IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JENNIFER J. ATTON, Appellant, vs. FREDERICK C. FEELEY, Respondent.	No. 72607-COA
JENNIFER J. ATTON, Appellant, vs. MCFARLING LAW GROUP, Respondent.	No. 74818-COA
JENNIFER J. ATTON, Appellant, vs. THRONE & HAUSER; EMILY MCFARLING; AND MCFARLING LAW GROUP, Respondents.[1]	No. 75657-COA

ORDER DISMISSING APPEAL IN PART, REVERSING IN PART AND REMANDING (DOCKET NO. 72607-COA), AFFIRMING (DOCKET NO. 74818-COA), AND DISMISSING APPEAL IN PART AND AFFIRMING IN PART (DOCKET NO. 75657-COA)

Jennifer J. Atton presents these consolidated appeals from various district court post-divorce decree orders. Eighth Judicial District Court, Family Court Division, Clark County; Rena G. Hughes, Judge.

[1]We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

19-21242

The underlying divorce decree required Atton and respondent Frederick C. Feeley to sell their marital residence and split the proceeds, and in the meantime, directed Atton to pay their mortgage. After the decree's entry, Atton's counsel, respondent Emily McFarling of respondent McFarling Law Group (referred to collectively as McFarling) withdrew and recorded a notice of lien for the attorney fees and costs that Atton had incurred. When she was unable to collect from Atton, McFarling moved to adjudicate the lien, arguing that it attached to Atton's share of the proceeds and that the subject attorney fees and costs should be reduced to judgment.

Meanwhile, Feeley's counsel, Dawn R. Throne of respondent Throne & Hauser (collectively referred to as Throne), likewise withdrew. But Throne moved to intervene to enforce the decree, arguing that, because Atton disputed McFarling's claimed attorney fees and costs, Atton failed to make two mortgage payments and execute certain closing documents and thereby prevented Throne from satisfying a confession of judgment that she obtained from Feeley against his share of the marital residence proceeds. Throne also sought attorney fees and costs from Atton for having to bring the motion. Atton opposed McFarling's and Throne's motions and moved for the district court to hold them in contempt.

Following a hearing, the district court entered three orders to address the above motions. In particular, because Atton represented at the hearing that she would submit the fee dispute to the State Bar of Nevada for arbitration, the district court effectively deferred ruling on McFarling's motion, and instead, entered an order on March 9, 2017, directing that Atton's share of the marital residence proceeds be held in a trust pending the fee dispute's resolution (the first March 9 order). The district court also entered a second order on March 9, 2017 (the second March 9 order), that permitted Throne to intervene, directed Atton to execute the closing documents, and provided Feeley a limited power of attorney to do so for

Atton if she refused. That order also directed that Feeley's share of the marital residence proceeds be used to satisfy Throne's confession of judgment against him and that a portion of Atton's share of the proceeds be used to compensate Feeley for the missed mortgage payments and to pay him $500 in attorney fees and costs for Throne having to intervene. Lastly, on March 13, 2017, the district court entered an order that, with the exception of the attorney fees and costs ruling, reproduced the above decisions and further denied Atton's motions to hold McFarling and Throne in contempt. The first and second March 9 orders are the subject of the appeal in Docket No. 72607, and the March 13 order is the subject of the appeal in Docket No. 75657, which is further discussed below.

Atton later commenced a fee dispute arbitration before the Bar, and the arbitration panel determined that, although McFarling's claimed attorney fees and costs were excessive, she was still entitled to a $10,362.15 attorney fees and costs award in addition to what she had already collected from Atton. McFarling moved the district court to reduce the $10,362.15 award to judgment, which the court did on December 14, 2017, despite Atton's opposition, on the ground that she agreed to binding arbitration. That decision is the subject of the appeal in Docket No. 74818.

Atton then moved to stay or set aside all of the decisions referenced above, which the district court denied on March 20, 2018. That decision, along with the March 13 order discussed above, is the subject of the appeal in Docket No. 75657.

Docket No. 72607

To the extent that Atton directs her appeal in Docket No. 72607 at the portions of the March 9 orders that provided for her marital residence proceeds to be held in trust and that permitted Throne to intervene, no statute or court rule authorizes such an appeal. *See* NRAP 3A(b) (listing substantively appealable decisions); *Taylor Constr. Co. v. Hilton Hotels*

Corp., 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984) (explaining that appellate jurisdiction requires a statute or court rule to authorize an appeal); *see also In re Temp. Custody of Five Minor Children*, 105 Nev. 441, 443, 777 P.2d 901, 902 (1989) (stating that temporary orders subject to periodic review are not appealable). Insofar as Atton's arguments are directed at the portions of those orders that granted Feeley a limited power of attorney and directed her to execute closing documents and to compensate Feeley for missed mortgage payments, they are likewise substantively unappealable since they merely enforced the divorce decree. *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (explaining that a post-judgment order must affect a party's rights under the judgment to be appealable as a special order entered after final judgment).

To the extent that Atton also directs this appeal at the portion of the second March 9 order that addressed satisfaction of Throne's confession of judgment, she only argues that she was aggrieved because the court improperly modified the divorce decree. But although Atton contends that the district court modified the decree's provision for her and Feeley to equally split the marital residence proceeds by requiring that those proceeds be used to satisfy Throne's confession of judgment, the second March 9 order only provides for Feeley's share to be used for that purpose. Consequently, Atton failed to demonstrate that the district court's decision in this regard affected her personal or property rights and that she thereby had standing to appeal as an aggrieved party. *See* NRAP 3A(a) (requiring a party to be aggrieved to have standing to appeal a judgment or order); *see also Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (explaining that, for purposes of NRAP 3A(a) a party is aggrieved "when either a personal right or right of property is adversely and

substantially affected"). Thus, given the foregoing, we dismiss Atton's appeal in Docket No. 72607 insofar as it relates to the above decisions.[2]

Atton's appeal in Docket No. 72607 is also directed at the second March 9 order's $500 attorney fees and costs award, which is an appealable determination. *See* NRAP 3A(b)(8) (authorizing appeals from special orders entered after final judgment); *Gumm*, 118 Nev. at 919, 59 P.3d at 1225 (explaining that post-judgment orders awarding attorney fees and costs are appealable under the predecessor to NRAP 3A(b)(8)). And in this regard, Atton is correct to the extent that she argues that Throne could not recover attorney fees for bringing the motion to intervene to enforce the divorce decree on behalf of her firm. *See Dezzani v. Kern & Assocs., LTD.*, 134 Nev. ___, ___, 412 P.3d 56, 63 (2018) (explaining that attorney litigants who proceed pro se cannot recover attorney fees since they do not incur them, but recognizing that, if such litigants incur costs, they may recover them).

But although the second March 9 order's attorney fees and costs award was based on Throne having to move to intervene, the district court made that award to Feeley, not Throne. And the record does not show that Feeley incurred attorney fees and costs in connection with Throne's motion, and neither Feeley nor Throne asserted otherwise below. *See, e.g., Martinez v. Maruszczak*, 123 Nev. 433, 438-39, 168 P.3d 720, 724 (2007) (providing that fact-based decisions supported by substantial evidence are entitled to deference); *see also Sellers v. Fourth Judicial Dist. Court*, 119 Nev. 256, 259, 71 P.3d 495, 498 (2003) (discussing the obligation to pay attorney fees as a prerequisite for an attorney fees award to a prevailing party); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049, 1054 (2015) (requiring a costs award to be based on evidence that the costs were actually

[2]Nevertheless, we consider Atton's arguments on these matters insofar as they relate to the appealable determinations discussed below.

incurred). Thus, the district court abused its discretion in awarding Feeley $500 in attorney fees and costs, *see Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014), and we therefore reverse and remand that portion of the second March 9 order.[3]

Docket No. 74818

Turning to the appeal in Docket No. 74818, Atton extensively challenges the December 14 order reducing the Bar's arbitration award to judgment, along with the district court's related decisions, by attacking its jurisdiction to address McFarling's attorney lien and reduce the Bar's arbitration award for the underlying attorney fees and costs to judgment.[4] Initially, because McFarling assisted Atton in obtaining a one-half interest in the marital residence proceeds and properly served her with a notice of lien before she could recover them, McFarling had an enforceable charging lien. *See* NRS 18.015(1)-(4) (setting forth the elements of an enforceable

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[3]Although this court generally will not grant a pro se appellant relief without first providing the respondent an opportunity to file an answering brief, *see* NRAP 46A(c) (stating the same), based on the record before us, the filing of an answering brief would not aid this court's resolution of these issues, and thus, no such brief has been ordered.

[4]Atton also argues that, because her appeal from the March 9 orders in Docket No. 72607 was pending when the district court entered the December 14 order, it could not hold that the December 14 order replaced the March 9 orders. But the district court only held that the December 14 order replaced the March 9 orders to the extent that they required Atton's marital residence proceeds to be held in trust pending resolution of the fee dispute. And because that decision was not appealable, as discussed above, the district court retained jurisdiction to alter its decision when it entered the December 14 order despite the appeal in Docket No. 72607. *See Knox v. Dick*, 99 Nev. 514, 516, 665 P.2d 267, 269 (1983) ("An appeal from a non-appealable order does not divest the trial court of jurisdiction."); *see also Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006) (explaining that "the district court retains jurisdiction to enter orders on matters that are collateral to and independent from [an] appealed order").

charging lien); *see also Leventhal v. Black & LoBello*, 129 Nev. 472, 477-78, 305 P.3d 907, 910-11 (2013) (explaining that charging liens attach to money or property obtained with an attorney's assistance, provided that the money or property is recovered after the client is served with notice of the lien). And given that McFarling had an enforceable charging lien, the district court could properly consider related issues, since it had jurisdiction "to enforce or determine the validity of the . . . lien" and to protect McFarling from "any attempt improperly to defeat the lien." *Earl v. Las Vegas Auto Parts, Inc.*, 73 Nev. 58, 62, 307 P.2d 781, 783 (1957); *see also Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 532-33, 216 P.3d 779, 782-83 (2009) (discussing the jurisdictional bases for the district court to consider charging liens), *superseded in part by statute*, 2013 Nev. Stat., ch. 79, § 1, at 271, *as recognized by Fredianelli v. Fine Carman Price*, 133 Nev. 586, 588-89, 402 P.3d 1254, 1256 (2017).

In this regard, the district court did not run afoul of *Argentena*, 125 Nev. at 540-41, 216 P.3d at 787-88, which explained that, even when an attorney has an enforceable charging lien, the district court should not summarily adjudicate an attorney-client fee dispute if it is based on allegations of legal malpractice. Indeed, although Atton's fee dispute with McFarling involved allegations of legal malpractice, the district court did not adjudicate that matter, as the court permitted Atton to submit the dispute to the Bar. And because Atton executed the Bar's binding arbitration form and does not dispute that McFarling did the same, the subsequent arbitration award was final and binding, such that the district court could reduce it to judgment given its jurisdiction to enforce McFarling's charging lien. *See* State Bar of Nevada Dispute Arbitration Committee Rules of Procedure XII(B) (providing that, when both parties to a fee dispute consent to binding arbitration, then the resulting award may

be enforced by a court of competent jurisdiction). Consequently, we affirm the December 14 order.

Docket No. 75657

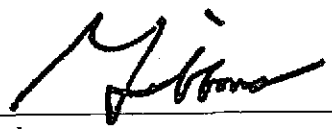
In Docket No. 75657, Atton directs her appeal, in part, at the March 20, 2018, order, which, among other things, denied her amended motion to set aside the March 9 and 13 and December 14 orders.[5] Initially, in seeking to set aside these orders, Atton presented argument below regarding the validity of McFarling's attorney lien and the district court's jurisdiction to reduce it to judgment. On appeal, to the extent Atton challenges the propriety of the district court denying her motion by attacking factual findings in the March 20 order that are unrelated to these issues, we discern no basis for relief since the court did not rely on them, and she did not seek to set aside the court's orders based on the issues underlying those findings. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

As to Atton's remaining challenges to the March 20 order, she has not demonstrated a basis for relief. Indeed, despite Atton's assertions to the contrary, the record reflects that McFarling properly served her via certified mail, return receipt requested, with a notice of attorney lien. *See* NRS 18.015(3) (providing that a charging lien is perfected when an attorney serves the client, either personally or via certified mail, return receipt requested, with a notice of lien). And although Atton argues that the notice was improper because McFarling's claimed attorney fees and costs exceeded those that were reduced to judgment, her argument fails since NRS

[5]Although Atton also challenges portions of the March 13 order that echoed the March 9 orders, we dismiss those challenges for lack of jurisdiction for the same reasons set forth in our discussion of her challenges to the March 9 orders in Docket No. 72607.

18.015(3) requires that the notice of lien state the amount of the claimed lien rather than an accurate prediction of what the attorney will be entitled to after resolution of any fee disputes. Thus, while Atton disputes whether McFarling had a valid lien and whether the district court had jurisdiction to reduce the underlying attorney fees and costs to judgment, her arguments fail for the same reasons discussed in the context of her appeal in Docket No. 74818. Consequently, we conclude that Atton failed to demonstrate that the district court abused its discretion in denying her motion to set aside its prior orders and affirm that decision. *See Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (recognizing the district court's broad discretion to resolve NRCP 60(b) motions).

It is so ORDERED.[6]



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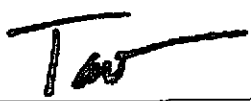

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cc: Hon. Rena G. Hughes, District Judge, Family Court Division
Jennifer J. Atton
Frederick C. Feeley
McFarling Law Group
Throne & Hauser
Eighth District Court Clerk

[6]We conclude that Atton's remaining arguments either do not warrant relief or need not be addressed given our disposition of these appeals.