

APR 30 2012

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

6	In re:	)	BAP No. WW-11-1484-HKiJu
7	JACK SHERMAN JEFFERIES,	)	Bk. No. 11-42206
8	Debtor.	)	
9	_____	)	
10	JACK SHERMAN JEFFERIES,	)	
11	Appellant,	)	
12	v.	)	<b>O P I N I O N</b>
13	CHARLES D. CARLSON, Chapter 7	)	
14	Trustee,	)	
15	Appellee.	)	
	_____	)	

Argued and Submitted on March 23, 2012  
at Seattle, Washington

Filed - April 30, 2012

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Brian D. Lynch, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
 Roger J. Sharp of Sharp Law Professional  
 Corporation argued for Appellant Jack Sherman  
 Jefferies. Charles D. Carlson of Carlson &  
 Thacker, PLLC, argued for Appellee Charles D.  
 Carlson, Chapter 7 Trustee.

\_\_\_\_\_

Before: HOLLOWELL, KIRSCHER and JURY, Bankruptcy Judges.

1 HOLLOWELL, Bankruptcy Judge:  
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3 The debtor appeals the bankruptcy court's order sustaining  
4 the chapter 7<sup>1</sup> trustee's objection to his homestead exemption  
5 claim. The debtor contended that an equalizing judgment he  
6 received in exchange for the transfer of his residence to his ex-  
7 wife in a dissolution decree constituted proceeds of the  
8 voluntary sale of his homestead, protected by the Washington  
9 homestead exemption statutes. The bankruptcy court disagreed.  
10 We AFFIRM.

11 **I. FACTUAL BACKGROUND**

12 Jack Jefferies (the Debtor) filed a chapter 7 bankruptcy  
13 petition on March 22, 2011. Charles Carlson was appointed the  
14 trustee (the Trustee).

15 Prior to filing bankruptcy, the Debtor and his now ex-wife  
16 purchased and resided on real property in Ridgefield, Washington  
17 (the Residence). After eight years of marriage, the Debtor moved  
18 out of the Residence due to marital difficulties. He has not  
19 lived at the Residence since April 2009; however, his ex-wife and  
20 children continue to reside there.

21 In December 2010, the Washington state court entered a  
22 Decree of Dissolution of Marriage (the Dissolution Decree). In  
23 the Dissolution Decree, the Debtor was awarded an "equalizing  
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26 <sup>1</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
28 All "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure  
are referred to as "Civil Rules."

1 Judgment for his interest in the real property awarded to his  
2 wife" in the amount of \$40,800 (Equalizing Judgment). The  
3 Equalizing Judgment was secured by a promissory note and deed of  
4 trust on the Residence. In February 2011, in furtherance of the  
5 terms of the Dissolution Decree, the Debtor conveyed his interest  
6 in the Residence to his ex-wife by quitclaim deed.

7 On Schedule C, the Debtor listed \$47,000 as exempt "Proceeds  
8 from sale of homestead" under WASH. REV. CODE (RCW) 6.13.030<sup>2</sup> (the  
9 Exemption). The Trustee objected to the Exemption. The Trustee  
10 asserted that because the Debtor no longer lived at the Residence  
11 and was divested of his interest in the Residence through the  
12 Divorce Decree, he failed to meet the requirements of  
13 Washington's homestead exemption statutes and was unable to claim  
14 the Exemption.

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17 <sup>2</sup> RCW 6.13.030 provides that:

18 A homestead may consist of lands, as described in RCW  
19 6.13.010, regardless of area, but the homestead  
20 exemption amount shall not exceed the lesser of (1) the  
21 total net value of the lands, manufactured homes,  
22 mobile home, improvements, and other personal property,  
23 as described in RCW 6.13.010, or (2) the sum of one  
24 hundred twenty-five thousand dollars in the case of  
25 lands, manufactured homes, mobile home, and  
26 improvements, or the sum of fifteen thousand dollars in  
27 the case of other personal property described in RCW  
28 6.13.010, except where the homestead is subject to  
execution, attachment, or seizure by or under any legal  
process whatever to satisfy a judgment in favor of any  
state for failure to pay that state's income tax on  
benefits received while a resident of the state of  
Washington from a pension or other retirement plan, in  
which event there shall be no dollar limit on the value  
of the exemption.

1           The Debtor responded by asserting that although he was  
2 divested of his interest in the Residence, his ex-wife's  
3 obligation to pay the Equalizing Judgment constituted proceeds of  
4 the voluntary sale of his homestead, for which an exemption is  
5 allowed. In reply, the Trustee asserted that "the divorce court  
6 awarded the home to [the Debtor's wife]. The debtor did not sell  
7 his interest in the home to his former wife as he alleges."

8           A hearing on the Exemption took place on July 5, 2011. The  
9 bankruptcy court considered the Exemption under RCW 6.13.070(1),  
10 which allows a debtor to exempt the proceeds from a voluntary  
11 sale of a homestead for the purpose of acquiring a new homestead.  
12 The bankruptcy court determined that the Equalizing Judgment  
13 constituted proceeds of the Debtor's former homestead. However,  
14 the bankruptcy court concluded that the criteria for the  
15 Exemption under RCW 6.13.070(1) was not satisfied because the  
16 transfer of the Residence to the debtor's ex-wife was not a  
17 voluntary sale. Therefore, the bankruptcy court determined that  
18 although the Debtor may have intended to use the proceeds for the  
19 purpose of acquiring a new homestead, the proceeds did not  
20 qualify for a homestead exemption. The bankruptcy court  
21 subsequently sustained the Trustee's objection to the Exemption  
22 by written order entered on July 28, 2011.

23           On August 9, 2011, the Debtor filed a motion for  
24 reconsideration (Reconsideration Motion). In the Reconsideration  
25 Motion, the Debtor argued that the bankruptcy court erred in its  
26 determination that the transfer of the Residence was not  
27 voluntary. The Debtor asserted that, through a consensual  
28 agreement with his ex-wife, he voluntarily transferred his

1 interest in the Residence to her and the Equalizing Judgment  
2 simply memorialized the consensual agreement to transfer the  
3 Residence. In a written order, the bankruptcy court clarified  
4 its analysis supporting its determination that the transfer of  
5 the Residence did not constitute a voluntary sale and denied the  
6 Reconsideration Motion. The Debtor timely appealed.<sup>3</sup>

## 7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C. § 1334  
9 and 28 U.S.C. § 157(b)(2)(B). We have jurisdiction under 28  
10 U.S.C. § 158.

## 11 **III. ISSUE**

12 Did the bankruptcy court err in determining that the Debtor  
13 could not claim a homestead exemption for the Equalizing  
14 Judgment?

## 15 **IV. STANDARDS OF REVIEW**

16 The bankruptcy court's conclusions of law are reviewed de  
17 novo. Decker v. Tramiel (In re JTS Corp.), 617 F.3d 1102, 1109  
18 (9th Cir. 2010). The scope of a statutory exemption is a  
19 question of law subject to de novo review. Gonzalez v. Davis (In  
20 re Davis), 323 B.R. 732, 734 (9th Cir. BAP 2005); Kelley v. Locke  
21 (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP 2003). The

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23 <sup>3</sup> The Debtor filed the Reconsideration Motion within 14 days  
24 of the bankruptcy court's order sustaining the Trustee's  
25 objection to the Exemption. Therefore, it tolled the time for  
26 appeal until 14 days from the final order disposing of the  
27 Reconsideration Motion. Dicker v. Dye (In re Edelman), 237 B.R.  
28 146, 151 (9th Cir. BAP 1999). Because the Debtor filed his  
notice of appeal within 14 days of order denying the  
Reconsideration Motion, the Debtor's appeal was timely. Rule  
8002(b)(2).

1 validity of the claimed exemption is controlled by the applicable  
2 state law. In re Kelley, 300 B.R. at 16. Additionally, whether  
3 a sale is considered a forced or voluntary sale for purposes of a  
4 homestead exemption is a question of law reviewed de novo. See  
5 generally, In re Cole, 93 B.R. 707, 708-09 (9th Cir. BAP 1988).  
6 De novo review requires that we consider the matter anew, as if  
7 it had not been heard before, and as if no decision had been  
8 rendered previously. Dawson v. Marshall, 561 F.3d 930, 933 (9th  
9 Cir. 2009).

10 The bankruptcy court's denial of a motion for  
11 reconsideration is reviewed for an abuse of discretion. Ta Chong  
12 Bank Ltd. v. Hitachi High Techs. Am., Inc., 610 F.3d 1063, 1066  
13 (9th Cir. 2010); Clinton v. Deutsche Bank Nat'l Trust Co. (In re  
14 Clinton), 449 B.R. 79, 83 (9th Cir. BAP 2011). A bankruptcy  
15 court abuses its discretion if it bases a decision on an  
16 incorrect legal rule, or if its application of the law was  
17 illogical, implausible, or without support in inferences that may  
18 be drawn from the facts in the record. United States v. Hinkson,  
19 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc); Ellsworth v.  
20 Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 914  
21 (9th Cir. BAP 2011).

## 22 V. DISCUSSION

### 23 A. Eligibility For Exemption

24 Washington has not "opted out" of the federal exemption  
25 scheme. Thus, a debtor domiciled in Washington may select either  
26 the exemptions afforded by Washington law, or the federal  
27 exemption scheme. 11 U.S.C. § 522(b); 4 COLLIER ON BANKRUPTCY  
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1 ¶ 522.02 (Henry Somers & Alan Resnick eds., 15th ed. rev. 2009).

2 The Debtor selected state law exemptions.

3 In Washington, a "homestead consists of real or personal  
4 property that the owner uses as a residence" or "the dwelling  
5 house or the mobile home in which the owner resides or intends to  
6 reside . . . . Property included in the homestead must be  
7 actually intended or used as the principal home for the owner."

8 RCW 6.13.010(1).<sup>4</sup> Property occupied as a homestead is  
9 automatically protected by the exemption. RCW 6.13.040.

10 Here, since the Debtor transferred his interest in the  
11 Residence prior to filing bankruptcy, he was not eligible for an  
12 automatic homestead exemption. Wilson v. Arkison (In re Wilson),  
13 341 B.R. 21, 27 (9th Cir. BAP 2006) (debtor not entitled to  
14 homestead exemption because he did not live in the marital home  
15 at the time he filed bankruptcy and could not reside there in the  
16 future due to the divorce decree that divested him of his  
17 property interest). However, the Debtor based the Exemption on  
18 RCW 6.13.070, which exempts a homestead from attachment,  
19 execution, or forced sale for the debts of the owner up to  
20 \$125,000, as well as the same amount in proceeds from a voluntary  
21 sale of the homestead, in good faith for the purpose of acquiring  
22 a new homestead. RCW 6.13.030, 6.13.070(1). Proceeds from a  
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24 <sup>4</sup> Property described in RCW 6.13.010 constitutes a homestead  
25 and is automatically protected by the homestead exemption of RCW  
26 6.13.070 from and after the time the property is occupied. If  
27 the homestead is unimproved or improved land that is not yet  
28 occupied as a homestead, the homestead is exempted from and after  
the time the declaration of homestead is recorded.  
RCW 6.13.040(1), (2).

1 voluntary sale of a homestead are exempt under RCW 6.13.070(1)  
2 for up to one year. Any new homestead acquired with the proceeds  
3 during that time may also be exempted. Id.

4 The Debtor claimed that the Equalizing Judgment constituted  
5 the proceeds of a voluntary sale of his Residence for the purpose  
6 of acquiring a new homestead. We agree that any property taken  
7 in exchange for the transfer of a homestead is considered to be  
8 "proceeds" as contemplated by the homestead exemption statute.

9 Vojta v. Buhre, 165 Wash. 384, 387 (1931). Accordingly, the  
10 Equalizing Judgment, secured by the note and deed of trust,  
11 constitutes proceeds for purposes of RCW 6.13.070(1).

12 Additionally, the Debtor submitted an uncontroverted declaration  
13 stating that he intended to use the proceeds to purchase a new  
14 homestead. Therefore, in order to meet the remaining criterion  
15 entitling the Debtor to the Exemption, the Debtor's transfer of  
16 the Residence to his ex-wife must have been a voluntary sale.

17 The legal authority guiding our analysis on this issue is  
18 scant. However, the Washington Supreme Court has provided an  
19 explanation of the difference between a forced and voluntary  
20 sale:

21 [A forced sale is] a transaction in which there is an  
22 element of compulsion on the part of either the seller  
23 or the buyer. If the element of compulsion is based  
24 upon purely economic reasons, the sale is generally  
25 considered voluntary . . . . Where, however, a seller  
or buyer is forced to act under a decree, execution or  
something more than mere inability to maintain the  
property, the element of compulsion is based upon  
legal, not economic factors . . . .

26 Felton v. Citizens Fed. Sav. & Loan Ass'n of Seattle, 101 Wash.  
27 2d 416, 422 (1984) (quoting State v. Lacey, 8 Wash. App. 542, 549  
28 (1973)).



1 In Felton, the court concluded that a nonjudicial trustee's  
2 sale was a voluntary sale because the debtors indirectly  
3 consented to the sale through the power of sale granted the  
4 trustee in the loan documents.<sup>5</sup> Id. at 422-23. The court  
5 determined that when a property owner consents, either directly  
6 or indirectly, to a sale under execution or other legal process,  
7 the sale is not a forced sale for purposes of the homestead  
8 statutes. The Debtor seizes on this language and contends that  
9 "[t]here is no reason [his] consent to this legal process [of  
10 dissolution] should be treated as any less consensual or  
11 voluntary than the consent of one signing a mortgage or deed of  
12 trust."

13 However, in Felton, it was the debtors' inability to  
14 maintain the property that led to the trustee's sale. The sale  
15 was therefore compelled due to economic factors. Thus, it fell  
16 squarely within the court's definition of a voluntary sale.  
17 Here, the Debtor transferred the Residence to his ex-wife, not  
18 because of purely economic reasons or an inability to maintain  
19 the Residence. He transferred the Residence to his ex-wife as  
20 part of a state court dissolution process and allocation of  
21 marital property.

22 The Debtor asserts that because there was a voluntary pre-  
23 decree agreement with his ex-wife to transfer the homestead, the  
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26 <sup>5</sup> The court in Felton was construing what is now RCW  
27 6.13.080, which provides that the homestead is not available  
28 against an execution or forced sale in satisfaction of judgments  
obtained on, among other things, debts secured by a vendor's lien  
on the property or debts secured by mortgages on the property.

1 Dissolution Decree did not transform that voluntary agreement  
2 into a forced sale. The Debtor's assertion might have more merit  
3 if the Debtor had quitclaimed the Residence prior to the entry of  
4 the Dissolution Decree. But even if there was some agreement,  
5 cooperation, and consent between the Debtor and his ex-wife as to  
6 who would retain the Residence, there remained an element of  
7 legal compulsion in the property division.

8 For example, the Debtor stated that the agreement did not  
9 come quickly ("We eventually agreed that the family home should  
10 be awarded to her so she could continue to reside there with our  
11 children."), and that he and his ex-wife disagreed about the  
12 amount that he would be paid for transferring his interest.  
13 Ultimately, it was the state court who decided, after a trial,  
14 the amount of the payment. Thus, the Equalizing Judgment was  
15 made through the Dissolution Decree as part of the state court's  
16 fair allocation of the marital property.

17 The Debtor, however, argues that the Dissolution Decree was  
18 not the operative document that divested him of his interest in  
19 the Residence. Nevertheless, it was the state court's final  
20 decisions on the allocation and distribution of the marital  
21 property that triggered the Debtor's obligation to transfer the  
22 Residence. Indeed, the Debtor admits he was "disappointed by  
23 [the state court judge's] decision and contemplated an appeal."  
24 However, since he did not appeal the Dissolution Decree, he was  
25 obligated by its terms to transfer the Residence, which resulted  
26 in the quitclaim deed to his ex-wife in exchange for the note and  
27 deed of trust.

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1 Homestead and exemption statutes are favored in the law and  
2 should be liberally construed. In re Dependency of Schermer, 161  
3 Wash. 2d 927, 953 (2007); Pinebrook Homeowners Ass'n v. Owen, 48  
4 Wash. App. 424, 427 (1987). Nevertheless, in applying the  
5 definitions of voluntary and forced sales set forth in Felton, we  
6 agree with the bankruptcy court that the sale or transfer by the  
7 Debtor of the Residence to his ex-wife was made with an element  
8 of legal, not purely economic, compulsion and was, therefore, not  
9 a voluntary sale. Consequently, the Debtor cannot claim the  
10 Exemption under RCW 6.13.070(1).<sup>6</sup>

11 **B. Reconsideration Motion**

12 The Debtor sought reconsideration pursuant to Rule 9023,  
13 incorporating Civil Rule 59(e). He asserted that the issue of  
14 whether the transfer of the Residence to his ex-wife was  
15 considered a voluntary or a forced sale was not fully briefed  
16 before the bankruptcy court because it was raised by the Trustee  
17 for the first time at the hearing on the objection to the  
18 Exemption. The Debtor asserted that the bankruptcy court erred  
19 in its determination that the sale was a forced sale, which  
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22 <sup>6</sup> The Debtor's reliance on In re Marriage of Foley, 84 Wash.  
23 App. 839 (1997) to support his argument is off-point. There, Mr.  
24 Foley was awarded the family home and ordered through a  
25 dissolution decree to pay Mrs. Foley an equalization award that  
26 was to be paid by refinancing or selling the home. Mr. Foley  
27 argued that the forced sale violated his homestead rights but the  
28 court held that "[a] judgment in owelty is an equitable lien on  
the property specified in the nature of a vendor's lien. It  
prevails over a homestead exemption." Id. at 845; see also RCW  
6.13.080 (cannot claim homestead exemption against a forced sale  
in satisfaction of vendor's lien).

1 resulted in the Debtor's ineligibility to claim a homestead  
2 exemption under RCW 6.13.070(1).

3 Although Civil Rule 59(e) permits a court to reconsider and  
4 amend a previous order, "the rule offers an 'extraordinary  
5 remedy, to be used sparingly in the interests of finality and  
6 conservation of judicial resources.'" <sup>7</sup> Kona Enters., Inc. v.  
7 Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (internal  
8 citation omitted). Thus, a motion for reconsideration should not  
9 be granted absent "highly unusual circumstances," unless the  
10 court is presented with: (1) newly discovered evidence, (2)  
11 committed clear error, or (3) there is an intervening change in  
12 the controlling law. Marlyn Nutraceuticals, Inc. v. Mucos Pharma  
13 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009). A Civil Rule  
14 59(e) motion may not be used to raise arguments or present  
15 evidence for the first time when they could reasonably have been  
16 raised earlier in the litigation. Kona Enters., Inc., 229 F.3d  
17 at 890.

18 The Debtor presented no new evidence or intervening change  
19 in the law that required the alteration of the bankruptcy court's  
20 order sustaining the Trustee's objection to the Exemption. For  
21 the reasons discussed above, the bankruptcy court did not err in  
22 determining that the Debtor's transfer of the Residence to his  
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24 <sup>7</sup> Additionally, under Local Bankruptcy Rule 9013-1(h), which  
25 incorporates Local Civil Rule for the U.S. District Court for the  
26 Western District of Washington (Local Civil Rule) 7(h), motions  
27 for reconsideration are disfavored and not granted unless there  
28 is a showing of manifest error, or, new facts or legal authority  
that could not have been brought to the court's attention earlier  
with reasonable diligence.

1 ex-wife, in exchange for an Equalizing Judgment through the  
2 Dissolution Decree, was a forced sale. Thus, the bankruptcy  
3 court did not err in concluding that the Debtor was ineligible  
4 for the Exemption. Consequently, there was no basis for the  
5 Debtor to prevail on his Reconsideration Motion. As a result, we  
6 conclude that the bankruptcy court did not abuse its discretion  
7 when it denied the Reconsideration Motion.

8 **VI. CONCLUSION**

9 For the reasons stated, we AFFIRM the bankruptcy court's  
10 order sustaining the Trustee's objection to the Exemption.  
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