

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS HEATH CONSTRUCTION
COMPANY, A NEVADA CORPORATION; AND
THOMAS HEATH,
Appellants,
vs.
P-C PLUMBING, INC., A NEVADA
CORPORATION,
Respondent.

No. 49354

FILED

OCT 01 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order refusing to release a mechanic's lien, entered after a show cause hearing. Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Appellants Thomas Heath Construction Company and Thomas Heath (collectively Thomas Heath Construction), contracted with respondent P-C Plumbing, Inc., for P-C to perform plumbing work on a residential construction project that Thomas Heath Construction owned. When Thomas Heath Construction failed to pay P-C the contract price that P-C believed it was entitled to, P-C recorded a notice of mechanic's lien against the project. In response, Thomas Heath Construction filed a motion in the district court under NRS 108.2275 requesting an order to show cause why P-C's notice of mechanic's lien should not be released. In its motion Thomas Heath Construction argued that P-C failed to comply with certain statutory requirements for recording a notice of mechanic's lien and that the amount of the notice of the lien was excessive.

After a hearing on Thomas Heath Construction's motion, the district court determined that P-C's notice of mechanic's lien was neither excessive nor frivolous and entered an order refusing to release P-C's notice of mechanic's lien. This appeal followed.

When our review of the documents before this court revealed a potential jurisdictional defect, we directed Thomas Heath Construction to show cause why this appeal should not be dismissed. Specifically, we noted that the challenged order did not appear substantively appealable. Thomas Heath Construction has timely responded to our order to show cause.

The mechanic's lien statute provides that an appeal may be taken from an order entered under NRS 108.2275(6).¹ NRS 108.2275(6) delineates three orders: (1) an order releasing a mechanic's lien and awarding costs and attorney fees to the party challenging the lien, (2) an order reducing the mechanic's lien's amount and awarding costs and attorney fees to the party challenging the lien, and (3) an order awarding costs and attorney fees to the lien claimant for defending a motion brought under that statute.

None of these listed orders describes the order designated in Thomas Heath Construction's notice of appeal. Although that order determined that P-C's lien notice was neither excessive nor frivolous and, consequently, refused to release respondent's lien, the order does not award attorney fees and costs as NRS 108.2275(6)(c) mandates in terms of appealability.² Thus, the challenged order does not constitute an appealable order within the terms of NRS 108.2275(6).

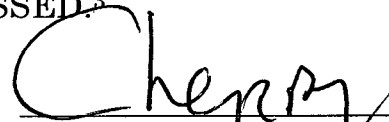
¹See NRS 108.2275(8).

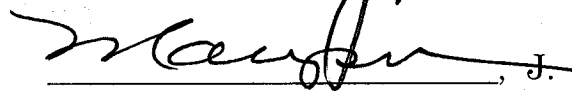
²Indeed, we analyzed a former version of this statute in Crestline Inv. Group v. Lewis, 119 Nev. 365, 75 P.3d 363 (2003). The former provision's language with respect to an award of attorney fees and costs was discretionary, not mandatory. See NRS 108.2275 (1997). We thus noted that "[t]he appealability of these orders does not turn on whether costs and attorney fees are awarded." Crestline, 119 Nev. at 368 n.1, 75

continued on next page . . .

Accordingly, we

ORDER this appeal DISMISSED.³


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

... continued

P.3d at 365 n.1. But the Legislature subsequently amended the statute to make an award of attorney fees and costs mandatory. Accordingly, Crestline no longer applies to orders made under NRS 108.2275(6).

Further, Thomas Heath Construction argues that the district court's order may be construed as awarding \$0 in attorney fees and costs, to fit within the terms of NRS 108.2275(6)(c). But an "award" by its nature constitutes a grant of something. See Black's Law Dictionary 147 (8th ed. 2004) (defining "award" as "[t]o grant by formal process or judicial decree"); Merriam Webster's Collegiate Dictionary 81 (10th ed. 1999) (defining "award" as "to confer or bestow").

³We decline Thomas Heath Construction's request to convert this appeal into a writ proceeding. Although we have rarely treated an appeal as a writ proceeding in the past, we generally have done so only when, by misdirection of this court, the parties otherwise would have been denied of an opportunity to request this court to consider or review a matter. See, e.g., Clark County Liquor v. Clark, 102 Nev. 654, 730 P.2d 443 (1986). Those circumstances are not present here. We note, however, that this appeals' dismissal is without prejudice to Thomas Heath Construction's right to pursue alternative relief by way of a petition for extraordinary writ relief.

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
William F. Buchanan, Settlement Judge
Pezzillo Robinson
Cogburn Law Offices
Eighth District Court Clerk