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Leventhal v. Black & Lobello, 129 Nev. Adv. Op. 50 (July 11, 2013)¹

MISCELLANEOUS - CHARGING LIEN, POST JUDGEMENT LIEN

Summary

Whether an order adjudicating an attorney's charging lien, served after the case was over, for fees against his client pursuant to Nev. Rev. Stat. § 18.015 was proper.

Disposition/Outcome

The Court established that a charging lien only attaches when notices are served in a timely manner *before* judgment has been entered and the judgment proceeds have been distributed. Further, a charging lien only attaches to a judgment, verdict, or decree entered, or to money or property recovered in which tangible, affirmative recovery resulted.

Thus, the Court reversed the district court's order adjudicating the attorney's charging lien against his client.

Factual and Procedural History

Black & Lobello (Lobello), a law firm, represented Leventhal in divorce proceedings. In such proceedings, Leventhal sought to enforce a prenuptial agreement that protected his separate property. Leventhal retained most of his separate property and received joint custody of his son upon a final decree of divorce based on a stipulated marital settlement agreement.

Months after the final divorce decree, Leventhal returned to court over a child custody dispute. Leventhal resolved such child custody dispute by stipulation and received joint custody of his child. The stipulated resolution over child custody did not produce any new recovery of money or property.

Although Leventhal compensated Lobello for attorney's fees up to the final divorce decree, Leventhal did not pay for fees charged to litigate the child custody dispute. After resolution of the child custody dispute and eight months after the final divorce decree, Lobello withdrew as counsel, gave notice, and filed a motion to adjudicate and enforce a charging lien for unpaid attorney's fees.

The district court granted the attorney's post-decree motion to adjudicate and enforce a charging lien against his client pursuant to Nev. Rev. Stat. § 18.015. The district court entered personal judgment against Leventhal for \$89,852.69. Leventhal appealed.

¹ By Ivy Hensel.

Discussion

Chief Justice Pickering wrote the opinion of the Court, with Justices Hardesty and Saitta concurring.

Attorneys may obtain and enforce a charging lien against a client's claim or recovery for fees due for services rendered in a case in which the attorney rendered services.²

In order for a court to adjudicate and enforce a charging lien, four requirements must be met.³ First, a claim, cause of action, or demand placed in the care of an attorney by a client must exist.⁴ Second, to perfect the lien, the attorney must serve notice to his or her client and upon the party against whom the client has a cause of action.⁵ Third, the lien must attach "to any verdict, judgment, or decree entered and to any money or property which is recovered...from the time of service of the notices required by this section."⁶ Fourth, the attorney must timely file and properly serve a motion to adjudicate the lien.⁷

The Court interpreted the third requirement to resolve the issues of the case. The Court found that a charging lien cannot attach to the benefit gained by the client in securing dismissal. There must be an affirmative claim to relief of tangible recovery, such as property, money, or other actual proceeds.⁸ Further, an attorney must perfect and serve a charging lien in a timely manner.

The Court found that Leventhal's preservation of his child custody agreement did not constitute a tangible recovery, as it was not an affirmative claim to money or property. Further, Lobello did not attempt to perfect a charging lien until eight months after the divorce decree was entered and the assets were distributed. The Court found that a charging lien could not attach to already distributed assets.

Conclusion

The Court reversed the district court's order adjudicating the attorney's charging lien.

² NEV. REV. STAT. § 18.015 (2011), *Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 532, 216 P.3d 779, 782 (2009).

³ *Schlang v. Key Airlines*, 158 F.R.D. 666, 669 (D. Nev. 1994).

⁴ *Argentena*, 125 Nev. at 534, 216 P.3d at 783.

⁵ NEV. REV. STAT. § 18.015(4) (2011).

⁶ NEV. REV. STAT. § 18.015(3) (2011).

⁷ NEV. REV. STAT. § 18.015(4) (2011).

⁸ *Glickman v. Sherer*, 566 So. 2d 574, 575 (1990).