

A. IDENTITY OF PETITIONER

Tamara and Jay Fleischer (“Fleischer”) ask this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

I. INTRODUCTION

The facts behind the issues of this petition, whether or not the amount of the Fleischers’ homestead is of constitutional magnitude, are outlined with the following table:

SHERIFF’S SALE ON WRIT OF EXECUTION THAT ALLOWED HOMESTEAD OF \$125,000 (CP114) FOR HOME THAT APPRAISED AT \$448,000 (CP119-121)	April 2, 2021 (CP 25-32)
EFFECTIVE DATE OF AMENDMENT TO RCW 6.13.030 THAT INCREASED THE FLEISCHERS HOMESTEAD AMOUNT FROM \$125,000 TO \$545,575 (CP69-72, 81-95)	May 12, 2021 (CP 68)
ORDER CONFIRMING CERTIFICATE OF SHERIFF’S SALE EN-	May 24, 2021 (CP 67-68)

TERED	
MOTION TO VACATE ORDER CONFIRMING SHERIFF'S SALE FILED	November 22, 2021 (CP 4-5)
ORDER DENYING MOTION TO VACATE ORDER CONFIRMING SHERIFF'S SALE	December 3, 2021 (CP 30-31)

The Fleischers were unaware of the increase in the homestead and did not object to the entry of the Order Confirming Certificate of Sheriff's Sale ("Order"). They also did not learn of the increase until the 30 day appeal period had expired. Instead they attacked the Order collaterally for violating Wash. Const. XIX, § 1.

The issue succinctly is the impact of the increase in the Fleischers' homestead amount between the date of the sheriff's sale on April 2, 2021 (CP 25-32) and the Order Confirming the Certificate of Sheriff's Sale on May 24, 2023 (CP 67-68).

The court of appeals in its opinion (A 2-9) ignored the issues Fleischers' raised in their brief. Citing neither case nor statute on point, it ruled for the first time in Washington State

that the amount of the Fleischers' homestead was not a fundamental constitutional right. The Fleischers thus could not attack it collaterally under CR 60(b) as void for violating the Fleischers' constitutional homestead rights. It ruled that the trial court had only made a mistake of law. Thus the Fleischers' only relief was through appeal. Whether or not the amount of the homestead is an issue of constitutional magnitude is the heart of this case. All other issues revolve around it.

B. Court of Appeals Decision of November 14, 2022 .

A. Without citing a case or statute, it ruled that the amount of the Fleischers homestead amount was not a fundamental constitutional right (App 5) and thus the Fleischers could not mount a collateral attack on the order confirming sheriff's sale. Their only recourse was an appeal for a mistake of law from the original order.

B. It denied the Fleischers' use of the \$125,000 homestead allowed, again without citing a case or statute or giving any factual analysis, defeating the purpose of the homestead

statute (App 9).

II.

The December 19, 2023 order denying publication of the order, (A 16), even though the decision of first impression, in ruling that the amount of the homestead was not of constitutional magnitude, should be published

III.

The January 20, 2023 order denying the motion to reconsider decision which order wrote the word “automatic” out of RCW 6. 13.040.

C. ISSUES PRESENTED FOR REVIEW

I.

Is the amount of the Fleischers homestead part of the Wash. Const. XIX, § 1 guarantee to them of a homestead? If the amount is part of the homestead, should the order confirming sheriff’s sale in violation of the Fleischers’ constitutional right be vacated as void.

II.

When RCW 6.13.040 states that the Fleischers' vested homestead is automatic, does this automatic increase apply after a sheriff's sale and before an order confirming the sheriff's sale can be entered.

III.

Should the Fleischers receive immediately the \$125,000 homestead, the substitute for their home, which presently sits in the bank account of the Clerk of Snohomish County?

IV.

Should the court of appeals opinion be published because it holds for the first time in Washington State that the amount of the homestead is not an of constitutional magnitude under

D.

STATEMENT OF THE CASE

The home appraised for \$448,000 (CP 119-121) The sheriff's sale occurred on April 2, 2021 (CP 025-032). The

winning bid by Carter was \$500,000. (CP 102). The writ of execution allowed a homestead of \$125,000. (CP 114). Unbeknownst to the Fleischers, the court, and apparently Carter, the state legislature increased the Fleischers automatic vested constitutional homestead amount, from \$125,000 to \$545,575, by amending RCW § 6.13.030 on May 12, 2021 (CP 69-72, 81-95). This increase occurred automatically on that date under RCW § 6.13.040.

The Fleischers, unaware of the change in their constitutional rights, did not object to the order by the trial court confirming Certificate of Sale on May 24, 2021.

After the trial court entered the Order Confirming Sheriff's Sale, Fleischers learned of their homestead increase, more than thirty days after May 24, 2021. Also, in spite of Carter's promise that Fleischers would receive the \$125,00 in cash at the time of the sale (CP 116) and as required by the Homestead Statute, they did not received it at the time of the sale and have yet to receive it

On November 22, 2022, Fleischers filed a motion to vacate the Sheriff's Order Confirming Sheriff's Sale and asserted their constitutional claim to the \$545,575 homestead. (CP 004-005). The impact of this increase voided the Certificate of Sale. RCW §§ 6.13.110 &.160 only allowed a Certificate of Sale to be confirmed when the appraisal of the homestead exceeds the constitutional homestead with liens and encumbrances. They also asked the court to receive their allowed minimal constitutional homestead of \$125,000.

Carter opposed both motions. On the request for release of the \$125,000 and contrary to their prior position (CP 116), Carter now reasoned that the purpose of the Homestead Statute, was not to supply shelter for the Fleischers, but to protect the purchaser at the sheriff's sale. (CP 41-45). As to the homestead increase, they ignored the constitutional argument, and contended that the date of the sheriff's sale, April 2, 2021 fossilized Carter's interest in the home and created a vested constitutional interest for her, that was immune from legislative

change. (CP 51-56). The trial court without explanation interpreted the homestead statute narrowly against the Fleischer and denied both motions on December 3, 2021. (CP 30-31).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I. Constitutional Issue.

The court of appeals ignored the issues that the Fleischers' raised in their brief. It brushed off the contention that the amount of the homestead was constitutionally protected. Its opinion (App 6) states that the homestead is not a fundamental constitutional right citing *In re Marriage of Maxfield*, 47 Wn.App. 699, 703, 737 P.2d 671 (1987) (citing *State v. Santos*, 104 Wn.2d 142, 702 P.2d 1179 (1985) which are not homestead cases. This court should grant this petition to answer this question: "When the citizens of Washington State drafted the Washington State constitution did they intend that the homestead and the amount of the homestead to be a "fundamental constitutional right?" Wash. Const. XIX, § 1. The court of appeals in its decision without discussion or citing case or

statute severed the amount of the homestead from Wash. Const. XIX, § 1 by ruling that the amount was not a fundamental constitutional right. Applying the increase as required by RCW §§ 6.13.110 &.160, which require that as a *sine qua non* of an order confirming a sheriff's sale, that homestead minimally had to appraise at more than the homestead. Until the order confirming the sheriff's sale had been entered, cited in their brief, the Fleishers held the vested constitutional right in their home until the order confirming the sheriff's sale was entered. The change in the amount of the homestead from a set amount to a flexible amount based upon sales (RCW 6.13.030(b)) was to protect homeowners from what happened in this case. This is a significant question of law under the Constitution of the State of Washington RAP 13.4(b)(3) and is worth of this Court's consideration.

A liberal interpretation of the homestead statute makes the Fleischers homestead increase a fundamental constitutional right and allowed Fleischers to collaterally attack the order

confirming the sheriff's sale collaterally. "[T]he homesteader has a vested right in the homestead exemption." *Robin L. Miller Constr. Co., Inc. v. Coltran*, 110 Wn. App. 883, 891, 43 P.3d 67 (2002). *Fed. Intermediate Credit Bank v. O/S Sablefish*, 111 Wn.2d 219, 228, 758 P.2d 494 (1988) "The right to a protected homestead is derived from a mandate of the Constitution of the State of Washington... The Fleischer's constitutionally vested right on May 24, 2021, the date the Order was entered, was \$545,350, The Order did not allow the Fleischers their constitutional vested right and is void.

Again, *Arbogast v. Linz*, 180 Wash. 315, 318 39 P.2d 615, 616 (1935) stated that "Statutes exempting real property from sale on execution have received a liberal construction by nearly all courts of this country (Citations omitted). " It further states that "(A)t the common law real property was not subject to sale on execution and was only made subject to such sale by statutory provision."

Young v. Davis, 50 Wash. 504, 97 P. 506, 507 (1908)

held that only the judicial confirmation of a foreclosure sale vests in the purchasers the full equitable title to the mortgaged premises.

In re Spokane Sav. Bank, 198 Wash. 665, 672, 89 P.2d 802 (1939) held that a sheriff's sale is not final until an order confirming the sale is entered. “*In re Spokane*, at 672 stated:

“The rule relative to the rights of parties before and after the confirmation of a judicial sale is well stated in *Morrison v. Burnette*, 154 Fed. 617, as follows: "There is a marked and radical distinction between the situations, the rights of the parties, and the established practice before and after the confirmation of the sale. The purchaser bids with full notice that the sale to him is subject to confirmation by the court and that there is a power granted and a duty imposed upon the judicial tribunal when it comes to decide whether or not the sale shall be confirmed to so exercise its judicial power as to secure for the owners of the property the largest practicable returns. He is aware that his rights as a purchaser are subject to the rational exercise of this discretion. But after the sale is confirmed that discretion has been exercised. The power to sell and the power to determine the price at which the sale shall be made has been exhausted. From thenceforth the court and the successful bidder occupy the relation of vendor and purchaser in an executed sale, and nothing is sufficient to avoid it which would not set aside a sale of like character between private parties. Hence the rule is settled, and it seems to be universally

approved, that after confirmation of a judicial sale neither inadequacy of price, nor offers of better prices, nor anything but fraud, accident, mistake, or some other cause for which equity would avoid a like sale between private parties, will warrant a court in avoiding the confirmation of the sale or in opening the latter and receiving subsequent bids. [Citing cases.] "This rule is so firmly established that it is no longer debatable..."

In *Bonded Adj. Co. v. Helgerson*, 188 Wash. 176, 178, 61 P.2d 1267 (1936) "a certificate of sale executed by a sheriff does not vest title, being at most but evidence of an inchoate estate that may or may not ripen into an absolute title." *Johnston v. Beneficial Management Corp. of Am.*, 85 Wn.2d 637, 641, 538 P.2d 510 (1975): "a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws: it must have become a title, legal or equitable, to the present or future enjoyment of property..."

Plaintiff initiated the sheriff's sale with the expectation that the "anticipated continuance of the present general laws." Its expectation was disappointed. The "present general laws"

changed. Its sale is void, as is the Order.

This Court should determine whether the amount of the homestead is a fundamental constitutional right of the Fleisch-
ers

If it is, it is void. An order which violates a person's constitutional rights is void. *See Weyerhaeuser Co. v. King County*, 91 Wn.2d 721, 723, 592 P.2d 1108 (1979)

“Having carefully considered all arguments presented by the parties in their briefs and in oral argument, we conclude the 1975 amendment in question violated the constitutional requirements for amending an existing statute, and is void. We therefore reverse the order....

State v. Ponce, 93 Wn.2d 533, 540, 611 P.2d 407 (1980) (a constitutional defect in a traffic conviction rendered the conviction void). *Kahler v. Squire*, 49 Wn.2d 911, 299 P.2d 570 (1956) (criminal conviction under unconstitutional law was void.) *State ex rel. Superior Court v. Sperry*, 79 Wn.2d 69, 483 P.2d 608 (1971) (an order of contempt was void because it violated the constitution.) The trial court should have granted the

November 22, 2021 motion to vacate the void May 24, 2021,
order

II. RAP 13.4(a)(1)

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

The petition meets the criteria of RAP 13.4(a)(1) “If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court.” It conflicts with *City of Seattle v. Long*, 198 Wn.2d 136, 177, 178 493 P.3d 94 (2021 R; *City of Seattle v. Long*, 198 Wn.2d 136, 177, 178 493 P.3d 94 (2021) (Gonzalez, C.J. concurring) stated that the homestead is automatic and requires no human intervention:

I particularly agree that Steven Long’s truck automatically qualified as his homestead because he obviously lived in it. In my view, though, the homestead act, ch. 6.13 RCW, also protected Long’s home both from being towed and from being subject to forced sale, regardless of whether the sale was ultimately avoided.

The homestead act protects ““a home where [the] family may be sheltered and live beyond the reach of financial

misfortune,”” and the act is construed “liberally so it may achieve its purpose of protecting family homes.” *In re Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007)”

Blacks Law Dictionary 4th Ed. Defines AUTOMATIC:

“Having inherent power of action or motion; self-acting or self regulating, mechanical.” *Am. Roll Gold Leaf Co. v. W. H. Coe Mfg. Co.*, 212 F. 720 (1st Cir. 1914).

In *Yardley & Co. v. United States*, 41 C.C.P.A. 85 (U.S. C.C.P.A. 1953), the amount of duty on an import turned on the definition of “automatic.’ At 89 it stated;

“It is a well settled rule of law that Congress generally intends that the usual and ordinary meaning shall attach to the language used in the statutes.

That definition (Automatic) is consistent with those we have found in other recognized references and court decisions. For example, in *Corpus Juris Secundum*, Vol. 7, p. 1296, is found the following:

“AUTOMATIC. Self-acting, or the elimination of human agency or volition, which results in the saving of labor and increases certainty and uniformity of operation; having an inherent power of action or motion, self-acting or self-regulating, not voluntary, not depending on the will, mechanical.

“AUTOMATICALLY. Acting without the continued application of human agency or volition, that is, as opposed to acting rationally or volitionally; of its own accord; self-acting.”

According to this case and its cited authorities, automatic meant that the Fleischers required no application of human agency or violation and did not have to assert their homestead claim in court on May 24, 2021.

United States v. Staples, 971 F.2d 608, 616 (10th Cir. 1992) (reversed on other grounds *Staples v. United States*, 511 U.S. 600, 114 S. Ct. 1793, 128 L. Ed. 2d 608, 1994 U.S. LEXIS 3773, 62 U.S.L.W. 4379, 8 Fla. L. Weekly Fed. S 115, 94 Cal. Daily Op. Service 3659, 94 D.A.R. 6853) defined automatic:

“By automatic is meant self-acting, or the elimination of human agency or volition which results in the saving of labor and increased certainty and uniformity of operation. Citing *Tripp Giant Leveler Co. v. Rogers*, 61 F. 289, 290-91 (D. Mass. 1894).”

Automatic means “the elimination of human agency or volition,” As applied to the Fleischers, while it would have been better if the Fleischers had objected at the May 24, 2021,

but their appearance and asserting was not a *sine qua non* of their receiving their increased homestead.

In *KeyBank Nat'l Ass'n v. McDole (In re McDole)*, No. C08-0098RSL, 2008 U.S. Dist. LEXIS 80531 (W.D. Wash. Sep. 18, 2008), the debtors attempted to avoid a judgment lien under 11 U.S.C. § 522(f), because it impaired their homestead exemption.

CHRONOLOGY

JUDGMENT RECORDED	07/10/2007
HOMESTEAD INCREASE FROM \$40,000 TO \$125,000	07/22/2007
BANKRUPTCY FILED	10/05/2007

This is the same issue, in the bankruptcy lien stripping context, as our state supreme court reached in *Macumber v. Shafer*, 96 Wn.2d 568, 637 P.2d 645 (1981).

Key Bank argued that for purposes of 11 U.S.C. § 522 (f), that the \$40,000 homestead at the time of recording the judgment should apply and not the increased \$125,000. Judge Lasnik *7,8 stated:

“Also, the parties agree that the amendment is remedial. Although a "remedial statute cannot be retroactively applied if it affects a vested right," *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 463, 832 P.2d 1303 (1992), no court has held that a judgment lien is a vested right against a homestead. Nor have any Washington courts held that an increase to the homestead exemption cannot be applied retroactively. In contrast, the Washington Supreme Court has held that an increase to the homestead exemption was retroactive: "In order to further the purpose of the homestead legislation in general, and to give effect to the amendment increasing the dollar amount of the exemption in particular, the amendment must be applied retroactively." *Macumber*, 96 Wn.2d at 570 The *Macumber* decision also explained that an increase in the exemption "does not impair the contractual obligation. It merely modifies the remedy." *Id.* at p. 572.” It admits that the trial court made a mistake of law allows interest o 12% per annum. It is good for ten years. RCW 4.64 allows the renewal of the judgment for another 10 ynears. The homestead amount was set at \$125,000 during 2007. In the meantime inflation has driving up the pile of money a person can receive for the home, although the usefulness of the kitchen sink remains the same. A person looks for the difference between the value of the house and the judgment and as in this case seeks to liquidate the difference.

The increase from \$125,000 to \$545,575 was automatic.

Under RCW §§ 6.13.110 &.160 the proposed sale should have ended on May 24, 2023. Since the increase was automatic, Fleischers did not have to object.



III.

RAP 13.4(b)(4) applies. Shelter is critical for many people and is a matter of compelling public interest. In the instant case, even though the Fleischers no longer reside at their house, they are denied the use of the \$125,000 to find other shelter. The state legislature passed eviction controls (RCW § 59.18.057) this last year. Up here in Bellingham, WA since last year, we have rent controls. (I oppose both, not because I do not believe that housing is a pressing and compelling concern,. It is. but because I do not believe that in the long run or even the short run they work). But to deprive the Fleischers of their house and deprive what is supposed to be the substitute for their house, the \$125,000, is heartless. When the trial court and the court of appeals without citing a case, or statute or undertaking any analysis foster homelessness, something is truly rotten in the state of Denmark.

CONCLUSIONS

The Fleischers petition this Court to review the following three issues:

A. That it determine whether the amount of the homestead is a fundamental constitutional part of Wash. Const. XIX, § 1. If it is a fundamental constitutional part of Wash. Const. XIX § 1, then this Court should vacate the order confirming the sheriff's sale.

B. This court give the word "automatic: in RCW 6.13.040 its plain meaning and rule that the amount of the Fleischers' homestead increase from \$125,000 to \$545,575 on May 12, 2021, applied automatically to the hearing on the Order confirming sheriff's sale on May 24, 2023, and that under RCW §§ 6.13.110 &.160 the order was void and should be vacated and rule in conformity with *City of Seattle v. Long*, 198 Wn.2d 136, 146.147 493 P.3d 94 (2021)

C. That the Fleischer without further ado and regardless of the decision of this court, receive the \$125,000 immediately.

D. Publish the ground-breaking court of appeals deci-

sion.

DATED this 21st day of February 2023.

/s/ James A. Sturdevant
James A. Sturdevant
WSBA #8016
Attorney for Petitioners

WORD COUNT

I hereby certify that by the calculation of the word processing program there are 3,500 words in the brief.

Dated this 21st day of February 2023.

/s/ James Sturdevant
James A. Sturdevant WSBA #8016
Attorney for Petitioners Jay and Tamara Fleischer

JAMES STURDEVANT ATTORNEY AT LAW

February 21, 2023 - 4:47 PM

Filing Motion for Discretionary Review

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: Case Initiation
Trial Court Case Title: Carter (MARGARET L CURTIS - ASG) VS FLEISCHER ET VIR
Trial Court Case Number: 09-2-05356-0
Trial Court County: Snohomish Superior Court
Signing Judge: Dwyer
Judgment Date: 01/20/2023

The following documents have been uploaded:

- MDR_Motion_Discretionary_Review_20230221164225D1701321_3502.pdf
This File Contains:
Motion for Discretionary Review
The Original File Name was Petition Review.pdf

Comments:

Sender Name: James Sturdevant - Email: sturde@openaccess.org
Address:
119 N COMMERCIAL ST STE 235
BELLINGHAM, WA, 98225-4477
Phone: 360-671-2990

Note: The Filing Id is 20230221164225D1701321

FILED
SUPREME COURT
STATE OF WASHINGTON
2/24/2023 9:58 AM
BY ERIN L. LENNON
CLERK

Court of Appeals No. 835122-I

Snohomish County Court No. 09-2-05356-0

Supreme Court No. 101734-1

**SUPREME COURT OF THE
OF THE STATE OF WASHINGTON**

TAMARA AND JAY FLEISCHER, husband and wife,

Petitioner,

v.

MARGARET CURTIS assignee of LINDA CARTER,

Respondent

APPENDIX PETITION FOR REVIEW

James A. Sturdevant
Attorney for Petitioners,
Tamara and Jay Fleischer

119 N. Commercial St. Ste 235
Bellingham, WA 98225
360-671-2990
WSBA #8016

APPENDIX TABLE OF CONTENTS

ORDERS APPEALED FROM

UNPUBLISHED DECISION 11/14/2022	1
ORDER DENYING PUBLICATION 12/19/2022	9
ORDER DENYING MOTION TO RECONSIDER 01/20/2023	10

TABLE OF FEDERAL STATUTES

11 U.S.C. § 522(f)	11
--------------------	----

WASHINGTON STATE CONSTITUTION

Wash. Const. Art. XIX § 1	19
---------------------------	----

TABLE OF WASHINGTON STATE STATUTES

RCW 6.13.020	20
RCW 6.13.040	21
RCW 6.13.110	23
RCW 6.13.160	24

WASHINGTON STATE COURT RULE

CR 60(b)	25
----------	----

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LISA S. CARTER,

Respondent,

v.

TAMARA L. FLEISCHER and JAY P.
FLEISCHER,

Appellants.

DIVISION ONE

No. 83512-2-I

UNPUBLISHED OPINION

DWYER, J. — The homestead of judgment debtors Jay and Tamara Fleischer was sold to judgment creditor Margaret Curtis¹ in a sheriff's sale. The Fleischers did not object to the sale during the 20-day statutory objection period. Upon Curtis's motion, the superior court thereafter entered an order confirming the sale. Nearly six months later, the Fleischers filed in the superior court a CR 60(b) motion to vacate the order. The superior court denied the Fleischers' motion, and the Fleischers appealed.

On appeal, the Fleischers contend that they are entitled to the homestead exemption amount set forth in the current version of the relevant statute, rather than the amount set forth in the statute in effect when the sheriff's sale occurred. They assert that the order confirming the sheriff's sale is void because they have a constitutional right to the current homestead exemption amount. We disagree. Although the right to a homestead exemption is constitutional, the specific

¹ The original judgment creditor, Lisa Carter, assigned the judgment to Curtis prior to the sale of the homestead.

homestead exemption amount to which a judgment debtor is entitled is a matter assigned to the legislature. The Fleischers have no constitutional right to receive any specific homestead exemption amount.

Moreover, in contending that the superior court erred in confirming the sheriff's sale because the legislature amended the homestead exemption amount subsequent to the sale, the Fleischers are asserting an error of law in the underlying order confirming the sale. Such an error may not be corrected pursuant to a CR 60(b) motion to vacate. Rather, errors of law must be raised on appeal. Accordingly, we affirm the superior court's order denying the Fleischers' motion to vacate.

I

On December 30, 2020, the superior court entered an order directing a sheriff's sale of the Fleischers' homestead in execution of a judgment. Based on the report of a court-appointed appraiser, the superior court determined that the value of the homestead exceeded the statutory homestead exemption amount, which was then \$125,000. See former RCW 6.13.030 (2007). As directed by RCW 6.13.160, the superior court ordered that the "sheriff shall proceed with the sale" and that, at the sale, "no bid may be received unless it exceeds the amount of the \$125,000 homestead exemption."

On April 2, 2021, the sheriff sold the Fleischers' homestead to Curtis for a sum greater than the homestead exemption amount. The sheriff deposited \$125,000, the amount of the homestead exemption then in effect, into the court registry to be paid to the Fleischers. See RCW 6.13.170. On April 5, 2021, the

superior court clerk filed a notice regarding the sale of the Fleischers' homestead, which the clerk also mailed to the Fleischers. The notice informed the Fleischers that the sale would be subject to confirmation by the court unless they filed an objection within 20 days. See RCW 6.21.110(2) (providing that the judgment creditor at a 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 unless the judgment debtor files an objection to confirmation within that period). The Fleischers did not object to the sale.

On May 12, 2021, following the expiration of the 20-day objection period, a bill passed by the legislature amending the statute setting forth the amount of a homestead exemption became effective. RCW 6.13.030; ENGROSSED SUBSTITUTE S.B. 5408, at 2, 67th Leg., Reg. Sess. (Wash. 2021).² The following day, Curtis filed a motion in the superior court to confirm the sheriff's sale. On May 24, 2021, finding "no substantial irregularities in the sale," the court entered an order confirming the sale.

Nearly six months later, on November 22, 2021, the Fleischers filed a motion pursuant to CR 60(b) seeking to vacate the order confirming the sheriff's sale. In their motion, the Fleischers contended that the legislature's amendment of the homestead exemption amount either rendered the order "void" or caused the order's entry to be "a mistake of law" or an "irregularity." On December 3,

² The statute now provides that "[t]he homestead exemption amount is the greater of" \$125,000 or, as relevant here, "[t]he county median sale price of a single-family home in the preceding calendar year." RCW 6.13.030(1)(b).

2021, the superior court denied the Fleischers' motion to vacate the order confirming the sheriff's sale.

The Fleischers appeal.

II

On appeal, the Fleischers assert that the superior court erred by denying their motion to vacate the order confirming the sheriff's sale. According to the Fleischers, the certificate of sale was rendered void by the legislature's subsequent amendment of the homestead exemption amount because the right to a homestead exemption is constitutional. However, the Fleischers disregard that they are not being denied a homestead exemption. Rather, they simply dispute the proper calculation of the homestead exemption amount, which is a statutory—not a constitutional—question. Moreover, a CR 60(b) motion to vacate is not a means of correcting errors of law. Rather, to assert such errors, the Fleischers were required to appeal from the underlying order confirming the sheriff's sale. Because the Fleischers have demonstrated no error in the superior court's order denying their motion to vacate, we affirm.

Washington's constitution directs the legislature to "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. Pursuant to this mandate, our legislature in 1895 enacted the homestead act, which "implements the policy that each citizen have a home where [the] family may be sheltered and live beyond the reach of financial misfortune." City of Seattle v. Long, 198 Wn.2d 136, 146, 493 P.3d 94 (2021) (alteration in original) (internal quotation marks omitted) (quoting

In re Dependency of Schermer, 161 Wn.2d 927, 953, 169 P.3d 452 (2007)). The homestead act, chapter 6.13 RCW, sets forth the procedures governing the sale of a homestead to satisfy a judgment. It further provides the homestead exemption amount to which judgment debtors are entitled upon such sale. RCW 6.13.030. Thus, although the existence of a homestead exemption arises from our state's constitution, the proper homestead exemption amount is a matter assigned to the legislature.

Civil Rule 60(b) provides, in specified circumstances, for relief from a judgment or order. However, the rule “does not authorize vacation of judgments except for reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings.” Burlingame v. Consol. Mines & Smelting Co., 106 Wn.2d 328, 336, 722 P.2d 67 (1986). “Errors of law may not be corrected by a motion pursuant to CR 60(b), but must be raised on appeal.” In re Marriage of Tang, 57 Wn. App. 648, 654, 789 P.2d 118 (1990).³ Although review of a denial of a CR 60(b) motion “is generally limited to the propriety of the denial,” “if questions are raised concerning lack of trial court jurisdiction and fundamental constitutional rights, these issues may be determined on appeal as justice may require.” In re Marriage of Maxfield, 47 Wn. App. 699, 703, 737 P.2d 671 (1987) (citing State v. Santos, 104 Wn.2d 142, 702 P.2d 1179 (1985)).

Generally, we review a trial court's denial of a CR 60(b) motion to vacate for a manifest abuse of discretion. Haley v. Highland, 142 Wn.2d 135, 156, 12

³ “An error of law is committed when the court . . . makes some erroneous order or ruling on some question of law which is properly before it and within its jurisdiction to make.” Port of Port Angeles v. CMC Real Est. Corp., 114 Wn.2d 670, 674, 790 P.2d 145 (1990) (quoting In re Ellern, 23 Wn.2d 219, 222, 160 P.2d 639 (1945)).

P.3d 119 (2000). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” Gillett v. Conner, 132 Wn. App. 818, 822, 133 P.3d 960 (2006). CR 60(b)(5), however, provides for the vacation of a void judgment. “Because courts have a mandatory, nondiscretionary duty to vacate void judgments,” we review de novo a trial court’s decision to grant or deny a CR 60(b)(5) motion. Dobbins v. Mendoza, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997).

Here, the Fleischers did not appeal from the superior court’s order confirming the sheriff’s sale. Instead, nearly six months after the order was entered, they filed a CR 60(b) motion to vacate the order. They assert on appeal that vacation of the order confirming the sheriff’s sale is required because, according to the Fleischers, the underlying order was rendered void when the legislature amended the statutory homestead exemption amount subsequent to the sheriff’s sale but prior to entry of the order confirming that sale. This is so, the Fleischers contend, because their right to a homestead exemption is conferred by our state’s constitution. Although this assertion is correct, the implication assigned to it by the Fleischers is not.

Although the Fleischers are correct that the Washington constitution mandates a homestead exemption, they are incorrect that the *amount* of that exemption implicates a constitutional interest. Rather, the amount of the homestead exemption to which a judgment debtor is entitled is set forth solely by statute. RCW 6.13.030. The Fleischers do not contend that they were improperly denied a homestead exemption. Instead, they assert that the superior

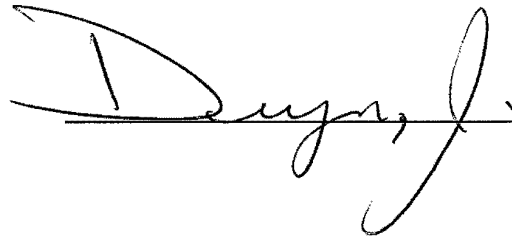
court inaccurately determined the amount of the exemption to which they are entitled. As presented here, there is no constitutional question at issue. Thus, the Fleischers are incorrect that the order confirming the sheriff's sale is void, and the superior court did not err by denying their motion to vacate on this basis.

Because the Fleischers have not demonstrated that the order confirming the sheriff's sale is constitutionally void, their appeal is confined to a challenge to the propriety of the superior court's denial of the motion to vacate. Maxfield, 47 Wn. App. at 703. In challenging the superior court's determination of the proper homestead exemption amount, the Fleischers assert an error of law. "Errors of law are not correctable through CR 60(b); rather, direct appeal is the proper means of remedying legal errors." Burlingame, 106 Wn.2d at 336; see also In re the Marriage of Persinger, 188 Wn. App. 606, 609, 355 P.3d 291 (2015) ("Our review of a CR 60(b) decision is limited to the trial court's decision, not the underlying order the party seeks to vacate."). The Fleischers neither objected to the sheriff's sale during the statutory 20-day objection period nor appealed from the superior court's order confirming the sheriff's sale. We will not review on appeal the underlying order sought to be vacated on a CR 60(b) motion.⁴

⁴ In the superior court, the Fleischers sought to vacate the order confirming the sheriff's sale on the basis of both CR 60(b)(5) and CR 60(b)(1). On appeal, they do not assert that the superior court erred in denying their motion on the basis of CR 60(b)(1), which provides for relief from judgment due to "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." However, we note that, in asserting that vacation of the order was required by that rule, the Fleischers did not assert any "mistake" or "irregularity" pursuant to which an order may be vacated. Rather, they simply sought to challenge the underlying order confirming the sheriff's sale. Again, the Fleischers cannot assert errors of law in the underlying order when appealing from an order on a motion to vacate.

Because the Fleischers have not demonstrated that the order confirming the sheriff's sale is void, the superior court did not err in denying their motion to vacate the order pursuant to CR 60(b)(5). Moreover, in contending that the homestead exemption amount determined by the superior court is incorrect, the Fleischers assert an error of law in the underlying order. Such errors, even if made, may not be remedied pursuant to a CR 60(b) motion to vacate.

Accordingly, we affirm the superior court's order denying the Fleischers' motion to vacate. We remand to the superior court for further proceedings, including, when appropriate, the disbursement of the proper homestead exemption amount.^{5,6}



WE CONCUR:



⁵ The Fleischers assert on appeal that they should "immediately" receive the \$125,000 homestead exemption. We do not view it as unusual that the homestead exemption remains in the court registry under the circumstances presented.

⁶ Prior to oral argument, respondent filed a motion to dismiss this appeal as frivolous. A commissioner of this court referred the motion to the panel considering the merits of the appeal. Because we conclude that the appeal was not frivolous, we deny that motion.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LISA S. CARTER,

Respondent,

v.

TAMARA L. FLEISCHER and JAY P.
FLEISCHER,

Appellants.

DIVISION ONE

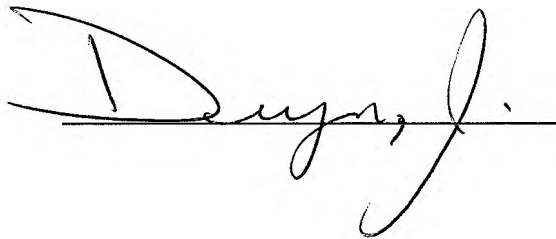
No. 83512-2-I

ORDER DENYING MOTION
TO PUBLISH OPINION

The appellants having filed a motion to publish opinion, and the hearing panel having considered its prior determination and finding that the opinion will not be of precedential value; now, therefore, it is hereby

ORDERED that the unpublished opinion filed November 14, 2022, shall remain unpublished.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "D. J. ...", written over a horizontal line.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LISA S. CARTER,

Respondent,

v.

TAMARA L. FLEISCHER and JAY P.
FLEISCHER,

Appellants.

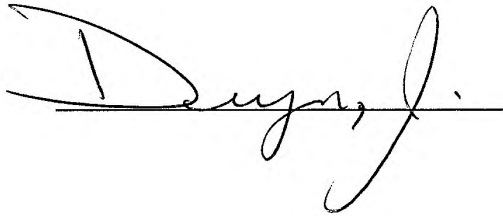
DIVISION ONE

No. 83512-2-1

ORDER DENYING MOTION
FOR RECONSIDERATION

The appellants having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby ORDERED that the motion for reconsideration is hereby denied.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "D. J. [unclear]", is written over a horizontal line. The signature is cursive and stylized.

11 USCS § 522, Part 1 of 3

Current through Public Law 117-285, approved December 21, 2022, with a gap of Public Law 117-263.

United States Code Service > **TITLE 11. BANKRUPTCY (§§ 101 — 1532)** > **CHAPTER 5. Creditors, the Debtor, and the Estate (Subchs. I — III)** > **Subchapter II. Debtor's Duties and Benefits (§§ 521 — 528)**

§ 522. Exemptions

(a) In this section—

- (1) “dependent” includes spouse, whether or not actually dependent; and
- (2) “value” means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b)

(1) Notwithstanding section 541 of this title [11 USCS § 541], an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title [11 USCS § 302] and individual cases filed under section 301 or 303 of this title [11 USCS § 301 or 303] by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)].

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986 [26 USCS § 7805], and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805 [26 USCS § 7805], those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii)

(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.]; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.] and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)], under section 401(a)(31) of the Internal Revenue Code of 1986 [26 USCS § 401(a)(31)], or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D)

(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 [26 USCS § 402(c)] or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that—

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)]; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title [11 USCS § 502] as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) [11 USCS § 523(a)] (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is—

(A)

(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USCS § 544, 545, 547, 548, 549, or 724(a)]; and

(ii) not void under section 506(d) of this title [11 USCS § 506(d)]; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title [11 USCS § 523(a)(4) or 523(a)(6)] owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

- (d) The following property may be exempted under subsection (b)(2) of this section:
- (1) The debtor's aggregate interest, not to exceed \$27,900 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.
 - (2) The debtor's interest, not to exceed \$4,450 in value, in one motor vehicle.
 - (3) The debtor's interest, not to exceed \$700 in value in any particular item or \$14,875 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
 - (4) The debtor's aggregate interest, not to exceed \$1,875 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
 - (5) The debtor's aggregate interest in any property, not to exceed in value \$1,475 plus up to \$13,950 of any unused amount of the exemption provided under paragraph (1) of this subsection.
 - (6) The debtor's aggregate interest, not to exceed \$2,800 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.
 - (7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.
 - (8) The debtor's aggregate interest, not to exceed in value \$14,875 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title [11 USCS § 542(d)], in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
 - (9) Professionally prescribed health aids for the debtor or a dependent of the debtor.
 - (10) The debtor's right to receive—
 - (A) a social security benefit, unemployment compensation, or a local public assistance benefit;
 - (B) a veterans' benefit;
 - (C) a disability, illness, or unemployment benefit;
 - (D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—
 - (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
 - (ii) such payment is on account of age or length of service; and
 - (iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986 [26 USCS § 401(a), 403(a), 403(b), or 408].
 - (11) The debtor's right to receive, or property that is traceable to—
 - (A) an award under a crime victim's reparation law;
 - (B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$27,900, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)].

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5) [11 USCS § 523(a)(5)]; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)

(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$7,575.

(4)

(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term “household goods” means—

- (i)** clothing;
- (ii)** furniture;
- (iii)** appliances;
- (iv)** 1 radio;
- (v)** 1 television;
- (vi)** 1 VCR;
- (vii)** linens;
- (viii)** china;
- (ix)** crockery;
- (x)** kitchenware;
- (xi)** educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii)** medical equipment and supplies;
- (xiii)** furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv)** personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv)** 1 personal computer and related equipment.

(B) The term “household goods” does not include—

- (i)** works of art (unless by or of the debtor, or any relative of the debtor);
- (ii)** electronic entertainment equipment with a fair market value of more than \$800 in the aggregate (except 1 television, 1 radio, and 1 VCR);
- (iii)** items acquired as antiques with a fair market value of more than \$800 in the aggregate;
- (iv)** jewelry with a fair market value of more than \$800 in the aggregate (except wedding rings); and
- (v)** a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

(g) Notwithstanding sections 550 and 551 of this title [11 USCS §§ 550 and 551], the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title [11 USCS § 510(c)(2), 542, 543, 550, 551, or 553], to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)

- (A)** such transfer was not a voluntary transfer of such property by the debtor; and
- (B)** the debtor did not conceal such property; or

(2) The debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

- (1)** such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USCS § 544, 545, 547, 548, 549, or 724(a)] or recoverable by the trustee under section 553 of this title [11 USCS § 553]; and
- (2)** the trustee does not attempt to avoid such transfer.

(i)

(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title [11 USCS § 550], the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title [11 USCS § 551], a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USCS § 544, 545, 547, 548, 549, or 724(a)], under subsection (f) or (h) of this section, or property recovered under section 553 of this title [11 USCS § 553], may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

- (1)** the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and
- (2)** any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986 [26 USCS § 408 or 408A], other than a simplified employee pension under section 408(k) of such Code [26 USCS § 408(k)] or a simple retirement account under section 408(p) of such Code [26 USCS § 408(p)], the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986 [26 USCS § 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8)], and earnings thereon, shall not exceed \$1,512,350 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

- (1)** real or personal property that the debtor or a dependent of the debtor uses as a residence;
- (2)** a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
- (3)** a burial plot for the debtor or a dependent of the debtor; or
- (4)** real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)

(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 [11 USCS §§ 544 and 548], as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$189,050 in value in—

- (A)** real or personal property that the debtor or a dependent of the debtor uses as a residence;
- (B)** a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
- (C)** a burial plot for the debtor or a dependent of the debtor; or
- (D)** real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)

- (A)** The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.
- (B)** For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)

(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$189,050 if—

- (A)** the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18 [18 USCS § 3156]), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or
- (B)** the debtor owes a debt arising from—
 - (i)** any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 USCS § 78c(a)(47)]), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;
 - (ii)** fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 [15 USCS § 78l or 78o(d)] or under section 6 of the Securities Act of 1933 [15 USCS § 77f];
 - (iii)** any civil remedy under section 1964 of title 18; or
 - (iv)** any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

History

HISTORY:

Nov. 6, 1978, P. L. 95-598, Title I, § 101, 92 Stat. 2586; July 10, 1984, P. L. 98-353, Title III, Subtitle A, § 306, Subtitle H, § 453, 98 Stat. 353, 375; Oct. 27, 1986, P. L. 99-554, Title II, Subtitle C, § 283(i), 100 Stat. 3117; Nov. 29, 1990, P. L. 101-647, Title XXV, Subtitle B, § 2522(b), 104 Stat. 4866; Oct. 22, 1994, P. L. 103-394, Title I, § 108(d), Title III, §§ 303, 304(d), 310, Title V, § 501(d)(12), 108 Stat. 4112, 4132, 4133, 4137, 4145; Feb. 12, 1998, 63 Fed. Reg. 7179.; Nov. 1, 2000, P. L. 106-420, § 4, 114 Stat. 1868; Feb. 20, 2001, 66 Fed. Reg. 10910.; Feb. 24, 2004, 69 Fed. Reg. 8482.; April 20, 2005, P. L. 109-8, Title II, Subtitle B, § 216, Subtitle C, § 224(a), (e)(1), Title III, §§ 307, 308, 313(a), 322(a), 119 Stat. 55, 62, 65, 81, 87, 96; Feb. 14, 2007, 72 Fed. Reg. 7082.; Feb. 25, 2010, 75 Fed. Reg. 8747.; Dec. 22, 2010, P. L. 111-327, § 2(a)(17), 124 Stat. 3559; Feb. 21, 2013, 78 Fed. Reg. 12089.; Feb. 16, 2016, 81 Fed. Reg. 8748.; Feb. 12, 2019, 84 Fed. Reg. 3488.; Jan. 31, 2022, 87 Fed. Reg. 6625.

United States Code Service
Copyright © 2023 All rights reserved.

End of Document

Wash. Const. Art. XIX, § 1

Current through January 1, 2022

Annotated Constitution of Washington > Constitution of the State of Washington > Article XIX Exemptions

§ 1 Exemptions — Homesteads, etc.

The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

Annotated Revised Code of Washington
Copyright © 2023 Matthew Bender & Company, Inc.,
a member of the LexisNexis Group. All rights reserved.

End of Document

Rev. Code Wash. (ARCW) § 6.13.030

Statutes current through 2022 Regular Session

Annotated Revised Code of Washington > *Title 6 Enforcement of Judgments (Chs. 6.01 — 6.44)* > *Chapter 6.13 Homesteads (§§ 6.13.010 — 6.13.240)*

6.13.030. Homestead exemption amount.

- (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.

History

2021 c 290, § 3, effective May 12, 2021; 2007 c 429 § 1; 1999 c 403 § 4; 1993 c 200 § 2; 1991 c 123 § 2; 1987 c 442 § 203; 1983 1st ex.s. c 45 § 4; 1981 c 329 § 10; 1977 ex.s. c 98 § 3; 1971 ex.s. c 12 § 1; 1955 c 29 § 1; 1945 c 196 § 3; 1895 c 64 § 24; Rem. Supp. 1945 § 552. Formerly RCW 6.12.050.

Annotated Revised Code of Washington
Copyright © 2023 Matthew Bender & Company, Inc.,
a member of the LexisNexis Group. All rights reserved.

End of Document

Rev. Code Wash. (ARCW) § 6.13.040

Statutes current through 2022 Regular Session

Annotated Revised Code of Washington > *Title 6 Enforcement of Judgments (Chs. 6.01 — 6.44)* > *Chapter 6.13 Homesteads (§§ 6.13.010 — 6.13.240)*

6.13.040. Automatic homestead exemption — Conditions — Declaration of homestead — Declaration of abandonment.

(1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

- (a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;
- (b) A legal description of the premises; and
- (c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

- (a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;
- (b) A legal description of the premises; and
- (c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

History

1993 c 200 § 3; 1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.

End of Document

Rev. Code Wash. (ARCW) § 6.13.110

Statutes current through 2022 Regular Session

Annotated Revised Code of Washington > *Title 6 Enforcement of Judgments (Chs. 6.01 — 6.44)* > *Chapter 6.13 Homesteads (§§ 6.13.010 — 6.13.240)*

6.13.110. Application under RCW 6.13.100 must be made by verified petition — Contents.

The application under RCW 6.13.100 must be made by filing a verified petition, showing:

- (1) The fact that an execution has been levied upon the homestead.
- (2) The name of the owner of the homestead property.
- (3) That the net value of the homestead exceeds the amount of the homestead exemption.

History

1987 c 442 § 211; 1981 c 329 § 15; 1895 c 64 § 10; RRS § 538. Formerly RCW 6.12.150.

Annotated Revised Code of Washington
Copyright © 2023 Matthew Bender & Company, Inc.,
a member of the LexisNexis Group. All rights reserved.

End of Document

Rev. Code Wash. (ARCW) § 6.13.160

Statutes current through 2022 Regular Session

Annotated Revised Code of Washington > *Title 6 Enforcement of Judgments (Chs. 6.01 — 6.44)* > *Chapter 6.13 Homesteads (§§ 6.13.010 — 6.13.240)*

6.13.160. Sale, if not divisible.

If, from the report, it appears to the court that the appraised value of the homestead property, less liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon, exceeds the amount of the homestead exemption and the property is not divided, the court must make an order directing its sale under the execution. The order shall direct that at such sale no bid may be received unless it exceeds the amount of the homestead exemption.

History

1999 c 403 § 3; 1987 c 442 § 216; 1981 c 329 § 18; 1895 c 64 § 18; RRS § 546. Formerly RCW 6.12.230.

Annotated Revised Code of Washington
Copyright © 2023 Matthew Bender & Company, Inc.,
a member of the LexisNexis Group. All rights reserved.

End of Document

Wash. CR 60

Current with rules received through January 1, 2023

WA - Washington Local, State & Federal Court Rules > PART IV RULES FOR SUPERIOR COURT > SUPERIOR COURT CIVIL RULES (CR) > 7. JUDGMENT

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
- (2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;
- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
- (8) Death of one of the parties before the judgment in the action;
- (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
- (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
- (11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs abolished — Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on vacation of judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

History

Adopted May 5, 1967, effective July 1, 1967; amended Sept. 26, 1972, effective Sept. 26, 1972; amended, effective Jan. 1, 1977; amended, effective April 28, 2015.

Washington Local, State & Federal Court Rules
Copyright © 2023 All rights reserved.

End of Document

JAMES STURDEVANT ATTORNEY AT LAW

February 24, 2023 - 9:58 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,734-1
Appellate Court Case Title: Lisa S. Carter v. Tamara L. and Jay P. Fleischer
Superior Court Case Number: 09-2-05356-0

The following documents have been uploaded:

- 1017341_Affidavit_Declaration_20230224095457SC962590_9767.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Declaration of Service Sup. Ct..pdf
- 1017341_Other_20230224095457SC962590_3445.pdf
This File Contains:
Other - Appendix
The Original File Name was Appendix Petition for Review.pdf

A copy of the uploaded files will be sent to:

- rodharmon@msn.com
- rodharmon@rodharmon.com

Comments:

Declaration of Service and Appendix to Petition for Review

Sender Name: James Sturdevant - Email: sturde@openaccess.org
Address:
119 N COMMERCIAL ST STE 235
BELLINGHAM, WA, 98225-4477
Phone: 360-671-2990

Note: The Filing Id is 20230224095457SC962590

FILED
SUPREME COURT
STATE OF WASHINGTON
2/24/2023 9:58 AM
BY ERIN L. LENNON
CLERK

Court of Appeals No. 835122-I

Snohomish County Court No. 09-2-05356-0

Supreme Court No. 1017341 - I

**SUPREME COURT OF THE
OF THE STATE OF WASHINGTON**

TAMARA AND JAY FLEISCHER, husband and wife,

Petitioner,

v.

MARGARET CURTIS assignee of LINDA CARTER,

Respondent

DECLARATION OF SERVICE

James A. Sturdevant
Attorney for Petitioners,
Tamara and Jay Fleischer

119 N. Commercial St. Ste 235
Bellingham, WA 98225
360-671-2990
WSBA #8016

I hereby certify and declare under penalty of perjury under the laws of the state of Washington that I served a copy of the Amended Petition for Review on the attorney for the Respondent Rodney Harmon on February 21, 2023 as follows: via e-mail to rodharmon@msn.com and via 1st Class U.S. postage prepaid to Rodney Harmon , Attorney at Law, P.O. Box 1066 Bothell, WA 98041.

Dated at Bellingham, WA this 23rd day of February 2023.

/ James A. Sturdevant
James A. Sturdevant Attorney for
Petitioners, Tamara and Jay Fleischer

JAMES STURDEVANT ATTORNEY AT LAW

February 24, 2023 - 9:58 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,734-1
Appellate Court Case Title: Lisa S. Carter v. Tamara L. and Jay P. Fleischer
Superior Court Case Number: 09-2-05356-0

The following documents have been uploaded:

- 1017341_Affidavit_Declaration_20230224095457SC962590_9767.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Declaration of Service Sup. Ct..pdf
- 1017341_Other_20230224095457SC962590_3445.pdf
This File Contains:
Other - Appendix
The Original File Name was Appendix Petition for Review.pdf

A copy of the uploaded files will be sent to:

- rodharmon@msn.com
- rodharmon@rodharmon.com

Comments:

Declaration of Service and Appendix to Petition for Review

Sender Name: James Sturdevant - Email: sturde@openaccess.org
Address:
119 N COMMERCIAL ST STE 235
BELLINGHAM, WA, 98225-4477
Phone: 360-671-2990

Note: The Filing Id is 20230224095457SC962590