

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

Appellants,

vs.

DANIEL S. SIMON; AND THE LAW
OFFICE OF DANIEL S. SIMON, A
PROFESSIONAL CORPORATION,
D/B/A SIMON LAW,

Respondents.

No. 83258

FILED

DEC 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

No. 83260

ORDER CONSOLIDATING AND PARTIALLY DISMISSING APPEALS

These are appeals from district court orders (1) denying a motion for reconsideration of a third-amended order on a motion to adjudicate an attorney lien and (2) denying a motion for an order to release client funds in excess of a judgment and require production of the complete file. Appellants have filed motions to consolidate these appeals. The motions are unopposed. Cause appearing, we grant the motions to consolidate.

In addition, the parties have responded to this court's order to show cause in Docket No. 83258 as to why that appeal should not be partially dismissed for lack of jurisdiction. As explained in the order, although appellants' docketing statement characterized their challenge to

the district court's order denying a motion for an order to disperse funds and compel production of the client file as an appeal from a final judgment, the order is plainly not a final judgment. The parties have filed responses to the order to show cause. In appellants' response, they contend that the district court's order denying the motion to disperse funds and compel production of the client file is appealable as a special order entered after final judgment. We disagree.

This court has limited jurisdiction and may only consider appeals authorized by statute or court rule. *Brown v. MHC Stagecoach*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013). “[T]he burden rests squarely upon the shoulders of a party seeking to invoke our jurisdiction to establish, to our satisfaction, that this court does in fact have jurisdiction.” *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001).

NRAP 3A(b)(8) allows an appeal from “[a] special order entered after final judgment.” However, “not all post-judgment orders are appealable.” *Burton v. Burton*, 99 Nev. 698, 700, 669 P.2d 703, 705 (1983). To qualify as an appealable special order entered after final judgment, the order “must be an order affecting the rights of some party to the action, growing out of the judgment previously entered.” *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002).

For example, in *Gumm v. Mainor*, this court concluded that a postjudgment order that distributed a significant portion of the appellant's judgment proceeds to certain lienholders was appealable because it altered his rights under the final judgment. *See id.* at 920, 59 P.3d at 1225. This court noted, in contrast, that a postjudgment order merely directing a portion of the appellant's judgment proceeds to be deposited with the

district court clerk pending resolution of the lien claims was not appealable. *See id.* at 914, 59 P.3d at 1225.

In a number of similar contexts, this court has consistently reiterated that postjudgment orders that do not affect the rights incorporated in the judgment are not appealable as special orders after final judgment. *See, e.g., Murray v. A Cab Taxi Service LLC*, No. 81641, 2020 WL 6585946 (Nev. Nov. 9, 2020) (Order Dismissing Appeal) (postjudgment order denying motions to allow judgment enforcement, distribute funds held by class counsel, and require the turnover of certain property of the debtor and granting a countermotion for a stay of collection activities pending appeal and reactivating a special master was not appealable); *Superpumper, Inc. v. Leonard Tr. for Morabito*, Nos. 79355 & 80214, 2020 WL 1129882 (Order Dismissing Appeal and Regarding Motions) (Nev. March 6, 2020) (orders denying claims of exemption asserted by appellants in post-judgment enforcement proceedings were not appealable); *Zandian v. Margolin*, No. 69372, 2016 WL 885408 (Order Dismissing Appeal) (Nev. March 4, 2016) (postjudgment order requiring appellant to appear for a debtor's examination and produce documents was not appealable).

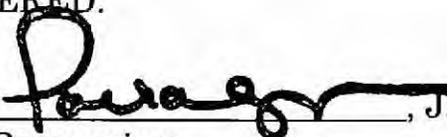
Here, the district court's order denying the motion to disperse funds and compel production of the client file did not alter any judgment nor distribute any portion of any judgment. Instead, the order simply preserved the status quo during the pendency of the parties' fee dispute. Indeed, as noted in the district court's order and as reflected by the Edgeworths' appeal from the district court's adjudication of the attorney lien, the parties' underlying fee dispute is ongoing. Thus, because the district court's order did not affect the rights incorporated in any judgment, it is not appealable as a special order entered after final judgment. *See* 15B

Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3916 (2d ed. 1992 and Supp. 2020) (an “appeal ordinarily should not be available as to any particular post-judgment proceeding before the trial court has reached its final disposition”).

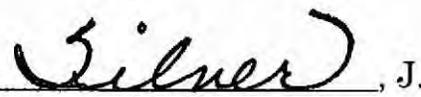
Accordingly, as it does not appear that the order denying the motion to disperse funds and compel production of the client file is otherwise appealable at this time, we conclude that this court lacks jurisdiction, and partially¹ dismiss the appeals in these cases as they relate to that order.

The briefing schedule in Docket No. 83258 is reinstated. The briefing schedule in these consolidated appeals shall proceed as follows. Appellants shall have 45 days from the date of this order to file and serve a single opening brief and appendix. Thereafter, briefing in these consolidated appeals shall proceed as provided in NRAP 31(a)(1). The motion for extension of time filed on November 19, 2021, in Docket No. 83260 is denied as moot.

It is so ORDERED.


Parraguirre


Stiglich


Silver

¹Although the Edgeworths’ couched their appeal, in part, as one from an order denying a motion for reconsideration, an order denying such a motion is not separately appealable. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Such a motion does, however, toll the underlying ruling, *see id.*, and we construe the Edgeworths’ appeal as challenging the district court’s order adjudicating the attorney lien on remand, which is an appealable determination. *See Gumm*, 118 Nev. at 919, 59 P.3d at 1225.

cc: Hon. Tierra Danielle Jones, District Judge
Morris Law Group
James R. Christensen
Christiansen Trial Lawyers
Eighth District Court Clerk