Case No. 81594

In the Supreme Court of Nevada

EDWARD N. DETWILER,

Appellant,

vs.

BAKER BOYER NATIONAL BANK, a Washington corporation,

Respondent.

District Court Case No. A760779

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

This briefing concerns three main issues, each of which resolves in the Bank's favor. First, the charging order is not final because it does not fully determine the substantive property rights of those interested, nor does it inform the third-party companies with sufficient clarity how they can comply with the order. Second, Detwiler argues that judgment enforcement through the charging order makes him a party, but NRCP 71 permits enforcement of orders against *nonparties* in the "same" manner as *parties*. As a nonparty witness appealing a contempt-associated order, he must seek review through an original writ proceeding. Finally, this appeal is moot because Detwiler continues to argue in his opposition that the charging order is objectionable because it violated the

Governor's pandemic-inspired moratorium against collecting judgments, which expired months ago.

I.

THE CHARGING ORDER IS NOT APPEALABLE BECAUSE IT DOES NOT RESOLVE THE ISSUES IT RAISES WITH FINALITY

A. Post-Judgment Orders that Enforce an Already-Entered Judgment Are Not Typically Appealable

Charging orders are a variety of "post-judgment orders made for the purpose of carrying into effect an already-entered judgment," which are not typically subject to appeal because they are neither "statutorily authorized" nor "final." *Jack M. Sanders Family Ltd. P'ship v. Fridholm Tr.,* 434 S.W.3d 236, 242 (Ct. App. Tex. 2014). The law is the same in Nevada. *Wilkinson v. Wilkinson*, 73 Nev. 143, 145, 311 P.2d 735, 736 (1957) (ruling interlocutory an appeal from an order requiring husband to pay wife's attorney fees for the defense against a motion to dissolve a restraining order, which implemented a final divorce decree).

1. Orders that Aid in the Enforcement of a Money Judgment Are Not Usually Appealable

Thus, for example, the "usual writs and orders" available to enforce a final money judgment are not, in general, appealable. *Sanders Family Ltd. P'ship,* 434 S.W.3d at 242; *accord Zandian v. Margolin*, 132

Nev. 1049 (2016) (Table) (an order requiring appellant to appear for a debtor's examination and to produce documents was interlocutory).

B. The Nevada Charging Order Decisions Detwiler Promotes Are Not Germane to Appealability

Although this Court has obviously reviewed charging orders, in these decisions the discussion of other forms of relief predominates, and charging orders feature as minor issues. *See, e.g., Tupper v. Kroc,* 88 Nev. 146, 150–52, 494 P.2d 1275, 1277–79 (1972) (characterizing the appealed order to set aside a judicial sale as a collateral attack on an otherwise final charging order issued one year earlier and not appealed by the parties). None of the decisions Detwiler promotes expressly considers whether a charging order by itself is final for purposes of appeal.

C. A Charging Order Does Not Qualify as an NRAP 3A(b)(8) "Special Order"

Appeals under this rule are reserved to actual, named parties. *Gumm v. Mainor*, 118 Nev. 912, 914, 59 P.3d 1220, 1221 (2002). Detwiler was never a named party; he was a witness.

D. A Charging Order Is Not an Injunction

Because we presume he wishes to invoke NRAP 3A(b)(3), Detwiler claims the charging order is a "mandatory injunction." (Opp'n, p. 6–7.) But it has none of the required features of such. It cannot be acted

upon without reference to other documents, *cf.* NRCP 65(d)(1)(C), including the agreements that establish Detwiler's percentage of ownership, which have not yet been produced. Similar concerns prompted the *Sanders Family* court to reject charging orders as a type of injunction. *See* 434 S.W.3d at 243–44.

II.

ALTERNATIVELY, EVEN IF THE CHARGING ORDER WERE FINAL, DETWILER'S NON-PARTY STATUS LIMITS HIM TO WRIT REVIEW

In an attempt to dispatch precedent, Detwiler claims that "the Trial Court has explicitly *treated* Mr. Detwiler as a debtor and defendant" because the charging order enforces the Contempt Order like the money judgment it is. (Opp'n, p. 7 (emphasis supplied.) However, when an order "may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party." NRCP 71.

Detwiler makes a naked claim that his "due process rights were violated," which confers "standing" to appeal, even if he were a nonparty. (Opp'n, p. 8.) Neither the Contempt Order nor the appealed charging order imputes Debtor's $1.4 million judgment to Detwiler. *Cf. Callie v. Bowling*, 123 Nev. 181, 184, 160 P.3d 878, 879–80 (2007).

Detwiler's remedy lies in a writ petition.

III.

EVEN ASSUMING AN APPEAL WERE PROPER, IT IS MOOT

Detwiler urges this Court to consider "whether the district court could properly issue a charging order where the application for such violated the Governor's emergency orders *at the time the application was filed*." (Opp'n, p. 9 (emphasis supplied).) This proves our point.

Detwiler obviously regards the charging order as the invalid "fruit" of the "poisonous tree"—the Contempt Order. But those arguments are the subject of his pending writ petition. The specific procedural deficiencies at issue in this appeal are moot or nonexistent. At a minimum, we ask this Court to hold this appeal in abeyance pending the outcome of the associated writ petition. The Court should also reject Detwiler's gratuitous, unsupported request for a stay in the event he files a second writ petition. This Court has already twice denied motions to stay in the related case. (No. 81220, Documents 20-20174; 20-31042.) Nothing has changed.

CONCLUSION

For these reasons, this appeal should be dismissed.

Dated this 22nd day of September, 2020.

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CERTIFICATE OF SERVICE

I certify that on September 22, 2020, I submitted the foregoing "Reply in Support of Motion to Dismiss Appeal" for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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

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Settlement Judge

/s/ Jessie M. Helm
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