

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUSTEES OF THE OPERATING  
ENGINEERS PENSION TRUST;  
TRUSTEES OF THE OPERATING  
ENGINEERS HEALTH AND WELFARE  
FUND; TRUSTEES OF THE  
OPERATING ENGINEERS  
JOURNEYMAN AND APPRENTICE  
TRAINING TRUST; AND TRUSTEES  
OF THE OPERATING ENGINEERS  
VACATION-HOLIDAY SAVINGS  
TRUST,  
Appellants,  
vs.  
PEEL BRIMLEY LLP,  
Respondent.

No. 57462

**FILED**

APR 26 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment, certified as final under NRCP 54(b), in an interpleader action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Plaintiff Clark & Sullivan Constructors, LLC, was involved in a federal litigation with non-party X-Treme X-Cavation, Inc. in which a judgment was entered in favor of X-Treme in the amount of \$19,411.07. Before the litigation was reduced to judgment, appellants Trustees of the Operating Engineers Pension Trust, Trustees of the Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers Journeyman and Apprentice Training Trust, and Trustees of the Operating Engineers Vacation-Holiday Savings Trust (collectively, Trusts)

served a writ of execution upon Clark & Sullivan seeking to garnish X-Treme's interest in the litigation. X-Treme's counsel, respondent Peel Brimley, LLP, served Clark & Sullivan with a notice of attorney's lien on X-Treme's interest the day after the Trusts served Clark & Sullivan. Both the Trusts and Peel Brimley assert that their interest has priority. Because of the competing claims to the judgment, Clark & Sullivan commenced this interpleader action.

In the interpleader proceeding, the district court entered summary judgment for Peel Brimley. The district court held that an attorney's lien under NRS 18.015 has priority over a general creditor's lien and awarded Peel Brimley the entire amount of its fee, which is in excess of the notice amount. The Trusts now appeal and argue that the district court erred in concluding that an attorney's lien has priority over a perfected writ of execution, and in awarding Peel Brimley the interpleaded funds in excess of the amount in the notice of attorney's lien.

We, however, do not reach the issues raised by the Trusts, because the Trusts did not properly perfect their writ of execution by serving X-Treme's counsel, Peel Brimley. Therefore, the Trusts have no interest in the judgment and no issue of priority exists for us to consider.

The Trusts assert an interest in the judgment against Clark & Sullivan based on a writ of execution issued by the United States District Court, District of Nevada. They claim to have perfected their interest in the judgment prior to Peel Brimley's perfection of its attorney's lien and, therefore, their interest has priority over Peel Brimley's attorney's lien.

FRCP 71 provides that an order granting relief may be enforced against a non-party using the same procedure for enforcing an order against a party. Under FRCP 69, a money judgment may be

enforced by writ of execution and the enforcing party must comply with applicable state procedural laws unless an applicable federal statute governs. In Nevada, a writ of garnishment<sup>1</sup> may be served on a person in possession or control of personal property of the judgment debtor; however, the judgment debtor must also be served with notice of the writ of garnishment in accordance with NRS 21.075 and 21.076. NRS 21.120. The Trusts did not comply with NRS 21.120, but contend that FRCP 4.1 preempts NRS 21.120 and their writ was perfected because they complied with FRCP 4.1.

FRCP 4.1 states, in relevant part,

Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits.

FRCP 4.1 prescribes who may serve process and where process may be served, but the rule does not indicate the required manner of service or who must be served. Nevada law indicates the required manner of service and who must be served. The Ninth Circuit Court of Appeals has held that state law manner of service requirements are not preempted by FRCP 4.1. Hilao v. Estate of Marcos, 95 F.3d 848, 853-54 (9th Cir. 1996) (noting that the failure to serve a financial institution according to state law rendered the levy ineffective).

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<sup>1</sup>The Trusts' writ of execution is equivalent to a writ of garnishment in this case. Compare NRS 21.120, with FRCP 69 and FRCP 71.

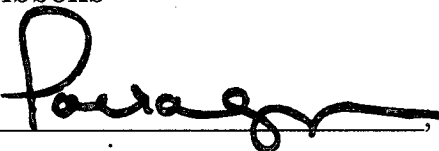
The Trusts' compliance with FRCP 4.1, which requires the United States Marshals Service to serve the writ of execution in place of the sheriff, does not relieve the Trusts from serving the proper parties as required by NRS 21.012, including the judgment debtor or its counsel. Therefore, if the Trusts did not serve X-Treme with notice of the writ of execution, the Trusts will not have a perfected interest in the judgment.

The Trusts have asked that we remand the matter to the district court for a determination on whether the writ of execution was properly served. However, remand is not necessary in this case. While there appears to be a dispute as to whether the United States Marshals served a copy of the notice and writ to X-Treme by mail, it is undisputed that the Trusts did not serve Peel Brimley, X-Treme's counsel. Under NRS 21.076, if the judgment debtor is represented by counsel, the notice and writ must be mailed to the attorney's office. Therefore, the Trusts did not properly serve the writ of execution and do not have a perfected interest in the interpleaded funds. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Timothy C. Williams, District Judge  
Lansford W. Levitt, Settlement Judge  
Laquer, Urban, Clifford & Hodge, LLP  
Peel Brimley LLP  
Eighth District Court Clerk