No. 98824-2

COA No. 78230-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

STEVEN G. LONG,

Petitioner.

ON APPEAL FROM SEATTLE MUNICIPAL COURT
Honorable Karen Donahue

PETITIONER'S REPLY BRIEF

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I. INTRODUCTION

The City asks that this Court grant review of the Court of Appeals' Homestead Act ruling "[i]f —but only if—the Court grants review of any of Long's claims." *City's Answer* at 1. But the City does not even attempt to argue that the homestead decision meets the criteria for discretionary review under RAP 13.4(b). Instead, repeating the same arguments that it raised below, the City merely asserts that the Homestead Act decision was "both consequential and wrong." *Id.* at 16.[1] The City does *not* assert that the decision conflicts with any prior decision of this Court or of the Courts of Appeals; does *not* claim that the Homestead Act ruling involves an important constitutional question to be decided; and does *not* claim that the ruling presents a continuing issue of substantial public interest. Instead the City merely asserts that the Court of Appeals' ruling "misinterprets the statutes that the court construes." *Id.* at 17. Since the straightforward ruling that the City violated the Homestead Act by withholding Long's home under threat of forced sale does not meet any of the criteria for review under RAP 13.4(b), review of that part of the decision below should be denied.

In addition, the City contends that Long lacks standing to petition

[1] The Court of Appeals held that the City violated the Homestead Act by withholding Long's home under a threat of forced sale if he didn't pay the City the debt created by the impoundment. This holding was entirely correct. Moreover, although the Court of Appeals disagreed, Long maintains that his home was wrongfully attached by the lien automatically created by RCW 46.55.140(1). Thus, Long submits that the Homestead Act was violated for a second independent reason. Since an appellate decision may be affirmed on any ground supported by the record (*Otis Housing Ass'n v. Ha*, 165 Wn.2d 582, 587, 201 P.3d 309 (2009)), there would be little point in granting review to review the ruling predicated on the forced sale language of the Act since the decision below could be affirmed on the alternate ground that the Act was violated by the lien attachment. In fact, the Superior Court RALJ judge held that the City violated the Homestead Act for precisely that second reason. CP 1080-81. Long submits that the Act was violated for *both* reasons.

for review of the Excessive Fines Clause issue. This contention rests upon a mischaracterization of the Court of Appeals' decision. The City claims that by voiding the Municipal Court's payment plan the Court of Appeals held that Long does not have to pay the City anything at all, and therefore there is no fine left that could possibly be excessive. In fact, the opinion below holds while the City cannot impose *storage* fees for storing a person's vehicular home, the City *can* impose *towing* ("impoundment") fees. Thus, the excessive fines clause issues are not moot. Finally, even if these issues were moot in this case, this court should still decide them because they are important constitutional questions that need resolution by this Court and they are capable of evading review.

II. ARGUMENT

A. The decision below is consistent with existing Washington Homestead Act case law and with the constitutional command of art. XIX, §1 that homesteads must be protected by law.

1. A declaration of homestead is not required.

The City argues that the Court of Appeals erred by concluding that Long's homestead protection was automatic. This is incorrect. The Court of Appeal's analysis is consistent with past precedent that requires liberal construction of homestead statutes in order to achieve their purpose of protecting homes. *Seattle v. Long*, 13 Wn. App.2d 709, 720-22, 467 P.3d 979 (2020). Citing RCW 6.13.040(1), the Municipal Court (CP 11), the Superior Court (CP 1080-81), and the Court of Appeals (13 Wn. App.2d at 723), *all* correctly determined that Long did not need to file a declaration of homestead. The resolution of this issue of statutory construction does not

meet any of the RAP 13.4 criteria and is simply not an issue that this Court needs to address.

2. Requiring a home dweller to wait until a forced sale has taken place would defeat the purpose of homestead.

The City argues that there was no attachment, execution, or forced sale process for the Homestead Act to protect against. *Answer*, at 18-19. However, the record shows that Long's home was held for 21 days because he could not pay the towing and storage fees, and was about to be sold at auction as required by statute unless he agreed to pay them. *Id.* at 2 citing RCW 46.55.130(1). The City's argument that it can withhold someone's home from them and threaten to sell it until they arrange to pay debts (as long as it does not actually sell it), is nonsensical given that the very purpose of homestead laws is "to provide a home for each citizen of the government, where his family may be sheltered and live beyond the reach of financial misfortune." *Clark v. Davis*, 37 Wn.2d 850, 852, 226 P.2d 904, 905 (1951).[2] The City's argument leads to the absurd conclusion that a person could not raise the Homestead Act issue when his home was *scheduled* to be sold, but had to wait to do that until his home had actually been sold.

Further, the debt collection consequences that Long faced over about $500 in towing and storage fees imposed on his home were in fact far more dire than the facts of other cases where courts held that homestead rights were violated. For example, in *City of Algona v. Sharp*, 30 Wn. App.

[2] *Accord Edgley v. Edgley*, 31 Wn. App. 795, 798–99, 644 P.2d 1208, 1210 (1982) (purpose is to "secure the claimant and his family in the possession of his home"; "statute is designed to prevent the property from being encumbered.") (internal citations omitted).

837, 638 P.2d 627, 627–30 (1982), a homeowner had twenty years to pay off an $800 sewer assessment fee. The homeowner received annual bills for 23 years, but he did not pay anything. His home was eventually ordered sold as part of a foreclosure process to satisfy the fee. The sale process had a redemption period that allowed him to retain possession of his home for two more years in which he could attempt to pay off the debt. Nevertheless, the Court of Appeals found a homestead violation because the homestead was exempt from execution and forced sale to satisfy the assessment lien, and the Court voided the sale. *Id.* at 838-43. If it is unlawful to sell a home where someone has over twenty years to pay off a debt and still maintain possession of their home for another two years after sale, *then a fortiori* it must be unlawful to hold someone's home under threat of forced sale, requiring them to sleep unsheltered, and to threaten to sell it in a matter of *weeks* if the person does not arrange to pay.[3]

The City argues that the sale of Long's home was not a "forced sale," because he committed a parking infraction and thus indirectly consented to its sale since the impound statutes say that an unredeemed vehicle may be sold. *Answer* at 19. The City's only case it cites in support of this, *Felton v. Citizens Fed. Sav. & Loan Ass'n of Seattle*, 101 Wn.2d 416,

[3] Although they are personal property, the City has conceded that vehicles can be homesteads. The Legislature clearly intended they be covered because impound debts do not come under any statutorily defined exception to homestead rights. See Substitute Senate Final Bill Report for SSB 5068 (Appendix A) ("Because some Washington citizens reside on their boats or in their cars or vans, it has been recommended that the homestead exemption's scope be expanded to include any personal or real property that the owner uses as a residence."); RCW 6.13.080 (listing when the homestead exemption is not available).

421, 679 P.2d 928, 931 (1984), is inapposite. That case involved a nonjudicial foreclosure sale under a deed of trust where the homeowners agreed to assume a purchase money obligation as part of their arranged purchase of a property, and that purchase money obligation, secured by a deed of trust, said that the property could be sold in a trustee's sale if they defaulted on their payments. The Court found that, in these circumstances, this was not a "forced sale" as it had been consented to by prior agreement. This is not like Long's circumstances. By the City's logic, homestead protections could never be invoked as long as someone incurs any sort of debt "voluntarily" or does some act that causes him to accumulate debt. This logic is inconsistent with homestead precedent.

3. The City's complaint that enforcement costs could not be recouped ignores the fact that homestead laws exist because it is recognized that keeping a home and shelter is more important than collecting debts.

Lastly, the City argues that the homestead decision is impractical because it would make it more complicated for the City to recover impound fines from vehicle owners. *Answer*, at 19-20. By arguing this, the City is taking the position that collecting a few hundred dollars in fines by holding someone's home from them and threatening to sell it if they don't pay, is more important than a person's right to keep their only home and shelter. All decisions of this Court and the Court of Appeals say otherwise. *See, e.g.*, *Clark v. Davis*, 37 Wn.2d at 852 (homestead laws "are based on the theory that the preservation of the homestead is of greater importance than the payment of debts"); *City of Algona*, 30 Wn. App. at 842 n.3 (rejecting the

argument that failing to collect fees would harm the City and holding that homestead rights were superior to the City's right to collect debts).

B. The Excessive Fines Clause issue is not moot. The Court below did not hold that Long did not have to pay anything.

1. Although the Court of Appeals held that the City could not withhold Long's home under threat of sale unless he agreed to a plan to pay storage fees, it simultaneously held that the City *could* charge Long for the towing costs.

The City misrepresents the decision below. The City claims that Long received all the relief he ever asked for when the Court of Appeals voided the Municipal Court's payment plan for violation of the Homestead Act. *Answer* at 5-6. The appellate court voided the payment plan because it was coercively obtained by means of illegal withholding. Long "agreed" to it solely because he was threatened with the loss of his home if he didn't agree. The "withholding" of his home under a threat of forced sale unless he signed a promissory note and agreed to the payment plan violated the Act, but the *towing* of his home did not. *For Homestead Act purposes,* the Court distinguished between towing costs and storage costs. The court held that the Homestead Act did not prohibit either the "impounding" of a person's vehicular home *by towing it away* from the spot of the parking infraction or charging the homeowner for the costs of the tow: "Our decision does not affect the **City's** authority to tow and impound an illegally parked vehicle. Nor does it prohibit the City *from charging a vehicle owner for costs associated with the towing and impounding of a vehicle*." 13 Wn.App.2d at 715 (italics added). Then, in the very next sentence the Court

explained while *moving* the vehicular home did not violate the Homestead Act, *refusing to release* the home to its occupant *did*: *"But* if that vehicle serves as the owner's principal residence, *the City may not withhold the vehicle from the owner* under the threat of forced sale. *Id.* at 715 (italics added).

Here, as the record plainly shows, the payment plan required Long to agree to pay something for *both* the towing costs *and* the storage costs. The *Notice of Right of Redemption and Opportunity for a Hearing* shows that six days after his home was towed away, Lincoln Towing notified Long that *as of that date* (October 18, 2016) Long already owed $576.71 for the impound fee plus $216 for eight days[4] of storage at $27 per day. CP 113. Moreover, the notice bluntly informed Long that he would have to pay *more* for every additional day of "storage" of his home if he didn't redeem the truck by paying Lincoln Towing the entire amount. CP 113.[5]

By the date of the impound hearing (November 2) – the amount of accrued storage fees was much higher ($567 calculated at $27 per day for 21 days). At the hearing, a Magistrate determined that the City lawfully impounded Long's home and approved a payment plan for $547.12. CP 135. Pursuant to the plan Long had to make twelve monthly payments over

[4] It is unclear why Lincoln Towing calculated *eight* days of storage fees given that as of October 18 the truck had only been stored for six days.

[5] "By signing below, I acknowledge that . . . (4) ***If I do not redeem the vehicle before the hearing***, the vehicle will not be released until the hearing process is completed, and ***storage charges will continue to accrue***. ***I will be responsible for paying such charges*** if the court finds the impound was valid. (5) I further understand that I must pick up the vehicle on the day of the hearing; ***otherwise additional storage charges will be added at my expense***." (Appendix B) (emphasis added).

the next year. CP 137. The Magistrate did not explain how he arrived at the figure of $547.12 and did not explain what portion of it was for the impound – for the towing fees – and what portion was for storage fees.

When the Court of Appeals held that "withholding" Long's home under threat of forced sale unless he first paid all accrued charges was a violation of the Homestead Act, it prohibited the City from making Long pay any of the storage charges. But as the Court explicitly held, it did "not prohibit the City from *charging a vehicle owner for costs associated with the towing and impounding of a vehicle*." 13 Wn. App.2d at 715 (italics added). Thus, by voiding the payment plan for violation of the Act, the Court of Appeals did not wipe out Long's debt entirely. It only eliminated that part of his debt attributable to storage costs. It did not eliminate any financial responsibility for the towing costs which Lincoln Towing set at $576.71. On remand the City remains free to impose these towing costs and that would not violate the Homestead Act. But Long maintains that it would violate the Excessive Fines Clause. Because Long remains subject to an order to pay these costs, the Excessive Fines Clause issue is not moot.

2. Even if the Excessive Fines Clause claim were moot, this Court can and should decide the Excessive Fines Clause issues anyway, because the validity of orders requiring poor people to pay the cost of impounding their vehicles is an important issue that is capable of evading review.

Even when a case is moot, courts have discretion to decide issues raised by the parties if they are of substantial public interest. Courts consider three criteria: (1) the public or private nature of the question presented; (2)

the need for judicial determination for future guidance of public officers, and (3) the likelihood of future recurrences of the issue. *In re Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1988). All three criteria are met here.

Since the Excessive Fines Clause issues presented are of constitutional magnitude, they are questions of a public nature. The City ignores the fact that similar issues are, in fact, arising and being decided by courts in other jurisdictions. *See, e.g., Pimentel v. Los Angeles*, 2020 WL 5507946, *6 (9th Cir.) (remand to determine whether doubled parking fines were constitutionally excessive).[6] Given (1) the number of homeless people forced to live in their vehicles; (2) their poverty which makes them unable to pay even modest fines and the fact that "for the poor impoundment often means forfeiture," (*State v. Villela*, 194 Wn.2d 451, 460 n.3, 450 P.3d 170 (2019)); and (3) their difficulties in avoiding violation of the parking laws,[7] these are issues that should be decided by this Court.

III. CONCLUSION

For these reasons, Petitioner Long asks this Court to grant his petition, and to deny the City's cross-petition.

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[6] The City points to dicta in outlier decisions rendered before *Timbs v. Indiana*, 139 S.Ct. 682 (2019) to support its contention that courts conducting an excessiveness inquiry are not constitutionally required to consider the personal financial circumstances of the offender, *Answer* at 12-13. But the City studiously ignores post-*Timbs* decisions such as *Colo. Dept. of Labor v. Dami Hospitality*, 442 P.3d 94, 101 (Colo. 2019), which read *Timbs* as holding that the offender's personal financial circumstances must be considered.

[7] See *Guide for People Living in Vehicles* (Seattle Scoflaw Mitigation Team) available on line at http://www.itfhomeless.org/ticketing-in-seattle-for-vehicle-residents.html.

Respectfully submitted this 24th day of September, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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