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### Fredianelli v. Price, 133 Nev. Adv. Op. 74. (Oct. 5, 2017) (en banc)

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CIVIL APPEAL: ENFORCEMENT OF RETAINING LIENS

**Summary**

Under NRS 18.015, attorneys are permitted to obtain attorney fees through the enforcement of a retaining lien.<sup>2</sup> If the attorney satisfies all elements of NRS 18.015, then properly moves the district court to enforce the lien, the district court can actively enforce the retaining lien and award the attorney a monetary judgment.

**Background**

Respondent Fine Carmen Price (Fine), represented appellant Kristi Rae Fredianelli (Fredianelli) in a paternity case. After the district court issued the final order in the paternity action, Fine filed a notice of withdrawal as attorney of record. Fine then filed and served a notice of a retaining lien against Fredianelli for \$13,701.82 of unpaid attorney fees. Fine moved the district court to: (1) adjudicate the rights of counsel (2) enforce the attorney’s retaining lien and (3) enter judgment for attorney fees. The district court granted Fine’s motion and enforced the retaining lien, which included awarding Fine with attorney fees.

There was no dispute over the amount of the attorney fees, however Fredianelli argued that the district court erred in enforcing the lien because a retaining lien cannot be reduced to a monetary judgment, there was no recovery on the paternity action to which a lien could attach, and a retaining lien is a passive lien that cannot be enforced by an attorney. Fredianelli appealed the district court order that allowed Fine to collect attorney fees through a retaining lien.

**Discussion**

*The district court did not err by enforcing Fine’s retaining lien against Fredianelli under NRS 18.015*

This case required the Court to analyze the 2013 amendments of NRS 18.015.<sup>3</sup> Prior to the 2013 amendments, only rules regarding charging liens were provided.<sup>4</sup> Retaining liens could not be actively enforced because they were considered a “passive lien.”<sup>5</sup> The 2013 amendments provided a method for attorney to actively enforce retaining liens. First, the attorney must serve notice in writing, in person, or by certified mail and state the amount of the lien.<sup>6</sup> The amount of the attorney fees subject to the lien must be agreed upon.<sup>7</sup> Second, the retaining lien “attaches to any file or other property . . . left in the possession of the attorney by his or her client, . . . from the

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<sup>1</sup> By Tamara Cannella.

<sup>2</sup> NEV. REV. STAT. § 18.015(4)(b).

<sup>3</sup> 2013 NEV. STAT., ch. 79 § 1 at 270–71; S.B. 140, 77th Leg. (Nev. 2013).

<sup>4</sup> See generally *Leventhal v. Black & Lobello*, 129 Nev. 472, 305 P.3d 907 (2013).

<sup>5</sup> *Argentina Consol. Mining Co. v. Jolley Uрга Wirth Woodbury & Standish*, 125 Nev. 527, 533, 216 P.3d 779, 783 (2009).

<sup>6</sup> NEV. REV. STAT. § 18.015(3) (2013).

<sup>7</sup> NEV. REV. STAT. § 18.015(2) (2013).

time of service of the notices required” by NRS 18.015(4)(b).<sup>8</sup> Third, if the above requirements are met, then the attorney must file a motion for adjudication and enforcement of the lien.<sup>9</sup>

The Court rejected Fredianelli’s argument that an attorney cannot actively enforce a retaining lien. Following the plain language of the statute, the Court concluded that all of the elements of NRS 18.015 were fulfilled, therefore Fine’s retaining lien was enforceable. Previous case law’s description of a retaining lien as “passive” does not apply to the new method outlined in NRS 18.015 following the 2013 amendments.

The Court rejected Fredianelli’s argument that affirmative recovery is necessary for a retaining lien to attach. The Court previously held that an attorney cannot enforce a charging lien in a custody case, as there is nothing to which the lien can attach.<sup>10</sup> However, here, the Court found that an affirmative recovery is not required for a retaining lien to attach. Looking at the language of the statute, retaining liens can attach “to any file or other property properly left in the possession of the attorney by his or her client.”<sup>11</sup>

In addition to a plain language analysis, the Court also provided a contextual and legislative history analysis to conclude that a retaining lien can be reduced to a monetary judgment. Since a retaining lien attaches to property left in the attorney’s possession, the Court concluded that this language includes reducing a retaining lien to a monetary judgment. This conclusion was also supported by examining the legislative history of the 2013 amendments. During the hearing on S.B. 140, Thomas Standish, describing the amendments’ effect on behalf of the Senate, contemplated that the court hearing the matter would “interpret how much in fees would be owed fairly by the client, and then enter a judgment if the court saw fit.” Using this contextual analysis, the Court rejected Fredianelli’s argument that a retaining lien cannot be reduced to a monetary judgement under NRS 18.015.

## **Conclusion**

The Court held that district court properly enforced Fine’s retaining lien against Fredianelli. The plain language of NRS 18.015(4)(b) allowed Fine to obtain attorney fees through the enforcement of a retaining lien. The Court affirmed the district court’s order.

HARDESTY, J., with whom PICKERING, J., agreed, dissenting:

Justice Hardesty and Justice Pickering disagreed with the majority’s determination based on a procedural flaw. They found the district court lacked jurisdiction to consider Fine’s motion because it was filed after the final order in the underlying paternity case. They also found that nothing in the 2013 amendments to NRS 18.015 allowed a retaining lien to allow for monetary judgment.

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<sup>8</sup> NEV. REV. STAT. § 18.015(4)(b) (2013).

<sup>9</sup> NEV. REV. STAT. § 18.015(6) (2013).

<sup>10</sup> Leventhal, 125 Nev. at 475, 305 P.3d at 912.

<sup>11</sup> NEV. REV. STAT. § 18.015(4)(b) (2013).