

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC A. POSIN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
NANCY M. SAITTA, DISTRICT JUDGE,
Respondents,

and

CHRISTENSEN LAW OFFICES,
CHTD.,
Real Party in Interest.

No. 38386

FILED

JUL 16 2003

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

KIMBERLY RHUDE,
Appellant,

vs.

CHRISTENSEN LAW OFFICES,
CHTD.,
Respondent,

No. 38416

ORDER GRANTING PETITION FOR WRIT OF MANDUMUS
(DOCKET NO. 38386) AND ORDER DISMISSING APPEAL
(DOCKET NO. 38416)

This is a writ petition and consolidated appeal challenging a district court order adjudicating an attorney lien. Appellant Kimberly Rhude retained respondent Christensen Law Offices to represent her in a personal injury action. Christensen drafted a fee agreement which Rhude signed. The fee agreement provided for a contingency fee in the amount of "40% of all monies so recovered, or offered, after the filing of a lawsuit herein." Subsequently, the amount was modified from forty percent to thirty-three and one-third percent. The fee agreement further provided, if

Rhude terminated Christensen's services prior to final settlement or recovery, that:

[Christensen] shall be granted a lien upon said file and any subsequent settlement or recovery thereunder in an amount equal to the reasonable value of [Christensen's] services plus costs and advances, together with interest at the rate of 12% per annum. If [Christensen] ha[s] obtained a judgment or an offer of settlement on behalf of [Rhude], the reasonable value of [Christensen's] services shall be deemed to be the same as the contingent fees stated above.

During Christensen's representation, a settlement offer was made in the amount of \$850,000.00.

Eventually, Rhude discharged Christensen and retained petitioner Eric Posin. Posin and Rhude entered into a retainer agreement, providing for a contingency fee in the amount of forty percent. Christensen filed a notice of attorney lien and a motion to enforce the lien, seeking \$286,079.95 for fees and costs plus interest at a rate of twelve percent per annum.

While Posin represented Rhude, the parties agreed to a structured settlement in the amount of \$1,960,146.30. Two days later, Christensen filed a notice of an amended attorney lien for fees and costs, seeking \$656,128.72 plus interest at a rate of twelve percent per annum. When the district court heard the motion, Rhude argued equitable estoppel should preclude Christensen from changing its position and increasing its attorney lien.

The district court entered an order granting the motion to enforce the attorney lien, awarding Christensen a quantum meruit award of thirty percent and Posin ten percent of the \$1,960,146.30 settlement.

The district court found Rhude's equitable estoppel argument lacked merit.

Thereafter, Posin petitioned this court for extraordinary writs of certiorari, mandamus, and/or prohibition, requesting that this court: (1) enter an order vacating or reversing the district court's order; and (2) instruct the district court to award Christensen \$283,333.33 in attorney fees and \$2,746.62 in costs;¹ or (3) in the alternative, reduce the amount of fees awarded. Rhude appealed from the order adjudicating the attorney lien.

Rhude's Appeal

Only an aggrieved party may appeal from an adverse decision.² "A party is 'aggrieved' within the meaning of NRAP 3A(a) 'when either a personal right or right of property is adversely and substantially affected' by a district court's ruling."³

We conclude Rhude lacks standing to appeal because she was not an aggrieved party. Regardless of how the district court adjudicated the attorney lien, Rhude would have been required to pay a total of forty percent in attorney fees. Thus, we dismiss Rhude's appeal.

¹Posin does not contest the district court's award of costs to Christensen in the amount of \$2,746.62.

²See NRAP 3A(a); Albert D. Massi, Ltd. V. Bellmyre, 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995).

³Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)).

Posin's Writ Petition

Because an attorney representing a client is not a party to the action and does not have standing to appeal an order determining an attorney lien, the proper recourse for such an attorney is through a petition for extraordinary writ.⁴ Petitions for extraordinary relief are addressed to the sound discretion of this court, and generally may only issue when there is no plain, speedy, and adequate remedy at law.⁵

Posin first argues writ relief is warranted because the fee agreement unambiguously provides that Christensen is entitled to attorney fees in the amount equal to the contingency percentage of the last offer of settlement obtained by Christensen. Christensen argues the district court correctly interpreted the fee agreement.

"The question of the interpretation of a contract when the facts are not in dispute is a question of law," and this court reviews the interpretation of a contract de novo.⁶ When a document is clear on its face, it will be construed from the written language and enforced as written.⁷ When a contract is ambiguous, it will be construed against the drafter.⁸ NRS 18.015(1) provides, in pertinent part, that an attorney lien

⁴See Albert D. Massi, Ltd., 111 Nev. at 1521, 908 P.2d at 706.

⁵See NRS 34.330; State v. Dist. Ct., 116 Nev. 953, 957, 11 P.3d 1209, 1211 (2000).

⁶Grand Hotel Gift Shop v. Granite St. Ins., 108 Nev. 811, 815, 839 P.2d 599, 602 (1992).

⁷Ellison v. C.S.A.A., 106 Nev. 601, 603, 797 P.2d 975, 977 (1990).

⁸Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994).

is “for the amount of any fee which has been agreed upon by the attorney and client.”⁹

After reviewing the fee agreement, we conclude the language is unambiguous. Even if it were ambiguous, we construe the agreement against the drafter, Christensen. The fee agreement provides, when Christensen has obtained an offer of settlement and Rhude has subsequently discharged Christensen, Christensen is entitled to the reasonable value of its services. The reasonable value of its services is defined as the contingent fees agreed upon, which was thirty-three and one-third percent of all monies recovered or offered after the filing of a lawsuit.¹⁰

We conclude that Christensen is entitled to thirty-three and one-third percent of \$850,000.00, which was the highest amount of monies offered to Rhude during Christensen’s representation. Thus, we conclude Christensen is entitled to \$283,333.33 in attorney fees. We note that Christensen filed his original lien in the amount of \$283,333.33 in attorney fees.

Lastly, Posin argues that equitable estoppel should apply to preclude Christensen from receiving an award of fees in excess of the amount sought in its original lien. Christensen argues the district court did not err in finding the equitable estoppel argument without merit.

Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good conscience, the party should not be

⁹NRS 18.015(1).

¹⁰Id.

allowed to assert because of his conduct.¹¹ The defense of estoppel requires a clear showing that the party relying upon it was induced by the adverse party to make a detrimental change in position, and the burden of proof is upon the party asserting the estoppel.¹² Whether these elements are present, so that the doctrine of equitable estoppel should be applied, depends upon the particular facts and circumstances of a given case.¹³

In this case, the district court found the equitable estoppel argument was without merit. Although Posin and Rhude entered into a fee agreement on February 21, 2001, Christensen did not assert or discuss its attorney lien with Posin until February 26, 2001, when it sent a letter to Posin. Because Posin agreed to represent Rhude with the knowledge that Christensen had previously represented her, prior to finding out the amount of Christensen's attorney lien, we conclude inducement and detrimental reliance cannot be shown. Thus, we conclude the district court did not err in finding the equitable estoppel argument to be without merit.

CONCLUSION

We dismiss the appeal. We grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order adjudicating an attorney lien and issue an order


¹¹Nevada State Bank v. Jamison Partnership, 106 Nev. 792, 799, 801 P.2d 1377, 1382 (1990).


¹²Id.

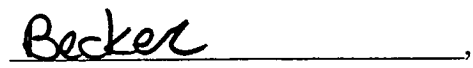
¹³Cheger, Inc. v. Painters and Decorators, 98 Nev. 609, 614, 655 P.2d 966, 999 (1982).

awarding Christensen \$283,333.33 in attorney fees and \$2,746.62 in costs plus interest at a rate of twelve percent per annum.¹⁴

It is so ORDERED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Bible Hoy & Trachok
Beckley Singleton, Chtd./Las Vegas
Clark County Clerk

¹⁴A writ of mandamus is available to control an arbitrary or capricious exercise of discretion. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).