

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL B. BARBER,

Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CARSON CITY; AND THE
HONORABLE JAMES TODD RUSSELL,
DISTRICT JUDGE,

Respondents,

and

JOHN COCKERILL, INDIVIDUALLY,
Real Party in Interest.

No. 81333-COA

FILED

OCT 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges a district court's order denying a motion to set aside an order purporting to temporarily lift a previously adjudicated attorney's lien.

Petitioner Joel B. Barber represented real party in interest John Cockerill in the underlying divorce proceedings. After entry of the divorce decree, Barber withdrew from the matter and filed a motion in the district court for adjudication of his attorney's lien. Cockerill did not oppose the motion, and the district court granted it and ordered Cockerill to pay Barber over \$10,000 in legal fees. Later, Cockerill filed an ex parte "motion to lift attorney's lien" requesting that the district court temporarily lift Barber's adjudicated lien so that Cockerill could pursue a fee dispute before the State Bar of Nevada's Fee Dispute Arbitration Committee. The district court initially declined to grant Cockerill's motion and directed Barber to

respond to it within five days, but the court ultimately determined that Barber failed to timely respond, and it granted the motion as unopposed.

Shortly thereafter, Barber opposed Cockerill's motion on its merits and sought relief from the district court's order under NRCP 60(b), contending that the district court miscalculated the time allowed for Barber to respond and thereby prematurely granted Cockerill's motion. After considering the briefing of both parties, the district court denied Barber's request for NRCP 60(b) relief in a written order and reaffirmed its prior decision. Although the district court agreed with Barber that it entered the prior order prematurely, it concluded that Cockerill was nevertheless entitled to the relief he requested in his motion "based on the facts at hand." This petition followed.¹

In his petition, Barber initially argued that the district court essentially set aside his previously adjudicated attorney's lien under NRCP 60(b)(1) without conducting the requisite analysis under *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982), *overruled in part by Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997), and that this court should therefore issue a writ of mandamus directing the district court to vacate its order granting Cockerill his requested relief. However, after this court directed Cockerill to file an answer to Barber's petition, the district court entered an order clarifying its reasoning, and it submitted that order to this court. In that order, the district court stated that it temporarily lifted the adjudicated attorney's lien because Cockerill's

¹Although Barber styled his petition as one for mandamus or prohibition, in the petition, he requests only a writ of mandamus. Accordingly, we construe Barber's petition solely in terms of that remedy.

proffered reasons for disputing Barber's fees were persuasive and warranted further investigation by the State Bar.

Treating the district court's submission as an answer to his petition, Barber filed a responsive reply, but that filing was rejected on grounds that Cockerill had not yet filed an answer. After Cockerill filed his answer,² Barber filed an untimely reply and a contemporaneous motion under NRAP 26(b)(1) requesting that this court extend the time allowed for Barber to file the reply. We grant Barber's unopposed motion and have considered his reply in resolving this matter.³ In the reply, Barber maintains that the district court's order lifting the attorney's lien—even if temporary in nature—constitutes an improper set aside under NRCP 60(b) and lacks any legal basis.

Because Barber is not a party to the underlying divorce proceedings, his petition for extraordinary writ relief is a proper vehicle for the instant challenge. *See Albert D. Massi, Ltd. v. Bellmyre*, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995) (holding that an attorney is not a party to his client's case and therefore lacks standing to appeal from a determination concerning his attorney's lien such that writ relief is appropriate). A writ

²Although we have considered Cockerill's answer, his arguments therein pertain primarily to the facts of the underlying fee dispute and do not address the legal propriety of the district court's order lifting Barber's attorney's lien.

³In his motion, Barber requested that this court consider not only his reply to Cockerill's answer, but also his earlier reply to the district court's submission to this court. However, because that filing was rejected, and because Barber did not thereafter resubmit it to this court, we have not considered it. Regardless, Barber indicated in his motion that after Cockerill filed his answer, Barber simply added to the original reply and resubmitted it as his reply to Cockerill's answer.

of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

At the outset, we note that the district court did not identify any clear basis in law for its decision to temporarily lift the adjudicated attorney's lien, nor have we discovered any such basis in our own research. Thus, we evaluate the district court's decision in terms of what it actually did, not how it was labeled. See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994). To the extent the district court's order granted Cockerill relief from Barber's lien under NRCP 60(b), we review decisions concerning such relief for an abuse of discretion. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). Moreover, to the extent the district court's order constituted a stay of the proceedings concerning Barber's attorney's lien or of the enforcement of the lien pending review by the State Bar of Nevada, we likewise review such decisions for an abuse of discretion. See *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 640, 289 P.3d 201, 205 (2012); *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973); see also NRCP 62(b) (providing that, "[o]n appropriate terms for the opposing party's security, the court may stay execution on a judgment" pending resolution of certain post-judgment motions). However, we review questions of law de novo. *Soro v. Eighth Judicial Dist. Court*, 133 Nev. 882, 885, 411 P.3d 358, 361 (Ct. App. 2017) (reviewing a question of law de novo in the context of a writ petition).

All of the parties concede that Cockerill could not have initiated a fee dispute with the State Bar without obtaining some form of relief from the adjudicated attorney's lien. See State Bar of Nevada Dispute Arbitration Committee Rule of Procedure III(C)(1) (providing that the committee does not have jurisdiction over "[d]isputes regarding which a complaint and/or motion to determine the fee has been previously filed with a court of competent jurisdiction - unless the issue of fees is requested by that court to be handled by the Fee Dispute Committee").⁴ And because the district court determined that further investigation of Cockerill's allegations was warranted based in part upon its own observations of Barber's conduct in the divorce proceedings, it purported to temporarily lift the adjudicated lien to allow Cockerill to proceed before the State Bar. However, in doing so, the district court did not fully address the extent to which the issue of Barber's fees had already been litigated in the context of the motion for adjudication of his attorney's lien. See NRS 18.015(6) (providing that the court shall, upon a lien-holding attorney's motion, adjudicate the rights of the attorney and the client and enforce the lien). Indeed, although the district court expressly stated that it was not "question[ing] the legitimacy" of Barber's lien, it did not make any findings under NRCP 60(b) or otherwise explain why Cockerill was entitled to any

⁴Although the rule provides that the district court may request that the State Bar handle the fee dispute even after a motion concerning the dispute has been filed, the district court did not make any such request at the time Barber filed his motion and instead proceeded to adjudicate Barber's lien. Nothing in the rule indicates that the district court may thereafter request that the State Bar handle a dispute that has already proceeded to adjudication and remains adjudicated.

form of relief, even though it had previously granted Barber's motion for adjudication of the lien and Cockerill had failed to oppose it.


The lack of findings or explanation on this point is notable, as the order adjudicating Barber's lien remains a valid court order. And as noted above, all of the parties concede that the State Bar would not have any power to consider the fee dispute so long as the order adjudicating the lien remained in effect. Accordingly, merely staying the proceedings or enforcement of the lien without setting the order adjudicating the lien aside would not allow Cockerill to circumvent the binding legal effect of that order. *See* 1A C.J.S. *Actions* § 308 (2020) ("A stay of proceedings is an extraordinary or provisional remedy that [merely] delays the award of a permanent remedy . . ."). The district court was therefore mistaken in its belief that it could afford Cockerill the right to proceed before the State Bar by temporarily lifting the adjudicated lien, rather than setting the order adjudicating it aside in its entirety.

Because the district court did not actually set the order adjudicating Barber's lien aside, it likewise failed to articulate any basis for doing so under NRCP 60(b). And because staying the proceedings or enforcement of the lien could not bring about the district court's intended result, the district court also failed to identify any proper basis for a stay. Accordingly, the district court abused its discretion in granting Cockerill his requested relief, *see Cook*, 112 Nev. at 181-82, 912 P.2d at 265; *see also Aspen*, 128 Nev. at 640, 289 P.3d at 205, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

district court to vacate its orders granting Cockerill relief from the order adjudicating Barber's attorney's lien.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Bittner Legal LLC
John Cockerill
Carson City Clerk

⁵We take no position regarding the merits of the underlying fee dispute or whether Cockerill may have any valid basis for obtaining relief from the order adjudicating Barber's lien.