THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2023-0023

Katherine R. Brady

v.

Lawrence P. Sumski,

Chapter 13 Bankruptcy Trustee

CERTIFIED QUESTIONS OF LAW

FROM

THE UNITED STATES DISTRICT COURT

FOR

THE STATE OF NEW HAMPSHIRE

BRIEF OF THE APPELLEE,

LAWRENCE P. SUMSKI, CHAPTER 13 BANKRUPTCY TRUSTEE

Lawrence P. Sumski,

Chapter 13 Bankruptcy Trustee

32 Daniel Webster Highway, Suite 15

Merrimack, NH 03054

603-626-8899

sumskich13@gmail.com

NH Bar No. 2490

Table of Contents

Table of Cases ………………………………………………………………………. 4

Table of Statutes ……………………………………………………………………5

Main Statutory Provisions …………………………………………………………6

Questions Presented ………………………………………………………………8

Standard of Review …………………………………………………………………9

Statement of the Case and Agreed Facts ……………………………………10

Summary of the Argument ………………………………………………………13

Argument ……………………………………………………………………………15

A. The Homestead "Right" is Status-Dependent,

and Multi-Featured …………………………………………15

B. Statutory Construction ……………………………………………21

C. There Are No Authoritative Cases Exactly On Point …32

D. The Legislature Protects Creditors, Too ……………………38

E. The Appellant's Position is a Solution in Search of a

Problem ……………………………………………………………44

Conclusion …………………………………………………………………………49

Statement Regarding Oral Argument ……………………………………………51

Signature Page ……………………………………………………………………51

Certificate of Compliance……………………………………………………………………52

Certificate of Service……………………………………………………………………….52

Appendix ………………………………………………………………Separately Submitted

Table of Cases

Beland v. Goss, 68 N.H. 257 (1895)…………………………………………….33

Deyeso v. Cavadi, 165 N.H. 76 (2013) ………………………………………..15

Gerrish v. Hill, 66 N.H. 171 (1890) ……………………………………………33

In re Hopkins, 2021 BNH 004 ………………………………………………..30, 33

Kassel v. Gannett Co., 875 F.2nd 935, 950 (1st Cir. 1989) ………………23

Maroun v. Deutsche Bank Nat'l Tr. Co., 167 N.H. 220 (2014)……..27, 34

In re Meyers, 323 B.R. 11, 13 (Bankr. D.N.H. 2005) ………………………15

Robitaille v. Roy and Dahar, Rockingham Superior Court,

Docket No. 218-2014-CV-00406 ……..……………………36, 37, 44

Sabato v. FNMA, 172 N.H. 128 (2019) ……………………………………34, 35

Stewart v. Bader, 154 N.H. 75 (2006) …………………………………..15, 33

In re St. Laurent, 2022 BNH 002 ……………………………………………….33

In re Visconti, 426 B.R. 422 (Bankr. D.N.H. 2001) …………………….32, 33

Watterworth v. Watterworth, 149 N.H. 442, 443 (2003) ………………..18

In re Weiner, 2015 BNH 012 ……………………………………………………34

Table of Statutes

RSA 304-C:1 ……………………………………………………………………….45

RSA 304-D ………………………………………………………………………….45

RSA 477, et seq. ………………………………………………………………….46

RSA 478, et seq. ………………………………………………………………….41

RSA 479, et seq. ………………………………………………………………….40

RSA 480:1 …………………….6, 9, 17, 19, 21, 22, 23, 25, 26, 27, 28,

29, 30, 33, 35, 37, 43, 49, 50

RSA 480:3-a ………………………………………………….6, 18, 30, 33, 34

RSA 480:8-a ………………………………………………………………..32

RSA 529……… ……………………………………………………….6, 7, 31, 37

RSA 540:1, et seq. ………………………………………………………..40

RSA 674:31 ………………………………………………………………..6

Main Statutory Provisions

The Homestead Right

RSA 480:1 Amount --- Every person is entitled to $120,000 worth of his or her homestead, or of his or her interest therein, as a homestead. The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person but shall not exist in the land upon which the manufactured housing is situated if that land is not also owned by the owner of the manufactured housing.

RSA 480:3-a Duration --- The owner and the husband or wife of the owner are entitled to occupy the homestead right during the owner's lifetime. After the decease of the owner, the surviving wife or husband of the owner is entitled to the homestead right during the lifetime of such survivor.

RSA 529:20-a Notice of Homestead Exemption --- Along with the notice required under RSA 529:20, the party in whose name the execution has issued shall provide to any person who resides or appears to reside on the real estate to be sold, the following notice by certified mail:

NOTICE

IF YOU OR YOUR SPOUSE OWNS AND RESIDES IN THIS PROPERTY, YOU AND/OR YOUR SPOUSE MAY BE ENTITLED TO A HOMESTEAD

EXEMPTION PURSUANT TO RSA 480:1. THIS EXEMPTS $120,000.00 FOR A SINGLE PERSON AND $240,000.00 FOR A MARRIED COUPLE.

IN ORDER TO CLAIM THIS EXEMPTION, YOU MUS NOTIFY THE SHERIFF OF THE COUNTY IN WHICH THE REAL ESTATE IS SITUATED AND THE JUDGMENT CREDITOR OF THE AMOUNT OF YOUR HOMESTEAD CLAIM IN WRITING. IF YOU DO SO BEFORE THE SALE, THE SHERIFF MUST PAY YOU THE AMOUNT OF YOUR HOMESTEAD EXEMPTION BEFORE PAYING THE JUDGMENT CREDITOR FROM THE PROCEEDS OF THE SALE. IF, HOWEVER, THE JUDGEMENT CREDITOR FILED A MOTION IN COURT CHALLENGING YOUR ENTITLEMENT TO OR THE AMOUNT OF THE HOMESTEAD EXEMPTION, THE SHERIFF SHALL NOT DISTRIBUTE THE PROCEEDS FROM THE SALE UNTIL FURTHER ORDER OF THE COURT.

IF YOU DO NOT NOTIFY THE SHERIFF AND THE CREDITOR OF YOUR EXEMPTION UNTIL AFTER THE SALE, THE CREDITOR NEED NOT PAY YOU THE AMOUNT OF YOUR HOMESTEAD EXEMPTION UNTIL THE EXPIRATION OF THE ONE-YEAR PERIOD DURING WHICH YOU MAY REDEEM THE PROPERTY PURSUANT TO RSA 529:26.

IF THE SHERIFF RECEIVED YOUR NOTICE OF HOMESTEAD EXEMPTION PRIOR TO THE SALE, THE SHERIFF MAY NOT SELL THE PROPERTY FOR LESS THAN THE AMOUNT OF THE CLAIMED HOMESTEAD EXEMPTION WITHOUT FURTHER ORDER OF THE COURT.

Questions Presented

The Federal Bankruptcy Court issued an opinion regarding its interpretation of the State of New Hampshire's homestead rights of a citizen, in this case a bankruptcy debtor, as they pertained to certain residential real estate that she, a married woman, had chosen to take title to solely in her own name. She resided at this New Hampshire single family dwelling with her non-owner spouse, and their children. The Bankruptcy Court ruled that only an owner of real estate, who also occupied that real state as his or her residence, could assert a homestead exemption as to the monetary value of that real estate.

This Debtor in Bankruptcy Court, referred to as the Appellant hereinafter, believed that the decision was incorrect, and appealed. The undersigned Chapter 13 Bankruptcy Trustee, the Appellee herein, agrees that the status of the caselaw regarding the State homestead law may be unclear, and that it merits review.

United States District Court Judge Steven McAuliffe, after review, opined that certain of the relevant statutes were ambiguous and possibly contradictory. He therefore presented two questions to the parties as his synopsis of the State legal questions at issue, which should be referred to the New Hampshire Supreme Court for decision. Both parties after review agreed with his formulation of the legal questions.

Judge McAuliffe, and by extension the parties, therefore agree that the questions of law presented are as follows:

1. **Does the ownership requirement described in the second sentence of N.H. Rev. Stat. Ann. 480:1 apply to all real property occupied as a homestead, or does it apply only to manufactured housing occupied as a homestead?**

   That is to say, assuming the homestead is real property other than manufactured housing, does the non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also have a present, vested, non-contingent homestead right of his or her own, which is currently valued at $120,000?

   and

2. **Does a non-owning spouse who occupies a manufactured housing unit with an owning spouse have a present (i.e., non-contingent) and enforceable homestead right with respect to that home, which is currently valued at $120,000?**

Standard of Review

The Appellee agrees with the Appellant that only questions of New Hampshire State law are presented in this case, and the New Hampshire Supreme Court is the final arbiter of their interpretation.

Statement of the Case and Agreed Facts

The Appellant, a married individual, filed for Chapter 7 Bankruptcy relief on December 17, 2021. She dutifully filed the required Bankruptcy Schedules, on which she listed all her assets, all her perceived lawful exemptions (which protected some or all of the value of these various asset categories), and all her creditors. Among other things, the Appellant listed on Schedule A/B her principal asset, certain residential real estate located at 27 Pinewood Drive, Merrimack, New Hampshire, at which she resided with her spouse and children. Appendix of Appellee, at p. 38.

The title to this residential real estate was in her name only, instead of being titled jointly to both her and her cohabitating spouse. Citing her sole ownership of the home, she claimed a homestead exemption for herself, only, on the Schedule C. Id., at p. 47.

There was and is no objection to this declared homestead exemption of she, the sole owner/occupier of the residential real estate.

In due course the Appellant amended her Schedules to include a purported second homestead exemption on behalf of her non-owner husband. The Chapter 7 Bankruptcy Trustee filed an objection to this *second* claimed $120,000 homestead exemption. Id., at p. 50. In due course Appellant elected to convert to Chapter 13 Bankruptcy. The undersigned Chapter 13 Bankruptcy Trustee was then appointed, and

pursued the same homestead exemption objection which had been filed by the predecessor Chapter 7 Trustee. Id., at p. 54.

It was alleged in the objection that, as the sole owner of the residential real estate, Appellant alone was entitled to the homestead exemption. In due course the Appellant, as an alternative theory, asserted her husband's putative "lien," in the homestead amount, against the residential property that she alone owned, again in an effort to protect his alleged homestead rights.

The Bankruptcy Court in due course held a hearing on the Trustee's objection to exemption. To understand the fact pattern and its issues, one must first be able to clearly identify the s*tatus* of the residential parties:

- First, there is an owner/occupier of the residence. In this case that describes the Appellant, the sole residential title holder who lived at the residence.
- Second, there is a non-owner/occupier of the residence. In this case that describes the Appellant's spouse, who was NOT on the title but who did live at the residence.

The Bankruptcy Court in its Memorandum Opinion ruled that the homestead rights, when looked at in the context of the full statutory scheme, in fact have two separate and distinct components:

- The homestead rights have a *monetary value* component, to which only the owner/occupier (or owners/occupiers in the

case of jointly owned real estate)[1] of the residential real estate would be entitled, in the current statutory amount of $120,000.

- The homestead also includes what will be referred to herein as a set of *ancillary, non-monetary* rights, to which both the owner/occupier, and any other non-owner/occupiers, would be entitled.

Memorandum Opinion, at p. 6.

Having found the uncontested fact that only the Appellant was the owner of the residential real estate, the Bankruptcy Court there held that only she would be entitled to claim the homestead exemption.

The Appellant appeals from this Bankruptcy Court decision, asserting that even a non-owner/occupier of residential real estate is entitled to both the monetary and the non-monetary homestead rights.

The Appellee believes that the Bankruptcy Court made the correct analysis, namely that the ancillary, non-monetary homestead rights flow to *both* parties, but that the monetary homestead rights are reserved *only* for the record owner/occupier of the residential real estate.

Judge McAuliffe's Questions, listed above, reference the two conflicting possibilities.

[1] Of course, more than one party may be the owner of real estate. In this Brief the word "owner" will be used in the singular for ease of discussion.

Summary of the Argument:

The Legislature, for as long as can be determined, has had a policy to protect its citizens and their families regarding what is typically their most valuable asset, the family residential real estate. This is obviously a worthy and necessary legislative policy goal. Over generations the Legislature has increased both the *valuation of the monetary portion* of this protection, and also the *scope* of the protection.

The homestead law originally protected only traditional buildings used as residences, which will be referred to herein as "stick-built" houses, simply because until the last few generations those were the only type of single-family homes that people lived in. Before its amendment, the homestead law specifically excluded from protection a new sort of dwelling, which was just appearing a few generations ago. But as more and more citizens chose to reside in these new sorts of dwellings, what were then known as "mobile homes," now more correctly referred to as "manufactured homes," it became determined as a matter of equity that similar homestead protection was needed for these manufactured homes as well. They were by any conceptual standard the same exact asset as a traditional stick-built home, though typically they were of a more modest value. There was therefore no principled difference between the two types of residences. Usually, due to the lesser economic status of the owners of those manufactured homes, the homes were less valuable than the traditional stick-built

homes, and often, for the same reason, these owners would own just the residential buildings, but not the land upon which the buildings sat. But by the amendment of the homestead law they were eventually deemed to be functionally and legally equivalent residences.

All agree that *equity* was the Legislature's clear intent when modifying the homestead statute. Having decided rightfully that these manufactured homes were no longer to be deemed mere chattels, but rather that they should be treated as exactly comparable residences and so deemed by society to be worthy of equal protection under the law, the remaining issue was for the Legislature to effectuate this new policy. The unintended consequence of the formulation of that amended statute, unfortunately, was to muddy the water as to the exact meaning and extent of the homestead rights.

This led to the Questions presented by Judge McAuliffe.

Argument

A. The Homestead "Right" is Status-Dependent, and Multi-Featured

To properly answer the questions Judge McAuliffe posed regarding the Legislature's intent in amending the homestead rights statute, one must first determine what those rights are. The generic homestead concept is agreed to by all: the Legislature has an abiding interest in protecting its citizenry. The single most valuable asset owned by the average citizen and his or her family is its residential real estate, and society has a worthwhile goal of assisting citizens in obtaining and retaining residential real estate. See, e.g., Deyeso v. Cavadi, 165 N.H. 76 (2013):

> The purpose of the homestead exemption is to secure to the debtors and their families the shelter of the homestead roof.

Id., at 79.

In furtherance of that policy, innumerable citations can be found to indicate that the statutory homestead protection is to be liberally construed. See, e.g., Stewart v. Bader, 154 N.H. 75, 89 (2006), and In re Meyers, 33 B.R. 11, 13 (Bankr. D.N.H. 2005).

There is no question or dispute about that.

But that truism, accepted by the Appellant and the Appellee and

all parties to this discussion, is not a dispositive statement; it is not a blank check in favor of every residential real estate occupier. The Bankruptcy Court below held that to properly analyze the generic homestead rights, one must first consider the *status* of the individual resident, and then the *separate components* of the homestead right that pertain differently to different individuals, depending upon that status.

An occupier of residential real estate can have one of two statuses, or both.

One can *either* be:

- an owner/occupier,

  or

- a mere[2] non-owner/occupier.

And of course, both spouses can be joint owners/occupiers at the same time.

From that *status* flows two sets of possible rights, to wit:

a. The rights of an owner/occupier of real estate, i.e., the party or parties in whose name the real estate is titled, and which person or persons occupy the real estate in question as a residence, are enhanced homestead rights; this person possesses both the *monetary* and *non-monetary* homestead rights.

[2] The word "mere" will be used in this Brief not as a pejorative term, but rather to connotate a lesser legal status that an occupier has than the owner of the real estate has.

versus

b. A mere "non-owner/occupier" of the real estate, namely a person who is not on the title to the real estate, but who does occupy it as a residence; that person or persons possesses a lesser set of homestead rights, just the non-monetary rights.

The Bankruptcy Court below found that the intent of the Legislature can only be determined by reviewing and applying these two sets of rights separately and distinctly. Once the status of the individual resident is determined, so can be the specific rights that he or she enjoys be determined:

A. Both the enhanced monetary rights *and* the ancillary, non-monetary portion of the homestead rights only belong to every owner/occupier of the real estate.

B. Only the ancillary "non-monetary" rights portion of the homestead rights belongs to all the other residents of the residential real estate, universally.

The Appellant cites without evidence the proposition that "most practitioners" [3] believe that the monetary portion of the homestead protection inures to both an owner/occupier, as well as any non-owner/occupier of the property. But the statutory analysis[4] is not clear about that, with several of the cases finding RSA 480:1 to contain

---

[3] Appellant's Brief, p. 21.

[4] See Section B, below.

somewhat contradictory and ill-defined language. See, e.g., McAuliffe Order, at p. 1.

In this case, the Appellant was the owner/occupier, and so entitled to both the enhanced, or monetary, and the ancillary, or non-monetary, homestead rights. The Appellant's spouse was a mere non-owner/occupier, and due to that lesser status he was entitled to just the ancillary, non-monetary homestead rights.

The ancillary, non-monetary rights that a non-owner/occupier spouse (and any of the other cohabitating family members of an owner/occupier) possesses are valuable. Memorandum Opinion, at p. 6. For example, such a spousal non-owner/occupier has marital rights in the property in the event of a marital dissolution; no married sole owner of real estate would be able to exclude a non-owner spouse from a division of marital assets regarding that real estate, merely due to the fact that the spouse is not a title owner. Watterworth v. Watterworth, 149 N.H. 442, 443 (2003). Similarly, a non-owner/occupier surviving spouse would be entitled to his or her "interest" in the subject real estate, upon the demise of the owner. RSA 480:3-a. A non-owner/occupier spouse has tenancy rights to occupy the real estate, despite not being on the title to it. These things are meaningful, and have value, and inure to the party due to his or her status as a mere non-owner/occupier of the residential real estate owned by someone else.

To be crystal clear, these non-monetary interests are not in dispute in this case; the Appellant's spouse has or had these non-monetary rights.[5]

Appellant, in her Brief, cites the statutory language of 480:1 regarding the homestead "interest" that every non-owner/occupier allegedly enjoys, further opining:

> "Interest" in this context does not necessarily mean "ownership." A spouse who resides and cohabits with his or her spouse has an "interest" in the home which gives each spouse a homestead interest even where one spouse does not have a title ownership interest.

Appellant's Brief, at p. 16-17.

She then attempts, however, to blur the line between the two aspects of the Homestead right, declaring that both the owner/occupier and the non-owner/occupier share not just the non-monetary rights, but the monetary rights as well. She asserts that:

> the legislative history makes it clear that the non-owning spouse has a present, separate, valuable, non-contingent and enforceable homestead right in the property, *and therefore can avail oneself to the extent of the value set forth therein* (Emphasis added)

Appellant's Brief, at p. 16.

The first clause of that quotation is a truism, as discussed here,

[5] The residential real estate has now been sold, so the issue is what interest exactly the non-owner spouse had as of the date that the Bankruptcy case was filed.

agreeable by all and specifically acknowledged and cited in the decision below. Memorandum Opinion, at p 6. The "interest" that is enjoyed by all parties, regardless of ownership status, is the non-monetary homestead right. The leap that the Appellant takes to the legal conclusion regarding the monetary portion of the homestead right in the emphasized second clause is unsupported, and contrary to the finding of the Bankruptcy Court below. Id., at p. 7.

The Appellee here asserts that, since the parties agree that the generic homestead right has two distinct parts, a very careful review of the caselaw discussing the "rights" must be observed. This distinction is not always made by reviewers of the statutory language in the caselaw, although it should be. A mere recitation that "A" and his non-titled spouse, "B," both affirmatively are found to have "a" homestead right in a particular property is just a non-pertinent, non-relevant observation. The sky is blue, and *all* spouses of the owners of residential real estate have "a" homestead interest, often incorrectly referred to as a generic monetary homestead interest, in all residential real estate owned by their spouses.

Crucially, unless a given caselaw decision holds that said non-owner/occupier spouse also and specifically has the *monetary* portion of the homestead interest, not just the generic and universal non-monetary portion, the Appellee posits that the decision is ambiguous, and certainly not persuasive as to the questions presented by Judge McAuliffe.

B. Statutory Construction

Answers to Judge McAuliffe's Questions become apparent when reviewing the statutory language. All parties to this appeal agree that the purpose of the 1983 amendment of 480:1 was to extend the Homestead rights to manufactured homes, to provide equitable treatment between manufactured home residences and traditional, stick-built residences. See, generally, Intervenor's Brief, at p. 23-25. In the interests of clarity, in hindsight it would have been much preferable for the Legislature to have repealed this section, and changed it into two sections: the first being an amendment to reflect the clear legislative policy change that no longer was there to be any distinction between stick-built and manufactured homes, and the second part to say exactly what common specific homestead rights both of these now-equal types of properties enjoyed.

The historical discussion of mobile or manufactured homes, however, presents sort of a red herring diversion from the important issues in the case. The construction of the amended statute that we now have, in combining the two types of homes into one statute, has led to this possible confusion on the part of some. It is unfortunate but understandable that the historical distinction between stick-built and the new manufactured residences was ever made; the fact that it was made is still perceived by some to have some relevance.

The first sentence of RSA 480:1 recites that “every person” is entitled to the monetary portion of the homestead right, discussed above. But the second sentence clarifies the extent and meaning of the protection. Its agreed and intended legislative intent was to extend to owners and occupiers of manufactured homes the exact same rights and protections possessed by owners of traditional stick-built homes cited in the first sentence, whatever they were. This second sentence specifies that the protection afforded to the manufactured homes has a specific restriction, which is perhaps ambiguously not so specifically cited in the first sentence. And it is a major restriction at that: namely that the monetary homestead protection requires *both* ownership and occupancy when it comes to manufactured homes.

The Bankruptcy Court below noted that the language of this second sentence pertaining to manufactured homes affirmatively and explicitly provided that only owners/occupiers of these homes were entitled to claim the monetary homestead right in the property. The Appellant and the State, noting that the first sentence, which referred to traditional stick-built homes, did not have the same restrictive language, seek to dismiss or minimize this extra condition for manufactured home owners. They claim that the “ownership” language of the second sentence is a mere “feature” of the amended law[6], rather than a specific, articulable prerequisite that those manufactured home owners

[6] See, e.g., Intervenor’s Brief, at p. 28.

and occupiers, and *only* manufactured homeowners, must possess to enjoy the full and enhanced monetary Homestead rights.

Judge McAuliffe's second[7] Question was:

Does a non-owning spouse who occupies a manufactured housing unit with an owning spouse have a present (i.e., non-contingent) and enforceable right with respect to that home, which is currently valued at $120.000?

The clear answer is "no."

The full second sentence of RSA 480:1 is stated above. When parsed of its unnecessary parts, that sentence reads:

> The homestead right created by this chapter shall exist in manufactured housing…which is owned and occupied as a dwelling by the same person…

Judge McAuliffe, in his Order certifying the Questions, stated that:

> When, in situations such as this, a federal court is called upon to apply state law, it "must take state law as it finds it: not as it might conceivably be, some day; nor even as it should be."

McAuliffe Order, at 18, citing and quoting from Kassel v. Gannett Co., 875 F.2nd 935, 950 (1st Cir. 1989)

[7] Judge McAuliffe's "two" questions actually consist of three related questions. To the undersigned it seems most logical to address the questions in the order presented here.

It is difficult to understand how the Legislature's simple and direct declarative statement that the monetary homestead rights were extended to manufactured housing "which is owned <u>and</u> occupied as a dwelling by the same person (emphasis added)" actually means "which is owned <u>or</u> occupied as a dwelling by the same person."

The Bankruptcy Court in its <u>Memorandum Opinion</u>, at p. 7, noted the failure of this non-sensical statutory interpretation put forth by the Appellant and the State. It is just illogical to claim that, in furthering the agreed policy change of creating equality between the two types of residential real estate, the Legislature would simultaneously impose a major additional term, ownership, as a prerequisite to enjoying the monetary homestead right regarding manufactured homes. In the thinking of the Appellant and the State, the Legislature would continue to allow the non-owners/occupiers of stick-built housing the full, enhanced monetary homestead rights *without* a requirement that they also be an owner. The contention of the Appellant and the State is that second sentence language, specifically requiring the prerequisite of "ownership," doesn't narrow or impose that same additional "ownership" requirements on the general homestead right in the first sentence. Rather, they assert that the new and additional "ownership" requirement applies *exclusively* to manufactured homes.

That is just contrary to the understood (and agreed) legislative intent of creating equality. It is akin to saying that some citizens have a certain set of rights, while some other set of objectively similarly

situated citizens have similar but lesser rights, for no articulable reasons. That's not a "feature;" that's discrimination. That supposes a legislative intent that is directly contrary to the stated policy goal of equalizing the treatment of the two types of residences and their owners. This is especially ironic in light of the typically lower economic status of the manufactured housing owners that the Legislature specifically sought to uplift and put on par with their typically more affluent counterparts.

The Appellant and the State would have this Court believe that the amended language in the second sentence of the homestead law was intended to expand its provisions and protections to manufactured homes, to encourage manufactured homes as a form of stable, residential housing—while at the same time *also* codifying manufactured homeownership as a second-class form of housing. The Appellant and the State in their analysis of the statutory change somehow turn an agreed and obvious overt attempt at equality into a simultaneous but stealthy attempt to impose second class citizenry upon manufactured home owners.

The Appellant's home in this case was a stick-built home, owned just by the Appellant, and not by her spouse. Should the particular residence have been a manufactured home, the spouse clearly would NOT have been entitled to claim his own monetary Homestead interest, not being an owner, due to the clear and unambiguous wording of the second sentence of 480:1. A legislative change intended to bring equal treatment to owners of typically more modestly valued manufactured

homes surely couldn't have simultaneously codified this separate and unequal treatment.

Further, as noted by the Court below[8], the language of the first sentence of 480:1 must perforce have some limiting inferences. To believe otherwise would make the words of the Statute nonsensically overbroad. If indeed "every person" who resides at the property is entitled to the monetary homestead protection, no creditor would ever be able to execute an attachment against the equity of said property, due to the application of numerous possible monetary homestead exemptions. It is easy to foresee confusing fact patterns if the monetary homestead right was extended without some limitation; a lender wouldn't know whether an occupying spouse existed at the time the owner took title; whether the spouse still resided with the owner at the time of an attachment; or whether the owner had a spouse and an adult child (who, being a humans, would qualify as an "every person"). What about several adult children? And for that matter need they be adults, or merely "person(s)?" The Appellant states that the idea that "any adult," not just a non-owner/occupier spouse, could claim the exemption is not true, as witnessed by the legislative history removing the minor children from protection, to allay problems with conveyancing. Minors have their own complicated set of rights (they are unable to execute binding contracts, e.g.) and they have a legal inability to waive rights that they may have; the removal of them from

[8] Memorandum Opinion, at p. 7-8.

homestead consideration was just to eliminate an unnecessary and complicating conveyancing issue.

Instead of viewing the overbroad "every person" language literally, the clarification in the second sentence provides insight to understanding that "every person" cited in the first sentence actually meant "every person who is an owner/occupier" of the residential real estate has some form of the homestead protection.

We must conclude that the Legislature intended the plain meaning of the words of the statute to be what they say.[9] Manufactured housing owners are to be treated the same as traditional stick-built housing owners. The language in the second sentence of 480:1 specifically and unambiguously provides that manufactured homeowners are only entitled to claim the monetary homestead rights if they *both* own and occupy the property. Logically, then, stick-built home owners, despite the allegedly ambiguous lack of a similar declarative statement in the first sentence, must perforce face the same restriction on that monetary homestead right. A non-owner/occupier of either type of residence possesses the non-monetary rights of the homestead law, but only owners possess the monetary rights of the homestead law. That is equality in line with the statutory goal.

[9] See, e.g., Maroun: "When examining the language of a statute," this Court "ascribe(s) the plain and ordinary meaning to the words used."

Judge McAuliffe's first question was:

1. Does the ownership requirement described in the second sentence of N.H. Rev. Stat. Ann. 480:1 apply to all real property occupied as a homestead, or does it apply only to manufactured housing occupied as a homestead?

That is to say, assuming the homestead is real property other than manufactured housing, does the non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also have a present, vested, non-contingent homestead right of his or her own, which is currently valued at $120,000?

The answer to that question is this: specificity trumps ambiguity. Traditional stick-built residences and manufactured homes were to be treated equally under the law. One category of these homes had imposed upon it a specific and unambiguous requirement of ownership/occupancy to enjoy the monetary part of the homestead rights. The other type perhaps ambiguously did not contain that language. Since equal treatment was the policy goal, to the ambiguous section must be inferred the specific common requirement: both ownership and occupancy are required to enjoy the enhanced monetary homestead rights.

Furthering re the "red herring" aspect of this analysis as it relates to the manufactured housing discussion, the Appellant and the State find that the wording regarding the *land* upon which the home sits to be

persuasive, of something. Presuming that most manufactured housing is on land owned by someone else, the language just seems to be unnecessary historical explanatory language, or a truism. It just provides, for example, that an owner of a manufactured home which is situated in a mobile home park, which mobile home park *is owned by someone else*, cannot claim the value of the mobile home park as part of his or her manufactured home's value. This is puzzling, but was apparently deemed to be necessary explanatory language in the context of the discussion of this then-new type of residential property, a couple of generations ago. By today's standards it seems as obvious and unnecessary as to say that the Appellant here, a sole title owner to the residence at 27 Pinewood Drive, Merrimack, cannot use the value of property owned by her next-door neighbors at 28 Pinewood Drive to somehow enhance or bootstrap the homestead rights she enjoyed in the actual property that she owned. Said another way, no person can claim a homestead interest in property that he or she doesn't own. That is hardly controversial, so that section of the second sentence of 480:1 should be viewed as outdated explanatory dicta, not helpful to any contention that the Appellant is making. The correct reading of that amended statute, as found by the Bankruptcy Court's analysis[10], is that the second sentence language regarding ownership as a prerequisite for claiming the full homestead rights was *explanatory*, attempting to make the intent of the section as a whole clear: ownership and occupancy

---

[10] Memorandum Opinion, at p. 7.

were both required, *and always had been required,* to claim the full monetary homestead right.

480:1 is the only section which describes and creates homestead rights. Review of its subsections is necessary to see if the analysis presented here is inaccurate.

RSA 480:3-a, by its very title, merely establishes the duration of the homestead right. The wording of this section was clearly intended to create and provide something that earlier didn't exist, before this section was added, namely a monetary homestead interest inuring to the non-owner survivor spouse, upon the demise of the owner. In re Hopkins, 2021 BNH 004. When 480:3-a was added, *for the first time* the non-owner/occupiers of the residence received the monetary homestead right, contingent upon the demise of the owner. The non-owner/occupying survivors, who already enjoyed the universal non-monetary homestead rights, now specifically and for the first time also were bestowed the monetary homestead right---contingent upon the demise of the owner/occupier. There is no sensible, non-tortured way to read 480:3-a, which thus enhanced the rights of non-owner/occupiers by adding this contingent right, without logically inferring that that in the opinion of the Legislature, the new law was needed for one clear reason: because *before* that statutory change, that monetary homestead right did not exist with non-owner/occupiers.[11] What other possible purpose could that addition have been intended to accomplish?

---

[11] Order of Bankrutpcy Court, at p. 2-3.

The related RSA 480:8-a provides guidance for the Superior Court to follow when determining whether certain parties will be able to establish a homestead right. The wording of the statute provides that only the "owner of a homestead or the wife or husband surviving such owner" can pursue the remedy against a judgement creditor. Residency is implied, but the title ownership is an articulated prerequisite in this subsection to the ability to declare a monetary homestead exemption.

A review of the language of RSA 529 doesn't help advance

Appellant's position. The section does not create or specify any new rights upon the citizenry. Rather, it provides a boilerplate statement of "best practice" notification terms. The obvious point that a non-owner spouse has a certain "interest" in his or her residence requires that, at a minimum, such persons should be made aware of the pending life changing action that a creditor is proposing. The broad language provides that notice should be given far and wide, not just to owners but to "any person who resides or appears to reside" at the property. See above, at p. 6-7. Any first year law student faced with the assignment of drafting such a creditor's notice would, out of an abundance of caution, include notice to all lawful occupiers and residents of the pending action.

C. There are No Authoritative Cases Exactly On Point

It is actually not surprising that, despite the stated and agreed import of the homestead law, there are not many cases interpreting it. A judicial discussion of the scope of the monetary homestead protection requires a rare fact pattern, such as found here, in which a financial dispute has arisen, and the defendants have the up-to $240,000 of equity in their threatened residential real estate that makes it worth legally fighting for. That is just not a common fact among the citizenry who are in financial distress.

While all understand and appreciate the policy goal of homestead protection, a common theme in the decided cases is that there is confusion as to the scope and nature of these rights, such as that stated here. Judge McAuliffe, synthesizer of the two specific legal questions at issue in this appeal, reviewed the caselaw and statutory language and found that the statutory homestead provisions were "ill defined," and that "reasonable people can certainly interpret …the homestead right in contradictory ways." McAuliffe Order, at 1. And he correctly asserted that "(t)he New Hampshire Supreme Court has yet to address the nuanced issues presented in this case." McAuliffe Order, at 19.

The underlying Memorandum Opinion, at p. 5-6, found the clear and unambiguous homestead discussion at In re Visconti, 426 B.R. 422 (Bankr. D.N.H. 2010) to be persuasive. In that case, discussing the application of the homestead right to a debtor's real estate, the Court

held that Mr. Visconti did not possess the monetary portion of the homestead right. It stated that "the ownership exemption under RSA 480:1 requires both occupancy and ownership." Id., at 426. And that Court further described the ancillary, non-monetary homestead rights discussed in this Brief, stating that "a spouse who does not hold an ownership interest does have a right to occupy the homestead during the non-spouse's lifetime and can claim a homestead right for their life after the death of the owner-spouse." Id., at 426.

The Memorandum Opinion cited the unreported case of In re St. Laurent, 2022 BNH 002, similarly for the proposition that ownership and occupancy both were required to assert the enhanced exemption, and a debtor who hadn't lived at his former homestead address for several years thus could not claim it. The Visconti decision contains the consistent internal cites of the 1890 New Hampshire Supreme Court case of Gerrish v. Hill, 66 N.H. 171, and the similarly ancient 1895 case of Beland v. Goss, 68 N.H. 257, to establish that there is a long-standing requirement of the necessity of both statuses, ownership and occupancy, to successfully claim the monetary homestead. This requirement is also stated in Stewart v. Bader, 154 N.H. 75,89 (2006).

As discussed above,[12] In re Hopkins, 2021 BNH 004, discussing the meaning of RSA 480:3-a, held that the homestead right of a non-owner/occupier spouse was strictly contingent. It became a vested

[12] See p. 30, above.

monetary homestead right, with specific protection of the $120,000 equity to the spouse, only upon the demise of the owner-spouse.

The Appellant cites with apparent agreement the holding of In re Weiner, 015 BNH 013, namely the proposition that these *prior* owners/occupiers, a debtor and spouse, at one time had a homestead right to their former residence, but due to the constructive abandonment of it for a number of years (despite the debtor's testimony that in fact he intended to return), the Court found that one of the two necessary prerequisites, occupancy, was lacking. Therefore, the homestead assertion was denied. Weiner, at 13.

The Appellant and State cite Maroun v. Deutsche Bank Nat'l Tr. Co., 167 N.H. 220 (2014) favorably, as it awarded a monetary homestead interest to a spouse. That case involved a title dispute, post-conveyance, involving a parcel of real estate and a botched homestead waiver in the title chain. The analysis of the Court indicates, as it must, that it intends to "ascribe the plain and ordinary meaning to the words used (internal citations omitted)…We do not construe statutes in isolation; instead, we attempt to do so in harmony with the overall statutory scheme." Id, at 168. But despite this statement, the Court thereupon analyzed the facts as they related to RSA 480:3-a, the above described "Duration" statute. Since both of the conveying parties were alive, it is respectfully suggested that that decision is not directly on point. Sabato v. FNMA, 172 N.H. 128 (2019), similarly involved married individuals and a post-conveyance title transfer dispute, with the usual

dispute as to whether the homestead interest was properly waived in a mortgage. This decision does not parse the homestead right into its two components, monetary and non-monetary. Without a clear and undisputed statement about the scope and extent of the homestead rights components, such as the undersigned hopes and expects this Court will provide when answering Judge McAuliffe's Questions, both of these cases can be distinguished.

The answers to the specific *nuanced* Questions in this appeal need to be addressed in any decision to make it authoritative. In his discussion of the holding in Sabato that the facts there were sufficient to establish a vested (i.e., monetary) homestead right, Judge McAuliffe states:

> The foregoing certainly suggests that, under New Hampshire law, except perhaps with respect to manufactured housing (footnote omitted), a spouse need not hold title to the underlying homestead in order to have a vested, non-contingent homestead right; it is sufficient if that person occupies the homestead and is married to the title-holder.

McAuliffe Order, at 14.

The Appellee, with respect, of course disagrees with this conclusion, and points to that above-referenced footnote, in which Judge McAuliffe seems to disregard the specific language *mandating* both ownership and occupancy for manufactured housing owners to assert the monetary homestead exemption, as cited in the second sentence of 480:1. Despite his own earlier stated admonition that any reviewing Court must take the law as it is, not as it might be or even

should be, McAuliffe Order, at 18, he states that only "perhaps" that specific language is a mandate, and "one plausible interpretation" of those clear words is …the exact opposite of what they clearly state, namely that the mandate is only a "plausible" interpretation. McAuliffe Order, at 14 (footnote 2). That seems to be an interpretation that changes the Legislature's clearly articulated policy statement in the statute to reflect what the reviewer *wanted* it to be, not what is was.

The Appellant cites with approval the Superior Court holding in Robitaille v. Roy and Dahar, Rockingham Superior Court, Docket No. 218-2014-CV-00406, cited at page 67 of Appellant's Appendix. It is certainly is in line with her interpretation of the homestead statute's protections. This interpretation of the law by a lower State Court Judge is entitled to respect, but that decision should be afforded no greater weight than that of the Bankruptcy Court decision below on these issues. Judges are human, and the unfortunate facts of that case might have swayed the jurist. The question presented there was should the spouse of a tortfeasor, who herself was blameless, be entitled to any portion of the monetary value of the residence which she occupied with her tortfeasor spouse, when as a family unit they were forced to sell the home due to a legal judgement against the tortfeasor spouse only. The plaintiff in that case opined that the blameless wife should get no monetary value from the homestead after its sale, since she had been a mere non-owner/occupier of the property.

The Superior Court Judge held otherwise, but not before noting that “somewhat remarkably this question seems to never have been answered.” Id., at p. 70. In her decision she indicates that she “relies in some part on RSA 529 as evidence of the Legislature’s intent.” Id., at p. 70. As discussed above[13] that reliance, with respect, may be misplaced; that statute merely provides an admonition to practitioners to provide exceptionally broad notice to possibly affected parties of their intended action, so broad that it is inclusive even of parties who reside or “appear to reside” at the subject property. RSA 529:20-a. That section does not in itself provide any rights. The rights, whatever they may be, appear only in RSA 480:1. Nevertheless, the Judge in Robitaille found that the non-owner spouse did possess a monetary homestead interest, finding that to be a “logical reading.” Id., at p. 72. Despite her holding, which resulted in the blameless spouse being awarded a partial monetary homestead right, the Judge indicated that it was a close question:

> The Court concedes that it is possible that the Legislature intended to give each spouse their own homestead right *but not access to their own $100,000 pot. The statute is not the model of clarity.*

Emphasis added. Id., at 72.

This is in line with the interpretation the Appellee here urges: all occupying spouses have their own non-monetary homestead rights, but

[13] Appellee’s Brief, at p. 31.

only the owner/occupier holds the enhanced monetary homestead rights.

D. <u>The Legislature Protects the Rights of Creditors, Too</u>

The parties to this action come to the questions presented by Judge McAuliffe from different perspectives.

The Appellant, not surprisingly, has her family's economic interests in mind. She hopes that the analysis of this Court will result in the monetary homestead exemption being extended to her non-owner/occupier husband, with whom she will presumably share it.

The State seeks to convince this Court that it has the interests of the citizenry as a whole in mind, as evidenced by its Intervenor status and Brief. But as the title of this section of the Appellee's argument implies, that is not necessarily true.

The Appellee represents the interests of the creditors of the Appellant in the underlying bankruptcy case, which she voluntarily filed. Though not directly stated in her filings, the Appellant and the Appellee agree that this, now, is squarely a case about money. Since the decision of the Bankruptcy Court below was entered, she, with the Bankruptcy Court's approval, has sold her solely owned residential real estate, and has already received her undisputed monetary homestead interest, $120,000. After payment of the home mortgage and related liens at the time of the sale, and the payment of the undisputed $120,000 monetary

homestead to the Appellant, there is an estimated $50,000 remaining, held in escrow by agreement pending this Court's decision. For what it is worth the estimated $50,000 remainder is less than the $120,000 monetary homestead interest that the Appellant believes her non-owner, occupier spouse should and could be entitled to receive.

Should this Court decide the issues presented here in the Appellant's favor, the remainder of the estimated $50,000 will rightfully belong to her non-owner/occupier spouse, entitled to it due to his status as a "person" who was a non-owner/occupier of the residential real estate at the time that the Bankruptcy case was filed. Should the Appellee prevail, the estimated $50,000 will be turned over to him, as Trustee.

The main function of a Chapter 13 bankruptcy trustee is to collect regular monthly payments from debtors, as well as liquidated lump sums from the sale of non-exempt assets when appropriate, and to disburse this money to creditors of the debtor, according to certain priorities established in the Bankruptcy Code.[14] In this case, the non-secured, filed and bona fide claims of the Appellant total some $40,000; after application of the statutory trustee commission, the remainder cited here would yield a high dividend to be paid toward these creditors of the Appellant. Should the Appellant prevail, to get a Chapter 13 Bankruptcy Plan approved,[15] she would be liable to pay the equivalent

[14] Since these duties are not at issue here, no statutory cites are deemed necessary.
[15] This presumes that if this Court rules in her favor she elected to remain in Chapter 13, rather than availing herself of her right to re-convert to Chapter 7.

of her available disposable income for at least 36 months, which would yield a lesser dividend. The clear stakes in this case are that if the non-owner/occupier spouse is awarded the purportedly exempt $50,000, the unsecured creditors of the Bankruptcy estate will receive next to nothing from the proceeds of the sale of the real estate.

The provisions of the federal Bankruptcy Code are not at issue here, so these uncontested facts are merely presented to establish a context. What is relevant here is that the State laws, in addition to protecting consumers, also protect creditors. Most individuals who purchase a residence, whether stick-built or manufactured, do so with a loan, which loan is backed with a promise to repay. Lenders typically secure the promise to pay with a mortgage. RSA 479:1 et seq. Lenders would never make such loans, and most people therefore would be unable to purchase a residence, unless they have clear statutory rights to enforce the mortgage. They are legally empowered to do this by demanding that the promise to pay be kept, with foreclosure as a remedy for the breach of said promises.

The Appellant and the State make much of the sacrosanct right of owners to keep their residences, which of course is a worthy societal goal. See, e.g., Appellant's Brief, at p. 18. But the "right" to keep the residence is not absolute. The Legislature has a statutory scheme which allows for foreclosure, and then eviction[16], of home owners/occupiers who fail to abide by their promises to repay lenders. The State cites,

[16] See RSA 540:1 et seq.

with apparent approval, the heated rhetoric of one Court regarding the purpose of the Homestead protection:

> to protect and preserve inviolate…a family home……where the wife and mother, during her life, and the children, during their minority, might remain undisturbed and secure against the claims of the selfish, unfeeling and avaricious.

Intervenor Brief, at p. 16.

Surely the State does not believe that all creditors can fairly be described with such pejorative language, and nor can all debtors be deemed to be above reproach. And, contrary to this assertion, the Legislature has granted creditors the important, enforceable rights of mortgage and foreclosure and eviction, since without their ability to safely lend, the societal goals of increased home ownership would not be possible. Part of the lending process is determining the creditworthiness of a potential purchaser. One who has had several foreclosures on his record, or a poor credit history in general, is obviously one who will not be a welcome customer to a lender, who has other potential borrowers without such baggage. A mortgage lender must assess risk, but so must *all* commercial and non-commercial creditors that consumers come into contact with.

Aside from, or in augmentation of, credit reports, lenders often rely upon an asset search when assessing a potential client. The primary asset that consumers have, as discussed above, is residential real estate, the ownership of which is readily reviewable at the Registry of Deeds. Indeed, the very point of having a Registry of Deeds, established at RSA

478, et seq., is to show to the world what real property assets a particular citizen owns. These records will show the address of the real estate in question, from which it is easy to approximate a value, and it will show what liens may exist upon it, whether they be consensual liens or involuntary judicial attachments. With this objective and easily determinable knowledge, a creditor can determine what equity the potential new client may have.

Part of this calculation in the context of residential real estate is a factoring in of the potential monetary homestead exemption which would be available if necessary, which creditors, by definition, cannot reach. Creditors in this State will be fundamentally affected by the decision this Court will enter. Should the Court determine that the underlying decision was correct, a lender can look at a particular property, such as the one the Appellant had owned, and determine that since there is only one record owner of it, there is only one monetary homestead interest ahead of any existing liens, and any newly contemplated loan. If the Appellant prevails, a prospective new lender in a case like this will need to assume that there are (at least) two potential monetary homestead exemptions in every owned residence. Even if a homeowner takes title in his or her name alone, a new lender considering making a loan to that person (and of the ability to enforce it) would as part of its due diligence examine the superior liens to the new loan. The analysis of the Appellant here would allow additional monetary homestead right(s) to spring into effect, even if a non-owner/occupier spouse was after-acquired. Needless to say, this could

be perceived to be a chilling disadvantage for potential creditors who are considering the security available to them when extending a new loan.

But the situation is even worse than that for the potential lender. The Registry of Deeds is a reliable source of the names of owners of real estate. But there is no record at the Registry of Deeds as to whether such an owner is married at the time of a loan, or subsequently; whether such spouse, if there is one, is an occupier of the real estate with the owner; or whether some other Court may further extend the homestead monetary to other "every person(s)" who may become additional occupiers of the residence.

The Appellant and the State would have this Court believe that first sentence of RSA 480:1 mandates that the monetary protection is extended to non-owner/occupiers, despite that faulty reasoning as discussed above, but then state the belief that no Court would interpret the "all persons" language of that same sentence to literally mean "all persons." Occupancy is a fungible status, and it is unfair to creditors to have to be concerned that, with absolutely no record to rely upon, non-owner/occupiers---and non-owner/occupier spouses, for that matter---can come and go, bringing with them new homestead monetary statuses, and compromising the equity value of the security---all with no notice. A much more predictable, fairer, and commonsensical commercial scheme would allow the readily available *ownership* status of real estate, demonstrable to the world by review of the records at the

Registry of Deeds, to be the sole measuring stick of how many monetary homestead exemptions exist at a given time.

E. The Appellant's Predicament is a Solution in Search of a Problem

Judge McAuliffe, in his analysis and perhaps as a major part of his findings, found that the Bankruptcy Court's decision undermines the "fresh start" provisions of the Bankruptcy Code. McAuliffe Order, at p. 19. With respect, this is simply not true. If this Appellant's spouse is deemed by this Court to not have a separate monetary homestead right, due to not having been an owner/occupier of the property when the Bankruptcy case was filed, that will be solely due to a voluntary choice--a voluntary choice made by the Appellant herself, not "the system."

The record is silent as to why she, a married woman, took title to the subject property in her name only. Most married couples jointly own their residential real estate, at least if they were married at the time of its acquisition. However, many married couples *choose* to have only one of the parties have the title in his or her name; that is also a perfectly reasonable way to hold the major family asset, as it could limit the potential civil liability of the non-owner spouse, and so the family. Memorandum Opinion, p. 6-7. Often in these single title cases the parties understand that one of them is more susceptible than the other

to potential civil liability, and the family decision to take ownership by the other party ipso facto helps to shield the family's primary asset.

Witness the Robitaille case cited by the Appellant, at Appellant Appendix, p 67. A tortfeasor husband was the sole owner/occupier of residential real estate that he shared with his non-owner/occupier wife. The parties were forced to sell their marital residence to satisfy the judgement, and as the Appellant notes the non-owner spouse was awarded a partial monetary homestead interest. Id., at 70. Had the innocent wife, a Mrs. Roy, been the sole owner/occupier of the residence, and the husband committed the same tort as a mere non-owner/occupier of the home, she might be living in the marital home still, having effectively protected the ownership. Yes, she got some money, but presumably she would have preferred to keep her home, as she would have had the title to the marital home been in her name only.

So the *choice* to take title by only one spouse can be perfectly reasonable, and indeed is a time-honored tactic. But despite the best laid plans, the circumstances sometimes backfire.

No discussion of LLCs and corporate entities is needed to remind the Court that the reason for their legislated existence is to create a limited the liability for their owners. RSA 304-C:1. Many if not most attorneys in private practice similarly structure their practices as PLLCs, similar limited liability entities, for the same reason. RSA 304-D.

We enjoy our freedoms in this country, including the freedom as married people to choose to own real estate either jointly or in the

name of one spouse. There are valid reasons for each choice. And there are consequences for making what in hindsight turns out to have been the wrong choice. Taking the valid optional choice of either sole, or joint, ownership of marital real estate away from married individuals would be wrong. Similarly, allowing a married couple to c*hoose* single ownership as a family asset shield, when it suits them, but to also the let the chosen non-owner/occupier to have the benefits of the monetary homestead right when that suddenly become desirable, is equally inappropriate. Memorandum Opinion, at p. 7.

The most important point is this. The Bankruptcy Court below held that a married residential real estate non-owner/occupier who resided at that real estate with his or her owner/occupier spouse does not have the monetary homestead right. The non-owner/occupier spouse does not have that monetary protection for one reason—the sole owner spouse had chosen not to give it to him or her. If desired, at any time, the sole owner/occupier could have changed his or her mind, and extended the ownership, and its benefits, with the stroke of a pen: the execution of a quit claim deed from the owning spouse to her non-owner spouse.

NH RSA 477, et seq. authorizes that simple act, which the proverbial first year law student could have helped accomplish at any time with an hour's notice. If the sole owner/occupier voluntarily chose to convey to the non-owner/occupier an interest in the real estate, then both of the married spouses would have been owners/occupiers of the

real estate, and so *both* would indisputably have been entitled to the full monetary homestead interest.

Judge McAuliffe notes that the Appellee "concedes" this to be true, but that is truly not a concession at all. McAuliffe Order, at p. 8. The Bankruptcy Court below cited the correct view of the law, that all owners/occupiers of residential real estate, whether stick-built or manufactured, are entitled to the full monetary homestead rights in said real estate. Memorandum Opinion, at p. 4. All debtors in Bankruptcy are required to list all their owned residential real estate in their Schedules, and all spouses who factually reside at such owned residential real estate are entitled to claim the monetary homestead exemption. This right is never challenged in Bankruptcy cases. The unfortunate decision, tactical or not, of the Appellant here to *not* have granted her spouse the protection that would have been afforded by co-owner status to him, which she could have bestowed upon him with the stroke of a pen on a quit claim deed, has left this remaining equity unprotected, and so available for payment to her bona fide creditors.

A quit claim deed transfer as described here would have come with it an uncontested $120,000 monetary Homestead interest for the transferee spouse. The Appellant's and State's contention that only a decision by this Court in its favor will protect New Hampshire families is simply not true. Married couples *under existing law* can protect $240,000 of monetary homestead equity any time they want, *if they choose to,* by either taking title in both names upon its acquisition, or

literally any day thereafter, by opting for the simple quit claim deed process described here. By analogy, it would be unseemly (not to mention illegal) to decline to pay for rental automobile collision insurance, but then to seek to retroactively apply for it after a fender bender. That is what the Appellant here is hoping to do—to correct a decision which in hindsight proved to have been unfortunate, after the fact.

Choices have consequences. No legislative cure is needed to correct any perceived injustice caused by the Appellant's own choices.

Conclusion

Judge McAuliffe's second Question was:

> **Does a non-owning spouse who occupies a manufactured housing unit with an owning spouse have a present (i.e., non-contingent) and enforceable right with respect to that home, which is currently valued at $120.000?**

The clear answer is "no."

The question references manufactured housing. The clear and unambiguous language of the second sentence of RSA 480:1, as it is parsed above[17], states that "The homestead right created by this chapter shall exist in manufactured housing…which is owned and occupied as a dwelling by the same person…" That "shall" language makes this a legislative mandate: the homestead right requires both ownership *and* occupancy.

From that determination, the answer to the first Question of Judge McAuliffe becomes apparent. His first question was:

> **Does the ownership requirement described in the second sentence of N.H. Rev. Stat. Ann. 480:1 apply to all real property occupied as a homestead, or does it apply only to manufactured housing occupied as a homestead?**

---

[17] Appellee Brief, at p. 23.

That is to say, assuming the homestead is real property other than manufactured housing, does the non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also have a present, vested, non-contingent homestead right of his or her own, which is currently valued at $120,000?

The answer to that question is that specificity always trumps ambiguity.

Traditional stick-built residences and manufactured homes were mandated to be treated equally, and one category of these homes had imposed upon it a specific and unambiguous requirement of ownership/occupancy to enjoy the monetary part of the homestead rights. The other type ambiguously did not contain that "ownership" language. To the ambiguity must be inferred the specific common requirement of ownership and occupancy to enjoy the enhanced homestead rights. There is no other way to view the language of 480:1 as a whole, in light of the stated legislative policy goal of achieving equity.

"Every person" who resides at a residence has an ancillary, universal, non-monetary homestead exemption in said property. But only the owners/occupiers of residential real estate, whether it is a traditional stick-built or a manufactured home, are entitled to both the full enhanced, monetary and non-monetary, homestead rights.

Statement Regarding Oral Argument

Should the Court deem it necessary, the undersigned Appellee will be happy to participate in Oral Argument of the discussion of these Questions.

Respectfully Submitted,

/s/ Lawrence P. Sumski
Lawrence P. Sumski
Chapter 13 Bankruptcy Trustee/Appellee
32 Daniel Webster Highway, Suite 15
Merrimack, NH 03054
603-626-8899
sumskich13@gmail.com
NH Bar No. 2490

Certificate of Compliance

I hereby certify compliance with all Rule 16 requirements. This Brief responds to an appeal by Katherine Brady and a cross appeal/intervention by the State. Excluding the items cited in that Rule, as determined by Word, this Brief contains 9,750 words, less than the total permitted by the Rule.

Respectfully Submitted,

/s/ Lawrence P. Sumski
Lawrence P. Sumski
Chapter 13 Bankruptcy Trustee/Appellee
32 Daniel Webster Highway, Suite 15
Merrimack, NH 03054
603-626-8899
sumskich13@gmail.com
NH Bar No. 2490

Certificate of Service

I hereby certify that a copy of this Brief and separate Appendix will be sent by electronic means to the Appellant and the Intervenor.

Respectfully Submitted,

/s/ Lawrence P. Sumski
Lawrence P. Sumski
Chapter 13 Bankruptcy Trustee/Appellee
32 Daniel Webster Highway, Suite 15
Merrimack, NH 03054
603-626-8899
Sumskich13@gmail.com
NH Bar No. 2490