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Golightly & Vannah, PLLC v. TJ Allen, LLC, 132 Nev. Adv. Op. 41 (Jun. 2, 2016)[1]

LIEN PRIORITY; PERFECTION OF LIEN

Summary

In order for attorneys working on a contingency basis to comply with NRS 18.015(4)'s requirement of perfecting a lien before receiving the funds, the notice of the lien must disclose the agreed upon contingency percentage and also claim court costs and out-of-pocket costs advanced by the attorney in an amount to be determined.

Background

Juan Quinteros was injured during a motor vehicle accident in February 2013. He hired Golightly & Vannah ("G&V") to represent him in his personal injury claim. Golightly & Vannah was to receive 33 percent of Quinteros' recovery. The personal injury claim settled with the insurer for $15,000, which was not enough to cover Quinteros' medical bills which totaled over $34,000 with Renown Regional Medical Center ("Renown") alone. There were at least five other creditors post-settlement, including TJ Allen, LLC. G&V filed an NRCP 22 interpleader, naming themselves as plaintiffs, and Quinteros along with potential creditors as defendants, to determine how the settlement money should be allocated. G&V alleged that it had an attorney lien on the settlement and its lien should take priority.

Renown argued that G&V's lien was not perfected pursuant to NRS 18.015(3) and therefore should be not given priority. After Renown filed its opposition, G&V then sent perfection notices to Quinteros, Renown, Renown's counsel, and TJ Allen. G&V also deposited the settlement funds with the district court. G&V submitted their reply stating that it had perfected its lien and Renown's argument was now moot. The district court found that the perfection notice was untimely because it was filed after a settlement was reached in the underlying case. Because the lien was not perfected, the district court ordered a pro-rata distribution of the settlement: G&V received $1,800; TJ Allen received $975; and Renown received $12,225.

Discussion

The district court did not err in ordering pro-rata distribution because G&V did not perfect its lien until after receiving the settlement funds

G&V argued that it could not perfect the lien before receiving the settlement because the exact amount of the lien would be unknown until after the settlement was reached and all costs could be calculated. Renown claimed that Nevada law requires perfection before the attorney receives the funds.

An attorney lien is only enforceable when it is attached and perfected pursuant to NRS 18.015[2]. The attorney must meet all of the statutory requirements before the lien can be

[1] By Baylie Hellman.

enforced.[3] The Court has previously found that an attorney's lien does not attach to the settlement proceeds if the attorney does not attempt to perfect the lien until after the settlement has been reached and its funds distributed.[4] The problem here arises because it can be impossible for an attorney to know the exact amount of the lien when working on contingency. The attorney's percentage is based upon the ultimate recovery itself. Therefore, in order to comply with both subsections of the statute, attorneys working on a contingency must perfect their lien by disclosing the agreed upon percentage.

NRS 18.015(3) does not require attorneys to state an exact dollar amount for their liens

NRS 18.015(3) requires a lien notice to "stat[e] the amount of the lien," it does not say that an attorney must state a specific dollar amount. Attorneys working on contingency cannot state an exact dollar amount until after settlement or verdict when costs are calculated. Thus, in order for attorneys working on a contingency basis to comply with NRS 18.015(4) the notice of the lien must disclose the agreed upon contingency percentage and claim court costs and out-of-pocket advances in an amount to be determined.

An attorney need not deposit contested funds with the district court so long as the funds remain in the attorney's trust account

G&V argued that requiring an attorney to deposit the contested funds with the district court makes it more difficult for all parties to receive their awards. Previously, the Court held in *Michel v. Eighth Judicial Dist. Court* that in an NRCP 22 interpleader, the attorney must deposit all of the funds to the district court.[5] Here, the Court concluded that the attorney need not deposit the funds so long as the attorney keeps the funds in his or her trust account. By doing so, the attorney is able to distribute the funds according to the court's order with "maximum efficiency."

The district court did not err in denying G&V costs in this case

G&V argued that it had an equitable duty to file the interpleader and therefore should not be forced to bear the entire cost of the action. Under NRS 18.020(3), "costs must be allowed of course to the prevailing party against whom judgment is rendered…[i]n an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500." Here, G&V was not the prevailing party in the interpleader action and is therefore not entitled to costs and fees.

A prevailing party must win on at least one of its claims.[6] In *Close*, the Court held that a party prevailed when it won on its mechanic's lien claim but had its damages reduced significantly by the adverse party's counterclaim.[7] Isbell received net damages significantly less than its award, but still prevailed.[8] G&V did not prevail in the interpleader action. G&V

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[2] Leventhal v. Black & LoBello, 129 Nev., Adv. Op. 50, 305 P.3d 907, 911 (2013).
[3] *Id.* at 909.
[4] *Id.* at 910-11.
[5] Michel v. Eighth Judicial Dist. Court, 117 Nev. 145, 151, 17 P.2d 1003 at 1007 (2001).
[6] Close v. Isbell Constr. Co., 86 Nev. 524, 531, 471 P.2d 257, 262 (1970).
[7] *Id.* at 525, 531, 471 P.2d 258, 262.
[8] *Id.* at 531, 471 P.2d 262.

argued that its lien had priority. Renown argued that the lien was not perfected and therefore had no priority. The district court found in favor of Renown and awarded it a full pro-rata share. Although G&V received some money, it did not prevail on the sole claim of priority and thus did not prevail.[9] Therefore G&V is not entitled to an award of costs.

Conclusion

G&V received the settlement on July 13, 2013 but did not sent the required notices until February 12, 2015. Per NRS 18.015(4), the lien attaches only to funds received after the notices are sent, therefore G&V did not have a priority lien against the settlement funds received before serving the notices. A contingency attorney still has an obligation to follow NRS 18.015(4) and thus must perfect his or her lien by specifying the agreed upon percentage.

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[9] The Court concluded that G&V was not the prevailing party and declined to rule on its argument about whether a prevailing party who seeks an excess of $2,500 but wins less is entitled to costs.