THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2023-0023

Katherine R. Brady
v.
Lawrence P. Sumski, Chapter 13 Trustee

CERTIFIED QUESTIONS OF LAW FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

BRIEF FOR THE INTERVENOR

THE STATE OF NEW HAMPSHIRE

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(Fifteen-minute oral argument requested)

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CERTIFIED QUESTIONS OF LAW

I. Does the ownership requirement described in the second sentence of RSA 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.

(State's Addendum at 1.)

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

(State's Addendum at 2.)

RELEVANT STATUTES

TITLE XLIX
HOMESTEADS

Chapter 480
THE HOMESTEAD RIGHT

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.

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.

TITLE LIV
EXECUTIONS, LEVIES, BAIL, AND THE RELIEF OF POOR DEBTORS

Chapter 529
LEVY OF EXECUTIONS ON REAL ESTATE

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 FOR A SINGLE PERSON AND $240,000 FOR A MARRIED COUPLE.

IN ORDER TO CLAIM THIS EXEMPTION, YOU MUST 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 JUDGMENT CREDITOR FILES 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 RECEIVES 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.

TITLE LXIV
PLANNING AND ZONING

Chapter 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS

Manufactured Housing

674:31 Definition. – As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

674:32 Manufactured Housing. –

I. Municipalities shall afford reasonable opportunities for the siting of manufactured housing, and a municipality shall not exclude manufactured housing completely from the municipality by regulation, zoning ordinance or by any other police power. A municipality which adopts land use control measures shall allow, in its sole discretion, manufactured housing to be located on individual lots in most, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality, or in manufactured housing parks and subdivisions created for the placement of manufactured housing on individually owned lots in most, but not necessarily all, land areas in districts zoned to permit residential uses within the municipality, or in all 3 types of locations. Manufactured housing located on individual lots shall comply with lot size, frontage requirements, space limitations and other reasonable controls that conventional single family housing in the same district must meet. No special exception or special permit shall be required for manufactured housing located on individual lots or manufactured housing subdivisions unless such special exception or permit is required by the municipality for single family housing located on individual lots or in subdivisions. Municipalities

permitting manufactured housing parks shall afford realistic opportunities for the development and expansion of manufactured housing parks. In order to provide such realistic opportunities, lot size and overall density requirements for manufactured housing parks shall be reasonable.

II. Notwithstanding paragraph I or any law or rule to the contrary, no zoning ordinance or bylaw shall prohibit an owner and occupier of a residence which has been damaged by fire or other disaster from placing a manufactured home on the lot of such residence and residing in such structure while the residence is being rebuilt. The period of such occupancy shall expire in 12 months from the placement of such structure or upon the issuance of a certificate of occupancy, whichever occurs first. Any such manufactured home shall be subject to state and local requirements relating to water supply and sewerage disposal. A manufactured home that is placed on a lot under this paragraph shall not attain the status of a vested nonconforming use.

STATEMENT OF THE CASE AND THE FACTS

Katherine R. Brady filed an individual chapter 7 bankruptcy petition on December 21, 2021. *In re Brady*, 2022 Bankr. LEXIS 1562 at *1 (D.N.H. Bankr. 2022). On Schedule A/B, she listed an ownership interest in her single-family home located in Merrimack, New Hampshire. *Id.* She lived in the home with her husband and two children and valued it at $236,100. *Id.* at *1-2. On Schedule C, she claimed a $120,000 homestead exemption pursuant to RSA 480:1. *Id.* at *2. On Schedule D, she listed a mortgage claim of $178,445.61 and no other secured claims. *Id.*

On February 1, 2022, Ms. Brady amended Schedules A/B and C. She increased the value of her home to $346,700. *Id.* She also asserted an additional $120,000 homestead exemption for her non-owner husband pursuant to RSA 480:1. *Id.* The bankruptcy trustee objected to the husband's homestead exemption and sought its disallowance. *Id.* at *2-3.

Ms. Brady had also moved to convert her case to a chapter 13 bankruptcy. *Id.* The bankruptcy court granted the conversion. *Id.* at *3. Thereafter, Ms. Brady amended Schedule D to her petition to add a second secured claim: that of her husband, in the amount of $120,000. *Id.* The bankruptcy trustee objected to this amendment too. *Id.*

The bankruptcy court issued a decision holding that Ms. Brady's non-owner husband had no present homestead right under RSA 480:1 and that the homestead right RSA 480:3-a establishes is contingent and is enforceable only upon the death of the owner-spouse. *Id.* at *5. The bankruptcy court concluded that, under New Hampshire law, a person must

both occupy and have an ownership interest in the homestead to be entitled to a present, enforceable, homestead right under RSA 480:1. *Id.*

Ms. Brady appealed the bankruptcy court's decision to the United States District Court for the District of New Hampshire. The parties filed competing briefs addressing the homestead issue. The New Hampshire Department of Justice filed an *amicus curiae* brief in support of Ms. Brady and in opposition to the bankruptcy court's decision.

Upon review of the briefs and the state statutes involved, the federal district court (*McAuliffe*, J.) certified two legal questions to this Court. (State's Addendum at 1-2.) The State of New Hampshire intervened in the matter and now files this brief in support of Ms. Brady and in opposition to the bankruptcy court's decision.

SUMMARY OF THE ARGUMENT

RSA 480:1 provides an owner and occupier of a homestead, and his or her non-owner, occupying spouse by virtue of that spouse's interests in the homestead, RSA 480:3-a, each with a present, vested, non-contingent homestead right valued at $120,000. *See, e.g.*, *Sabato v. Federal Nat'l Mort. Assoc.*, 172 N.H. 128, 132 (2019) ("The statutory protection of the homestead right applies not only to the homeowner, but also extends to spouses who occupy the homestead but are not title owners of the property.") (internal quotations omitted); *Maroun v. Deutsche Bank Nat'l Trust Co.*, 167 N.H. 220, 226 (2014) ("The statutory protection of the homestead right also extends to spouses who occupy the homestead but are not title owners of the property."); *Deyeso v. Cavadi*, 165 N.H. 76, 79-80 (2013) ("The [homestead] exemption 'protect[s] the family from destitution, and . . . protect[s] society from the danger of its citizens becoming paupers.'") (quoting 40 Am. Jur. 2d Homestead § 1, at 381-82 (2008)).

RSA 480:1 extends this homestead right to manufactured housing that is "owned and occupied as a dwelling by the same person." The "owned and occupied" requirement referenced in the second sentence of RSA 480:1 is a feature a manufactured home must possess in order for the homestead right RSA chapter 480 creates to extend to it; that ownership and occupancy requirement cannot be sensibly read to limit the homestead right itself only to owner occupiers of manufactured homes, nor can it be sensibly construed to apply beyond the confines of the second sentence of

RSA 480:1 to limit the homestead right only to owner occupiers of real property.

This Court should, therefore, answer the first certified question as follows:

"The second sentence of RSA 480:1 does not apply to all real property occupied as a homestead. It applies only to manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person. The non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also has a present vested, non-contingent homestead right of his or her own, which is currently valued at $120,000."

With respect to the second certified question, the State suggests that the answer provided should be, "Yes."

The second sentence of RSA 480:1 was intended to extend the same homestead right RSA chapter 480 creates to manufactured housing. The statutory language makes clear that this homestead right "exists" in manufactured housing that is "owned and occupied as a dwelling by the same person." The "owned and occupied" language of the second sentence of the statute describes a feature the manufactured home must possess for the homestead right RSA chapter 480 creates to extend to it. Non-owner, occupying spouses possess a present, non-contingent homestead right valued at $120,000 under RSA chapter 480. Thus, if the homestead right RSA chapter 480 creates extends to a manufactured home because one spouse both owns and occupies it as a dwelling, the non-owner, occupying spouse has a present right to occupancy in that homestead during the owner's lifetime, RSA 480:3-a, a significant and valuable interest in the

homestead sufficient to give the non-owning, occupying spouse a present, non-contingent, and enforceable homestead right worth $120,000 in the manufactured home.

ARGUMENT

I. RSA 480:1 GRANTS NON-OWNER OCCUPYING SPOUSES A PRESENT, NON-CONTIGENT HOMESTEAD RIGHT IN THEIR HOMESTEAD WORTH $120,000.

The certified questions presented for resolution require this Court to interpret the homestead provisions of RSA chapter 480. "The interpretation and application of statutes present questions of law, which [this Court] review[s] *de novo*." *Maroun v. Deutsche Bank Nat'l Trust Co.*, 167 N.H. 220, 225 (2014). In such matters, this Court is the "final arbiter[] of the legislature's intent as expressed in the words of the statute considered as a whole." *Id.* "When examining the language of a statute," this Court "ascribe[s] the plain and ordinary meaning to the words used." *Id.* It does not "construe statutes in isolation," but attempts to read them "in harmony with the overall statutory scheme." *Id.* "Statutory homestead protections are universally held to be liberally construed to achieve their public policy objective." *Id.*

Under RSA 480:1, "[e]very person is entitled to $120,000 worth of his or her homestead[1], or of his or her interest therein, as a homestead." This homestead right "is generally exempt from attachment or encumbrance." *Maroun*, 167 N.H. at 225 (quoting *Stewart v. Bader*, 154 N.H. 75, 88 (2006)). "'The purpose of the homestead exemption is to secure to debtors and their families the shelter of the homestead roof.'" *Id.*

[1] New Hampshire case law defines the "homestead" as the "home place" and "the home, the house, and the adjoining land, where the head of the family dwells; the home farm." *Hoitt v. Webb*, 36 N.H. 158, 166 (1858). The homestead is the "dwelling place of the family, where they permanently reside." *Tucker v. Kenniston*, 47 N.H 267 (1867).

(quoting *Deyeso v. Cavadi*, 165 N.H. 76, 79 (2013)); *see Gunnison v. Twitchel*, 38 N.H. 62, 69 (1859) ("[T]he great and paramount object of the homestead act [is] . . . 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."). "'The exemption protects the family from destitution, and protects society from the danger of its citizens becoming paupers.'" *Maroun*, 167 N.H. at 226 (quoting *Deyeso*, 165 N.H. at 79-80). "It also promotes the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen." *Id.* (quoting *Deyeso*, 165 N.H. at 80).

"The statutory protection of the homestead right also extends to spouses who occupy the homestead but are not title owners of the property: 'The owner and the husband or wife of the owner are entitled to occupy the homestead right during the owner's lifetime,' and, after the owner's death, the surviving spouse is entitled to the homestead right during his or her lifetime." *Id.* (quoting RSA 480:3-a). "The statute, therefore, contemplates a homestead right in both spouses, even when only one spouse legally owns the homestead." *Id.* The statute further "casts the homestead right as a personal privilege, which the homeowner and spouse are *entitled* to exercise." *Id.* at 228.

"Historically," this Court "ha[s] been protective of the homestead right" particularly when "an owner-spouse has attempted to relinquish the right without the consent of the non-owner spouse." *Id.* at 229. This Court's "solicitude reflects the fact that the homestead laws were primarily

enacted for the protection of the non-owner spouse and dependent children." *Id.*

The first sentence of RSA 480:1 entitles "every person" to a "$120,000 worth of his or her homestead, or of his or her interest therein, as a homestead." Since a statute is presumed not to contain superfluous or redundant words, *see Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 669 (2007); *Winnacunnet Co-op. Sch. Dist. v. Town of Seabrook*, 148 N.H. 519, 526 (2002), the dual usage of the word homestead should not be interpreted to create redundancy. In other words, the inclusion of both "his or her homestead" and "his or her interest therein" *as a homestead* implies there is a difference between a homestead and an interest in a homestead. The statute's distinction between "his or her homestead" and "his or her interest in his or her homestead" indicates there are two methods by which a homestead right may be established.

The purpose of the homestead right supports the conclusion that the *interest in homestead* provision refers to the interest a non-owning spouse has in the homestead estate/the homestead right held by the owning spouse. Specifically, RSA 480:3-a establishes that non-owning spouses have, at least, two significant interests in a homestead: (1) a present right of occupancy; and (2) an inchoate right in the owning spouse's homestead right. The non-owning spouse's present right to occupy the homestead during the owner's lifetime alone is of significant value.

These interests in the homestead give a non-owning spouse like Ms. Brady's husband a present, non-contingent $120,000 homestead right under the first sentence of RSA 480:1. *See also* RSA 529:20-a (requiring a Notice of Homestead Exemption to state, "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 $120,00 for a single person and $240,000 for a married couple.").

This Court's existing precedent supports this result. This Court has repeatedly affirmed that non-owning spouses possess an inchoate right in the homestead acquired by virtue of the marriage relation. *See, e.g.*, *Lake v. Page*, 63 N.H. 318, 319 (1885); *Barney v. Leeds*, 51 N.H. 253, 271-73 (1871); *Meader v. Place*, 43 N.H. 307, 308 (1861). While it is true that one spouse must have an ownership interest for either spouse to claim the homestead right, *see, e.g.*, *Gerrish v. Hill*, 66 N.H. 171 (1890); *Beland v. Goss*, 68 N.H. 257 (1895), it does not follow that *both* must have an ownership interest for a non-owner spouse to have an interest in homestead. Non-owning spouses—by virtue of the interests they possess in the homestead pursuant to RSA 480:3-a—undeniably qualify for the homestead right RSA chapter 480 establishes and are entitled to $120,000 worth of that homestead interest under RSA 480:1.

This Court made this point clear in *Maroun*. In that case, this Court was asked to decide if a non-owning spouse's notarized affidavit waiving his homestead right was effective as to a mortgage signed several years later. *Maroun*, 167 N.H. at 225. Resolution of this issue "require[d]" this Court "to interpret and apply the statutory homestead exemption" embodied in RSA 480:1, :3-a, :4, :5-a. *Maroun*, 167 N.H. at 225. In interpreting those statutes, this Court held that "[t]he statutory protection of the homestead right also extends to spouses who occupy the homestead but are not title owners of the property." *Id.* at 226. This Court looked to the language of RSA 480:3-a to establish "a homestead right in both spouses, even when

only one spouse legally owns the homestead." *Id.* This holding necessarily implies that the non-owning spouse's occupancy interest in the homestead, as established by RSA 480:3-a, is sufficient alone to establish the homestead right under RSA 480:1.

This Court repeated this holding from *Maroun* in its decision in *Sabato v. Federal National Mortgage Association*, where it explained the New Hampshire homestead right as follows: "'The statutory protection of the homestead right' applies not only to the homeowner, but 'also extends to spouses who occupy the homestead but are not title owners of the property.'" 172 N.H. 128, 132 (2019) (quoting *Maroun*, 167 N.H. at 226).

The United States Court of Appeals for the First Circuit has also read *Maroun* to establish that "[w]hen a married couple resides together in a home, the homestead right 'extends to . . . both spouses, even when only one spouse legally owns the homestead.'" *Deutsche Bank Nat'l Tr. Co., Tr. for FFMLT Tr. 2005-FF2 v. Pike*, 916 F.3d 60, 68 (1st Cir. 2019) (quoting *Maroun*, 167 N.H. at 226).

Accordingly, the plain language of RSA 480:1, as interpreted and applied by this Court, extends to a non-owning spouse like Ms. Brady's husband a present, non-contingent $120,000 homestead right.

II. THE SECOND SENTENCE OF RSA 480:1 EXTENDS THE HOMESTEAD RIGHT TO CERTAIN MANUFACTURED HOUSING; IT DOES NOT NARROW, OR IMPOSE REQUIREMENTS ON, THE HOMESTEAD RIGHT ITSELF.

The second sentence of RSA 480:1 reads as follows:

> 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.

This sentence plainly applies solely to manufactured housing and was added to RSA 480:1 later in time solely to address manufactured housing. Manufactured housing is unique because the land on which a manufactured home sits is typically owned by a third-party. The evident purpose of the second sentence of RSA 480:1 is to extend the homestead right RSA chapter 480 creates to a certain type of manufactured housing. Specifically, it makes clear that the homestead right "exists in manufactured housing" that is "owned and occupied as a dwelling by the same person." The ownership requirement referenced in the second sentence of RSA 480:1 is a feature a manufactured home must possess in order for the homestead right RSA chapter 480 creates to extend to it; that ownership requirement cannot be sensibly read to constrain or limit the homestead right itself only to owner occupiers of manufactured homes, nor can it be sensibly construed to apply beyond the confines of the second sentence of RSA 480:1. The history of manufactured housing and RSA 480:1 reveals why this conclusion is correct.

A. History of Manufactured Housing.

"Manufactured homes have substantially evolved from their earliest predecessors: travel trailers, often homemade, that could be hitched to the back of a car and were intended as temporary housing." Rory O'Sullivan and Gabe Medrash, *Creating Workable Protections for Manufactured Home Owners: Evictions, Foreclosures, and the Homestead*, 49 Gonz. L. Rev. 285, 288 (2013). "By 1950, however, ninety percent of all such

trailers were used as primary, permanent residences, and they were becoming increasingly difficult to move." *Id.* at 288-89.

Congress recognized this change and, in response, passed the National Mobile Home Construction and Safety Standards Act of 1974, which "brought manufactured housing under federal regulation by what was then known as the Housing and Community Development Act of 1974." *Id.* at 289. "This Act directed the United States Department of Housing and Development (HUD) to develop federal construction and safety standards for manufactured homes that would preempt state and political subdivision standards." *Id.* "Following this mandate, HUD established its manufactured housing code in 1976, now commonly referred to as the 'HUD Code.'" *Id.*

"A central point of compliance with the HUD Code requires that a manufactured home be equipped with a permanent chassis, which is 'a supporting frame with removable axle and wheels." *Id.* "Once installed, however, the wheels are often removed and the home is affixed to the underlying property and linked to public utilities." *Id.* "Once sited, it is generally impractical – if not impossible – to move a manufactured home." *Id.* at 290.

"As manufactured homes became safer, higher quality, more permanent fixtures after the implementation of the HUD Code, they also became more widely recognized as a viable alternative for affordable housing." *Id.* at 291. "In recognition of the role manufactured housing had come to occupy in the national housing market, Congress further amended the Housing and Community Development Act of 1974 with the Manufactured Housing Improvement Act of 2000." *Id.* "Among other

changes, this Act amended the findings and purpose of the 1974 statute, declaring that 'manufactured housing plays a vital role in meeting the housing needs of the Nation,' and that 'manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans.'" *Id.* (quoting 42 U.S.C. §§ 5401(a)(1)-(2) (2012)). "These congressional findings have since been corroborated; manufactured home ownership has been widely acknowledged as an affordable alternative to both traditional, site-built home ownership and rental housing." *Id.*

B. The N.H. Homestead Statute: 1977 amendment

In response to the evolving permanent nature of manufactured houses, in 1977, the New Hampshire legislature passed a bill modifying New Hampshire statutes to specifically treat "mobile home[s], including house trailers and trailers," as "personal property," subject to sheriff sale and excluded from the protection of the homestead exemption. (*See* State's Appendix ("App.") at 3, Laws 1977, 299:1.) The 1977 amendment provided:

> Every person is entitled to $2,500 worth of his homestead, or of his interest therein, as a homestead; provided, however, that the homestead right created by this chapter shall not exist in any mobile home, including house trailers and trailers; nor shall a homestead right exist in the land upon which any such mobile home is situated whether or not the real estate is owned by the owner of such mobile home.

Id.

The 1977 amendment expressly precluded the application of the homestead exemption to both the mobile home as well as the land upon which it was located, "whether or not the real estate [was] owned by the owner of such mobile home." *Id.* This was the first time ownership language was added to RSA 480:1. The ownership language in the 1977 amendment was clearly confined to the assertion that the homestead exemption cannot be applied to land on which a manufactured house sits, regardless of whether a person owns both the manufactured house and the land. *See id.* The Senate Journal reflects a legislative intent that the ownership language was introduced to ensure the homestead exemption would not be used to protect the value of real property owned by the mobile homeowner by simply placing a temporary-style manufactured house – unattached to utilities or services – on the land. (*See* State's App. at 6-13, N.H.S. Jour. 209-16 (1977).) The ownership language in the 1977 amendment was added to specifically address the unique, mobile nature of manufactured houses; the ownership language was narrow in its scope and explicitly addressed the homestead right in the context of manufactured houses and the land upon which they rested.

C. N.H. Homestead Statute: 1983 Amendment

The Legislature's attempt to classify manufactured houses as personal property contributed to the inconsistent and confusing development of the law, a problem which was raised before a Senate committee in 1983 while reviewing House Bill 63-FN (1983). House Bill 63-FN (1983) proposed to amend several laws regarding the treatment and classification of manufactured housing. (*See* State's App. at 14-16, N.H.S. Jour. 973-75 (1983), generally.) Senator Blaisdell stated:

> HB 63-FN . . . will change and improve existing laws that currently treat manufactured housing, mobile homes, in a confused and disorganized fashion. Manufactured housing currently has some attributes of personal property and some attributes of real property. HB 63-FN would eliminate existing ambiguities by making it clear that manufactured housing, once it is placed on a site and connected to the utilities is real property. Just like any other home in the State of New Hampshire.

(State's App. at 14-15, N.H.S. Jour. 973-74.)

Due to the "confused and disorganized fashion" of laws related to manufactured homes, in June 1983, the Legislature passed House Bill 63, establishing definite characteristics for manufactured houses while simultaneously recognizing manufactured houses as real property and amending all corresponding statutes. (*See* State's App. at 17-209, Laws 1983, ch. 230.) The Legislature's changes included, in relevant part:

1. A statutory definition of "manufactured housing" which closely tracked the language in the National Mobile Home Construction and Safety Standards Act of 1974 (State's App. at 17-18, Laws 1983, 230:4);
2. Title to manufactured houses would be transferred by warranty deed and recorded at the registry of deeds (State's App. at 19-20, Laws 1983, 230:14;
3. Manufactured houses would be subject to real estate transfer tax and be subject to real estate property tax (State's App. at 18, Laws 1983, 230:7-:8); and

4. An amendment to RSA 480:1, replacing the language added in 1977 with the "second sentence" language at issue in this matter:

> The homestead right created by this chapter shall exist in manufactured housing, as defined by RSA 31:118, 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.

(State's App. at 23, Laws 1983, 230:15.)

Viewed in the context of its legislative history, it is clear the 1983 amendment's addition of the "second sentence" to RSA 480:1 was not done to limit the application of the homestead exemption, but to extend the homestead exemption to manufactured housing "owned and occupied as a dwelling by the same person." The 1983 amendment directly replaced and reversed the 1977 amendment, with the 1983 amendment reflecting the Legislature's contemporary intent to broaden the applicability of the existing statutory homestead right to manufactured housing.

The Legislature's inclusion of the language "which is owned and occupied as a dwelling by the same person. . ." in the 1983 amendment as a condition-precedent for the homestead right to exist in a manufactured home is a direct acknowledgment of the unique nature of manufactured housing: such housing does not, necessarily, rest atop land owned by the manufactured homeowner. The second sentence explicitly confirms that the ownership requirement language is the result of the Legislature ensuring that a manufactured house owner cannot assert the homestead exemption

for land beneath the manufactured house not owned by the homeowner.[2] It further confirms that a person who rents or leases a manufactured home does not have a homestead right in that home. Rather, the 1983 amendment makes clear that the statutory homestead right "exist[s]" only in manufactured housing "which is owned and occupied as a dwelling by the same person."

The 1983 amendment did not, and cannot be sensibly read to, impose an ownership condition on the general homestead right RSA chapter 480 establishes. The 1983 amendment added the second sentence while leaving the first sentence of RSA 480:1 practically unchanged: a comparison of the first phrase in the 1977 amendment and the first sentence in the 1983 amendment reveals a consistent provision which is clear in its establishment of the homestead exemption, generally. The 1983 amendment expanded the application of the homestead exemption to manufactured houses through the addition of the second sentence, but the ownership language therein relates solely to manufactured houses and the determination whether the homestead exemption will apply to the land upon which they rest. There is no indication that the ownership language in the second sentence of the 1983 amendment has, or was ever intended to have, any effect on the first sentence of RSA 480:1, or was meant to travel beyond the confines of the second sentence to any other provision of RSA chapter 480.

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[2] The converse is also true. The homestead right does not exist in the land upon which a manufactured home sits unless owned by the person who owns and occupies the manufactured home.

D. Conclusion

Thus, consistent with the foregoing analyses contained in Sections I and II above, the State suggests that this Court answer the first certified question as follows:

"The second sentence of RSA 480:1 does not apply to all real property occupied as a homestead. It applies only to manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person. The non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also has a present vested, non-contingent homestead right of his or her own, which is currently valued at $120,000."

III. THIS COURT SHOULD ANSWER THE SECOND QUESTION IN THE AFFIRMATIVE.

The second certified questions asks:

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

The State suggests that this Court should answer this certified question, "Yes."

"'The purpose of the homestead exemption is to secure to debtors and their families the shelter of the homestead roof.'" *Maroun*, 167 N.H. at 225 (quoting *Deyeso*, 165 N.H. at 79); *see Gunnison*, 38 N.H. at 69 ("[T]he great and paramount object of the homestead act [is] . . . 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."). "'The exemption protects the family from destitution, and protects society from the danger of its citizens becoming paupers.'" *Maroun*, 167 N.H. at 226 (quoting *Deyeso*, 165 N.H. at 79-80). "It also promotes the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen." *Id.* (quoting *Deyeso*, 165 N.H. at 80). "Statutory homestead protections," like those contained in RSA 480:1, "are universally held to be liberally construed to achieve their public policy objective." *Id.* at 225.

The second sentence of RSA 480:1 was intended to extend the same homestead right RSA chapter 480 creates to manufactured housing. The statutory language makes clear that this homestead right "exist[s]" in manufactured housing that is "owned and occupied as a dwelling by the same person." The "owned and occupied" language of the statute describes a feature the manufactured home must possess for the homestead right RSA chapter 480 creates to extend to it. Non-owner, occupying spouses possess a present, non-contingent, and enforceable homestead right valued at $120,000 under RSA chapter 480. RSA 480:1; RSA 480:3-a. Thus, if the homestead right RSA chapter 480 creates extends to a manufactured home because one spouse both owns and occupies it as a dwelling, the non-owner, occupying spouse of the manufactured home has a present right to occupancy in that homestead during the owner's lifetime, RSA 480:3-a. That occupancy right is a significant and valuable interest in the homestead sufficient to give the non-owning, occupying spouse of a manufactured home a present, non-contingent, and enforceable homestead right worth $120,000 under RSA 480:1.

This result is consistent with the purpose of the 1983 amendment to RSA 480:1, which was not to restrict the application of the homestead right, but to expand it to certain manufactured housing. This result is also consistent with the public policy of the State of New Hampshire which encourages manufactured housing as a form of stable, residential housing by requiring municipalities to "afford reasonable opportunities for the siting of manufactured housing" and prohibiting municipalities from excluding manufactured housing "completely from the municipality by regulation, zoning ordinance, or by any other police power." RSA 674:32, I.

Accordingly, this Court should answer the second certified question, "Yes."

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court answer to the first certified question presented as follows:

"The second sentence of RSA 480:1 does not apply to all real property occupied as a homestead. It applies only to manufactured housing, as defined by RSA 674:31, which is owned and occupied as a dwelling by the same person. The non-owning occupying spouse of one who holds a homestead right pursuant to RSA 480:1 also has a present vested, non-contingent homestead right of his or her own, which is currently valued at $120,000."

The State also requests that this Court answer the second certified question presented, "Yes."

The State requests a fifteen-minute oral argument to be presented by Anthony J. Galdieri, Solicitor General.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE

By its Attorneys,

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Date: March 28, 2023

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CERTIFICATE OF COMPLIANCE

I, Mary F. Stewart, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 4,771 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

March 28, 2023 *<u>/s/ Anthony J. Galdieri</u>*
Anthony J. Galdieri

CERTIFICATE OF SERVICE

I hereby certify that a copy of the State's brief shall be served on Lawrence Sumski, counsel for the Chapter 13 Trustee and Leonard Deming, counsel for Katherine M. Brady, through the New Hampshire Supreme Court's electronic filing system.

March 28, 2023 *<u>/s/ Anthony J. Galdieri</u>*
Anthony J. Galdieri

ADDENDUM

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UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Katherine R. Brady,
Debtor/Appellant

v.

Case No. 22-cv-272-SM
Opinion No. 2022 DNH 150

Lawrence P. Sumski,
Chapter 13 Trustee,
Appellee

O R D E R

Katherine Brady appeals from a decision of the Bankruptcy Court holding that she was not entitled to claim a homestead exemption on behalf of her non-debtor husband. The Bankruptcy Court determined that because Brady's husband did not have an ownership interest in the couple's home, any homestead interest he had was, under New Hampshire law, at best contingent, and then enforceable only upon Katherine's death.

Reasonable people can certainly interpret New Hampshire's ill-defined statutory provisions related to the homestead right in contradictory ways. But the Bankruptcy Court's construction of those statutes, while reasonable, still seems to be at odds with New Hampshire Supreme Court precedent. That circumstance, in turn, gives rise to a degree of uncertainty that may prove particularly disruptive in administering the homestead right in

many contexts. Establishing the nature and scope of the state's homestead exemption presents issues of particular importance to New Hampshire, as evidenced by the New Hampshire Attorney General's amicus appearance in opposition to the Bankruptcy Court's construction. And, because reconciling ambiguous and possibly contradictory statutory provisions, which necessarily implicates policy choices, is a matter best left within the authoritative province of the New Hampshire Supreme Court, the court proposes to certify dispositive questions of law in this case to the New Hampshire Supreme Court.

Background

The debtor, Katherine Brady, filed an individual Chapter 7 bankruptcy petition in December of 2021. Initially, she listed among her assets a single-family home in Merrimack, New Hampshire. Although her husband and children lived with her in that home, she alone held title to it. She valued the property at approximately $235,000. On Schedule C, Brady listed her $120,000 homestead exemption pursuant to New Hampshire Revised Statutes Annotated ("RSA") 480:1. On Schedule D, she listed a mortgage deed of approximately $180,000 and no other secured claims. In February of 2022, Brady amended her bankruptcy schedules by increasing the value of her home to roughly $345,000. She also asserted an additional $120,000 homestead

exemption on behalf of her non-debtor husband (who, as noted above, did not share title to the couple's home). The Chapter 7 Trustee objected to the husband's homestead exemption and sought its disallowance.

In March of 2022, the court granted Brady's motion to convert her case to one under Chapter 13. Subsequently, Brady amended Schedule D to her petition to add a second secured claim: that of her husband, in the amount of $120,000 (this appears to have been another way for Brady to assert her husband's claimed homestead exemption). The Trustee objected to that amendment as well. On May 2, 2022, the Bankruptcy Court held a hearing on both of the Trustee's objections. In a written decision, the Bankruptcy Court concluded that, under New Hampshire law, a person must both occupy and have an ownership interest in the underlying homestead to be entitled to a present, enforceable, homestead right under RSA 480:1. In re Brady, No. BR 21-10712-BAH, 2022 WL 1913497, at *5 (Bankr. D.N.H. June 3, 2022). The court also determined that although a non-owner spouse does have a homestead right (arising under RSA 480:3-a), that right is contingent in nature and is enforceable only upon the death of the owner-spouse. Id.

Because Brady's husband did not hold any legal title to the couple's home, the Bankruptcy Court concluded that he held no current enforceable homestead right under RSA 480:1. And, because his spouse, Brady, had obviously not predeceased him, that court concluded that he held no present homestead right under RSA 480:3-a — at least not one of any monetary value. Consequently, Brady was not entitled to claim a homestead exemption on his behalf on Schedule C of her bankruptcy petition. For the same reasons, the court concluded that Brady's husband did not hold a secured lien on the couple's home and, therefore, Brady was unable to list such a lien on Schedule D.

Discussion

It is appropriate to begin by identifying what is not at issue in this case. First, there is no dispute that the dispositive question of law — whether Brady's husband currently holds a non-contingent $120,000 homestead right in the couple's home — is governed by New Hampshire law. Second, all seem to agree — indeed, the Trustee concedes — that if Brady's husband had held joint title to the couple's home, the couple would have been "entitled to a combined exemption of $240,000," Appellee's Brief (document no. 8) at 5, and, presumably, Brady would have been entitled to list her husband's homestead exemption on

Schedule C to her bankruptcy petition. The sole legal issue presented, then, is whether, under New Hampshire law, Brady's non-owning husband has a present (i.e., non-contingent) homestead interest in the couple's home, valued at $120,000.

I. New Hampshire's Statutory Provisions.

A person's homestead right is established and governed by RSA chapter 480. Two sections of that statute are particularly relevant in this case, and they provide as follows:

> 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.

(emphasis supplied).

II. The Bankruptcy Court's Decision.

The Bankruptcy Court concluded that the "owned and occupied" requirement imposed in the second sentence of RSA 480:1 applies not just to manufactured housing but, instead, to all real property occupied as a homestead. In re Brady, 2022 WL 1913497, at *4. Consequently, it found that because Brady's husband did not hold joint title to the couple's home, he did not have any homestead right under RSA 480:1.

> The Court is cognizant that RSA 480:1 does not use the word "owner" or "owned" in the first sentence of the statute but rather refers to a homestead and an "interest therein." However, the second sentence of the statute does refer to property that "is owned and occupied as a dwelling." With respect to manufactured housing, the statute is clear that someone must own and occupy the manufactured housing in order to assert a homestead exemption under RSA 480:1. It is not enough to simply occupy it. From a public policy standpoint, it would be nonsensical for the homestead exemption to be more restrictive for manufactured housing than it is for all other housing. Thus, the statute as a whole supports an interpretation that ownership and occupancy are required to claim a homestead exemption in all housing. To interpret the statute otherwise would discriminate against owners of manufactured housing.

In re Brady, 2022 WL 1913497, at *4. Moreover, the Bankruptcy Court reasoned that its interpretation of New Hampshire's homestead right was consistent with principles of fairness and equity:

> [A] couple has the right to decide that only one of them will own the family homestead, perhaps as [a] means to shield the family home from claims that lie solely against the non-owner. But . . . such a choice has consequences, and one consequence is that the non-owner is unable to assert a homestead exemption under RSA 480:1. If it were otherwise, the non-owner would be getting the benefit of non-ownership, e.g., not subjecting the family home to potential liens and attachments by third-party creditors, but would not be experiencing the burden of it, i.e., having no homestead exemption under RSA 480:1. That strikes the Court as both inequitable and inconsistent with the provisions of the statute.

Id. at *3.

In further support of its interpretation of RSA 480:1, the Bankruptcy Court pointed to RSA 480:8-a, which provides that to "establish" the homestead right, "the owner of a homestead or the wife or husband surviving such owner," may file a petition with the superior court. Thus, said the court,

> to pursue an action in state court to establish a homestead right, one must be the 'owner' of the homestead property or the 'surviving spouse' of such owner. This provision makes a distinction between ownership and non-ownership, supporting the view that RSA 480:1 only protects an owner's homestead right.

Id. (emphasis supplied).[1]

[1] The Bankruptcy Court also relied upon the opinion in In re Visconti, 426 B.R. 422 (Bankr. D.N.H. 2001) to support its interpretation of RSA 480:1. That reliance, however, seems misplaced. In Visconti, the court disallowed the debtor's

In light of those findings, the court concluded that a different section of the statute — RSA 480:3-a — creates and sets the terms of the homestead rights of non-owning spouses:

> [U]nder RSA 480:3-a, the Court finds that the non-owner spouse's $120,000 homestead exemption arises only upon the death of the owner. In other words, the Debtor's spouse's interest is contingent. Upon the Debtor's death, the non-owner spouse will be able to step into the shoes of the owner spouse. At that time, the non-owner spouse will be able to assert a $120,000 homestead exemption. Until then, while the non-owner spouse may have a homestead right that can be protected by an exemption under RSA 480:3-a, the value of that exemption is $0. The couple is not allowed to "double-dip" and claim $240,000 as exempt. Otherwise, the ownership requirement of RSA 480:1 would be irrelevant.

Id. at *5 (emphasis supplied).

In short, it is fair to say that the Bankruptcy Court concluded that RSA 480:1 requires a person to both occupy and

---

invocation of his homestead right because, on the date the debtor filed his petition, he neither owned the couple's homestead nor was he still married to its owner. Consequently, the Bankruptcy Court held, somewhat unremarkably, that, "No homestead may be claimed in property owned by an individual to whom the person is not married, even if they occupy the property. Ownership must exist either in the person claiming the homestead or in that person's spouse. On the petition date, the Debtor could not claim any such ownership interest." Id. at 426 (emphasis supplied). While some broad dicta in Visconti can be read to support the Bankruptcy Court's reading of RSA 480:1, the holding does not resolve the parties' current dispute. In this case, Brady's husband was married to her and he occupied the homestead when Brady filed her bankruptcy petition.

have an ownership interest it the homestead in order to hold a homestead right. In the Bankruptcy Court's view, RSA 480:3-a, not RSA 480:1, establishes and sets the terms of the homestead right in a non-owning spouse, vesting the $120,000 homestead right only upon the death of the owner spouse.

III. Countervailing Considerations.

The Bankruptcy Court's decision is clear, thoughtful, and logical in its reconciliation of ill-defined statutory language. Still, there are compelling legal arguments that give reason to doubt its conclusions. As importantly, much of the Bankruptcy Court's opinion relies on policy preferences, equity assessments, and assumptions regarding potential discrimination against owners of manufactured housing. Those preferences and assumptions are not clearly rooted in expressions of legislative intent or in identified principles of New Hampshire's common law. Such value judgments are best left to the authoritative province of the New Hampshire Supreme Court.

Among factors weighing against the Bankruptcy Court's interpretation of a non-owning spouse's homestead right is this: the New Hampshire Supreme Court has noted that, as its title suggests ("Duration"), "RSA 480:3-a . . . merely establishes the duration of the homestead right; it does not define the nature

of the right itself." Boissonnault v. Savage, 137 N.H. 229, 232–33 (1993) (emphasis supplied). That point undermines the Bankruptcy Court's opinion, which rests on the contradictory conclusion that RSA 480:3-a actually creates and defines the homestead rights of non-owner spouses.

Additionally, a separate New Hampshire statutory provision can certainly be read to imply that non-owning spouses do have a present, non-contingent, and vested homestead right in the couple's home. That statute, which governs levies and executions, provides that, "[a]ll real estate, except the homestead right, may be taken on execution, and may be appraised and set off to the creditor at its just valuation in satisfaction of the execution . . .." RSA 529:1. It goes on to state that, "Notice of the time and place of sale shall be given to the debtor, or left at his abode if he resides in the state." RSA 529:20. With regard to the homestead right, that statute provides, in relevant part, that,

> 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 FOR A SINGLE PERSON AND $240,000 FOR A MARRIED COUPLE.

529:20-a (emphasis supplied). While arguable either way perhaps, the statutorily required terms of the notice seem to be more easily read to suggest that a spouse need not hold title to the homestead in order to have a present (and valuable) homestead right in it. Rather, provided the person is married to the owner and resides at the property, the notice requirement appears to assume that he or she has a non-contingent homestead right in the amount of $120,000.

Finally, the New Hampshire Supreme Court's recent opinion in Sabato v. FNMA, 172 N.H. 128 (2019) stands in contradiction to the Bankruptcy Court's conclusions. The facts presented in Sabato are somewhat complex, but simplified they are as follows. A husband and wife occupied a home in Pelham, but only the wife held legal title to the property. In 2002, the wife refinanced her purchase money mortgage and secured her loan by giving a first mortgage deed that was eventually assigned to Federal National Mortgage Association ("FNMA"). The wife released her homestead right, but her husband did not sign the mortgage deed or otherwise release his homestead right. So, the non-owning

husband's homestead right had priority over FNMA's first mortgage deed. See generally RSA 480:4.

Subsequently, the wife and husband gave a second mortgage deed to secure a $65,000 home equity line of credit, by which they both released their homestead rights. Approximately nine years later, the second mortgage lender foreclosed its mortgage deed. That set up the following somewhat odd lien priority:

> **First position**: second mortgage lender up to the value of the non-owning husband's $120,000 homestead right (which, because FNMA never obtained a release of that right, had priority over FNMA's first mortgage); then
>
> **Second position**: FNMA up to the value of its loan; then
>
> **Third position**: second mortgage lender for the balance of its loan, if any, in excess of $120,000.

At the foreclosure sale, the property was sold for $65,000. Because that was less than the husband's homestead interest ($120,000) the second mortgage lender was lawfully entitled to retain all sale proceeds up to the value of its outstanding loan (which happened to be $65,000, so second mortgage lender was fully paid). Then, the "unused" balance of the husband's homestead exemption ($55,000) retained its priority over FNMA's mortgage. So, when FNMA subsequently bought the property from the foreclosure purchaser, it held sole title to that property

subject to the non-owning husband's remaining $55,000 homestead exemption.

For purposes of this case, the critical point of Sabato is this: the New Hampshire Supreme Court treated the non-owning spouse's homestead right as valid, enforceable, and valued at the then-current statutory amount of $120,000. That is to say, the non-owning husband held a present, non-contingent homestead right and it had a statutorily prescribed value. To exercise that right and assert its $120,000 value, he did not have to wait for his spouse to pass, nor did he have to "step into the shoes of the owner." Brady 2022 WL 1913497 at *5. Consequently, the Sabato opinion is at odds with the Bankruptcy Court's conclusion that the "owned and occupied" language in the second sentence of RSA 480:1 applies generally to all real property. Indeed, several years ago, the Bankruptcy Court (Yakos, J.) had a different perspective, noting that the limiting language in RSA 480:1 applies exclusively to manufactured housing:

> The New Hampshire statutory provision on homestead exemptions in RSA 480:1 (Supp. 1985) is quite brief: "Every person is entitled to $5,000 worth of his homestead, or of his interest therein, as a homestead . . .." The remainder of this statutory provision sets forth special rules regarding manufactured housing, i.e., mobile homes, which are not pertinent here.

In re Eckols, 63 B.R. 523, 524 (Bankr. D.N.H. 1986) (emphasis supplied).

The foregoing certainly suggests that, under New Hampshire law, except perhaps with respect to manufactured housing,[2] 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.

IV. The "Owned and Occupied" Requirement of RSA 480:1.

As should now be clear, the dispositive issue turns on the meaning and scope of the "owned and occupied" language in the second sentence of RSA 480:1. If that limitation applies universally — that is, to all real property — then the Bankruptcy Court was correct: Brady's husband holds no homestead right by virtue of RSA 480:1 because he does not hold title to the couple's home. If, on the other hand, that "owned and occupied" language applies only to manufactured housing, then

[2] The court says "perhaps" with respect to manufactured housing because, as discussed more fully below, one plausible interpretation of RSA 480:1 suggests that even with respect to manufactured housing, a person need not hold title to the property in order to have a homestead right in it, provided he or she occupies it as a homestead and is married to the owner.

the Bankruptcy Court reached the wrong conclusion under state law, and Brady is entitled to invoke her husband's $120,000 homestead exemption.

In 1983, the New Hampshire legislature added the "owned and occupied" language in the second sentence of RSA 480:1 as part of a larger bill that was designed to redefine the way New Hampshire law treated manufactured housing (or "mobile homes," as they had been known). See An Act Relative to a Transfer Tax on Mobile Homes, Chapter 230 (HB 63), 1981-82 Special Session at 202-09 (effective Aug. 17, 1983). Historically, manufactured housing had been treated as personal property. Chapter 230's amendments to various chapters in New Hampshire's Revised Statutes Annotated changed that and provided, going forward, that manufactured housing would be treated as real property. The overarching goal of those amendments was straightforward: to subject the sale of manufactured housing to New Hampshire's real estate transfer tax.

Given the purpose of Chapter 230's statutory amendments, it seems unlikely that the legislature intended to modify existing law as it related to the homestead right, except to provide that the homestead right would be available to those who owned and occupied manufactured housing as a homestead (perhaps — though

not necessarily — on a more restricted basis). The legislative history on that point, however, remains murky and the proper interpretation of the "owned and occupied" language of RSA 480:1 is unresolved.

There is a plausible interpretation of the 1983 amendments to RSA 480:1 that does not require both occupancy and ownership for the homestead right to vest (either in manufactured housing specifically or, more generally, in any real estate occupied as a homestead). Because manufactured housing is often situated on property owned by a third party (a developer, park owner, or homeowners' association for example), the legislature may have employed the "owned and occupied" language as a means to make clear that the homestead right typically attaches only to the manufactured housing unit and not the underlying real estate upon which it is set (unless, of course, the same entity holds title to both). That is to say, the homestead right attaches to manufactured housing when an occupant holds title to the unit and occupies it as a dwelling; the owner of the underlying real estate may not claim the homestead right unless that person also holds title to the manufactured housing unit and occupies it as a homestead. There may have been no legislative intent to alter the then-current statutory scheme which seems to have afforded a

present, non-contingent homestead right to both the owner of the homestead and his or her non-owning (but occupying) spouse.

Similarly, there is a plausible interpretation of RSA 480:8-a (upon which the Bankruptcy Court relied) that does not compel the conclusion that non-owning spouses have no present homestead right under RSA 480:1. To be sure, that statute provides that only the "owner" of the homestead or the surviving spouse of the owner may petition the superior court to "establish" the homestead right.

> **Establishing Right.** The superior court, upon petition of the owner of a homestead or the wife or husband surviving such owner, or upon petition of a judgment creditor and such notice as it may order, may appoint appraisers and cause the homestead right to be set off, and a record of the proceedings being made in the registry of deeds, the right shall be established as against all persons.

RSA 480:8-a (emphasis supplied). As noted above, the Bankruptcy Court found that provision to be supportive of its conclusion that the spouse of the homestead owner has no present homestead right of any value and that his or her valuable right vests only upon the owning spouse's death. But it is also reasonable to read RSA 480:8-a as merely establishing a standing priority in the owning spouse with regard to bringing a petition in Superior Court in the first instance. That is to say, the legislature

may have deemed it best to have the owner of the underlying homestead property file any such petitions and, only if that owner had died, to allow the surviving spouse to file such a petition. Again, however, the legislative intent and the reason for the language employed in that statute remain unclear.

V. Certification to the N.H. Supreme Court.

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." Kassel v. Gannett Co., 875 F.2d 935, 950 (1st Cir. 1989) (citation and internal punctuation omitted). When state law has been authoritatively interpreted by the state's highest court, this court's role is clear: it must apply that law according to its tenor. See Id. When the law is unclear but the signposts are only modestly blurred, the federal court may assume that the state court would adopt an interpretation of state law that is consistent with logic and supported by reasoned authority. See Moores v. Greenberg, 834 F.2d 1105, 1107 n.3 (1st Cir. 1987). However, this court is and should be hesitant to blaze new, previously uncharted state-law trails. Accordingly, when a dispositive legal question is novel and the state's law in the area is unsettled, certification is often appropriate. See Lehman Bros. v. Schein, 416 U.S. 386, 391 (1974); Arizonans for

Official English v. Arizona, 520 U.S. 43, 76 (1997). See also Acadia Ins. Co. v. McNeil, 116 F.3d 599, 605 (1st Cir. 1997) ("[W]hen the meaning of a state law depends on the decisionmaker's ability to discern the state legislature's intent from an array of mixed signals, considerations of federalism, comity, and practicality suggest that the state's highest tribunal is best positioned to make an informed and authoritative judgment."). The signposts here are more than modestly blurred and the Bankruptcy Court's decision exposes the array of mixed signals found in the state's statutes and judicial precedent.

The New Hampshire Supreme Court has yet to address the nuanced issues presented in this case. Moreover, resolution of those issues implicates significant public policy matters for the State of New Hampshire. Indeed, the New Hampshire Department of Justice, Consumer Protection Division, has asserted that resolution of the issues presented in this case "will have a broad impact on the ability of New Hampshire consumers to obtain a fresh start through bankruptcy and may endanger home ownership for married consumers outside of bankruptcy . . .." Amicus Brief (document no. 5) at 1. Accordingly, the prudent course at this stage is to certify the dispositive questions of state law. Otherwise, our Court of

Appeals would likely have to revisit the question of certification — a situation that does not represent an efficient use of either judicial or the litigants' resources. And, even if the Court of Appeals decided to resolve the matter on the merits, lingering doubt would still remain until the New Hampshire Supreme Court authoritatively construed New Hampshire's statutes and reconciled New Hampshire legal precedent. In the meantime, uncertainty and disruption and a risk of conflicts in the administration of legal claims related to the homestead right could continue unabated.

Conclusion

The court proposes to certify the following questions of law to the New Hampshire Supreme Court:

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?

See generally N.H. Supr. Ct. R. 34. If any party objects to the form of the questions the court proposes to certify, a written objection, along with suggested alternative language, shall be filed on or before **December 15, 2022.** The court proposes to submit to the New Hampshire Supreme Court, as its statement of facts, the facts as presented in this order. If any party objects or wishes the court to supplement that statement of facts, that party shall file an objection and a proposed statement of supplemental facts by the same date.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

December 1, 2022

cc: Counsel of Record