IN THE SUPREME COURT OF THE STATE OF NEVADA

WAI OI CHAN,
Appellant,
vs.
ELIZABETH ASHLEY D/B/A ASHLEY LAW GROUP
Respondents.

No. 49839

FILED

JAN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order and judgment on an attorney's lien. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Our preliminary review of the docketing statement and documents submitted to this court pursuant to NRAP 3(e) revealed a potential jurisdictional defect: it appeared that the order designated in the notice of appeal is not substantively appealable.[1] In particular, it appeared that the district court's order did not resolve all of the rights and liabilities of all the parties to the underlying action.[2] And it further appeared that no statute or court rule authorizes an independent appeal from an interlocutory order and judgment on an attorney's lien.

[1]See NRAP 3A(b).

[2]See NRAP 3A(b)(1) (providing for appeals from final judgment); Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000) (defining a "final judgment" for purposes of NRAP 3A(b)(1)).

Accordingly, this court ordered appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.[3]

The parties have responded to the show cause order. Appellant argues that this court has jurisdiction on three grounds: (1) the district court has entered an order certifying the order and judgment on the attorney's lien as final under NRCP 54(b) and that order cures any jurisdictional defect, (2) the order and judgment on the attorney's lien is final for purposes of NRAP 3A(b)(1) because respondent is not a party to the district court action and no party other than appellant has an interest in the subject matter of the order and judgment, or (3) this court should "assume" jurisdiction because this case involves a matter of public policy related to the practice of law. Respondent has filed a reply indicating that "[s]hould this Court determine that the NRCP 54(b) certification was proper" and cures the jurisdictional defect, she "has no objection." Otherwise, respondent does not address whether the NRCP 54(b) certification is proper and cures the jurisdictional defect or appellant's argument that the order and judgment is appealable under NRAP 3A(b)(1). Respondent does, however, take issue with appellant's third argument, stating that this court cannot "assume" jurisdiction "where it

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[3]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule); see also Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (stating that although interlocutory order is not independently appealable, it may be challenged in the context of an appeal from the final judgment or order).

would otherwise not exist." We conclude that none of appellant's arguments sufficiently establish that we have jurisdiction.[4]

First, we conclude that NRCP 54(b) certification was not proper. NRCP 54(b) allows the district court to certify as final a judgment that completely removes one or more parties from an action. Here, the order and judgment on the attorney's lien did not remove a party. Appellant remains a party to the pending claims in the district court, and respondent is not a party to the district court action.[5] We therefore conclude that the order and judgment were not properly certified as final under NRCP 54(b).

Second, the order and judgment is not final for purposes of NRAP 3A(b)(1). We have explained that a final judgment for purposes of NRAP 3A(b)(1) is one that disposes of all the issues presented in the case and leaves nothing for future consideration of the court, except certain post-judgment matters.[6] As noted above, the order being appealed does not resolve all of the issues presented in the case and there remain claims pending in the district court. The fact that the order could be characterized as being collateral to the underlying action does not make it

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[4]See Moran v. Bonneville Square Assocs., 117 Nev. 525, 527, 25 P.3d 898, 899 (2001) ("[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.").

[5]Albert D. Massi, Ltd. v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995) (holding that attorney is not a party to former client's action and therefore lacks standing to appeal from an order determining an attorney's lien).

[6]Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

a final judgment for purposes of NRAP 3A(b)(1).[7] We therefore conclude that the order and judgment are not final for purposes of this court's jurisdiction under NRAP 3A(b)(1).

Third, even if a matter involves important issues that might warrant this court's consideration, this court may only exercise jurisdiction as provided by a statute or court rule. In the absence of such authority, this court lacks jurisdiction.[8]

Alternatively, appellant "requests leave to convert this appeal" to a petition for a writ of mandamus or prohibition. Respondent opposes this request on the ground that appellant has not demonstrated that the district court exceeded its jurisdiction. We deny appellant's request to "convert" this appeal into an original writ proceeding without prejudice to appellant's right to file a properly prepared petition for a writ of

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[7]See Alper v. Posin, 77 Nev. 328, 363 P.2d 502 (1961) (stating that there cannot be more than one final judgment in an action); see also State, Taxicab Authority v. Greenspun, 109 Nev. 1022, 1025, 862 P.2d 423, 425 (1993) (declining to adopt "collateral order doctrine" (citing Occidental Petroleum Corp. v. S.E.C., 873 F.2d 325, 328-39 (D.C. Cir. 1989) (explaining that "collateral order" exception to final judgment rule for federal appellate court jurisdiction provides that certain orders that are not final may be appealed as of right if the order is a conclusive determination of the disputed question, resolves an important issue that is completely separate from the merits of the action, and would be effectively unreviewable on appeal from a final judgment))).

[8]Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (stating that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule).

mandamus or prohibition consistent with NRAP 21 and the applicable provisions of NRS Chapter 34.[9]

Having considered the parties' responses to our order to show cause, we conclude that we lack jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Wolfe Thompson
Ashley Law Group
Eighth District Court Clerk

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[9]We express no opinion as to the merits of any petition for extraordinary relief, including whether appellant has a plain, speedy, and adequate remedy at law in the form of an appeal from a final judgment in the underlying action, once the district court has entered one. See Cheung v. Dist. Ct., 121 Nev. 867, 124 P.3d 550 (2005) ("As a writ petition seeks an extraordinary remedy, we will exercise our discretion to consider such a petition only when there is no 'plain, speedy and adequate remedy in the ordinary course of law' or there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration." (footnote omitted) (quoting NRS 34.170 and NRS 34.330)).