

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM H. ASKWITH,  
Appellant,

vs.

VICTOR LEE MILLER,  
Respondent.

No. 37897

WILLIAM H. ASKWITH,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
MARK W. GIBBONS, DISTRICT  
JUDGE,

Respondents,

and

LAW OFFICES OF VICTOR LEE  
MILLER,

Real Party in Interest.

No. 38210

FILED

DEC 12 2002

JAMES H. BROWN  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND  
ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person appeal and this original proper person petition for a writ of mandamus arise out of a district court order enforcing an attorney's lien, entering judgment for attorney fees and costs, and disbursing money to the attorney.<sup>1</sup> On April 5, 2001, the district court entered a written order granting attorney Victor Lee Miller's motion to enforce attorney's lien, denying William H. Askwith's countermotions to strike and for sanctions, directing Miller to return the defendants'

<sup>1</sup>We direct the clerk of this court to correct the caption on this court's docket in No. 38210 to conform with the caption on this order.

judgment check and the defendants to deposit a new check with the County Clerk, and ordering the County Clerk to disburse \$48,433.79 to Miller. The court ordered Miller to pay outstanding \$500 and \$1,350 medical liens from this sum, and to keep \$46,583.79 in full satisfaction of his lien. After Askwith timely filed a notice of appeal from the order, he twice asked Miller to surrender his case file so that he could prepare for the appeal. Miller refused, demanding \$300-400 in estimated photocopying costs and a \$250 deposit to begin copying. Askwith then filed this writ petition.<sup>2</sup>

The appeal challenges the propriety of the lien adjudication and disbursement of the judgment proceeds to Miller. The writ petition seeks to compel Miller to surrender the original case file, without additional expense, and to compel the district court to release the remaining judgment funds.<sup>3</sup>

Docket No. 37897 (appeal). We have reviewed the district court record and the documents submitted by Askwith, and we conclude that the district court did not abuse its discretion or otherwise err in entering the order adjudicating Miller's lien. Under NRS 18.015, Miller had a lien for the agreed-upon fee, which attached to the judgment and the

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<sup>2</sup>Although appellant/petitioner was not granted leave to file papers in proper person, see NRAP 46(b), we have considered all documents received from him. We deny as moot appellant's motion to expedite.

<sup>3</sup>We note that documents appended to a motion received in the appeal show that, in January 2002, the district court granted Askwith's motion to release the remainder of the judgment funds to him and that Askwith received a district court check for \$45,559.04, which he endorsed "under-duress." To the extent that the writ petition seeks to compel the release of these funds it is moot.

money recovered from the defendants. Miller perfected his lien in accordance with statutory requirements, and the district court adjudicated the lien as required by NRS 18.015(4). Miller supported his \$46,583.79 request with a copy of the fee agreement signed by Askwith, which provided for a contingent fee in the amount of forty percent of all money collected should the suit not be settled before trial, plus costs, expenses and disbursements to be deducted after calculation of the contingent fee. Forty percent of the \$93,992.83 deposited with the court is \$37,597.13. Miller submitted a client ledger summary showing costs, expenses and disbursements totaling \$8,986.66. Accordingly, we affirm the order adjudicating Miller's lien and disbursing judgment funds to him.

Docket No. 38210 (writ petition). This court may issue a writ of mandamus to compel the performance of an act that the law especially enjoins as a duty resulting from an office, trust or station, if petitioner has no plain, speedy and adequate remedy in the ordinary course of law.<sup>4</sup>

It appears that Miller has a duty to surrender Askwith's file to him. An attorney's retaining lien attaches to his client's documents, papers, property and so forth in his possession, and gives the attorney the right to retain these items until all costs and charges against his client are paid,<sup>5</sup> while a statutory charging lien attaches to any judgment, and money or property recovered.<sup>6</sup> Here, all costs and charges against Askwith were satisfied from the judgment, and Miller's retaining and

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<sup>4</sup>NRS 34.160; NRS 34.170.

<sup>5</sup>Morse Et. Al. v. District Court, 65 Nev. 275, 195 P.2d 199 (1948).

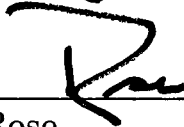
<sup>6</sup>Id.; NRS 18.015.

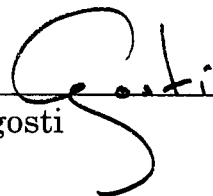
charging liens were both extinguished. Miller has no right to retain any documents, papers or property belonging to or prepared for Askwith.<sup>7</sup>

It also appears, however, that Askwith has a legal remedy precluding writ relief. He may file a motion in the district court for an order directing Miller to produce his case file.<sup>8</sup> Accordingly, we deny the petition for a writ of mandamus.

It is so ORDERED.

 \_\_\_\_\_, C.J.  
Young

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Agosti

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<sup>7</sup>See SCR 166(4) (providing that, upon termination of representation, a lawyer shall surrender papers and property to which the client is entitled); NRS 7.055(1) (providing that an attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client).

<sup>8</sup>See NRS 7.055(2) (authorizing a client who, after demand and payment of fees does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property, to obtain an order for the production of these items by a motion filed after at least 5 days' notice to the attorney, and further providing that if the court finds the attorney has withheld the client's items without just cause, the attorney is liable for costs and attorney fees).

cc: Hon. Mark W. Gibbons, District Judge  
William H. Askwith  
Victor Lee Miller  
Perry & Spann/Las Vegas  
Clark County Clerk