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Elizabeth A. Brown  
Clerk of Supreme Court

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

10 \* \* \*

11 EDWARD N. DETWILER,

12 Appellant,

13 v.

14 BAKER BOYER NATIONAL BANK, a  
15 Washington corporation,

16 Respondent.

Supreme Court Case No.: 81594

District Court Case No.: A-17-760779-F

17 **APPELLANT'S OPPOSITION TO MOTION TO DISMISS APPEAL**

18 **HUTCHISON & STEFFEN**

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27 *Attorney for Appellant,*

28 *Edward N. Detwiler*

1                   **APPELLANT’S OPPOSITION TO MOTION TO DISMISS APPEAL**

2                   Appellant Edward N. Detwiler (“Mr. Detwiler” or “Appellant”) hereby opposes Respondent  
3 Baker Boyer National Bank’s (“Bank” or “Respondent”) Motion to Dismiss Appeal. This  
4 Opposition is based on the exhibits attached hereto and the Memorandum of Points and Authorities  
5 which follows, all of which demonstrate that this appeal should not be dismissed, as Mr. Detwiler  
6 has standing to bring this appeal and this Court has jurisdiction to hear it.

7                   **MEMORANDUM OF POINTS AND AUTHORITIES**

8                   **I. INTRODUCTION AND STATEMENT OF FACTS**

9                   The trial court, Honorable Richard Scotti (“Trial Court”), issued an Order on January 9, 2019  
10 (“January 2019 Order”) regarding the twenty vehicles at issue (the “Vehicles”), which the  
11 Respondent sought to obtain in order to partially satisfy its Judgment against judgement debtor Mr.  
12 Foust (“Judgment Debtor” or “Foust”). The Vehicles were found to be in the possession and control  
13 of Foust. During later proceedings, Mr. Detwiler was subpoenaed and sanctioned by the Trial Court  
14 under EDCR 7.60, despite never being named as a party. *See* EDCR 7.60 (“The court may . . .  
15 impose upon an **attorney or a party** all [authorized and reasonable] sanctions.”) (emphasis added).  
16 Specifically, on March 23, 2020, the Trial Court entered an Order and Judgment against Mr.  
17 Detwiler in the amount of \$318,855.52 (the “Contempt Order”). *See* Exhibit 1. Mr. Detwiler  
18 appealed the Contempt Order to this Court (Supreme Court Case No. 81017), and this Court entered  
19 an Order Dismissing Appeal on May 5, 2020 (the “May 5<sup>th</sup> Order”). *See* Exhibit 2.

20                   Critically, this Court’s May 5<sup>th</sup> Order found that: (1) Mr. Detwiler was not a party to the  
21 underlying trial-court action, (2) the Contempt Order was not appealable nor a final judgment, and  
22 (3) the Contempt Order did not affect the judgment rights or liabilities of a party to the action. *Id.*

23                   Now, despite this Court’s finding that the Contempt Order did not “resolve any issues in the  
24 case . . . [or] any garnishment or similar claims against appellant,” *see id.* at pp. 2–3, the Trial Court  
25 has gone a step farther by entering a “Charging Order against all Nevada Limited Liability Company  
26 Membership Interests of Edward N. Detwiler” (the “Charging Order”) on July 6, 2020. *See* Exhibit  
27 3. The Charging Order specifically states that it is a post-judgment order to enforce the Contempt  
28 Order for the full judgment of \$318,855.52 and it directs all “Nevada limited liability compan[ies]

1 in which Edward N. Detwiler has an interest . . . to immediately direct all membership distributions  
2 otherwise due to Edward N. Detwiler to be made directly to Baker Boyer National Bank.” *Id.* at pp.  
3 1–2. Further, the Charging Order prohibits distributions “to any other person or entity any  
4 membership distributions . . . due to Edward N. Detwiler . . . [or] third-party creditors of Edward N.  
5 Detwiler.” *Id.* at p. 2. Finally, the Charging Order directs all “Nevada limited liability compan[ies]  
6 in which Edward N. Detwiler has an interest . . . to disclose (a) any and all agreements controlling  
7 the interest of Edward N. Detwiler in said companies . . . and (b) any and all records . . . that concern  
8 the amounts that would otherwise be distributed to Edward N. Detwiler by the respective company.”  
9 *Id.* at p. 2.

10 The Bank has brought the present Motion to Dismiss Appeal, arguing that (1) the Charging  
11 Order is not appealable, (2) Mr. Detwiler lacks standing, and (3) this Appeal is Moot. In doing so,  
12 the Bank represents that this Court “does not seem to have had the occasion to consider the  
13 appealability of a charging order.” *See* Motion at p. 6. As noted below, this is patently untrue, as  
14 the Court has considered charging-order appeals on several occasions. Further, the Bank makes  
15 several scandalous and untrue intimations regarding Mr. Detwiler. For example, the Bank claims  
16 that, during a hearing on November 5, 2018, “the district court ruled that . . . Detwiler lied repeatedly  
17 under oath and had attempted to fraudulently transfer the vehicles.” *See* Motion at p. 3. Yet, when  
18 examining the Trial Court’s actual findings, the Trial Court never ruled or held such. *See* Motion  
19 at Exhibit 1. Further, at other places in its Motion, the Bank makes transparently false statements.  
20 *See, i.e.,* Motion at p. 3 (stating that Mr. Detwiler “participated in all proceedings in a representative  
21 capacity,” despite the fact that Mr. Detwiler was not represented by an attorney during such  
22 proceedings); p. 4 (referring to Detwiler’s previous testimony during certain proceedings as a  
23 “ruse”). The Bank’s numerous, inaccurate assertions made in an attempt to smear Mr. Detwiler –  
24 including the Bank’s oft-repeated falsehoods that Mr. Detwiler was ever found to have committed  
25 fraud, which he was not – are false, but also irrelevant to the instant motion, and will not be  
26 addressed here further except that they are flatly denied by Mr. Detwiler.

27 After everything is said and done, Mr. Detwiler is the subject of the Bank’s exclusive remedy  
28 to execute on Mr. Detwiler’s stake in various limited-liability companies (the “LLCs”). Further,

1 despite charging orders being limited to executing judgments on member's interests under NRS  
2 86.401(1), and despite the Bank never having obtained "advance approval of the discovery  
3 commissioner" to issue a subpoena, in violation of AO 20-17 and NRCP 45, the Charging Order  
4 directs the subject LLCs to turn over documents. In sum, the Bank and the Trial Court are (1)  
5 violating Mr. Detwiler's due-process rights by effectuating a taking of Mr. Detwiler's property  
6 without naming him as a party or allowing him to defend himself with the normal mechanisms of  
7 civil procedure, and (2) abusing the procedure defined under NRS 86.401(1).

## 8 **II. LEGAL ARGUMENT**

### 9 **A. The Charging Order is Appealable under Nevada Law**

#### 10 *1. Charging orders are appealable special orders under NRAP 3A(b)(8)*

11 Contrary to the Bank's assertions, a charging order is appealable as a "special order entered  
12 after final judgment." NRAP 3A(b)(8). To be appealable, such an order "must be an order affecting  
13 the rights of some party to the action, growing out of the judgment previously entered . . . [and] must  
14 be an order affecting rights incorporated in the judgment." *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d  
15 1220, (2002) (relying on NRAP 3A(b)(2)); *see also Peck v. Crouser*, 129 Nev. 120, 125 n. 3 295  
16 P.3d 586, 588 n. 3 (2013) (noting that, since *Gumm* was decided, NRAP 3A(b)(8) was enacted and  
17 "[n]o substantive alteration was made to NRAP 3A in the 2009 amendment").

18 This Court has previously considered appeals from charging orders. Most notably, in *Tupper*  
19 *v. Kroc*, this Court found that, because the debtor failed to "either limit the charging order or prevent  
20 the sale of [the debtor's] interest" and because the debtor "did not appeal from [the charging] order  
21 [within 30 days]," the debtor was "estopped to question the propriety of the charging order." 88  
22 Nev. 146, 151–52, 494 P.2d 1275, 1278 (1972); *see also Weddell v. H2O, Inc.*, 128 Nev. 94, 97,  
23 271 P.3d 743, 745 (2012) (reversing the "district court's judgment relating to the scope of the  
24 charging order against [the debtor's] membership interests"); *Topol v. First Indep. Bank of Nev.*,  
25 130 Nev. 1255, at \*2 (Nev. May 30, 2014) (unpublished disposition) (considering whether the  
26 "district court improperly entered a charging order against [the debtor's] interest in an LLC");  
27 *Becker v. Becker*, 131 Nev. 857, 858, 362 P.3d 641, 642 (2015) (responding to a certified question  
28 and considering whether a debtor's "economic interest can still be subject to the charging order

1 remedy” when the debtor “exempt[s] his stock in [certain listed] corporations”).

2 Here, the subject Charging Order is appealable as a special order. First, the order affects the  
3 rights of a party to the action. While not a named party, the Trial Court has clothed Mr. Detwiler  
4 with the status of a party by issuing the Charging Order. *See, supra*, subsection A. Alternatively,  
5 Mr. Detwiler’s due process rights were violated by not naming him as a party, which grants him  
6 party status for purposes of this appeal. *Id.* Further, this Court has previously considered appeals  
7 brought regarding charging-order issues. *Id.* The Bank and Trial Court should not be permitted to  
8 avoid appeal of the Charging Order merely by refusing to name Mr. Detwiler as a party.

9 Second, the Charging Order grows out of a previous judgment entered by the Trial Court.  
10 In fact, the Charging Order recognizes such: “Whereas, on or about March 30, 2020, the Court  
11 entered a judgment in favor of plaintiff Baker Boyer National Bank and against Edward N. Detwiler  
12 in the amount of \$318,855.52, with post-judgment interest continuing to accrue.” *See* Exhibit 3 at  
13 p. 1. While it is true that this Court’s May 5<sup>th</sup> Order found that the Contempt Order was not a final  
14 judgment, the Trial Court is nevertheless treating the Contempt Order as if it were a final judgment.  
15 Critically, the Charging Order acts as a final enforcement mechanism of the Contempt Order and  
16 leaves virtually no room to Mr. Detwiler to challenge either the Charging Order or the Contempt  
17 Order at the district-court level. Rather, the Bank and the Trial Court have skirted the issue of  
18 naming Mr. Detwiler as a party or allowing Mr. Detwiler the usual civil proceedings before (1)  
19 entering a judgment against Mr. Detwiler; and (2) executing such judgment against his interest in  
20 various LLCs.

21 *2. The Charging Order is final because it resolves all of the issues regarding Mr.*  
22 *Detwiler’s interests and because it is the Bank’s exclusive remedy*

23 Alternatively, the Charging Order is a final judgment pursuant to NRAP 3A(b)(1). The  
24 Charging Order “disposes of all the issues presented in the case, and leaves nothing for the future  
25 consideration of the court, except for post-judgment issues such as attorney’s fees and costs.” *See*  
26 *Lee v. GNLV Corp.*, 116 Nev. 424, 426 996 P.2d 416, 417 (2000).

27 The Bank cites a few nonbinding cases from outside jurisdictions concerning the  
28 appealability of charging orders. This case law is misleading and irrelevant since, as noted above

1 in subsection B(1), *supra*, this Court has considered appeals from charging orders on a number of  
2 occasions. Still, even considering nonbinding cases, other jurisdictions have noted that charging  
3 orders may be final judgments. *See Keeler v. Acad. of Am. Franciscan History, Inc.*, 943 A.2d 630,  
4 656 (Md. Ct. Spec. App. 2008) (finding a charging order was a final judgment because, under  
5 Maryland law and contrary to other jurisdictions, “[a] charging order constitutes a lien on the  
6 judgment debtor’s transferable interest in the partnership” and the charging order directed the  
7 payment of money); *Steinberg v. Rand, Jack M. Sanders Family Ltd. P’ship v. Roger T. Fridholm*  
8 *Revocable, Living Tr.*, 434 S.W.3d 236, 242 (Tex. Ct. App. 2014) (finding that a “trial court’s  
9 [charging] order is only appealable if it operates as a mandatory injunction . . . [by] resolv[ing]  
10 property rights and impos[ing] obligations on the judgment creditor or interested third parties”).  
11

12 Here, the Charging Order is the Bank’s exclusive remedy against Mr. Detwiler’s interest in  
13 limited-liability companies. *See* NRS 86.401(2)(a) (stating that a charging order “[p]rovides the  
14 exclusive remedy by which a judgment creditor . . . may satisfy a judgment out of the member’s  
15 interest of the judgment debtor . . . and no other remedy may be ordered by a court”). By definition,  
16 then, once a charging order is issued, there are no issues left to resolve, as the court can issue no  
17 remedy against a member’s interest in an LLC other than through the charging order. Further,  
18 because there should have been an independent action for the collection of this judgment against  
19 Mr. Detwiler, *see Callie v. Bowling*, 123 Nev. 181, 186 n. 10, 160 P.3d 878, 881 n. 10 (2007), the  
20 Charging Order represents the final judgment against Mr. Detwiler’s interests, similar to the  
21 procedure in a garnishment proceeding. *See Rawson v. Ninth Judicial Dist. Court*, 133 Nev. 309,  
22 396 P.3d 842 (2017) (finding that “garnishment proceedings are independent from the underlying  
23 action and that the resulting judgment in favor or against the garnishee defendant constitutes a final  
24 judgment in the garnishment proceeding”).  
25  
26

27 Finally, unlike other jurisdictions (which the Bank cited in its Motion), the Charging Order  
28 acts as a mandatory injunction and as a lien against Mr. Detwiler’s property interests. *See* Exhibit

1 (directing the LLCs to pay, “under penalty of contempt,” distributions to the Bank that would  
2 otherwise be due to Mr. Detwiler). Presumably, the nature of Nevada’s charging orders is the  
3 precise reason why this Court has previously reviewed charging orders. *See Tupper v. Kroc*, 88  
4 Nev. 146, 494 P.2d 1275 (1972); *Weddell v. H2O, Inc.*, 128 Nev. 94, 271 P.3d 743 (2012); *Topol v.*  
5 *First Indep. Bank of Nev.*, 130 Nev. 1255 (Nev. May 30, 2014) (unpublished disposition); *Becker v.*  
6 *Becker*, 131 Nev. 857, 362 P.3d 641 (2015).

7  
8 **B. Mr. Detwiler has Standing to Appeal**

9 The very purpose of a charging order is to charge an underlying judgment against the  
10 defendant/judgment debtor’s interest in a limited-liability company. *See* NRS 86.401(1) (“On  
11 application . . . by any judgment creditor of a member, the court may charge the member’s interest  
12 with payment of the **unsatisfied amount of the judgment** with interest.”) (emphasis added). This  
13 Court has found that judgments cannot be collected against nonparties absent an independent action:  
14 “[W]henever a judgment creditor seeks to collect on a judgment from a nonparty, the judgment  
15 creditor must file an independent action.” *Callie v. Bowling*, 123 Nev. 181, 186 n. 10, 160 P.3d  
16 878, 881 n. 10 (2007); *see also DeMaranville v. Emp’rs Ins. Co. of Nev.*, 135 Nev. 259, 268 448  
17 P.3d 526, 534 (2019) (rejecting a nonparty’s proposition that it was deprived of due process because  
18 the nonparty had standing as a respondent); NRCP 71 (“When an order . . . may be enforced against  
19 a nonparty, the procedure for enforcing the order is the same as for a party.”). If an independent  
20 action is not filed against the nonparty for collection purposes, the nonparty’s due process rights are  
21 violated. *Callie*, 123 Nev. at 182, 160 P.3d at 879.

22 In its May 5<sup>th</sup> Order, this Court held that Mr. Detwiler was not a party in the underlying  
23 district-court action, noting that “although appellant indicates instances where he has been called a  
24 defendant below (although many of those instances appear to refer to the intervening company that  
25 appellant managed, rather than appellant), it appears that appellant was subpoenaed as a witness and  
26 has participated on behalf of the intervenor as its manager.” *See* Exhibit 2 at p. 2. Now, however,  
27 the Trial Court has explicitly treated Mr. Detwiler as a debtor and defendant. *See* Exhibit 3 at p. 1  
28 (“Whereas, on or about March 30, 2020, the Court entered a judgment in favor of [the Bank] and

1 against Edward N. Detwiler, . . . the Court hereby grants the request for a charging order.”). This  
2 certainly conforms to the Trial Court’s previous treatment of Mr. Detwiler as a party. *See* Court  
3 Minutes of March 17, 2020 hearing, attached as Exhibit 4 (stating that Mr. Detwiler “certainly was  
4 a party” after the Trial Court’s January 9, 2019 order). At any rate, while Mr. Detwiler does not  
5 appear in the caption of the charging order, the Trial Court nevertheless pits the Bank (as plaintiff)  
6 against Mr. Detwiler (as defendant and debtor). *Id.*

7 If this Court finds that Mr. Detwiler is not a party, he still has standing because his due  
8 process rights were violated. Just as in *Callie, supra*, where this Court considered the appeal of a  
9 nonparty against whom a domesticated judgment was rendered, the facts here demonstrate that the  
10 Bank and Trial Court are employing the mechanisms of judgment collection against Mr. Detwiler  
11 without affording him party status.

12 Thus, either: (1) Mr. Detwiler was a party (as judgment debtor, albeit improperly, which is  
13 the subject of Mr. Detwiler’s writ petition pending before this Court) in the underlying judgment  
14 that the Charging Order enforces, or (2) the Bank and the Trial Court violated Mr. Detwiler’s due  
15 process rights by enforcing a judgment against him without naming him as a party and affording  
16 him the rights due to him as a party. Either way, Mr. Detwiler has standing to appeal the Charging  
17 Order.

18 **C. The Appeal is not Moot because the Charging Order is Presently Enforceable**

19 The Bank argues that this case is moot, citing *Personhood Nev. v. Bristol*, 126 Nev. 599,  
20 602, 245 P.3d 572, 574 (2010). This Court’s “duty is not to render advisory opinions but, rather, to  
21 resolve actual controversies by an enforceable judgment.” *Id.* A case is moot when, even if the  
22 relief sought on appeal were granted, such would not actually provide “effective relief.” *Id.*

23 Here, there is an enforceable judgment in the form of the Charging Order (which enforces  
24 the Contempt Order). The Bank confuses the mootness standard by arguing that, because certain  
25 events (related to the district-court stay and a Governor’s emergency order) passed their deadline,  
26 “this appeal is moot.” For mootness purposes, the issue is not whether events leading up to the  
27 Charging Order are moot, but whether the Charging Order is moot. The correct analysis is to decide  
28



1 whether, when deciding issues related to the Charging Order's enforceability, this Court's decision  
2 will have any real effect.

3       There are a number of issues that this Court can properly review regarding the Charging  
4 Order, including, but not limited to: (1) whether the Charging Order violates the exclusive-remedy  
5 mandate of NRS 86.401 by requiring the LLCs to turn over documents; (2) whether the Charging  
6 Order violates the Eighth Judicial District Court's Administrative Order 20-17 and NRCP 45; (3)  
7 whether the district court could properly issue a charging order where the application for such  
8 violated the Governor's emergency orders at the time the application was filed.  
9

10       In sum, a decision regarding the Charging Order would directly affect whether Mr.  
11 Detwiler's interests in various LLCs can be charged. Because the Charging Order's enforceability  
12 is not a moot issue, this appeal is not moot.  
13

14 **D.     Mr. Detwiler cannot Obtain Other Relief until this Appeal is Exhausted**

15       NRS 86.241 provides that members of a limited-liability company generally only enjoy the  
16 right to indemnification for litigation expenses "after exhaustion of all appeals [from the judgment  
17 by a court of competent jurisdiction]."

18       If this Court decides that the Charging Order is not appealable, Mr. Detwiler requests time  
19 to prepare and file a Writ Petition and a Motion to Stay, both to appeal the substantive issues  
20 stemming from the Charging Order and to exhaust all appeals in order to seek indemnification costs  
21 and other remedies at a later date.  
22

23 **III.    CONCLUSION**

24       Mr. Detwiler respectfully requests that this Court deny Respondent's Motion to Dismiss  
25 Appeal. If this Court is inclined to dismiss this appeal, Mr. Detwiler would respectfully request that  
26 this Court: (1) give him 60 days to prepare and file a Writ Petition and also file a new Motion to  
27

28 ///

///

1 Stay; and (2) issue a stay until a determination is made on said Motion to Stay.

2 DATED this 16th day of September, 2020.

3 **HUTCHISON & STEFFEN**

4  
5 By /s/ Brenoch Wirthlin, Esq.  
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***Via Electronic Service through E-Flex System:***

I further certify that I served a copy of the foregoing by United States mail, postage prepaid, at Las Vegas, Nevada, to the following:

Dated: September 16, 2020.

Page 11 of 11

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EXHIBIT PAGE ONLY

## EXHIBIT 1

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

*Steven D. Grierson*

**JUDG**

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*Attorneys for Plaintiff Baker Boyer National Bank*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK, a  
Washington corporation,

Plaintiff/Judgment Creditor,

vs.

JAMES PATTERSON FOUST, JR., also  
known as James P. Foust, Jr., individually, and  
his marital community, if any,

Defendant/Judgment Debtor.

Case No.: A-17-760779-F

Dept. No.: II

**ORDER AND JUDGMENT**

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other -

**ORDER AND JUDGMENT**

On April 1 and 24, 2019, and May 17, 21, 2019, the cause of whether or not Edward N. Detwiler and Harry Hildibrand, LLC should be punished for contempt of Court came on for trial. Harry Hildibrand, LLC was represented at all times through its manager, Edward N. Detwiler. Witnesses on the part of Harry Hildibrand, LLC and Edward N. Detwiler, on the one hand, and on the part of the plaintiff and judgment creditor Baker Boyer National Bank (the "Bank"), on the other hand, were sworn and examined.

After hearing the evidence and the arguments of counsel, the Court retired to consider its decision. The Court has given due study and consideration to all of the above, and to the whole record and history in this litigation, including all hearings conducted on discovery questions throughout the period of this action's commencement to the present. The Court has further reviewed all relevant pleadings, papers, and other relevant and credible documents and materials in this case, as well as pleadings in other related court cases.


1 This Court concludes that Edward N. Detwiler and Harry Hildibrand, LLC have followed a  
2 contumacious, conscious, willful, and deliberate policy throughout this litigation, which continues  
3 to the present time, of cynical disregard and disdain of this Court's orders, particularly the order to  
4 turnover and surrender certain vehicles to the Bank, as detailed in the Court's order and judgment  
5 of January 9, 2019. Therefore, it is ORDERED, ADJUDGED, and DECREED that Edward N.  
6 Detwiler and Harry Hildibrand, LLC stand in contempt of Court. The Court has made previously  
7 findings of fact and conclusions of law that detail the contemptuous conduct and that resolved  
8 certain post-trial motions and requests to tax costs and award attorney fees in its separate rulings  
9 which issued on January 30, 2020, and March 12, 2020.

10 It is, therefore, CONSIDERED and ADJUDGED by the Court that the Bank, have and  
11 recover of and from Edward N. Detwiler and Harry Hildibrand, LLC, on a joint and several  
12 liability basis, the sum of \$100,000.00, and interest on that sum, from January 30, 2020, at the rate  
13 established by Chapter 99 of the Nevada Revised Statutes, and the further sum of \$208,889.00, as  
14 attorney's fees in this cause, together with costs, taxed at \$9,966.52, with interest on these  
15 amounts to run from the notice of entry of this order and judgment, and let execution issue.

16 It is further CONSIDERED and ADJUDGED that this order and judgment shall be  
17 enforced against the joint and/or separate property of Edward N. Detwiler and Harry Hildibrand,  
18 LLC.

19 It is further CONSIDERED and ADJUDGED that this order and judgment shall in no way  
20 affect the underlying judgment in this case against the judgment debtor, James P. Foust and his  
21 marital community, which judgment remains unsatisfied at this time.

22 Dated this 23<sup>rd</sup> day of March, 2020

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24  
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28  
  
DISTRICT COURT JUDGE  
2nd A-17-740779-F

1 Respectfully submitted,

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3  
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EXHIBIT PAGE ONLY

## EXHIBIT 2

HUTCHISON & STEFFEN

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A PROFESSIONAL LLC



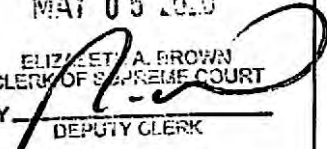
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD N. DETWILER,  
Appellant,  
vs.  
BAKER BOYER NATIONAL BANK, A  
WASHINGTON CORPORATION,  
Respondent.

No. 81017

FILED

MAY 06 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is an appeal from a district court judgment awarding sanctions after finding appellant in contempt during enforcement proceedings on a domesticated judgment. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

On April 21, 2020, respondent moved to dismiss this appeal for lack of jurisdiction, asserting that, as a nonparty to the action below, appellant lacks standing to appeal. On April 27, 2020, after appellant filed an emergency motion to stay the judgment pending our decision in this appeal, we issued an order to show cause why this appeal should not be dismissed for lack of jurisdiction, noting that in addition to the standing issue raised by respondent, the contempt order itself did not appear to be substantively appealable. We deferred ruling on the stay motion pending our resolution of these jurisdictional concerns.

Appellant timely responded to our show cause order, also opposing the motion to dismiss. In his response, appellant asserts that we have jurisdiction because (1) he was treated as a party below, having been named in a subpoena and court documents and having appeared in the action, (2) the order is either an appealable final judgment or an appealable

special order after final judgment, and (3) the equities weigh in favor of allowing this appeal to proceed.

Under NRAP 3A(a), only an aggrieved party may appeal. This court has consistently refused to adopt other jurisdictions' broad views of who is entitled to appeal as a party in favor of clear and absolute rules designed to give fair notice. *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994). In so doing, we have defined party as someone who has been named as a party to the lawsuit and who has been served with process or has appeared. *Id.* (citing *Garaventa Land & Livestock Co. v. Second Judicial Dist. Court*, 61 Nev. 350, 354, 128 P.2d 266, 267-68 (1942)). Here, although appellant indicates instances where he has been called a defendant below (although many of those instances appear to refer to the intervening company that appellant managed, rather than appellant), it appears that appellant was subpoenaed as a witness and has participated on behalf of the intervenor as its manager. Appellant has not pointed to any instances where claims were filed against him or in which he personally was named as garnishee. *See, e.g., Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 1213, 197 P.3d 1051, 1056 (2008) (recognizing that garnishee defendants may become parties to post-judgment garnishment proceedings). Thus, it does not appear that appellant was a party to the action below.

Even if appellant is considered a party, however, the order is not substantively appealable. A final judgment is one that resolves all of the issues presented in the case, leaving nothing for the future consideration of the court except for post-judgment issues. *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). The contempt order does not resolve any issues in the case and, as noted above, does not resolve any

garnishment or similar claims against appellant. Thus, it is not a final judgment for purposes of appeal under NRAP 3A(b)(1).

Further, the order does not affect the judgment rights or liabilities of a party to the action. It awards attorney fees as a sanction unrelated to the judgment between the parties. Therefore, it does not qualify as a special order after final judgment appealable under NRAP 3A(b)(8). *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (“A special order made after final judgment, to be appealable under [NRAP 3A(b)(8)], must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.”).

As explained in *Pengilly v. Rancho Santa Fe Homeowners Association*, “this court does not have jurisdiction over an appeal from a contempt order where no rule or statute provides for such an appeal.” 116 Nev. 646, 649, 5 P.3d 569, 571 (2000). As no rule or statute provides for the appeal here, we lack jurisdiction and

ORDER this appeal DISMISSED.<sup>1</sup>

  
Gibbons, J.

  
Stiglich, J.

  
Silver, J.

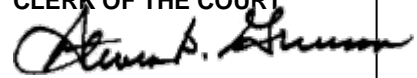
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<sup>1</sup>In light of this order, appellant’s motion for stay is denied as moot. As we lack jurisdiction, we deny appellant’s request to grant a stay pending any potential filing of a writ petition.

cc: Hon. Richard Scotti, District Judge  
Hutchison & Steffen, LLC/Las Vegas  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Eighth District Court Clerk

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## EXHIBIT 3



**ORDR**

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*Attorneys for Plaintiff Baker Boyer National Bank*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

BAKER BOYER NATIONAL BANK,

Case No.: A-17-760779-F

Plaintiff/Judgment Creditor,

Dept. No.: II

vs.

JAMES PATTERSON FOUST, JR., also  
known as James P. Foust, Jr., individually, and  
his marital community, if any,

Defendant/Judgment Debtor.

**CHARGING ORDER AGAINST ALL NEVADA LIMITED LIABILITY**

**COMPANY MEMBERSHIP INTERESTS OF EDWARD N. DETWILER**

Whereas, on or about March 30, 2020, the Court entered a judgment in favor of plaintiff Baker Boyer National Bank and against Edward N. Detwiler in the amount of \$318,855.52, with post-judgment interest continuing to accrue; and

Whereas the Court has considered Baker Boyer National Bank's application for a charging order pursuant to NRS 86.401;

Now therefore, the Court hereby grants the request for a charging order as follows:

1. **IT IS HEREBY ORDERED** that, pursuant to NRS 86.401, Dallas Management LLC; Nai'a Resorts, LLC; and PSV Development, LLC; and any other Nevada limited liability company in which Edward N. Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to immediately direct all membership distributions otherwise due to Edward N. Detwiler to be made directly to Baker Boyer National Bank until the judgment issued by this Court against Edward N. Detwiler has been paid in full, including accrued post-judgment interest

1 and continuing costs of collection, such as reasonable attorney fees. For the avoidance of doubt,  
2 distributions shall be understood to include, without limitation, earnings, return of capital, noncash  
3 distributions, distributions in kind, profits, cash, assets, monies, and any other type of property or  
4 consideration due or that shall become due, whether they be interim or liquidating, and whether or  
5 not the distribution be expressly labeled salary or other current compensation for services  
6 rendered.

7 2. **IT IS FURTHER ORDERED** that Dallas Management LLC; Nai'a Resorts, LLC;  
8 and PSV Development, LLC; and any other Nevada limited liability company in which Edward N.  
9 Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to refrain from  
10 distributing to any other person or entity any membership distributions (described in Item 1 above)  
11 due to Edward N. Detwiler, including any payments to third-party creditors of Edward N.  
12 Detwiler.

13 3. **IT IS FURTHER ORDERED** that Dallas Management LLC; Nai'a Resorts, LLC;  
14 and PSV Development, LLC; and any other Nevada limited liability company in which Edward N.  
15 Detwiler has an interest be, and hereby are, ordered, upon penalty of contempt, to disclose (a) any  
16 and all agreements controlling the interest of Edward N. Detwiler in said companies, including,  
17 without limitation, operating agreements and amendments thereto; contracts; articles of merger,  
18 conversion, exchange, or domestication; articles of organization; bylaws; documents showing the  
19 proportion of Edward N. Detwiler's and others' contribution to company's capital; and documents  
20 indicating classes of members with relative rights, powers, and duties, including voting rights, and  
21 (b) any and all records, such as financial statements and profit and loss statements, that concern  
22 the amounts that would otherwise be distributed to Edward N. Detwiler by the respective  
23 company.

24 **IT IS SO ORDERED.**

25 Dated this 2nd day of July, 2020

26   
27 DISTRICT COURT JUDGE  
28 BWT A-17-760779-F

Respectfully submitted,  
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By:   
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*Attorneys for Plaintiff Baker Boyer National  
Bank*



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## EXHIBIT 4

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Foreign Judgment**

**COURT MINUTES**

**March 17, 2020**

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A-17-760779-F	Baker Boyer National Bank, Plaintiff(s) vs. James Foust, Jr., Defendant(s)
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March 17, 2020	10:00 AM	All Pending Motions
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HEARD BY: Scotti, Richard F.	COURTROOM: Chambers
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COURT CLERK: Elizabeth Vargas

**PARTIES** Minute Order- No parties present.  
**PRESENT:**

**JOURNAL ENTRIES**

- STATUS CHECK: ORDER RE SANCTIONS MOTION TO SEAL SUPPORTING DOUCMENTS TO AFFIDAVIT OF JOHN E. BRAGONJE IN SUPPORT OF LEWIS AND ROCA ATTORNEYS FEES AND COSTS INCURRED IN CONNECTION WITH MR. DETWILER AND HARRY HILDIBRAND, LLC

The Court GRANTS Plaintiff's Attorney's Fees and Costs in the amount of \$208,889 in fees, and \$9,966.52 in costs. The Court has considered the Brunzell factors as discussed in Plaintiff's brief. Mr. Detwiler had the actual ability to comply with this Court's Order of January 9, 2019. From that point forward, he certainly was a party.

The Court GRANTS Plaintiff's Motion to Seal Supporting Documents.

The Court also reviewed Mr. Detwiler's competing Order regarding the January 30, 2020 and February 18, 2020 hearings. The Court finds Plaintiff's proposed Order to more accurately reflect the referenced proceedings. According, the Court declines to strike, or otherwise invalidate, the signed Order filed on March 12, 2020 and VACATES the March 20, 2020 Status Check. Plaintiff to prepare the Order.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Elizabeth Vargas, to all registered parties for Odyssey File & Serve. //ev 3/17/20