# APPENDIX

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## APPENDIX A

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| In re: DUSTIN JADE WELLS,<br>Debtor, | FILED<br>DEC 3 2021<br>MOLLY C. DWYER, CLERK<br>U.S. COURT OF APPEALS |
| KATHLEEN A MCCALLISTER,<br>Plaintiff-Appellee,<br>v.<br>DUSTIN JADE WELLS,<br>Defendant-Appellant. | No. 20-35984<br>D.C. No. 4:20-cv-00086-BLW<br>MEMORANDUM* |

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Argued and Submitted November 9, 2021
Portland, Oregon

Before: GRABER and CHRISTEN, Circuit Judges, and R. COLLINS,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Debtor Dustin Jade Wells timely appeals the district court's order holding that the bankruptcy court erred by permitting Debtor to keep the proceeds from a voluntary sale of his homestead. We review de novo the district court's decision. *Phillips v. Gilman* (*In re Gilman*), 887 F.3d 956, 963 (9th Cir. 2018). We review de novo the bankruptcy court's legal conclusions and for clear error its factual findings. *Id.* Because the district court correctly applied binding precedent, we affirm.

Debtors in Idaho must use Idaho's exemptions. Idaho Code § 11-609; *see Owen v. Owen*, 500 U.S. 305, 308 (1991) (noting that States may constrain debtors to a State-created list of exemptions). Idaho permits a homestead exemption up to $100,000 for an owner-occupied residence. Idaho Code §§ 55-1003, 55-1004(1), 55-1008(1).[1] Idaho also grants a time-limited homestead exemption on proceeds from the sale of a homestead: "The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, . . . up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds." *Id.* § 55-1008(1). Debtor filed for bankruptcy and, while his case was pending, moved to sell his homestead. The bankruptcy court approved the sale, but Debtor failed to purchase a new homestead within the year required by statute.

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[1] All citations are to the 2019 version of the Idaho Code. Effective this year, Idaho amended its provisions to allow a homestead exemption of up to $175,000. Idaho Code § 55-1003 (2021). But no statutory amendment affects the analysis of this case, which concerns an amount less than $100,000.

1. The district court correctly held that our decisions in *Wolfe v. Jacobson* (*In re Jacobson*), 676 F.3d 1193 (9th Cir. 2012), and *England v. Golden* (*In re Golden*), 789 F.2d 698 (9th Cir. 1986), control. In *In re Jacobson*, 676 F.3d at 1197, as here, a debtor owned a homestead, filed for bankruptcy in a State that imposes a time-limited exemption on proceeds from a sale, and then sold the homestead during bankruptcy. We held that, in order to retain the homestead exemption, the debtor must comply with the State's time limit for reinvesting the sales proceeds in a new homestead. *Id.* at 1198–1200; *see also In re Golden*, 789 F.2d at 699–701 (holding that a debtor who filed for bankruptcy after selling a homestead but during the State's period for reinvesting the sales proceeds lost the homestead exemption by failing to reinvest). Although those cases arose in California, California's homestead exemption is materially indistinguishable from Idaho's homestead exemption. *Compare* Cal. Civ. Proc. Code § 704.720(b) (2012) ("If a homestead is sold under this division . . . , the proceeds of sale . . . are exempt in the amount of the homestead exemption . . . for a period of six months after the time the proceeds are actually received by the judgment debtor . . . ."), *with* Idaho Code § 55-1008(1) (quoted above).

2. The district court correctly held that the Trustee's motion, which sought an order declaring that the sales proceeds belonged to the bankruptcy estate, was timely. Throughout the bankruptcy, "the estate held a contingent, reversionary interest" in any eventual proceeds resulting from a sale of the homestead. *Gaughan v. Smith* (*In re Smith*), 342 B.R. 801, 808 (B.A.P. 9th Cir. 2006). When Debtor sold the

homestead and failed to reinvest the proceeds within the period allowed by statute, "the proceeds, stripped of their exempt status, transformed into *nonexempt* property, i.e., property of the bankruptcy estate, by operation of law. At that point, there was no need for the trustee to pursue an objection to the claimed exemption because no such exemption existed." *Id.*; *see also Schwab v. Reilly*, 560 U.S. 770, 788–91 (2010) (holding that the trustee need not object within the time specified by Bankruptcy Rule 4003 when the trustee seeks an order reclaiming value that has always belonged to the bankruptcy estate). The Trustee's motion was timely and otherwise procedurally proper.

3. The district court correctly held that the rule that we announced in *In re Jacobson* remains good law. Neither *Harris v. Viegelahn*, 575 U.S. 510 (2015), nor *Law v. Siegel*, 571 U.S. 415 (2014), nor any other Supreme Court decision is "clearly irreconcilable" with our decision. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc).

*Harris* ruled that post-petition wages held by the Chapter 13 trustee must be returned to the debtor when the debtor converts the case to Chapter 7, but the decision hinged on the particular statutory provisions applicable to conversion cases, which do not apply here. 575 U.S. at 516–22. The Court also discussed the general "fresh start" principle of bankruptcy law, *id.* at 513–14, 518, but its discussion is fully consistent with our own discussion of that principle in *In re Jacobson*, 676 F.3d at 1200.

A similar analysis applies to *Siegel*, 571 U.S. at 421, in which the Supreme Court held that, whatever inherent powers a bankruptcy court has, "a bankruptcy court may not contravene specific statutory provisions" of the Bankruptcy Code. In particular, the Court rejected the creation of an equitable exception to the Code's list of exemptions: "The Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id*. at 424. But the Court expressly noted that States could create their own regimes of exemptions and exceptions: "It is of course true that when a debtor claims a *state-created* exemption, the exemption's scope is determined by state law . . . . But *federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code." *Id*. at 425. *In re Jacobson* neither purported to apply a judicially created exception nor authorized an action otherwise prohibited by the Bankruptcy Code; instead, it applied a state-created exemption. *Siegel* and *In re Jacobson* are not clearly irreconcilable.

4. Although our precedents require that we affirm, we recognize, as did the district court, that our decisions have been criticized, questioned, and rejected by many. A pair of bankruptcy judges wrote separately in the wake of *In re Golden* to question the validity of that court's consideration of post-petition acts. *Ford v. Konnoff* (*In re Konnoff*), 356 B.R. 201, 208 (B.A.P. 9th Cir. 2006) (Pappas, Bankr. J., concurring); *In re Smith*, 342 B.R. at 809 (Klein, Bankr. J., concurring). The Ninth Circuit Bankruptcy Appellate Panel ("BAP") distinguished *In re Golden* as

"based on a peculiar temporal exemption statute" and held that "its holding is thus limited to its facts." *Cisneros v. Kim* (*In re Kim*), 257 B.R. 680, 686 (B.A.P. 9th Cir. 2000). The year after we decided *In re Jacobson*, Bankruptcy Judge Ahart published a point-by-point critique of the decision and explained his view that the decision is both wrong and poor policy. *See* Hon. Alan M. Ahart, *In re Jacobson: The Ninth Circuit Court of Appeals Erred By Holding the Debtor Liable for Her Exempt Homestead Sale Proceeds*, 32 Cal. Bankr. J. 409 (2013). A prominent bankruptcy practice guide calls *In re Jacobson*'s holding "questionable." 3 Norton Bankr. L. & Prac. 3d § 56:9 n.6 (Oct. 2021); *see also* 13 Collier on Bankruptcy CH. 02.[5] (Richard Levin & Henry J. Sommer eds., 16th ed. 2021) (noting the general rule that post-petition acts are irrelevant and observing that, "despite this principle," we considered post-petition acts in *In re Jacobson*). The First Circuit recently rejected our rule, expressly disagreeing with our decision and labeling it "unpersuasive." *Rockwell v. Hull* (*In re Rockwell*), 968 F.3d 12, 23 (1st Cir. 2020) *cert. denied*, 141 S. Ct. 1372 (2021). For our part, earlier this year, we distinguished *In re Jacobson*; characterized that decision as an "outlier"; and agreed with the BAP that *In re Golden*'s holding is "limited to its facts." *Klein v. Anderson* (*In re Anderson*), 988 F.3d 1210, 1214 n.4, 1216 (9th Cir. 2021) (per curiam).

The Fifth Circuit has agreed with *In re Jacobson*—at least nominally—in a case involving Texas's homestead exemption. *Viegelahn v. Frost (In re Frost)*, 744 F.3d 384, 388 n.2 (5th Cir. 2014). But the Fifth Circuit distinguished other cases on the ground that Texas did not exempt an interest or specific

amount of the homestead—Texas exempts the full homestead, without limit. *Id.* at 388–89. California and Idaho, by contrast, exempt only a specific amount of the homestead, so the Fifth Circuit's reasoning appears to contradict our rule in *In re Jacobson*.

We add only one observation. Applying *In re Jacobson*'s rule in a case like this one leads to arguably peculiar results. The federal government and some States allow a homestead exemption but allow no exemption whatsoever in sales proceeds. 11 U.S.C. § 522(d)(1). In those jurisdictions, a debtor may claim the full homestead exemption and, once the period for objecting to exemptions expires, the debtor may sell the homestead and retain all proceeds. States like California and Idaho grant debtors a *more generous* exemption by allowing debtors an additional exemption, albeit a time-limited one, in sales proceeds. Yet our ruling in *In re Jacobson* has the perverse result that debtors in those jurisdictions have only a contingent homestead exemption such that, practically, they have *fewer rights* during bankruptcy than debtors in other jurisdictions. We see no justification in federal law, state law, or logic for that result.

The primary motivation of our earlier decisions appears to be that, under a contrary rule, bankruptcy debtors would escape the State's time limit and thus have greater rights than those persons in the same state who do not file for bankruptcy. We agree with Judge Pappas' cogent response: "That . . . bankruptcy debtors [receive] additional rights as compared to those not in bankruptcy is nothing new given the remedial purposes of the bankruptcy laws. Bankruptcy is all about the modification of creditors'

state law rights." *In re Konnoff*, 356 B.R. at 209–10 (Pappas, Bankr. J., concurring).

**AFFIRMED.**

## APPENDIX B

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF IDAHO**

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|---|---|
| In the Matter of:<br>DUSTIN JADE WELLS,<br>Debtor, | Case No.<br>4:20-cv-00086-BLW |
| KATHLEEN McCALLISTER,<br>Plaintiff,<br>v.<br>DUSTIN JADE WELLS,<br>Defendant. | **MEMORANDUM DECISION AND ORDER** |

### INTRODUCTION

This appeal deals with a so-called "vanishing homestead exemption"[1] in the context of a Chapter 13 bankruptcy.

In 2019, Debtor Dustin Jade Wells declared bankruptcy and claimed his home as exempt under Idaho statutory law. Later, during the pendency of his bankruptcy, Wells sold the home with no intent of reinvesting the proceeds in a new home. He used the proceeds to pay a creditor.

[1] *See generally In re Williams*, 515 B.R. 395, 401 (Bankr. D. Mass. 2014) (characterizing state homestead exemption statutes as providing for vanishing exemptions; discussing cases).

Idaho's homestead exemption statute allows debtors to exempt proceeds from a voluntary sale of the homestead for a one-year period but only if the sale was made "in good faith for the purpose of acquiring a new homestead . . . ." Idaho Code § 55-1008(1). Here, the bankruptcy court held that the proceeds from the sale of Wells' homestead were exempt under the Idaho statute. The trustee appeals, arguing that the homestead exemption vanished by operation of law when Wells sold the homestead without reinvesting the proceeds in another home and with no intent to do so. The Court agrees and will reverse.

## STANDARD OF REVIEW

The Court will apply a de novo standard of review because the appeal involves interpreting the Bankruptcy Code and Idaho's homestead statute. *See generally Smith v. IRS (In re Smith)*, 828 F.3d 1094, 1096 (9th Cir. 2016) ("The court reviews de novo the bankruptcy court's interpretation of the bankruptcy code."); *United States v. Cabaccang*, 332 F.3d 622, 624–25 (9th Cir. 2003) (en banc) ("The construction or interpretation of a statute is a question of law that we review de novo.").

## BACKGROUND

Debtor Dustin Jade Wells filed a chapter 13 bankruptcy petition in May 2019. He valued his home at $625,000 and claimed $100,000 of the equity as exempt under Idaho's homestead exemption.

The trustee objected, arguing that the relevant Idaho statute limited the debtor to the lesser of $100,000 or the net value of the homestead exemption. In this case, the net value was $57,677.64, given that

the home was subject to two mortgage liens totaling $567,322.36 ($625,000 – $567,322.36 = $57,677.64). Wells responded by amending his schedules, increasing the stated value of the residence to $668,000 and then stating the homestead exemption as "100% of the fair market value, up to any applicable statutory limit." The trustee did not object to this amended homestead exemption.

Later, as part of a settlement agreement with his largest creditor, Box Canyon Dairy, Wells agreed to sell the home and pay Box Canyon $45,000 at closing. The trustee objected to Wells' motion to sell the home to the extent it would allow him to use proceeds from the sale to pay Box Canyon directly. The trustee relied on Idaho statutory law which states that if a homestead is voluntarily liquidated, the exempt proceeds must be reinvested in another homestead within a year; otherwise, the proceeds lose their exempt status. *See* Idaho Code § 55-1008.

In January 2020, the bankruptcy court overruled the trustee's objection and entered an order permitting the sale and the payment of proceeds directly to Box Canyon. The trustee appeals.

## DISCUSSION

### 1. Mootness

Preliminarily, Wells argues that this appeal is moot. He points out that a plan has already been confirmed, all estate property has vested in the him, he has received funds from the homestead sale, and he has paid those funds to Box Canyon Dairy.

There are two mootness doctrines to consider: Article III mootness and equitable mootness. *See In re Thorpe Insulation Co.*, 677 F.3d 869, 880 (9th Cir.

2012). Article III mootness focuses on whether there is an actual case or controversy before the court. *See id.*; U.S. Const. art. III, § 2, cl. 1. Equitable mootness, on the other hand, "occurs when a 'comprehensive change of circumstances' has occurred so 'as to render it inequitable for this court to consider the merits of the appeal.'" *Thorpe*, 677 F.3d at 880. Wells focuses solely on equitable mootness, and he carries the burden of establishing mootness. *See generally Suter v. Goedert*, 504 F.3d 982, 986 (9th Cir. 2007) ("the burden of establishing mootness is on the party advocating its application").

The Ninth Circuit looks at the following factors to determine equitable mootness: "whether a stay was sought, whether the plan has been substantially consummated, whether third party rights have intervened, and, if so, whether any relief can be provided practically and equitably." *Thorpe*, 677 F.3d at 880. Considering these factors, the Court is not persuaded that this appeal is equitably moot.

First, although the trustee did not seek a stay, she did ensure that the plan anticipated her appeal. The confirmed plan includes this provision:

> Discharge shall not be entered upon completion of plan payments unless Box Canyon Dairy shall have received a minimum of $55,000 on Claim No. 1 paid through the Trustee. The $55,000 is separate and apart from the proceeds of the sale of the home and gifts. *If Trustee should succeed in her appeal and should the proceeds from the sale of the home be accounted through the Plan and Trustee, or actually go through her office, it shall not count towards the $55,000.*

*Ch. 13 Plan*, Bk. Dkt. 209, Part 8, ¶¶ 1.4 & 5.3 (emphasis added). Granted, the better practice would have been to seek a stay. But given the trustee's objections below, along with this provision in the plan, the Court is not persuaded that the trustee sat on her rights or otherwise permitted developments to proceed without her participation. Likewise, the Court is not persuaded that the trustee sat on her rights by failing to object to the amended homestead exemption. At that time, there was no indication that Wells intended to sell the property at all so it would have been premature for the trustee to object. As discussed below, the Ninth Circuit rejected a similar argument in *England v. Golden (In re Golden)*, 789 F.2d 698 (9th Cir. 1986). *See* discussion *infra* ¶ 2.B.

Second, even assuming Wells' plan has been substantially consummated, the Court may still provide effective relief given the plan provision that anticipates what will happen if the trustee succeeds on this appeal. *See Thorpe*, 677 F.3d at 882 n.7 (observing that even if a plan is substantially consummated, "that would not be the end of the inquiry").

Third and fourth, Box Canyon, a third party, will be affected by this appeal. But, again, this possibility was anticipated in the plan. Additionally, it is still possible for the court to practically and equitably provide relief to the appellant. As for the equities of the situation, the trustee correctly points out that Box Canyon has received an inequitable distribution. Otherwise, the court is persuaded that, on remand, the bankruptcy court will be able to craft a practical resolution to this matter that is in keeping with the plan provision anticipating a potentially successful

appeal. Accordingly, the Court declines to find this appeal equitably moot.

**2. The Homestead Exemption**

**A. The Statutory Framework**

The filing of a Chapter 13 bankruptcy petition creates a bankruptcy estate generally consisting of all of the debtor's property. 11 U.S.C. § 541(a). The Bankruptcy Code authorizes the debtor to exempt certain kinds of property from the estate, which enables the debtor to retain those assets post-bankruptcy. § 522(b)(1) & (d). One such exemption is the homestead exemption, which protects up to $25,150 in equity in the debtor's home. § 522(d)(1).[2] Some states, including Idaho, have opted out of the federal exemptions and instead provide their citizens with different, often more generous, protections than those afforded under the Bankruptcy Code. *See generally Law v. Siegel*, 571 U.S. 415, 418 (2014) (citing Victor D. López, *State Homestead Exemptions and Bankruptcy Law: Is It Time for Congress To Close the Loophole?* 7 Rutgers Bus. L.J. 143, 149–65 (2010) (listing state exemptions)

Idaho's homestead exemption statute, as it applies to Wells, protects up to $100,000 in home equity. *See* Idaho Code § 55-1008.[3] The statute further provides

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[2] Section 522(d)(1) provides for a $15,000 exemption, but that number adjusts upward every three years beginning in April 1998. *See* 11 U.S.C. § 104.

[3] The relevant part of the statute provides:

> Except as provided in section 55-1005, Idaho Code, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount

that if the homestead is sold "in good faith for the purpose of acquiring a new homestead," the exemption will cover the sale proceeds for up to one year as well as any new homestead purchased with the proceeds. *Id*. As already noted, Wells did not reinvest the proceeds from the sale of his home into a new one, nor did he intend to do so.

**B. Ninth Circuit Authority**

The Ninth Circuit has held that if debtors exempt a homestead under a state statute, they must comply with the entire statute; they cannot choose favorable provisions and discard unfavorable ones. *See generally Golden*, 789 F.2d at 700–01. Put differently, "When a debtor elects to avail himself of the exemptions the state provides, he agrees to take the fat with the lean . . . ." *Zibman v. Tow (In re Zibman)*, 268 F.3d 298, 304 (5th Cir. 2001). This rule is illustrated in two Ninth Circuit cases that ultimately control this appeal: *England v. Golden (In re Golden)*, 789 F.2d 698 (9th Cir. 1986), and *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193 (9th Cir. 2012).

In *In re Golden*, 789 F.2d 698, a chapter 7 debtor sold his house before declaring bankruptcy. *Id*. at 699.

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specified in section 55-1003, Idaho Code. *The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead . . . up to . . . [$175,000] shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds*.

Idaho Code § 55-1008(1) (emphasis added). Note that the statute now protects up to $175,000 in equity. That limit, however, is applicable to debtors who filed bankruptcy on or after March 20, 2020. Wells filed before that date and is thus subject to the previous, $100,000 statutory limit.

He claimed the proceeds from the sale were exempt under California's homestead exemption statute, which required proceeds to be reinvested within six months. *Id.* Golden did not reinvest the proceeds but nevertheless argued that proceeds were exempt. *Id.* at 700.

The Ninth Circuit disagreed: "Applying California law, we . . . hold that when the debtor fails to reinvest homestead proceeds within a period of six months in which the debtor has control of those proceeds, the proceeds should revert to the trustee." *Id.* (citation omitted). The court rejected the debtor's argument that the trustee's silence during the six-month reinvestment period prevented the trustee from claiming the proceeds. The court explained that the trustee had no right to claim the proceeds during that period; thus there was no reason for the trustee to "notify the debtor of a claim not yet in existence." *Id.* at 701. Instead, the court effectively placed the burden on the debtor to act to maintain an exemption that might otherwise vanish given the statutory language. *Id.* at 701. "Given the clarity of the provisions requiring reinvestment, Golden could not have reasonably relied on the trustee's silence as an indication of a permanent exemption." *Id.*

Under *Golden*, the proceeds from the sale of Wells' home lost their exempt status because Wells did not sell his home for the purpose of purchasing a new home and did not, in fact, invest the proceeds in a new home within the statutory period. Granted, Wells' situation is distinguishable because Golden sold his house *before* filing bankruptcy (and thus had proceeds in hand — not a homestead — when he filed) and Wells sold his *after* filing (and thus had a homestead

— not proceeds — when he filed). Given this difference, Wells could argue that the reinvestment requirement was not triggered for Wells because the *property* was being claimed as exempt — not *proceeds*. The bankruptcy court took note of this fact, observing that under the snapshot rule, it was significant that on the date Wells filed his petition, the homestead property "wasn't in the form of proceeds but rather was in the form of land. The debtor hadn't sold it." *Oral Ruling Tr.*, Dkt. 4-2, at 32:22–25.

But the Ninth Circuit addressed this situation — that is, a post-petition sale of a homestead — in *In re Jacobson*, 676 F.3d 1193, and was not persuaded that this factual distinction required a different ruling than the one handed down in *Golden*. In *In re Jacobson*, chapter 7 debtors claimed a state homestead exemption and then later, post-petition, sold the home. *Id.* at 1198. The debtors did not reinvest the proceeds within the statutory period but nevertheless argued that the exemption should apply because, under the "snapshot rule," exemptions are fixed at the time the petition is filed. *See id.* at 1199; *see generally White v. Stump*, 266 U.S. 310, 313 (1924). The bankruptcy court agreed with the debtors, and the Ninth Circuit BAP affirmed.

The Ninth Circuit reversed, relying on its earlier decision in *Golden*. The court stated:

> There is no material difference between *Golden* and this case. The homestead exemption gave the Jacobsons clearly defined rights with respect to the . . . property. The Jacobsons had a right to $150,000 in proceeds. . . . *That right was contingent on their reinvesting the proceeds in a*

> *new homestead within six months of receipt. The Jacobsons did not abide by that condition and thus forfeited the exemption*.

*Id*. at 1199 (emphasis added; citations to the governing state homestead statute, Cal. Civ. P. Code §§ 704.730(a)(3) & 704.720(b), omitted).

Otherwise, the *Jacobson* Court was unpersuaded by the debtor's policy arguments. Among other things, the Jacobsons had argued that honoring the statutory reinvestment requirement would incentivize trustees to delay closing cases during the reinvestment period. The Ninth Circuit found this concern "too speculative." *Id*. at 1200. And, more broadly, the court held that the Bankruptcy Code "demands respect for the ways in which states balance the rights of debtors and creditors." *Id*.

*Jacobson* is almost directly on point. The only notable difference is that Wells is a chapter 13 debtor whereas the Jacobsons filed a chapter 7 petition. But that distinction does not help Wells. Rather, it could potentially help the trustee because in chapter 13 cases, the Bankruptcy Code contains a provision mandating that all property coming into the debtor's possession after the commencement of the case, and before the case is closed, dismissed, or converted, becomes property of the estate. *See* 11 U.S.C. § 1306. Chapter 7 does not contain any similar provision, and other courts have held that chapter 7 debtors who own a homestead on the date of filing enjoy an unconditional state exemption, notwithstanding a reinvestment requirement for proceeds. *See Lowe v. DeBerry (In re DeBerry)*, 884 F.3d 526, 529–30 (5th Cir. 2018) (holding that if a chapter 7 debtor owned a

homestead on the date of filing and later sold that homestead, the homestead was nonetheless subject to an unconditional state homestead exemption). These cases do not help Wells, though, given that he is a chapter 13 debtor. Accordingly, under *Jacobson* and *Golden*, Wells is foreclosed from arguing that the proceeds from his homestead sale were exempt.

**C. Supreme Court Authority**

Wells argues that *Golden* and *Jacobson* conflict with three Supreme Court decisions: *Owen v. Owen*, 500 U.S. 305 (1991); *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992); and *Law v. Siegel*, 571 U.S. 415 (2014). The Court disagrees; two of these cases were decided in the early 1990s — roughly 20 years before the 2012 *Jacobson* decision — and none of these cases overrules either *Golden* or *Jacobson*.

Taking the cases in chronological order, the first stop is *Owen v. Owen*, 500 U.S. 306 (1991). In that case, Dwight Owen owned a condo subject to a $160,000 judgment lien held by his ex-wife. (His ex-wife had obtained the judgment before he purchased the condo.) Mr. Owen filed a bankruptcy petition and declared the condo exempt. By operation of state law, the condominium remained subject to his ex-wife's lien. *Id*. at 307. The Supreme Court held that Mr. Owen could avoid the lien because state law directly conflicted with the Bankruptcy Code (specifically 11 U.S.C. § 522(f)) which allows debtors to avoid preexisting liens. *Id*. at 308.

There is no such conflict here. At the time Wells declared bankruptcy he had the right to — and did — claim a homestead exemption. But the state statute sets forth conditions to maintain that exemption when

there is a sale, and Wells did not comply with those requirements and thus failed to maintain the exemption. There is nothing about that Idaho's statutory reinvestment requirement that directly conflicts with the Bankruptcy Code. Further, in dicta, the *Owen* Court stated that nothing in the Bankruptcy Code "limits a State's power to restrict the scope of its exemptions; indeed, it could theoretically accord no exemptions at all." *Id*. Accordingly, this Court cannot disregard the reinvestment requirement in the Idaho statute. *Cf*. *Ford v. Konnoff (In re Konnoff*), 356 B.R. 201, 208 (B.A.P. 9th Cir. 2006) (rejecting the notion that Owen effectively overruled *Golden*).

Next up is *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). In that case, the debtor, Emily Davis, declared bankruptcy while she was pursuing an employment discrimination claim in state court. *Id*. at 640. She claimed the money she expected to win in the lawsuit as exempt. At the initial meeting of creditors, the trustee was informed that Davis might win $90,000 in her lawsuit. The trustee decided not to object; he doubted the lawsuit had any value. *Id*. That turned out to be a mistake; Davis settled her case for $110,000 and then turned over a portion of the settlement to her attorneys to cover their fees. The trustee demanded that the law firm turn over monies it had received from Davis. The firm refused, arguing that it should be able to keep the fees because Davis had claimed the proceeds as exempt, and the trustee had not timely objected. *Id*.

The Court agreed with the firm, holding that because there was no objection, the exemption became final. The Court explained that "[d]eadlines may lead

to unwelcome results, but they prompt parties to act and they produce finality. In this case, despite what respondents repeatedly told him, Taylor did not object to the claimed exemption." *Id*. at 644. The Court held that, having failed to object, the trustee could not later seek to deprive Davis and the law firm of the exemption. *Id*.

*Taylor* is inapplicable here. True, the trustee did not object to Wells' amended exemption, but that is irrelevant because the homestead exemption vanished when Wells did not reinvest the proceeds in another homestead. *Taylor* did not address a homestead exemption — or any exemption with a similar sunset provision — and is thus unhelpful.

The final Supreme Court case, *Law v. Siegel*, 571 U.S. 415 (2014), is also unhelpful. In that case, a chapter 7 debtor falsely claimed that an individual had a large mortgage on his home and then claimed his home as exempt under the state homestead exemption statute. At the time, the trustee didn't know of the fraud and therefore did not object to the claimed exemption. *Id*. at 419. Later, after extensive litigation, the trustee learned of the fraudulent mortgage and asked the bankruptcy court to surcharge the proceeds of the home sale to recoup some of his litigation expenses. The bankruptcy court allowed the surcharge. *Id*. at 419–20. The Supreme Court reversed, holding that because the trustee had not objected to the exemption, the exemption became final and the surcharge was unauthorized. *Id*. at 422–23.

Here, Wells is not arguing that the bankruptcy court allowed an improper surcharge on exempt

proceeds. Rather, the issue is whether a claimed homestead exemption can vanish by its own terms, even if the trustee does not object. *Law* did not address or rule on that issue, meaning that *Golden* and *Jacobson* remain good law and control the outcome. Further, to the extent *Law* spoke to the issue, it confirmed that state-court exemptions come with whatever strings may be attached: "It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption." *Id*. at 425 (citations omitted).

To be sure, *Golden* and *Jacobson* have been criticized. *Jacobson* has been criticized in at least one article;[4] the First Circuit has expressly stated that *Jacobson* is "unpersuasive,"[5] and two Ninth Circuit BAP Judges have questioned whether *Golden* was correctly decided in the first place.[6] But despite these criticisms, both cases remain good law; this Court is bound to follow them. Plus, although Judge Klein criticized *Golden*, he noted that at least one of "perverse incentives" of the case — that trustees would prolong cases in an effort to have the exemption

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[4] Hon. Alan M. Ahart, *In re Jacobson: The Ninth Circuit Court of Appeal Erred by Holding the Debtor Liable for Her Exempt Homestead Sale Proceeds*, 32 Cal. Bankr. J. 409 (2013).

[5] *Rockwell v. Hull (In re Rockwell)*, 968 F.3d 12, 23 (1st Cir. 2020).

[6] *See Gaughan v. Smith (In re Smith)*, 342 B.R. 801, 809 (B.A.P. 9th Cir. 2006) (Klein, J., concurring) ("The issue is difficult, and *Golden* may not have been correctly decided in 1986."); *In re Konnoff*, 356 B.R. at 208 (Pappas, J., concurring) (stating that *Golden* deserves reconsideration).

automatically vanish — had not manifested itself in the decades since *Golden* was decided. *See In re Smith*, 342 B.R. at 809 (Klein, J., concurring). As he put it, "the opportunity for abuse following *Golden* has remained more theoretical than real." *Id*.

For all these reasons, the Court concludes that Wells' homestead exemption vanished when he sold his home and did not reinvest proceeds in another home. Accordingly, the Court will reverse.

**ORDER**

For all these reasons, the Court **REVERSES** the bankruptcy court's decision and **REMANDS** for proceedings consistent with this ruling.

DATED: October 14, 2020

B. Lynn Winmill
U.S. District Court Judge

## APPENDIX C

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF IDAHO**

| | |
|---|---|
| **In Re:**<br>**DUSTIN JADE WELLS,**<br>**Debtor.** | **Bankruptcy Case No. 19-40478-JMM**<br>**Chapter 13** |

**ORDER APPROVING DISTRIBUTION OF NET SALES PROCEEDS**

**THIS MATTER** comes before the Court following Debtor's Motion to Sell Real Property described as 582 South 100 West, Jerome, Idaho ("Property"). Dkt. No 145. The Debtor timely claimed a homestead exemption in the Property, which was not opposed by the Chapter 13 Trustee.[1] In the Motion, Debtor requested authority to sell the Property and to pay from the sales proceeds the costs of sale, property taxes, irrigation assessments and two allowed secured claims that encumbered the Property. Lastly, from the balance of the proceeds that remained after the other disbursements at closing ("Net Proceeds"), he requested authority to disburse those Net Proceeds to

[1] It is undisputed that the Chapter 13 Trustee initially objected to the Debtor's claim of a homestead exemption in the Property. Dkt. No. 33. The Debtor subsequently amended his claim of exemption in the homestead on schedule C, Dkt. No. 46, and the Chapter 13 Trustee did not file a timely objection. Creditor Box Canyon Dairy did object to the amended homestead exemption, Dkt. No. 57, but that objection was resolved between the Debtor and Box Canyon in their stipulation. *See* Dkt. Nos. 166, 169.

the Debtor since they were exempt. The Chapter 13 Trustee objected to the proposed sale. Dkt. No. 150.

On December 17, 2019, a hearing was conducted on the Motion to Sell and all objections to the sale were resolved by the parties appearing except for the objection to the proposed distribution of the Net Sales Proceeds to the Debtor. Those Net Sales Proceeds were to be held by Title One, the closing escrow agent for the sale of the Property, pending further hearing before this Court. At the hearing, the Debtor represented that the Net Proceeds were to be disbursed by Debtor to pay Box Canyon Dairy in accordance with a settlement agreement announced orally on October 24, 2019, Dkt. No. 155, and subsequently documented by a written stipulation on January 14, 2020, Dkt. No. 166.

This Court entered its order authorizing the sale on December 23, 2019, but reserved the Net Proceeds dispute for a later hearing. Dkt. No. 159. The Trustee and Debtor submitted further written argument over the disbursement of the Net Proceeds, and the parties appeared on January 15, 2020 at a hearing to present further argument regarding the Chapter 13 Trustee's objection to the disbursement of the Net Proceeds to the Debtor. Dkt. Nos. 164, 165, and 167.

On January 15, 2020, the Court entered its oral findings of fact and conclusions of law overruling the Trustee's objection to the disbursement of the Net Proceeds to the Debtor, and directing the Debtor to submit a proposed order approved by the chapter 13 trustee. Dkt. No. 167. Subsequently, the Chapter 13 Trustee and Debtor could not agree to the form of the order (see Motion filed January 25, 2020 at Dkt. No.

171).[2] On January 28, 2020, the Chapter 13 Trustee and Debtor appeared before the Court to present argument concerning entry of Debtor's proposed order, and the Court thereafter took the matter under advisement. Following the hearing, the Court has determined it will enter its own order.

Now therefore for the reasons set forth and for other good cause,

**IT IS HEREBY ORDERED** that the Debtor's Motion to Consider Entry of Order, Dkt. No. 171, is hereby **DENIED**.

**IT IS FURTHER HEREBY ORDERED** that the Net Proceeds shall be disbursed to the Debtor, and the objections by the Chapter 13 Trustee are overruled.

**IT IS FURTHER HEREBY ORDERED** that Title One shall turn over the funds held in escrow in the amount of $15,751.61[3] to the Debtor, Dustin J. Wells, to be paid in accordance with the settlement stipulation with Box Canyon. Dkt. No. 166.

DATED: February 5, 2020


JOSEPH M. MEIER
CHIEF U.S. BANKRUPTCY JUDGE

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[2] On January 27, 2020, Box Canyon Dairy filed its Notice of Non-Opposition Re: Debtor Justin Jade Wells' Motion to Enter Order, Dkt. 171.

[3] The Debtor has represented that this is the liquidated amount of the Net Proceeds.

## APPENDIX D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

| | | |
|---|---|---|
| In re: | ) | Case No. |
| | ) | **BK-19-40478-JMM** |
| **DUSTIN JADE WELLS**, | ) | **Chapter 13** |
| Debtor. | ) | |
| | ) | Boise, Idaho |
| And related cases and parties | ) | January 15, 2020 |
| | ) | 1:36:07 p.m. |

**TELEPHONIC ORAL ARGUMENTS & COURT'S RULING**

HELD BEFORE THE HONORABLE JOSEPH M. MEIER, PRESIDING JUDGE OF THE U.S. BANKRUPTCY COURT

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

**APPEARANCES:**

FOR THE DEBTOR:

**PAUL ROSS, Esq.**
Idaho Bankruptcy Law
P.O. Box 483
Paul, ID 83347
208-219-7997
Fax: 208-416-6996
paul@idbankruptcylaw.com

FOR THE CREDITORS:

No appearances

FOR THE CHAPTER 13 TRUSTEE:

**KATHLEEN A. McCALLISTER,**
Chapter 13 Trustee
P.O. Box 1150
Meridian, ID 83680
208-922-5100
Fax: 208-922-5599
kam@kam13trustee.com

**BOISE, IDAHO**
**WEDNESDAY, JANUARY 15, 2020**

*** * * * ***

PROCEEDINGS BEGAN AT 1:36:07 P.M.

THE CLERK: Please rise. The United States Bankruptcy Court for the District of Idaho is now in session. The Honorable Joseph M. Meier presiding.

THE COURT: Please be seated.

Good afternoon. We're here on the one matter this afternoon. It is Wednesday, January 15th, 2020. Dustin Jade Wells is on for hearing today. That's case number 19-40478. I see the debtor, Mr. Wells, appearing through Mr. Ross, who's in Pocatello. Our Chapter 13 Trustee, Mrs. McCallister, is here in Boise.

It's that — I'll advise the parties, I have reviewed your briefs. The matter on for hearing today is what we do with the remainder of the proceeds related to the sale I previously approved before the — before the end of last year.

Is there anything else on for hearing this — this afternoon?

MS. McCALLISTER: No, Your Honor.

THE COURT: Mr. Ross?

MR. ROSS: Yeah.

THE COURT: I think it's your argument, why don't you go ahead.



MR. ROSS: Thank you, Your Honor.

The Trustee — so the original motion was filed, the Court approved that and then reserved the request — the — in a sense, the objection to that claim of exemption beyond a one-year period.

I've already provided the original response to the Trustee's objection, in addition to the memorandum and so I'll rely on those arguments.

I do want to provide some additional information regarding an issue that the Trustee brought out in her — in her memorandum, particularly regarding *Law v. Siegel* and — I think the interesting thing is that — so some of these questions were addressed, I believe, previously in the *Owen v. Owen* case from the United State Supreme Court, 500 U.S. 305. And I did not reference that initially.

But the *Konnoff* case, which the Trustee relies on and looks at, refers back to the *Owen v. Owen* case and which I think, for the most part, *Law v. Siegel* is a repeat in many senses of — of the same argument. And so I want to walk a little bit through *Law v. Siegel* just to point out some of the issues there and I think how it flows.

So for the — just for the record, 522 is the statute in which the exemptions are claimed. And at the filing of the bankruptcy then there was a claim of exemption that was filed at that time and there was not — there was an



objection by the Trustee initially regarding the amount of the total amount that would be allowed. And then that objection was not renewed and the objection that was filed in — by Box Canyon has also been resolved, as was the stipulation that was filed, I

believe yesterday with the Court, and I've not seen an order from the Court approving that stipulation as yet.

But when it comes to the current exemption issue, there's not been a formal objection within time frames of 4003 and — but it is what the Trustee raised as part of the motion to sell objection.

And so under *Law v. Siegel* I'll — just for the Court's information, that was initially a case under California law and the exemption was under, I don't remember the exact California statute, but *Siegel* claimed the exemption pursuant to California law as permitted under 522. I'll note that the United States joined in the Trustee's asking to surcharge the exemption of Mr. Law in that case and argued that basically state law is the one that dictates and trumps on what is occurring with exemptions on whether to allow it or not.

The bank — or the U.S. Supreme Court went on to explain that 522 does not give courts discretion to grant or withhold exemptions based on what are the considerations that they deem as appropriate. And then they went through the



statute, Section 522 and basically said there's two provisions that deal with homestead exemptions, 522(o) and 522(q), which limits homestead exemptions. And neither of those were claims or grounds for objecting to the exemption of Mr. Law. And as such, the Supreme Court says you don't get to somehow surcharge or undermine the homestead exemption of Mr. Law because you're not within the realms of objecting or limiting under 522.

The Supreme Court said that there was mind numbingly — there's mind numbingly detailed what 522 provides for disallowing or undermining or somehow surcharging an exemption of any person.

And so then the Trustee cites *Law v. Siegel* for the reasons we have given or she — it is of course true that when a debtor claims a state created exemption, the exemption still to be determined by state law which may provide that certain types of debtor conduct warrants denial of the exemption. And they're quoting to the California case.

But then the Supreme Court says, some of the earlier decisions in which *Siegel* relies, that was the Trustee in this case and in which the Fifth Circuit cited in Stewart, are instances in which federal courts applied state law to disallow state created exemptions and then says:

> "Our federal law provides no authority for Bankruptcy Courts to deny an exemption on grounds not
>
> Page 7
>
> specified in the code."

So the Trustee seems to rely on that language. I read that last sentence as saying that that's not permissible course of conduct for a Court to take. And so that's — I guess that's where some of the dispute is, is in the — in the construction of *Law v. Siegel* and that paragraph.

I read it that 522 is expressed. It's clear. And it provides the outlines. And previously there were some exceptions under state law, but I read that says — that says that there's no authority for Bankruptcy

Courts to deny an exemption not specified in the Bankruptcy Code, particularly 522.

THE COURT: Well, let me stop you there, Mr. Ross, because *Law versus Siegel* of course, dealt with the Trustees getting the Bankruptcy Court to surcharge the exempt property to, basically as a sanction for the bad faith that Mr. Law was perpetrating. Right? That — I mean it really was kind of reaching and interfering with the homestead.

But does *Law versus Siegel* really address this issue, which is Idaho statute that says the debtor gets a homestead in Black Acre, if you would, the place that the debtor is living at? If the debtor sells Black Acre then the — that homestead will follow — will be on — will still be exempt and the cash that's generated from the sale of that property up to $100,000. And then finally it's got to wind



up in whatever you want to call it, White Acre, the replacement property within a year of the sale of Black Acre, the initial property.

So is *Law versus Siegel* really helpful in this area where we've got the Idaho statute that's pretty explicit on proceeds from the sale of the homestead?

MR. ROSS: So there's two thoughts I have on that —

THE COURT: Okay.

MR. ROSS: — particular issue. *Law v. Siegel* reiterates that exemptions are determined as of the date of filing the bankruptcy petition. And *Wilson v. Rigby*, the Ninth Circuit case, also stands for that same opposition, we determine exemptions at the time

of filing. And so if we want to reopen that period, multiple periods down the road then I guess the question is where do we stop?

So, for example, if someone claimed a home — an exemption in a personal injury lawsuit, amount — for the amount reasonably necessary, well, then at some point something happens in the case and now we can reopen and object again because circumstances have changed and it's no longer reasonably necessary.

Or the co-mingling arguments that could be raised after the filing of the case. It's not — my first concern is that, exemptions are determined at the time of filing the



bankruptcy, because otherwise we open, in a sense, a Pandora's box of what we could do for objections to exemptions later. So.

THE COURT: So your point is, is that — is that Mr. — is that Mr. Wells claimed that exemption, he owned the house on the day the petition was filed and it was only until post-petition that he decided to sell it. But that there was no cash in existence from the sale of the homestead prior to the petition, right?

MR. ROSS: Correct.

THE COURT: Okay.

MR. ROSS: And under 522 also and Rule 4003, there's a 30 day period for which the Trustee to object to the home — the claimed exemption and that exemption was not objected to.

THE COURT: And that's kind of your *Law versus Siegel* argument, in essence, where the Supreme Court says if you don't timely object, even though it

may have been a good objection, or in other words the exemption wasn't warranted, you're forever barred from claiming that objection to that exemption?

MR. ROSS: Correct. And that would be that *Taylor v. Kronz — Kronz*, there's a whole separate line of case law and its progeny as well.

THE COURT: Okay.

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MR. ROSS: The second prong, the concern deals with — this is a Chapter 13, not a Chapter 7. So in a Chapter 7 situation there — I understand the snapshot rule and that's where *Wilson v. Rigby* comes through. But under the Chapter 13 deal as it's called, I think it's *In re Burgie*, talks about that individuals in a Chapter 13 can keep their property as part of the deal of the Chapter 13 as long as they commit income and enough — enough money flow through the bankruptcy system in order to provide for the best interest of creditors test at the — at the effective date of the plan.

And so this is also a Chapter 13 where the debtor gets to obtain and to keep any proceeds of anything that was part of the bankruptcy petition on the filing date and so — and then we have the opportunity of spending that down accordingly, as long as we meet the best interest test and everything else at the beginning of the case. And so I think there's two issues potentially with trying to reopen that period and especially in a Chapter 13 case.

THE COURT: Well, and have you read the recent BAP decision that came out December 31 of 2019, it's called *In re Black* that deals with the idea of the post-

petition sale of a property post-confirmation. Have you read that decision?

MR. ROSS: Yes. And I believe that's exactly on



point.

THE COURT: Why?

MR. ROSS: Because the fact that that's the Chapter 13 deal that we get to keep the proceeds. If I remember though, *In re Black* had, I think there was some distinguishment about — from that case because that was a confirmed case as where this one is not.

THE COURT: It was a confirmed plan and that case focused on the vesting of the property of the estate as of the confirmation date of the plan.

MR. ROSS: Right. And I — because of some of the — some of those different factors — facts of that case, I did not cite to *In re Black* for this one because I thought *Wilson v. Rigby* was more applicable and *Law v. Siegel* particularly.

THE COURT: Well, I mean, in essence, what your argument is, is that when the exemption is made or claimed under Schedule C, and I understand this was an amended exemption, and the Trustee didn't object to that exemption, that property — the homestead is no longer property of the estate, right? I mean that's, in essence, the argument you're making? So right now the homestead isn't property of the estate?

MR. ROSS: And that is the — the *Parks* decision of this Court from 1996 that says exactly that, that because the

exemption period has past, then they stand and you don't get to reopen that, to somehow pull it back into the estate.

THE COURT: Well, okay, but — but that — that *Parks* case dealt with — dealt with proceeds, right? And it dealt with — that was a Chapter 7. How is that — isn't that different here, where the debtor has a commitment to pay for three years, — actually this is — so it's a 60 month plan, so how do I factor that in? Because didn't Judge Pappas in *Parks* kind of recognize at the end of the decision, it's probably dicta that it may be a different situation in a Chapter 13?

MR. ROSS: I read *Parks* as to distinguish it between pre-petition and post-petition. And so the fact that this property existed on the date of the filing of the bankruptcy means that the exemptions were claimed and they were properly claimed. There was no objection to 4003 and as such, like you'd indicated, it's pulled out of the estate and we're done.

I read it as that — that simple. And I don't recall the dicta at the end. If it's dicta. I didn't find — I don't remember finding that as significant.

THE COURT: All right. Thank you, Mr. Ross.

You can continue. I was thanking you for your two points on the —

MR. ROSS: Oh.



THE COURT: — on the property of the estate. Sorry.

MR. ROSS: And for the most part I think I've laid out all the argument in my — the original response

and the memorandum and so — and then there's the *Konnoff* case, which I'd already mentioned. It seemed to me that the, of course which Judge Pappas was one of the judges on that I found interesting, but that was in the interpretation of Arizona law, which was an 18 month revisit period, where Idaho is simply one year.

But I think *Law v. Siegel* tips the scales back in favor of the *Owen v. Owen* scenario, as well as *Law v. Siegel*. But 522 outlines the case law and the parameters of which you can disallow a claim. And (p) and (q) are the only two that deal with homestead exemptions. And trying to take that back to state law, even if you get past the 30 day objection period is just inappropriate. Federal law, 522, does not provide to disallow a claim a year after the fact.

Does the Court have any questions?

THE COURT: Well, I —

MR. ROSS: Additional questions?

THE COURT: — I guess I have a question on a couple of the other issues if — unless you're — unless you're done? I want to ask you those, but I was just going to wait until we got to that particular place.

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MR. ROSS: I'll rely on my briefing and memoranda for the rest of the argument.

THE COURT: So, and I'm summarizing here and I know that numbers may not be exact, but your deal with Box Canyon in essence is, I'm going to — I, the debtor, am going to sell the property. I'm going to pay the secured creditors. I'm going to pay the cost of sale. And then the net proceeds — and you've used anywhere from $40–$45,000, I don't know what that

amounts to be, but the net proceeds are my exemptions and then I'm just going to pay that directly, not through the Trustee, but I'm going to pay that directly to Box pursuant to the deal. Right?

MR. ROSS: Right.

THE COURT: So how do you deal with the Trustee's argument that, albeit Box has currently 98 percent, plus or minus of the allowed unsecured claims, but there's another 2 percent and they're not getting any of that distribution. Isn't that an unfair discrimination of those other creditors?

MR. ROSS: so typically in a Chapter 7 or a Chapter 13 scenario, if we have exempt assets, the debtor doesn't have to pay them to anyone. They remain the debtor's property and he can spend them down — he or she can spend them down, stick them in a savings account, squirrel them in a mattress, it doesn't matter. There's no requirement that



somehow those exempt proceeds count towards proceeds that go to the unsecured creditors. So the agreement with Box Canyon is, in essence, rather than sticking them into — under the mattress, we're going to pay them over to an unsecured creditor outside the bankruptcy because they are exempt. They don't have to go through the bankruptcy estate and will pay to help resolve some of the issues with Mrs. Wells' embezzlement, alleged embezzlement activity, embezzlement activity and other issues that all — and the Court's I think has seen those on the periphery of the case, that is something that's outside the purview of the bankruptcy estate and exempt assets can be used by the debtor however he sees fit.

And so some argument that just because he is choosing to turn them over as part of an agreement to Box Canyon doesn't mean that they should be paid through the estate or through the Trustee's account.

THE COURT: And that — and that's just by virtue of the sale. That has nothing to do with the plan you're planning to confirm? The plan you — the plan that's up for confirmation?

MR. ROSS: Part of the agreement was to make sure that there was a certain base part of that plan, but that's not — we have to meet a certain criteria so that they won't have an objection to confirmation. But still there's nothing in there that requires exempt proceeds to be paid through the



estate to anybody or even to their own bank account.

THE COURT: So the debtor is taking a risk in paying this now, isn't he, if he hasn't confirmed his plan or can't confirm his plan for whatever reason and I approved this, isn't that a risk that he's taking that the plan won't be confirmed?

MR. ROSS: Well, I mean it wouldn't be any different than any other direct payment. I mean if we were proposing to pay, I don't know any creditor, a car creditor, direct payments as opposed through the Trustee, sure. If the creditor — if the debtor walks away from that car down the road, yeah, there's a risk that they're losing the potential equity in a foreclosure — or a repossession and sale of that car. Sure, there's going to be — yes. I mean if they brought their utility payment current and in a sense walked away from their bankruptcy and walked away from the apartment. Yes, there's always a risk that you're

losing the money that you paid post — pre-petition — or post — pre-confirmation or post-confirmation. There's always a risk with that, but that's really the debtor's choice regarding his exempt property.

THE COURT: Those were the questions I had, Mr. Ross. Do you have anything else you'd like me to know?

MR. ROSS: I don't at the present.

THE COURT: Thank you.

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MS. McCALLISTER: Thank you, Your Honor.

THE COURT: Ms. McCallister.

MS. McCALLISTER: [Coughs]. Excuse me.

So I filed an objection to debtor's motion to sell his real estate mostly based on how the debtor proposes to spend the proceeds from that sale. I think counsel is mischaracterizing this as objection to an untimely objection to his claim of objection, which it isn't.

I'm — I didn't object to the debtor's claim of homestead exemption under Idaho law. But as the Court is aware, Idaho debtors are limited to — to exemptions permitted by Idaho law. And the Idaho state law provides that the exempt proceeds are exempt for one year and must be used for the purpose of acquiring a new homestead. And I don't think that changes just because the debtor is in a bankruptcy proceeding. He doesn't get to have more rights than somebody that's not in a bankruptcy proceeding.

THE COURT: Well, let — and let me stop you there because — and maybe you need to walk me through that. In essence, as I've read the Idaho exemption stat — the homestead exemption statute it's, hey, debtor

you're protected up to 100,000 — I'm talking not bankruptcy law now —

MS. McCALLISTER: Okay.

THE COURT: — I'm talking pure state law. You're



protected $100,000 in this homestead, it's on Black Acre. If you sell that Black Acre and you — and you segregate the proceeds, then you have a year from the date of that sale to find a replacement home and those — those proceeds will be exempt in the original home into the proceeds and then finally, as long as you get into the new home within a year, they'll be exempt all the way through.

That's a little different than what we're talking about here, isn't it? Because would it make a difference if the debtor said, hey, I'm exempting it in Black Acre. He claimed that exemption under state law and then sold the place, and then decided to — to use Mr. Ross's term, burn the money in the street. How does that violate Idaho law? He's lost his exemption but he's — but he's not trying to keep it. He's trying to use it to basically cut his deal with this creditor.

MS. McCALLISTER: Well, the purpose of the exemption is so that the debtor has new household. A new — you know, new homestead property and that's why the legislature made this homestead exemption, so that the debtor is assured a home. And by nature of the state law, he's — they've got one year to reinvest that into homestead property.

"And homestead property held for in use of restoring or replacing the homestead property up to the

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amount specified in Section 55-1003.

It's exempt for one year and he has to acquire homestead property with the proceeds. After that one year is up creditors can go after that money.

THE COURT: if the money is still there. Right? I mean that's my point, is that — it's protected. If the money is there creditors can't grab the money and they — and certainly if he didn't — if the money were still in a segregated account and he didn't buy the new place and a year and a day passed, all of a sudden that money is available because it still sitting there. Well, what about the practical reality where the debtor sells the home, wants to buy a new home, doesn't get it accomplished but — and decides to spend the money somewhere else before that year runs out. Does Idaho law provide any remedy for a creditor to somehow chase that money back?

MS. McCALLISTER: I've not looked at it, as far as that remedy but I think you open up another Pandora's box to say now debtors can use the Bankruptcy Court to get done what they couldn't have done, you know, if they had a creditor chasing them to collect a bill. Now they say, well, now I have protection, I'm going to file bankruptcy, I'm going to sell my house after I file bankruptcy; maybe never confirm a Chapter 13 plan and dismiss my case and I'm going to burn that money whatever way I want to.

THE COURT: Okay.

MS. McCALLISTER: And it just leads into problems. I mean typically if a debtor didn't invest — reinvest their homestead property, the homestead funds into new homestead property within a one-year period it did lose it exempt — its exempt status and should be turned over to creditors.

In this case, the debtor can wait a year and if he doesn't reinvest it in homestead property then it should lose its exempt status. Or he could turn it over now because he just said I'm not going to use this money to acquire new homestead property. That's not my intent.

THE COURT: So that kind of gets into the — into the unfair treatment of unsecured creditors because, I mean, ignoring for a moment and I'm —

MS. McCALLISTER: Right.

THE COURT: — I'm not trying to ignore. Ignoring for a moment the administrative expense the Trustee is entitled — is arguing she's entitled to, he is planning to pay creditors and it's just this issue of he's paying 98 percent holder rather than the 2 percent holder.

MS. McCALLISTER: Correct. And I — I also wanted to mention that I don't think that, you know, counsel's characterization of *Law v. Siegel* is correct. You know, in that case the Court found that, you know, the — the Supreme Court found that the Bankruptcy Court couldn't surcharge the

claimed exemption. But it did find that the state law limits on claimed exemptions are what they are. You know when the debtor claimed — it is of course true that when the debtor claims a state created exemption, the exemption scope is determined by state law, you know, and so *Law — Law v. Siegel* just, you know, says that right there. It's not saying, you know, everything is out the window. The state law exemption is what it is.

So when Mr. Ross says, well, you know, this Supreme Court decision abrogated these prior decisions, I disagree. I don't think it says that at all.

You know, the decision such as in *Jacobson*, *Konnoff* and *Golden*. You know, and the Court in the *Jacobson* case said — I'm sorry, you know I can't see very well. Those exemptions must be determined in accordance with the state law applicable on the date of filing; and the entire state law applicable on the date of filing that is determinative of whether the exemption applies. And in this case the state law included a reinvestment requirement for the debtor's share of the homestead proceeds. And I don't think we can just ignore that and say, yeah, but the debtor may have sold, you know, his property and, you know, and just took the money to jackpot and got rid of it all or something and then the creditors are out of luck.

And we know the debtor plans to sell the property



— has sold the property already. We know what the proceeds are. We know that the debtor doesn't plan to use them to reinvest in a homestead property and then — then he further wants to say, you know, and I

want to treat this creditor differently than my other unsecured creditors.

THE COURT: And you challenge the argument that Mr. Ross makes that because it's exempt monies I can pay it however I want. And if I choose to pay this creditor over that creditor that's my choice not — and it's not a violation of the plan?

MS. McCALLISTER: I do challenge that.

THE COURT: Okay. For the re- — just because of the one year requirement in the Idaho statute?

MS. McCALLISTER: Right.

THE COURT: Okay.

MS. McCALLISTER: Based on the Idaho state law. I also think that the holding in *Wilson versus Rigby* was mischaracterized. In that case the Court did say, you know, the exemptions are set on the date of filing. And in that case it said, you know, your exemption under this state law that said the exemption is up to the amount of your equity up to $100,000 and because in that case the amount of equity on the date of filing was about $3500. The debtor was limited to that, which she had in equity on the date of filing and couldn't claim up to the $100,000. And I think that's what



that case discusses. So I —

THE COURT: So the appreciate — I mean, in essence, in *Wilson* the property was appreciating over time and higher than what it existed on the petition date.

MS. McCALLISTER: Correct.

THE COURT: And the question was, was that — was the appreciation property of the estate or did the exemption cover it. Right?

MS. McCALLISTER: And the exemption was limited to the amount of equity the debtor had on the date that she filed that case which at that time was a small amount.

THE COURT: And so how does that — how do we parlay — I get that in a Chapter 7 context, because in a Chapter 7 context, especially under Idaho law and again under *Wilson* was — was —

MS. McCALLISTER: Was Washington.

THE COURT: — Washington law. The debtor isn't entitled — isn't entitled to a homestead, it's entitled to 100,000 — up to $100,000 in a homestead and so that — that was the distinction they made.

But in a 13, I mean what happens in a Chapter 13 is, the plan gets confirmed, unless it's unusual the property reinvest in the debtor. Right?

MS. McCALLISTER: Well —

THE COURT: And so unlike *Wilson* in a Chapter 7, we



don't have a property estate anymore and —

MS. McCALLISTER: But we don't have a confirmed plan.

THE COURT: And your point is well taken, that the plan isn't confirmed here. But isn't — is there any difference between it not been property of the estate because the plan revested in the debtor versus what the —

MS. McCALLISTER: What —

THE COURT: — the other case law says is, that if there's not a timely objection to the exemption it's no longer property of the estate.

MS. McCALLISTER: I think they are different.

THE COURT: Okay.

MS. McCALLISTER: You know, I think the debtor is entitled to his exemption in the amount of equity that he had on the date of filing, subject to the debtor reinvesting those proceeds into a homestead property.

Now if the debtor wants to put those funds in a bank account and sit on them for a year and reinvest them within that year, they retain their exempt status. I don't think they retain their exempt status if he says I don't even intend to do that.

THE COURT: He's —

MS. McCALLISTER: No, I've told you I intend to give this to my creditor.

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THE COURT: That's an intention issue. And are you arguing there's a different intent as of the petition date here than there was later?

MS. McCALLISTER: No.

THE COURT: Okay. So you're not arguing that the — that the Trustee timely objected to the amended objection?

MS. McCALLISTER: Nope.

THE COURT: It's not an objection to the exemption, it's just simply the effect of Idaho law and the one year to reinvest?

MS. McCALLISTER: Correct. Again, I did disagree with the preferential treatment to one particular creditor. The code does require that there isn't preferential treatment and creditors of the same class be treated the same. And that's where the fund should go through the plan to be paid to the unsecured creditors pro rata. And I also object to the debtor's characterization that payments to unsecured creditors should be made directly. I think, you know, there should be very limited times when creditors are paid directly in a Chapter 13.

THE COURT: And what are those limited times?

MS. McCALLISTER: You know, you have your house that extends beyond the term of the plan. You have even a car that extends beyond the term of the plan if you're not

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cramming down the value. Once you cram down the value and modify that claim, of course you have to pay it through the plan, but if I have a 36 month plan and a 84 month car installment contract, then that should be paid directly.

THE COURT: Long term secured debt.

MS. McCALLISTER: Long-term secured debt. But other than that, you know, everything else should be going through the plan.

THE COURT: How about gifts from third parties? Not income in the same sense of the word that — that — I don't know, our job gives you. A gift from a family member. Should that go through the plan?

MS. McCALLISTER: 1506 would call that anything that the debtor acquires after the filing of

the case is property of the bankruptcy estate. You know, and I'm not sure if the Court is heading to, you know, is Mr. Wells parents or Mrs. Wells parents going to pay Box Canyon Dairy up to this $45,000, you know, if it doesn't ever get to the debtors, you know, maybe — I don't know that that actually became property of the bankruptcy estate. But a gift, you know, is anything —

THE COURT: If it's actually paid into the debtors' account, yeah.

MS. McCALLISTER: You know, I think then 1306 would apply.

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THE COURT: I see. I see what you're saying. Is that the debtor has dominion and control over it, in essence, by receiving it, however he or she receives it?

MS. McCALLISTER: Mm-hmm.

THE COURT: Okay.

MS. McCALLISTER: And I'll let my brief speak for the rest.

THE COURT: Okay. Thank you, Mrs. McCallister.

MS. McCALLISTER: Thank you.

THE COURT: Mr. Ross.

MR. ROSS: Your Honor, I would like to cite the Court to — the Court to another decision that came out recently. I couldn't find a cite formally just yet, but it's from the District of Maine. It's *Hall versus Rockwell*. And the issue is — I'm sorry, the opinion was given on the 24th of September, 2019, and it refers directly to a — based on the same situation on a Chapter 13. And that Court refers to what it calls

the complete snapshot rule. Basically that the snapshot is complete, it cannot be changed and it's — and it's not subject to revision based on subsequent events. So it's talking about the snapshot at the beginning of the case.

If the Trustee has a concern regarding the one year time frame, then I — it seems that the debtor would still obtain and receive the proceeds from the home and then if



there was anything left at the end of the one-year, then it seems that it could be something that the Trustee could argue would be something that needed to go into the estate. But I still don't think that complete snapshot rule removes that exemption. 522 doesn't provide for it and I still don't think it — it — I don't think it's applicable.

I will point out on *Wilson v. Rigby*, that that was a Chapter 7 case, and I talked about that earlier, but the thing that I think is important is that the original exemption was claimed when the case was filed, I'm going from memory, I think in 2013. And then when time had passed and now — it now became aware that there was some potential proceeds above and beyond what was claimed, the debtor amended those exemptions in the homestead, trying to — trying to increase them and then that's where the Trustee objected. So that period had reopened. Now from the opinion itself, I can't see the objection come within 30 days, but I'm assuming it did because it's never raised within the *Wilson v. Rigby* opinion. So I think *Wilson's* a little different in that term because there was an actual amendment of the exemptions. And as

far as I can tell it was a proper objection under 4003 that challenged that exemption.

But on the other — on opposing side, if they had claimed $100,000 as opposed to the exact amount at the time of filing, under the *Taylor v. Kronz* case I still think it



would have — it would have been capped at the 100, there wouldn't have been the ability of the Trustee to limit it. So I just want to point that out for the case — or for the Court. But in this case —

THE COURT: Unless the Trustee objected under *Law versus Siegel* — or the *Taylor* — that's a lesson from *Taylor*, right?

MR. ROSS: Correct. Correct. So I still — the date of filing is what's important. And the intent was, at that point, the original plan, we were going to keep this house — I'm sorry, we — the debtor was going to keep that home and was trying to pay off the second in full. The first was going to have the arrears cured and move forward with payments and income assistance from the parents. That obviously is not going to be an option at this point and so — and that was part of the motion was that the election was then to sell.

I had another thought but I've forgotten it, so it must not be important.

But I think this is a question of there's some — there's some ambiguity in the law regarding *Law v. Siegel* and I — I think when *Law v. Siegel* says that federal law provides no remedy under 522, I think it's abrogating *Konnoff* and *Golden* and the previous line

of cases that deal with — with allowing this under state law. And even 4003 I



don't think allows it. Rule 4003.

So I don't have anything further, unless the Court has some additional questions?

THE COURT: I don't, Mr. Ross. Thank you.

MR. ROSS: Thank you, Your Honor.

THE COURT: Mrs. McCallister, it's a little unusual, but I'll give you an opportunity if you want to respond to anything that Mr. Ross just argued, the main case or —

MS. McCALLISTER: No, Your Honor. Thank you.

**JUDGE'S RULING**

THE COURT: Ordinarily, with a case like this, I think I'd be inclined to take the matter under advisement, but I — but I think the facts and the law, with respect to this case is, is unique enough that I — and I see a reason to move this matter along just simply because I know, because the parties argued it to me and I didn't review it again this afternoon when I was preparing that — that confirmation of course is, we're on the heels of that. It's coming. So I'm going to — I've read the materials. I've heard the argument of the parties, I'm going to enter a decision on this issue here this afternoon.

In this case, of course it's Justin Jade Wells. Mr. Wells filed this Chapter 13 petition, the dates and times are in the — are in the docket and not necessarily

relevant here, other than to note that as of the date of the petition he was the owner of real property, I believe in Jerome County and he exempted that. His initial exemption was objected — his initial objection — excuse me, let me try that again. His initial exemption, homestead exemption, was objected to by the Chapter 13 Trustee and it was subsequently amended. And there's no dispute that after that amendment the Trustee didn't file an additional objection to the amended homestead objection. And that objection was due under the Federal Rules of Bankruptcy Procedure, I think it's 4003(b) within 30 days.

The Trustee doesn't dispute and isn't here arguing that she made a timely objection — or made a timely objection to the exemption. Is not objecting to the exemption as it existed on the petition date. And that doesn't — the amount of that doesn't appear to be at issue either, per the amendment. In other words, it's somewhere in the neighborhood of $45,000. That's the number I've seen, which was, in essence, the equity over and above the existing consensual liens that encumbered this real property that the debtor was claiming as an exemption. So we don't, in this case, have any issue with the appreciation of value on this property. The debtor made a valid exemption claim. The Trustee didn't object. The time ran to object and now that exemption stands.



There's a side issue, I suppose, and that is is that Box Canyon Dairy, one of the creditors here, did object to that amended exemption, but as I understand the

settlement that was articulated to this Court at an earlier hearing last fall that they're — they're walking away from that objection to the exemption.

Now here, of course the issue is, the Trustee alleges and asserts that under Idaho law the Idaho's exemption statute that the exemption will not maintain itself if Mr. Wells does not reinvest the proceeds from the sale of his Jerome home into a new piece of property within a year. And so the Trustee suggests that we need to wait a year to determine whether or not the debtor can hold onto that homestead exemption under Idaho law. That's — I think that's Idaho Code 55-1008.

The debtor makes the point and I find that as of the date of the petition the debtor was not intending to sell the property. The debtor claimed the property as exempt. There was no intent to sell. The Trustee isn't really arguing that there was an intent to sell at the time the exemption was claimed, rather that's a fact that occurred afterwards. And I think that's significant that this property existed on the day the bankruptcy petition was filed, wasn't in the form of proceeds but rather was in the form of land. The debtor hadn't sold it. Hadn't converted



the — his interest in the property to cash. Rather it was simply existing as land.

The whether or not a homestead is sold pre- or post-petition is important and I cite the parties, as they've cited to me, Judge Pappas's decision *In re Parks* . That's 96.2 IBCR 64, Bankruptcy, District of Idaho, 1996. There, the Bankruptcy Court found it significant that property claimed as exempt was no

longer property of the estate and its subsequent transmutation into proceeds, which would — which would be nonexempt under state law, does not bring those proceeds into the estate. That's, in essence, what Judge Pappas was saying in that case.

And so I think it significant here that — that we didn't have proceeds at the time the petition was filed. Whether you want to call it a snapshot or not, I think that's what it is.

And *Wilson*, the Ninth Circuit case also brings us back to that point as well. *Wilson*, which is *Wilson versus Rigby*, 909 F.3d, 3063, Ninth Circuit, 2018, also held that the exemption is to be determined as of the date of the petition. What we're doing here is attempting to deal with it post-petition.

In essence here, I think the Trustee's argument is that the Bankruptcy Code requires that we reopen the property estate. In other words, the exemption was claimed. It was



not objected to timely. The exemption stands. The case law seems pretty clear, including *Law versus Siegel*. That's the Supreme Court case, 134 Supreme Court, I think it's 1196. That basically held that if there's not a timely exemption it's no longer property of the estate. In essence, the Trustee's argument here is while you're — there was a valid exemption, I didn't object to it. It was no longer property of the estate, but in essence it comes back to life, if you would, in the Chapter 13 proceeding because the debtor didn't go ahead and take those proceeds and reinvest them into a new — into a new house.

I think it's important to look at some of the —some of the case law in this. The exemption stands, according to the — according to the United States Supreme Court, even if there is not a colorable statutory basis for making a claim of exemption. That's *Taylor versus Freeland* & *Kronz*, that's 503 U.S. 638, 643, 644, Supreme Court case 1992.

I think it's important also to look at — at the recent decision I mentioned, it's the Black decision. It's the Ninth Circuit BAP decision issued on December 31, 2019, that's BAP case number NV-18-1351. In that case we were dealing in that case with a confirmed plan. That plan required the debtor to sell property or refinance property that was a rental property. It was not exempt property. The



debtor had lost his claim to an exemption in that case. And through the negotiation process in the Chapter 13, eventually confirmed a plan that said I will sell that property and I will pay $45,000 to creditors. Time passed. The debtor did sell the property and got $107,000 for that property. Proposed to pay $45,000 to the creditors, just like the plan had said. And importantly the plan had revested the property in the debtor. Hadn't reserved it for the bankruptcy estate. So on confirmation the property was revested in debtor. The fight then, therefore, between the Chapter 13 Trustee in *Black* and the debtor was who got the additional proceeds. In this case it was approximately $51,000 of additional proceeds. The Trustee moved to modify the plan and require the debtor to pay that into the plan. That's the additional amount, the $51,000 over and above what the plan

said, which was 45. And asserted that that was net disposable income.

The BAP was pretty clear on that, that the plan stated that the property revested in the debtor. The plan was confirmed. The Trustee argued that the appreciation of — that had occurred in the property since the plan was confirmed was property of the estate. In other words, that that — that was an exception under 1306(a)(1) and even though it existed as of pre- — even though it existed as of the petition date, that appreciation, according to the



Trustee's argument in that *Black* case belonged to the estate and, therefore, hadn't vested in the debtor.

The Ninth Circuit BAP rejected that argument and said that once the property vested in the debtor it was in the debtor and it didn't revest. And I think that's the situation we have here.

Basically the Trustee's argument is that this valid exemption somehow comes back into the estate because of what's occurred post-petition.

It's different than *Black* because we don't have a confirmed plan and we don't have the revesting that occurred in *Black*. But I think *Law versus Siegel* and the other case law, including the case that I mentioned *in re Parks*, that's the Idaho decision by Judge Pappas issued in 1996, indicates that it's not property of the estate once the exemption is validly — once the exemption is claimed and not validly disputed. I don't think this is — I don't think this homestead is property of the estate.

Importantly too, I think the facts of this case are important to consider. The debtor is not attempting to simply burn this property on the street or go to Jackpot and gamble it, as has been the argument of counsel here. What he's doing is saying, hey, I want to use that excess money, whether it's 40 or $45,000, it was covered by my homestead and I want to pay a creditor with that. I want to pay a



creditor who holds 98 percent of the allowed unsecured claims. That's not disputed in the parties arguments. And I — and that's part of my deal where I — where I adjudicated and settled the claims of that creditor. And so unlike a situation where the debtor just runs away with the money, blows it, absconds with it, whatever the term or verb you want to use. Here the debtor is actually using it to facilitate the — to facilitate his attempt to reach a resolution with this creditor and I'm assuming, although we aren't there, I'm assuming to confirm a 60 month plan. I assume that because I think this Court can take notice of the fact that the parties presented to me, back in the fall, that the debtor's settlement with Box Canyon, the 98 percent creditor, or better said the creditor that holds 98 percent of the allowed unsecured claims, I'm required — I, the debtor, am required to pay a certain amount and it's $110,000 over the life of a plan in order to get my discharge. And I think that in this situation the debtor — the debtor is acting in good faith and is attempting to — is attempting to honor that settlement based on everything that I've heard.

But the point is, is the debtor's exemption stands. And if the debtor decides to use the money and pay

creditors with it, I think that's his right. It's important, in my mind, that Idaho law basically protects that money from the



reach of creditors in the initial property into the account where the proceeds of a sale of the property go. And then finally to the — to the ultimate property. If that chain is not broken, the debtor will maintain that exemption. If that chain is broken, in other words, if the debtor didn't reinvest it in a year, they'd lose the exemption. But the — but the important thing to me is, that the debtor is not trying to protect that money from creditors, rather he's trying to use it to pay a creditor. And I think that's the intent of Idaho statute is to allow — is to allow the debtor to maintain that homestead if that's the election that he or she would like to make. I don't think it gives the right of creditors to row in and basically take charge of those proceeds in that year period. I think it simply protects those proceeds. And if there are no proceeds to protect, well, then — then the debtor can't invest in a new piece of property.

I think it's important also to talk about the *Burgie* case, that the Ninth Circuit BAP decision 239 — let me backup. That's *McDonald versus Burgie*, 239 B.R. 406, 409, Ninth Circuit BAP, 1999. There, the argument was basically that the — the proceeds from the sale of real property in a Chapter 13 bankruptcy case became disposable income to be distributed under the Chapter 13 plan. And there, the BAP was not convinced of that. Concluded that the debtor can

voluntarily use those proceeds, but cannot be compelled to do so. In other words, the Bankruptcy Appellate Panel indicated that that was not net disposable income that the debtor had to pay into the plan, but rather could do it voluntarily or not. And I think that *Burgie* plan is consistent. That 1999 decision is consistent with the *Black* decision issued at the end of 2019, recognizing the sales of property, that in a — that have been revested in the debtor can't be — cannot come back into the estate and be mandated to be used for payment of creditor. I think the concept is the same here, even though we had a little different facts where we have property that's validly exempted and I don't think is property of the estate anymore.

And I started out by saying I think this is an unusual case. And I particularly alert you to that, Mr. Ross. I don't want to be misconstrued here in this ruling to be opening up Pandora's box to say that all things can be paid outside the plan, that all — that you can disfavor a group of unsecured creditors in favor of another unsecured creditor. I think you're right and you persuaded me when you said, hey, those proceeds are exempt proceeds and I, the debtor, can use them however I want; and if I want to pay one class of creditors different from another class of creditors, that's not a confirmation issue, that's just my choice of how — how I'm using my exempt proceeds. And so I



don't think this is a confirmation issue where we're favoring one creditor over the other. I think this

rather is the debtor's election to use his homestead proceeds in a manner that the debtor wants to use them, as opposed to under a — under a confirmed chapter — or a plan that the debtor is attempting to confirm under Chapter 13.

I, therefore, don't think that's unfair treatment and I'm not — I don't think it's right for me to be making a ruling that it's unfair in treatment of one unsecured creditor over the others under 11 U.S.C. 1322(a)(3). We're simply dealing with now, that the end of the motion for sale; the motion for sale that I — the Court previously approved that allowed the payment of all the encumbrances against the property; they allowed the closing cost and simply what do we do with what's left? What do we do with the exemption? And that's really all that I'm dealing with here as well, what do we do with the exemption?

I also don't agree with the Trustee's argument that this whole thing circumvents the purpose and the manner of how Chapter 13's are funded. She's correct that it's unusual. Here that — that asks — that an asset that the debtor owns should be paid through a Chapter 13 in the normal course of things it should go through. The Trustee should be entitled to her statutory commission. There should be a pro rata distribution as required by a Chapter 13. Here again, with



this unusual fact pattern, we have the debtor paying the property that doesn't belong to the creditors. It would not be part of the best interest of creditors tests. It's exempt property. And so I think there's — in my mind, there's a distinction here between — between

this and if I were dealing with it at the time the plan were being confirmed.

Finally I'm not persuaded that with the cases that are out there, including the — including the Ninth Circuit's Bankruptcy Appellate Panel's case of *Konnoff*, 2006. I think for the reasons I've already stated we've got a different fact pattern here than was in that case. Yes, Idaho law does have that requirement of reinvestment, but I think utilizing that in this case to — to deny the debtor the use of this money to pay creditors is the wrong choice for this Court to make.

So I'm going to overrule the Trustee's objection. I'm going to authorize the payment of the net proceeds as requested by the debtor which, in essence, the net proceeds being what was left over from that sale being paid to Box Canyon Dairy is — I'm approving that.

Mr. Ross, do you want to present an order to me?

MR. ROSS: Yes, and I believe the title company will require one for release of the funds from escrow.

THE COURT: Mrs. McCallister, would you like to



approve the form of that order?

MS. McCALLISTER: Yes, Your Honor.

THE COURT: Please get Mrs. McCallister's signature on that. I should have indicated at the beginning, I reserve the right to memorialize these oral findings and conclusions in writing, but at this point the oral decision will stand.

Thank you. I appreciate the hard arguments you made and your professionalism in this.

We'll be in recess.

THE CLERK: Please rise.

PROCEEDINGS CONCLUDED AT 2:35:24 P.M.

* * * * *



**CERTIFICATION**

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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**MAPLE VALLEY, WA 98038-6064**
**(206) 953-7066**
**gayle@nwtranscripts.com**

/s/ Gayle Martin-Lutz
FEDERALLY CERTIFIED MANAGER/OWNER

/s/ Gayle Martin-Lutz 03/22/20
TRANSCRIBER DATE

## APPENDIX E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 11 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

| | |
|---|---|
| In re: DUSTIN JADE WELLS,<br>Debtor, | No. 20-35984 |
| KATHLEEN A MCCALLISTER,<br>Plaintiff-Appellee,<br>v.<br>DUSTIN JADE WELLS,<br>Defendant-Appellant. | D.C. No. 4:20-cv-00086-BLW<br>District of Idaho, Pocatello<br><br>ORDER |

Before: GRABER and CHRISTEN, Circuit Judges, and R. COLLINS,* District Judge.

Judge Christen has voted to deny Appellant's petition for rehearing en banc and Judge Collins has so recommended. Judge Graber has recommended to grant the petition for rehearing en banc.

The full court has been advised of Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on it.

Appellant's petition for rehearing en banc, Docket No. 43, is DENIED.

* The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

## APPENDIX F

### 11 U.S.C. § 522
### Exemptions

* * *

**(b)(1)** Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

**(2)** Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

**(3)** Property listed in this paragraph is—

**(A)** subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile

has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

**(B)** any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

**(C)** retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

**(4)** For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

**(A)** If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

**(B)** If the retirement funds are in a retirement fund that has not received a favorable determination

under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

**(i)** no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

**(ii)(I)** the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

**(II)** the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

**(C)** A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

**(D)(i)** Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

**(ii)** A distribution described in this clause is an amount that—

**(I)** has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

**(II)** to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

**(c)** Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

**(1)** a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

**(2)** a debt secured by a lien that is—

**(A)(i)** not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

**(ii)** not void under section 506(d) of this title; or

**(B)** a tax lien, notice of which is properly filed;

**(3)** a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

**(4)** a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in

section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

**(d)** The following property may be exempted under subsection (b)(2) of this section:

**(1)** The debtor's aggregate interest, not to exceed $27,900 [originally "$15,000", adjusted effective April 1, 2022][1] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

* * *

[1] See Adjustment of Dollar Amounts notes below.

**11 U.S.C. § 541**
**Property of the estate**

**(a)** The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

**(1)** Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

* * *

## Idaho Code § 55-1003 (2019)
## HOMESTEAD EXEMPTION LIMITED

A homestead may consist of lands, as described in section 55-1001, Idaho Code, regardless of area, but the homestead exemption amount shall not exceed the lesser of (i) the total net value of the lands, mobile home, and improvements as described in section 55-1001, Idaho Code; or (ii) the sum of one hundred thousand dollars ($100,000).

## Idaho Code § 55-1008 (2019)
## HOMESTEAD EXEMPT FROM EXECUTION — WHEN PRESUMED VALID

**(1)** Except as provided in section 55-1005, Idaho Code, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in section 55-1003, Idaho Code. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds.

**(2)** Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county in which the homestead is situated.

## APPENDIX G

| Fill in the information to identify your case | | | |
|---|---|---|---|
| Debtor 1 | **Dustin Jade Wells** | | |
| | First Name | Middle Name | Last Name |
| Debtor 2 (Spouse, if filing) | | | |
| | First Name | Middle Name | Last Name |
| United State Bankruptcy Court for the: | DISTRICT OF IDAHO | | |
| Case number: | **19-40478** | | |

■ Check if this is an amended filing

Official Form 106A/B

**Schedule A/B: Property** 12/15

**In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.**

**Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest in**

1. **Do you own or have an legal or equitable interest in any residence, building, land, or similar property?**

☐ No. Go to Part 2.

■ Yes. Where is the property?

1.1

**582 South 100 West**
Street address, if available, or other description

**Jerome ID 83338-0000**
City State Zip Code

**Jerome**
County

**What is the property?** Check all that apply

■ Single family home
☐ Duplex or multi-unit building
☐ Condominium or cooperative
☐ Manufactured or mobile home
■ Land
☐ Investment property
☐ Timeshare
☐ Other_____

**Who has interest in the property?** Check one

■ Debtor 1 only
☐ Debtor 2 only
☐ Debtor 1 and Debtor 2 only
☐ At least one of the debtors and another

**Other information you wish to add about this item, such as local property identification number:**
**Purchase price July 2018 plus estimated increase in value, includes outbuildings and fixtures (arena, chutes, troughs)**

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

| **Current value of the entire property?** | **Current value of the portion you own?** |
|---|---|
| **$668,000.00** | **$668,000.00** |

**Describe the nature of our ownership interest (such as fee simple, tenancy by the entireties, or a life estate), if known.**
**Fee simple**

■ Check if this is community property (see instructions)

2. **Add the dollar value of the portion you own for all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here.....=>** **$668,000.00**

**Part 2 Describe Your Vehicles**

**Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not?** Include any vehicles you own

that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases*.

* * *

| Fill in the information to identify your case | | | |
|---|---|---|---|
| Debtor 1 | **Dustin Jade Wells** | | |
| | First Name | Middle Name | Last Name |
| Debtor 2 (Spouse if, filing) | First Name | Middle Name | Last Name |
| United State Bankruptcy Court for the: | DISTRICT OF IDAHO | | |
| Case number: (if known) | **19-40478** | | |

■ Check if this is an amended filing

Official Form 106C 4/19

**Schedule C: The Property You Claim as Exempt**

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known).

**For each item of property you claim as exempt, you must specify the amount of the exemption**

**you claim. One way of doing so is to state a specific dollar amount as exempt. Alternatively, you may claim the full fair market value of the property being exempted up to the amount of any applicable statutory limit. Some exemptions—such as those for health aids, rights to receive certain benefits, and tax-exempt retirement funds—may be unlimited in dollar amount. However, if you claim an exemption of 100% of fair market value under a law that limits the exemption to a particular dollar amount and the value of the property is determined to exceed that amount, your exemption would be limited to the applicable statutory amount.**

**Part 1: Identify the Property You Claim as Exempt**

1. **Which set of exemptions are you claiming?** Check one only, even if your spouse is filing with you.

   ■ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)

   ☐ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. **For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.**

| **Brief description of the property and line on *Schedule A/B* that lists this property** | **Current value of the portion you own** Copy the value from *Schedule A/B* |
|---|---|
| **582 South 100 West Jerome, ID 83338 Jerome County Purchase price July 2018 plus estimated increase in value, includes outbuildings and fixtures (arena, chutes, troughs)**<br>Line from *Schedule A/B*: **1.1** | **$668,000.00** |
| **Amount of the exemption you claim**<br>*Check only one box for each exemption.* | **Specific laws that allow exemption** |
| ☐ _____<br>■ 100% of fair market value, up to any applicable statutory limit | **Idaho Code §§ 55-1001, 55-1002, 55-1003** |

| **Brief description of the property and line on *Schedule A/B* that lists this property** | **Current value of the portion you own** Copy the value from *Schedule A/B* |
|---|---|
| **Roping Dummy - Smarty**<br>Line from *Schedule A/B*: **9.10** | **$3,000.00** |
| **Amount of the exemption you claim**<br>*Check only one box for each exemption.* | **Specific laws that allow exemption** |
| ■ $0.00<br>☐ 100% of fair market value, up to any applicable statutory limit | **Idaho Code § 11-605(10)** |

| **Brief description of the property and line on *Schedule A/B* that lists this property** | **Current value of the portion you own** Copy the value from *Schedule A/B* |
|---|---|
| **2 Coats saddles**<br>Line from *Schedule A/B*: **9.11** | **$5,000.00** |

| **Amount of the exemption you claim**<br>*Check only one box for each exemption.* | **Specific laws that allow exemption** |
|---|---|
| ■ $0.00<br>☐ 100% of fair market value, up to any applicable statutory limit | **Idaho Code § 11-605(10)** |

| **Brief description of the property and line on *Schedule A/B* that lists this property** | **Current value of the portion you own**<br>Copy the value from *Schedule A/B* |
|---|---|
| **Oilfield pipe.**<br>Line from *Schedule A/B*: **53.1** | **$2,000.00** |

| **Amount of the exemption you claim**<br>*Check only one box for each exemption.* | **Specific laws that allow exemption** |
|---|---|
| ■ $0.00<br>☐ 100% of fair market value, up to any applicable statutory limit | **Idaho Code § 11-605(10)** |