

SUPREME COURT OF NEVADA

Bero-Wachs v. Law Office of Logar & Pulver

123 Nev. 71 (2007) · No. Docket Nos. 44488 and 46865 · Decided May 3, 2007

SUMMARY

The Nevada Supreme Court held that an attorney’s lien does not attach to alimony or qualified retirement accounts awarded in a divorce decree to the extent those assets are exempt from execution under Nevada law. The court also held that an attorney may not include a forensic accountant’s fees in the lien when the client independently contracted with the accountant and the attorney was not liable for those fees. The court affirmed in part, reversed in part, remanded for a determination regarding the exemption status of the retirement accounts, and denied the related writ petition.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Douglas, J.; Maupin, C.J.; Gibbons, J.; Hardesty, J.; Parraguirre, J.; Cherry, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	May 3, 2007
DOCKET	Docket Nos. 44488 and 46865
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bero-Wachs appealed a district court order upholding an attorney's lien against property awarded to her in a divorce decree and including forensic accountant fees in the lien. Logar separately petitioned for a writ of mandamus concerning the lien's application to Bero-Wachs's alimony award.
STANDARD OF REVIEW	Statutory interpretation is reviewed by examining the statute's plain language. The reasonableness of attorney fees and validity of the attorney's lien were reviewed for abuse of discretion to the extent those issues were addressed.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Francesca Bero-Wachs v. Law Office of Logar & Pulver, Ronald J. Logar

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QUESTIONS PRESENTED

1. Whether an attorney's lien may attach to alimony or qualified retirement accounts awarded in a divorce decree when those assets are exempt from execution by creditors.
2. Whether an attorney may include a forensic accountant's fees in an attorney's lien when the client independently contracted with the accountant to pay those fees.
3. Whether the district court properly determined the reasonableness of Logar's fees and the validity of the lien as to nonexempt property.

HOLDINGS

1. An attorney's lien cannot attach to alimony or qualified retirement accounts awarded in a divorce decree to the extent those assets are exempt from execution by creditors.
2. The attorney's lien did not attach to Bero-Wachs's alimony award because the award was exempt from execution.
3. An attorney cannot include a forensic accountant's unpaid fees in an attorney's lien when the client independently contracted with the accountant to pay those fees.
4. The district court had to determine which, if any, of the IRAs awarded to Bero-Wachs were exempt from execution; the lien remained valid as to nonexempt property, and Logar's fees were reasonable.

KEY QUOTATIONS

"When NRS 21.090 substantively conflicts with NRS 18.015, NRS 21.090 must take precedence." (123 Nev. at 77)

"We therefore conclude that attorney's liens cannot attach to exempt alimony or exempt retirement accounts awarded in a divorce decree" (123 Nev. at 77-78)

"Under these circumstances, Logar is not considered a principal under the contract; his act of recommending DeGeus's services does not create joint and several liability under Molezzo." (123 Nev. at 79)

FACTUAL BACKGROUND

Francesca Bero-Wachs retained Ronald Logar to represent her in a divorce involving alleged concealed assets, commingling, and dissipation of community property. At Logar's recommendation, she independently retained forensic accountant Dan DeGeus under a separate retainer agreement to value her husband's medical practice and investigate possible waste. After the divorce decree, Bero-Wachs refused to pay the fees, and Logar obtained an attorney's lien that included DeGeus's fees and purported to reach property awarded to Bero-Wachs, including alimony and IRAs.

PROCEDURAL HISTORY

After Bero-Wachs's divorce decree was entered, attorney Ronald Logar obtained an attorney's lien that included his fees, costs, and the forensic accountant's fees. The district court held that the lien did not attach to Bero-Wachs's alimony award but did attach to other assets, including four IRAs. The Supreme Court of Nevada affirmed the alimony ruling, reversed the inclusion of the accountant's fees, remanded for a determination of which IRAs were exempt, and denied Logar's mandamus petition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must determine which, if any, of the retirement accounts awarded to Bero-Wachs are exempt from execution under NRS 21.090. The order is reversed to the extent it includes DeGeus's accounting fees in Logar's attorney's lien. The alimony ruling is affirmed, and Logar's mandamus petition in Docket No. 46865 is denied.

CASES CITED

- Sarman v. Goldwater, Taber and Hill, 80 Nev. 536, 396 P.2d 847 (1964)
- Muije v. A North Las Vegas Cab Co., 106 Nev. 664, 799 P.2d 559 (1990)
- Ex Parte Phillips, 43 Nev. 368, 187 P. 311 (1920)
- Hildahl v. Hildahl, 95 Nev. 657, 601 P.2d 58 (1979)
- Lamb v. Lamb, 83 Nev. 425, 433 P.2d 265 (1967)
- Dunseath v. Industrial Commission, 52 Nev. 104, 282 P. 879 (1929)
- Hardy & Hardy v. Wills, 114 Nev. 585, 958 P.2d 78 (1998)
- Northwestern National Bank of South St. Paul v. Kroll, 306 N.W.2d 104 (Minn. 1981)
- Jasper v. Smith, 540 N.W.2d 399 (S.D. 1995)
- Matter of Marriage of Wageman, 968 P.2d 1114 (Kan. Ct. App. 1998)
- In re Marriage of Thompson, 158 Cal. Rptr. 160 (Ct. App. 1979)
- In re Danelson, 142 B.R. 932 (Bankr. D. Mont. 1992)
- In re Marriage of Comley, 32 P.3d 1128 (Kan. 2001)
- Chapman v. Wells, 557 N.W.2d 725 (N.D. 1996)
- Long v. Collins, 88 N.W. 571 (S.D. 1901)
- A.F. Constr. Co. v. Virgin River Casino, 118 Nev. 699, 56 P.3d 887 (2002)
- Madera v. SIIS, 114 Nev. 253, 956 P.2d 117 (1998)
- Erwin v. State of Nevada, 111 Nev. 1535, 908 P.2d 1367 (1995)
- Molezzo Reporters v. Patt, 94 Nev. 540, 579 P.2d 1243 (1978)
- Edwards v. Andrews, Davis, Legg, Bixler, etc., 650 P.2d 857 (Okla. 1982)

- Eleazer v. Hardaway Concrete Co., Inc., 315 S.E.2d 174 (S.C. Ct. App. 1984)

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