

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

2  
3 **MOISES A. LEYVA; and DARREN J.**  
4 **LACH, ESQ.**

5                   Appellants,

6 vs.

7 **QBE INSURANCE COMPANY; and,**  
8 **ERIC BLANK INJURY ATTORNEYS,**

9                   Respondents.

Supreme Court Case No. 84627

Electronically Filed  
(District Court A-18-716-2022) 08:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

10                   **OPPOSITION TO ERIC BLANK INJURY ATTORNEYS'**  
11                   **MOTION TO DISMISS APPEAL**

12                   HONE LAW

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1 Appellants Moises A. Leyva (“Leyva”) and Darren J. Lach, Esq. (“Lach”  
2 and, collectively, “Appellants”) by and through undersigned counsel, hereby oppose  
3 Eric Blank Injury Attorneys (“Respondent”)’s Motion to Dismiss Appeal (the  
4 “Motion”) filed June 29, 2022. This Opposition is based upon the following  
5 memorandum of points and authorities, the pleadings and papers on file herein, and  
6 any oral argument allowed by the Court.

## 7 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 8 **I. INTRODUCTION**

9 The district court originally entered an order adjudicating Respondent’s  
10 attorney lien after an evidentiary hearing. The district court then reconsidered,  
11 based upon arguments that Respondent failed to make in the initial motion to  
12 adjudicate the attorney lien and upon evidence that was both unauthenticated and  
13 clearly inadmissible hearsay.

14 Under Nevada law, both Leyva and Lach may challenge the district court’s  
15 erroneous ruling. Leyva has an interest in ensuring that the correct attorneys are  
16 paid the correct amount, and thus he is an aggrieved party. The Motion, therefore, is  
17 misplaced and should be denied. Additionally, even if Leyva is not an aggrieved  
18 party, which he is for the reasons discussed below, Lach still may challenge the  
19 district court’s order. That would warrant, at minimum, a conversion of the appeal  
20 to a petition for an extraordinary writ.

### 21 **II. STATEMENT OF RELEVANT FACTS**

22 On December 16, 2016, Sabreana Robinson injured Leyva in an automobile  
23 accident. Robinson had an insurance policy, issued by Progressive, with \$15,000.00  
24 in liability coverage. Respondent’s Ex. 1, Findings of Fact, Conclusions of Law,  
25 and Order, at Finding of Fact (“FF”) ¶ 1. Leyva was driving a vehicle owned by  
26 Silver State Transportation Services LLC (“Silver State”). Silver State had an  
27 insurance policy, issued by Respondent QBE Insurance Company (“QBE”), with  
28 \$1,000,000.00 in uninsured or underinsured motorist coverage. *Id.* at FF ¶ 2.



1       Leyva pursued claims for his injuries. Four law firms represented him  
2 sequentially: The Firm, Heshmati & Associates, Respondent, and Lach Injury Law.  
3 The Firm did some work and later asserted an attorney lien of \$6,112.50. *Id.* at FF  
4 ¶ 3. Heshmati & Associates apparently performed no work and asserted no attorney  
5 lien. *Id.* at FF ¶ 4. Lach was managing attorney with Respondent when Leyva  
6 retained them. *Id.* at FF ¶ 5. Lach was the primary attorney responsible for Leyva's  
7 case while he worked at Respondent. *Id.* at FF ¶ 8.

8       On June 25, 2012, Lach left Respondent and started his own practice, Lach  
9 Injury Law. *Id.* at FF ¶ 27. Leyva transferred his case from Respondent to Lach  
10 Injury Law. *Id.* at FF ¶ 31.

11       Leyva and QBE went to mediation. Lach negotiated a settlement for  
12 \$915,000.00 out of the \$1,000,000.00 policy limit for uninsured or underinsured  
13 motorist coverage. *Id.* at FF ¶ 34.

14       Respondent asserted an attorney lien. The district court held an evidentiary  
15 hearing to adjudicate it. The district court applied the contingent-fee agreement  
16 between Leyva and Respondent. *Id.* at Conclusion of Law ("CC") ¶ 19. The district  
17 court determined that Respondent's fee would be \$371,000.00, less offsets for fees  
18 due to Lach and The Firm. *Id.* at CC ¶ 30. The district court determined that Lach's  
19 fee would be \$122,000.00 and that The Firm's fee would be \$6,112.50. *Id.* at CC  
20 ¶¶ 35, 36.

21       Respondent moved to reconsider the district court's order. The district court  
22 granted the motion and reduced Lach's fee to \$17,760.00, a reduction of  
23 \$104,240.00, or approximately 85.4% from its initial determination of Lach's fee.  
24 Respondent's Ex. 3.

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1 **III. LEGAL ARGUMENT**

2 **A. Legal standard**

3 **1. Attorney lien**

4 “An attorney at law shall have a lien . . . [u]pon any claim, demand or cause  
5 of action, including any claim for unliquidated damages, which has been placed in  
6 the attorney’s hands by a client for suit or collection, or upon which a suit or other  
7 action has been instituted.” NRS 18.015(1)(a). The attorney may seek enforcement  
8 of the lien and adjudication of the rights of the attorney, the client, or other parties  
9 by motion filed in that suit or action. NRS 18.015(6).

10 **2. Review of district court’s decision on an attorney lien**

11 If the client wants the district court’s decision on an attorney lien reviewed,  
12 then the client may appeal. *See Argentina Consol. Min. Co. v. Jolley Urga Wirth*  
13 *Woodbury & Standish*, 125 Nev. 527, 216 P.3d 779 (2009), *superseded by statute*  
14 *on other grounds as stated in Fredianelli v. Fine Carman Price*, 402 P.3d 1254,  
15 1255-56 (2017). The courts have jurisdiction over the attorney and the fee dispute.  
16 125 Nev. at 532-33, 216 P.3d at 782-83. Respondent’s contention that they are not a  
17 respondent on appeal thus is incorrect. *See Motion* at 5-6. They are a party to this  
18 appeal.

19 **3. Appeal by an aggrieved party**

20 “A party who is aggrieved by an appealable judgment or order may appeal  
21 from that judgment or order . . . .” NRAP 3A(a). “A party is ‘aggrieved’ within the  
22 meaning of NRAP 3A(a) “when either a personal right or right of property is  
23 adversely and substantially affected” by a district court's ruling.” *Valley Bank of*  
24 *Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting *Estate*  
25 *of Hughes v. First Nat’l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)).

26 **B. Leyva is an aggrieved party and may appeal**

27 Leyva, as the plaintiff, certainly is a party. He also is an aggrieved party.  
28 Respondent’s argument that he is not aggrieved because, no matter what, the money



1 Leyva will pay in attorney fees will not change misses an important point. It matters  
2 not only *what* Leyva pays, but also *whom* Leyva pays. Leyva has an interest in  
3 ensuring that the correct attorneys are paid for their work. If Leyva believes that the  
4 district court erred and ordered too much to be paid to Respondent, then his right to  
5 his property, though attached to a lien, has been substantially and adversely  
6 affected. He should be able to appeal.

7       Respondent's argument would mean that Leyva has no recourse even if the  
8 district court erroneously determined that a firm that did no work should be paid.  
9 Four law firms represented Leyva sequentially: (1) The Firm; (2) Heshmati &  
10 Associates; (3) Respondent; and (4) Lach Injury Law. The Firm asserted an attorney  
11 lien for \$6,112.50 that nobody has disputed. Heshmati & Associates apparently did  
12 no work and asserted no attorney lien. If Heshmati & Associates asserted an  
13 attorney lien, and if the district court agreed with Heshmati & Associates, then  
14 Leyva would be required to pay a law firm that did nothing for him.<sup>1</sup> Under  
15 Respondent's theory, Leyva could not appeal that erroneous order because, no  
16 matter what, the amount that Leyva would pay to the attorneys would not change. It  
17 would be left to the other firms to file petitions for an extraordinary writ to correct  
18 the error. If those other law firms decided that correction of the error was not worth  
19 the effort, then Heshmati & Associates would be unjustly enriched at Leyva's  
20 expense, and Leyva could do nothing about it.

21       Leyva acknowledges that the amount he will pay as a contingency fee will  
22 not change. Nonetheless, Leyva should be able to appeal the district court's  
23 allocation of that fee between Lach and Respondent.

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28 <sup>1</sup> To be clear, Leyva does not accuse Heshmati & Associates of such conduct. Leyva only uses them as a  
hypothetical example of how Respondent's argument would work in situations other than this specific situation.



1           **C.     If necessary, the Court should convert this appeal into a petition**  
2           **for an extraordinary writ**

3           While Leyva is an aggrieved party who may appeal, Lach acknowledges that  
4 he is not a party to the action below. That, however, does not mean that Lach is  
5 without recourse: He has the ability to challenge the district court's erroneous ruling  
6 regardless of whether Leyva is an aggrieved party. *See Albert D. Massi, Ltd. v.*  
7 *Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995). Under *Massi*, Lach may file a  
8 petition for an extraordinary writ. 111 Nev. at 1521, 908 P.2d at 706.

9           Since both Leyva and Lach have appeal rights arising from the order of the  
10 district court, the Motion should be denied. If, however, the Court disagrees and  
11 determines that Leyva is not an aggrieved party, then Lach respectfully asks this  
12 Court to convert the appeal into a writ petition pursuant to NRAP 21. Lach  
13 forthwith would comply with the filing requirements of NRAP 21 and the affidavit  
14 requirement of NRS 34.170.

15           **IV.   CONCLUSION**

16           For the foregoing reasons, Leyva respectfully requests that this Court deny  
17 Respondent's Motion to Dismiss Appeal.

18           Dated this 11th day of July 2022.

19           HONE LAW



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