

APR 21 2010

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

6	In re:	)	BAP No. WW-09-1313-HMoMk
7	BONNIE G. SNAVELY	)	
8	Debtor.	)	Bk. No. 07-11283-SJS
9	_____	)	
10	BONNIE G. SNAVELY	)	
11	Appellant,	)	
12	v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
13	NANCY L. ISSERLIS,	)	
14	Appellee.	)	
	_____	)	

Argued and Submitted on February 19, 2010  
at Seattle, Washington

Filed - April 21, 2010

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

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding.

Before: HOLLOWELL, MONTALI and MARKELL, Bankruptcy Judges.

The debtor in this case recorded a declaration of homestead stating she resided on property located in Flathead County, Montana and amended her bankruptcy schedules to take an exemption

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 in that property. However, the bankruptcy trustee contended that  
2 the debtor did not reside on the property and filed a motion to  
3 void the homestead declaration. The bankruptcy court found the  
4 debtor's assertion of residence on the property was not credible  
5 and entered an order voiding the declaration of homestead. We  
6 AFFIRM.

7 **I. FACTS**

8 Bonnie Snavely (Snavely) filed an individual chapter 11<sup>2</sup>  
9 bankruptcy petition on March 25, 2007. Snavely listed her  
10 address and residence in King County, Washington, in the city of  
11 Black Diamond. She checked a box stating she had been domiciled  
12 in Western Washington and had a residence or principal place of  
13 business in Western Washington for at least 180 days prior to  
14 filing bankruptcy or for the longer part of the 180 days prior to  
15 filing bankruptcy than in any other district.

16 Snavely's bankruptcy schedules indicated she did not pay  
17 rent.<sup>3</sup> Her monthly expenses included \$100 for home maintenance  
18 and \$3,100 for real property taxes. Snavely's interest in real  
19 property (Schedule A) included: (1) commercial property in  
20 Montana; (2) cabins at Lake McDonald in Montana, subject to a  
21 partition claim ("Lake McDonald"); (3) Kona Ranch on Amigo Road  
22 in Missoula, Montana ("Kona Ranch"); and (4) mineral rights on  
23

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24 <sup>2</sup> Unless specified otherwise, all Code, chapter, and section  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

26 <sup>3</sup> We have taken judicial notice of the bankruptcy case  
27 docket and underlying bankruptcy records. See O'Rourke v.  
28 Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58  
(9th Cir. 1989) (court may take judicial notice of underlying  
bankruptcy records with respect to an appeal).

1 real property in Montana. Snavely did not claim a homestead  
2 exemption. Pursuant to § 522(b)(1) and (2), she claimed federal  
3 exemptions under § 522(d)<sup>4</sup> for: real property mineral rights,  
4 cash on hand, household goods<sup>5</sup>, jewelry and furs, office  
5 equipment, and an automobile. The trustee did not object to any  
6 of the exemptions claimed by Snavely within 30 days after the  
7 § 341 meeting of creditors. See Rule 4003(b).

8 On her schedules, Snavely listed her business as a real  
9 estate developer and her business address, since 1989, as the  
10 Black Diamond address. She included Kona Ranch as a business  
11 address since 1999. In October 2008, Snavely recorded a  
12 declaration of homestead in Missoula, Montana, stating that Kona  
13 Ranch was her residence and homestead.<sup>6</sup> Kona Ranch was  
14 foreclosed in November 2008.

15 On May 22, 2009, the trustee sought permission to sell Lake  
16 McDonald for the benefit of the estate. The trustee proposed to  
17 sell Lake McDonald for \$103,500 to in-laws of Snavely's  
18 ex-husband because the property would otherwise be difficult to  
19 sell as it was subject to a partition action and the septic

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21 <sup>4</sup> Washington has not "opted out" of the federal exemption  
22 scheme. A debtor domiciled in Washington may select either the  
23 exemptions afforded by Washington law, or the federal exemption  
24 scheme. 11 U.S.C. § 522(b); 4 Collier on Bankruptcy ¶ 522.02  
(Henry Somers & Alan Resnick, eds., 15th ed. rev. 2009).

25 <sup>5</sup> Various household furnishings and goods to which Snavely  
26 claimed an exemption were listed as being located in Black  
27 Diamond, Washington, in Kalispell, Montana, at Kona Ranch and at  
28 Lake McDonald.

<sup>6</sup> At the time Snavely recorded the declaration of homestead,  
Kona Ranch had been the subject of motions for relief from stay  
filed by its secured creditor to conduct a foreclosure sale.

1 system was in disrepair. Snavelly filed an opposition on  
2 June 12, 2009. Snavelly argued that the trustee was not  
3 adequately marketing Lake McDonald or realizing its full value.  
4 On June 19, 2009, the trustee filed a motion for approval of sale  
5 of Lake McDonald by auction. Again Snavelly objected to the  
6 proposal, asserting the property would not realize its full  
7 market value if sold at auction. After a hearing on the matter,  
8 the bankruptcy court entered an order on June 29, 2009, approving  
9 the sale of Lake McDonald by auction. On July 8, 2009, the  
10 trustee filed a notice that the auction was scheduled for  
11 August 10, 2009. At the auction, Lake McDonald sold for  
12 \$301,000; the bankruptcy court confirmed the sale by an order  
13 entered on August 14, 2009.

14 On July 21, 2009, after the trustee was granted the  
15 authority to sell Lake McDonald, but before the auction took  
16 place, Snavelly recorded a declaration of homestead in Flathead  
17 County, Montana stating that Lake McDonald was her residence and  
18 homestead.

19 On September 11, 2009, the trustee filed a motion requesting  
20 that the bankruptcy court declare Snavelly's homestead declaration  
21 for Lake McDonald void. The trustee argued that Snavelly did not  
22 reside at Lake McDonald but at Kona Ranch. To support that  
23 contention, the trustee submitted Snavelly's declaration of  
24 homestead for Kona Ranch along with a declaration from Mr. Samuel  
25 (who acquired Kona Ranch at the foreclosure sale), which stated  
26 that Snavelly resided at Kona Ranch and a lease for an extension  
27 of the arrangement was being negotiated. Furthermore, the  
28 trustee contended that the declaration of homestead encumbered

1 the trustee's ability to sell Lake McDonald and that the filing  
2 of the declaration violated the automatic stay.

3 In a filed opposition, Snavely asserted there was no  
4 evidence suggesting she did not reside at Lake McDonald. Snavely  
5 submitted her own declared testimony stating that the Lake  
6 McDonald property was purchased in 1973, with the intention of it  
7 being a retirement home, and that improvements on the property  
8 were made in anticipation of her retirement in the home. Snavely  
9 stated she stayed at Kona Ranch when in Missoula on business, but  
10 that she otherwise resided at Lake McDonald.

11 A hearing on the trustee's motion to void Snavely's  
12 recording of the homestead on Lake McDonald was set for  
13 September 25, 2009. Approximately one hour prior to the hearing,  
14 Snavely amended her bankruptcy schedules to claim Montana state  
15 exemptions, including a homestead exemption for Lake McDonald  
16 under MCA § 70-32-104.<sup>7</sup> The bankruptcy court granted the  
17 trustee's motion, finding that "under all the circumstances, I  
18 don't think this homestead declaration is in good faith. I don't  
19 believe the debtor." The bankruptcy court entered an order on  
20 September 25, 2009, voiding Snavely's recorded declaration of  
21 homestead on Lake McDonald. Snavely timely appealed.

22 \_\_\_\_\_  
23 <sup>7</sup> At the hearing, the trustee notified the bankruptcy court  
24 that Snavely had amended her schedules to switch from federal to  
25 state exemptions but did not specify that the state exemptions  
claimed were under Montana law.

26 The trustee subsequently filed an objection to Snavely's  
27 claimed Montana state exemptions on October 5, 2009. See e.g.,  
28 Seror v. Kahan (In re Kahan), 28 F.3d 79, 82 (9th Cir. 1994)  
(trustee timely objected to exemption claim by filing objection  
within 30 days of amendment, which was not a mere clarification  
of initial exemption claim).



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**V. DISCUSSION**

The briefing in this appeal conflates whether Snavely had a valid declaration of homestead with whether she had a valid homestead exemption claim. However, Snavely had not amended her bankruptcy schedules to claim a homestead exemption until immediately prior to the hearing on the trustee's motion to void the homestead declaration. Nevertheless, at oral argument on appeal, the parties agreed that the issue here is ultimately whether Snavely's claim of a Montana state homestead exemption itself is allowable<sup>8</sup> and valid.<sup>9</sup>

Under many state exemption statutes, the declaration of homestead must comply with specific requirements, which are necessary to establish and obtain a homestead exemption. For example, in order to claim a homestead exemption under Montana law, as Snavely did here, there must be a declaration of

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<sup>8</sup> Snavely asserts that the bankruptcy court refused to allow her to amend her bankruptcy schedules to claim state exemptions. That issue was not addressed by the bankruptcy court. Although exemption rights are determined by the facts as they exist on the petition date, a debtor may create a valid exemption postpetition if his or her declaration of homestead is recorded and the bankruptcy schedules are amended to claim the exemption. See Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th Cir. BAP 2000); Arkison v. Gitts (In re Gitts), 116 B.R. 174, 178-79 (9th Cir. BAP 1990) aff'd, and adopted by Arkison v. Gitts (In re Gitts), 927 F.2d 1109 (9th Cir. 1991); Martison v. Michael (In re Michael), 163 F.3d 526, 529 (9th Cir. 1998).

<sup>9</sup> The trustee contends that the bankruptcy court treated the hearing on the motion to void the homestead declaration as a hearing on an objection to the claim of homestead exemption. Appellee's Opening Brief at 3. However, neither the transcript of the hearing nor the subsequent order that was entered by the bankruptcy court support the trustee's contention.

1 homestead recorded in the real property records where the  
2 property is located. MCA § 70-32-105. Thus, because the  
3 declaration of homestead is entwined with the homestead exemption  
4 itself, we address both issues.

5 **A. Declaration of Homestead**

6 The validity of a declaration of homestead depends upon its  
7 compliance with statutory requirements. United States Fid. &  
8 Guar. Co. v. Alloway, 173 Wn. 404, 406 (1933); Wilson v. Arkison  
9 (In re Wilson), 341 B.R. 21, 27 (9th Cir. BAP 2006). Snavely's  
10 declaration of homestead was executed and properly recorded in  
11 Flathead County.<sup>10</sup> The declaration stated that Snavely "resides  
12 in Lake McDonald as a homestead."

13 On appeal, Snavely contends she "satisfied the requirements  
14 for a declaration of homestead under Montana law."<sup>11</sup> Opening  
15 Brief at 8. Additionally, in a footnote in her opening brief,  
16 Snavely asserts that because "Washington law arguably applies to  
17 determine the validity of her homestead declaration,"<sup>12</sup> the

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18  
19 <sup>10</sup> Although the copy of the declaration of homestead  
20 included in the record on appeal does not contain the "attached  
21 Exhibit A" that describes the real property claimed as a  
22 homestead, we assume for purposes of this appeal that it properly  
23 references Lake McDonald.

24 <sup>11</sup> It is unclear what law the bankruptcy court applied in  
25 making its determination that Snavely did not reside at Lake  
26 McDonald. Snavely referred to both Montana and Washington law in  
27 her briefing before the bankruptcy court. The actual exemption  
28 statute under which Snavely claimed her homestead exemption was  
not referenced in Snavely's pleadings before the bankruptcy  
court.

<sup>12</sup> Snavely is entitled to claim Washington state exemptions  
or the federal exemptions of § 522(d). 11 U.S.C. § 522(b)(1).

(continued...)



1 declaration of homestead was also valid under Washington law.  
2 After reviewing the statutory requirements for a declaration of  
3 homestead under both Montana and Washington law, we conclude that  
4 under either state's law, the bankruptcy court correctly  
5 identified Snavely's residency at Lake McDonald as necessary to a  
6 valid homestead declaration and a claim of homestead exemption.

7 1. Montana Law

8 Montana law defines a homestead as the dwelling house in  
9 which the person resides and the land on which it is situated.  
10 MCA § 70-32-101. A valid recorded declaration of homestead is  
11 required to establish a homestead exemption. MCA § 70-32-105.  
12 The declaration of homestead must be executed and acknowledged in  
13 the same manner as a grant of real property. Id. It must  
14 contain a statement that the person making it is residing on the  
15 premises (description provided) and claims them as a homestead.  
16 MCA § 70-32-106. Then, the declaration must be recorded in the  
17 office of the county clerk of the county in which the land is  
18 situated. MCA § 70-32-107.

19 2. Washington Law

20 Similarly, in Washington, a "homestead consists of real or  
21 personal property that the owner uses as a residence" or "the  
22 dwelling house or a mobile home in which the owner resides or  
23 intends to reside. . . . Property included in the homestead must  
24 be actually intended or used as the principal home for the  
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26 <sup>12</sup>(...continued)

27 Section 522(b)(3)(A) provides that the exemptions are those  
28 available under applicable state law, which is defined as where  
the petition is filed. See Arrol v. Broach (In re Arrol),  
170 F.3d 934, 935 (9th Cir. 1999).

1 owner." RCW 6.13.010(1). For improved or unimproved land not  
2 yet occupied, a recorded homestead declaration is necessary to  
3 establish the homestead. A declaration of homestead must contain  
4 a statement that the person making it is residing on the premises  
5 or intends to reside on the premises. RCW 6.13.040(3)(a). The  
6 declaration must provide a legal description of the premises, an  
7 estimate of the actual cash value of the premises, and must be  
8 recorded in the recording office for the county where the land is  
9 located. RCW 6.13.040(2) and (3); In re Wilson, 341 B.R. at 26.

10 3. Declarant Must Reside On The Property

11 Snavelly argued she was entitled to a homestead at Lake  
12 McDonald because she resided there.<sup>13</sup> Montana has statutory  
13 guidelines for determining residency. Umland v. Nat'l Cas. Co.,  
14 2003 MT 356, ¶ 20, 319 Mont. 16, 81 P.3d 500. A residence is  
15 considered to be "the place where a person remains when not  
16 called elsewhere for labor or other special or temporary purpose  
17 and to which the person returns in seasons of repose."  
18 MCA § 1-1-215. Washington has no general statutory definition of  
19 a residence.

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21 \_\_\_\_\_  
22 <sup>13</sup> Snavelly stated in her September 22, 2009, declaration  
23 that since the time she and her former spouse bought Lake  
24 McDonald, she intended to use it as a retirement home. However,  
25 the intention to reside on a declared homestead, under Washington  
26 law, is measured at the time the declaration is filed. See  
27 In re Wilson, 341 B.R. at 26. The bankruptcy court found that  
28 Snavelly could not have reasonably intended to reside at Lake  
McDonald at the time she filed the declaration of homestead:  
"She's filed a declaration of homestead - on a piece of property  
which she can never live on." H'rg. Tr. at 7:15-19. Indeed, at  
the time Snavelly filed the declaration of homestead, the order  
granting the trustee authority to sell Lake McDonald had already  
been entered and an auction was pending.

1           The evidence that Snavelly resided at Lake McDonald consisted  
2 of her declaration, dated September 22, 2009, attached to her  
3 opposition to the trustee's motion to void the homestead  
4 declaration. In it she stated that: (1) she and her husband  
5 purchased Lake McDonald in 1973, with the intention of making it  
6 their retirement home; (2) improvements were made in anticipation  
7 of retiring in the home; (3) she stays at Kona Ranch when in  
8 Missoula and "when [she] is not in Missoula [she] reside[s] at  
9 the Lake McDonald cabin"; and finally, (4) she is essentially  
10 destitute and Lake McDonald is the only place she has to go.

11           For her part, the trustee contended Snavelly did not actually  
12 reside at Lake McDonald based upon Snavelly's prior recorded  
13 homestead declaration for Kona Ranch and a declaration from  
14 Mr. Samuel, who acquired Kona Ranch in foreclosure. Mr. Samuel's  
15 declaration stated that Snavelly continued to reside on Kona Ranch  
16 after the foreclosure and that he and Snavelly were in  
17 negotiations for her to continue to live there in the future.

18           A homestead declaration must be filed in good faith, which  
19 is construed as meaning that "'it must speak the truth' in order  
20 to be valid." In re Wilson, 341 B.R. at 27 (citation omitted);  
21 see also, Blagg v. Bass, 261 F.2d 631, 635 (9th Cir. 1958). At  
22 the close of hearing, the bankruptcy court found that Snavelly's  
23 declaration of homestead was not truthful:

24           All the while the trustee is selling this property,  
25 going through all kinds of contortions, finally sells  
26 it, then all of a sudden, boom, I have a  
27  
28

1 homestead. . . . [U]nder all the circumstances,<sup>14</sup> I don't  
2 think this homestead declaration is in good faith. I  
3 don't believe the debtor.

4 Hr'g. Tr. at 9:7-10; 10:2-5.

5 The briefing and evidence submitted to the bankruptcy court  
6 were sparse. As a result, the bankruptcy court's findings were  
7 few. The bankruptcy court found that the declaration of  
8 homestead was not filed in good faith because: (1) Snavelly did  
9 not raise the issue of a homestead on Lake McDonald during the  
10 sale motions and objections; (2) she filed the bankruptcy  
11 petition stating she resided in Washington, and (3) she could  
12 have no intention to reside on Lake McDonald in the future  
13 because it was set for sale at auction. Additionally, the  
14 bankruptcy court found Mr. Samuel's declaration that Snavelly  
15 resided at Kona Ranch was more credible than Snavelly's  
16 declaration that she resided at Lake McDonald.

17 We must defer to the bankruptcy court's findings of fact  
18 based on credibility. We do not find the bankruptcy court's  
19 conclusion that Snavelly did not actually reside at Lake McDonald

20  
21 <sup>14</sup> The bankruptcy court presided over Snavelly's previously  
22 filed chapter 11 bankruptcy case in 2002. During the course of  
23 that bankruptcy, Snavelly opposed a change of venue to Montana on  
24 the basis that she resided in Washington and intended to always  
25 reside in Washington. The bankruptcy court alluded to this  
26 during the September 25, 2009, hearing, stating:

27 Sometimes I have a pretty good memory. . . she took the  
28 position [then] that she was a resident of Black Diamond.  
She had always been a resident of Black Diamond. She would  
always be a resident of Black Diamond. And when this case  
was filed, she - the petition showed she was a resident of  
Black Diamond. Now, how does all of a sudden she have a  
homestead over in Lake McDonald?

Hr'g Tr. at 3:14-4:1.

1 clearly erroneous. "Where there are two permissible views of the  
2 evidence, the fact finder's choice between them cannot be clearly  
3 erroneous." Anderson v. City of Bessemer, 470 U.S. at 574.

4 The only evidence of Snavely's residency at Lake McDonald  
5 was her own assertion that she splits her time between Kona Ranch  
6 and Lake McDonald. There is no other evidence in the record to  
7 support that contention. For example, Snavely's bankruptcy  
8 schedules do not indicate that she resided in Montana at the time  
9 the petition was filed. During the course of the bankruptcy  
10 case, Snavely asserted she resided at Kona Ranch (a place where a  
11 portion of her business was located). Snavely's recorded  
12 homestead for Kona Ranch was not abandoned (although the property  
13 was foreclosed).<sup>15</sup> Snavely did not file any amendment or  
14 document in the bankruptcy case changing her address or residence  
15 to Lake McDonald until September 25, 2009, when she amended her  
16 schedules to claim an exemption for Lake McDonald as a homestead.  
17 Moreover, Snavely did not assert, in her objections to the sale  
18 of Lake McDonald, that she resided or spent any time on the  
19 property, or that she claimed a homestead exemption in the  
20 property. Since Montana and Washington law both provide for a  
21 homestead exemption in excess of \$125,000, knowing that Snavely  
22 intended to assert a homestead would have had a bearing on the  
23 trustee's decision to sell Lake McDonald.

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24  
25 <sup>15</sup> If the property owner resides or claims a homestead on  
26 another parcel of property, he or she must also execute and  
27 record a declaration of abandonment of homestead (in the same  
28 manner as a declaration of homestead is recorded) on that  
property. See RCW 6.13.040(2) and (4); MCA § 70-32-302. A  
homestead may also be abandoned by a grant of the homestead  
property. Id.

1           Accordingly, the bankruptcy court's findings of fact were  
2 supported by the evidence and declaration testimony. The  
3 bankruptcy court applied the correct rule of law (the  
4 determination of residency on the property) to the facts and it  
5 did not err in the conclusion it reached. Therefore, we agree  
6 with the bankruptcy court that Snavelly's homestead declaration is  
7 void.

8 **B. Homestead Exemption**

9           Snavelly filed her bankruptcy petition and declared she was  
10 domiciled in Washington. Therefore, Snavelly is only entitled to  
11 claim Washington state exemptions or the federal exemptions of  
12 § 522(d). 11 U.S.C. § 522(b)(1). Section 522(b)(3)(A) provides  
13 that the exemptions are those available under applicable state  
14 law, which is defined as where the petition is filed. See  
15 In re Arrol, 170 F.3d at 935. Accordingly, Snavelly is not  
16 entitled to claim a Montana state homestead exemption. Even if  
17 she were so entitled, the lack of a valid homestead declaration  
18 precludes her from doing so. MCA § 70-32-105.

19           Snavelly is also not entitled to claim a homestead exemption  
20 in Lake McDonald under Washington law. In Washington, there are  
21 two methods of creating a homestead exemption. "An automatic  
22 homestead exemption is created under RCW 6.13.040(1) for  
23 '[p]roperty described in RCW 6.13.010 [which] constitutes a  
24 homestead and is automatically protected by the exemption  
25 described in RCW 6.13.070 from and after the time the property is  
26 occupied as a principal residence by the owner.'" In re Gitts,  
27 116 B.R. at 178. Alternatively, a property owner may establish a  
28 homestead for exemption purposes by declaration. In re Wilson,

1 341 B.R. at 26. To declare a homestead in property "that is not  
2 yet occupied as a homestead," the property owner must execute and  
3 record a declaration establishing his or her intent to reside on  
4 the property in the future. Id.; RCW 6.13.010(1), 6.13.040(2)  
5 and (3).

6 A debtor's entitlement to an exemption is determined based  
7 upon facts as they existed at the time of the bankruptcy filing,  
8 and subsequent changes to those facts typically are irrelevant  
9 for exemption determination purposes. See Hopkins v. Cerchione  
10 (In re Cerchione), 414 B.R. 540, 548 (9th Cir. BAP 2009);  
11 In re Kim), 257 B.R. at 684. At the time Snavely filed her  
12 bankruptcy petition, she did not occupy the residence at Lake  
13 McDonald. Therefore, she was not eligible to qualify for the  
14 "automatic" homestead exemption afforded under RCW 6.13.040(1);  
15 In re Wilson, 341 B.R. at 26.

16 The bankruptcy court did not err in finding that Snavely did  
17 not reside or intend to reside at Lake McDonald. "[U]nder  
18 Washington law . . . a 'declaration of homestead is a right or  
19 privilege given a property owner by statute, so that its validity  
20 depends upon compliance with the statutory requirements and only  
21 by such compliance does the homestead come into existence.'" In re Wilson  
22 341 B.R. at 27 (quoting Bank of Anacortes v. Cook,  
23 10 Wn.App. 391, 395, 517 P.2d 633, 636 (1974)). Here, Snavely  
24 did not comply with the statutory requirement that she actually  
25 reside or intend to reside at Lake McDonald. Therefore, she is  
26 not entitled to claim a homestead exemption for Lake McDonald  
27 under Washington law. See In re Wilson, 341 B.R. at 27.

**VI. CONCLUSION**

For the foregoing reasons, we AFFIRM the bankruptcy court's order voiding Snavely's declaration of homestead for Lake McDonald, which precludes Snavely from claiming a homestead exemption for Lake McDonald.