

FILED
SUPREME COURT
STATE OF WASHINGTON
8/24/2023 10:23 AM
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Ct. No. 102309-0

(Court of Appeals No. 56982-5-II)

WASHINGTON TRUST BANK, a Washington Corporation,

Plaintiff/Respondent,

v.

KYLE K. KOZAK, an individual,

Defendant/Appellant.

PETITION FOR DISCRETIONARY REVIEW

Thomas A. Ped, WSBA #40232
Williams Kastner & Gibbs PLLC
1515 SW Fifth Avenue, Suite 600
Portland, OR 97201-5449
Tel: (503) 228-7967
Fax: (503) 222-7261
tped@williamskastner.com

Attorney for Defendant/Appellant

TABLE OF CONTENTS

	Page(s)
I. IDENTITY OF THE PETITIONER	1
II. STATEMENT OF DECISION	1
III. ISSUES PRESENTED FOR REVIEW	1
IV. STATEMENT OF THE CASE.....	1
A. Separate, Pre-Marriage Debt of Kozak	1
B. Hearing on Exemption Claim	3
C. Procedural History	5
D. Certification of Questions to Washington Supreme Court	5
V. ARGUMENT	6
A. Washington Law and Policy Protect Marital Assets from Separate Spousal Debts	6
B. The “Marital Bankruptcy Rule” Protects Marital Assets from Pre-Marriage Debts	8
C. Washington Trust’s Judgment Was Not “Within” Three Years of Kozak’s Marriage.	10

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Haley v. Highland</i> , 142 Wash.2d 135, 12 P.3d 119 (2000)	10
<i>In re Diafos</i> , 110 Wash.App.2d 758, 762-63, 37 P.3d 304 (2001)	8
<i>In re Marriage of Chumbley</i> , 150 Wash.2d 1, 5, 74 P.3d 129 (2003).	7
<i>Nelson v. P.S.C., Inc</i>	5
<i>Nichols Hills Bank v. McCool</i> , 104 Wash.2d 78, 701 P.2d 1114 (1985)....	6
<i>Watters v. Doud</i> , 92 Wash.2d 317, 596 P.2d 280 (1979)	10
Statutes	
RCW 6.17.020(3).....	2
RCW 26.16.200	4
RCW 25.16.200	9
RCW 26.16.010	6
RCW 26.16.030	7
RCW 26.16.030(2).....	6
RCW 26.16.200	1, 3, 8, 10
Rules	
RAP 13.4(b)(2)-(4)	1

Pursuant to RAP 13.4(b)(2)-(4), Appellant Kyle Kozak respectfully requests discretionary review of

I. IDENTITY OF THE PETITIONER

The party seeking review is appellant Kyle Kozak.

II. STATEMENT OF DECISION

On July 25, 2023, Division II of the Court of Appeals issues its decision affirming the decision of the trial court.

III. ISSUES PRESENTED FOR REVIEW

Whether the its proper to conclude that Washington Trust Bank’s judgment in 2011, obtained five years prior to Kozak’s marriage, was “within” three years of the marriage for the purposes of RCW 26.26.200.

IV. STATEMENT OF THE CASE

A. Separate, Pre-Marriage Debt of Kozak

In 2007, Mr. Kozak and two business partners invested jointly in projects to construct and sell homes on a speculative basis using Mr. Kozak’s company as the general contractor. CP 47 (Kozak Dec., ¶ 2.)

The projects were funded in large part by commercial bank loans. In conjunction with the loans, Mr. Kozak and his partners signed commercial guarantees which guaranteed the debts personally. CP 47 (Kozak Dec., ¶ 3.)

Due to the financial crisis of 2008, construction stopped and the projects could not be completed. Neither Mr. Kozak nor his business partners could repay the loans. CP 48 (Kozak Dec., ¶ 4.)

Washington Trust obtained a judgment against Mr. Kozak on his obligations under the personal guarantees in Washington County Circuit Court for the State of Oregon under Case No. C111998CV on November 4, 2011. The judgment was filed as a Foreign Judgment on September 11, 2019. CP 36 (Objection to Debtor's Exemption Claim, ¶ 2; *see also* CP 42, Ex. A). The judgment was renewed on Plaintiff's Application for Extension of Judgment for an additional ten years on October 11, 2021, pursuant to RCW 6.17.020(3). CP 36-37.

Mr. Kozak and his spouse, Brittany Moyer, were married in 2016. CP 48 (Kozak Dec., ¶ 7.)

On November 18, 2021, Washington Trust served its writ of garnishment upon I.Q. Credit Union. The writ froze the marital community funds of Mr. Kozak and Ms. Moyer. CP 48 (Kozak Dec., ¶ 8.)

B. Hearing on Exemption Claim

On December 10, 2021, Mr. Kozak timely delivered his Exemption Claim to the Writ of Garnishment. CP 30. The Exemption Claim applies to all funds sought by the Writ of Garnishment because the funds “are marital community and fully exempt from garnishment for this antecedent debt” pursuant to RCW 26.16.200. *Id.*, p. 2.

Washington Trust served its Objection to Debtor’s Exemption Claim on December 16, 2021. CP 36.

At the hearing on the exemption claim, the trial court held:

THE COURT: All right. Well, I thank – I thank you for your argument, and I – I did appreciate sort of having some insight into this statute, which I hadn’t had an opportunity to review before. But I

do find the exemption complaint should be denied based on RCW 26.16.200.

This statute is really intended to protect the non-debtor spouse from being liable for the other partner's pre-marital debt, essentially. I think that's the policy behind this is to protect the spouse, but that doesn't mean it protects the community asset.

So in the three years within marriage, based on the case authority and my reading of that, the Court finds that that's really saying that if you're a creditor and you're seeking payment of your debt, you have to reduce it to judgment about, you know – you can't wait too long after somebody's gotten married. Because if you go beyond the three years and now you're trying to seek a debt, it's – it's essentially a fairness argument. It's a – it's a lack of knowledge by the spouse that there's this debt that's going to be out there that's going to use up some community property. And so it's saying you have to do this within three years.

Well, here the creditor, Washington Trust Bank, did reduce their debt against the defendant to judgment before three years had essentially – before even the marriage. So their – that provision, essentially, has been met under here. And under the statute it does say that the accumulations and earnings of the – of the spouse shall be available to the legal process to satisfy the debts incurred by a spouse prior to marriage. And so I find that this is – that the garnishment is appropriate here by given RCW 26.16.200, and so I'm denying the defendant's motion. RP 10-12.

C. Procedural History

The trial court's Order Denying Exemption Claim Of Defendant was entered on April 25, 2022. CP 219.

On May 20, 2022, Mr. Kozak filed a Notice of Appeal to the Washington Court of Appeals, Division II, seeking review of the court's order. CP 223.

D. Certification of Questions to Washington Supreme Court

As noted in the Introduction above, the United States District Court for the Western District of Washington has certified the same questions raised in this appeal to the Washington Supreme Court for decision. Following the trial court's ruling in this case in March 2022, a case based on similar facts was argued in *Nelson v. P.S.C., Inc.*, United States District Court, Western District of Washington, No. C22-0712-JCC. *See* AP 1-3; Order.

The Washington Supreme Court has assigned the matter for briefing and decision under its Case No. 101444-9. *See* AP 4-5; Letter from Washington Supreme Court.

V. ARGUMENT

A. **Washington Law and Policy Protect Marital Assets from Separate Spousal Debts**

Washington law prioritizes protecting community property, and a spouse's separate property, from the separate debts of the other spouse. Under decisional law, community property is generally not available to satisfy the separate debts of either spouse. *Nichols Hills Bank v. McCool*, 104 Wash.2d 78, 701 P.2d 1114 (1985). By statute, the separate property of either spouse is not subject to the "debts or contracts" of the other. RCW 26.16.010 (husband); RCW 26.16.020 (wife).

In *Nichols*, a bank sought to enforce a father's obligations as a personal guarantor on a loan taken out by his son. The bank attempted to reach the father's marital community assets. The mother had protested the father making the guaranty but never communicated her opposition to the bank. RCW 26.16.030(2) specifically prohibits either spouse from giving away community property without the express or implied consent of the other. At trial, the bank argued unsuccessfully that the mother's silence

amounted to consent. The lower court dismissed the bank's claim against the community estate.

The Washington Supreme Court, ruling *en banc*, rejected the bank's argument outright and agreed with the trial court. The opinion states:

We refuse to encroach on the province of the Legislature by judicially substituting a less restrictive knowledge requirement for a statutorily-specified consent requirement. **Not only would we do violence to a specific statute by adopting the bank's analysis, we would also undermine a core purpose of the community property laws.** The bank's interpretation would enable one spouse to give away an entire estate in derogation of the interest of the non-acting spouse who knew of but felt powerless to halt the transfer.

104 Wash.2d at 82-83. [Emphasis added.]

Washington's "core purpose" in protecting marital assets is further reflected in the presumption under the law that assets acquired during marriage are community property. *In re Marriage of Chumbley*, 150 Wash.2d 1, 5, 74 P.3d 129 (2003). RCW 26.16.030 (Property acquired after marriage "is community property.") To rebut the presumption, and thereby proceed against a spouse's separate property acquired during the marriage, there must be present clear and convincing evidence that the asset fits within a separate property provision. *Chumbley*, 150 Wash.2d at 5.

B. The “Marital Bankruptcy Rule” Protects Marital Assets from Pre-Marriage Debts

As with protections for marital assets as to spousal debts incurred during a marriage, there are likewise strict protections of marital assets as to debts and liabilities incurred by one spouse prior to the marriage. Historically under Washington law, once a debtor married, all of his or her earnings and accumulations therefrom became community property and were thus beyond the reach of creditors. This “instant protection” afforded to a debtor from creditors upon marriage gave rise to the term “marital bankruptcy.” *In re Diafos*, 110 Wash.App.2d 758, 762-63, 37 P.3d 304 (2001).

The “marital bankruptcy rule” is codified and then modified, but only slightly, in RCW 26.16.200. The statute states in full:

Neither person in a marriage or state registered domestic partnership is liable for the debts or liabilities of the other incurred before marriage or state registered domestic partnership, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other:
PROVIDED, That the earnings and accumulations of the spouse or domestic partner shall be available to the legal process of creditors for the satisfaction of debts incurred by such spouse or domestic partner prior to the marriage or the state registered domestic partnership. For the purpose of this section, neither person in the marriage or the state registered domestic partnership shall be construed to have any interest in the earnings of the other:
PROVIDED FURTHER, That no separate debt,

except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either spouse or either domestic partner unless the same is reduced to judgment within three years of the marriage or the state registered domestic partnership of the parties. The obligation of a parent or stepparent to support a child may be collected out of the parent's or stepparent's separate property, the parent's or stepparent's earnings and accumulations, and the parent's or stepparent's share of community personal and real property. Funds in a community bank account which can be identified as the earnings of the nonobligated spouse or nonobligated domestic partner are exempt from satisfaction of the child support obligation of the debtor spouse or debtor domestic partner.

[Emphasis supplied.]

The “instant protection” afforded by the marital bankruptcy rule is akin to the “fresh start” given to debtors under the bankruptcy laws. The policy behind the rule is to support and encourage marriage and families by allowing the marital community members to grow their earnings unfettered by pre-marriage obligations. In *Watters v. Doud*, 92 Wash.2d 317, 596 P.2d 280 (1979), *overruled on other grounds*, *Haley v. Highland*, 142 Wash.2d 135, 12 P.3d 119 (2000), the court noted that the rule served “to assure the community enough integrity to allow development without handicaps unrelated to its own undertakings.” 92 Wash.2d at 322 [citations omitted].

C. Washington Trust’s Judgment Was Not “Within” Three Years of Kozak’s Marriage.

Division II’s decision on the application of RCW 25.16.200 turns on the meaning of “within;” that is, whether Washington Trust’s judgment, obtained five years prior to Kozak’s marriage, was “within” three years of the marriage. The answer under any plain definition of “within” is “No.”

The Court of Appeals borrowed from Webster’s Third New International Dictionary to define “within” as “not longer in time than : before the end or since the beginning of.” The Court concluded the judgment obtained five years away from the marriage was nonetheless “within” three years.

But, Washington Trust’s judgment was obtained at a point that is outside the three year period stated in the proviso to RCW 26.26.200. An event that occurred five years before the marriage, the judgment, was not “within” three years of the marriage. There is simply no way to square the Court’s conclusion with the Court’s own definition of “within.”

Respectfully, the judgment was not obtained “within” the proviso period so that Washington Trust can fall within the limited class of creditors who are entitled to take advantage of, and seek protection through, the proviso.

Likewise, the judgment was not obtained “before the end or since the beginning of” the three-year period. With all due

respect, the Court's opinion simply does not logically fit with the plain meaning of "within."

The Court of Appeals expressed that Kozak's position would "punish the timely creditor" and it would be "absurd" to conclude otherwise. To the contrary, however, it is Kozak's position that the Legislature made a conscious decision using plain language to indicate that creditors are not the only ones who should find favor under the law. If by some reason of policy, a different word other than "within" should be used in RCW 26.16.200, then it is Kozak's position that it is up to the Legislature to amend the statute.

The Legislature's conscious and deliberate use of the word "within," as opposed to a word like "before," demonstrates a public policy that debtors are entitled to some amount of favor under the law, too, at some point. This includes being able to get married without a debilitating debt that will shadow the marriage potentially forever, as in this case. This includes being able to start a family at some point. This includes starting a new life.

Respectfully, it is not "absurd" to allow a debtor to eventually obtain a fresh start. Even debtors such as Mr. Kozak.

The Court of Appeals decision should be reversed.

RESPECTFULLY SUBMITTED this 24th day of August,
2023.

s/ Thomas A. Ped

Thomas A. Ped, WSBA #40232
Williams Kastner & Gibbs PLLC
1515 SW Fifth Avenue, Suite 600
Portland, Oregon 97201
Telephone: (503) 228-7967
tped@williamskastner.com
Attorneys for Appellant

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Ct. No. _____

(Court of Appeals No. 56982-5-II)

WASHINGTON TRUST BANK, a Washington Corporation,
Plaintiff/Respondent,

v.

KYLE K. KOZAK, an individual,
Defendant/Appellant.

**APPENDIX TO
PETITION FOR DISCRETIONARY REVIEW**

Thomas A. Ped, WSBA #40232
Williams Kastner & Gibbs PLLC
1515 SW Fifth Avenue, Suite 600
Portland, OR 97201-5449
Tel: (503) 228-7967
Fax: (503) 222-7261
tped@williamskastner.com

Attorney for Defendant/Appellant

July 25, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WASHINGTON TRUST BANK,

Respondent,

v.

KYLE K. KOZAK,

Appellant.

No. 56982-5-II

PUBLISHED OPINION

LEE, P.J. — Kyle Kozak appeals the superior court’s order denying his exemption claim to Washington Trust Bank’s (Washington Trust) writ of garnishment on his account at iQ Credit Union. Kozak claims that the account was exempt from garnishment because the account contained community property assets.

Washington Trust obtained a judgment against Kozak in November 2011. He married his current spouse in 2016. RCW 26.16.200 provides that a creditor on a premarital, separate debt may collect on community property assets so long as the creditor reduced its claim to judgment “within three years of the marriage . . . of the parties.” Kozak argues that RCW 26.16.200 requires that the judgment be obtained within three years before the marriage or within three years after the marriage. We conclude that RCW 26.16.200 applies so long as the creditor reduced its claim to judgment any time before three years after the debtor’s marriage. Because Washington Trust did that here, we affirm the superior court.

No. 56982-5-II

FACTS

In 2007, Kyle Kozak owned and operated a general contracting construction company in Oregon. Kozak constructed and sold homes on a speculative basis. In May 2007, Kozak took out two loans, for \$840,000 and for \$276,000, from Pinnacle Bank of Oregon to fund his construction projects. Kozak personally guaranteed the loans.

In 2008, due to the financial crash, Kozak could not complete his construction projects, nor could he pay back his loans. In 2009, Pinnacle Bank closed, and Washington Trust bought and assumed Pinnacle's deposits and loans.

In January 2010, Kozak filed for Chapter 7 bankruptcy. Kozak listed Washington Trust as a creditor. However, in May 2010, the bankruptcy trustee brought an action against Kozak in U.S. Bankruptcy Court to "obtain a determination of the various interests in certain property, to disregard certain sham entities, . . . and to avoid and recover the Debtor's fraudulent and/or preferential transfer of assets." Clerk's Papers (CP) at 104. Specifically, the trustee alleged:

Prior to the Petition Date, the Debtor engaged in significant cash transactions and is believed to frequently have in his possession large quantities of cash which he stored in shoe boxes. Additionally, the Debtor had amassed a substantial amount of both titled and untitled personal property, including collector's cars, motorcycles, vintage snowmobiles, arcade games, BMX bicycles and bicycle parts, art collections, vintage wine collection, Diecast cars, Nascar memorabilia, and memorabilia associated with the Star Wars films. . . . The Debtor also acquired a substantial firearm collection . . . [and] numerous automobiles

. . . .

. . . The Debtor used and/or conspired with certain affiliates and family members . . . to hold either title to, or possession of, some of the Debtor's Collectibles, in a scheme to avoid payment of federal and state income taxes, judgment creditors, and lenders.

No. 56982-5-II

CP at 105-06. Based on the trustee's pending suit, Kozak waived his bankruptcy discharge. Kozak's waiver of discharge stated: "I understand that by waiving my discharge, I will not receive a discharge of my debts in this case, and I further understand that I will not be able to discharge any debt that was or could have been listed in this case in a subsequent case." CP at 124.

In November 2011, Washington Trust obtained a judgment against Kozak for his outstanding debt on the two loans in Oregon's Washington County Circuit Court. At that time, Kozak's outstanding debt, excluding interest, was \$892,958.29. According to Kozak, he was unaware that Washington Trust obtained a money judgment against him, in part because Washington Trust accomplished service through publication. However, based on the circuit court's register of actions in Washington Trust's suit against Kozak, it appears Washington Trust attempted to serve Kozak personally multiple times before "post[ing] on [the] gate of [Kozak's] residence" and publishing the summons in the "Daily Journal." CP at 72. Washington Trust also mailed the summons and complaint to Kozak.

In 2012, Washington Trust issued garnishments to various financial institutions, including the Bank of Oswego and Chase Bank, but the institutions returned the garnishments without any funds. Kozak did not make any payments on the judgment.

In 2015, Washington Trust served interrogatories and a "Notice of Demand to Pay Judgment" on Kozak. CP at 133. As of June 22, 2015, Kozak owed \$1,466,129.45, which included principal, interest, costs, and attorney fees. The record does not show whether Kozak replied to the interrogatories.

No. 56982-5-II

In February 2016, Kozak married his current spouse, Brittany Moyer. Then, in 2019, Washington Trust filed a motion for examination of judgment debtor and order restraining disposal of property. Oregon's Washington County Circuit Court granted Washington Trust's motion. The circuit court ordered Kozak to appear for a debtor's examination and to bring monthly bank statements of institutions where he held assets.

Kozak produced bank records for an account at iQ Credit Union, where he deposited paychecks for his work as an independent contractor. The iQ Credit Union account is a joint account between Kozak and his wife. According to Kozak, he did not have any other bank accounts. Kozak also testified that he was an Oregon resident with his permanent address in Molalla, Oregon. However, his secondary residence was in Battle Ground, Washington, where his wife owned a home.

In September 2019, Washington Trust filed the judgment against Kozak in Clark County Superior Court. Then, in October 2021, Washington Trust filed to extend the life of foreign judgment. The Clark County Superior Court renewed the judgment for another 10 years.

In November 2021, Washington Trust issued a writ of garnishment to iQ Credit Union for a total of \$2,488,133.44. In its answer to the writ of garnishment, iQ Credit Union stated that there was \$21,058.46 due and owing from iQ Credit Union, as garnishee, to Kozak. In December 2021, Kozak filed an exemption claim, cited to RCW 26.16.200,¹ and stated, "All funds are marital community and fully exempt from garnishment for this antecedent debt." CP at 31.

¹ RCW 26.16.200 provides in pertinent part:

No. 56982-5-II

Kozak argued that because Washington Trust did not reduce its claim against Kozak to judgment within the three years prior to his marriage or the three years immediately following his marriage, Washington Trust was precluded from reaching Kozak's earnings accumulated during his marriage. Washington Trust objected to the exemption claim.

In March 2022, the superior court held a hearing on the exemption claim. Washington Trust argued that the phrase "within three years" in RCW 26.16.200 means that a creditor has three years after a debtor's marriage to reduce a claim to judgment in order to continue collecting on the debt from community property assets. 1 Verbatim Rep. of Proc. (VRP) at 4. Accordingly, Washington Trust asserted, creditors who reduced their claims to judgment before a debtor's marriage should not be precluded from collecting on the debtor's earnings and accumulations after marriage. Kozak argued that a creditor of separate, premarital debt needed to reduce a claim to judgment either three years before marriage or three years after marriage in order to access community property funds.

The superior court denied Kozak's exemption claim. In its order, the superior court stated:

[A] judgment entered more than three years prior to a marriage satisfies the requirements under RCW 26.16.200, which is not a community property statute,

Neither person in a marriage . . . is liable for the debts or liabilities of the other incurred before marriage . . . nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other: PROVIDED, That the earnings and accumulations of the spouse . . . shall be available to the legal process of creditors for the satisfaction of debts incurred by such spouse . . . prior to the marriage For the purpose of this section, neither person in the marriage . . . shall be construed to have any interest in the earnings of the other: PROVIDED FURTHER, That no separate debt, except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either spouse . . . unless the same is reduced to judgment within three years of the marriage . . . of the parties.

No. 56982-5-II

but rather intended to protect the non-debtor spouse from liability for the other marital partner's premarital debt. The court further concluded that RCW 26.16.200 is intended to preclude creditors who fail to obtain a judgment within three years *after* a marriage from reaching the debtor spouse's earnings and accumulations. Here, [Washington Trust] obtained a judgment against [Kozak] on November 4, 2011, more than three years prior to [Kozak]'s marriage to Brittany Kozak.

CP at 220 (emphasis in original). The superior court also stated that the writ of garnishment issued to iQ Credit Union did not extend to "earnings and accumulations that are traceable directly to [Kozak]'s spouse." CP at 220. The superior court ordered iQ Credit Union to pay the garnished funds in the amount of \$21,058.46.

Kozak appeals.

ANALYSIS

Kozak argues the superior court erroneously interpreted RCW 26.16.200 when it held that Washington Trust was not barred from garnishing Kozak's earnings and accumulations acquired after his marriage to satisfy his premarital, separate debt. Washington Trust argues that because it reduced its claim against Kozak to judgment well before Kozak's marriage and "within the three-year statutory framework of RCW 26.16.200," it is not barred from collecting on Kozak's marital earnings and accumulations to satisfy his outstanding debt. Br. of Resp't at 12. We agree with Washington Trust.

A. STANDARD OF REVIEW

We review questions of statutory interpretation *de novo*. *Protective Admin. Servs., Inc. v. Dep't of Revenue*, 24 Wn. App. 2d 319, 330, 519 P.3d 953 (2022). "Our goal in interpreting a statute is to determine the legislature's intent and give effect to it." *Id.*

No. 56982-5-II

Courts first look to the plain meaning of a statute to derive legislative intent. *Burien Town Square Condo. Ass'n v. Burien Town Square Parcel 1, LLC*, 3 Wn. App. 2d 571, 574, 416 P.3d 1286, *review denied*, 191 Wn.2d 1015 (2018). A statute's plain meaning is discerned by consideration of "the statutory context, related statutes, and the entire statutory scheme." *Protect Zangle Cove v. Dep't of Fish & Wildlife*, 17 Wn. App. 2d 856, 870, 488 P.3d 894 (quoting *Swinomish Indian Tribal Cmty. v. Dep't of Ecology*, 178 Wn.2d 571, 582, 311 P.3d 6 (2013)), *review denied*, 198 Wn.2d 1029 (2021). Courts may also look to the dictionary for undefined statutory terms. *State v. Eyman*, 24 Wn. App. 2d 795, 837, 521 P.3d 265 (2022).

A statute is ambiguous if there is more than one reasonable interpretation of its plain meaning. *Beasley v. GEICO Gen. Ins. Co.*, 23 Wn. App. 2d 641, 656, 517 P.3d 500 (2022), *review denied*, 200 Wn.2d 1028 (2023). In such cases, courts may look to legislative history. *Id.* However, courts "do not rewrite unambiguous statutory language under the guise of interpretation." *Jespersen v. Clark County*, 199 Wn. App. 568, 578, 399 P.3d 1209 (2017). Furthermore, courts construe statutes to avoid absurd results. *Id.*

B. MARRIAGE, MARITAL BANKRUPTCY, AND RCW 26.16.200

1. Legal Principles

Assets acquired after marriage are considered community property. RCW 26.16.030. Moreover, an individual is not liable for the separate, premarital debts of his or her spouse. RCW 26.16.200.

Typically, creditors can access only the separate property of a debtor to satisfy separate debts. *Ryan v. Diafos*, 110 Wn. App. 758, 762, 37 P.3d 304 (2001), *review denied*, 147 Wn.2d

No. 56982-5-II

1024 (2002). Once a debtor marries, “all of his earnings and accumulations therefrom [become] community property and [are] thus beyond the reach of the creditors.” *Id.*; *Haley v. Highland*, 142 Wn.2d 135, 148, 12 P.3d 119 (2000) (stating “community property is generally not available to satisfy the separate debts of either spouse.”). This rule is known as “marital bankruptcy.” *Diafos*, 110 Wn. App. at 763; *see* RCW 26.16.200.

The “marital bankruptcy” rule is reflected in RCW 26.16.200. *See Haley*, 142 Wn.2d at 144. However, RCW 26.16.200 also includes provisos. *See* RCW 26.16.200. RCW 26.16.200 states:

Neither person in a marriage . . . is liable for the debts or liabilities of the other incurred before marriage . . . nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other: PROVIDED, That the earnings and accumulations of the spouse . . . shall be available to the legal process of creditors for the satisfaction of debts incurred by such spouse . . . prior to the marriage For the purpose of this section, neither person in the marriage . . . shall be construed to have any interest in the earnings of the other: PROVIDED FURTHER, That no separate debt, except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either spouse . . . unless the same is reduced to judgment within three years of the marriage . . . of the parties.

“Provisos operate as limitations on or exceptions to the general terms of the statute to which they are appended.” *Shoulberg v. Pub. Util. Dist. No. 1 of Jefferson County*, 169 Wn. App. 173, 180, 280 P.3d 491, *review denied*, 175 Wn.2d 1024 (2012). Provisos are generally strictly construed. *Id.*

RCW 26.16.200’s provisos alleviate the “harsh effects” of its general terms in which a creditor was “faced with marital bankruptcy from the moment of the debtor’s marriage.” *Watters v. Doud*, 92 Wn.2d 317, 322, 596 P.2d 280 (1979), *overruled on other grounds by Haley*, 142

No. 56982-5-II

Wn.2d at 150. Accordingly, creditors may access community property in satisfaction of a debtor spouse's premarital, separate debt so long as the claim is reduced to judgment within three years of marriage. RCW 26.16.200; *Haley*, 142 Wn.2d at 150 (holding that RCW 26.16.200 does not shield "community property from collection for the separate obligations of a spouse."). The intent of RCW 26.16.200 is "to protect one spouse from vicarious liability for the separate obligations of the other," not to protect community property. *Haley*, 142 Wn.2d at 147. Debtors have no obligation to disclose their marriage to creditors, nor is failure to disclose marriage concealment. *Watters*, 92 Wn.2d at 323.

2. Washington Trust's Claim is Not Barred by RCW 26.16.200

The parties dispute the meaning of "within" in the phrase, "within three years of the marriage" in RCW 26.16.200's second proviso. Kozak asserts that if the debt was not reduced to judgment within either three years before the marriage or three years after the marriage, "the creditor is barred absolutely" from accessing marital community assets—including a creditor who reduced its claim to judgment *more* than three years before the debtor's marriage. Br. of Appellant at 14. We disagree.

Courts look to the plain meaning of a statute to derive legislative intent. *Burien Town Square Condo. Ass'n*, 3 Wn. App. 2d at 574. Here, RCW 26.16.200 first provides its general terms: that an individual is not liable for the separate, premarital debts of their spouse. RCW 26.16.200. However, the first proviso qualifies the general terms: "the earnings and accumulations of the spouse . . . shall be available to the legal process of creditors for the satisfaction of *debts incurred by such spouse . . . prior to the marriage.*" RCW 26.16.200 (emphasis added). The

No. 56982-5-II

exception is clear. The earnings and accumulations of the debtor spouse—in other words, community assets—*shall* be available to creditors for the satisfaction of separate, premarital debts. Indeed, the legislature declared that in the context of premarital, separate debt, the non-debtor spouse does not possess an interest in the earnings and accumulations of the debtor spouse. RCW 26.16.200.

The final proviso qualifies the exception: if a creditor wants to access, and to continue accessing, community assets for the satisfaction of the separate, premarital debt, it must reduce its claim to judgment within a specified timeframe. RCW 26.16.200. The issue here is whether “within three years of the marriage” means, as Kozak argues, a six-year window of the three years before marriage and three years after marriage.

“Within” is not defined by statute. *See* RCW 26.16.200. Therefore, we may look to the dictionary definition of “within” to discern its plain meaning. *Eyman*, 24 Wn. App. 2d at 837.

Here, “within” is used as a preposition; in RCW 26.16.200, it expresses a frame of time. As a preposition, “within” is defined as “not longer in time than : before the end or since the beginning of.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2627 (2002). Accordingly, the second proviso of RCW 26.16.200 should be read as “no separate debt . . . may be the basis of a claim against the earnings and accumulations of either spouse . . . unless the same is reduced to judgment [not longer in time than or before the end of] three years of the marriage . . . of the parties.”

The interpretation of “within” as “not longer in time than” or “before the end of” is also supported by past cases that addressed RCW 26.16.200. Courts appear to have treated “within”

No. 56982-5-II

as forward-looking. *See, e.g., Pac. Gamble Robinson Co. v. Lapp*, 95 Wn.2d 341, 347 n.2, 622 P.2d 850 (1980) (“Moreover, RCW 26.16.200, the so-called ‘marital bankruptcy’ statute, provides that the earnings and accumulations of a spouse shall be available to creditors for the satisfaction of debts incurred by that spouse prior to marriage for a period of 3 years *from the date of the marriage*.” (emphasis added)), *overruled on other grounds by Haley*, 142 Wn.2d at 148; *Watters*, 92 Wn.2d at 322 (“[A] creditor is entitled to either 3 years of payments on the debt *after the marriage* from community assets or in the case of default, he may reduce his claim to judgment within 3 years of the marriage to reach community assets during the life of the judgment.” (emphasis added)).

Kozak argues that RCW 26.16.200’s provisos “were not intended to open the floodgates to creditors of all stripes, including those whose debts had been reduced to judgment before the marriage.” Br. of Appellant at 16. Kozak’s argument is unpersuasive. This is not a circumstance where there is a “flood” of creditors waiting in the wings to extract unexpected payments. Here, at issue are the rights of existing creditors who have otherwise followed proper procedure for satisfaction of outstanding debts by timely reducing the debt owed to a judgment against the debtor.

The effect of Kozak’s proposed interpretation is to punish the timely creditor. This is in contravention to our Supreme Court’s interpretation of RCW 26.16.200 and its provisos:

The sounder view is that the amendment was meant to [*a*]lleviate the harsh effects of the previous law but was not intended to make community assets vulnerable for an indefinite period of time. We believe that the amendment serves to soften the effect of the main provision in that the creditor is no longer faced with marital bankruptcy from the moment of the debtor’s marriage. Rather, pursuant to the amendment, a creditor is entitled to either 3 years of payments on the debt after the marriage from community assets or in the case of default, he may reduce his claim to judgment within 3 years of the marriage to reach community assets during the

No. 56982-5-II

life of the judgment. This interpretation gives effect to the amendment without defeating the clear provisions of the general statute.

Watters, 92 Wn.2d at 322 (emphasis in original). Clearly, if the legislature intended to protect creditors through alleviating the “harsh effects” of the marital bankruptcy rule, it is absurd to think that the legislature did not intend to protect creditors who had judgments *prior* to a debtor’s marriage. Indeed, should Kozak’s interpretation be adopted, timely creditors with judgments secured over three years prior to the debtor’s marriage suddenly lose all protections because there is no mechanism or avenue for a creditor to obtain judgment *again* after a debtor’s marriage—for a judgment to be reduced to another judgment is a redundancy unheard of in the law.

Furthermore, a debtor has no obligation to inform a creditor of his or her marriage. *Watters*, 92 Wn.2d at 323. Accordingly, a creditor may have no notice that a debtor has married. Again, to say that the legislature statutorily prescribed a strict time limit for a creditor to reduce its claim to a judgment only during the three years *before* a marriage, which the creditor has no control or notice of, or that creditor will lose the ability to collect on its judgment is an interpretation that yields absurd results. We construe statutes to avoid absurd results. *Protect Zangle Cove*, 17 Wn. App. 2d at 870.

In addition to alleviating the harsh effects of the marital bankruptcy rule for creditors, our Supreme Court has also interpreted the intent of RCW 26.16.200 as to protect one spouse from the premarital liabilities of the other. *Haley*, 142 Wn.2d at 147. Accepting this as true, we note that prior to marriage, there is no spouse to protect. This bolsters the idea that “within” is meant as forward-looking and should be interpreted as “no later than” or “before the end of” three years of the marriage.

No. 56982-5-II


Based on the plain language of RCW 26.16.200 and considering the entire statutory scheme, we hold that “within three years of the marriage” means no later than or before the end of three years after marriage. Accordingly, Washington Trust’s claim is not barred by RCW 26.16.200 because it reduced its claim to judgment before Kozak’s marriage; thus, the judgment was obtained well before the end of three years after Kozak got married. Therefore, the superior court did not err in its order denying Kozak’s exemption claim.

We affirm the superior court.



Lee P.J.

We concur:



Price, J.



Che, J.

August 24, 2023 - 10:23 AM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Washington Trust Bank, Respondent v Kyle K. Kozak, Appellant (569825)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20230824102221SC184265_3297.pdf
This File Contains:
Motion for Discretionary Review of Court of Appeals
The Original File Name was Petition_for_Review_-_FINAL_8_24_23.pdf

A copy of the uploaded files will be sent to:

- britta.warren@bhlaw.com
- tanya.green@bhlaw.com

Comments:

Sender Name: Thomas Ped - Email: tped@williamskastner.com

Address:

1515 SW 5TH AVE STE 600
PORTLAND, OR, 97201-5449
Phone: 503-944-6988

Note: The Filing Id is 20230824102221SC184265