

While finding that Diamond Field LLC was entitled to collect rent from Maple Acres Estates' forty-two homeowning tenants in the absence of any written agreement between it and those tenants, the trial court inconsistently held that the forty-two homeowning tenants of Maple Acres Estates living there on March 31, 2023, had no "rental agreements" in effect on that day because the agreements under which they were paying rent to occupy their lots were unwritten, and the trial court ruled "*void ab initio*."[45] Neither West Va. Code Chapter § 37-15 nor W. Va. Code Chapter § 55-3B define the term "rental agreement," as used in W. Va. Code § 37-15-6a, as being limited to written agreements. Both Chapters in fact contemplate actions by landlords against tenants occupying manufactured home lots "where there is no written agreement."[46]

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[43] Billings-Appx.Vol.1.p.000003.
[44] *Id.* at Vol.2.p.000304.
[45] *Id.* at Vol.1.p.000013.
[46] *See* W. Va. Code § 55-3B-1(c)(3); W. Va. Code § 37-15-2 (e)(3).

The lower trial court erred when it dismissed the W. Va. § 37-15-6a claim by holding as a matter of law that Diamond Field LLC's March 31, 2023, notice did not "terminate" the "rental agreements" of these forty-two tenants, even though it was not disputed that notice purported to end those tenants' right to continue to occupy their lot at a rental payment of $155-$170 per month without first providing six months prior notice of the near doubling of the rental charge.

V. Statement Regarding Oral Argument and Decision

This appeal includes a matter of first impression. No appellate court has been asked to review or apply W. Va. Code § 37-15-6a. Additionally, this case involves issues of fundamental public importance as more and more West Virginians turn to factory-built home rental communities as a source of affordable housing. According to the 2020 census, 13% of West Virginians lived in manufactured homes. Clear guidance from the Court on how to apply the provisions of the statute and the scope of protection tenants can seek via a landlord's warranty of habitability will benefit not only the tenants of Maple Acres Estates but also tenants in similar communities across the state. Accordingly, Petitioner respectfully requests oral argument pursuant to Rule 20.

VI. Argument

Petitioner asserts the trial court erred in two substantial ways, each of which warrant reversal of the trial court's decision to allow Petitioner to proceed to a jury trial on the respective claims.

A. The trial court committed reversible error by failing to properly analyze Petitioner's Count V and ignoring clear issues of fact.

Petitioner's Count V asserted a claim against Diamond Field LLC for breaching the implied warranty of habitability. In a written or oral lease of residential premises, there is an implied warranty the landlord will deliver and maintain the leased property in a fit and habitable

condition.[47] West Virginia Code § 37-6-30 further imposes a statutory warranty of habitability and requires a landlord to maintain leased residential property in a condition that meets applicable health, safety, fire and housing code requirements. The landlord's duty under the implied warranty and the statute are identical.[48] The landlord's duty to supply premises in a habitability condition extends to common areas of the community.[49]

In instances in which the warranty of habitability has been breached, West Virginia generally adopts the difference in value approach to formulating damages for a landlord's breach of the warranty of habitability. But, as the Supreme Court of Appeals of West Virginia recognized in its seminal case on the issue, "money damages so assessed, while appropriate in the commercial cases, are inadequate in most residential landlord-tenant tenant cases, since the residential tenant who endures a breach of the warranty of habitability normally does not actually lose only money."[50] Accordingly, "annoyance and inconvenience can be considered as elements of proof in measuring damages for loss of use of real property."[51]

Thus, for Ms. Williams-Billings to maintain her habitability claim, the finder of fact must determine two things: whether the implied warranty of habitability has been materially breached and the extent of her damages, including amounts for annoyance and inconvenience.[52] The trial court erred in granting Diamond Field LLC summary judgment on Ms. Williams-Billings Count V because the record clearly contained material issues of fact concerning both elements that should have been permitted to proceed to a jury.

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[47] Syl Pt. 1, *Teller v. McCoy*, 162 W. Va. 367, 253 S.E.2d 114 (1978).
[48] *Id*, 162 W. Va. at 382, 253 S. E. 2d at 123-124.
[49] Syl Pt. 1, *Marsh v. Riley*, 118 W. Va. 52, 188 S.E. 748 (1936).
[50] *Teller*, 162 W. Va. at 389-90, 253 S.E.2d at 128.
[51] *Brooks v. City of Huntington*, 234 W. Va. 607, 609, 768 S.E.2d 97, 99 (2014).
[52] *Teller*, 162 W. Va. 367, 253 S.E.2d 114.

Ms. Williams-Billings was able to support her claim that Diamond Field LLC is liable for breaching the warranty of habitability through her verified complaint[53] which contained a litany of sworn statements of fact concerning the conditions in Maple Acres Estates on March 31, 2023, when Respondent assumed the role of landlord to the tenants of the community. Specifically, the record shows that on March 31, 2023, Maple Acres Estates' sewage system was not properly operating. This resulted in the surface collection of raw sewage in the community, sewage back-ups into tenants' homes, and noxious odors.[54] Additionally, the record shows that on March 31, 2023, Maple Acres Estates suffered from poor drainage resulting in standing water in yards and around homes.[55] These waterlogged conditions not only exposed tenants of Maple Acres Estates to mold and other damage to their homes, but it also limited their full enjoyment of the leased premises and created breeding grounds for the infestation of flies and mosquitos.[56] Petitioner's claim regarding the conditions of Maple Acres Estates is, ironically, further supported by Diamond Field LLC's affidavits in support of its dispositive motion.

Matt Bragg, lead sanitarian at the Mercer County Health Department inspected Maple Acres Estates on June 1, 2023—two months after Respondent assumed ownership and control of the community. Mr. Bragg only inspected the community for compliance with "W. Va. C.S.R. § 64-40-7 through § 64-40-16," and his inspection revealed further non-compliance with those legislative rules. Indeed, his inspection revealed non-compliance with health department rules that was required to be ameliorated before the health department would issue a permit to Respondent to operate Maple Acres Estates. Mr. Bragg's inspection revealed a number of relevant concerns

[53] Although the trial court granted summary judgment to Respondent, dismissing Petitioner's amended complaint, her original verified complaint nonetheless represented a sworn statement of fact. *See e.g.*, *Foster v. Good Shepherd Interfaith Volunteer Caregivers*, 202 W. Va. 81, 502 S.E.2d 178 (1998).
[54] Billings-Appx.Vol.1.p.000056, 000064–65.
[55] *Id.*
[56] *Id.*

impacting the habitability of Maple Acres Estates which further support Ms. Williams-Billings' allegations: ground and paved surfaces were not graded to properly drain; streets/roads/walkways were not maintained in good repair; the sewage system was not maintained in good repair; odors and/or rodents, insects or other nuisance were present; and the community was not "free of insect breeding, rodent harborage and infestation."[57] Not only do these facts surrounding the conditions at Maple Acres Estates establish factual questions which preclude summary judgment, this evidence of the conditions present in Maple Acres Estates from March 31, 2023, to at least June 27, 2023, is uncontroverted in the record.[58]

Apparently without regard to this factual record, the trial court summarily concluded "the [Mercer County] Health Department conducted a proper inspection of the Park under W. Va. C.S.R. §§ 64-40-1, *et seq.*," and, "[Respondent] is entitled to summary judgment on Count V of the Amended Complaint."[59] This conclusion is clear and reversible error. The trial court undertook no analysis of the general conditions present in Maple Acres Estates. Rather, the trial court concluded ultimate compliance with the legislative rule was all that was required to dismiss Petitioner's breach of warranty of habitability claim. Such a conclusion is not supported by cases examining a landlord's common law warranty obligations nor a landlord's statutory obligation. Indeed, the trial court erred again when it stated that Respondent "came forward with a supporting affidavit made on the personal knowledge of the Health Department's Lead Sanitarian…[Petitioner] failed to come forward with anything in the way of evidence."[60] First, the Lead Sanitarian, Mr. Bragg, actually revealed conditions Maple Acres Estates that prevented it

[57] Billings-Appx.Vol.1.p.0000514.
[58] *See generally* Billings-Appx.Vol.1.p.000056, 000064–65, 000514.
[59] Billings-Appx.Vol.1.p.000008.
[60] Billings-Appx.Vol.1.p.000007.

from passing the health department's inspection without remedial measures.[61] The conclusion the trial court reached is contrary to Mr. Bragg's testimony and evidence regarding the conditions in the community as he found them upon his initial inspection.[62] Second, the trial court also found that Mr. Bragg's "inspection revealed compliance issues."[63] Third, the trial court's conclusion is clearly erroneous because the Petitioner's verified complaint should be afforded equal weight to an affidavit—both are sworn statements under penalty of perjury.[64] Despite these obvious logical gaps, the trial court still held that because "the Health Department conducted a proper inspection of the Park . . . [Respondent] is entitled to summary judgment on" this issue.[65] The trial court provides no other substantiation for its conclusion.

It is extraordinary that the trial court could make such a leap: that because a proper inspection was conducted by the health department, an inspection that revealed habitability concerns the health department required Diamond Field LLC to remediate, Respondent was entitled to summary judgment on Ms. Williams Billings' claim for breach of the warranty of habitability. The trial court's logical inference—that to maintain a claim for a breach of the warranty of habitability, the unhabitable condition must remain present for the duration the litigation—is not supported by a single case in this state. The measure of damages for Petitioner's habitability claim—the fair rental value of the property in the unhabitable state versus the fair rental value of the property in a habitable state plus amounts for annoyance and inconvenience[66]—are the only elements of the claim impacted by the eventual remediation of Maple Acres Estates'

[61] Billings-Appx.Vol.1.p.000514.
[62] *Id.*
[63] Billings-Appx.Vol.1.p.000004 (citing the inspection report that shows roads not in good repair; sewer system problems; rodents, insects, or nuisance; and insect breeding, rodent harborage, and infestation)
[64] *Foster*, 202 W. Va. 81, 502 S.E.2d 178.
[65] Billings-Appx.Vol.1.p.000008.
[66] *Teller*, 162 W. Va. 367, 253 S.E.2d 114.

condition. That is, Diamond Field LLC's efforts to bring Maple Acres Estates into compliance with habitability standards stops additional damages from accruing, but that remediation does not prevent a tenant from asserting the claim against it. Again, no case law supports the trial court's conclusion that remediation moots Petitioner's claim or damages. The trial court's focus on whether the inspection by Mr. Bragg was proper is an inquiry that has no impact on Ms. Williams-Billings' habitability claim. Whether the health department conducted a proper inspection of Maple Acres Estates has no bearing on the success of Ms. Williams-Billings' Count V. The record clearly indicates that genuine issues of material fact exist as to whether Diamond Field LLC breached its implied warranty of habitability to Ms. Williams-Billings and other homeowning tenants at Maple Acres Estates. Therefore, Petitioner must be permitted to submit this issue to the jury. Accordingly, the trial court committed reversible error in granting summary judgment to Respondent on Petitioner's Count V.

B. The trial court erred in concluding that W. Va. Code § 37-15-6a does not apply to unwritten agreements to rent manufactured home lots.

W. Va. Code § 37-15-6a states unambiguously:

> (a) A landlord of a factory-built home rental community may not terminate a rental agreement nor otherwise evict more than twenty-five tenants of any factory-built home rental community within a single eighteen-month period unless:
>
> > (1) The landlord obtains written agreement to voluntarily vacate the premises by every tenant prior to the expiration of the eighteen-month period;
> >
> > (2) The landlord provides not less than six months' notice to terminate the rental agreement to each tenant; or
> >
> > (3) The tenant has breached a provision of the rental agreement and the termination complies with the requirements of this article.
>
> (b) If a landlord violates the provisions of this section, the tenant has a cause of action to recover actual damages, the costs required to relocate the aggrieved tenant

> and, in addition, a right to recover treble damages or the equivalent of the aggrieved tenant's rent for one year, whichever is greater, and reasonable attorney fees.[67]

"When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute."[68] The trial court erred by not giving effect to the statute's clear and unambiguous language. The trial court acknowledges that Ms. Williams-Billings has asserted "a constructive or oral lease agreement"[69] for her tenancy in Maple Acres Estates. The trial court acknowledges that she asserts the unilateral change of a material term of that agreement—the amount owed under the contract—terminated her agreement to occupy her lot in Maple Acres Estates for $170 per month. In the proceedings below, Ms. Williams-Billings also asserted a claim under W. Va. Code § 37-15-3, which requires tenancy in a manufactured housing community to be pursuant to a written lease agreement. She argued that Respondent's failure to comply with that statutory requirement should have consequences, including prohibiting Diamond Field LLC from collecting rents while it was out of compliance with the statute.[70] The trial court seizes upon this to hoist Petitioner by her own petard, stating:

> [Petitioner] argues that [Respondent] operates the Park in violations of W. Va. Code § 37-15-3(a) because it did not present tenants with written lot lease agreements until July 20, 2023. . . but she seeks to enforce unwritten lot lease agreements [made with the prior owner] to prevent [Respondent] from charging her increased lot rent. This contradiction cannot be resolved.[71]

The trial court then concludes that if Ms. Williams-Billings is correct in her requested relief that Diamond Field LLC is not entitled to collect rents for its failure to comply with the statutory

[67] W. Va. Code § 37-15-6a.
[68] Syl Pt. 5, *State v. Gen. Daniel Morgan Post, V.F.W.*, 144 W. Va. 137, 107 S.E.2d 353 (1959).
[69] Billings-Appx.Vol.1.p.000009.
[70] *Id.* at 000059–61.
[71] *Id.* at 000012–13.

requirement of a written lease agreement,[72] then it cannot violate any statutory notice requirements for the mass termination of the tenants' oral agreements to occupy their lots in Maple Acres Estates for an agreed upon monthly rate. In coming to this conclusion, the trial court not only fails to give effect to the plain language of the statute, but also its conclusion is against public policy; this is reversible error.

By its clear language, W. Va. Code § 37-15-6a is implicated any time a landlord terminates twenty-five or more rental agreements of homeowning tenants in an eighteen-month period. "It is a well known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning."[73] "In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used."[74] Finally, "[i]n ascertaining legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purpose of the legislation."[75]

Read together in the context of W. Va. Code § 37-15-6a, it is clear the legislator intended to establish heightened notice requirements when a landlord such as Diamond Field LLC terminates more than twenty-five rental agreements. Diamond Field LLC, by its demand to the residents of Maple Acres Estates to either 1) pay $299 per month, 2) sell their home to Diamond Field LLC, or 3) be evicted has terminated the previous agreement of the tenants to occupy the lot upon which their homes sit for $155 or $170 per month.

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[72] Indeed, the trial court found no such entitlement and granted summary to Respondent on this Count.
[73] *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979).
[74] Syl. Pt. 4, *Keener v. Clay Cty. Dev. Corp.*, 247 W. Va. 341, 344, 880 S.E.2d 63, 66 (2022).
[75] *E. Steel Constructors, Inc., v. City of Salem*, 209 W. Va. 392, 404 n.11, 549 S.E.2d 266, 278 n.11 (2001)(citation omitted).

The parties agree the forty-two homeowning tenants residing in Maple Acres Estates on March 31, 2023, were not doing so at the largess of the previous owner. Rather, the homeowning tenants had obligations to pay rent in exchange for their continued right to possess the property upon which their homes sit. There was an offer of a place to situate one's home, acceptance of that offer, and sufficient consideration, i.e. the payment of monthly rent.[76] These oral contracts for the leased lots in Maple Acres Estates are assumed by the new owner upon the transfer of the property to Diamond Field LLC.[77]

Without regard to these existing agreements which Diamond Field LLC assumed by operation of law when it closed on Maple Acres Estates on March 31, 2023, that same day it sent the following notice to all homeowning tenants:

> *We have a strict policy as far as the payment of rent . . . . If your rent is not paid on time, there will be a late fee enforced and you will be subject to eviction*. . . . As of May 1st, your lot rent will be $299. This is in line with what other parks in the areas are charging, and we believe this is a good value. However, if you would like to sell your mobile home, please contact us, as the park can assist you in selling it, or may be interested in purchasing it from you.[78]

On May 1, 2023, when the new terms where effective, the date upon which Respondent admits the homeowner tenants of Maple Acres Estates started paying the $299 increased amount to avoid eviction, each of the forty-two prior agreements to pay $155 or $170 each month for lot rent were no longer effective; they were terminated. This is precisely the intention that W. Va. Code § 37-15-6a protects.

The trial court took these facts and made two troubling conclusions: even though the homeowning tenants of Maple Acres started paying the new rent amount on May 1, 2023, because the litigation stretched on for more than six months, the failure to provide adequate notice before

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[76] *See, e.g.*, *Kirby v. Lion Enters.*, 233 W. Va. 159, 756 S.E.2d 493 (2014).
[77] W. Va. Code § 37-6-1.
[78] Billings-Appx.Vol.1.p.000068 (emphasis supplied).

terminating the previous agreements was moot;[79] and W. Va. Code § 37-15-6a does not apply to unwritten lease agreements. First, the trial court, just as it did with the breach of the warranty of habitability claim, erroneously concludes that subsequent remediation of a violation moots a plaintiff's claim. The trial court concluded that if at the time of summary judgment the notice provisions of W. Va. Code § 37-15-6a had accrued to that date, the Petitioner could not maintain her claim, and again finds: "even if § 37-15-6a did apply to the case at bar—which it does not—the Court finds that as of this date, [Respondent] provided [Petitioner] at least six months' notice of the termination of [Petitioner]'s lot lease agreement."[80] W. Va. Code § 37-15-6a provides that if a landlord violates the heightened notice requirements contained therein, a "tenant has a cause of action to recover actual damages, the costs required to relocate the aggrieved tenant and, in addition, a right to recover treble damages or the equivalent of the aggrieved tenant's rent for one year, whichever is greater, and reasonable attorney fees."[81]

The trial court's reasoning, however, makes the entire statute meaningless, and especially disregards the landlord's liability for violating the statute. All a landlord would have to do to avoid damages to an aggrieved tenant is run the clock out for six months, thus curing any defective notice. The slow pace of litigation would ensure a tenant would almost never be able to get to judgment before the clock ran out. Of course this cannot be an accurate interpretation of the legislative intent nor is this analysis consistent with the plain language of the statute. The violation of the statute occurred when Diamond Field LLC provided inadequate notice to each of the homeowning tenants of Maple Acres Estates and at least by May 1, 2023, when the new agreements went into effect. Perhaps more troubling is the trial court's conclusion that the

[79] *Id.* at 000012.
[80] Billings-Appx.Vol.1.p.000012.
[81] W. Va. Code § 37-15-6a(b).

protections of the statute do not apply to unwritten leases. W. Va. Code § 37-15-6a clearly means to protect tenants from sudden and immediate threats to safe and affordable housing by requiring advance notice of any termination of existing agreements. This notice requirement takes into account the special circumstances of manufactured homeowners who have their homes situated in these factory-built home rental communities. The legislature could have included the words "written agreement" if it so intended to limit the protection of the statute. It did not.

The trial court found that W. Va. Code § 37-15-3 requires tenancy in a factory-built home rental community be pursuant to a written lease agreement. The trial court then concluded that § 37-15-3 does not provide a remedy for a landlord's violation of the section.[82] The trial court then went on to discuss instances when the Legislature "anticipated instances of verbal factory-built homesite rental agreements between landlords and tenants."[83] Presumably, then the trial court agreed that Ms. Williams-Billings possessed a verbal rental agreement, and found that no damages accrue under W. Va. Code § 37-15-3 simply because there was no written agreement, and that Ms. Williams-Billings was obligated to continue her duties under the agreement—namely the continued payment of rent.[84] Finding the lack of a written rental agreement was of no effect, the trial court nonetheless came to the contradictory conclusion that if Ms. Williams-Billings'

> Unwritten lot lease agreement with the Park's previous owner is void, it was void *ab initio*. As such, Plaintiff cannot establish that Defendant terminated her unwritten agreement with the Park's previous owner. As a matter of law, the Court concludes that W. Va. Code § 37-15-6a does not apply to Defendant's lot rent increase.[85]

[82] Billings-Appx.Vol.1.p.000014.
[83] *Id.* at 000015-000016.
[84] *Id.* at 000015.
[85] *Id.* at 000013.

Effectively, the trial court concluded that so long as a landlord violates § 37-15-3, "which does not contain a remedy for a landlord's violation," it can avoid the consequences of the strong remedy found in § 37-15-6a. This conclusion is clearly erroneous.

To be clear, the trial court concluded that Ms. Williams-Billings' unwritten lot lease agreement was void. However, this did not provide her with any relief, and she remained obligated to continue making monthly lot rent payments to Diamond Field LLC. The demand by Diamond Field LLC for new terms under which Ms. Williams-Billings could continue occupying her lot terminated her previous agreement. But because her unwritten lease was void, there was actually no agreement for the landlord to terminate, and thus Diamond Field LLC avoids liability under W. Va. Code § 37-15-6a. This conclusion reads into § 37-15-6a the word "written" to modify the word "agreement." This cannot be what the Legislature intended, nor is it consistent with the plain language the Legislature did adopt, in enacting clear protections of homeowning tenants in a manufactured housing community who are subjected to mass terminations of rental agreements by their landlord.

The trial court has managed to negate the protections of both section 3 and section 6a of chapter 37, article 15 of the West Virginia Code by its ruling. If the trial court's conclusion is upheld, it will create a loophole so large as to subsume all tenant protections of chapter 37, article 15 of the West Virginia Code. The trial court's conclusion plainly contravenes the law, is against public policy, and eviscerates the few protections afforded to the uniquely positioned and highly invested homeowning tenant. Accordingly, this Court should reverse the trial court's conclusion.

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully asks the Court to grant oral argument, to reverse in part the summary judgment order entered by the Circuit Court of Mercer County, and to remand this case for a jury to resolve the remaining issues raised in this case.

THE ESTATE OF MICHELLE WILLIAMS-BILLINGS,
Petitioners,
--By Counsel--

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IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

No. 24-ICA-3

THE ESTATE OF MICHELLE WILLIAMS-BILLINGS,

Petitioner, Plaintiff below,

v.

DIAMOND FIELD LLC, d/b/a MAPLE ACRES ESTATES,

Respondent, Defendant below.

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APPEAL FROM THE CIRCUIT COURT OF MERCER COUNTY

CERTIFICATE OF SERVICE

I, Colten L. Fleu, do hereby certify that on April 8, 2024, copies of the foregoing **PETITIONER'S APPEAL BRIEF** and **APPENDIX** were electronically served on all counsel of record using the File and Xpress system.

/s/ Colten L. Fleu
Colten L. Fleu (WVSB #12079)