

DA 21-0493

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 111

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J & L LANDS, LP, a Montana Limited Partnership,

Plaintiff and Appellee,

v.

JERRY W. NEZAT,

Defendant and Appellant.

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APPEAL FROM: District Court of the Eleventh Judicial District,  
In and For the County of Flathead, Cause No. DV-18-111D  
Honorable Dan Wilson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Donald R. Murray, Hash, O'Brien, Biby & Murray, PLLP, Kalispell,  
Montana

For Appellee:

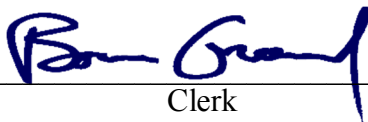
Paul A. Sandry, Johnson, Berg, & Saxby, PLLP, Kalispell, Montana

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Submitted on Briefs: April 13, 2022

Decided: June 7, 2022

Filed:

  
Clerk

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Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Jerry W. Nezat appeals from the orders of the Eleventh Judicial District Court, Flathead County, granting summary judgment to J&L Lands, LP, and awarding J&L a portion of the proceeds from the sale of his homestead property. Nezat maintains on appeal he is entitled to the full proceeds from the sale and assigns multiple legal errors to the District Court’s July 7, 2021 Order Granting Plaintiff’s Motion for Summary Judgment and Denying Defendant Nezat’s Cross-Motion for Summary Judgment and September 7, 2021 Order Denying Defendant Jerry W. Nezat’s Rule 59 Motion to Alter or Amend Judgment. We conclude under the homestead statutes codified at Title 70, chapter 32, MCA, Nezat is entitled to the full proceeds from the sale of his home. As the homestead exemption statutes dispose of the matter, we decline to address other issues raised by Nezat. We reverse and remand for the District Court to enter summary judgment in favor of Nezat.

### **PROCEDURAL AND FACTUAL BACKGROUND**

¶2 Nezat and his late wife Dixie Nezat were married for 45 years. Dixie died in October 2008. The couple owned a 20-acre tract of land (the “Property”) in Flathead County as tenants-in-common. In 1996, they built a home on the Property and filed a Homestead Declaration. Upon Dixie’s death her half interest in the property passed to her estate. Shortly after Dixie’s death, Nezat began a relationship with Mary C. Meadows, whom he had met online. On May 26, 2009, Nezat recorded a quitclaim deed transferring half of his interest in the property to Meadows as joint tenants. On May 5, 2010, J&L obtained a judgment against Meadows for \$21,615.62 with accruing interest.

¶3 In August 2010, Nezat filed an action against Meadows to recover the interest he had granted her in the Property. He alleged the quitclaim deed and purported conveyance to Meadows had been procured by fraud and undue influence and the quitclaim deed was invalid and void ab initio. Meadows signed a deed conveying her interest in the property back to Nezat on February 20, 2015, and the case was dismissed with prejudice by stipulation of the parties. Nezat filed a new homestead declaration on the Property on September 21, 2017. On January 19, 2018, Nezat recorded a deed of distribution from Dixie's estate to Nezat. After this transfer, Nezat was the sole owner of the Property.

¶4 On February 2, 2018, J&L filed this action against Nezat to foreclose a judgment lien on the Property, along with a lis pendens against the Property in an attempt to recover on its outstanding judgment against Meadows. On February 16, 2018, J&L agreed to lift its judgment lien against the property and allow Nezat to sell the property. In exchange, Nezat agreed to place into trust proceeds from the sale in the total amount of J&L's judgment lien plus accrued interest, pending the outcome of this litigation. As of February 16, 2018, the total amount of J&L's judgment lien with interest against Meadows was \$39,430.19. On February 21, 2018, Nezat sold the Property and received net traceable proceeds of approximately \$220,000 from the sale. He placed \$39,430.19 into trust. On November 12, 2020, J&L moved for summary judgment. Nezat filed a cross-motion for summary judgment on March 8, 2021.

¶5 On July 7, 2021, the District Court granted summary judgment to J&L and denied Nezat's cross-motion for summary judgment. The District Court determined J&L's

judgment against Meadows became a lien on all of Meadows's property, including her 25 percent interest in the Property, from the time the judgment against her was docketed on May 5, 2010, pursuant to § 25-9-301, MCA. The court concluded this judgment lien survived her conveyance of the property back to Nezat. As 25 percent of the property remained encumbered by the lien, the court concluded J&L was entitled to recover up to 25 percent of the proceeds from the sale of the home despite Nezat's homestead declaration on the Property. Further, the District Court concluded that as the total amount of the judgment plus interest was less than 25 percent of the proceeds of the sale, J&L was entitled to recover the full value of the judgment plus interest or \$39,430.19 from the proceeds of the sale. The court determined collateral estoppel barred Nezat from alleging Meadows procured the quitclaim deed from Nezat by fraud, undue influence, or lack of consideration. Nezat moved to alter or amend the judgment pursuant to Rule 59, which the District Court denied on September 7, 2021. Nezat appeals.

### **STANDARD OF REVIEW**

¶6 We review a district court's ruling on a motion for summary judgment de novo, applying the criteria of M. R. Civ. P. 56. *Bailey v. State Farm Mut. Auto. Ins. Co.*, 2013 MT 119, ¶ 18, 370 Mont. 73, 300 P.3d 1149.

### **DISCUSSION**

¶7 The homestead exemption serves to protect the homes of debtors from their creditors. *See Wall v. Duggan*, 76 Mont. 239, 246, 245 P. 953, 955 (1926) ("The law authorizes a debtor to erect a barrier around the home, over which the sheriff although

armed with final process under such a judgment, cannot pass.” (quoting *Fitzell v. Leaky*, 14 P. 198, 201 (Cal. 1887)). This exemption has existed in Montana law in some form since territorial times. See *Lindley v. Davis*, 7 Mont. 206, 14 P. 717 (1887). Since statehood, the Constitution of Montana has required the Legislature to “enact liberal homestead and exemption laws.” 1972 Mont. Const. art. XIII, § 5; 1889 Mont. Const. art. XIX, § 4. Due to their humanitarian purpose, as enshrined in our State Constitution, homestead exemption statutes are liberally construed. See *Lindley*, 7 Mont. at 217, 14 P. at 722 (“The homestead laws have an object perfectly well understood, and in the promotion of which courts may well employ the most liberal and humane rules of interpretation. This object is to assure to the unfortunate debtor, and his equally unfortunate but more helpless family, the shelter and influence of home.” (quoting Abraham Clark Freeman, *Cotenancy and Partition* 110 (1874))); see also *Neel v. First Fed. Sav. & Loan Ass’n of Great Falls*, 207 Mont. 376, 387, 675 P.2d 96, 102 (1984); *Ferguson v. Spieth*, 13 Mont. 487, 491, 34 P. 1020, 1020-21 (1893).

¶8 Today, Title 70, chapter 32, MCA, governs homestead exemptions. In 2021, a creditor could not execute on a homestead valued at \$350,000<sup>1</sup> or less to satisfy a judgment,

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<sup>1</sup> In *Neel*, we explained because “homestead laws are to be liberally construed in favor of the homestead claimant,” increases in the homestead value limit “apply to *all* debts whenever contracted” even after judgment has been entered against the claimant. *Neel*, 207 Mont. at 387, 675 P.2d at 102. In 2021, the Legislature increased the home value limit from \$250,000 to \$350,000 and mandated the value limit to increase by 4 percent every calendar year after 2021. See 2021 Mont. Laws ch. 442, § 1 (codified as § 70-32-104, MCA (2021)). The amendments became effective on May 11, 2021, before the District Court entered judgment in this case. The amended statute clearly states: “In 2021, the homestead value limit is \$350,000.” This higher value limit applies to these proceedings which occurred in 2021.

except under limited statutory exceptions. *See* § 70-32-104, MCA (“In 2021, the homestead value limit is \$350,000.”); § 70-32-201, MCA (“The homestead is exempt from execution or forced sale, except as in this chapter provided.”). Those exceptions include debts secured by construction or vendors’ liens or mortgages on the property itself. Section 70-32-202, MCA. For properties valued over the homestead value limit, the statute provides a specific process for appraisal, division, and sale of the property to satisfy other types of judgments. *See* §§ 70-32-203 through -215, MCA.

¶9 As the homestead statutes declare a general rule the homestead is exempt under § 70-32-201, MCA, and then enumerate specific exceptions under § 70-32-202, MCA, those enumerated exceptions are the exclusive exceptions to the homestead exemption. *See Wall*, 76 Mont. at 246, 245 P. at 955. Section 70-32-202, MCA, does not include an exception for judgment liens that are entered before a homestead declaration is made. In fact, the 1981 Legislature specifically removed an exception for judgments obtained before a declaration of homestead was filed to allow a homestead exemption to be claimed after judgment was recorded. *See* 1981 Mont. Laws ch. 370, § 6. Thus, as we recognized in *Neel*, 207 Mont. at 380, 675 P.2d at 99, a person claiming a homestead exemption may declare a homestead after a judgment is recorded. *See* § 70-32-201, -202, MCA. The provision allowing a declarant to file a homestead declaration after judgment has been obtained exempts that homestead from execution or forced sale, except as provided for under the homestead statutes. Additionally, the homestead statutes provide any proceeds up to the statutory homestead value limit from the voluntary sale of a homestead property

are exempted from judgment execution for 18 months. *See* § 70-32-216, MCA; *In re Snyder*, 2006 MT 308, ¶ 10, 335 Mont. 11, 149 P.3d 26.

¶10 J&L maintains its judgment lien on 25 percent of the Property survived the transfer of the Property from Meadows to Nezat. Assuming, *arguendo*, J&L's judgment lien on the property remained on the 25 percent interest of the property transferred back to Nezat in 2015, the homestead statutes would still apply to protect the property from execution from that judgment. Under the homestead exemption statutes, Nezat was entitled to declare and have the full protection of the homestead exemption on the Property even after judgment had been entered against Meadows and attached to any interest she had in the Property before it was conveyed back to him. *See* § 70-32-201 and -202, MCA; *Neel*, 207 Mont. at 380, 675 P.2d at 99. Additionally, Nezat was entitled to keep up to \$350,000 of proceeds from any voluntary sale of the Property. *See* §§ 70-32-201, -216, MCA. The parties stipulated the proceeds from the sale of the property were \$220,000. Thus, Nezat was entitled to the full proceeds of the sale of the Property.

¶11 The District Court erred in satisfying J&L's judgment lien from the proceeds of the sale before exempting the full amount of the homestead value limit allowed under the statute. We have previously explained:

from the fact that [the Legislature] declared a general rule that the homestead is exempt, and then enumerated certain exceptions to that rule, but failed to include as one of the exceptions a homestead subject to an attachment, it must be accepted as a legislative declaration that the lien of an attachment does not operate to defeat a homestead declaration.

*Wall*, 76 Mont. at 246, 245 P. at 955. As J&L's judgment lien did not fall under one of the enumerated exceptions to the exemption of the homestead from execution to satisfy a judgment, it could not operate to defeat Nezat's homestead declaration. Under the homestead exemption, the full value of the exemption is satisfied first and

the creditor claiming the homestead is on the same plane as other creditors seeking the proceeds of a judicial sale and all creditors are paid according to their respective ranking after payment of cost. The whole theory of the exemption of the homestead is that the obligation of the debtor to those whom he owes the duty to support is a higher obligation than the payment of his debts. The purpose of the framers of the law was to secure a home beyond the reach of financial misfortune, around which gather the affections of the family; the greatest incentive to virtue, honor and industry.

*Neel*, 207 Mont. at 387, 675 P.2d at 102. Nezat had the right to receive the full value of the homestead exemption before any proceeds could be used to satisfy J&L's judgment lien on the Property. The District Court erred in satisfying J&L's judgment lien before Nezat received the full value of the homestead exemption from the proceeds of the sale.

### **CONCLUSION**

¶12 Reversed and remanded for the District Court to grant summary judgment to Nezat.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH  
/S/ JAMES JEREMIAH SHEA  
/S/ BETH BAKER  
/S/ DIRK M. SANDEFUR