10-15-2019

# Puckett v. Bergmann Appellant's Brief Dckt. 47074

IN THE SUPREME COURT OF THE STATE OF IDAHO

| | |
|---|---|
| ROYAL VON PUCKETT,<br><br>Plaintiff-Appellant,<br><br>vs.<br><br>SHARON K. SMITH, formerly known As Sharon K. Novotny,<br><br>Defendant-Respondent. | Supreme Court No. 47074-2019<br>Fourth Dist. Ada Case No. CVOC-9592445<br>Fourth Dist. Ada Case No. CV OC-1995-30747 |

---

**APPELLANT'S OPENING BRIEF**

Appeal From The District Court Of The Fourth Judicial District
Of The State Of Idaho, For The County of Ada

Honorable Jason D. Scott, Presiding

**VERNON K. SMITH**
Attorney at Law
1900 W. Main Street
Boise, Idaho 83702
Telephone: (208) 345-1125
Facsimile: (208) 345-1129
Email: vlslaw@live.com

***ATTORNEYS FOR APPELLANT***

**RONALD L. SWAFFORD**
Attorney at Law
655 S. Woodruff Avenue
Idaho Falls, Idaho 83401
Telephone: 208-524-4002
Facsimile: 208-524-4131
Email: rons@swaffordlaw.com

***ATTORNEYS FOR RESPONDENT***

## TABLE OF CONTENTS



## TABLE OF CASES AND AUTHORITIES

**CASES**

**STATUTES**

# I.

## STATEMENT OF THE CASE

### A. NATURE OF THE CASE

The nature of this appeal concerns the validity of a Sheriff's Sale of *personal property,* where all of the case file creditor rights-property interests owned by Defendant-Respondent, Sharon K. Smith-Novotny-Moore-Bergmann (hereafter "Bergmann") contained in the case file entitled *Smith v. Smith,* Case No. CV-DR-1990-12684, were sold at a sheriff's sale on November 13, 2014, as conducted pursuant to Idaho's execution statutes.

The levy undertaken by the sheriff upon that case file containing those property interests of Bergmann was undertaken pursuant to writ (R. pp. 35-36; 45-46; 80-81; 82-83; 110-111) and the Letter of Instruction (R. pp. 88-92; 194-198) from Plaintiff-Appellant, Royal Von Puckett (hereafter "Puckett") to recover upon the Judgment he had against Bergmann.

At the scheduled sale, following the statutory notices and advertisement (Notice of Levy, R. pp. 43-44; 85-86; 108-109; Notification of sale, R. pp.42; 97; 104; Recorded Writ of Execution and Notice of Recording, R. pp. 95; 105-106; and Notice of Sheriff's Sale, R. pp. 42, 97, 104), the sheriff sold all of the property interests in all of the creditor rights contained within the Fourth District Court Ada County case file entitled *Smith v. Smith,* Case No. CV-DR-1990-12684.

Though Bergmann had full knowledge of the levy, recordings, claim forms, and intended sale, Bergmann declined to submit any objection, declined to present any claim to any exemption, declined to attend the sale, and failed to instruct the sheriff in any manner relating to the process of selling the case file contents consisting of her creditor rights-property interests at the sale.

Almost six weeks later, Bergmann decided to challenge the sale, and upon her motion, the lower court vacated the sale upon the basis there was "inadequate consideration" paid by the successful bidder (Puckett), and "irregularity" in the sale process, concluding that within the case file there were two distinct judgments (along with a series of purported renewals), and it was not clear to the lower court which judgment was being sold. The lower court's decision serves to

require the sheriff to identify and sell separately the property interests contained in the levied upon case file, as reflected in the Memorandum Decision and Order entered February 6, 2015 (R. pp. 466-473; 563-570; 621-628).

Puckett's efforts to challenge this unprecedented Order was delayed by Bergmann's bankruptcy Petition filed March 31, 2015, preventing hearing on Puckett's Reconsideration motion R. pp. 507-508) of that controversial Order (R. p. 466-473; 563-570; 621-628).

Puckett finally secured stay relief from the U.S. Bankruptcy Court on March 5, 2019, about which the lower court was so informed on March 11, 2018 (R. p. 824, L. 6-7), authorizing the lower court to proceed upon Puckett's Reconsideration and any needed appeal.

The lower court heard the Reconsideration motion and declined to vacate or alter the Order (R. p. 824-827), from which this appeal is taken to the Supreme Court (R. pp. 828-847) to confront the abuse of discretion of the lower court that invalidated the statutorily conducted sheriff's sale under Idaho's execution statutes.

## B. COURSE OF PROCEEDINGS BELOW

The Clerk's Record is lengthy, setting forth the history related to the issues in these controversial proceedings. Years after Puckett obtained his money judgment against Bergmann (November 8, 1999) and following a series of renewals thereof (R. pp. 13-30), the principal sum and accrued interest owing on Puckett's judgment against Bergmann exceeded $173,000.00 by the year 2014, as identified in the Affidavit of computation of amounts when securing his writ of execution (R. pp. 31-34). Puckett had decided to seek recovery upon his Judgment.

On October 8, 2014, Puckett obtained a Writ to proceed with execution (R. pp. 35-36; 45-46; 80-81; 82-83; 110-111); on October 9, 2014, Puckett instructed the sheriff to proceed (R. pp. 88-92; 194-198) with execution, directing the sheriff to a particular case file, whereupon the sheriff levied upon and seized ***all*** of the creditor rights and property interests that Bergmann held within that Fourth District Court case file, entitled *Smith v. Smith,* Case No. CV-DR-1990-12684. The

execution statutes require a judgment creditor proceed first against *personal property* of the debtor. Puckett's instruction to the sheriff stated the following:

> "Enclosed with this Letter of Instruction is the Writ of Execution issued by the Clerk of the District Court on October 8, 2014, authorizing you to execute upon property interests she owns, and at present we request you execute upon the personal property interest she holds in that certain Judgment entered in her favor in the case of Smith v. Smith, CV-DR-90-12684D, on February 11, 1991, and all subsequent modifications and renewals. That case was a divorce proceeding in which Sharon K. Smith, the Plaintiff obtained a judgment against Vernon K. Smith, the Defendant. In that case, Sharon was awarded a money judgment, and in that proceeding she was referred to as "Smith", and ***you will be executing upon that entire judgment interest she holds in that case.*** She has been going by her maiden name "Bergmann" since mid-2000's, and has recorded real property transfers in 2006 while using that name, though her social security number remains the same." (Emphasis added) (R. pp. 88; 194)
>
> We request you commence execution upon ***any and all right, title, and interest*** of Sharon *K.* Smith/Bergmann, (also known as Novotny/Moore/Bergmann) in that judgment entered in the case entitled Sharon K. Smith v. Vernon K. Smith, case# CV-DR-1990-12684, originally filed of record in the District Court of the Fourth District of the State of Idaho, in and for Ada County, on or about January 29, 1990, and judgment entered February 11, 1991. Mr. Puckett wants the property rights and interests she holds in that judgment against Vernon K. Smith, and wants it levied upon, seized, and sold at public auction, and Mr. Puckett will bid in his judgment at the sheriff's sale, to the extent necessary, as a credit bid, to either Secure ownership of that judgment, or generate the funds in the bidding process to address recovery of her debt to him. (Emphasis added) (R. pp. 89-90; 195-196)
>
> Mr. Puckett does request you take immediate action to attach that judgment, in pursuit of this execution process, at the earliest possible date, and schedule the matter for the earliest sale. (R. pp. 90; 196)

The Sheriff located that case file and made levy upon ***all*** creditor rights found in the case file, preparing Notice of Sheriff's Levy as then issued and recorded on October 23, 2014, (R. pp. 43-44), and posted notice of the sale on October 29, 2014 (R. p. 42) advertising a sheriff's sale of ***all*** creditor rights and property interests held by Bergmann found in that case file, and scheduled the sale for November 13, 2014.

The sale proceeded as scheduled, receiving a credit bid from Puckett, with the sheriff issuing his Certificate of Sale of ***all*** creditor rights and property interests contained within that case file, issued

to Puckett on November 24, 2014 (R. p. 41; 99; 103), then submitting the Sheriff's Return to the court on December 2, 2014 (R. p. 40; 101-102).

Bergmann through her attorney, filed a motion to set aside the Sale on December 22, 2014 (R. pp. 47-48), accompanied by Bergmann's affidavit (R. pp. 49-51) and Memorandum (R. pp. 52-60), to which Puckett responded (R. pp. 61-75) supported by affidavit (R. pp. 76-199), with Puckett scheduling the matter for hearing January 21, 2015 (R. pp. 200-201). Bergmann submitted a Reply Memorandum on January 16, 2015 (R. pp. 202-212), giving rise to a Supplemental Memorandum from Puckett on January 20, 2015 (R. pp. 213-231), along with Supplemental Affidavit and Further Supplemental Memorandum on February 4, 2015 (R. pp. 232-282).

Bergmann thereafter submitted a Supplemental Memorandum on February 4, 2015 (R. pp. 283-288), with further Affidavit (R. pp. 289-458), to which Puckett responded with Further Supplemental Memorandum (R. pp. 459-465).

The matter was heard and the court instructed the parties to produce documents reflecting any judgment creditor's interests Bergmann held in Case No. CV-DR-1990-12684, giving rise to an Additional Supplemental Memorandum submitted by Bergmann on February 9, 2015, (R. pp. 474-478), to which Puckett moved to strike portions of Bergmann's submittal as being irrelevant to the court's inquiry (R. pp. 479-485), along with his supporting affidavit (R. pp.486-628).

The lower court, prior to reviewing those further submittals, entered its Memorandum Decision and Order (setting aside the Sheriff's Sale) on February 6, 2015. (R. pp. 466-473; 563-570; 621-628), not reviewing any documents filed after February 6, 2015.

Puckett filed his Motion for Reconsideration (R. pp. 507-508), and while awaiting a scheduled hearing date from which to submit supporting memorandum of authority under Rule 7, IRCP, Puckett's counsel undertook to secure a second Writ, issued February 20, 2015 (R. pp. 512-513), with further instruction to the Sheriff (R. pp. 571-619) submitted on February 27, 2015 directing the sheriff to levy again, specifically identifying *all* creditor right *Instruments contained in the case file, by name*, with copies attached as Exhibits, "a" through "k" (all of which the sheriff before had levied upon and sold as a single unit or lot), and pursuant to Puckett's second instruction, the Sheriff issued a second

Notice of Levy (R. pp. 515-571), including copies of the same creditor rights-property interests previously seized and sold, specifically identifying *the Instruments by name*, attached to the Levy, identified as Exhibits, "a" through "k", and pursuant to that levy, the sheriff scheduled a second Sheriff's Sale, advertising and publishing Notice of a second Sheriff's Sale for April 2, 2015 at 10:15 A. M. (R. p. 514).

This subsequent levy and seizure was intended to prevent Bergmann from attempting assignment of those property interests within that case file to another (aware of her propensity to conceal her real property interests), preventing such assignment while Puckett awaited proceedings upon his Motion for Reconsideration on the enforcement of the November 13, 2014 sheriff's sale.

Once Bergmann received notice of the second Levy, similar to that of the first levy, Bergmann filed a Claim of Exemption on March 24, 2015 (R. p. 631-633), to which Puckett filed his Contest of her Claim (R. pp. 629-633), and prior to the scheduled hearing on Bergmann's Claim, Bergmann filed her Bankruptcy Petition on March 31, 2015, staying all further state court proceedings.

While Bergmann's Chapter 13 Bankruptcy Petition was being processed, the lower court inquired as to the status of the bankruptcy proceedings, initially on May 24, 2016, to which inquiry Puckett replied June 7, 2016 (R. pp. 634-711), and Bergmann replied June 8, 2016 (R. pp. 712-727), confirming the stay, with Puckett confirming his intent and desire to proceed upon his Reconsideration motion, once the Petition was either dismissed or stay relief granted.

On August 8, 2018, the lower court again sought update (R. pp. 728-730), to which inquiry Bergmann replied August 15, 2018 (R. pp. 731-732) and Puckett replied August 20, 2018 (R. pp. 733-763), confirming the stay still remained, with Puckett then submitting his "tentative" memorandum of authority, to be considered once Puckett secured stay relief to proceed in state court which was obtained on March 5, 2019.

Once securing stay relief from the U.S. Bankruptcy Court on March 5, 2019, Puckett informed the state court on March 11, 2019 (R. p. 824, L. 6-7), from which the lower court issued a scheduling order and thereafter heard Puckett's pending Motion for Reconsideration.

Puckett submitted a further Memorandum (R. pp. 764-778), and Bergmann submitted her

Opposition (R. pp. 778-789) with two Declarations (R. pp. 790-792; 793-807), to which Puckett submitted a Reply Memorandum (R. pp. 808-823), from which the lower court entered the Order denying Puckett's Motion to Reconsider (R. pp. 824-827), from which denial and Order Puckett took this appeal to the Idaho Supreme Court (R. pp. 828-847) to address the lower court's abuse of discretion in failing to render a decision based upon the applicable standards of law.

## C. STATEMENT OF FACTS

Pursuant to Puckett's Writ of Execution (R. pp. 35-36; 45-46; 80-81; 82-83; 110-111)) and Letter of Instruction (R. pp. 88-92; 194-198), the Ada County Sheriff levied upon and attached ***all*** of Bergmann's creditor rights-property interests in the case file, *Smith v. Smith,* Case No. CV-DR-1990-12684, including a February 11, 1991 original Judgment, together with all Instruments and renewals pertaining to any creditor rights. Puckett's Instruction successfully directed the sheriff to the case file containing all Bergmann's creditor rights-property interests, including the original judgment Instrument, 1991 and the original judgment Instrument, 1999, along with a series of other renewal Instruments. The sheriff, authorized by I. C. §11-201, elected to levy upon the case file containing all of those creditor rights-property interests within that case file, seizing the entire case file and all judgments and renewal instruments, rendering it seized and subject to his levy. The sheriff relied upon I. C. §11-201, which provides the following authority, both in 2014 and to the present day:

> I. C. §11-201. Property liable to seizure. **All** goods, chattels, moneys and **other property,** both real and **personal, or any interest therein of the judgment debtor, not exempt by law,** and **all property and rights of property, seized and held under attachment in the action, are liable to execution.** Shares and interest in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, **and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment.** Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. **Until a levy, property is not affected by the execution.** (Emphasis added)

The sheriff chose to effectuate the levy on the entire case file by that Levy conducted on October 23, 2014, so none would then be transferred or conveyed to a third party, having been informed of Bergmann's propensity within the content of the Instruction. The sheriff relied upon his authority under the execution statute to levy upon the entire case file. The Letter of Instruction had taken the sheriff to the case file, and the sheriff, being already alerted to the propensities of the debtor from the content of the Letter of Instruction, found that series of Instruments, and pursuant to statute, was authorized to levy upon and seize ***all*** creditor rights contained within that case file, *Smith v. Smith,* Case No. CV-DR-1990-12684, and the sheriff concluded, unless directed otherwise, the content of those creditor rights was best suited for one single lot or unit sale, as no renewal Instrument reflected any amount within them, and a review of the renewal statute suggested a renewal Instrument *replaced* a former Instrument, and absent any direction from the judgment debtor to be addressed at the scheduled sale, the sheriff concluded the entire case file, containing all creditor rights-property interests of Bergmann, was best suited to be sold as a single lot, avoiding any confusion.

The Sheriff's Notice of Levy (R. pp. 43-44), Notice of Sheriff's sale (R. p. 42), and Sheriff's Return (R. p. 40), identified the ***levy and seizure*** was upon the entire case file, containing all of the creditor rights-property interests Bergmann held in the case file, *Smith v. Smith,* Case No. CV-DR-1990-12684.

Bergmann took no action in response to the sheriff's Notice of Levy, receiving a copy of the recording of the Notice of Levy and packet of claim exemption forms, declining to file any objection or claim (all of which proper notifications were mailed to Bergmann by the sheriff on October 24, 2014 (R. p. 101), as confirmed in the Sheriff's Return (R. pp. 40; 101-102).

Bergmann never appeared at the sale to direct or instruct the sheriff to consider the separation of any of the creditor rights-property interests that were contained in that single case file, despite the requirement promulgated by statute that a judgment debtor, if concerned about any proposed method of the sale, must be present at the sale to direct the sheriff if it be the belief any particular property interest should be offered for sale separately. The debtor has the obligation to be present at the sale (I. C. §11-304), but if any interest is to be sold in a manner other than determined by

the sheriff, who had determined it best to sell the entire case file content of creditor rights as a single unit-single lot sale to avoid any confusion, consistent with the Notice of Levy and advertisement, then the debtor must be present at the sale to direct the sheriff to consider an alternative manner in conducting the sale.

In the absence of such direction from the debtor, the sheriff's discretion is perceived to be final under I. C. §11-304, as the sheriff is authorized to proceed in the manner he believes appropriate, who was seeking to prevent confusion or conflict within the creditor rights-property interests that had a series of renewals within the case file, potentially competing and confusing to the public if offered for sale independently and individually.

Bergmann's case file consisted of "judgments", "orders amending judgment", and "renewed judgments", each fitting the description of "judgment", with a series of renewals without any amounts within them. The sheriff collectively referred to these creditor interests as "personal property interests" in both the Levy and Return, and in like manner, those "property interests" where advertised and noticed for sale as "one unit or lot" within the case file, identified as containing ***all*** of "Sharon K. Smith's property interests within that case, *Smith v. Smith,* Case No. CV-DR-1990-12684". Neither the debtor, nor anyone on Bergmann's behalf, asked or instructed the sheriff to sell any of the case file contents separately or independently, and the sheriff's certificate of Sale issued to Puckett confirmed he acquired all creditor rights-property interests contained within and identified in that case file, being the successful bidder at that sheriff's sale (R. pp. 41; 99; 103).

The ***Sheriff's Return*** confirmed the manner in which the sheriff had *levied upon, seized, advertised, and sold those property interests as the content within that specific case file.*

## D. STANDARD OF REVIEW

The standard of review in an appeal of this nature is that of abuse of discretion. Any order to set aside an execution sale is a matter of court discretion. *Suchan v. Suchan,* 113 Idaho 102, 109, 741 P.2d 1289, 1296 (1986); *see also Safaris Unlimited, LLC v. Von Jones*, Idaho Supreme Court

Docket No. 44914, June 29, 2018, cited as 421 P.3d 205 (2018).

To determine whether a court has abused its discretion, the reviewing court evaluates whether the lower court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with relevant legal standards; and (4) reached its decision by an exercise of reason. *Lunneborg v. My Fun Life,* slip op. 45200 at p. 7 (June 28, 2018).

In this appeal, just as in *Safaris Unlimited, supra*, Puckett has challenged those elements concerning the lower court's action being outside the boundaries of its discretion, inconsistent with the relevant legal standards, and failed to reach a decision based on the law and legal reasoning.

The "general rule" governing a sheriff's sale is that inadequacy of consideration is not sufficient ground to set aside a sheriff's sale, but "gross inadequacy of consideration, coupled with very slight additional circumstances is sufficient.", as it has been initially cited in *Fed. Land Bank of Spokane v. Curts*, 45 Idaho 414, 425, 262 P. 877, 880 (1927).

## II.
## ISSUES PRESENTED ON APPEAL

**1. Did the lower court abuse its discretion in setting aside the sheriff's sale?**
**2. Did the lower court make a finding of "approximate value" of the case file contents sold at the sheriff's sale?**
**3. Did the lower court err in finding "additional circumstances" in the nature of "irregularity" in the sale process to set aside the sale?**

## ARGUMENT

### 1. Did the lower court abuse its discretion in setting aside the sheriff's sale?

The fundamental issue presented in this appeal is whether the lower court abused its discretion when vacating the sheriff's sale conducted on November 13, 2014. In addressing that issue, the reviewing court must examine several aspects of the applicable standards that must be considered when reviewing a sheriff's sale. The reviewing court's initial focus is to determine whether the lower court made a "reviewable" "finding of fact" as to the "approximate value" of the property interests

that were sold at the sheriff's sale. If the lower court has failed to make such a reviewable finding, the order setting aside the sale must be reversed and the matter remanded to the lower court.

If such a "reviewable finding" has been established, then this court will determine if the sale price was "grossly inadequate", and if deemed to be such, then proceed to determine whether there exists "additional circumstances", typically found to be within the subject of a statutory violation or some irregularity in the sale process. These constitute the reviewable elements to be addressed in the applicable principles and standards to be considered in any Order vacating a sheriff's sale.

In this case, the sheriff, pursuant to his authority under I. C. §11-304, sold all of the case file contents that held debtor's creditor rights-property interests in Ada County Court case, *Smith v. Smith*, Case No. CV-DR-1990-12684, selling same as one single bidding lot or unit, as was his discretion, as the debtor declined to attend the sheriff's sale to direct or instruct the sheriff in any other manner to sell the case file contents, either in separate lots or as individual Instruments, in the process of conducting that lawfully undertaken sheriff's sale.

**a. The general provisions concerning sheriff's sales**

Title 11, Chapter 3, *Idaho Code* enumerates the requirements governing sheriff sales. *See also Safaris Unlimited, supra,* 421 P.3d 215 Section D. In *Safaris,* this court emphasized the requirements within Title 11, the effect of which seeks to compensate the judgment creditor, while protecting the judgment debtor from any overreaching.

Title 11 specifically permits the judgment creditor to execute on ***all*** non-exempt personal and real property of the judgment debtor (I.C. § 11-201); it sets forth a notification process (I.C. § 11-302); and provides for the manner in which a sheriff's sale is conducted (I.C. § 11-304). *See Safaris Unlimited, supra.*

The "general rule" establishes the standard upon which a sheriff's sale is subject to being vacated, and the principle saying is that mere "inadequacy of consideration" is not a sufficient ground for setting aside a sheriff's sale, but "gross inadequacy of consideration", coupled with "slight additional circumstances", is sufficient.

This appeal brings into issue the application of that principle and those attendant concerns, and whether those principle standards have been established in this case to justify setting aside this statutorily conducted sheriff's sale on November 13, 2014.

This court declared in *Safaris* there ***must*** be a determination of "approximate value" of the property being sold, so the reviewing court may have a finding to determine whether such a factual finding supports "gross inadequacy of consideration" in the sale price, and if there is a factual finding of "approximate value", and a determination of "gross inadequacy" in the sale price is established, then the review progresses to determine if there were any "additional circumstances", slight or otherwise, to impact the process of the sale, typically some failure in statutory compliance with the execution statutory provisions, or some irregularity in the manner in which the sale was being conducted. As to this initial and fundamental issue of "approximate value", this court held in *Safaris* the following analysis:

> Applying the general rule here leads us to vacate the district court's decision setting aside the sheriff sale..... we reach this result because the district court failed to act consistently with relevant standards by not conducting a proper application of the governing law. The district court specifically ***failed to make a sufficient finding as to the approximate value*** **of the *Sligar* litigation.....**The district court thus did not make a sufficient finding on the *Sligar* litigation's approximate value. ***This finding was critical, as the governing law very clearly inquires whether "gross inadequacy of consideration ... [is] coupled with very slight additional circumstances[.]"*** ..... *Safaris Unlimited, LLC v. Von Jones* 421 P.3rd 205 (2018), Section D, p. 217-219 (Emphasis added).

This court applied the general rule and the established standard on several occasions prior to *Safaris,* articulating this subject within the above cited *Safaris* case, by citing a series of sales and factual issues where "adequacy" and "circumstances" of a sale were addressed. The court began with the historical analysis in *Fed. Land Bank of Spokane v. Curts,* 45 Idaho 414, 425, 262 P. 877, 880 (1927), where the general rule was applied to vacate the sale of *real property,* when the real property was *erroneously subdivided* and sold for $300, despite a written bid for $8,700. In *Gaskill v. Neal,* 77

Idaho 428, 432, 293 P.2d 957, 960 (1956), the court found the general rule was applied to vacate a sale of *real property* when a house and garage, worth $11,000, were *separated and sold as two distinct units* for $426.12. In *Tudor Engineering Co. v. Mouw*, 109 Idaho 573, 575-76, 709 P.2d 146, 148-49 (1985), the court found the general rule was applied to vacate a sale of *real property*, when there was *no notice of the sale*, but sold the real property for $385.65 and the real property was thereafter advertised for sale by the purchaser for $49,000.

In each of those cases, (*Curts, Neal, and Tudor, supra*), the court determined there was a "gross inadequacy of consideration" in the sale of the *real property*, and those sales were coupled with "additional circumstances," setting forth reasoning that an erroneous division or segregation of real property, or a failure to comply with statutory requirements, were justification to set the sale aside.

In *Phillips v. Blazier-Henry,* 154 Idaho 724, 729, 302 P.3d 349, 354 (2013), where the court also cited to *Curts, Neal,* and *Tudor*, citing also *Suchan v. Suchan,* 113 Idaho at 108-10, 741 P.2d at 1295-97)(1986), *Phillips* reiterated the general rule, but *clarified* the principle by confirming that *gross inadequacy of consideration, alone, is not sufficient to vacate a sheriff's sale.* In *Phillips,* the sheriff sold roughly 20 acres of *real property* for $1,000. The lower court *vacated the sale*, concluding the price was so low, as to "*shock the judicial conscience,*" though at the same time, determined there were no "additional circumstances" or irregularities in the process of the sale to join any gross inadequate consideration. Id. at 728, 302 P.3d at 353. Thus, the law required the order setting aside the sale be reversed.

In *Safaris,* the court noted cases where the sale price and circumstances did not provide any basis to vacate the sheriff's sale, citing initially *Suchan v. Suchan,* 113 Idaho 102, 741 P.2d 1289 (1986), where it addressed the sale of *real property,* where the successful bidder bought 800 acres for $12,000.00, which was subject to a mortgage of $59,000.00, an effective purchase price of $71,000.00. The real property had been appraised for $680,000.00, but given various factors (water permit issues, depressed market, rocky outcroppings), a market value of $300,090.00 was considered, and recognized that all "forced sales commonly produce lower prices.".

*Suchan* found the sale price to be "grossly inadequate" but concluded there *was no irregularity in the sale process,* stating a critical factual element in these matters that any "*misunderstanding of legal rights,* though unfortunate, is *not an irregularity in the sale* itself." Id. at 109, 741 P.2d at 1296. In *Suchan,* the complaining party failed to show up at the sale to bid in the judgment amount.

The *Suchan* court stated the general rule regarding sheriff sales in the following manner:

> In general, gross inadequacy of price coupled with irregularities in the sale warrants vacation. *Gaskill v. Neal,* 77 Idaho 428, 432, 293 P.2d 957, 960 (1956); *The Federal Land Bank of Spokane v. Curts,* 45 Idaho 414, 425, 262 P. 877, 880 (1927). Whether to set aside an execution sale lies largely within the trial court's discretion. *Gaskill,* 77 Idaho at 433, 293 P.2d at 960. In both *Gaskill and Curts,* the sheriff conducting the execution sale ***sold the property in parcels rather than as a unit, at the direction of persons not authorized to direct the manner and order of sale.*** Each court held this to be an irregularity in the sale. In the instant case, ***George, the execution debtor, directed the order of sale of parcels under the express statutory authority of I.C. § 11-304.*** In *Gaskill,* a house and garage lay partly on each of the two parcels sold. No similar factor exists in this case. The sheriff in *Gaskill and Curts* also improperly ignored the highest bid offered at the sale and instead accepted a much lower bid. This irregularity did not occur in the instant case, where the sheriff accepted only the highest bid.
> ***In general, parcels not adapted for separate and distinct enjoyment should be sold as a unit.*** However, under I.C. § 11-304 ***if the party directing the order of sale can show in an intelligible manner the particular way in which the property can be profitably sold in parcels, the general rule will not apply and the sheriff must follow his directions.*** *Gaskill,* 77 Idaho at 432, 292 P.2d at 960.

Because there was no irregularity in the sale, this court reversed, reaffirming the rule that to vacate a sheriff's sale, the law requires ***both*** grossly inadequate consideration ***and*** attendant "additional circumstances" [irregularities in the sale]. Id. at 728-30, 302 P.3d at 353-55.

As stated in *Phillips,* this court declined to adopt this "shock the conscience" standard, as to do so undermined the required presence of "attendant additional circumstances", the missing element in *Phillips* and other cases.

Arguments advanced in *Phillips,* suggesting the expansion of what is "additional circumstances" were: failure to attend the sale; failure to submit a credit bid; failure to instruct the sheriff to enter a credit bid; failure to obtain assignment of redemption rights. Those proposed

"additional circumstances" were unequivocally rejected, as they only served to illustrate both *inattention and misunderstanding of the law*, not constituting a statutory non-compliance or some irregularity in the conduct of the sale process.

*Safaris* involved a *personal property* sale, not a real property sale, and concluded that when applying the general rule and applicable standards, the law required the reversal of that Order vacating that sheriff's sale because the lower court failed to establish a ***finding of fact*** to review a lower court's determination of "approximate value" of the personal property being sold, as *Safaris* concluded that *a finding is necessary to determine whether there was actually any gross inadequacy of consideration.*

In our case on appeal, this court is confronted with that initial and fundamental issue as well: Did the lower court made a factual determination as to the "approximate value" of the contents of the case file that had been levied upon, advertised, noticed up for sale, and sold by the sheriff on November 13, 2014? That issue must be addressed by this court before the analysis can advance to the remaining elements to be applied to these sheriff sales

**2. Did the lower court make a finding of "approximate value" of the case file contents sold at the sheriff's sale?**

This appeal, pursuant to the announcements set forth in the *Safaris* analysis, require these party litigants to address this threshold question: Did the lower court make a "finding of fact" as to the "approximate value" of the case file contents sold at this sheriff's sale?

Though this sequence in analysis of this principle and standard appears to be forefront and embraced within the *Safaris* decision, could it not also be appropriate to instead proceed with the final question whether any "additional circumstances (typically statutory non-compliance or irregularity in the sale process) regarding the proceedings undertaken by the sheriff were present or absent, and if no qualifying "additional circumstances" are found to exist, the issue of "approximate value" and "gross inadequacy of consideration" appear to be immaterial to the final outcome of the controversy, as without the "attendant additional circumstances", a sheriff's sale, irrespective of the other elements, cannot be set aside, made eminently clear in *Safaris Unlimited, supra.*

The applicable principles and standards on this subject matter confirm a sheriff's sale cannot be set aside in the absence of additional circumstances, and absent any additional circumstances in the nature of a statutory violation or established irregularity in the sale process, the issue of "approximate value" and "gross inadequacy of sale price" no longer present a concern to the disposition of the dispute over the validity of the sheriff's sale.

**a. The "approximate value" of the case file contents found by the lower court**

Given the basis for the reversal in *Safaris,* this court has establish its preferred sequence of inquiry in this process when challenging a sheriff's sale. The reversal in *Safaris* occurred because there was a lack of factual finding as to "approximate value" of the ***Sligar* litigation** that was being sold by the sheriff at that sale. This court declined to engage in any discussion whether there was grossly inadequate consideration, as there was no factual finding of any value to review. This court declined to then address whether there were "additional circumstances" present to even consider, had there been any gross inadequacy in the sale price. It would appear consistent with the standards to be applied I these controversies that if the reviewing court found no "additional circumstance" in the execution-sale process, what's the purpose for any need to have a record of a factual finding of approximate valuation, when the absence of "additional circumstances" is dispositive?

That said, and accepting the proposition this court has announced in *Safaris*, Appellant will first address the lower court's determination on "approximate valuation" of the case file contents sold at this sheriff's sale. Instead of being "litigation claims and causes of actions", as was the subject matter in *Safaris,* in our dispute there are Instruments, in the nature of creditor rights contained in this case file content.

This court, according to *Safaris,* will first determine whether our lower court established an appropriate "reviewable" finding of value of the case file contents to meet this court's satisfaction for review, and if it be found that the finding is lacking, then the lower court's Order, setting aside the sheriff's sale, must be reversed, consistent with the holding in *Safaris*, as the court indicates it cannot, or will not, review the standards without an approximate value of what was being sold at the sale.

If the finding, entered by the lower court, is determined to be sufficient for review, then it remains Puckett's position the sale price established by Puckett's credit bid was consistent with, and in keeping with, the "approximate valuation" that was established by the lower court, as the lower court made a finding the case file contents (creditor rights) were ***"not worth very much in the market value".*** With that "approximate value" determination, there is no basis to find a "gross inadequacy in the consideration" as the $100.00 bid Puckett opened the bidding with is consistent with something "not worth very much". Absent any gross inadequacy, the lower court's Order must also be reversed, without need to address any issue as to any "attendant additional circumstances".

The excerpt from our lower court on its "approximate value" and "sale price", states:

> ***Those rights might not be worth very much in a market-value*** considering that the judgment debt owed by Vemon (sic) K. Smith remains unpaid after many years. *But their market value, even if much smaller than the judgments' face value, seemingly cannot be less than zero dollars. Consequently, the effective sale price Sharon Smith netted at the sheriff's sale—less than zero dollars—is grossly inadequate* ***or, if not grossly inadequate, at least too low,*** when considered in combination with the inadequate property description, to warrant upholding the sale as a valid one. (Emphasis added) (Memo. Decision Pg. 6-7) (R. pp. 471-472; 568-569; 626-627)
>
> But it did not yield a sizeable bid. Instead, it yielded a credit bid in an amount too small to even cover the sheriff's fees, which are added to the judgment debt, causing the total judgment debt to increase, rather than decrease, as a result of the sale of Sharon Smith's rights in "THAT CERTAIN JUDGMENT." ***Thus, she received <u>less than nothing</u> through the sheriff's sale in return for those rights.*** (Emphasis added) (Memo. Decision Pg. 6) (R. pp. 471; 568; 626).

The "approximate value" of the entire case file contents (creditor rights), as determined by the lower court, was ***"Those rights might not be worth very much in a market-value",*** but having found that valuation, none-the-less determined the sale price, ***if not grossly inadequate, at least too low.*** That appears to be a rather imprecise assessment of the sale price, when the valuation made it clear the entire file contents was not worth very much. Notwithstanding that somewhat imperfect analysis, the lower court then immediately directed its attention to the "sale process", concluding there

was an "inadequate property description" as to the case file contents the sheriff was selling, despite the fact the sheriff specifically levied upon, seized and attached ***"all of Sharon K. Smith's personal property interests in the case of Smith vs. Smith, Case No. CV-DR-1990-12684"***, a single case file, not two or more files, and all creditor rights within that case file contents were the subject of the sale.

The Notice of Levy described the single case file, and all of the creditor rights-personal property interests contained within it, and the sheriff advertised the levy and notice of sheriff's sale as such, being one single case file in which the entire case file contents, being *all of the creditor rights-property interests within it* were being sold at the sheriff's sale, never advertising the sale to be of any one particular instrument within the case file contents, but rather the entire case file contents of creditor rights-property interests contained in that one specifically identified case file.

All of the Sheriff's notifications, including the sheriff's Return, specifically indicated the fact the sheriff had levied upon ***"all of Sharon K. Smith's personal property interests in the case of Smith vs. Smith, Case No. CV-DR-1990-12684"***, and the entire case file content of such property interests were to be sold at the sheriff's sale. It was that specifically identified case file, and its entire contents of creditor rights, that was the subject matter of the property interests sold at that sale, not any one particular Judgment, Instrument, or multiple case files.

Bergmann was well aware of what was being sold, and if Bergmann had any desire for the Sheriff to sell any of the creditor right contents within that case file in some independent or made a separate bid item, then she, as the debtor, according to the statute I. C. §11-304, had the obligation and responsibility to attend the sale and direct the sheriff to sell what creditor interests within that entire case contents she felt or believed should be sold separately or independently, as only the judgment debtor can give that specific instruction, and the sheriff, upon being so notified, must follow those instructions.

The sheriff has the discretion on those decisions, unless the debtor attends the sale and gives the direction in some other manner to the sheriff. Otherwise no requirement is imposed on the sheriff, as he is vested with the discretion to determine in his best judgment how to proceed with the manner and order of sale, which in this case, the sheriff wanted to remain consistent with both the levy and

the advertisement in the notice of sheriff's sale, and he was selling all of the creditor rights contained in that one case file, the one he levied upon and the one he advertised for sale in the sheriff's Notice of Sheriff's sale.

The sheriff logically perceived the creditor rights-property interests within that entire case file to reflect a series of creditor rights, somewhat uncertain because of the duplicity of some instruments, seeing judgments and then renewal judgments, replacing earlier Instruments by the intended purpose of the renewals, which may have either substituted the original, or merged into another Instrument, and none of the renewals had any stated amount within them.

The sale had to be consistent with the advertisement, as all of the creditor rights were being advertised to be sold within the case file content.

**b. Is the "approximate value" of the entire case file contents a sufficient finding of fact?**

The question this court will address is whether our lower court sufficiently addressed "approximate valuation" of the entire case file contents, before willing to address "adequacy of the sale price". If this court concludes the lower court made an insufficient factual finding of value, then the Order must be reversed, remanded, and the sale upheld, as mandated by *Safaris.*

In reading the soliloquy expressed by our lower court, it appears to be the concern over the inclusion of the sheriff's fees to the Puckett Judgment, such that the result was that the Judgment debt was *increased,* and from that (despite the $100.00 credit bid from Puckett) the court concluded the sale price actually realized *less than zero.*

That "concern", however, is not the "finding of fact" as to the "approximate value" found by the lower court as to the value of the entire case file contents that was being sold. The "concern" is over the consequence of the procedural reality sheriff's fees are assessed in these situations, and though such assessment is added to the unsatisfied judgment remaining, the judgment creditor is always required to advance those costs. The sheriff's fees are a consequence of the execution process, not the sale price. Though our lower court may have been shocked by this consequence, especially when those assessed fees consume the amount of the successful bid, that has nothing to do with the "value" of the property being sold, and to that point, *Phillips* rejected any concerns about "shocking"

attributes in these sale matters, having declined to embrace any "shock the conscience" considerations whatsoever. *Phillips* also rejected (as reiterated in *Safaris* at 421 P.3d 217) an irrelevant litany of "perceived" "additional circumstances" as the court concluded a ***parties' inattention and misunderstanding of the law is not an additional circumstance.*** (such as failing to attend the sale to direct the sheriff as to the manner of the sale) The elements in *Phillips* was re-affirmed in *Safaris.*

Our lower court's "finding of fact" on the "approximate value" of the entire case file contents was expressed as ***"those rights might not be worth very much in a market-value".*** Given that finding, and if it were to be held to be a sufficient finding, then Puckett's credit bid of $100.00 supports that lower court's finding, as Puckett concluded the entire case file contents "was not be worth very much", and the "sale price" was consistent with the lower court's "approximate valuation" of the case file contents.

Sheriff's fees, being authorized (required) by statute, they are not a function of property value, nor considered to be a statutory non-compliance or irregularity in the sale process. These assessments are paid by the judgment creditor, regardless of any effective levy or property sale, and those costs are added to the unsatisfied judgment, whether the lower court, or anyone else, is offended by that consequence.

The lower court's concern about fees, and calling the sale price "less than zero" because of the consequence of these fees, is not a proper component of the standard to be applied in these matters, and to the point, Puckett's credit bid of $100.00 was not "less than zero", as sheriffs do not accept zero bids, much less bids "less than zero".

The lower court found an "approximate value" of the entire case file contents, imprecise as it may be so described, but sufficiently found the case file contents in the nature of creditor rights-property interests within the case file entitled *Smith vs. Smith,* Case No. CV-DR-1990-12684, had an "approximate value" of being "not worth very much in a market value", and that valuation fits in between what could be characterized as being more than zero, and "not very much", such that the credit bid of $100.00 tendered by Puckett, being his opening bid, and soon to be declared the final offer at the sale, was a bid within the range of the lower court's valuation,

being not "grossly inadequate", whether too low or not, as there is no other finding made by the lower court on that issue pertaining to value of the entire case file contents (creditor rights-property interests) being sold at that sheriff's sale.

The lower court commented that the sale price was ***"if not grossly inadequate, [is] at least too low".*** The lower court here appears to distinguish between being "too low" and being "grossly inadequate", so did this lower court even make a determination the sale price was grossly inadequate? If not grossly inadequate, is there any need to then consider "attendant additional circumstances"? Did the court conclude the price was "too low" or "grossly inadequate"?

This uncertain and rather confusing analysis the consequence of the sheriff's fees assessed in these execution proceedings.

Our lower court did not have the guidance announced in *Safaris* to use as its backdrop, but given what finding has been made by our lower court, setting aside the sheriff's sale is not supported by any of the language contained in the execution statutes, and there is no factual basis to conclude the sheriff had any obligation or duty to separate out the case file contents and sell separately any judgment Instrument, when the sheriff had levied upon, advertised, noticed for sale, and effectively sold the entire case file contents, being ***all*** creditor rights-property interests identified within that one single case file. The sheriff was selling all creditor rights contained in one single case file, never proposing to sell, not instructed to sell, any one individual instrument separate from another Instrument contained within that one specifically identified case file.

The lower court has cited no case law to support any of its position by any factual comparison, and its finding of value, as imprecise as it may serve to be, represents a finding of an "approximate value" of the entire case file contents in a colloquial fashion, confirming these "property interests" are such that ***"those rights might not be worth very much in a market-value"***, and absent a specific criteria to require more specificity within the determination of value, that determination may suffice, as *Safaris* has not announced a more precise requirement of valuation to be ascertained.

This court must now undertake to determine whether that "finding of fact" is a sufficient finding for judicial review. If it is, then Puckett does submit that his credit bid of $100.00 was very much consistent and in line with what the lower court's assessed valuation of the entire case file contents to be "not worth very much in a market value", and the public gathering confirmed the bidding interest was consistent with that approximate value, as no one saw the worth to be in excess of that.

If that finding ***"those rights might not be worth very much in a market-value"*** is seen to be a little imprecise to constitute a factual determination of value to be "reviewed" by this court, then the lower court's Order must be reversed, as in *Safaris*, and the validity of the sheriff's sale fully reinstated.

**c. What did the public see to be an "approximate value" of the case file contents?**

Had anyone at the sale saw any value in the entire case file contents to justify bidding higher than what Puckett tendered as his opening bid, it would have garnered further bidding, so the perception of the bidding public supports the lower court's finding Bergmann's creditor rights, identified and contained in that one specifically identified case file, were "not worth very much".

The knowledgeable public, reviewing the entire contents of the *Smith v. Smith* case file, would reasonably conclude the "creditor rights-property interests" stemmed from an old disputed divorce proceeding spanning three decades ago, with creditor rights lying dormant for decades, potentially uncollectable, and possibly unenforceable, with no activity for nearly a quarter century, seeing a 1991 judgment that was never renewed in the renewal cycle of 1996, Bergmann failing to provide a "renewed judgment" despite being directed on November 5, 1996 to do so, and seeing a 1999 Judgment that in subsequent years was not even eligible for renewal in prior years, along with renewals with no figures or amounts, left much to be desired as a value asset. The general public would be skeptical at placing any value beyond even what the lower court did ("not very much") just as Puckett concluded and did, and prudence dictated that the entire case file contents would best be sold as one single case file unit or lot, just as the sheriff so concluded, absent any attendance of the debtor or her representative, and absent any specific direction from the debtor to the contrary.

The entire case file contents was made transparent and recorded as a public disclosure with reference to the entire case file contents within *Smith vs. Smith,* Case No. CV-DR-1990-12684, identified within the Notice of Levy, which was recorded, and was fully disclosed and identified in the publications, the advertisements, the posted notices and in the announcement at the publicly held Sheriff's Sale on November 13, 2014.

Appellant would suggest to this court, regardless the issue of "approximate valuation" to reverse the Order of the lower court upon the conclusion there was no additional circumstance recognized by this court that would constitute any violation of the execution statutes or any irregularity in the sale process, as the lower court did not find any violation of the execution process, the levy process, the advertisement process, or the notification of the sale process; rather only expressed concern because it concluded there were two separate original judgments contained within the identified single case file, and the lower court felt those two judgments could better be sold separately, despite the fact the sheriff has that discretion, not the court, and the sheriff was selling the entire file contents of that case, not any single judgment instrument.

The sheriff sold the file contents as he so levied upon it, as he had so advertised the entire case file contents, as he had so noticed the case file contents for sale, and conducted the sale in that manner. This constitutes the only concern relied upon by the lower court to conclude "irregularity" in the sale process, and neither the statute nor case law says the sheriff did anything improper or unlawful.

**3. Did the lower court err in finding "additional circumstances" in the nature of "irregularity" in the sale process to set aside the sale?**

There has been no showing by the lower court the sheriff has improperly levied upon the debtor's personal property, or did not properly advertise the property interests as he did, nor any showing that the notice of the sale was in any way improper, or that the sheriff had an obligation to sell separately any instrument within the entire case file contents that was the subject of the sale.

All of the creditor rights-property interests of Bergmann in that entire case file was levied upon within that one specifically identified case file, and it was that ***one case file,*** containing ***all*** creditor rights-property interests that was to be sold, and was advertised as being sold as a single unit

or lot, as the entire case file contents of that one case file was seized, advertised, noticed for sale and offered for sale to the bidding public. Nothing done by the sheriff at the sheriff's ale was in any way inconsistent with the way in which the case file was levied upon, seized, advertised, and noticed to be sold at the sheriff's sale.

The lower court has identified no "statutory" violation in the manner in which the entire case file contents, containing the creditor rights-property interests of Sharon K. Smith (Bergmann) were improperly or inadequately sold at the sheriff's sale, as the entire case file contents was sold pursuant to the execution statutes, pursuant to discretion of the sheriff, absent any instruction from the debtor.

The conclusion by the lower court there was "irregularity in the sale process" is the flawed belief that the sheriff had a duty or obligation to reach into the case file contents and select each individual Instrument, and sell them separately, and that by not selling what the court believed to be at least two identifiable and different judgments from within the entire contents of that case file, the sheriff committed some irregularity in the sale process.

The lower court has identified no statutory basis or case authority to support its conclusion, and the lower court cannot disregard the statutory provisions that place with the sheriff the discretion to sell "property interests" in the manner he selects, absent a direction or instruction from the judgment debtor. (*See* I. C. §11-304).

The process conducted by the sheriff was in accordance with the statute and authority vested in the Sheriff. In *Safaris,* the court recited the execution/sale statutes, by stating:

> Title 11 permits the judgment creditor to execute on ***all non-exempt personal and real property of the judgment debtor***, I.C. § 11-201 (Emphasis added).
>
> I. C. §11-301 is similarly expansive and states in relevant part:
>
> The sheriff must execute the writ against the property of the judgment debtor by ***levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action,*** and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. (Emphasis added)

The "property interests" the sheriff levied upon, seized, advertised, and sold in *Safaris Unlimited* was described to be *all of the rights and interests* of Michael Von Jones, who was identified as the Plaintiff in the pending action levied upon, and those "rights and interests" were identified as follows:

> "....without limitation, ***all right, title, claim, and interest of Defendant Mike Von Jones in and to all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, bonds, guarantees, warranties, costs, expenses, losses, liens, actions, and causes of action of each and every kind, nature and description, whether now known or unknown, suspected or unsuspected, which Jones might have, own, or hold, or at any time heretofore ever had, owned, or held against Jeremy Sligar and/or Overtime Garage, LLC, including, without limitation, those claims that are the subject of the lawsuit of Mike Jones v. Jeremy Sligar and Overtime Garage, LLC; Twin Falls County Case No. CV42-16-1554,***
> .....

None of the "rights and interests" of Mr. Jones were divided up or sold separately when sold at the sheriff's sale. It remains a fact this Court never proceeded to address whether there were any "additional circumstances" in that case to consider if the sheriff had to sell any of those "rights and interests", contained and identified in that litigation file, separately, absent a direction from the judgment debtor, as this court reversed the order vacating the sheriff's sale, due to a failure in the finding regarding the approximate value of the "rights and interests" of the litigation.

In *Safaris*, the sheriff's sale was conducted as scheduled, and was selling what was advertised: *all of the rights and interests of that Defendant in that specifically identified case filing*, and Safaris Unlimited, the only bidder in attendance at the sale, purchased all of those rights and interests as contained in that one identified case file entitled *Mike Jones v. Jeremy Sligar and Overtime Garage, LLC*; Twin Falls County Case No. CV42-16-1554.

Quite consistent with the manner in which this Bergmann execution and sale was conducted. The creditor rights in our case were also identified and contained in ***one case file***, not a series of case files. The judgment creditor in *Safaris* tendered a credit bid, and the bidding ended, rendering the creditor the successful bidder, just as with Puckett. The record indicates Michael

Jones, the judgment debtor, did not attend the sale, just as with this judgment debtor, Bergmann, and we also find that Jones, just like Bergmann, later moved to set aside the sale, which the lower court set aside.

On appeal in *Safaris*, this Court *reversed*, holding the lower court presented no factual finding relating to the approximate valuation of the "*Sligar litigation*", being the value of the property within case file.

This Court noted that whether a lower court has abused its discretion, an Appellate Court must determine whether the district court: ..... (3) ***acted consistently with relevant legal standards.***

This court concluded the lower court in *Safaris* failed to act consistently with relevant standards, and had not conducted a proper application of the governing law. (*Safaris Unlimited, Supra,* 421 P.3d at 217) The lower court failed to make a sufficient finding as to any value of the worth of the *Sligar litigation.* The record indicates the lower court made remarks, in that:

> "[i]t may be that Mr. Sligar owes Mr. Jones some money, it may be that Mr. Jones owes Mr. Sligar some money, it may be that neither one of them owes anybody any money. Who knows?"

It remains difficult to criticize that lower court as to its inability to place any value on what truly is an unknown factor to the court, and arguably even to the litigating parties, as that may well be the basis of their controversy. Realistically, there is much to appreciate by the analysis given by the court in *Citizens National Bank v. Dixieland Forest Products, LLC,* 935 So.2d 1004, 1010 (Miss. 2006), which undertook to explain that "[a]s with ***any other personal property,*** a chose in action's value— for purposes of levy and execution— is determined at a sheriff's execution sale."

This court has taken the position that a finding of" approximate value" is to be *articulated either on the record or in writing, based on preponderance of evidence found of record, and that first step remains critical as what remains an element of the governing law, which requires gross inadequacy of consideration...coupled with additional circumstances,* announced in *Curts,* 45 Idaho at 425, 262 P. at 880 (1927); *Gaskill,* 77 Idaho at 432-33, 293 P.2d at 960 (1956); *Tudor,*

109 Idaho at 575-76, 709 P.2d at 148-49 (1985); *Suchan,* 113 Idaho 102, 109, 741 P.2d 1289, 1296 (1986), and *Phillips,* 154 Idaho at 727-30, 302 P.3d at 352-55 (2013).

*Safaris* appears to hold for the proposition absent "an approximate value", *it leaves the court unable to conduct appellate review of that element,* as there are no facts on appeal to review, before going to the remaining issues in the analysis. *See also Frontier Dev. Grp., LLC v. Caravella,* 157 Idaho 589, 595, 338 P.3d 1193, 1199 (2014).

**a. *Was there any "irregularity" or "additional circumstance" in this sale process?***

The lower court concluded "irregularity" in the Sheriff's Sale, based upon the reasoning the lower court saw two judgments among the series of Instruments and renewals contained within the entire case file contents within *Smith vs. Smith,* Case No. CV-DR-1990-12684, and for that reason, the lower court concluded the sheriff had an obligation to present the two judgments separately, and the sheriff did not declare which one, of the two judgments, he was selling at the sheriff's sale. The flaw in that reasoning is that the sheriff ***was not selling any single judgment***; the sheriff was selling the entire case file contents, being ***all of Bergmann's "personal property interests" found within the case file, Smith vs. Smith, Case No. CV-DR-1990-12684,*** and those creditor rights-property interests were being sold as one unit or lot, consistent with the authority granted to the sheriff in the Idaho's Execution Statutes. The Sheriff followed the discretion allowed to him within the requirements of the statutory law, and there is no case law in Idaho to impose upon the sheriff a duty to do otherwise.

If the debtor (Bergmann) wanted any of her creditor rights-property interests to be somehow separated out and sold independently, it was incumbent upon her to attend the sheriff's sale and direct the sheriff to sell the contents of the entire case file in some manner other than the way in which the case file was seized, advertised, noticed for sale and was then slated to be sold to the public as a single case file unit or lot.

Bergmann did not attend the sale, and if she failed to do so because she ***misunderstood the law,*** that does not convert to the imposition of an obligation on the sheriff to read her mind and to do what she fails herself to undertake to do. Bergmann, herself, or an authorized agent, has to attend the

sale and instruct the sheriff as to her concerns. The Supreme Court has consistently maintained the proposition that ***any misunderstanding of the law does not provide any irregularity of the sale or create any additional circumstance to consider,*** as cited hereinbefore. Bergmann held those creditor rights-property interests identified and contained within the case file, *Smith vs. Smith, Case No.* CV-DR-1990-12684, and she was well aware the entire case file contents was levied upon, attached, seized, advertised, and noticed for a sheriff's sale, and Bergmann failed to either object to the manner of sale of the property interests scheduled to be sold, or attend the sale to protect those interests to be sold, and in those situations, there will not be a sympathetic ear in the appellate courts. See *Phillips v. Blazier-Henry, supra,* where the court made the relevant observation that "Chance failed to protect her own interests by submitting a credit bid or attending the sale . . ." 154 Idaho at 730, 302 P.3d at 355, and further observed that one, "who fails to protect its interests in the sale might not find a sympathetic ear in the courts." 154 Idaho at 729, 302 P.3d at 354.

Bergmann makes the flawed attempt to suggest to the lower court she did not know what (subject matter) was being sold at the Sheriff's Sale. That's rather interesting, as she failed to attend the sale, but had she been there, she would have heard the sheriff announce he was selling all of the creditor rights-property interests identified and contained within that specifically identified ***case file.*** The lower court did not find any basis to attack the execution, the levy, the advertisement, or the notice of sale, only concerned as to the conduct of the sale itself, wanting the contents sold separately.

The process of scheduling a Sheriff's Sale is established by Statute, Title 11, Chapter 1, concerning executions, and Chapter 3, concerning Levy and Sale under Execution. The Statute governing Levy and Sale under Execution, I. C. § 11-302, relates to personal property, which is not perishable, wherein subpart two controls, which provides as follows:

> "In case of other personal property, by posting a similar notice (meaning a written notice of the time and place of the sale ) in three (3) public places in the precinct or city where the sale is to take place for not less than five (5) nor more than ten (10) days before the time set for the sale, or by publishing a copy thereof at least one (1) week, and not more than two (2) weeks, in a newspaper published in the county, if there be one."

The Notice of Sale has never been challenged, as the record was clear that notice was posted at three locations on November 6, 2014, being no less than five (5) nor more than ten (10) days from the scheduled sale of November 13, 2014. There has been no finding of any irregularity in the posting of Notice of this Sale. The Writ of Execution was processed by the Ada County Sheriff's office by serving the Writ and Levy of the judgment upon the property interests of Sharon K. Smith (Bergmann) upon in the Fourth District Court of Ada County, where judgment creditor's interests were held, as the personal property interests of Sharon K. Smith (Bergmann) were located in Ada County, with the Ada County clerk. There has been no finding of any irregularity in the execution or levy process.

All of those property interests (those rights, titles, claims, and interests contained in that specifically identified case file, *Smith vs. Smith*, Case No. CV-DR-1990-12684) were ***attached and levied upon*** by the Ada County Sheriff, and he confirmed that procedural process in two ways: the Sheriff served a Recorded copy of the Writ of Execution and a recorded copy of the Notice of Levy upon the Clerk of the Fourth Judicial District Court, Ada County, Idaho, at the Ada County Courthouse, 200 West Front St., Boise, ID, 83702, by personally serving a copy of the Recorded Writ of Execution and recorded Notice of Levy upon Chelsea Carattini, a court clerk, where the rights, titles, claims and interests of Sharon K. Smith (Bergmann) were located and identified within that one specific case file and one specific case number, and furthermore, ***the Sheriff served a Recorded copy of the Writ of Execution and a recorded copy of the Notice of Levy, together with the Exemption Claim forms, upon Sharon K. Smith at her resident address in Nampa, Idaho,*** being the judgment debtor actually claiming ownership of the case file attached and levied upon by the Ada County Sheriff. ***Sharon K. Smith (Bergmann) not only received that formal notice through the Sheriff's office, but also provided a copy of the Writ of Execution, and reference to the Notice of Levy, along with a copy of the Letter of Instruction on October 10, 2014, to her attorney, and on October 14, 2014, Bergmann received that complete packet of documentation from her attorney.***

That pursuant to Title 11 Chapter 2, I. C. § 11-203:

> "The defendant or the defendant's representative is to complete the claim of exemption form as provided to them by the Sheriff's department."

Bergmann declined to complete, execute or submit any of the Claim of Exemption forms, as no exemption would apply. Those claim forms were provided to her through I. C. §8-507(C). At that period of time, I. C. §8-507(c) declares that §8-507(A) through §8-507(D) shall apply to Levy of Execution, pursuant to Chapters 2 and 3, Title 11. *See* I. C. §8-507(c).

Pursuant to I. C. §8-507(A):

> "The service on a defendant by the Sheriff shall be ***service by mail to the defendant to the last known mailing address of the defendant as provided by the plaintiff in the written directions,*** and the Sheriff shall indicate on the return of the writ filed with the court the date and manner of service upon the defendant, and any third party, and shall indicate the document served."

That current address was provided to the sheriff, and the submittals were completed.

***The Notice to Sharon K. Smith (Bergmann) did provide to her the enclosed Writ of Execution, the enclosed Notice of Levy, setting forth the fact the Sheriff had levied upon all of the case file contents, her personal property, and the enclosed Claim of Exemption forms, and the defendant had 14 days after the date of the mailing of these documents to file a Claim of Exemption with the Sheriff's office.***

All statutory requirements were met with full and complete compliance, as the Writ of Execution, Notice of Levy, Notice of Sheriff's Sale, and the Claim of Exemption forms were mailed to the last known address of Sharon K. Smith (Bergmann) at her home address in Nampa, Idaho, as contemplated by all provisions of §8-507, §8-507(A), §8-507(B), §8-507(C), §8-507(D), and Title 11, Chapters 2 and 3, Statutes of the State of Idaho. The lower court has found no "additional circumstance" or any "irregularity" in any of that statutory process.

I. C. §11-304 allows a judgment debtor to be present at a scheduled sheriff's sale, to advance any concerns or preference in any manner of the sale process, no debtor is required to be in attendance, and the debtor's failure to attend constitutes a waiver of any matters that could have been raised during the sale process. . If the judgment debtor elects to be present at the sale, that debtor has the authority to ***direct the order in which the property, real or personal, is to be sold, when such property consists***

***of several known lots or parcels or of articles which can be sold to advantage separately,*** and the Sheriff is obligated to follow the instructions. It remains an argument whether this sale consisted of anything that needed to be or should be sold separately, as it was the entire case file contents that was being sold, as advertised, not individual Instruments. Had the debtor appeared at the sale and participated, that issue could have been addressed and resolved—to the satisfaction of the debtor.

There were not thought to be "several known lots or parcels or of articles" that were independently seized in this execution process, as there was but ***one case file that was the subject matter of this execution and sale process,*** which contained all of the creditor rights-property interests of the debtor, and it was that single case file that contained the rights, titles, and interests of Bergmann, and were susceptible to being sold as a single unit or lot sale, just as was the sale conducted in the *Safaris* case.

Bergmann suggests ***she*** did not know which of her judgments or renewed judgments were being sold; notwithstanding the fact that she knew all of her rights, titles, and interests, as a judgment creditor in Case No. CV-DR-1990-12684, was levied upon and were to be sold as within that specifically identified case file, and having failed to attend the sale, her expression that she was uncertain as to which article or parcel was about to be sold is most disingenuous, as there was only one case file, not multiple files levied upon and all interests in that case file was advertised to be sold, and that is what she knew had been levied upon, receiving the writ, notice of levy and claim forms.

When Bergmann failed to make her appearance at the sale, and failed to even attempt to instruct the sheriff of any (now claimed) desire to separate out any aspect of the case file contents, she has waived any claim there was any jeopardy or loss as a result of selling the contents of that case file as one unit or lot, as that was where "all" of her creditor rights-property interests were contained, and she has no standing to challenge the process of that sale under any theory of a single unit-one lot sale, as all interests, confusing and overlapping as they were, were all contained in that one case file that was being sold as a single unit for one sum of money.

This Court must enforce the statute as it is written, and cannot create a burden upon a Sheriff to dismantle a single case file and sell component items from within it, when it was levied upon,

seized, advertised, and noticed for sale as a case file containing all rights, titles, and interests of Sharon K. Smith (Bergmann), in Case No. CV-DR-1990-12684, the composite of contents within the case file being the subject of the sale.

The lower Court focused upon the phrase, "that certain judgment," being used within the Letter of Instruction, saying it was singular rather than plural, because of which the court raised the question of possible ambiguity as to whether only one, or both judgments, arising out of the scope of the referenced civil proceeding, was seized and sold pursuant to the writ of execution.

It was ***all*** property interests identified and contained within the one specifically identified case file contents that the sheriff levied upon, advertised, and noticed for sale, which included all creditor rights-property interests within that one specifically identified case file. Nothing found within Idaho's execution statutes require a judgment creditor to first inventory, and then precisely identify personal property that the sheriff has the authority to levy upon and sell at a sheriff's sale.

Because the entirety of the property interests levied upon, as arising out of the civil proceeding *Smith vs. Smith*, Case No. CV-DR-1990-12684, consisted of judgments and renewal Instruments, there simply is no identifiable Idaho legal authority to support the lower court's action in setting aside the sheriff's sale on the basis the case file contents had to be sold independently and separately, absent any direction or instruction from the judgment debtor.

The lower court erroneously determined: (1) there was an inadequate property description, coupled with (2) inadequate consideration paid for the property (actually in its final analysis, the price was said to be "too low", if not grossly inadequate), and upon that basis, set aside the sheriff's sale. Memo. Decision at pg. 7 (R. p. 472; 569; 627).

In the lower court's first sentence under the heading "Analysis" the lower court stated the primary basis for its determination the personal property sold *had not been adequately described* or identified is expressed in this manner:

> When a judgment creditor wants to have personal property of the judgment debtor sold in execution on the judgment, the judgment creditor must give the county sheriff instructions identifying the property to be levied upon and sold. *See* I.C. §

8-507(a). . . . Memorandum Decision at pg. 5 (R. p. 470; 567; 625).[1]

A court's decision to set aside a sheriff's sale constitutes an exercise of discretion. *Phillips v. Blazier-Henry*, 154 Idaho 724, 727, 302 P.3d 349, 352 (2013). The challenge made under that standard by Puckett arises under the second prong of the abuse of discretion analysis involving a court's reliance upon an erroneous legal standard. Reliance upon an erroneous legal standard was the same ground cited in *Phillips v. Blazier-Henry*. 154 Idaho at 730, 302 P.3d at 355. The lower court, in reaching its decision to set aside the sheriff's sale, stating the property description was inadequate, did not act consistently with the legal standards specifically applicable to that determination, as provided by Idaho's judgment execution statutes, giving rise to the question:

> Is a judgment creditor statutorily required to provide the county sheriff with instructions that specifically and exactly identify the property he is to levy upon and sell, when that judgment creditor has generically identified a case file and a "judgment," interest within it, wanting all personal property owned by the judgment debtor in that case file sold in satisfaction of the levy against the case file?

**d. There is no statutory "particularity" requirement concerning identification of personal property seized and to be sold under a writ of execution**

The only "particularity" requirement that is stated within Idaho's execution statutes is that which only applies to real property, as stated in I. C. §11-302(3). "In case of real property, by posting a similar notice particularly describing the property . . ." ***Even with that particularity*** – as only applicable to real property – Idaho's statutory law remains clear, when either the real or personal property consists of multiple lots, parcels, or articles, an exercise of discretion exists as

---

[1] In 2017 the Idaho Legislature repealed I.C. §§ 8-507 through 8-523 and reenacted substantially similar provisions at I.C. §§ 11-701 et seq. *See*, 2017 Ida.Sess.L. ch. 303, pg. 799, §§ 2, 3 (pg. 800), & § 9 (pp. 803-813). No provision was made for any retroactive application of these 2017 amendments, which went into effect July 1, 2017. I.C. § 67-510. Therefore, the review of this Order should be governed by the law that was in effect at the time the original motion to set aside the sheriff's sale was made in 2015. *See e.g.*, *Alexander v. Harcon, Inc.*, 133 Idaho 785, 788, 992 P.2d 780, 783 (2000); and *State v. Hiatt*, 162 Idaho 726, 728, 404 P.3d 668, 670 (Ct.App.2017).

to the order of sale, as declared in the last sentence of I. C. §11-304: "The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions."

In this case, the lower court itself identified the undisputed fact that the writ of execution, as issued, encompassed both judgments within the identified case to which that writ of execution applied. The Court declared that the judgment creditor's directive was, "unclear because two distinct money judgments were entered in her [Sharon's] favor in that case and were never consolidated into a single money judgment. The Court sees no way to interpret that singular phrasing as encompassing both money judgments." *See*, Memo. Decision at pg. 6 (bracketed reference added) (R. p. 471; 568; 626). Then declaring, "The uncertainty created by the singular phrasing, along with the failure to specify a particular judgment date or amount (or two judgment dates or amounts), undermined the sale process." Memo. Decision at pg. 6 (R. p. 471; 568; 626).

This conclusion is not supported by Idaho's execution statutes. *Phillips v. Blazier-Henry*, 154 Idaho at 729, 302 P.3d at 354 ("This Court's decisions have set out a consistent and appropriate standard to apply in cases seeking to set aside a sheriff's sale conducted under Idaho's execution statutes.").

The question whether the lower court's reason and conclusion for setting aside the sheriff's sale is whether it is supported by the actual requirements established within Idaho's execution statutes. The statute the lower court primarily relied was I.C. §8-507(a)(2). This statute is incorporated by reference, as applied to a levy upon personal property, by the express language found in I. C. §11-301. Section 8-507(a) lists documents the sheriff must serve upon a person or corporation in possession of property that is subject to the levy. All that I. C. §8-507(a)(2) expressly requires is he service of a notice that the identified object – here, the specifically identified case file in which there are property interests in the form of creditor rights – is being "attached in pursuance of such writ." That statute does not require the judgment creditor to inventory what a judgment debtor's personal property interests are, or ascertain any specific

identification of that personal property. It is seen to be what is contained within that specifically identified case file.

That statute does not expressly require any of the additional identifying information upon which the lower court relied in setting aside the sheriff's sale. There is no requirement found in I. C. §8-507(a)(2) that a judgment(s) date or judgment(s) amount is to be ascertained, as it is clearly ascertainable by what is identified and contained within the specifically identified case file.

There is no requirement that multiple judgments first must be consolidated into a single judgment so as to permit a single case file, or the contents of that file, to be levied upon. Here, the case number of the civil proceeding was identified as encompassing the judgments (creditor interests) that were contained within the case file that was being levied upon. I. C. §11-301, itself, addresses the lower court's concerns as to how a general levy upon personal property of a judgment debtor is to be carried out:

> **11-301. Execution of writ.** – The sheriff must execute the writ against the property of the judgment debtor by levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.
>
> [The final paragraph of this statute now refers to I. C. §§11-703, 11-706, 11-707, 11-709 and 11-710, instead of the now-repealed I. C. §§8-507 through 8-507D, which were formerly referenced in this paragraph. *See*, footnote 1 above] (bracketed reference to omitted material added).

In *Phillips v. Blazier-Henry*, 154 Idaho 724, 729, 302 P.3d 349, 354 (2013) the mere payment of what is deemed to be inadequate consideration at a sheriff's sale does not – standing alone – justify setting aside that sheriff's sale. So, in the absence of some evidence supporting the existence of some irregularity in the sheriff's sale, one that is recognized within Idaho law, none

of which Appellant has seen to apply to this sale, is there any need to inquire further into the adequacy of consideration, when absent any additional circumstances, the sale is not subject to being set aside?

The lower court has not identified the basis from which to impose any legal obligation upon the sheriff to require him to sell the contents of a case file separately. Instead, the sheriff is entitled to conduct the sale as a single unit as authorized by I. C. §11-304. Absent any instruction provided by the Judgment Debtor at the time of the sale, directing the sheriff to sell those personal property interests separately, the sheriff acted properly and within his statutory authority. The operative language of I. C. §11-304 provides:

> The judgment debtor, *if present at the sale*, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions. (Emphasis added).

I. C. §8-507(a)(2) does not support the existence of any legal standard the lower court has decided to set aside the sheriff's sale. Idaho's execution statutes provide for a compartmentalization of property executed upon, to the extent that property is either real or personal, which characterization is consistent with general principles of Idaho property law. *See*, I. C. §§55-101 & 55-102. Not only does I. C. §8-507(a)(2) not require the specificity in identifying the property executed upon that this Court has implied – including any date or amount of any instrument representing a creditor right within the specifically identified case file, but the lower court's interpretation of that statute is in direct conflict with scope of personal property subject to execution, as declared in I. C. §11-201, and in conflict with the discretion granted to the sheriff by I. C. §§11-301 & 11-304 to both marshal, and then to sell, such non-exempt personal property of the debtor as is necessary to satisfy the writ of execution. *See generally, Worley Highway Dist. v. Kootenai County*, 104 Idaho 833, 835, 663 P.2d 1135, 1137 (Ct.App.1983) ("It is a cardinal principle of statutory construction that where possible to do so courts must harmonize and reconcile statutes which apparently conflict.").

The lower court has abused its discretion in setting aside the sheriff's sale as based upon an alleged legal standard not supported by the express language of Idaho's execution statutes. The lower court's order setting aside the sheriff's sale must be vacated and the sheriff's sale fully reinstated.

**e. No established "irregularities" exist within the Execution proceedings and November 13, 2014 Sheriff's Sale which would justify setting the sale aside**

The lower court found no other basis to set aside the sheriff's sale, beyond what has been addressed above. The sheriff was presented with a writ of execution issued against a specifically identified case file, and referencing a "certain judgment" known to be found within that specifically identified case file, in which it remains undisputed there were a series of Instruments found within that case file. No argument has been raised that either of the two "original" judgments, as entered within that specifically identified case file, were not equally susceptible to being levied upon within the scope of the property interests identified by the writ. On this question, I. C. §11-201 sets the benchmark standard that, "All goods, chattels, moneys and other property, both real and personal, *or any interest therein of the judgment debtor*, *not exempt by law or by court order*, and all property and rights of property, seized and held under attachment in the action, are liable to execution." (Emphasis added).

Every creditor right-property interest, as arising out of that specifically identified case file, was an interest encompassed by the writ of execution, and none of the creditor rights contained therein were exempt from execution "by law or court order." Consequently, there was no legal impediment under that writ of execution to prohibit the sheriff from exercising his discretion to levy against all of those creditor rights-property interests as contained within that specifically identified case file, just as his Notice of Levy and Notice of Sheriff's sale so disclosed that he had done. All creditor rights-property interests, including what the lower court has called "two judgments", were levied upon, seized, noticed for sale and sold as being within the case file contents of what was specifically identified as the target case file, levied upon as a single unit advertised as such, and slated to be sold as such as being property interests within a specifically

identified single case file.

In light of these statutory standards, exactly how does this particular matter present a different situation than as does typically arise out of a general execution made upon personal property of a debtor, in which the sheriff has the discretion granted under I. C. §§11-301 & 304 to sell any amount of personal property necessary to satisfy a levy? As a typical example, I. C. §11-605(3) provides an exemption for one motor vehicle, up to a value of $7,000.00. If a writ of execution identified the generic class to attach as referring to "motor vehicle" (in the singular), would that designation preclude the ability of the sheriff, as authorized by statute, to execute against multiple motor vehicles titled to the judgment debtor, that is found to be in excess of the statutory exemption?

Unless exempt *by law or court order,* all personal property of a judgment debtor is susceptible to levy under writ of execution. Any imprecise identify by class or number of the non-exempt property that is otherwise subject to execution does not constitute an irregularity in any aspect of the execution process, and our lower court has not taken any issue with this aspect of the law.

In this case, there it one case file and all of its contents that was being levied upon, advertised, noticed for sale, and to be sold, and if Bergmann wanted any of that process to be addressed differently, she needed speak out and attend the sale. *Her misunderstanding of the law is not an irregularity in the sale process, and her failure to attend will not be allowed to be a basis to set the sale aside. Phillips v. Blazier-Henry, supra,* summarized the applicable analysis:

> This Court has not previously held that gross inadequacy of price, standing alone, provides grounds for setting aside a sheriff's sale. Our decisions have uniformly held that **there must be some irregularity in the sale or other slight additional circumstance**. There was no slight additional circumstance in this case that weighed in favor of setting the sale aside. 154 Idaho at 730, 302 P.3d at 355 (emphasis added).

The sheriff is unconditionally protected by the language in the statute, and the sheriff's office conducted the sheriff's sale in accordance with the execution statutes, and the lower court

cannot disregard the sheriff's discretionary right to sell property interests in question as a single unit or lot rather than dig into a twenty-five year old case file and sell independently and separately various creditor rights-property interests that may be conflicting, confusing, and somewhat uncertain, and for that very reason, there bidding public is told they assume any risk, as the sale is without any warranty or guarantee as to the nature of the interest being acquired through that sale, especially given the overlap and confusion, as expressed previously. The sheriff confirmed he had executed upon ***all*** of the property interests of Bergmann as described within the Sheriff's Return:

> 1.) I received the Writ of Execution on October 9, 2014, and pursuant to said Writ and Instructions from Plaintiff on October 23, 2014, I served a copy thereof with Notice of Levy upon the Ada County Recorder through Gail Garrett, 200 W. Front St., Boise, ID 83702, by recording said documents as Instrument No. 2014-086335 and Instrument No. 2014-086336, AND DID LEVY UPON THE PERSONAL PROPERTY INTERESTS presently claimed by said Sharon K. Smith, as judgment creditor, she holds wherein she is identified and named as the Plaintiff therein, and her former husband, Vernon K. Smith, is named and identified as the Defendant therein, Case No. CV-DR-1990-12684 and that I Noticed the property for Sheriff's Sale scheduled on November 13, 2014.
>
> 2.) That pursuant to Instructions from said Plaintiff on October 23, 2014, I did also serve a copy of those recorded documents upon the Ada County Fourth District Court, through Chelsea Caratinni, Deputy Clerk at 200 W. Front St., Boise, ID 83702.
>
> 3.) That copies of the attached recorded documents, with Claim of Exemption form were mailed to the Defendant on October 24, 2014, at the following address: Sharon K. Smith, 13724 Morning Side St., Nampa, ID, 83651-5091.
>
> 4.) That on November 6, 2014, Sheriff Sale Notices were posted at the following locations: Public Safety Building lobby at 7200 Barrister Dr., Boise, ID 83704; Albertson's lobby at 1520 Cole Rd. Boise, ID 83704; and Fred Meyer's lobby at 5230 W. Franklin Rd., Boise, ID 83705.
>
> 5.) That I attended at the time and place of said Sale and sold the PREVIOUSLY DESCRIBED PERSONAL PROPERTY and rendered the following statement to wit: Judgment amount $173,226.70, interest on Judgment from October 1, 2014 through November 13, 2014, $2,068.19, Sheriff's fees:

(services, return, postings, commission, mailings, and certificate of sale) $187.17, recording fees: Certificate of Sale: $10.00, Sheriff's costs and fees: $197.17, less amount credit bid by Plaintiff: $100.00, amount still owed on Judgment: $175,392.06.

The creditor rights-property interests upon which the sheriff did levy, advertise, notify and declared in his return were all addressed in the plural. The result of this levy and sale was that the Sheriff seized and sold ***all*** of Sharon K. Smith's property interests that arose within the civil proceeding, *Smith vs. Smith*, Case No. CV-DR-1990-12684. Any interested potential bidder, in order to make an informed decision as to whether or not to bid, and in what amount to bid, at that November 13, 2014 sheriff's sale, was adequately notified to inquire from the writ of execution and the notice of sale, the scope and nature of the property interests arising out of the *Smith vs. Smith* civil proceeding, that were being sold – a case file containing various creditor rights-property interests, the reference to which was also recorded with the Ada County Recorder's Office.

I. C. §§11-301 and 11-304, both provide deference to directions as provided by a judgment debtor who is personally present at the sale, as to the order in which the personal property that has been levied upon may be sold. If the judgment debtor is not personally present at the sale, the sheriff is granted the necessary discretion to determine the order of sale, and the amount of property that should be sold in order to satisfy the writ of execution.

On this point *Phillips v. Blazier-Henry, supra,* made the relevant observation that "Chance failed to protect her own interests by submitting a credit bid or attending the sale . . ." 154 Idaho at 730, 302 P.3d at 355, and went on to further observe that one, "who fails to protect its interests in the sale might not find a sympathetic ear in the courts." 154 Idaho at 729, 302 P.3d at 354.

Although Bergmann indicated she did not know what property interest was to be sold at the sheriff's sale, prior to the date of the sale, specific and adequate reference was made to the civil proceeding out of which the creditor rights-property interests to be attached and sold had arisen, receiving the writ, the notice of levy, and the claim forms. The only recognized property interests arising out of that civil proceeding were here creditor rights-property interests, reflecting

judgments and a series of purported renewals. In light of this fact, there is simply no grounds for any claim she misunderstood what case file and what contents was being sold, and to argue otherwise is most disingenuous.

Once again, in *Suchan v, Suchan*, 113 Idaho 102, 741P.2d 1289 (1986), the Court determined that neither gross inadequacy in the sale price, nor any irregularity in the conduct of the sale will be declared *if it is based upon any misunderstanding of one's legal rights*, as such situation does not constitute an irregularity in the conduct of a sheriff's sale. *Suchan* stated the applicable general rule as follows:

> In general, parcels not adapted for separate and distinct enjoyment should be sold as a unit. However, under I.C. § 11-304 if the party directing the order of sale can show in an intelligible manner the particular way in which the property can be profitably sold in parcels, the general rule will not apply and the sheriff must follow his directions. *Gaskill*, 77 Idaho at 432, 292 P.2d at 960; 113 Idaho at 109, 741 P.2d at 1296.

In the absence of any direction from the judgment debtor, this general rule was properly followed by the Ada County sheriff in the conduct of the sheriff's sale in this matter.

The Court again restated the *Suchan* standard in *Safaris Unlimited, LLC v. Von Jones*, 163 Idaho 874, 421 P.3d 205 (2018):

> The *Suchan* Court did not find that the sale price was grossly inadequate but, more relevant to this case, found there was no irregularity in the sale. *Id.* The Court indicated that the judgment creditor's "misunderstanding of her legal rights, though unfortunate, is not an irregularity in the sale itself." *Id.* at 109, 741 P.2d at 1296. The Court also noted that, "[b]y [the judgment creditor's] failure to bid the $100,000 plus interest, [she] did not preserve her judgment lien for this amount." *Id.* at 108, 741 P.2d at 1295.163 Idaho at 885, 421 P.3d at 216.

It simply comes down to this: Bergmann failed to attend the sheriff's sale, and her failure to attend does not constitute any irregularity in the sale. Similar to the situation that was before the Court in *Safaris*, involving the *Sliger litigation*, wherein there were property interest within a single case file then in litigation, and that Sliger litigation file was levied upon, wherein the Jones' interests were contained, and were sold as a single unit for one money, and no irregularity was

identified in the conduct of that sale within the discussion of the *Safaris* court.. The matter was remanded for a determination of "approximate valuation" of the property interests contained within the litigation case file, and the court gave no indication there was to be inferred any irregularity in the sale process, by dicta or otherwise. The Ada County Sheriff performed as permitted by the statute in selling ***all*** of the creditor rights-property interests identified and contained within this specifically identified case file, as a single unit or one lot sale.

In summary, the evidence within the record of this proceeding does not support the existence of any "additional circumstance" or "irregularity" in the conduct of the sheriff's sale to justify setting the sale aside.

In the absence of any irregularity, is there need to get intensely entwined in a debate as to the "adequacy" of the consideration paid at the sale, or even the "approximate value" of the property interests found within the case file, as the standard to be applied in these controversies is that *without* irregularity in the sale, or slight additional circumstances, the court is without authority to invalidate a sheriff's sale. See *Phillips v. Blazier-Henry, supra; Safaris unlimited, supra.*

## V.

## CONCLUSION

For all the reasons stated above, the Order of the lower court, setting aside the sheriff's sale conducted on November 13, 2014, should be vacated and the sheriff's sale fully effectuated and reinstated.

Dated this 15th day of October, 2019.

Vernon K. Smith
Attorney for Plaintiff-Appellant

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 15th day of October, 2019 copy of the foregoing **APPELLANT'S OPENING BRIEF** were served upon the following:

Ronald L. Swafford
Attorney at Law
SWAFFORD LAW, PC
655 S. Woodruff Avenue
Idaho Falls, Idaho 83401
Telephone: 208-524-4002
Facsimile: 208-524-4131
Email: rons@swaffordlaw.com

[ X ] E-filed thru ICourt
[ ] U.S. Mail, postage prepaid
[ ] Hand Delivered
[ ] Overnight Mail
[ ] Facsimile Transmission
[ ] Other _____

Vernon K. Smith
Attorney for Appellant