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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3)
4 KRISTI RAE FREDIANELLI,)

5 Appellant,)

6 v.)

7)
8 SEBASTIAN MARTINEZ,)

9 Respondent.)
10)

Electronically Filed
Nov 17 2016 08:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 69992
District Court No. D373016

11 **APPELLANT'S REPLY BRIEF**

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TABLE OF CONTENTS

	Page
STATEMENT OF THE ISSUES(S) PRESENTED FOR REVIEW.....	2
ARGUMENT.....	2-4
CONCLUSION.....	4-5
CERTIFICATE OF COMPLIANCE.....	5-6
CERTIFICATE OF SERVICE.....	6

I. ISSUE IN REPLY BRIEF: A RETAINING LIEN DOES NOT FURNISH THE BASIS FOR A MONETARY JUDGMENT.

II. ARGUMENT

In this case, the District Court had the ability to enforce a retaining lien, but not enter a monetary judgment based upon a retaining lien. As stated in Respondent’s Answering Brief, *Leventhal*¹ was decided after NRS 18.015(1)(b) came into effect. This fact, specifically the timing of *Leventhal*, strengthens Appellant’s argument, not weakens it as Respondent asserts.

Respondent asserted a retaining lien only, and requests this Court to hold that a retaining lien filed after the *Leventhal* decision trumps *Leventhal* and provides a vehicle by which a retaining lien is expanded to create a monetary judgment. Respondent fails to offer any statutory support or case authority to

¹ *Leventhal v. Black & LoBello*, 305 P.3d 907, 909 (Nev. 2013).

1 support her position. Instead, Respondent merely offers a historical timeline and
2 inexplicably notes that *Leventhal* was decided after NRS 18.015 added section (1)
3 (b), which provides for a retaining lien. Pursuant to section 4 of NRS 18.015, the
4 lien “attaches to any verdict, judgment or decree entered and to any money or
5 property which is recovered on account of the suit or other action,” and pursuant to
6 section 6 of NRS 18.015, “On motion filed by an attorney having a lien under this
7 section, the attorney's client or any party who has been served with notice of the
8 lien, the court shall, after 5 days' notice to all interested parties, adjudicate the
9 rights of the attorney, client or other parties and enforce the lien.
10
11

12 Subsection 6 of NRS 18.015 does not provide that a retaining lien may be
13 reduced to a monetary judgment when nothing was recovered, and *Leventhal*
14 bolsters Appellant’s argument. The District Court is not statutorily empowered to
15 enforce a retaining lien by entering a monetary judgment.
16

17 While the Respondent is free to use those remedies available to creditors, *Leventhal*
18 is controlling and not relied upon in error by Appellant. As this Court held in *Leventhal*,
19 at 909:
20

21 Nevada attorneys have all the usual tools available to creditors to recover
22 payment of their fees. For example, a law firm can sue its client and obtain a
23 money judgment for fees due, thereby acquiring, if recorded, a judgment lien
24 against the client's property. NRS 17.150(2). An attorney also has a passive
25 or retaining lien against files or property held by the attorney for the client.
See Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury &
Standish, 125 Nev. 527, 532, 216 P.3d 779, 782 (2009). Finally, in an

1 appropriate case, an attorney may assert a charging lien against the client's
2 claim or recovery under NRS 18.015. *Id.*; see NRS 18.015(5) (“Collection of
3 attorney's fees by a [charging] lien under this section may be utilized with,
4 after or independently of any other method of collection.”).”

5 If Respondent is holding files or property, she is free to retain them. However,
6 the perfection of a retaining lien does not render *Leventhal* inapplicable and a
7 retaining lien does not empower a District Court to enter a monetary judgment. No
8 monetary recovery was obtained in the underlying action and there was nothing for
9 a retaining lien to attach to, other than papers and files left in the attorney’s
10 possession.

11 **III. CONCLUSION**

12 Appellant respectfully requests that this Honorable Court find that the District
13 Court erred by entering a money judgment/lien against Appellant in a paternity
14 action involving custody and visitation issues upon which no lien could attach,
15 after the final entry of a custodial/visitation order and that pursuant to the
16 foregoing this Honorable Court remand the matter for proceedings consistent with
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2 its orders, and for any further relief that is warranted.

3 Dated this 14th day of November 2016.

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14 **CERTIFICATION PURSUANT TO NRAP 28A**

15 I, Patricia A. Marr, Esq., certify pursuant to NRAP 28A:

- 16 1. That I have read this brief;
- 17 2. That to the best of my knowledge, information and belief, the brief is not
- 18 frivolous or interposed for any improper purpose, such as to harass or to
- 19 cause unnecessary delay or needless increase in the cost of litigation; and
- 20 3. That this brief complies with all applicable Nevada Rules of Appellate
- 21 Procedure, including the requirement of Rule 28(e) that every assertion in
- 22 the briefs regarding matters in the record be supported by a reference to the
- 23 page of the appendix where the matter relied on is to be found.
- 24 4. That this brief complies with NRAP 32 (a) (5) in that it is in 14 Point Times
- 25

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2 New Roman Font, and is less than 14 pages.

3 Dated this 14th day of November, 2016.

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16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that a copy of the foregoing *Appellant's Reply Brief*
18 was sent by first class mail, postage prepaid, to the following parties on the 10th
19 day of November, 2016.

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