

No. 75010-1-I

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION ONE

ANDREW CLAYTON,
Respondent,

v.

MARY KAY WILSON,
Appellant

FILED
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Court of Appeals
Division I
State of Washington

ON APPEAL FROM
KING COUNTY SUPERIOR COURT
No. 04-2-14443-4 SEA

APPELLANT'S OPENING BRIEF

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I. Introduction

Close attention to the decision in this case is required because it involves the Constitutional sanctity of our state's homestead exemption. Respondent, a judgment creditor, attempts to force the sale of a judgment debtor's Constitutionally-protected homestead without following the required procedures embodied in Chapter 6.13 RCW. Without question, the judgment debtor's homestead consists of her residence as well as the three tracts that adjoin and surround her residence. The judgment creditor insists that he can unilaterally segregate the debtor's encumbered residence tract from the three surrounding unencumbered tracts without appointing an appraiser and without paying the judgment debtor her Constitutionally-protected \$125,000 homestead exemption.

II. Assignments of Error

A. The trial court wrongfully authorized a writ of execution to be issued because the judgment creditor's trial counsel's December 2015 Declaration was legally insufficient.

B. The trial court wrongfully ordered the sale of three tracts of property that surround the judgment debtor's residence.

C. The trial court erred in not determining what separate property interests the judgment debtor had in the property being ordered for sale.

D. The trial court wrongfully extended the writ of execution because there was no motion filed requesting such relief.

III. Issues Related to Assignments of Error

A. Whether the judgment creditor's trial counsel's declaration was insufficient for the trial court to properly authorize a writ of execution against the three tracts that surround judgment debtor's residence. (Assignment A).

B. Whether the trial court erred in directing the court's clerk to issue a writ of execution on the three tracts that surround the judgment debtor's residence. (Assignment A).

C. Whether the trial court's order that summarily concluded the three tracts that surround the judgment debtor's residence should be sold is not supported by sufficient findings. (Assignment B).

D. Whether the three tracts that surround the judgment debtor's residence are the judgment debtor's Constitutionally-protected homestead property. (Assignment B).

E. Whether the trial court erred by not requiring the judgment creditor to comply with Chapter 6.13 RCW. (Assignment B).

F. Whether the trial court erred by not requiring the Constitutionally-protected \$125,000 homestead exemption be paid first to the judgment debtor from any bids on the property to be sold. (Assignment B).

G. Whether the trial court abused its discretion in not appointing an appraiser to appraise the tracts the judgment creditor requested be sold. (Assignment B).

H. Whether the trial court erred in not affording the judgment debtor the other statutory protections enumerated in Chapter 6.13 RCW related to homestead property. (Assignment B).

I. Whether the trial court erred in not determining the judgment debtor's separate interests in the three tracts that surround judgment debtor's residence. (Assignment C).

J. Whether the trial court erred in extending the writ of execution absent a motion requesting that relief. (Assignment D),

IV. Statement of the Case

Respondent (“Judgment Creditor”)’s attempts to force the sale of three real property tracts that surround Appellant Mary Kay Wilson (“Judgment Debtor”)’s residence, without protecting her Constitutionally-mandated \$125,000 homestead exemption or affording her the other statutory protections set forth in Chapter 6.13 RCW.

In 2006, the trial court issued findings of fact and conclusions of law against Judgment Debtor’s former husband, finding that the former husband serially molested an underage boy while he and the Judgment Debtor were married; the boy did yard work on the couple’s community property. As such, Judgment Debtor became vicariously liable for her former husband’s intentional tort, but only to the extent of the couple’s non-exempt former community property. *See Clayton v. Wilson*, 145 Wn. App. 86, 186 P.3d 348, (2008), affirmed, 168 Wn.2d 57, 227 P.3d 278 (2010).

The trial court initially entered a judgment against both Judgment Debtor and her former husband. CP 101-4. After the appeal was final and a mandate was issued, it entered an amended judgment that made it clear that Judgment Debtor was only

vicariously liable up to the amount of the former community's non-exempt property and that her separate property was not available to satisfy the Amended Judgment. CP 140-43. Judgment Creditor recorded a certified copy of the Amended Judgment against Judgment Debtor's residence as well as the three parcels that surround Judgment Debtor's residence.¹

After the Judgment Debtor and her former husband dissolved their marriage, the Judgment Debtor made substantial payments that preserved for execution, levy, and sale the three tracts that surround her residence. For instance, the trial court found in its original findings of fact and conclusions of law that there was a valid \$75,000 loan that the Judgment Debtor owed her mother and that would be deducted against the Judgment Debtor's inheritance once the mother died. CP 85, ¶ 11. In addition, Judgment Debtor paid all the real estate taxes on the three tracts that surround her residence. CP 210-11. For 2011 through 2015, the real estate taxes for just these years totaled over \$95,000.00. CP 210.

In December of 2015, the Judgment Creditor made an *ex parte* application to the trial court that resulted in the trial court

¹ See Judgment Debtor's Motion to Supplement the Record Through Judicial Notice filed simultaneous herewith.

directing its court clerk to issue a writ of execution on three real property tracts that surround the Judgment Debtor's residence. When making the *ex parte* application for a writ of execution, Judgment Creditor filed a declaration from its trial counsel Kathy Goater ("Trial Counsel") that was dated in August 2015. This declaration failed to include the following information:

- That she personally visited the three tracts.
- That she spoke with the neighbors to the three tracts.
- Facts supporting her conclusion that the three tracts were not homestead property
- A list of all personal property of Judgment Debtor's former husband (the tortfeasor who was separately liable) or the former community.
- That the three tracts surrounded Judgment Debtor's residence.

The issued writ was delivered to the Sheriff who levied on the three tracts that surround Judgment Debtor's residence. CP 172-77. The Sheriff refused to publicly sell the three tracts and required Judgment Creditor to obtain an order directing the sale. CP 156.

On February 12, 2016 the trial court entered an order extending the time to enforce the writ of execution. CP 150-151. There was no motion requesting such an order, no note for motion, and no evidence the order was ever given to Judgment Debtor.

On February 29, 2016, Judgment Creditor through its new counsel (“Collections Counsel”) filed and served a motion to obtain the order the Sheriff required that directed the sale of the three tracts that surround Judgment Debtor’s residence. CP 155-59. This was the first time Judgment Debtor knew about Judgment Creditor’s *ex parte* application to the trial court, Trial Counsel’s Declaration that was filed in December 2015, the writ of execution directed to the three tracts that surround Judgment Debtor’s residence, and the Sheriff’s levy.²

Judgment Debtor filed a response to Judgment Creditor’s Motion that cited applicable case law that the three tracts that surround her residence are her homestead and should be afforded homestead protections. She also showed that her residence was encumbered by a deed of trust. Finally, it showed she had spent her separate property funds in maintaining and improving these three tracts by, amongst other things, paying over \$95,000 in real estate taxes. CP 197-218.³

² There is no declaration of service for any of these items in the record.

³ Judgment Debtor’s Response Declaration also made one misstatement. She stated she filed a Declaration of Homestead identifying her residence, but that is not true. Judgment Debtor *did not* file a Declaration of Homestead. See Judgment Debtor’s Motion to Supplement the Record Through Judicial Notice.

Judgment Creditor filed a reply that cited no contrary authority to the authority cited by Judgment Debtor that stood for the proposition that the property that surrounded Judgment Debtor's residence was not homestead property. CP 219-224.

The trial court, without oral argument, entered an order directing that the three tracts that surround judgment Debtor's Residence be sold. The trial court's judgment contains no findings or conclusions on whether the three tracts that surround the Judgment Debtor's residence are homestead. It contained no findings that the net value of the Judgment Debtor's residence equaled or exceeded the \$125,000 Constitutionally-protected homestead exemption. It did not appoint an appraiser. It did not require Judgment Debtor first be paid the \$125,000 Constitutionally-protected homestead exemption. And it did not allow any of the protections afforded homesteads in Chapter RCW 6.13 RCW. CP 225-26.

Judgment Debtor timely appealed the trial court's order directing that the three parcels that surround her residence be sold without affording her the applicable homestead protections. CP 227-30. Commissioner Neel entered a stay pending this appeal.

V. Argument

A. The Writ Of Execution Was Issued In Error.

1. The judgment creditor's trial counsel's *ex parte* declaration was inadequate to support a valid writ of execution

To obtain a valid real property writ of execution, RCW 6.17.100(1) requires a judgment creditor to file with the court an affidavit that must contain certain enumerated facts. Here, Trial Counsel's Declaration did not contain the required facts, and the trial court issued an improper writ of execution directed toward the three tracts that surround the Judgment Debtor's residence.

Whether there were sufficient facts in Trial Counsel's Declaration to justify the trial court issuing a writ of execution directed toward real property is a question of law and is reviewed *de novo* because this Court is determining the correct law and applying it to the facts set forth in the declaration supporting the writ of execution. *Gibson v. Washington State Dep't of Employment Sec.*, 185 Wn. App. 42, 52, 340 P.3d 882, 887 (2014). Applying the *de novo* review standard, it is clear the facts alleged in Trial Counsel's Declaration were inadequate to support the trial court issuing the writ of execution directed toward Judgment Debtor's three tracts that surround her residence.

First, Trial Counsel's Declaration (CP 144-45) simply concluded that Judgment Creditor had exercised due diligence to ascertain whether the real property is occupied or otherwise claimed by the judgment debtor as a homestead as defined in Chapter 6.13 RCW, and whether the judgment debtor is currently occupying the property as the judgment debtor's principal residence. RCW 6.17.100(4)(b). In her Declaration (CP 144-45), Trial Counsel did not show that she conducted any diligence much less due diligence.

The term "due diligence," is defined in RCW 6.17.100(3) and includes "the creditor or the creditor's representative *personally visiting the premises...and contacting immediate neighbors* of the premises..." In her declaration, Trial Counsel does not state she personally visited the premises or that she contacted the neighbors. To be sure, one of the neighbors for the three tracts surrounding Judgment Debtor's residence is Judgment Debtor herself. Surely, had Trial Counsel contacted Judgment Debtor, then Trial Counsel would have known that Judgment Debtor was claiming the three surrounding tracts as her homestead.

Second, when a judgment creditor avers that the real property is not occupied or claimed as a homestead, the judgment

creditor must list the facts relied upon to make that conclusion.

RCW 6.17.100(4)(c). Trial Counsel's Declaration contains a simple statement that, "upon information and belief, judgment debtors do not currently occupy the property as a principal residence." Again, there is simply no evidence offered to support the conclusion Trial Counsel stated in her Declaration.

Third, RCW 6.17.100(4)(d) mandates that, if the judgment debtor is not occupying the property and there is no declaration of non-abandonment of record, a statement must be included based on belief *whether the judgment debtor has been absent for a period of at least six months*, with the facts relied upon to reach that conclusion. Here, there was no statement that Judgment Debtor had not occupied the real property for at least six months, and there are no other facts stated in Trial Counsel's Declaration to support her conclusions.

Fourth, a judgment creditor's declaration must attach a list of the judgment debtors' personal property with an indication of any items that the judgment creditor believes to be exempt. RCW 6.17.100(4)(a). In cases where a spouse is a tortfeasor and is also separately liable along with the community, the list must include a list of the tortfeasor spouse's separate property as well as

community property. *Casa del Rey v. Hart*, 110 Wn.2d 65, 73, 750 P.2d 261, 265 (1988). In addition, the judgment creditor must set forth the *facts* that support the judgment creditor's conclusion that it has exercised due diligence to determine whether there is sufficient nonexempt personal property to satisfy the judgment. *Casa del Rey*, 110 Wn.2d at 73.

Again, Trial Counsel's Declaration did not contain any list of any personal property, either for the former community or for the tortfeasor Douglas Wilson. It is simply absent. Moreover, Trial Counsel's Declaration sets forth no facts that support her conclusions that she exercised due diligence to make a determination whether there is sufficient personal property. Finally, Trial Counsel's Declaration post-dates the original Judgment in this matter by 9 ½ years, so it would be extremely unlikely that Trial Counsel had undertaken any diligence, much less due diligence, regarding personal property.

Because Trial Counsel's Declaration failed to comply with RCW 6.17.100's requirements, the trial court erred when it ordered its clerk to issue a writ of execution and the writ of execution was wrongfully issued and should be quashed.

Additionally, the Order extending the Writ of Execution was also issued in error. First, there was no motion, which is required before any relief can be granted. CR 7(b)(1). And again, there was no evidence a motion or the order was ever delivered to Judgment Debtor.

2. Judgment Creditor Lacked Candor Toward The Tribunal When He Submitted His Praecipe To The Trial Court *Ex Parte* And Did Not Tell The Trial Court That The Three Real Property Tracts He Sought To Execute Upon Surrounded Judgment Debtor's Principal Residence.

Judgment Creditor's Trial Counsel's Declaration that was submitted *ex parte* to the trial court was ethically improper. "In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." RPC 3.3(f). The rationale underlying this rule is that in any *ex parte* proceeding, there is no balance of presentation by opposing advocates. See Comment 14 to RPC 3.3. Because the object of an *ex parte* proceeding is nevertheless to yield a substantially just result, the judge has an affirmative responsibility to accord the absent party just consideration. *Id.* Therefore, the lawyer for the represented party has the correlative duty to make disclosures of

material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision. *Id.*

Judgment Creditor's counsel did not meet this standard. Judgment Creditor's *ex parte* submission to the trial court lacked any mention that the three tracts that Judgment Creditor was trying to levy upon actually surrounded Judgment Debtor's known homestead. This was critically important for a writ of execution submission because a homestead includes not only a judgment debtor's residence, but also the surrounding real property. RCW 6.13.010(1); and *Baker v. Baker*, 149 Wn. App. 208, 202 P.3d 983 (2009).

B. The Three Tracts That Surround Judgment Debtor's Residence Are Judgment Debtor's Homestead.

The three tracts that surround Judgment Debtor's residence are Judgment Debtor's homestead. The trial court's Order Directing Sale concluded that the three tracts that surround Judgment Debtor's residence are "non-homestead." See Order Directing Sale, CP 229, ln. 22. This conclusion, however, is based on undisputed facts and is, therefore, a matter of statutory construction that is reviewed *de novo*. *Baker v. Baker*, 149 Wn.

App. at 210-11; and *In re Chappell*, 373 B.R. 73, 76 (B.A.P. 9th Cir. 2007), aff'd sub nom. *In re Gebhart*, 621 F.3d 1206 (9th Cir. 2010).

Applying a *de novo* review, it is clear that these three tracts are part of Debtor's homestead. "...[T]he homestead consists of the dwelling house ... in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated *and by which the same are surrounded...*" RCW 6.13.010(1) (emphasis added). In *Baker v. Baker*, 149 Wn. App. 208, 202 P.3d 983 (2009), the appellate court held that five contiguous parcels that surrounded a judgment debtor's residence were all part of the judgment debtor's homestead, despite only one of the parcels being occupied by the judgment debtor. *Baker*, 149 Wn. App. at 212 ("the parcels that surround Mr. Baker's residence are exempt under Washington's homestead act.")

As explained in *Baker*, this decision embodied the principals our state Supreme Court has enunciated for over one hundred years. For instance, in *Morse v. Morris*, 57 Wash. 43, 106 P. 468 (1910), it held that a homestead may consist of lots in one block on which a dwelling is situated, and lots in an adjoining block separated from a dwelling and used for other purposes. Subsequently, it also held that four lots in one tract may be set

aside to a widow as homestead. *In re Murphy's Estate*, 46 Wash. 574, 90 P. 916 (1907).

Baker is the most analogous case and shows the three tracts that surround Judgment Debtor's Residence are part of Judgment Debtor's homestead. In *Baker*, the sole issue on appeal was "[w]hether the homestead act exempts property surrounding a parcel where a residence is located..." *Id.* at 210. As stated, this question was answered in the affirmative. *Id.* at 212. In *Baker*, a judgment creditor sought to enforce her judgment against the tracts that surrounded the tract upon which the judgment debtor's home was located. *Id.* at 210. The trial court applied the rationale from the earlier cases, noting that the holdings were instructive because the use and enjoyment of a residence includes the surrounding property and they, together, make up the homestead. *Id.* The court further noted that this holding gave effect to our legislature's use of the term "land ... by which the same are surrounded" in RCW 6.13.010(1), and that our legislature set a \$125,000 limit to avoid abuse of the homestead exemption. *Id.*

The current case is on all fours with *Baker*. Judgment Debtor resides on a tract that is contiguous to the three tracts that surround her residence. It is undisputed that Judgment Debtor

resided at her residence and owned the three parcels that surrounded her residence for decades, which was well before the Judgment and Amended Judgment were entered. CP 209, Par. 4. This is not a case where the Judgment Debtor acquired additional property contiguous with her homestead after the judgment was entered and is seeking homestead protection on the subsequently acquired property.

To be sure, Judgment Creditor recorded 4 certified copies of the Judgment – one against Judgment Debtors residence and one each against the three tracts that surround Judgment Debtor’s residence.⁴ The only time a judgment creditor needs to record a certified copy of a judgment in the public records is when the judgment creditor wants the judgment to attach to the excess value in the judgment debtor’s homestead. See RCW 6.13.090. This shows Judgment Creditor knew that the three tracts that surround Judgment Debtor’s residence were Judgment Debtor’s homestead. If the Judgment Creditor did not believe that the three tracts that surround Judgment Debtor’s residence were not Judgment Debtor’s homestead, then Judgment Creditor would not have had to do anything further to perfect his judgment lien on those three

⁴ See Motion to Supplement Record Through Judicial Notice filed simultaneous herewith.

tracts. See *In re Marriage of Bobbitt*, 135 Wn. App. 8, 18, 144 P.3d 306, 311 (2006).

Because the three tracts in dispute surround Judgment Debtor's residence that she has lived in well before the Judgment and Amended Judgment were entered, they are Judgment Debtor's homestead.

C. Because The Three Tracts That Surround Judgment Debtor's Residence Are Her Homestead, Judgment Debtor has A Constitutionally-Protected Exemption And Other Rights That Must Be Observed.

The Washington state Constitution unequivocally states that "[t]he legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families." Wash. Const. art. XIX, § 1. To further this policy, the Washington legislature has implemented the homestead exemption law or homestead act. The homestead exemption law, like the other exemptions in Title 6 RCW, places limitations on a Washington court's power to enforce judgments. *In re Wieber*, 182 Wn.2d 919, 928, 347 P.3d 41, 45 (2015). Courts favor the act and construe it liberally to promote its purpose of protecting family homes. *In re Dep. of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007). As such, it must be scrupulously followed when a court

seeks to determine and sell homestead property. The biggest feature of the homestead law is that it gives the Judgment Debtor the first \$125,000 from the proceeds of any sale of homestead property. See RCW 6.13.030 and 6.13.070.

D. Because The Three Tracts That Surround Judgment Debtor's Residence Are Part Of Her Homestead, The Trial Court Erred In Entering An Order Authorizing These Tracts Be Sold Without Affording Judgment Debtor The Required Homestead Protections.

First, the trial court made no determination as to the value of Debtor's residence or the value of the three tracts that surround her residence. It, therefore, made no finding that Judgment Debtor was retaining \$125,000 in net equity in her homestead or that there was any excess to satisfy Judgment Creditor. A judgment lien on homestead property only attaches to the value over the \$125,000 homestead exemption. RCW 6.13.090. "Following its policy of protecting homesteads, the Legislature has required that a determination be made that there is indeed excess value before the lien is actually executed." *Sweet v. O'Leary*, 88 Wn. App. 199, 202, 944 P.2d 414, 416 (1997). Without findings as to value of the residence the Judgment Creditor did not execute on at this time or the value of the three tracts that surround Judgment Debtor's

residence, there could be no finding that there was excess property or value to which the judgment lien attached.

Second, the Judgment Creditor admittedly used the wrong procedure to sell the three tracts that surround Judgment Debtor's residence. Because the three tracts here were part of Judgment Debtor's homestead, the Judgment Creditor had to use the procedures for sale enumerated in RCW Chapter 6.13.

RCW 6.13.100 requires that "[w]hen execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor *shall* apply to the superior court of the county in which the homestead is situated *for the appointment of a person to appraise the value* thereof." Of particular relevance to this situation, the language herein is *mandatory*, not discretionary. Here, Judgment Creditor did not file the required verified petition and did not request the appointment of an appraiser to make the necessary valuations.

Instead, Judgment Creditor blatantly usurped the appraiser's function and the trial court's duty by unilaterally segregating Judgment Debtor's residence, which is encumbered by a deed of trust, from the three tracts that surround Judgment Debtor's

residence, selling only the three surrounding tracts, and leaving Judgment Debtor with the encumbered residence. This was clear error because the only way to properly segregate surrounding property from a judgment debtor's homestead is by using the procedures in RCW 6.13.150, which states

If, from the [appraiser's] report, it appears to the court that the value of the homestead, less liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon, exceeds the homestead exemption and the property can be divided without material injury and without violation of any governmental restriction, the court may, by an order, direct the appraiser to set off to the owner so much of the land, including the residence, as will amount in net value to the homestead exemption, and the execution may be enforced against the remainder of the land.

From this statute it is readily apparent that only the trial court can physically segregate property from a judgment debtor's homestead and direct its sale. A judgment creditor cannot. Moreover, a trial court must first receive an appraiser's report before ordering a physical segregation. These procedures were not followed, and this Court should not sanction Judgment Creditor's attempt to evade the required statutory procedure.

There are other protections that should have been afforded to Judgment Debtor. First, she should have received the first

\$125,000 from the sale proceeds. RCW 6.13.170. Second, these proceeds should have received homestead protection. RCW 6.13.180. Additionally, Judgment Debtor should have been allowed to occupy the property until the redemption period expired without accounting to the Judgment Creditor for issues or value of occupation. RCW 6.23.110(3). Finally, the property should be subject to an open listing during the redemption period. RCW 6.23.120.

E. Judgment Debtor’s Separate Estate Is Not Liable For the Judgment Or Amended Judgment.

This Court’s prior appellate decision makes clear that Judgment Debtor’s liability only extends to the former community property. *Clayton v. Wilson*, 145 Wn. App. 86, 100-01, 186 P.3d 348, 354 (2008), aff’d, 168 Wn.2d 57, 227 P.3d 278 (2010). (“Nevertheless, we conclude that Conclusion of Law 8 and the judgment should be amended to clarify that Mrs. Wilson is liable to Andrew to the extent of the former community property.”)

F. Judgment Debtor’s Separate Estate Holds An Equitable Right Of Reimbursement That Is Secured By An Equitable Lien That Must Be Paid First From Any Sale.

Equity will impress a lien on community property in favor of one who is clearly shown to have contributed separate funds to its acquisition or to the enhancement of its value. See *Farrow v.*

Ostrom, 16 Wn.2d 547, 133 P.2d 974 (1943). The value a former spouse makes to community property from her or his separate estate is not subject to a community creditor's lien and cannot be sold to satisfy that lien. Harry M. Cross, The Community Property Law (Revised 1985), 61 Wash. L. Rev. 13, 144-45 (1986). The separate property contributions must be paid first to the non-obligated spouse. *Farrow*, 16 Wn.2d at 547.

Here, on a mere 4 business days' notice, Judgment Debtor showed that she made significant separate property contributions to the three tracts that surround her residence, which Judgment Creditor wants to sell in its entirety. First, the trial court found in its findings of fact that the \$75,000 debt owed by Judgment Debtor to her mother constituted a valid legal obligation which, if not repaid during the life of the mother, would be charged against Judgment Debtor's share of any inheritance from her mother. CP 85. Furthermore, Judgment Debtor paid all of the property taxes on the parcels since 2003 and most recently she paid over \$95,000 in back taxes for years 2011- 2015. CP 210. Applying the *Farrow* rule, because the benefits to the property are specifically identifiable, Judgment Debtor thus holds a right of reimbursement, secured by an equitable lien on the three tracts surrounding her

residence. In fact, the only reason that these tracts are even available for execution is because Judgment Debtor made those separate property contributions. Her equitable lien, therefore, entitles her to be paid these amounts (plus interest) before Judgment Creditor can receive anything.

G. Judgment Creditor Cannot Force The Sale Of Any Appreciation Since the Divorce On The Property Because Such Appreciation Is Judgment Debtor's Separate Property.

Judgment Creditor cannot force the Judgment Debtor's appreciation in her one-half ownership in former community property. When a marriage is dissolved, subsequently acquired property cannot be community property because there is no community to own it; rather, undistributed property is owned by the parties separately as tenants in common and the property is characterized as former community property. *Yeats v. Yeats' Estate*, 90 Wn.2d 201, 203, 580 P.2d 617, 619 (1978).

Community creditors can reach the former community property's net value at the time of the dissolution, but cannot reach the non-obligated former spouse's appreciation on the former community property.

If the spouses divorce after a community tort or contract liability is incurred, enforcement can be had

against property held by either former spouse which had been community property before the divorce, whether or not separate liability was incurred by the spouse now holding the asset. If the non-obligated former spouse becomes the owner, any increase in value of the former community property is, apparently, beyond the reach of the community creditor, just as improvements or later separate payments would not inure to the benefit of the creditor. The creditor is limited to the net community equity at the time of dissolution of the marriage.

Harry M. Cross, The Community Property Law (Revised 1985), 61 Wash. L. Rev. 13, 144-45 (1986)

Here, the Judgment Creditor cannot sell the three tracts that surround Judgment Debtor's residence to the extent the value is attributable to post-decree appreciation or separate property contributions. More importantly, if Judgment Creditor is the successful bidder at any forced sale, then Judgment Creditor must first come up with these appreciation and separate property contribution amounts (plus the homestead exemption) and pay those amounts to Judgment Debtor. Judgment Debtor is entitled to know what she will receive, and Judgment Creditor should know what he should have to pay. For these reasons, the trial court erred by not determining these amount and ordering them to be paid ahead by Judgment Creditor.

VI. CONCLUSION

For the reasons set forth in this Opening Brief, Appellant requests this Court:

- Quash and vacate the Writ of Execution issued in this case and the February 12, 2016 Order extending the Writ or Execution.
- Reverse, quash and vacate the Order Directing Sale of the three tracts that surround Judgment Debtor's residence and hold they are part of Judgment Debtor's homestead.
- Instruct the trial court that any attempt to reach the equity in Judgment Debtor's residence or the three tracts that surround her residence must be accomplished through the procedures set forth in RCW Chapter 6.13 and not Chapter 6.17.
- Instruct the trial court that Judgment Debtor must be first paid her \$125,000 Constitutionally-protected homestead exemption from any judicial sale of her residence or the three tracts that surround her residence.
- Instruct the trial court that Judgment Debtor must be next paid her separate property contributions that benefitted her residence or the three tracts that surrounded her residence.

DATED this 29th day of June 2016.

Western Washington Law Group, PLLC
/s/ Robert J. Cadranell

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Phone 425.728.7296
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of this Emergency Motion for Stay Pending Appeal to the following:

Office of the Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email <input checked="" type="checkbox"/> Electronic Upload
Green & Norwood, PLLC 2722 Eastlake Ave E., Suite 350 Seattle, WA 98102	<input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Electronic Upload
Schroeter Goldmark Bender 810 Third Ave, Suite 500 Seattle, WA 98104	<input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Electronic Upload

Signed this 29th day of June, 2016 at Edmonds, Washington.

/s/ Lindsey Matter

Lindsey Matter
Paralegal