

Francesca Bero-Wachs v. The Law Office of Lograr and Pulver,
123 Nev. Adv. Op. 10 (May 3, 2007)¹

CIVIL PROCEDURE – ATTORNEY LIENS

Summary

Appellant Bero-Wachs appeals from a district court order upholding her attorney's lien which attached her IRA accounts and included accountant fees. Respondent Lograr petitions for a writ of mandamus, seeking a declaration that Bero-Wachs' alimony award is attachable to his attorney's lien.

Disposition/Outcome

Affirmed in part, reversed in part and remanded; petition for writ of mandamus denied. The district court correctly decided that Respondent's lien did not attach to Bero-Wachs' alimony because an attorney's lien does not attach to awards in a divorce decree that are exempt from creditor execution. However, because the district court did not determine whether any of Bero-Wachs' IRA accounts are exempt from creditors under NRS 21.090, that issue is remanded. The district court erred in including accountant's fees in Respondent's attorney lien because Bero-Wachs had independently contracted with the accountant for payment of his fees.

Factual and Procedural History

Bero-Wachs filed for divorce from her husband in August of 2000. A year into the proceedings, she hired Respondent Lograr as her attorney. Bero-Wachs believed that her husband was hiding assets, living beyond his means in order to deplete marital assets prior to issuance of a divorce decree, and intentionally commingling his personal finances with those of his medical practice to hide his income.

Lograr suggested that Bero-Wachs hire Dan DeGeus, a forensic accountant, to value her husband's medical practice and to evaluate whether he had been depleting marital assets by living beyond his means. Bero-Wachs hired DeGeus and entered into an independent retainer agreement with him and requested that he uncover her husband's assets. Lograr and DeGeus did extensive work for Bero-Wachs and Lograr represented her throughout the proceedings.

After the divorce, Bero-Wachs notified Lograr and DeGeus that she refused to pay their fees. Lograr filed for an attorney's lien to recover his fee and included DeGeus's costs and fees as well. The district court upheld the lien and allowed attachment of all assets awarded including four IRA accounts, but excluded Bero-Wachs' alimony award. Bero-Wachs appealed the adjudication of the attorney's lien, and Lograr submitted a petition for a writ of mandamus to compel attachment of her alimony award.

¹ By Judy Carol Cox

Discussion

The Court first addresses whether an attorney's lien attaches to alimony awards and IRAs, which are usually exempt from creditors. NRS 21.090 was enacted to fulfill the Nevada Constitution's mandate that certain property is exempt from creditor claims. NRS 21.090(1)(s) specifically makes alimony awards exempt from creditors and NRS 21.090(1)(q) exempts certain eligible IRAs from creditor execution. However, NRS 18.015 conflicts with NRS 21.090 by allowing an attorney to place a lien on his client's claim or action. The lien attaches to any verdict, decree or judgment entered and to any money or property recovered in the action. Because 21.090 was enacted to further the mandate of the State Constitution, it must be strictly construed and NRS 18.015, which conflicts with it, must be subordinate.

Next the Court examined whether the district court properly allowed inclusion of accountant fees in Lograr's lien even though Bero-Wach signed an independent contract with him. Under NRS 18.015(1), to have a lien on a client's claim or action one must be an attorney at law and the lien has to represent reasonable fees for services rendered by the attorney. A forensic accountant, therefore, may not have a lien on a client's claim or cause of action.

Lograr claims that under *Molezzo Reporters v. Patt*,² he is allowed to include DeGeus's accountant fees in his costs because they were incurred in furtherance of Bero-Wachs' case and he is jointly and severally liable to DeGeus. However, the court concludes that because Bero-Wachs' entered into an independent agreement to pay DeGeus his fees, Lograr is not jointly and severally liable to DeGeus and may not include the accounting fees into his costs.

Conclusion

The court affirmed the district court's order in exempting Bero-Wachs' alimony award from Lograr's attorney's lien because an attorney's lien cannot attach to awards in a divorce decree that are exempt from creditors, and NRS 21.090 exempts alimony from creditors. Consequently, Lograr's petition for a writ of mandamus requesting the court to declare that the alimony awards were not exempt was denied. The court remanded for a determination of whether Bero-Wachs' IRAs are eligible for exemption. The court also reversed the district court's order including DeGeus's accountant fees. Because Bero-Wachs had an independent retainer agreement with DeGeus, Lograr was not jointly and severally liable to him, and so he could not include DeGeus's fees in his costs.

² 579 P.2d 1243 (Nev. 1978).