

SUPREME COURT OF NEVADA

Yonker Construction, Inc. v. Hulme

248 P.3d 313 (Nev. 2010) · No. No. 55406 · Decided December 30, 2010

SUMMARY

The Nevada Supreme Court held that an appeal from an interlocutory order releasing a mechanic's lien under NRS 108.2275 was premature because the district court had not yet awarded attorney fees and costs. The court dismissed the appeal for lack of jurisdiction, concluding that the statutory process must be fully completed before an appeal may proceed.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Per Curiam; Hardesty; Douglas; Pickering
JURISDICTION	Nevada
DECIDED	December 30, 2010
DOCKET	No. 55406
DISPOSITION	dismissed
PROCEDURAL POSTURE	Yonker Construction appealed an interlocutory district-court order releasing a mechanic's lien that reserved the determination and award of attorney fees and costs for a later date. The Supreme Court of Nevada dismissed the appeal as premature for lack of appellate jurisdiction.
STANDARD OF REVIEW	The court considered de novo whether it had appellate jurisdiction over the challenged interlocutory order.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Yonker Construction, Inc. v. Colin Hulme, Vanessa Hulme

TOPICS

- construction law
- interlocutory appeal
- appellate jurisdiction
- final judgment rule
- attorney fees

PRACTICE AREAS

- construction law
- appellate procedure
- civil procedure
- remedies

QUESTIONS PRESENTED

1. Whether an order releasing a mechanic's lien under NRS 108.2275(6)(a) is immediately appealable under NRS 108.2275(8) when the order reserves the award of attorney fees and costs for a later date.
2. Whether the appeal could proceed under the general rule that attorney-fee and cost awards may be appealable as special orders after final judgment under NRAP 3A(b)(8).

HOLDINGS

1. NRS 108.2275(8) permits an appeal from an interlocutory order releasing a mechanic's lien only after the district court has both directed release of the lien and awarded attorney fees and costs as required by NRS 108.2275(6)(a). An order that reserves the fee and cost award is not yet appealable, making an appeal from that order premature.
2. The general rule allowing appeals from special orders after final judgment does not apply to an appeal authorized by the statutory exception in NRS 108.2275(8), because that exception concerns immediate review of specified interlocutory orders rather than final judgments or post-judgment orders.

KEY QUOTATIONS

“Accordingly, we conclude that NRS 108.2275(8) allows appeals from interlocutory orders releasing a mechanic's lien only after subsection 6(a)'s mandate has been fully carried out, meaning that the court has directed the lien's release and awarded attorney fees and costs.” (314)

“Since we lack jurisdiction over the premature appeal, this appeal is dismissed.” (314)

FACTUAL BACKGROUND

The district court determined that Yonker Construction's mechanic's lien was frivolous and made without reasonable cause. It ordered the lien released but deferred the award of attorney fees and costs until after reviewing the applicant's affidavit and verified memorandum. The order therefore did not fully carry out the statutory mandate governing frivolous mechanic's liens.

PROCEDURAL HISTORY

The district court determined that the mechanic's lien was frivolous and made without reasonable cause and ordered the lien released. Rather than awarding attorney fees and costs in the same order, the district court directed the applicant to submit an affidavit of attorney fees and a verified memorandum of costs. The Supreme Court issued a show-cause order regarding the premature appeal and ultimately dismissed it because the statutory requirements for an appealable order had not been fully satisfied.

DISPOSITION

dismissed

CASES CITED

- Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998)

- Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)
- Santoro v. Principi, 274 F.3d 1366, 1369 (Fed. Cir. 2001)
- Allen v. Okam Holdings, Inc., 116 F.3d 153, 154 (5th Cir. 1997)
- Crestline Inv. Group v. Lewis, 119 Nev. 365, 368 n. 1, 75 P.3d 363, 365 n. 1 (2003)

OPINION

PER CURIAM.

248 P.3d 313 (2010) YONKER CONSTRUCTION, INC., a California Corporation, Appellant, v. Colin HULME and Vanessa Hulme, Individually and as Husband and Wife, Respondents. No. 55406. Supreme Court of Nevada. December 30, 2010. Rollston, Henderson, Crabb & Johnson and Robert M. Henderson, South Lake Tahoe, California; Cooksey, Toolen, Gage, Duffy & Woog and Griffith H. Hayes and Marisa A. Pocchi, Las Vegas, for Appellant.

Ailing & Jillson, Ltd., and Gregory D. Ott, Lake Tahoe, for Respondents. Before HARDESTY, DOUGLAS and PICKERING, JJ. OPINION PER CURIAM: NRS 108.2275(6)(a) provides that, if the district court determines that a mechanic's lien is frivolous and made without reasonable cause, the court must enter an order releasing the lien and awarding attorney fees and costs to the applicant.

Here, however, while the district court made the requisite determinations and ordered the lien released, it failed to award attorney fees and costs at that time, instead directing the applicant to file an affidavit of attorney fees and a verified memorandum of costs.

Because the challenged order reserved the award of attorney fees and costs for a later date, it does not constitute an appealable order within the terms of NRS 108.2275, rendering this appeal premature. DISCUSSION Although appeals from interlocutory orders generally are not permitted under Nevada's jurisdictional statutes and rules, see Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998), NRS 108.2275(8) expressly *314 provides for such appeals when they relate to orders made pursuant to subsection 6 of that statute, which governs hearings on motions to determine the frivolous or excessive nature of a mechanic's lien.

Pertinent to this appeal, NRS 108.2275(6)(a) provides that "[i]f, after a hearing on the matter, the court determines that... [t]he notice of lien is frivolous and was made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion."

Here, the challenged order deferred awarding attorney fees and costs until after the court had reviewed respondents' verified memorandum and affidavit. Consequently, this appeal appeared premature, and we directed appellant to show cause why the appeal should not be dismissed for lack of jurisdiction. Appellant, in its timely response to our show-cause order, argues that this

situation should be analyzed under *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000), which notes that attorney fees and costs awards are typically appealable under NRAP 3A(b)(8) (formerly NRAP 3A(b)(2)) as special orders after final judgment.

That case is inapposite, however, as its discussion pertains to appeals from final judgments and post-judgment orders, as specified in the NRAP, not to appeals authorized by a statutory exception to the final judgment rule allowing for immediate challenges to certain specified interlocutory orders. Exceptions to the final judgment rule are narrowly construed.

See generally *Santoro v. Principi*, 274 F.3d 1366, 1369 (Fed.Cir.2001) (noting that that court narrowly construes jurisdictional statutes); *Allen v. Okam Holdings, Inc.*, 116 F.3d 153, 154 (5th Cir.1997) ("Interlocutory appeals are generally disfavored, and statutes permitting them must be strictly construed."); cf. *Crestline Inv. Group v. Lewis*, 119 Nev. 365, 368 n. 1, 75 P.3d 363, 365 n. 1 (2003) (analyzing a former version of NRS 108.2275(6), which, unlike the current version, gave the district court discretion to award attorney fees and costs, and noting that "[t]he appealability of these orders does not turn on whether costs and attorney fees are awarded").

Additionally, requiring the NRS 108.2275(6)(a) attorney fees and costs award to be rendered before an appeal from the interlocutory order may proceed prevents the prospect of having two appeals from what is essentially the same statutory process.

Accordingly, we conclude that NRS 108.2275(8) allows appeals from interlocutory orders releasing a mechanic's lien only after subsection 6(a)'s mandate has been fully carried out, meaning that the court has directed the lien's release and awarded attorney fees and costs. CONCLUSION As appellant has not demonstrated that the district court's order releasing the lien is substantively appealable or provided this court with a copy of any NRS 108.2275(6)(a) attorney fees and costs award, this appeal is premature.

Since we lack jurisdiction over the premature appeal, this appeal is dismissed.