

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK OWENS,
Appellant,
vs.
GLENN SCHEPPS, ESQ.,
Respondent.

No. 54745

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order adjudicating an attorney's lien. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

When our review of the documents filed in this matter revealed a potential jurisdictional defect, this court entered an order on February 19, 2010, directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. The February 19 order pointed out that the July 22, 2009, district court order adjudicating the attorney's lien, designated in the notice of appeal, was not independently appealable and that it was unclear whether the district court had entered a final judgment, from which appellant could timely appeal and challenge the interlocutory attorney's lien order. Appellant has filed a response to this court's show cause order and respondent has filed a reply.

In his response, appellant contends that the order adjudicating the attorney's lien is appealable under NRAP 3A(b)(8) as a special order entered after final judgment. According to appellant, the final judgment is the district court's July 23, 2009, order confirming an arbitration award. But as respondent points out, the July 22 order adjudicating the attorney's lien was entered before, not after, the district

court's July 23 order confirming the arbitration award, and thus, the July 22 order cannot constitute an appealable special order entered after final judgment. See Gumm v. Mainor, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (providing that a special order entered after a final judgment is one that affects "the rights of some party to the action," growing out of the final judgment).

And regardless, the July 23 order does not appear to constitute the final judgment in this matter. Instead, the district court's August 20, 2009, order granting a motion to alter or amend its order confirming the arbitration award appears to constitute the final judgment. See 38.247(f); NRS 38.243(1) (providing that, on confirming an arbitration award, the district court "shall enter a judgment in conformity therewith"); Morrell v. Edwards, 98 Nev. 91, 92-93, 640 P.2d 1322, 1324 (1982). As with the July 23 district court order, the district court's August 20 order was entered after the district court's order adjudicating the attorney lien; thus, the attorney's lien order cannot constitute a special order entered after final judgment.

Moreover, even construing appellant's notice of appeal as from the district court's August 20 judgment, in the context of an appeal from which appellant could challenge the interlocutory attorney's lien order, Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998), appellant's notice of appeal is untimely. Written notice of the August 20 order's entry was served by mail that same day. But appellant filed his notice of appeal on October 12, 2009—well beyond the 33-day appeal period. See NRAP 4(a)(1) and 26(c).

Accordingly, as we lack jurisdiction to consider the order adjudicating the attorney's lien, we

ORDER this appeal DISMISSED.¹

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Doug Smith, District Judge
Dana Jonathon Nitz, Settlement Judge
Law Offices of Richard McKnight, P.C.
Leavitt Law Firm
Eighth District Court Clerk

¹As regards appellant's alternative request for leave to file an original petition for extraordinary writ relief, leave is not required. NRAP 21.