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Supreme Court No. 1017341
COA No. 83512-2-I

Supreme Court of the State of Washington

Tamara L. Fleischer and Jay P. Fleischer,
Defendants/Appellants,
v.

Lisa S. Carter (Assignee: Margaret L. Curtis),
Plaintiff/Respondent.

Answer to Petition for Review

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I. Identity of Respondent.

Margaret L. Curtis is the assignee of the judgment creditor, the purchaser at the sheriff's sale, and the respondent in this case. She obtained the order confirming the sheriff's sale, which the judgment debtors, Tamara and Jay Fleischer, seek to vacate via CR 60(b).

II. Relevant Facts.

The Fleischers' home was sold to Margaret Curtis in a sheriff's sale. CP 105-08.¹ When the Fleischers did not object to the sale during the 20-day statutory objection period, the judgment creditor became entitled to an order confirming the sale. CP 105; RCW 6.13.160. Thereafter the legislature increased the exemption amount.² Then Mrs. Curtis moved for, and the superior court entered, an order confirming the sale. CP

¹ The sale complied with the statutory procedures governing the sale of a homestead then in effect. RCW 6.13.100-.160; CP 121, 125, 176-180. The Fleischers do not contend otherwise.

² ENGROSSED SUBSTITUTE S.B. 5408, at 2, 67th Leg., Reg. Sess. (Wash. 2021).

96. The Fleischers did not appeal the order.

Nearly six months later, the Fleischers filed a CR 60(b) motion seeking to vacate the order. CP 83. The Fleischers justified their use of CR 60(b) by contending that they had been denied a fundamental constitutional right.³

The trial court denied the motion. CP 83. The Fleischers appealed. They asked the Court of Appeals to decide whether the amount of the latest homestead exemption increase applied to the sheriff's sale of their home. RCW 6.13.030. The Court of Appeals affirmed the superior court in an unpublished decision.

The Court of Appeals rejected the Fleischers' claim to a *constitutional* right to a *specific* homestead exemption amount, deeming their right to be statutory, not constitutional. Slip op. at

³ *In re Marriage of Maxfield*, 47 Wash. App. 699, 702 (1987) (inadequate notice and opportunity to be heard); *State v. Santos*, 104 Wn. 2d 142, 145–46 (1985) (right to confront accuser); *State v. Dictado*, 102 Wn. 2d 277, 286–87 (1984) (right not to be bound by a judicial proceeding to which one was not a party); RAP 2.5(a)(3).

6. As such, the Fleischers' alleged error of law could only be raised by appealing from the order of confirmation within 30 days after its entry, not by collaterally attacking it under CR 60(b) six months later. *In re Marriage of Maxfield*, 47 Wn. App. 699, 702 (1987) ("If notice of appeal is not filed within 30 days from entry of an appealable order, the Court of Appeals is without jurisdiction to consider that order.")

III. Reasons for Denying Review.

The Fleischers ask this court to decide whether the most recent amendment to RCW 6.13.030, which increased the homestead exemption amount, applied to a sheriff sale that occurred before the amendment's effective date. More specifically, they ask whether Article XIX of the state constitution mandated this application. Pet. Rev. at 4.

The Washington State constitution imposes a mandate on the legislature, namely, to protect a portion of the homestead:

The legislature shall protect by law from forced sale a certain portion of the homestead"

Wash. Const. Art. XIX. But the constitution leaves it up to the

legislature to decide by statute:

- what portion of the homestead to protect,
- whether to change the amount of protection from time to time, and
- by what mechanism the right to the homestead exemption attaches.

The Fleischers do not contend that the legislature has failed to fulfill this constitutional duty. The legislature has fulfilled it by enacting the homestead act, Chapter 6.13, RCW. The legislature has created a statutory right protecting a portion of the homestead.

When the constitution imposes a duty on the legislature, it must act. *McCleary v. State*, 173 Wn. 2d 477, ¶¶ 95-97 (2012). But the constitution also imposes a division of responsibilities between the judiciary and the legislature. *Id.* So, the specific details of the legislature's act are left to its discretion. *Id.* And the legislature acts by enacting a statute, in this case creating a statutory right.

It is the statute, not the constitution, which specifies what

portion of the homestead is protected. The Court of Appeals correctly reasoned that the Fleischers present an issue of statutory, rather than constitutional, right.

The Fleischers greatly rely upon the term “automatic” in RCW 6.13.040, where the property protected by the homestead exemption is described, and apply it to RCW 6.13.030, where the homestead exemption amount is specified. Pet. Rev. at 14-22.

RCW 6.13.040 (1) provides:

Property described in RCW 6.13.010⁴ constitutes a homestead and is *automatically protected* by the exemption described in RCW 6.13.070⁵ from and after the time the real or personal property is occupied as a principal residence by the owner

RCW 6.13.040 (1) (emphasis added). And yet, nowhere does the legislature apply the term “automatic” to the amount of the exemption specified in RCW 6.13.030. More importantly, the

⁴ “The homestead consists of real or personal property that the owner or a dependent of the owner uses as a residence.” RCW 6.13.010 (1).

⁵ “[T]he homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030.” RCW 6.13.070 (1).

term “automatic” does not appear in Article XIX of the state constitution: “The legislature shall protect by law from forced sale a certain portion of the homestead” “The Fleischers have no *constitutional* right to receive any specific homestead exemption amount.” Slip op. at 2 (emphasis added).

The Fleischers’ own argument reveals that their case concerns a statutory, not a constitutional, right. They assert:

The decision conflicts with a decision of this Court, *City of Seattle v. Long*, 198 Wn.2d 136, 177, 178 493 P.3d 94 (2021) when it wrote the word “automatic” out of RCW 6.13.040.

Pet. Rev. at 14. This is an argument that the lower court’s error was in its interpretation and application of a statute (RCW 6.13.040), not of a constitutional provision. Article XIX. RAP 13.4(b).

The Fleischers point to no decision by this court that the right to a specific homestead exemption amount is written into the constitution. The words of Article XIX do not support such an interpretation.

The Fleischers also ask that the \$125,000 now held in the

superior court registry be disbursed to them. That money should not be disbursed until the Fleischers' challenges to the sheriff sale are finally resolved. If those challenges are resolved against the Fleischers, they are entitled to the money and not the house. If they prevail, they are entitled to the house and not the money. The Court of Appeals has appropriately remanded this issue to the superior court. The remand will take effect when the mandate is issued. Until then, the \$125,000 should remain in the court registry.

VI. Conclusion.

The Fleischers ask this court to interpret a statutory right, not a constitutional one. The constitution mandates that the legislature protect a portion of the homestead. Wash. Const. Art. XIX. It does not specify the method of protection. The method of protection chosen by the legislature is the creation of a statutory homestead exemption. RCW 6.13. This is a statutory right created by the legislature in compliance with the constitutional mandate. The statute defines the portion of the

homestead that is protected.

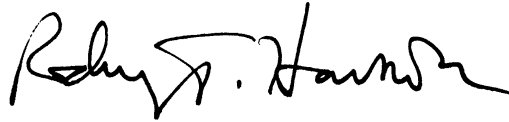
The Fleischers failed to raise their issue of statutory law by a timely-filed appeal from the order confirming the sheriff sale. Consequently, the Court of Appeals had no jurisdiction over their appeal and correctly affirmed the superior court.

There is no issue within RAP 13.4(b) for this court to review.

The court is requested to deny the petition.

Respectfully submitted this 5th day of March, 2023

Certified word count: 1398

A handwritten signature in black ink, appearing to read "Rodney T. Harmon". The signature is written in a cursive style with a horizontal line underneath it.

Rodney T. Harmon, WSBA #11059
Attorney for Margaret L. Curtis,
assignee of Lisa S. Carter

Certificate of Service

I certify that on this day I mailed by U.S. Mail, postage prepaid, a copy of the document to which this certificate is attached to counsel for Tamara and Jay Fleischer addressed to:

James Sturdevant
Attorney At Law
119 N. Commercial St. Ste. 235
Bellingham, WA 98225

Dated this 5th day of March, 2023

A handwritten signature in black ink, appearing to read "Rodney T. Harmon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rodney T. Harmon, WSBA #11059
Attorney for Margaret L. Curtis

Appendix

Statutes¹

RCW 6.13.030 Homestead exemption amount (effective on April 2, 2021)

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of one hundred twenty-five thousand dollars in the case of lands, manufactured homes, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.13.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

RCW 6.13.030 Homestead exemption amount (effective May 12, 2021)

(1) The homestead exemption amount is the greater of:

(a) \$125,000;

(b) The county median sale price of a single-family home in the preceding calendar year; or

(c) Where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, no dollar limit.

(2) In determining the county median sale price of a single-family home in the preceding year, a court shall use data from the Washington center for real estate research or, if the Washington center no longer provides the data, a successor entity designated by the office of financial management.

¹ Other relevant statutes are included in the appendix to the petition for review.

RCW 6.21.110 Confirmation of sale

(1) Upon the return of any sale of real estate, the clerk: (a) Shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation"; (b) shall mail notice of the filing of the return of sale to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them; (c) shall file proof of such mailing in the action; (d) shall apply the proceeds of the sale returned by the sheriff, or so much thereof as may be necessary, to satisfaction of the judgment, including interest as provided in the judgment, and shall pay any excess proceeds as provided in subsection (5) of this section by direction of court order; and (e) upon confirmation of the sale, shall deliver the original certificate of sale to the purchaser.

(2) The judgment creditor or successful purchaser at the sheriff's sale is entitled to an order confirming the sale at any time after twenty days have elapsed from the mailing of the notice of the filing of the sheriff's return, on motion with notice given to all parties who have entered a written notice of appearance in the action and who have not had an order of default entered against them, unless the judgment debtor, or in case of the judgment debtor's death, the representative, or any nondefaulting party to whom notice was sent shall file objections to confirmation with the clerk within twenty days after the mailing of the notice of the filing of such return.

(3) If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date.

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Transmittal Information

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