IN THE SUPREME COURT OF THE STATE OF NEVADA

MONT E. TANNER, ESQ.,
Appellant,
vs.
DANNY JESKE, SAVANNIA JESKE, A MINOR REPRESENTED BY ATTORNEY GALEN D. SCHUTT,[1]
Respondents.

No. 57300

ORDER DISMISSING APPEAL IN PART AND REINSTATING BRIEFING

This is an appeal from a post-judgment district court order denying appellant's motion to amend the caption and sanctioning appellant.

FACTS

This appeal arises from an attorney fee dispute, which was originally submitted to the fee dispute arbitration committee. The committee awarded appellant attorney fees against respondent Danny Jeske. Appellant filed a motion in the district court to confirm the fee award, naming Jeske, and the district court granted the motion, entering judgment against Jeske on October 12, 2009. To collect on the judgment, appellant attempted to execute a writ of garnishment against Jeske's minor daughter's blocked account in a different district court action, to

[1]The clerk of this court is directed to amend the caption on this court's docket in accordance with this order's caption. Because the order challenged on appeal imposes monetary sanctions against appellant that are payable to attorney Galen D. Schutt, based on his representation of the minor in defending against appellant's motion to include the minor in the judgment entered against respondent Danny Jeske, it appears that the Savannia Jeske and Schutt should be included as respondents in this appeal.

which appellant was not a party. The district court in the case involving the blocked account denied the motion, noting that the minor was not indebted to appellant under the judgment. Appellant then filed a post-judgment motion in the underlying fee dispute case, seeking to amend the caption on the final judgment to include Danny Jeske in his capacity as guardian for his minor daughter and arguing that, although appellant only identified the defendant in the fee dispute as "Danny Jeske," his attorney services were rendered to both Jeske and his minor daughter, and thus the court should grant the motion in equity so that appellant could execute the judgment against the minor's blocked account. On January 13, 2010, the district court denied the motion to amend the caption and granted respondent's countermotion for sanctions, awarding, under NRCP 11, $2,500 in attorney fees payable, to Savannia Jeske's attorney, Galen Schutt, for having to respond to appellant's motion. Appellant then filed a motion to amend the January 13 order and for reconsideration, citing NRCP 59(e) and EDCR 2.24(b). The district court denied appellant's motion, and this appeal followed.

An order denying leave to amend a judgment's caption is not appealable

Perceiving a jurisdictional defect, this court entered an order to show cause, noting that the final judgment in this matter was the October 12, 2009, judgment, which confirmed the fee dispute award and entered judgment against Jeske, and that it appeared that this court lacked jurisdiction over the January 13, 2010, order because no statute or court rule allows for an appeal from an order that denies amendment of a caption on a judgment so that the judgment may be enforced against a party in a different capacity or from an order imposing sanctions. Gumm v. Mainor, 118 Nev. 912, 59 P.3d 1220 (2002) (recognizing that a post-

judgment order must affect rights growing out of the final judgment to be appealable); Taylor Constr. Co., 100 Nev. 207, 678 P.2d 1152 (pointing out that, generally, this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule). It was also unclear whether the motion to amend and for reconsideration tolled the time to appeal, so that the appeal was timely taken from the January 13 order. See NRAP 4(a).

Appellant timely responded, asserting that the January 13 order is appealable as a special order after final judgment that affected his rights incorporated in the October 12 judgment confirming the fee dispute award. Appellant also argues that the portion of the January 13 order awarding $2,500 in attorney fees as a sanction for bringing the motion to amend operated as an offset to the October 12 judgment, effectively reducing his damages award.

As no statute or court rule authorizes an appeal from an order denying leave to amend the caption on a judgment, and the appeal is untimely as to that portion of the order, we conclude that we lack jurisdiction to consider this appeal to the extent that it challenges that portion of the district court's order. NRAP 3A(b); NRAP 4(a); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (noting that this court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule). Accordingly, we dismiss that portion of appellant's appeal.

To the extent that appellant is challenging the portion of the district court's order sanctioning appellant $2,500 in attorney fees under NRCP 11, we conclude that the appeal may proceed on that issue. See NRAP 3A(b)(8); Harrell v. Dixon Bay Transp. Co., 718 F.2d 123, 127 (La.

Ct. App. 1983) (concluding that a motion for reconsideration of a post-judgment order further postponed the commencement of the 30-day appeal period until after entry of the order denying the reconsideration motion, because the post-judgment order represented the first time that appellant was presented with an unfavorable judgment, and the appellant timely filed a motion for reconsideration, effectively asking the district court to alter or amend the post-judgment order). Accordingly, we next consider the merits of this appeal from the sanctions order.[2]

The district court did not abuse its discretion in sanctioning appellant

This court reviews a district court's award of attorney fees as a sanction for an abuse of discretion. Simonian v. Univ. & Com. Coll. Sys., 122 Nev. 187, 196, 128 P.3d 1057, 1063 (2006). Appellant has already filed and served his opening brief and appendix, arguing that the district court based the sanction on an erroneous finding that his motion to amend the caption on the final judgment was devoid of any legal authority and that he was deprived of a reasonable opportunity to respond to

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[2]Our show cause order also directed attorney Schutt to clarify his status as Jeske's counsel in this matter, noting that although Schutt had indicated in a motion to dismiss purportedly filed through "Special Appearance" on behalf of Jeske's minor daughter, that he was not Jeske's counsel in this appeal and did not represent Jeske in the district court, documents before this court appeared to memorialize Schutt's representation of Jeske. This court's order struck the motion to dismiss and explained that if Schutt intended to withdraw his representation of Jeske, he must file a proper motion to do so. Schutt responded, reiterating that he does not represent Jeske and that he only wants to protect the minor's blocked bank account. Although Schutt failed to file a proper motion to withdraw as counsel, it nevertheless appears that Jeske intends to proceed in proper person. Thus, we direct the clerk of this court to remove Schutt and the Herr Law Group as counsel for respondent. Additionally, as respondent is in proper person, no answering brief is due and this matter stands submitted on the opening brief.

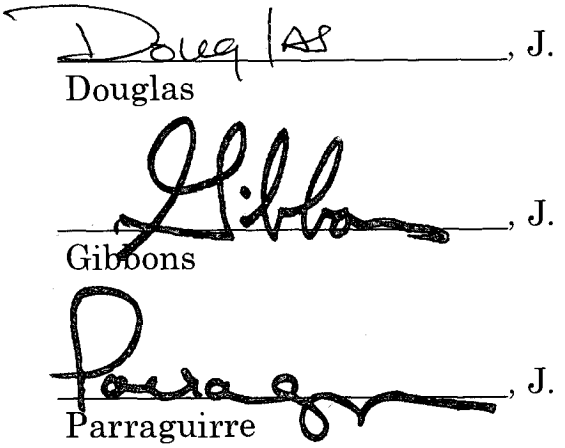
respondent's countermotion for sanctions. Appellant asserts that the countermotion for sanctions did not comply with NRCP 11 requirements, it was untimely filed, and appellant was not served with it until the day before the hearing.

Having reviewed the appendix and considered appellant's arguments, we conclude that the district court acted within its discretion by imposing sanctions against appellant. The countermotion for sanctions was filed two days late under EDCR 2.20(e),[3] however, the district court considered and ruled on it. The certificate of service indicates that the countermotion was served seven days in advance of the hearing and appellant did not file an opposition or a motion to continue based on his arguments that he was not afforded adequate time to respond. Although appellant argues that $2,500 is unreasonable and that monetary sanctions are not allowable when the court finds that the claim is not supported by law, see NRCP 11(b)(2), (c)(2)(A), the district court found that appellant's motion to modify the caption of the final judgment was brought in bad faith, namely, as pointed out in Jeske's countermotion, so that appellant could seek to collect the judgment against Jeske from a minor's blocked account, which was the subject of unrelated litigation, when the minor was not a debtor under the judgment. See NRCP 11(b)(1), (c)(2). The bad faith finding is supported by the record and, when warranted for effective deterrence, sanctions may include an award of all reasonable attorney fees and expenses incurred as a result of the violation. NRCP 11(c)(2). As we

[3]Although appellant argues that the countermotion was filed nine days late, it was two days late under NRCP 6.

perceive no abuse of discretion in the district court's decision to sanction appellant $2,500, we affirm that decision.

It is so ORDERED.[4]



Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Mont E. Tanner
Herr Law Group
Danny Jeske

[4]We have considered appellant's arguments and conclude they lack merit and thus do not warrant reversal.