

APN # 1219-25-002-018
WHEN RECORDED RETURN TO:
Loral L. Langemeier
P.O. Box 36
Zephyr Cove, NV 89448



KAREN ELLISON, RECORDER

The undersigned hereby affirms that this document
Submitted for recording does not contain the
Social security number of any person or persons.
(Pursuant to NRS 239(b).030)

Space above this line for Recorder's use

DECLARATION OF HOMESTEAD

Pursuant to the requirements of NRS 115.020, **LORAL L. LANGEMEIER, a married woman**, does certify and declare as follows:

THAT LORAL L. LANGEMEIER, with her family, resides on the premises hereinafter described;

THAT she now resides on the land and premises located at 586 Leealan Drive, in the County of Douglas, State of Nevada, City of Gardnerville, more particularly described as:

Lot 5, as shown on the map of FAYE CANYON ESTATES, according to the map thereof, recorded January 13, 1989, Book 189, Page 1591, Document No. 194374, Official Records of Douglas County, Nevada.

Assessor's Parcel Number: 1219-25-002-018

THAT she claims the land and premises hereinabove described together with the dwelling house thereon, and its appurtenances, as a Homestead; that all of said property is necessary to the use and enjoyment of said Homestead.

THAT no former declaration of homestead has been made by her.

IN WITNESS WHEREOF, she has hereunto set her hand this 27th day of May, 2020.

LORAL L. LANGEMEIER

ACKNOWLEDGEMENT

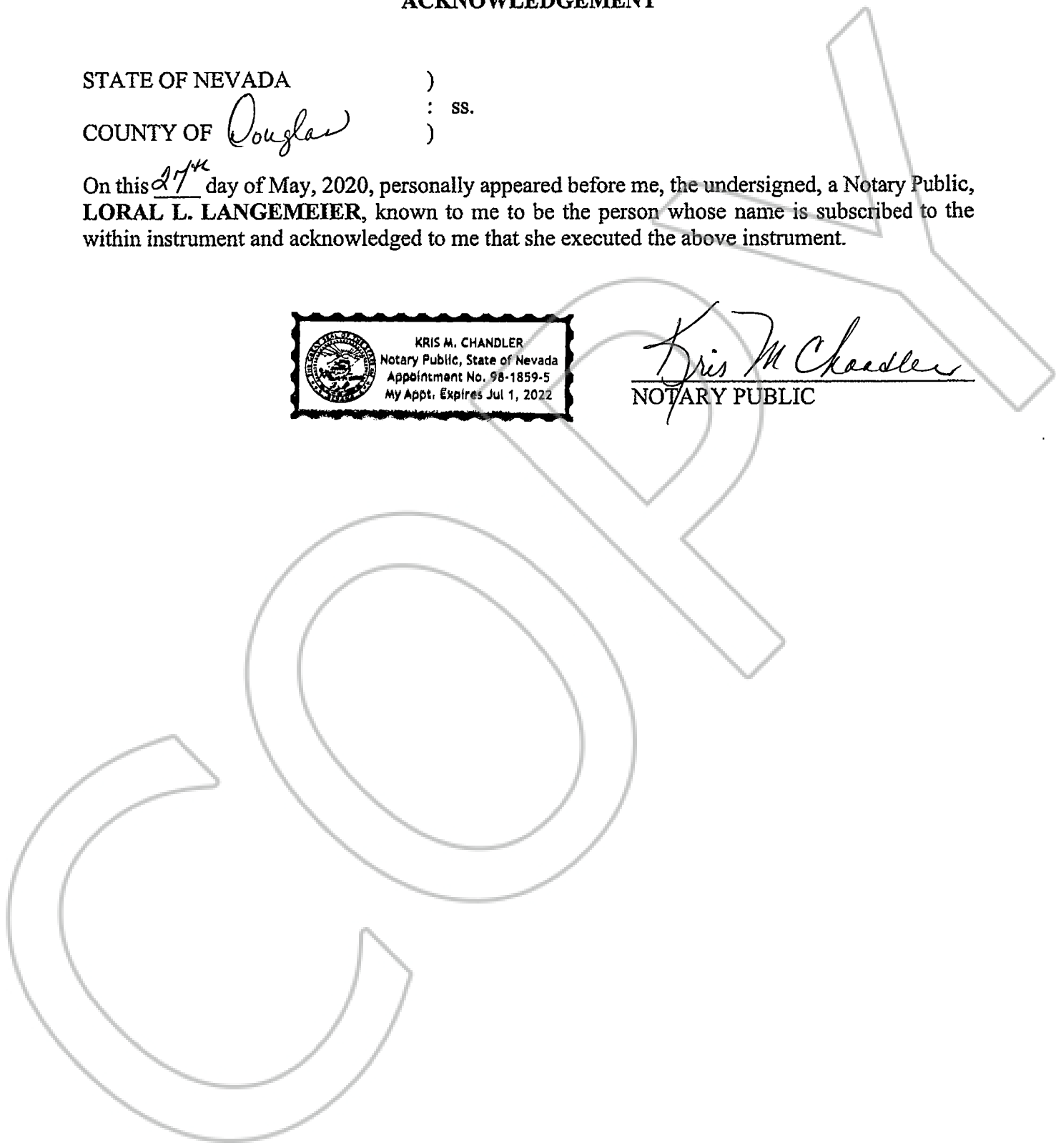
STATE OF NEVADA)
 : SS.
COUNTY OF *Douglas*)

On this *27th* day of May, 2020, personally appeared before me, the undersigned, a Notary Public, **LORAL L. LANGEMEIER**, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the above instrument.



Kris M Chandler

NOTARY PUBLIC



Caldwell v. Nelson (In re Caldwell)

United States Bankruptcy Appellate Panel for the Ninth Circuit

February 18, 2016, Argued and Submitted at Las Vegas, Nevada; February 24, 2016, Filed

BAP No. NV-15-1074-JuKiD

Reporter

545 B.R. 605 *; 2016 Bankr. LEXIS 577 **; Bankr. L. Rep. (CCH) P82,932

In re: PATRICK HEATH CALDWELL,
Debtor. PATRICK HEATH CALDWELL,
Appellant, v. VICTORIA L. NELSON, Chapter
7 Trustee, Appellee.

Prior History: [**1] Appeal from the United States Bankruptcy Court for the District of Nevada. Bk. No. 2:14-bk-16024-LED. Honorable Laurel E. Davis, Bankruptcy Judge, Presiding.

Core Terms

homestead exemption, homestead, exempt, householder, legal title, transfer title, bankruptcy court, transferred, ownership, declaration, recorded, declaration of homestead, reconsideration, beneficial, mortgage, married

Case Summary

Overview

ISSUE: Where debtor transferred title to real

property to and from a trust and an LLC, whether a bankruptcy court erred when it limited his homestead exemption under 11 U.S.C.S. § 522(p)(1) because the property was conveyed by the LLC to the trust during the 1215-day period preceding his petition. HOLDINGS: [1]-Debtor held an interest in the property that supported a claim of homestead while the LLC was the sole titleholder, as Nev. Rev. Stat. §§ 21.090(1)(l) and 115.005 did not designate how title had to be held and did not limit the estate to fee simple; [2]-As he resided on the property since 1994 and was at all times in actual possession of the house, he met the definition of a householder under Nevada law, and the property was a protected homestead even when the LLC was titleholder; [3]-Equity subject to the exemption was the result of mortgage payments he made during his occupancy.

Outcome

The bankruptcy appellate panel reversed the bankruptcy court's order.

LexisNexis® Headnotes

Bankruptcy Law > ... > Judicial
Review > Standards of Review > De Novo
Standard of Review

HN1 Standards of Review, De Novo
Standard of Review

A bankruptcy court's interpretation of the
Bankruptcy Code is a matter of law subject to
de novo review.

Bankruptcy Law > ... > Judicial
Review > Standards of Review > De Novo
Standard of Review

HN2 Standards of Review, De Novo
Standard of Review

A bankruptcy appellate panel reviews a
bankruptcy court's interpretation of state law de
novo in order to determine if it correctly
applied the substantive law.

Bankruptcy Law > ... > Judicial
Review > Standards of Review > Clear
Error Review

HN3 Standards of Review, Clear Error
Review

Findings of fact are reviewed by a bankruptcy
appellate panel under a clearly erroneous
standard. A court's factual determination is
clearly erroneous if it is illogical, implausible,
or without support in the record.

Bankruptcy Law > Exemptions > State Law
Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law
Exemptions > Specific Exemptions

HN4 State Law Exemptions, Election of
Exemptions

11 U.S.C.S. § 522(p)(1)(A) imposes a limitation
on the homestead exemption a debtor can claim
regardless of the applicable state law
exemptions. Section 522(p)(1) provides in part
that except as provided in § 522(p)(2) and 11
U.S.C.S. §§ 544 and 548, as a result of electing
under 11 U.S.C.S. § 522(b)(3)(A) to exempt
property under state or local law, a debtor may
not exempt any amount of interest that was
acquired by the debtor during the 1215-day
period preceding the date of the filing of the
petition that exceeds in the aggregate \$155,675
in value in real or personal property that the
debtor or a dependent of the debtor uses as a
residence.

Bankruptcy Law > Exemptions > State Law
Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law
Exemptions > Specific Exemptions

HN5 State Law Exemptions, Election of
Exemptions

To determine whether the statutory cap in 11
U.S.C.S. § 522(p)(1)(A) applies, a court
considers whether a debtor "acquired an
interest" within 1215 days of filing for relief.

Bankruptcy Law > Exemptions > State Law
Exemptions > Specific Exemptions

Civil Procedure > Preliminary
Considerations > Federal & State
Interrelationships > Erie Doctrine

HN6 [🔗] **State Law Exemptions, Specific Exemptions**

A bankruptcy appellate panel looks to state law to determine whether a debtor held an interest in a property which would support a claim of homestead.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Governments > Legislation > Interpretation

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN7 [🔗] **State Law Exemptions, Specific Exemptions**

Nev. Rev. Stat. § 21.090(1)(f) exempts homestead property from execution as provided for by law. Under Nev. Rev. Stat. § 115.005(2)(a), the "homestead" is broadly defined as the property consisting of a quantity of land, together with the dwelling house thereon and its appurtenances. These statutes do not designate how title to the property is to be held, and they do not limit the estate that must be owned, i.e., fee simple or some lesser interest. Nevada courts have held that the exemption should be liberally and beneficially construed in favor of the debtor and protecting the family home.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

Governments > Legislation > Interpretation

HN8 [🔗] **State Law Exemptions, Specific**

In Nevada, to secure the benefits of the statutory provisions exempting the homestead from forced sale, it is necessary that a declaration of homestead be filed for record. Nev. Rev. Stat. § 115.020. The declaration must state, when made by a married person or persons, that they or either of them are married, or if not married, that he or she is a householder. § 115.020(2)(a). The Nevada Supreme Court has defined the term "householder" as one who keeps house, further stating that a householder must be in actual possession of the house and must be 'the occupier of a house. In Goldfield, the court stated that "householder" referred to the civil status of a person, not his property, and a man may be a householder without owning real estate.

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN9 [🔗] **State Law Exemptions, Specific Exemptions**

The requirement of "householder" as used in the declaration of homestead statute is directed at persons "not married." Nev. Rev. Stat. § 115.020(2)(a).

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN10 [🔗] **Exemptions & Immunities, Homestead Exemptions**

Nevada law requires that a homestead claimant

have some type of interest in the property to claim the "equity" exemption up to \$550,000 under *Nev. Rev. Stat. § 115.010*. While Nevada law does not distinguish between the types of interests in property that qualify for the homestead exemption, the Nevada Supreme Court has held that a claimant must have more than a general interest in or right to possession of the property claimed to be exempt. In *Savage*, the court considered whether a security deposit in a residential lease was exempt from execution under *Nev. Rev. Stat. § 21.090(1)(l)* or Nevada's homestead law. The court first noted that the homestead exemption extended only to the "equity" in the property held by the claimant. "Equity" is defined in *Nev. Rev. Stat. § 115.005(1)* as the amount that is determined by subtracting from the fair market value of the property the value of any liens excepted from the homestead exemption pursuant to *§ 115.005(3)* or *Nev. Rev. Stat. § 115.090*. In interpreting the statutory language, the court concluded that the statutory definition of "equity" *Nev. Rev. Stat. § 115.005(1)* contemplates more than a general "interest" in the property or the right to possession; it contemplates ownership. Since the security deposit did not qualify as "equity," the court decided that the debtor could not claim it exempt under Nevada's homestead law.

Real Property Law > Exemptions & Immunities > Homestead Exemptions

HN11[~~1~~] Exemptions & Immunities, Homestead Exemptions

The Nevada Supreme Court's holding in *Savage* does not say that a debtor has to have an ownership interest in the property equivalent to fee simple ownership in order to claim a homestead exemption. Although the court

found that the definition of "equity" contemplated ownership, it did not limit the estate that must be owned beyond saying that the interest had to be more than a general interest or right to possession. Read in the context of the definition of a "householder" and the case law, the "ownership" required by *Savage* cannot be limited to only fee simple title.

Bankruptcy Law > Exemptions > State Law Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

HN12[~~1~~] State Law Exemptions, Election of Exemptions

The filing of a homestead declaration does not trigger the statutory cap under *11 U.S.C.S. § 522(p)(1)*.

Bankruptcy Law > Exemptions > State Law Exemptions > Election of Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

HN13[~~1~~] State Law Exemptions, Election of Exemptions

In enacting *11 U.S.C.S. § 522(p)(1)*, Congress did not envision limiting a debtor's homestead exemption where: (1) debtor purchased the property well before the start of the 1215-day period, (2) continuously possessed and occupied the property as his homestead, and (3) accumulated the "equity" by making regular mortgage payments throughout his occupancy.

Counsel: A.J. Kung, Kung & Brown, argued for appellant Patrick Heath Caldwell.

Jacob L. Houmand, Nelson & Houmand, P.C., argued for appellee Victoria L. Nelson, chapter 7 trustee.

Judges: Before: JURY, KIRSCHER, and DUNN, Bankruptcy Judges.

Opinion by: JURY

Opinion

[*606] JURY, Bankruptcy Judge:

Chapter 7¹ trustee, Victoria L. Nelson (Trustee), objected to the Nevada homestead exemption in the amount of \$550,000 claimed by debtor Patrick Heath Caldwell (Debtor), seeking to limit it to the statutory cap of \$155,675 under § 522(p)(1). Trustee argued that Debtor acquired an interest in the homestead property within the meaning of § 522(p)(1) because the property was conveyed by Caldwell Family Investments II, LLC (LLC) to Debtor and his spouse as trustees of the Caldwell Family 1998 Trust (Trust) during the 1215-day period preceding the date of the filing of Debtor's petition. Debtor asserted that the

limitation under § 522(p)(1) was not triggered since he retained a beneficial and equitable interest in the property at all times despite transfers of the fee title to the property to and from the Trust and the LLC. [*2]

The bankruptcy court sustained Trustee's objection. Looking first to the laws of Nevada and Delaware regarding limited liability companies, the court found that Debtor did not have an ownership interest in the property during the time when the LLC was the record title holder. Next, the court relied upon Nevada case law which required a debtor to have some form of equity in the property in order to claim a homestead — the court finding that this equity contemplated ownership. Finally, the bankruptcy court followed out-of-jurisdiction case law which rejected a debtor's attempt to claim a homestead exemption in real property held in the name of an LLC. Debtor moved for reconsideration which the bankruptcy court denied. This appeal [*607] followed. For the reasons explained below, we REVERSE.

I. FACTS

A. Prepetition Transfers Of Debtor's Property

The facts are undisputed. Debtor and his spouse (Ms. Caldwell) purchased real property located on Eagle Hills Drive, Las Vegas, [**3] Nevada (Property) in March 1994. The record shows that Debtor and Ms. Caldwell have continuously resided in the home on the Property since they purchased it and have made all mortgage payments, paid taxes, maintained insurance and assumed all other responsibilities of a real property owner. Since 1994 they have transferred title to the Property seven times to

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. "Rule" references are to the Federal Rules of Bankruptcy Procedure, and "Civil Rule" references are to the Federal Rules of Civil Procedure.

and from the Trust and the LCC. These transfers were for no consideration and, per Debtor's declaration, for estate planning purposes.

In June 1998, they transferred the Property to the Trust with Debtor and Ms. Caldwell as the sole trustees via a recorded quitclaim deed. Over five years later, in October 2003, the Property was transferred from the Trust back to Debtor and Ms. Caldwell as joint tenants via a recorded quitclaim deed. In February 2006, Debtor and Ms. Caldwell transferred the Property back to the Trust via a recorded quitclaim deed.

On October 14, 2008, Debtor formed the LLC, a Delaware limited liability company, by filing Articles of Organization with the Delaware Secretary of State. Debtor and Ms. Caldwell are the sole members of the LLC. In November 2010, the Property was transferred from the Trust to the LLC via [**4] a recorded quitclaim deed. On April 26, 2011, a declaration of homestead was recorded against the Property by the LLC.

On October 10, 2011, the Property was transferred from the LLC to the Trust. On the same date, a declaration of homestead was recorded against the Property, this time by the Trust, which stated the following: "This declaration constitutes an abandonment of the former declaration recorded on April 26, 2011."

B. Bankruptcy Events

On September 5, 2014, 1061 days after the LLC transferred title to the Property to the Trust, Debtor filed his chapter 7 petition (Petition Date). Ms. Nelson was appointed as the chapter 7 trustee.

In his schedules, Debtor listed the Property

value as \$1,065,000 and total liens of \$516,802, leaving a net equity of \$548,198 in the Property. Debtor claimed the full \$550,000 homestead exemption in the Property under Nevada Revised Statutes (NRS) 21.090(1)(l) and 115.050.

Trustee objected to Debtor's homestead exemption in the amount of \$550,000, seeking to limit it to \$155,675 under § 522(p)(1) due to the transfer from the LLC to the Trust within the 1215-day period prior to the Petition Date.

In response, Debtor argued that the limitation under § 522(p)(1) did not apply [**5] because he always retained a beneficial and equitable interest in the Property despite the numerous transfers of legal title to and from the Trust and the LLC. Debtor reasoned that such interests were retained since he and his spouse were the sole trustees of the Trust and the sole members of the LLC and thus Debtor was "merely transferring title from himself to an entity owned by him." He also asserted that although the LLC held the title to the Property, his continuing payment of taxes, the mortgage, and insurance indicated that he and Ms. Caldwell continued to use and consider the Property as their own. Debtor further maintained that neither he nor Ms. Caldwell needed to be [**608] vested with legal title to validly declare a homestead under NRS 115.020. For these reasons, Debtor argued anew that he received no "interest" for purposes of § 522(p)(1) or the homestead exemption under Nevada law when the LLC transferred legal title to the Trust. Finally, Debtor pointed out that the purpose behind § 522(p)(1) would not be served under the facts of this case as he never attempted to shield assets or liquidate nonexempt assets to artificially increase the equity in his home.

In a supporting declaration, Debtor testified

that **[**6]** the transfers of title to the Property were "made for estate planning purposes only, pursuant to advice from [his] financial planners and/or counsel." He also declared:

My wife and I have always been the sole trustee and members of the Family Trust and Family Investment LLC; and the Family Trust and Family Investment LLC held legal title to the Eagle Hills Home at various times, in trust for my wife and I.

After a hearing on January 27, 2015, the bankruptcy court placed its findings of fact and conclusions of law on the record on February 17, 2015. The court ruled that Debtor acquired an interest in the Property on October 10, 2011, the date the LLC transferred the Property to the Trust, and because this date was 1061 days prior to the petition date, § 522(p)(1) limited Debtor's homestead exemption to \$155,675. In reaching this conclusion, the court noted that under either Nevada or Delaware limited liability law, Debtor did not hold an interest in the Property while it was titled in the name of the LLC because the LLC was a separate legal entity and a member's interest in a limited liability company is personal property. The court further noted that a requirement for exempting equity in a homestead **[**7]** under Nevada law was an ownership interest rather than a general or possessory interest in the Property, citing Savage v. Pierson, 123 Nev. 86, 157 P.3d 697 (Nev. 2007). Finally, relying on out-of-jurisdiction case law which interpreted exemption statutes in other states, the bankruptcy court rejected Debtor's contention that he could claim a homestead exemption in real property held in the name of an LLC. Based on all these authorities, the court found that Debtor acquired his interest in the Property within the meaning of § 522(p)(1)(A) on October 10, 2011, when title to the Property was transferred by the LLC to the Trust.

On February 24, 2015, the bankruptcy court entered the order sustaining Trustee's objection (Exemption Order). On the same day, Debtor filed a motion for reconsideration. There, Debtor maintained that the LLC held the Property "in trust" for Debtor and Ms. Caldwell. As a result of this trust-like arrangement, Debtor asserted that he retained a beneficial or equitable interest in the Property and, therefore, he could claim a homestead exemption in the Property under Nevada homestead law even though the LLC was the record titleholder of the Property.

On March 3, 2015, Debtor filed a notice of appeal (NOA) from the Exemption Order. Subsequently, **[**8]** the bankruptcy court rejected Debtor's "in trust" theory on the ground that there was no evidence of an express trust between Debtor and the LLC and thus even if such a trust existed, it was a "secret" trust. The court denied his motion for reconsideration by an order entered on March 13, 2015 (Reconsideration Order). Debtor then filed an amended NOA indicating that he was appealing both the Exemption Order and the Reconsideration Order.²

² Trustee subsequently entered into a compromise with U.S. Bank, N.A. which held a stipulated judgment lien on the Property. The parties disputed whether such lien was perfected. Pursuant to the compromise, the estate would receive 67% of the net proceeds from the sale of the Property and the bank would receive 33% of the proceeds. Trustee then listed the Property for sale. Debtor moved for a stay pending appeal which the bankruptcy court denied. On June 10, 2015, the Panel denied Debtor's request for an emergency stay. On September 4, 2015, the Panel granted Debtor's renewed motion for an emergency stay to prevent the sale of the Property pending resolution of this appeal, as the sale would not provide enough proceeds to satisfy Debtor's homestead exemption **[**9]** claimed in the amount of \$550,000 should he prevail. In other words, if Debtor prevails, the estate will net no money after the homestead is paid, which would make such sale of no benefit to the estate. The stay was conditioned upon Debtor's continued payments on the secured debt and maintenance of insurance on the Property.

[*609] II. JURISDICTION

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

III. ISSUE

Whether the bankruptcy court erred by finding that § 522(p)(1) applied under these circumstances.

IV. STANDARDS OF REVIEW

HN1[*] A bankruptcy court's interpretation of the Bankruptcy Code is a matter of law subject to de novo review. Predovich v. Staffer (In re Staffer), 262 B.R. 80, 82 (9th Cir. BAP 2001), aff'd, 306 F.3d 967 (9th Cir. 2002).

HN2[*] We review a bankruptcy court's interpretation of state law de novo in order to determine if it correctly applied the substantive law. Kipperman v. Proulx (In re Burns), 291 B.R. 846, 849 (9th Cir. BAP 2003) (citing Astaire v. Best Film & Video Corp., 116 F.3d 1297, 1300 (9th Cir. 1997) (issues of state law are reviewed de novo)).

HN3[*] Findings of fact are reviewed under a clearly erroneous standard. A court's factual determination is clearly erroneous if it is illogical, implausible, or without support in the record. United States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en banc).

V. DISCUSSION

HN4[*] Section 522(p)(1) imposes a limitation on the homestead exemption a debtor can claim regardless of the applicable state law

exemptions. In re Kane, 336 B.R. 477, 481 (Bankr. D. Nev. 2006); In re Virissimo, 332 B.R. 201, 207 (Bankr. D. Nev. 2005). Section 522(p)(1) provides in relevant [**10] part:

Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$155,675 in value in--
(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

HN5[*] To determine whether the statutory cap applies, we consider whether Debtor "acquired an interest" within 1215 days of filing for relief.

In this regard, Trustee submits that Debtor had no interest in the Property prior to the October 10, 2011 transfer of legal title from the LLC to the Trust because (1) the LLC held legal title to the Property; (2) the LLC was the legal owner [**610] of the Property under Delaware and Nevada limited liability laws; and (3) Debtor could not have claimed a homestead exemption while the Property was held in the name of the LLC. According to Trustee, it follows that the upon the transfer of legal title from the LLC to the Trust,³ Debtor "acquired an interest" in the Property within the meaning of § 522(p)(1).

In response, Debtor asserts that he retained a beneficial and equitable interest in the Property since 1994 despite the transfers of title to and from the LLC and the Trust over the years. To

³Trustee concedes that when title [**11] is in a revocable trust where a debtor is the settlor and beneficiary, the debtor may claim a homestead.

strate his retained interest, he points out he and Ms. Caldwell have continuously lived in the dwelling on the Property since 1994 and have paid the mortgage, taxes, and insurance. Debtor further asserts that he could claim a homestead exemption under Nevada law while title was held by the LLC because of his use and continued possession of the Property as a "householder," and there is no requirement that he hold legal title to the Property for it to be a homestead under Nevada law. According to Debtor, since he retained an interest in the Property and it was always his homestead, the Property was always an exempt asset under Nevada law despite the transfer of title to the LLC. Based on these premises, Debtor contends that he did not "acquire an interest" when the LLC transferred title to the Property to the Trust within 1061 days before the Petition Date, and thus the limitation [**12] of § 522(p)(1) is not applicable. In short, Debtor's position, for purposes of the homestead exemption, is that he retained a sufficient interest in the Property during all the multiple conveyances of legal title to and from the LLC. For the reasons discussed below, Debtor has the better argument.

HN6 [¶] We look to Nevada law to determine whether Debtor held an interest in the Property which would support a claim of homestead while the LLC was the sole titleholder. *Butner v. United States*, 440 U.S. 48, 54-55, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979) (determination of property rights is controlled by state law). **HN7** [¶] *NRS 21.090(1)(l)* exempts homestead property from execution "as provided for by law." Under *NRS 115.005(2)(a)*, the "Homestead" is broadly defined as "the property consisting of . . . [a] quantity of land, together with the dwelling house thereon and its appurtenances;" These statutes do not

designate how title to the property is to be held, and they do not limit the estate that must be owned, i.e., fee simple or some lesser interest. Nevada courts have held that the exemption should be liberally and beneficially construed in favor of the debtor and protecting the family home. See *In re Norris*, 203 B.R. 463, 465 (Bankr. D. Nev. 1996) (citing *Jackman v. Nance*, 109 Nev. 716, 857 P.2d 7 (Nev. 1993)).

HN8 [¶] In Nevada, to secure the benefits of the statutory provisions exempting the homestead from forced sale, it is necessary [**13] that a declaration of homestead be filed for record.⁴ *NRS 115.020; I.H. Kent Co. v. Busscher*, 277 F.2d 901, 905 (9th Cir. 1960). "The declaration must state: (a) When made by a married person or persons, that they or either of them are married, or if [**611] not married, that he or she is a householder." *NRS 115.020(2)(a)*. The Nevada Supreme Court has "defined the term householder as 'one who keeps house,' further stating that a householder 'must be in actual possession of the house' and must be 'the occupier of a house.'" *Van Meter v. Nilsson (In re Nilsson)*, 315 P.3d 966, 969 (Nev. 2013) (quoting *Goldfield Mohawk Mining Co. v. Frances—Mohawk Mining & Leasing Co.*, 31 Nev. 348, 102 P. 963, 965 (Nev. 1909)). In *Goldfield*, the court stated that "householder" referred "to the civil status of a person, not his property, and a man may be a householder without owning real estate." 102 P. at 966.

Debtor maintains that he was the "householder" of the Property since he and his family continuously occupied the Property as their primary residence since 1994. We note that **HN9** [¶] the requirement of "householder" as used in the declaration statute is directed at

⁴The declaration may be filed at any time prior to an execution sale.

persons "not married." NRS 115.020(2)(a). As we understand the record, Debtor was married. Nonetheless, the "householder" definition is useful for our analysis. Based on the undisputed evidence that Debtor continually resided on the Property [**14] since 1994 and was at all times in actual possession of the house, we have no doubt that Debtor meets the definition of a "householder" under Nevada law. Debtor met the possession and occupancy requirements for a "householder" and did not need to hold fee simple title to the Property to achieve that status under Nevada law. Accordingly, Debtor has established that the Property was protected as a homestead even when the LLC was the titleholder.

Although Debtor was a "householder," HN10 [7] Nevada law requires that a homestead claimant have some type of interest in the property to claim the "equity" exemption up to \$550,000 under NRS 115.010. While Nevada law does not distinguish between the types of interests in property that qualify for the homestead exemption,⁵ the Nevada Supreme Court has held that a claimant must have more than a general interest in or right to possession of the property claimed to be exempt. Savage, 157 P.3d at 701-02. There, the court considered whether a security deposit in a residential lease was exempt from execution under NRS 21.090(1)(l) or Nevada's homestead law.⁶ The court first noted that the homestead exemption extended only to the "equity" in the property held by the claimant. "Equity" is defined in NRS 115.005(1) as "the amount [**15] that is

determined by subtracting from the fair market value of the property the value of any liens excepted from the homestead exemption pursuant to subsection 3 of NRS 115.010 or NRS 115.090." In interpreting the statutory language, the court concluded that "the statutory definition of 'equity' [under NRS 115.005(1)] contemplates more than a general 'interest' in the property or the right to possession, it contemplates ownership." 157 P.3d at 701. Since the security deposit did not qualify as "equity," the court decided that the debtor could not claim it exempt under Nevada's homestead law.

Although Savage is factually distinguishable from this case, the Nevada court's interpretation of "equity" in the context of the homestead exemption provides some [**612] guidance for our review in this appeal. In contrast to Trustee's position, HN11 [7] the holding in Savage does not say that a debtor has to have an ownership interest in the property equivalent to fee simple ownership in order to claim a [**16] homestead exemption. Although the court found that the definition of "equity" contemplated "ownership," it did not limit the estate that must be owned beyond saying that the interest had to be more than a "general interest" or right to possession. Read in the context of the definition of a "householder" and the case law we cited above, the "ownership" required by Savage cannot be limited to only fee simple title.

The record shows that the interest Debtor retained in the Property after the transfer of legal title to the LLC was more than a general interest or the mere right to exclusive possession. According to the record, he retained all the indicia of ownership by his possession and use of the Property along with the payment of the mortgage, taxes, and insurance. Plainly,

⁵Likewise, it is not necessary for us to do so in the context of this appeal.

⁶The court also considered the exempt status of the security deposit under NRS 21.090(1)(m) - Nevada's dwelling exemption. In that analysis, the court came to the same conclusion that it was not exempt.

the "equity" in the Property which is subject to the exemption was the result of payments made by Debtor over the years. Trustee did not present any evidence to controvert these facts. We thus conclude that Debtor was not divested of all interests in the Property by the transfer of legal title to the Property to the LLC. Accordingly, Debtor's homestead rights in the Property before and after the transfers of title [**17] remained unchanged.

Finally, it does not matter that a declaration of homestead with respect to the Property was filed on October 10, 2011, within 1061 days of the filing of the petition. HNI2[**] The filing of a homestead declaration does not trigger the statutory cap under § 522(p)(1). Greene v. Savage (In re Greene), 583 F.3d 614, 620 (9th Cir. 2009). Like the debtor in Greene, Debtor acquired his exemptible interest in the Property in 1994, well outside the statutory period contained in § 522(p)(1), and, as discussed above, that exemptible interest never changed.

HNI3[**] In enacting § 522(p)(1), we do not believe that Congress envisioned limiting a debtor's homestead exemption where as here (1) debtor purchased the property in 1994, well before the start of the 1215-day period, (2) continuously possessed and occupied the Property as his homestead, and (3) accumulated the "equity" by making regular mortgage payments throughout his occupancy.

In sum, we conclude that the transfer of title from the LLC to the Trust did not constitute an "interest" that was "acquired" by Debtor to limit his homestead claim, within the meaning of § 522(p)(1). As discussed above, Nevada law protected Debtor's homestead rights in the Property throughout the various transfers of title. Therefore, the statutory cap does not

apply. [**18] ⁷

VI. CONCLUSION

We REVERSE the bankruptcy court's order limiting Debtor's homestead exemption pursuant to § 522(p)(1).

End of Document

⁷Because we reverse on other grounds, it is not necessary for us to address Debtor's other argument that the LLC held the Property "in trust."

Van Meter v. Nilsson (In re Nilsson)

Supreme Court of Nevada

December 26, 2013, Filed

No. 61070

Reporter

129 Nev. 946 *; 315 P.3d 966 **; 2013 Nev. LEXIS 117 ***; 129 Nev. Adv. Rep. 101; 2013 WL 6835018

IN RE: DAVID ORRIN NILSSON,
DEBTOR. WILLIAM A. VAN METER,
Appellant, vs. DAVID ORRIN NILSSON,
Respondent.

householder, occupancy, bona fide residency,
single person, divorce

Case Summary

Overview

Subsequent History: As Corrected March 11, 2014.

HOLDINGS: [1]-Pursuant to *Nev. Rev. Stat. § 115.020(2)*, in order to select property as a homestead, an individual had to reside on that property; [2]-The homeowner could not validly file a homestead declaration on the Reno property because it was not his bona fide residence.

Prior History: [***1] Certified question, pursuant to *NRAP 5*, regarding homestead exemptions. United States Bankruptcy Court for the District of Nevada; Bruce T. Beesley, Judge.

Outcome

Certified question answered.

Disposition: Question answered.

LexisNexis® Headnotes

Core Terms

homestead, reside, exemption, homestead exemption, declaration, declaration of homestead, real property, provisions,

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN1 Exemptions & Immunities, Homestead Exemptions

The homestead, exemption can only be extended, or limited by the statutes or constitutional provision that created it. The homestead exemption was intended to protect the family home despite financial distress, insolvency or calamitous circumstances, as the preservation of the home was deemed of paramount importance as a matter of public policy. Nevada construes homestead laws liberally in favor of the debtor and his or her family. Nevertheless, the laws exempting the homestead are not based upon principles of equity. Thus, while the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation can be applied only where there is a substantial compliance with the homestead provisions.

Governments > Legislation > Interpretation

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN2 Legislation, Interpretation

Determining whether a debtor must reside on real property in order to claim a homestead exemption requires the Nevada Supreme Court to interpret several constitutional and statutory provisions. In interpreting constitutional and statutory provisions, the supreme court looks first to the provision's language. If the constitutional or statutory language is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.

Bankruptcy Law > Exemptions > State Law
Exemptions > Election of Exemptions

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law
Exemptions > Opt Out Powers

HN3 State Law Exemptions, Election of Exemptions

Under the United States Bankruptcy Code (Code), a debtor who files for bankruptcy may exempt certain assets from his or her estate, thus preventing creditors from reaching the exempted assets to satisfy outstanding debts, 11 U.S.C.S. § 522(b)(1) (2006). The Code provides that states may opt out of the federal exemption scheme and instead provide for state law exemptions. Nevada is an opt-out state and lists its property exemptions in Nev. Rev. Stat. § 21.090. Under Nevada law, the homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to Nev. Rev. Stat. § 115.010 is not applicable may be exempted from the bankruptcy estate, Nev. Rev. Stat. § 21.090(1)(1); Nev. Const., art. 4, § 30. Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN4 Exemptions & Immunities, Homestead Exemptions

Because the Nevada bankruptcy exemption provisions do not define "homestead," but

instead refer to the "homestead as provided for by law," the Nevada Supreme Court turns to Chapter 115 of the Nevada Revised Statutes, which governs homesteads in this state. Nev. Rev. Stat. § 115.005(2)(a) defines a homestead as property consisting of a quantity of land, together with the dwelling house thereon to be selected by the husband and wife, or either of them, or a single person claiming the homestead. Thus, the statutory definition of "homestead" does not expressly state whether a party must reside on his or her homestead. It does, however, require that the property "be selected" as a homestead by the party or parties. This requirement is governed by Nev. Rev. Stat. § 115.020, which provides that the selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead, § 115.020(1).

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN5 Exemptions & Immunities, Homestead Exemptions

When married persons select their homestead by declaration, the declaration must state that they are married and that one or both of them are, at the time of making the declaration, residing with their family on the premises, Nev. Rev. Stat. § 115.020(2)(a)-(b). Although the statute does not require that a single person declaring an intention to claim a property as a homestead must declare that he or she resides on the property, it does require such a person to specify that he or she is a householder, § 115.020(2)(a). The Nevada Supreme Court has defined the term householder as "one who keeps house," further stating that a householder must be in actual possession of the house and

must be the occupier of a house. Therefore, based on the language of § 115.020(2)(a), a single person declaring an intention to claim a property as a homestead must be in actual possession of the house.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN6 Exemptions & Immunities, Homestead Exemptions

In addition to declaring his or her residence or householder status, any claimant selecting property as his or her homestead must state that it is their or his or her intention to use and claim the property as a homestead, Nev. Rev. Stat. § 115.020(2)(c). Under § 115.020(2)(a) single individuals selecting a homestead must declare that they are householders. Thus, based on the language of the statute, in order to select property as a homestead, an individual must reside on that property.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN7 Exemptions & Immunities, Homestead Exemptions

In Nevada, it is axiomatic there can not be a homestead absent residence, when a declaration of homestead is filed the declarant must be residing on the premises with the intent to use and claim the property as a homestead. While the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation can be applied only where there is a substantial compliance with the homestead provisions.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN8 [↓] **Exemptions & Immunities,
Homestead Exemptions**

Under Nev. Rev. Stat. § 115.020(2), a homestead declaration must concern the claimant's bona fide residence. A debtor must actually reside on real property in order to properly claim a homestead exemption for that property.

Counsel: Woodburn & Wedge and John F. Murtha, Reno, for Appellant.

Christopher P. Burke, Reno, for Respondent.

Judges: Gibbons, J., Pickering, C.J., Hardesty, J., Parraguirre, J., Douglas, J., Cherry, J., Saitta, J.

Opinion by: Gibbons

Opinion

[*947] [**967] BEFORE THE COURT EN BANC.

By the Court, GIBBONS, J.:

The United States Bankruptcy Court for the District of Nevada has certified a question of law to this court regarding the ability of a debtor to claim Nevada's homestead exemption.

The certified question asks:

Can a debtor properly claim a homestead exemption for his interest in real property under NRS 21.090(1)(l) and NRS Chapter 115 when debtor himself does not reside on the property but his minor children do? Put another way, does a debtor have to actually reside on the property that is the subject of a claimed homestead exemption under NRS 21.090(1)(l) and NRS Chapter 115, or is it sufficient that a [*948] debtor's minor children reside on the property in order to qualify for the exemption?

In re Nilsson, No. BK-11-52664-BTB (Bankr. D. Nev. May 7, 2012). We conclude that [***2] a debtor must actually reside on real property in order to properly claim a homestead exemption for that property.

FACTS AND PROCEDURAL HISTORY

Respondent David Orrin Nilsson (David) and his ex-wife, Kelli, married in 1990. They have three children. In 1994, David and Kelli purchased property in Reno as joint tenants and built a home on it a year later (the Reno property). David and Kelli lived together in the house with their children until 2006, when David moved out of the Reno property and began living in a travel trailer in Sparks. Kelli filed for divorce that same year.

The Nilssons' divorce decree provided that Kelli would reside at the Reno property with the children until it sold. Although the decree provided that the Reno property would be listed for sale on July 1, 2008, or as otherwise agreed, it does not appear that the property was ever listed for sale. Thus, David and Kelli each hold a half interest in the property as tenants in common.

In early 2011, over three years after the final divorce decree was filed, Kelli recorded a homestead declaration with Washoe County, listing the Reno property as her individual homestead. David did not join in the declaration, although Kelli [***3] noted that his name was on the Reno property's title. Subsequently, David filed for Chapter 7 bankruptcy, which was eventually converted to Chapter 13. On his schedule of real property assets, he claimed an interest in the Reno property as half-owner with Kelli. On his schedule of personal property, he listed the Sparks travel trailer and noted that he lived in it.

After a series of amendments, David claimed the Reno property as exempt from inclusion in his bankruptcy estate based on, among other things, the homestead exemption. Appellant William A. Van Meter, the [***968] bankruptcy trustee, objected to David's claimed exemption of the Reno property insofar as he had not resided on it since 2006. David responded that, even though he had not lived on the Reno property for several years, he could nonetheless claim the exemption in order to protect his interest in the Reno property for the benefit of his children. The bankruptcy court certified the question to this court without ruling on the trustee's objection. We subsequently accepted the question and directed briefing.

The trustee argues that David cannot claim a homestead exemption on the Reno property because he does not reside there, he [***4] did not record a declaration of homestead, and he cannot now record a valid declaration of homestead on the Reno property. David responds that he can claim a homestead exemption on the [*949] Reno property even though he does not reside on it, and that he can exempt the Reno property through constructive

occupancy because his children still live there and by tracing the homestead back to his family's residency there.

DISCUSSION

The homestead exemption

HNI[7] "[T]he homestead, exemption can only be extended, or limited by the statutes or constitutional provision that created it." Savage v. Pierson, 123 Nev. 86, 90, 157 P.3d 697, 699 (2007). The homestead exemption was intended to protect "the family home despite financial distress, insolvency or calamitous circumstances," Jackman v. Nance, 109 Nev. 716, 718, 857 P.2d 7, 8 (1993), as the preservation of the home was "deemed of paramount importance as a matter of public policy." I.H. Kent Co. v. Miller, 77 Nev. 471, 475, 366 P.2d 520, 521-22 (1961). Nevada construes homestead laws liberally in favor of the debtor and his or her family. Jackman, 109 Nev. at 718, 857 P.2d at 8. Nevertheless, we have made clear that the "laws exempting the homestead are [***5] not based upon principles of equity." I.H. Kent Co., 77 Nev. at 475, 366 P.2d at 521-22. Thus, while the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation "can be applied only where there is a substantial compliance with [the homestead] provisions." McGill v. Lewis, 61 Nev. 34, 40, 116 P.2d 581, 583 (1941).

HN2[7] Determining whether a debtor must reside on real property in order to claim a homestead exemption requires us to interpret several constitutional and statutory provisions. See Nev. Const. art. 4, § 30; NRS Chapter 115; see also Jackman, 109 Nev. at 718, 857 P.2d at

§ ("The homestead exemption, unknown to the common law, was given birth as a constitutional and statutory response to public policy and sentiment."). In interpreting constitutional and statutory provisions, we look first to the provision's language. See MGM Mirage v. Nev. Ins. Guar. Ass'n, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). If the constitutional or statutory language "is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." Hamm v. Arrowcreek Homeowners' Ass'n, 124 Nev. 290, 295, 183 P.3d 895, 899 (2008) [***6] (internal quotations omitted).

HN3 Under the United States Bankruptcy Code (Code), a debtor who files for bankruptcy may exempt certain assets from his or her estate, thus preventing creditors from reaching the exempted assets [*950] to satisfy outstanding debts. 11 U.S.C. § 522(b)(1) (2006). The Code provides that states may opt out of the federal exemption scheme and instead provide for state law exemptions. In re Virissimo, 332 B.R. 201, 203 (Bankr. D. Nev. 2005); 11 U.S.C. § 522(b)(2) (2006). Nevada is an opt-out state and lists its property exemptions in NRS 21.090. NRS 21.090(1); In re Christensen, 122 Nev. 1309, 1314, 149 P. 3d 40, 43 (2006). Under Nevada law, the "homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable" may be exempted from the bankruptcy estate.¹ See NRS 21.090(1)(l); see also [*969] Nev. Const. art. 4, § 30 (stating that "[a] homestead as provided by law, shall be

exempt from forced sale under any process of law"). *Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead*

HN4 Because the Nevada bankruptcy exemption provisions do not define "homestead," but instead refer to the "homestead as provided for by law," we turn to Chapter 115 of the Nevada Revised Statutes, which governs homesteads in this state. Savage, 123 Nev. at 90-91, 157 P.3d at 700. As relevant here, NRS 115.005(2)(a) defines a homestead as property consisting of "[a] quantity of land, together with the dwelling house thereon . . . to be selected by the husband and wife, or either of them, or a single person claiming the homestead." Thus, the statutory definition of "homestead" does not expressly state whether a party must reside on his or her homestead.² It does, however, require that the property "be selected" as a homestead by the party or parties. This requirement is governed by NRS 115.020, which provides that "[t]he selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead." NRS 115.020(1).

HN5 When married persons select their homestead by declaration, the declaration must state that they are married and that one or both of them are, "at the time of making the declaration, residing with [*951] their family .

²However, the Legislature's use of the term "dwelling house" suggests an intent that the party must reside [*958] on his or her homestead. See Black's Law Dictionary 582 (9th ed. 2009) (defining dwelling house as "[t]he house or other structure in which a person lives; a residence or abode"); see also Smart v. State, 244 Ind. 69, 190 N.E.2d 650, 651-52 (Ind. 1963) (holding that a rural summer cottage was not a dwelling house within the meaning of Indiana's burglary statute because it was not the owners' primary residence and the owners only "spent a two or three weeks' vacation and weekends there").

¹The word allodial [*957] is defined as "[h]eld in absolute ownership." Black's Law Dictionary 88 (9th ed. 2009).

. . . on the premises." NRS 115.020(2)(a)-(b). Although the statute does not require that a single person declaring an intention to claim a property as a homestead must declare that he or she resides on the property, it does require such a person to specify that "he or she is a householder." NRS 115.020(2)(a). This court has defined the term householder as "one who keeps house," further stating that a householder "must be in actual possession of the house" and must be "the occupier of a house." Goldfield Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co., 31 Nev. 348, 354, 102 P. 963, 965 (1909). [***9] Therefore, based on the language of NRS 115.020(2)(a), a single person declaring an intention to claim a property as a homestead must be "in actual possession of the house." *Id.*

HN6[¶] In addition to declaring his or her residence or householder status, any claimant selecting property as his or her homestead must state "that it is their or his or her intention to use and claim the property as a homestead." NRS 115.020(2)(c). David argues that under NRS 115.020(2)(c), a single person, as "any claimant," may file a declaration of homestead for a parcel of real property that he does not reside on because this subsection does not contain its own residency or householder requirement. But this reading of the homesteading statutes ignores the requirement in NRS 115.020(2)(a) that single individuals selecting a homestead must declare that they are householders. Thus, based on the language of the statute, we conclude that in order to select property as a homestead, an individual must reside on that property. See NRS 115.020(2)(a); Goldfield Mohawk Mining Co., 31 Nev. at 354, 102 P. at 965.

David may not exempt the Reno property as a

homestead under the doctrine of constructive occupancy

David argues [***10] that he should be able to claim constructive occupancy of the Reno property because he originally resided on the property and only moved because of the divorce. Further, he argues that he should be able to claim constructive occupancy in order to protect his children who still reside on the property. David cites a number of cases from other jurisdictions in support of his [**970] proposition that he can claim constructive occupancy. See In re Thomas, 27 B.R. 367, 370-71 (Bankr. S.D.N.Y. 1983) (finding that a debtor driven from her residence by domestic violence may still claim an exemption in the home); see also Beltran v. Kalb, 63 So. 3d 783, 787 (Fla. Dist. Ct. App. 2011) (applying Florida's constitutional provision that allows homestead exemptions for "the residence of the owner or the owner's family," thus ruling that an [*952] owner of a house may claim a homestead as long as his family resides there).³ We do not find these cases persuasive.

HN7[¶] In Nevada, "[i]t is axiomatic there can not be a homestead absent residence[,] . . . when a declaration of homestead is filed the declarant must be residing on the premises with the intent to use and claim the property as a homestead." In re Sullivan, 200 B.R. 682, 685

³David's reliance on these cases is misplaced because they are distinguishable from this situation for a number of reasons. First, many deal with situations in which a debtor spouse left the marital residence but was still awaiting final resolution of the [***11] pending divorce—thus each spouse's possessory right to the property had yet to be determined. See In re Moulterie, 398 B.R. 501, 505 (Bankr. E.D.N.Y. 2008). In these situations, many courts have found that the debtor spouse was entitled to a homestead because the possessory right to the preexisting homestead was not yet finalized in state court. *Id.* That is not the case here. Additionally, several of the cited cases apply homestead statutes that allow for a much more liberal scrutiny of the homestead residence requirement. See Beltran, 63 So. 3d at 787.

(Bankr. D. Nev. 1996), *aff'd*, 163 F.3d 607 (9th Cir. 1998). While the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation "can be applied only where there is a substantial compliance with [the homestead] provisions." McGill, 61 Nev. at 40, 116 P.2d at 583; see Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 330, 849 P.2d 267, 269 (1993) [***12] ("Where the language of the statute is plain and unambiguous [,] . . . a court should not add to or alter [the language] to accomplish a purpose not on the face of the statute" (internal quotation marks omitted)).

We conclude that HIN8 under NRS 115.020(2), a homestead declaration must concern the claimant's "bona fide residence." See Jackman, 109 Nev. at 721, 857 P.2d at 10 (concluding that a building used partly as a business could be claimed as a homestead, so long as the property remained the family's "bona fide residence"); McGill, 61 Nev. at 39-40, 116 P.2d at 583 (requiring proof of actual bona fide residence at the time the homestead declaration is filed). As such, we conclude that David may not validly file a homestead declaration on the Reno property because it was not his bona fide residence, and we decline David's invitation to extend Nevada homestead law based on constructive occupancy.⁴

[*953] We therefore conclude that a debtor must actually reside on real property in order to properly claim a homestead exemption for that

⁴We note that David may still be able to file a homestead declaration after he filed his bankruptcy petition, since we have held that a declaration may be filed at any time before the actual sale under execution. See Myers v. Matley, 318 U.S. 622, 627-28, 63 S. Ct. 780, 87 L. Ed. 1043 (1943); In re Zohner, 156 B.R. 288, 290 (Bankr. D. Nev. 1993); [***13] Massev-Ferguson, Inc. v. Childress, 89 Nev. 272, 272, 510 P.2d 1358, 1358 (1973). However, such a declaration would still be invalid due to the fact that the Reno property is not David's bona fide residence.

property.⁵

/s/ Gibbons, J.

Gibbons

We concur:

/s/ Pickering, C.J.

Pickering

/s/ Hardesty, J.

Hardesty

/s/ Parraguirre, J.

Parraguirre

/s/ Douglas, J.

Douglas

/s/ Cherry, J.

Cherry

/s/ Saitta, J.

Saitta

End of Document

⁵We have considered the parties' remaining arguments and conclude that they are without merit.

Van Meter v. Nilsson (In re Nilsson)

Supreme Court of Nevada

December 26, 2013, Filed

No. 61070

Reporter

129 Nev. 946 *; 315 P.3d 966 **; 2013 Nev. LEXIS 117 ***; 129 Nev. Adv. Rep. 101; 2013 WL 6835018

IN RE: DAVID ORRIN NILSSON,
DEBTOR. WILLIAM A. VAN METER,
Appellant, vs. DAVID ORRIN NILSSON,
Respondent.

householder, occupancy, bona fide residency,
single person, divorce

Case Summary

Subsequent History: As Corrected March 11,
2014.

Prior History: [***1] Certified question,
pursuant to NRAP 5, regarding homestead
exemptions. United States Bankruptcy Court
for the District of Nevada; Bruce T. Beesley,
Judge.

Overview

HOLDINGS: [1]-Pursuant to Nev. Rev. Stat. § 115.020(2), in order to select property as a homestead, an individual had to reside on that property; [2]-The homeowner could not validly file a homestead declaration on the Reno property because it was not his bona fide residence.

Disposition: Question answered.

Outcome

Certified question answered.

Core Terms

homestead, reside, exemption, homestead
exemption, declaration, declaration of
homestead, real property, provisions,

LexisNexis® Headnotes

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

[HNI](#) Exemptions & Immunities, Homestead Exemptions

The homestead, exemption can only be extended, or limited by the statutes or constitutional provision that created it. The homestead exemption was intended to protect the family home despite financial distress, insolvency or calamitous circumstances, as the preservation of the home was deemed of paramount importance as a matter of public policy. Nevada construes homestead laws liberally in favor of the debtor and his or her family. Nevertheless, the laws exempting the homestead are not based upon principles of equity. Thus, while the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation can be applied only where there is a substantial compliance with the homestead provisions.

Governments > Legislation > Interpretation

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

[HN2](#) Legislation, Interpretation

Determining whether a debtor must reside on real property in order to claim a homestead exemption requires the Nevada Supreme Court to interpret several constitutional and statutory provisions. In interpreting constitutional and statutory provisions, the supreme court looks first to the provision's language. If the constitutional or statutory language is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.

Bankruptcy Law > Exemptions > State Law
Exemptions > Election of Exemptions

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law
Exemptions > Opt Out Powers

[HN3](#) State Law Exemptions, Election of Exemptions

Under the United States Bankruptcy Code (Code), a debtor who files for bankruptcy may exempt certain assets from his or her estate, thus preventing creditors from reaching the exempted assets to satisfy outstanding debts, 11 U.S.C.S. § 522(b)(1) (2006). The Code provides that states may opt out of the federal exemption scheme and instead provide for state law exemptions. Nevada is an opt-out state and lists its property exemptions in Nev. Rev. Stat. § 21.090. Under Nevada law, the homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to Nev. Rev. Stat. § 115.010 is not applicable may be exempted from the bankruptcy estate, Nev. Rev. Stat. § 21.090(1)(l); Nev. Const., art. 4, § 30. Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

[HN4](#) Exemptions & Immunities, Homestead Exemptions

Because the Nevada bankruptcy exemption provisions do not define "homestead," but

instead refer to the "homestead as provided for by law," the Nevada Supreme Court turns to Chapter 115 of the Nevada Revised Statutes, which governs homesteads in this state. Nev. Rev. Stat. § 115.005(2)(a) defines a homestead as property consisting of a quantity of land, together with the dwelling house thereon to be selected by the husband and wife, or either of them, or a single person claiming the homestead. Thus, the statutory definition of "homestead" does not expressly state whether a party must reside on his or her homestead. It does, however, require that the property "be selected" as a homestead by the party or parties. This requirement is governed by Nev. Rev. Stat. § 115.020, which provides that the selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead, § 115.020(1).

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN5 [🔗] Exemptions & Immunities, Homestead Exemptions

When married persons select their homestead by declaration, the declaration must state that they are married and that one or both of them are, at the time of making the declaration, residing with their family on the premises, Nev. Rev. Stat. § 115.020(2)(a)-(b). Although the statute does not require that a single person declaring an intention to claim a property as a homestead must declare that he or she resides on the property, it does require such a person to specify that he or she is a householder, § 115.020(2)(a). The Nevada Supreme Court has defined the term householder as "one who keeps house," further stating that a householder must be in actual possession of the house and

must be the occupier of a house. Therefore, based on the language of § 115.020(2)(a), a single person declaring an intention to claim a property as a homestead must be in actual possession of the house.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN6 [🔗] Exemptions & Immunities, Homestead Exemptions

In addition to declaring his or her residence or householder status, any claimant selecting property as his or her homestead must state that it is their or his or her intention to use and claim the property as a homestead, Nev. Rev. Stat. § 115.020(2)(c). Under § 115.020(2)(a) single individuals selecting a homestead must declare that they are householders. Thus, based on the language of the statute, in order to select property as a homestead, an individual must reside on that property.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN7 [🔗] Exemptions & Immunities, Homestead Exemptions

In Nevada, it is axiomatic there can not be a homestead absent residence, when a declaration of homestead is filed the declarant must be residing on the premises with the intent to use and claim the property as a homestead. While the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation can be applied only where there is a substantial compliance with the homestead provisions.

Real Property Law > Exemptions &
Immunities > Homestead Exemptions

HN8 [↓] Exemptions & Immunities, Homestead Exemptions

Under Nev. Rev. Stat. § 115.020(2), a homestead declaration must concern the claimant's bona fide residence. A debtor must actually reside on real property in order to properly claim a homestead exemption for that property.

Counsel: Woodburn & Wedge and John F. Murtha, Reno, for Appellant.

Christopher P. Burke, Reno, for Respondent.

Judges: Gibbons, J., Pickering, C.J., Hardesty, J., Parraguirre, J., Douglas, J., Cherry, J., Saitta, J.

Opinion by: Gibbons

Opinion

[*947] [**967] BEFORE THE COURT EN BANC.

By the Court, GIBBONS, J.:

The United States Bankruptcy Court for the District of Nevada has certified a question of law to this court regarding the ability of a debtor to claim Nevada's homestead exemption.

The certified question asks:

Can a debtor properly claim a homestead exemption for his interest in real property under NRS 21.090(1)(l) and NRS Chapter 115 when debtor himself does not reside on the property but his minor children do? Put another way, does a debtor have to actually reside on the property that is the subject of a claimed homestead exemption under NRS 21.090(1)(l) and NRS Chapter 115, or is it sufficient that a [*948] debtor's minor children reside on the property in order to qualify for the exemption?

In re Nilsson, No. BK-11-52664-BTB (Bankr. D. Nev. May 7, 2012). We conclude that [***2] a debtor must actually reside on real property in order to properly claim a homestead exemption for that property.

FACTS AND PROCEDURAL HISTORY

Respondent David Orrin Nilsson (David) and his ex-wife, Kelli, married in 1990. They have three children. In 1994, David and Kelli purchased property in Reno as joint tenants and built a home on it a year later (the Reno property). David and Kelli lived together in the house with their children until 2006, when David moved out of the Reno property and began living in a travel trailer in Sparks. Kelli filed for divorce that same year.

The Nilssons' divorce decree provided that Kelli would reside at the Reno property with the children until it sold. Although the decree provided that the Reno property would be listed for sale on July 1, 2008, or as otherwise agreed, it does not appear that the property was ever listed for sale. Thus, David and Kelli each hold a half interest in the property as tenants in common.

In early 2011, over three years after the final divorce decree was filed, Kelli recorded a homestead declaration with Washoe County, listing the Reno property as her individual homestead. David did not join in the declaration, although Kelli [***3] noted that his name was on the Reno property's title. Subsequently, David filed for Chapter 7 bankruptcy, which was eventually converted to Chapter 13. On his schedule of real property assets, he claimed an interest in the Reno property as half-owner with Kelli. On his schedule of personal property, he listed the Sparks travel trailer and noted that he lived in it.

After a series of amendments, David claimed the Reno property as exempt from inclusion in his bankruptcy estate based on, among other things, the homestead exemption. Appellant William A. Van Meter, the [**968] bankruptcy trustee, objected to David's claimed exemption of the Reno property insofar as he had not resided on it since 2006. David responded that, even though he had not lived on the Reno property for several years, he could nonetheless claim the exemption in order to protect his interest in the Reno property for the benefit of his children. The bankruptcy court certified the question to this court without ruling on the trustee's objection. We subsequently accepted the question and directed briefing.

The trustee argues that David cannot claim a homestead exemption on the Reno property because he does not reside there, he [***4] did not record a declaration of homestead, and he cannot now record a valid declaration of homestead on the Reno property. David responds that he can claim a homestead exemption on the [*949] Reno property even though he does not reside on it, and that he can exempt the Reno property through constructive

occupancy because his children still live there and by tracing the homestead back to his family's residency there.

DISCUSSION

The homestead exemption

HNI[¶] "[T]he homestead, exemption can only be extended, or limited by the statutes or constitutional provision that created it." *Savage v. Pierson*, 123 Nev. 86, 90, 157 P.3d 697, 699 (2007). The homestead exemption was intended to protect "the family home despite financial distress, insolvency or calamitous circumstances," *Jackman v. Nance*, 109 Nev. 716, 718, 857 P.2d 7, 8 (1993), as the preservation of the home was "deemed of paramount importance as a matter of public policy." *I.H. Kent Co. v. Miller*, 77 Nev. 471, 475, 366 P.2d 520, 521-22 (1961). Nevada construes homestead laws liberally in favor of the debtor and his or her family. *Jackman*, 109 Nev. at 718, 857 P.2d at 8. Nevertheless, we have made clear that the "laws exempting the homestead are [***5] not based upon principles of equity." *I.H. Kent Co.*, 77 Nev. at 475, 366 P.2d at 521-22. Thus, while the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation "can be applied only where there is a substantial compliance with [the homestead] provisions." *McGill v. Lewis*, 61 Nev. 34, 40, 116 P.2d 581, 583 (1941).

HNI2[¶] Determining whether a debtor must reside on real property in order to claim a homestead exemption requires us to interpret several constitutional and statutory provisions. See *Nev. Const. art. 4, § 30*; NRS Chapter 115; see also *Jackman*, 109 Nev. at 718, 857 P.2d at

§ ("The homestead exemption, unknown to the common law, was given birth as a constitutional and statutory response to public policy and sentiment."). In interpreting constitutional and statutory provisions, we look first to the provision's language. See MGM Mirage v. Nev. Ins. Guar. Ass'n, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009). If the constitutional or statutory language "is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." Hamm v. Arrowcreek Homeowners' Ass'n, 124 Nev. 290, 295, 183 P.3d 895, 899 (2008) [***6] (internal quotations omitted).

HN3[*] Under the United States Bankruptcy Code (Code), a debtor who files for bankruptcy may exempt certain assets from his or her estate, thus preventing creditors from reaching the exempted assets [*950] to satisfy outstanding debts. 11 U.S.C. § 522(b)(1) (2006). The Code provides that states may opt out of the federal exemption scheme and instead provide for state law exemptions. In re Virissimo, 332 B.R. 201, 203 (Bankr. D. Nev. 2005); 11 U.S.C. § 522(b)(2) (2006). Nevada is an opt-out state and lists its property exemptions in NRS 21.090. NRS 21.090(1); In re Christensen, 122 Nev. 1309, 1314, 149 P. 3d 40, 43 (2006). Under Nevada law, the "homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable" may be exempted from the bankruptcy estate.¹ See NRS 21.090(1)(I); see also [*969] Nev. Const. art. 4, § 30 (stating that "[a] homestead as provided by law, shall be

exempt from forced sale under any process of law"). *Nevada law requires that a debtor must reside on real property in order to exempt that property as a homestead*

HN4[*] Because the Nevada bankruptcy exemption provisions do not define "homestead," but instead refer to the "homestead as provided for by law," we turn to Chapter 115 of the Nevada Revised Statutes, which governs homesteads in this state. Savage, 123 Nev. at 90-91, 157 P.3d at 700. As relevant here, NRS 115.005(2)(a) defines a homestead as property consisting of "[a] quantity of land, together with the dwelling house thereon . . . to be selected by the husband and wife, or either of them, or a single person claiming the homestead." Thus, the statutory definition of "homestead" does not expressly state whether a party must reside on his or her homestead.² It does, however, require that the property "be selected" as a homestead by the party or parties. This requirement is governed by NRS 115.020, which provides that "[t]he selection must be made by either the husband or wife, or both of them, or the single person, declaring an intention in writing to claim the property as a homestead." NRS 115.020(1).

HN5[*] When married persons select their homestead by declaration, the declaration must state that they are married and that one or both of them are, "at the time of making the declaration, residing with [*951] their family .

²However, the Legislature's use of the term "dwelling house" suggests an intent that the party must reside [***8] on his or her homestead. See *Black's Law Dictionary* 582 (9th ed. 2009) (defining dwelling house as "[t]he house or other structure in which a person lives; a residence or abode"); see also Smart v. State, 244 Ind. 69, 190 N.E.2d 650, 651-52 (Ind. 1963) (holding that a rural summer cottage was not a dwelling house within the meaning of Indiana's burglary statute because it was not the owners' primary residence and the owners only "spent a two or three weeks' vacation and weekends there").

¹The word allodial [***7] is defined as "[h]eld in absolute ownership." *Black's Law Dictionary* 88 (9th ed. 2009).

. . . on the premises." NRS 115.020(2)(a)-(b). Although the statute does not require that a single person declaring an intention to claim a property as a homestead must declare that he or she resides on the property, it does require such a person to specify that "he or she is a householder." NRS 115.020(2)(a). This court has defined the term householder as "one who keeps house," further stating that a householder "must be in actual possession of the house" and must be "the occupier of a house." Goldfield Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co., 31 Nev. 348, 354, 102 P. 963, 965 (1909). [***9] Therefore, based on the language of NRS 115.020(2)(a), a single person declaring an intention to claim a property as a homestead must be "in actual possession of the house." *Id.*

HN6[¶] In addition to declaring his or her residence or householder status, any claimant selecting property as his or her homestead must state "that it is their or his or her intention to use and claim the property as a homestead." NRS 115.020(2)(c). David argues that under NRS 115.020(2)(c), a single person, as "any claimant," may file a declaration of homestead for a parcel of real property that he does not reside on because this subsection does not contain its own residency or householder requirement. But this reading of the homesteading statutes ignores the requirement in NRS 115.020(2)(a) that single individuals selecting a homestead must declare that they are householders. Thus, based on the language of the statute, we conclude that in order to select property as a homestead, an individual must reside on that property. See NRS 115.020(2)(a); Goldfield Mohawk Mining Co., 31 Nev. at 354, 102 P. at 965.

David may not exempt the Reno property as a

homestead under the doctrine of constructive occupancy

David argues [***10] that he should be able to claim constructive occupancy of the Reno property because he originally resided on the property and only moved because of the divorce. Further, he argues that he should be able to claim constructive occupancy in order to protect his children who still reside on the property. David cites a number of cases from other jurisdictions in support of his [***970] proposition that he can claim constructive occupancy. See In re Thomas, 27 B.R. 367, 370-71 (Bankr. S.D.N.Y. 1983) (finding that a debtor driven from her residence by domestic violence may still claim an exemption in the home); see also Beltran v. Kalb, 63 So. 3d 783, 787 (Fla. Dist. Ct. App. 2011) (applying Florida's constitutional provision that allows homestead exemptions for "the residence of the owner or the owner's family," thus ruling that an [*952] owner of a house may claim a homestead as long as his family resides there).³ We do not find these cases persuasive.

HN7[¶] In Nevada, "[i]t is axiomatic there can not be a homestead absent residence[,] . . . when a declaration of homestead is filed the declarant must be residing on the premises with the intent to use and claim the property as a homestead." In re Sullivan, 200 B.R. 682, 685

³David's reliance on these cases is misplaced because they are distinguishable from this situation for a number of reasons. First, many deal with situations in which a debtor spouse left the marital residence but was still awaiting final resolution of the [***11] pending divorce—thus each spouse's possessory right to the property had yet to be determined. See In re Moulterie, 398 B.R. 501, 505 (Bankr. E.D.N.Y. 2008). In these situations, many courts have found that the debtor spouse was entitled to a homestead because the possessory right to the preexisting homestead was not yet finalized in state court. *Id.* That is not the case here. Additionally, several of the cited cases apply homestead statutes that allow for a much more liberal scrutiny of the homestead residence requirement. See Beltran, 63 So. 3d at 787.

(Bankr. D. Nev. 1996), *aff'd*, 163 F.3d 607 (9th Cir. 1998). While the statutory provisions relating to homesteads should be liberally construed, this liberal interpretation "can be applied only where there is a substantial compliance with [the homestead] provisions." McGill, 61 Nev. at 40, 116 P.2d at 583; see Maxwell v. State Indus. Ins. Sys., 109 Nev. 327, 330, 849 P.2d 267, 269 (1993) [***12] ("Where the language of the statute is plain and unambiguous [,] . . . a court should not add to or alter [the language] to accomplish a purpose not on the face of the statute" (internal quotation marks omitted)).

We conclude that HNS under NRS 115.020(2), a homestead declaration must concern the claimant's "bona fide residence." See Jackman, 109 Nev. at 721, 857 P.2d at 10 (concluding that a building used partly as a business could be claimed as a homestead, so long as the property remained the family's "bona fide residence"); McGill, 61 Nev. at 39-40, 116 P.2d at 583 (requiring proof of actual bona fide residence at the time the homestead declaration is filed). As such, we conclude that David may not validly file a homestead declaration on the Reno property because it was not his bona fide residence, and we decline David's invitation to extend Nevada homestead law based on constructive occupancy.⁴

[*953] We therefore conclude that a debtor must actually reside on real property in order to properly claim a homestead exemption for that

property.⁵
/s/ Gibbons, J.

Gibbons
We concur:

/s/ Pickering, C.J.

Pickering

/s/ Hardesty, J.

Hardesty

/s/ Parraguirre, J.

Parraguirre

/s/ Douglas, J.

Douglas

/s/ Cherry, J.

Cherry

/s/ Saitta, J.

Saitta

End of Document

⁴ We note that David may still be able to file a homestead declaration after he filed his bankruptcy petition, since we have held that a declaration may be filed at any time before the actual sale under execution. See Myers v. Matley, 318 U.S. 622, 627-28, 63 S. Ct. 780, 87 L. Ed. 1043 (1943); In re Zohner, 156 B.R. 288, 290 (Bankr. D. Nev. 1993); [***13] Massev-Ferguson, Inc. v. Childress, 89 Nev. 272, 272, 510 P.2d 1358, 1358 (1973). However, such a declaration would still be invalid due to the fact that the Reno property is not David's bona fide residence.

⁵ We have considered the parties' remaining arguments and conclude that they are without merit.