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IN THE SUPREME COURT OF THE STATE OF NEVADA

REZA ZANDIAN, A/K/A
GOLAMREZA ZANDIANJAZI, A/K/A
GHOLAM REZA ZANDIAN, A/K/A
REZA JAZI, A/K/A J. REZA JAZI,
A/K/A G. REZA JAZI, A/K/A
GHONOREZA ZANDIAN JAZI, an
individual,

Supreme Court Case No. 82559
District Court Case No. 09OC005791B

PETITION FOR REHEARING

Appellant,

vs.

JED MARGOLIN, an individual,

Respondent.

_____ /

Appellant, Reza Zandian, A/K/A Golamreza Zandianjazi, A/K/A Gholam Reza Zandian, A/K/A Reza Jazi, A/K/A J. Reza Jazi, A/K/A G. Reza Jazi, A/K/A Ghonoreza Zandian Jazi (“Appellant” and/or “Zandian”), by and through his attorneys, Mark Forsberg, Esq. and Oshinski & Forsberg, Ltd., hereby files his Petition for Rehearing (“Petition”) as follows:

SUMMARY OF ARGUMENT

This Petition seeks rehearing by this Court of its Order Dismissing Appeal filed February 16, 2022. This Petition is filed timely in accordance with NRAP 40.

Appellant brought his appeal under NRAP 3A(b)(8). The Order Dismissing Appeal, expressly relying on *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002), concluded that the appeal should be dismissed because the order appealed from did not affect “the rights of some party to the action, growing out of the judgment previously entered.” The Court stated that “Accordingly, post judgment orders do not affect rights already incorporated in a judgment are not appealable as SOAFJs.” In reaching this result, the Court expressly considered Respondent Margolin’s right to execute on his default judgment that arose from the judgment itself but fails to assess Appellant Zandian’s right to have any lien arising out of the judgment perfected in strict accord with NRS 17.150(4). This conclusion overlooks the central holding of *Gumm v. Mainor* that to be appealable under NRAP 3A(b)(8), the order appealed from must affect the rights of *some party* to the appeal. Thus, the order dismissing the appeal misapplies *Gumm v. Mainor*. Moreover, this reasoning then applied in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007) and *Worsnop v. Karam*, 458 P.3d 353 (Nev. 2020), this Court would have dismissed both of those appeals on jurisdictional grounds because both appeals concern themselves solely with post judgment execution procedural matters required by statute and not on the rights of

either party based solely on the judgment itself. Appellant respectfully urges that this result is incorrect and that Appellant's appeal should not have been dismissed.

ARGUMENT

Gumm v. Mainor is the dispositive case and provides the proper analysis for whether a special order after final judgment establishes the jurisdiction of this court to hear an appeal. The issue there, as here, whether the special order after judgment affected the rights of a party that had been established by the judgment. In *Gumm*, more specifically, the question was the interpretation of this Court's statement in *Wilkinson v. Wilkinson*, 73 Nev. 143, 145, 311 P.2d 735, 736 (1957) that such an appeal "must affect the rights of the *parties* growing out of final judgment." (Emphasis added.) The *Gumm* court clarified that the post judgment order need not affect the rights of both parties under the judgment, but only some party under the judgment. Therefore, in *Gumm*, where the subject of the appeal would have affected one but not both parties to the appeal and thus would not have qualified as a basis for jurisdiction under *Wilkinson*, the court held that the correct interpretation of the rule is that jurisdiction arises if the appeal of the special order after judgment affects the rights of any party.

Here, while the Court expressly recognized that the rights of the Respondent were rooted in the judgment itself, it failed to consider or address the rights of the Appellant to the benefits of NRS 17.150(4) and to the strict application of the

mandatory timing requirements set forth therein for the perfection of a lien, which, in itself, is a necessary prerequisite to execution on the judgment. Argument on this subject was presented in Appellant's Opening Brief, Argument, Sections B and C, pp. 9-19 and his Reply Brief, Argument, Section A, pp. 2 *et seq.*

It seems beyond dispute that this appeal affects the rights of the Respondent, Margolin. If successful, it would ultimately deprive him of the right to execute on the judgment at all because of his failure to strictly comply with NRS 17.150(4). That in itself is an effect on the rights of at least one party to the appeal and establishes the jurisdiction of this Court under NRAP 3A(b)(8). But the appeal also plainly affects the rights of Appellant Zandian, irrespective of the substance of the judgment itself. As set forth in the Opening Brief, Argument, Section C, beginning at p. 17, Zandian is entitled to strict compliance with NRS 17.150(4), a process which would render the district court's order enabling the execution on the judgment erroneous and the lien void as having not been perfected in accordance with the statute.

Unlike this case, cases post-dating and relying upon the holding in *Gumm* in which this Court has dismissed appeals have turned only on whether the special order after judgment affected the specific rights of a party under the terms of judgment rather than, for example, merely delayed or reapportioned the judgment rights. Thus, in *Murray v. A Cab Taxi Serv. LLC*, No. 81641, 2020 WL 6585946

(Nev. November 9, 2020) (order dismissing appeal), cited by this Court in its order dismissing Zandian's appeal, the Court dismissed the appeal because the district court's post judgment order did not alter the amount of the appellant's judgment or distribute any portion of the judgment to other parties, nor did it reduce respondent's liability or obligations under the judgment, but only stayed the enforcement proceedings during the pendency of the appeal. Therefore, in that case, the rights of either party were not affected by the appeal, and it was dismissed. Here, in contrast, if successful, this appeal would eliminate Zandian's obligations under the judgment entirely because the lien to enforce it was never perfected, therefore also affecting the rights of Respondent Margolin.

In *Davidson v. Davidson*, 382 P.3d 880, 882 (Nev. 2016), the court found that it had jurisdiction to consider an appeal under NRAP 3A(b)(8) where the district court denied the appellant's claim for one-half of the equity in marital property, and thus affected the appellant's rights "growing out of the judgment previously entered." Similarly, this appeal affects the rights to both parties growing out of the judgment previously entered, and the court therefore has jurisdiction.

This Court implicitly recognized its jurisdiction over an appeal challenging the process used in executing on a judgment in the seminal case cited in Appellant's opening and reply briefs: *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007). In *Leven*, the appellant did not challenge the validity of the underlying judgment, just

as Zandian does not do so here. Rather, the appellant in *Leven* argued that the judgment could not be enforced because the judgment creditor had not properly renewed the judgment in strict compliance with a statute. Had the court in *Leven* applied the reasoning this Court relied upon in dismissing Zandian’s appeal, it would not have reached the substance of the appeal and would simply have dismissed it for lack of jurisdiction because, as here, the appeal did not change the rights of either party established by the judgment itself, which was not being challenged. Similarly, the appellant in *Worsnop v. Karam*, 458 P.3d 353 (Nev. 2020), the challenged post judgment order denied a motion to set aside a renewed judgment and to declare void an expired judgment, and the court took jurisdiction of the appeal notwithstanding the fact that it did not alter the rights of the parties established by the judgment itself. Had this Court treated the *Worsnop* appeal as it did Zandian’s appeal here, it would have dismissed the appeal for lack of jurisdiction on the ground that the appellant’s “right to execute on his default judgment arises from the default judgment itself, not the subsequent enforcement order.” Here, Zandian’s challenge is to the subsequent enforcement order, not the default judgment itself.

Finally, it is respectfully urged that this Court bear in mind that the issue raised in Zandian’s appeal has been presented to the Court of Appeals but not decided. In *Secured Holdings, Inc. v. Eighth Judicial Dist. Court of State*, (Nev. App. 2017, No. 73158), the Court of Appeals was presented the issue raised by Zandian: whether a

judgment creditor's lien-related claims should be dismissed because the failure of the judgment creditor to file an affidavit of judgment at the same time it recorded the judgment, as required by NRS 17.150(4). That case came before the Court of Appeals on a writ rather than an appeal. The Court of Appeals did not reach the issue because it could not establish a clear statutory duty to dismiss the case on those grounds and therefore determined that writ relief was not available. The appeals court invited the writ petitioner to raise the issue on appeal, again suggesting that a challenge to a post-judgment execution process is a special order after final judgment appealable under NRAP 3A(b)(8). However, the issue has not subsequently been decided by either the Court of Appeals or this Court. The opinion in *Secured Holdings* identifies no jurisdictional issues that would be raised as a result of its statement that writ petitioner could bring issue be brought before the court on appeal, and further suggests that there is no jurisdictional bar as a result of NRAP 3A(b)(8).

This Court's previous dismissal of a Zandian appeal is distinguishable from this appeal because of the nature of the order appealed from. In its order dismissing appeal filed March 4, 2016 in case No. 69372, the Court concluded that it did not have jurisdiction because an order by the district court setting a debtor's examination was not appealable as a special order after final judgment since the order did not affect the rights of either party arising out of the judgment. In contrast, the challenged order here, because it was entered without requiring strict compliance

with statutory procedures, affects the rights of both parties, as set forth above. The disposition of this appeal will inevitably affect the rights of one, if not both, the parties.

CONCLUSION

For the above reasons, Appellant respectfully requests that this appeal be reheard. It is difficult to conceive of a procedural posture in which an appellant could challenge post judgment orders with regard to execution on judgments given the reasoning of the Court in the Order Dismissing Appeal. If, as the Court of Appeals has held, an aggrieved party cannot obtain writ relief from a judgment lien not perfected in accordance with NRS 17.150(4), and this Court lacks jurisdiction if the rights of the parties set forth in the judgment itself are not modified, a party wishing to challenge an improperly perfected lien on the basis of the statute would have no remedy at all, a result inconsistent with the Court's previous jurisprudence.

Dated this 3rd day of March, 2022.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg, Esq.
Mark Forsberg, Esq., NSB 4127
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE PURSUANT TO RULES 40 AND 40A

1. I hereby certify that this Petition for Rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1. This Petition for Rehearing has been prepared using Microsoft Word with a Times New Roman font (proportional spacing) with a 14 point font size.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 40 or 40A because it does not exceed 10 pages.

Dated this 3rd day of March, 2022.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg, Esq.
Mark Forsberg, Esq. NSB 4265

CERTIFICATE OF SERVICE

I certify that and that on March 3, 2022, I filed a true and correct copy of the foregoing **Petition for Rehearing** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

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