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Rawson v. Ninth Judicial Dist. Court, 133 Nev. Adv. Op. 44 (June 29, 2017)

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APPELLATE LAW: APPEALING JOINT DEBTOR ORDERS

Summary

The Nevada Supreme Court interpreted the NRS 17.030–17.080 judgment debtor statutes and found: (1) that a joint debtor action gives rise to a final, appealable judgment that precludes review through a petition for extraordinary writ relief; and (2) that the principles governing extraordinary writ relief prevent a petitioner from challenging a void order when the petitioner had the opportunity to appeal the challenged order.

Background

Heli Ops International, LLC (“Heli Ops”) entered into a loan agreement with C4 Worldwide, Inc. (“C4”). Under the loan agreement, Heli Ops agreed to loan \$1 million to C4 to invest in collateralized mortgage obligations (“CMOs”), provided that C4 repay Heli Ops \$20 million plus interest. Rather than investing in the CMOs, C4’s principals, including Chairman and CEO D.R. Rawson, allegedly used the loan money for personal use. Thereafter, C4 defaulted on its loan, leading to a settlement agreement wherein D.R. Rawson acknowledged the \$20 million debt owed to Heli Ops.

When D.R. Rawson defaulted on the settlement agreement, Heli Ops sued. In its suit, Heli Ops named D.R. Rawson, C4, and five others as defendants, but excluded Margaret Rawson (“Margaret”), D.R. Rawson’s wife and Treasurer of C4. Ultimately, D.R. Rawson, C4, and two other defendants failed to defend the suit, leading to a default judgment in Heli Ops favor.

During the collection process, Heli Ops traced part of the loan proceeds to Margaret’s accounts and, therefore, instituted garnishment and joint debtor proceedings against her. The district court, pursuant to NRS 17.040, summoned Margaret to appear and show cause why she should not be bound by the default judgment. Margaret requested garnishment exemptions and moved to quash the summons. However, in a February 2014 order, the district court denied Margaret’s requests and held that she be bound by the default judgment in all respects. Margaret did not appeal.

In February 2015, Margaret filed a bankruptcy petition which stayed enforcement of the default judgment. Nevertheless, the Bankruptcy Court refused to discharge the judgment debt. Approximately one year later, Margaret filed a petition for writ of mandamus with the Nevada Supreme Court challenging the district court’s order that added her as a joint debtor to the default judgment. The Nevada Supreme Court directed Margaret to show cause why the petition should not be denied because the challenged order was a final judgment from which she could have appealed. In response, Margaret argued: (1) that she was not a party to the underlying litigation and, therefore, did not have the right to appeal the district court’s order; and (2) that writ relief was appropriate because the district court’s joint debtor order was void for lack of due process.

¹ By Hunter Davidson.

Discussion

An order resolving a joint debtor proceeding is a final, appealable order, rendering extraordinary writ relief unavailable

“[A] joint debtor action is a new action against the previously unserved joint debtors, independent from the underlying action against the originally served debtors.”² Accordingly, a joint debtor action—as a new, independent action—gives rise to a final judgment that may be appealed by an aggrieved party pursuant to NRAP 3(A)(a) and (b)(1). Generally, this right to appeal is an “adequate and speedy legal remedy” that precludes writ relief.³ Moreover, “writ petition[s] may not be used as a substitute to correct a party’s failure to timely appeal.”⁴

Here, Margaret’s writ petition challenging the joint debtor order fails because Margaret never appealed the order. As a new, independent action, Margaret had the right to appeal the joint debtor order. Margaret did not appeal the joint debtor order, and it would be improper to grant her writ petition as a substitute for her failure to timely appeal.⁵ Therefore, Margaret’s initial argument in favor of the writ petition fails.

We decline to consider a writ petition challenging an allegedly void order when an appeal was available

“[A] party may use an extraordinary writ petition as the vehicle to attack a void order only when extraordinary writ relief is otherwise available.” Still, extraordinary writ relief is not available if the petitioner had the right to appeal the challenged order. In the instant case, Margaret had the right to challenge the district court’s joint debtor order, but failed to do so. Therefore, Margaret may not use a writ petition to challenge the allegedly void order.

Conclusion

Examining the judgment debtor statutes provided in NRS 17.030–17.080, the Nevada Supreme Court held: (1) that a joint debtor action gives rise to a final, appealable judgment that precludes review through a petition for extraordinary writ relief; and (2) that the principles governing extraordinary writ relief prevent a petitioner from challenging a void order when the petitioner had the opportunity to appeal the challenged order. Therefore, the Court denied Margaret’s writ petition.

² NEV. REV. STAT. §§ 17.030–17.080; *see also* 30 Am. Jur. 2d *Executions and Enforcements of Judgment* § 10 (2005).

³ *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

⁴ *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224–25, 88 P.3d 840, 841 (2004); *see also* 52 Am. Jur. 2d *Mandamus* §§ 38, 39 (2011).

⁵ *See id.*