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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/03/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) No. 1 CA-CV 11-0317
)
ANGELA T. BURK,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
DENNIS E. TEUFEL,)
)
Respondent/Appellee.)
_____)
)
UDALL, SHUMWAY & LYONS, P.L.C.,)
)
Real Party in Interest/)
Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2008-002605
FN2008-091601
(Consolidated)

The Honorable M. Jean Hoag, Retired Judge

AFFIRMED AND REMANDED

Angela T. Burk
In Propria Persona

Tempe

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S W A N N, Judge

¶1 This is an attorney's fees collection case. Appellant Udall, Shumway & Lyons, P.L.C. ("the Firm") represented appellee Angela T. Burk ("Wife") with respect to the dissolution of her marriage with appellee Dennis E. Teufel ("Husband"). When post-decree disagreements arose between Husband and Wife concerning the amount to which Wife was entitled for spousal maintenance and attorney's fees, Husband's funds were deposited into the Firm's trust account to preserve the status quo pending resolution of the disputes. The parties eventually purported to settle all claims between them, including all attorney's fees claims, with Wife agreeing to the immediate release of the undisbursed portion of the funds held in trust. The Firm claimed unsuccessfully that it has a lien on those funds to secure the unpaid balance of its fees. We hold that because Wife acquired only a claim to the funds -- and was never adjudicated the owner of them -- no lien attached. We therefore affirm the superior court's rejection of the claimed lien.

FACTS AND PROCEDURAL HISTORY

¶2 In July 2009, after a trial, the superior court entered a decree of dissolution. The court ordered Husband to

pay Wife a lump sum of \$250,000 for spousal maintenance, and \$74,237 for attorney's fees and costs incurred through March 2009. The court further ordered Wife's counsel to file a supplemental affidavit for fees and costs incurred after March 2009.

¶3 Husband moved for a new trial regarding, *inter alia*, the spousal maintenance and attorney's fees award, and also moved to stay enforcement proceedings pending resolution of his motion for new trial. Before the motion for new trial was decided, Wife filed an application for a writ of garnishment on Husband's bank account. The garnishee bank answered and stated that it was holding the sum of \$334,626, and Husband requested a garnishment hearing. Shortly thereafter, the court awarded \$20,000 in additional, post-March 2009 attorney's fees and costs to Wife based on the supplemental affidavit provided pursuant to the court's earlier order.

¶4 At a later Resolution Management Conference, the parties agreed that the total amount of spousal maintenance and attorney's fees awarded to Wife (excluding interest), adjusted for uncontested offsets but not for contested offsets, was \$264,237. The court quashed the garnishment and ordered that the sum held by the bank be treated as follows: (1) \$125,137 plus interest was to be disbursed to Wife; (2) \$4,243 in exempt funds was to be disbursed to Husband; and (3) the balance of the

sum was to be "placed in [the Firm's] Trust Account for disbursement according to Court Order" and "remain held/frozen pending a final order of the Court." The court did not specify whether the disbursement to Wife was to be attributed to the spousal maintenance award, the attorney's fees awards, or both.

¶15 Pursuant to the court's orders, the bank transferred \$330,347 (the total amount held, minus the exempt funds ordered to Husband) to the Firm's trust account. Wife and the Firm then agreed between themselves that part of the \$125,137 disbursement to Wife would be used to pay the Firm for all charges incurred through November 2009.

¶16 Thereafter, the court denied Husband's motion for new trial with respect to the spousal maintenance and attorney's fees award, and Husband filed a notice of appeal. Other post-decree disputes continued in the superior court. During the course of these disputes, the court ordered "Husband [to] release" an additional \$30,000, which was then disbursed to Wife from the funds held in the trust account. Husband also authorized the release of an additional \$45,624 that was disbursed to Wife. Husband asserted that these disbursements completed satisfaction of the spousal maintenance award, but Wife disagreed, contending that a portion of the spousal maintenance award was still outstanding because the initial \$125,137 disbursement had been, in part, for the two attorney's

fees awards. Wife then moved for additional attorney's fees and costs, requesting fees incurred since July 2009.

¶7 Before the court resolved the parties' dispute concerning the characterization of the \$125,137 disbursement or decided Wife's motion for additional attorney's fees, the parties personally negotiated and entered into a settlement agreement that purported to resolve all disputed claims between them, including all spousal maintenance and attorney's fees claims. As part of the settlement agreement, and upon her receipt of a settlement payment from Husband, Wife agreed to "immediately direct and authorize the release to [Husband] . . . of all of the remaining garnished funds currently being held in trust by her attorney."

¶8 After Husband's counsel filed notice of the parties' settlement with the court, a dispute arose between Husband and the Firm regarding the settlement agreement's directive for release of the funds held in the trust account. The Firm contended that it had a security interest or charging lien in those funds pursuant to its fee agreement with Wife, and objected to any disbursement until Wife's account with the Firm was paid. Husband argued that the funds should immediately be disbursed to him pursuant to the terms of the settlement. The parties and their counsel eventually stipulated to a disbursement of all but \$40,000 (roughly equal to the amount

claimed owing from Wife to the Firm), and the court ordered that this amount remain in the trust account pending further order.

¶19 The court initially remarked that it was inclined to enforce the previous attorney's fees and costs awards, and that the trust account funds did not belong to Husband because they were garnished. The court ultimately ruled, however, that the Firm did not have a charging lien or security interest in the funds remaining in the trust account, and reiterated its order that this \$40,000 would remain in the Firm's trust account "as a reserve to cover the Firm's disputed attorney fees claim."

¶10 The Firm thereafter withdrew from its representation of Wife and timely filed a notice of appeal on its own behalf. Citing the pending notice of appeal, the superior court declined to consider Husband's later motion for the release of the \$40,000. The \$40,000 remains in the trust account.

JURISDICTION

¶11 Though neither party raises the issue, we must as an initial matter determine whether we have jurisdiction to consider this appeal. *Sorenson v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997).

¶12 An appeal generally must be taken by an "aggrieved party." ARCAP 1 ("An appeal may be taken by any party aggrieved by the judgment."); *Farmers Ins. Grp. v. Worth Ins.*, 8 Ariz. App. 69, 71, 443 P.2d 431, 433 (1968) ("It is a prerequisite to

our appellate jurisdiction that the appellant be a 'party aggrieved' by the judgment or order from which the appeal is taken."). The Firm was not a "party" to the proceedings below. The Firm was, however, aggrieved by the court's conclusion that it had no charging lien or security interest in the funds. The Firm had a direct, substantial, and immediate pecuniary interest in that ruling, and its interests were adversely affected by the ruling. See *Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8*, 221 Ariz. 104, 108, ¶ 7, 210 P.3d 1275, 1279 (App. 2009) (describing indicia of a grievance for purposes of appellate jurisdiction). In these circumstances, we have jurisdiction over the Firm's timely appeal pursuant to A.R.S. § 12-2101(A)(2) and (4). See *Wieman v. Roysden*, 166 Ariz. 281, 284, 802 P.2d 432, 435 (App. 1990) (non-party attorney was aggrieved by sanctions imposed against him, and was therefore permitted to appeal from the portion of the judgment affecting him).

STANDARD OF REVIEW

¶13 This appeal requires us to consider: (1) the availability of a contractual lien pursuant to the fee agreement between Wife and the Firm; and (2) the availability of a charging lien pursuant to Arizona law. We review issues of contract interpretation de novo. *Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631, 634, ¶ 5, 2 P.3d 1276,

1279 (App. 2000). We generally review the application of an equitable remedy (such as a charging lien, *Millsap v. Sparks*, 21 Ariz. 317, 320, 188 P. 135, 136 (1920)) for an abuse of discretion, but aspects of the court's decision -- including a decision to deny the remedy based on a legal conclusion -- may be reviewed de novo. See *McCloud v. State*, 217 Ariz. 82, 86-87, ¶ 10, 170 P.3d 691, 695-96 (App. 2007).

DISCUSSION

¶14 The Firm contends that it has a contractual security interest in the undisbursed trust account funds pursuant to its fee agreement with Wife, and a charging lien pursuant to Arizona law.

¶15 A legal prerequisite to either a contractual or common-law lien on the funds is Wife's ownership of or legal entitlement to the funds. The fee agreement (to which Husband is not a party) specifies that the Firm shall have a security interest in property "recovered, awarded or obtained pursuant to any action filed on behalf of [Wife] by [the Firm], or otherwise obtained by [Wife] pursuant to the representation." Similarly, Arizona law provides that a charging lien may only attach to monies received via a judgment or settlement in favor of the lienor-attorney's client. *Langerman Law Offices, P.A. v. Glen Eagles at the Princess Resort, LLC*, 220 Ariz. 252, 254, ¶ 6, 204 P.3d 1101, 1103 (App. 2009) ("To establish that it has a common-

law charging lien on the judgment, [the law firm] must demonstrate, at a minimum, that it is owed attorneys' fees under its contingency fee contract with [the client] and that there is some judgment in [the client's] favor to which a charging lien can attach."); *Richfield Oil Corp. v. La Prade*, 56 Ariz. 100, 105, 105 P.2d 1115, 1118 (1940) ("It is true that if the proceeds of a settlement pass through the hands of plaintiff's attorneys, they have an attorney's lien thereon for the amount of their fee").

¶16 Here, Wife never obtained ownership of the funds remaining in the trust account. The trust account funds were initially identified and held pursuant to Wife's application for a writ of garnishment, but because no writ was ever entered, the funds were not payable to Wife except by court order. See *Gillespie Land & Irr. Co. v. Jones*, 63 Ariz. 535, 542, 164 P.2d 456, 459 (1945). As the court ordered, the funds were "held/frozen" until disbursements were required of or authorized by Husband. The Firm's reliance on the court's finding that the funds did not belong to Husband is unavailing -- the court ordered that Husband could not remove the funds arbitrarily because they were held in the trust account, but the funds did not belong to Wife until ordered to her.

¶17 The \$40,000 remaining in the trust account has not been ordered or otherwise directed to Wife. It remained in the

trust account because there was a pending *dispute* as to Wife's entitlement -- a dispute she has purported to settle without payment of the funds to her.

¶18 Had the court adjudicated the dispute in Wife's favor, the Firm would have had a lien on the funds. But by purporting to relinquish her own claim against Husband for the fees she owed her counsel, Wife prevented entry of an order that would have vested her with a right to which a lien could attach. In effect, if the settlement agreement is interpreted to resolve the last remaining attorney's fee dispute, Wife has subjected herself to liability for the fees and insulated Husband (and the funds held in trust) from liability.

¶19 As of the time this appeal was commenced, therefore, the Firm did not have a lien on the funds in its trust account.¹ But at that time, the court had not enforced the settlement agreement by ordering the return of the funds to Husband, and the question of the interpretation of the settlement agreement is not before us on this appeal. Indeed, the court's own order is internally inconsistent. First, the order states that "Husband and Wife have, apparently, reached an agreement whereby Wife relinquished all claims to the monies garnished from

¹ It is possible that the Firm could have asserted a valid contractual or common-law lien against funds ordered disbursed from the trust account or otherwise obtained by Wife. The Firm did not do so.

Husband's bank account." And in the next sentence, the court ordered that \$40,000 be retained in the trust account "as a reserve to cover the Firm's disputed attorney fees claim." This language leads us to conclude that the court may have been of the view that further proceedings were warranted as between Husband and Wife. On remand, the court may consider whether there remain any issues with respect to the settlement agreement that might necessitate a final resolution of Wife's request for fees, or whether the settlement agreement is dispositive of the issue as between Wife and Husband. Our decision does not preclude the Firm from pursuing any other claim for relief.²

CONCLUSION

¶20 We affirm the superior court's determination that the Firm had no lien rights in the funds held in trust. We remand so that the court can determine whether the settlement agreement is dispositive of Wife's remaining claim for fees, and whether to order the disbursement of the remaining funds to Husband.

¶21 We deny the Firm's request for attorney's fees and costs on appeal. Not only is the Firm not the prevailing party, but the Firm is ineligible for an award of its appellate fees in

² We do not address the Firm's arguments on appeal that the parties' settlement was collusive and should be set aside, and that Husband's counsel acted unethically with respect to the settlement. Those issues are beyond the scope of this appeal. The Firm's argument that it is entitled to a fee award against Husband under A.R.S. § 25-324 is similarly beyond the scope of this appeal.

any circumstances because it is self-represented. *Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (App. 1983). In the exercise of our discretion, we deny Husband's request for attorney's fees on appeal. As the prevailing party, Husband is entitled to an award of costs upon compliance with ARCAP 21.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

JON W. THOMPSON, Judge