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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ABBY RIOS,

Plaintiff,

v.

WAL-MART STORES, INC., a Delaware
corporation;

Defendant.

Case No. 2:11-cv-01592-KJD-GWF

ORDER

Presently before the Court is Plaintiff's Motion to Adjudicate Attorney's Fee Lien (#249). Plaintiff's former counsel, Liborious Agwara ("Agwara") filed a response in opposition (#254) to which Plaintiff replied (#256).

Also before the Court is Plaintiff's Motion to Dismiss Liborious Agwara, Esq.'s Complaint in Interpleader (#253). Liborious Agwara filed a response in opposition (#258) to which Plaintiff replied (#259).

Finally before the Court is Liborious Agwara's Motion to Remand to State Court (#257). Plaintiff filed a response in opposition (#260) to which Agwara replied (#261).

I. Procedural Background

On or about August 14, 2009, Plaintiff Abby Rios slipped and fell at Defendant's Wal-Mart store. As result of her fall, Rios suffered injuries. Agwara claims to have "supervised and directed Ms. Rios' medical treatment in accordance with her injuries and/or complaints of pain" beginning in August 2009. Thus, began a long and tortured representation of Plaintiff documented in the Court's Order (#107) in which the magistrate judge granted Plaintiff's emergency motion to reopen discovery and extend trial date. In that order, the Court noted that Plaintiff had withheld evidence of prior spinal injury and evidence of a need for future spinal

1 surgery which resulted in an order limiting what evidence could be produced at trial. Further the
2 Court noted that counsel was belatedly attempting to get the case in order before trial.

3 On or about August 19, 2009, Agwara and Plaintiff executed a contingency fee
4 agreement that provided a forty percent (40%) contingent fee for litigation concluded after post-
5 trial motions or appeals. If the client were to terminate Agwara's services then Plaintiff agreed to
6 pay a reasonable fee for work performed and expenses. Agwara did not file suit until June 29,
7 2011. He barely survived a motion for summary judgment in an Order (#38) entered October 5,
8 2012. Plaintiff then took no action of record for six (6) months even though the scheduling order
9 required counsel to file a Proposed Joint Pre-trial Order within thirty (30) days of the order on
10 summary judgment (during this delay created by Plaintiff's counsel, one of Plaintiff's treating
11 physicians and expert witnesses died). Additionally, as trial approached on October 21, 2013,
12 Plaintiff was forced to seek a "short" (four month) trial continuance because counsel had left the
13 country for a family emergency (his father had passed away six months previously). The motion
14 was filed shortly after Defendant's motion to exclude evidence of damages that had not been
15 disclosed by Plaintiff.

16 Perhaps frustrated by the constant delays and mismanagement of her case, Plaintiff
17 discharged Agwara and substituted current counsel on February 12, 2014. On or about February
18 13, 2014, Agwara filed Notice of Attorney Lien on Plaintiff Rios by serving her current counsel.
19 Agwara also served Notice on Wal-mart by serving its counsel. At no time has Agwara filed a
20 motion to adjudicate that attorney's lien.

21 On September 18, 2015, Plaintiff prevailed at trial. The Court later granted Defendant's
22 Motion for Judgment as a Matter of Law vacating the verdict. However, Plaintiff prevailed on
23 appeal and Judgment (#247) was entered on November 21, 2018. Satisfaction of Judgment was
24 filed on December 11, 2018. Though Agwara had no funds to deposit in the court's registry, on
25 December 26, 2018, he filed a complaint in interpleader ("the interpleader action") in state court
26 naming as defendants Plaintiff Abby Rios, her counsel--the law firm of Black & Lobello, and
27 presumably all the medical providers to whom Agwara had referred Rios when he was still
28 supervising and directing Rios' medical treatment.

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2 Plaintiff filed Notice of Removal on January 4, 2019, removing the interpleader action in
3 accordance with the Court’s ancillary jurisdiction over the attorney’s lien.¹ Plaintiff then filed a
4 Motion to Adjudicate Attorney’s Lien (#253) on January 15, 2019. Plaintiff asserts that all
5 medical lien holders have been paid which has not been controverted by Agwara. Further, no
6 defendant in the interpleader has made an appearance other than Rios, who filed a motion to
7 dismiss. It appears that only Agwara’s attorney’s lien remains to be litigated.

8 II. Analysis

9 A. Motion to Adjudicate Attorney’s Lien

10 In the present action, Agwara filed notice of what is typically referred to as a charging
11 lien. See Leventhal v. Black & LoBello, 305 P.3d 907, 909 (Nev. 2013). “A charging lien is ‘a
12 unique method of protecting attorneys’”. Id. (quoting Sowder v. Sowder, 977 P.2d 1034, 1037
13 (N.M.Ct.App.1999)). A charging lien allows an attorney, on motion in the case in which the
14 attorney rendered the services, to obtain and enforce a lien for fees due for services rendered in
15 the case. See Argentina Consol. Mining Co. v Jolley Urga Wirth Woodbury & Standish, 216
16 P.3d 779, 782 (Nev. 2009). The lien “is not dependent on possession, as in the case of the
17 general or retaining lien. It is based on natural equity—the client should not be allowed to
18 appropriate the whole of the judgment without paying for the services of the attorney who
19 obtained it.” 23 *Williston on Contracts* § 62:11 (4th ed. 2002).

20 While the lien is based on equity, in Nevada it is enforceable by statute. Leventhal, 305
21 P.3d at 909; Nev. Rev. Stat. § 18.015. The statute requires four actions before a court can
22 adjudicate and enforce the lien. First, there must be a “claim, demand or cause of action, ...
23 which has been placed in the attorney’s hands by a client for suit or collection, or upon which a
24 suit or other action has been instituted.” NRS 18.015(1). The parties agree that this requirement
25 has been met. The lien is the amount of the agreed-upon fee or, if none has been agreed upon, a

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27 ¹ District courts have ancillary jurisdiction over fee disputes generated by an attorney's withdrawal. See, e.g.,
28 Curry v. Del Priore, 941 F.2d 730, 731 (9th Cir. 1991). “Determining the legal fees a party to a lawsuit properly before
the court owes its attorney, with respect to the work done in the suit being litigated, easily fits the concept of ancillary
jurisdiction.” Federal Sav. & Loan Ins. Corp. v. Ferrante, 364 F.3d 1037, 1041 (9th Cir. 2004) (quoting Jenkins v.
Weinshienk, 670 F.2d 915, 919 (10th Cir. 1982)).

1 reasonable amount for the services rendered “on account of the suit, claim, demand or action.”
2 NRS 18.015(1). Here, the contingency fee agreement requires Rios to pay a reasonable fee upon
3 termination of Agwara.

4 Second, the attorney must perfect the lien by serving “notice in writing, in person or by
5 certified mail, return receipt requested, upon his or her client and upon the party against whom
6 the client has a cause of action, claiming the lien and stating the interest which the attorney has
7 in any cause of action.” NRS 18.015(2). Here, Rios argues that she was not personally served as
8 required by statute. However, the general rule has always been that service on a parties’
9 designated agent, in this case Black & Lobello, is service on the party. See Cohen v. Gold, 2018
10 WL 1308945, *3 (D. Nev. March 12, 2018); Bingham & Snow Nevada, PC, 2015 WL 4172342,
11 *1-2, n.1 (Nev. July 9, 2015)(*unpublished disposition*, but recognizing that the Nevada Supreme
12 Court has declined to directly address this issue). Both Rios and Defendant Wal-Mart were
13 served with the lien by certified mail as required by the statute.

14 Third, the statute sets a timing requirement: Once perfected, the “lien attaches to any
15 verdict, judgment or decree entered and to any money or property which is recovered on account
16 of the suit or other action, from the time of service of the notices required by this section.” NRS
17 18.015(3). Here, the lien was served in 2014, four years before the verdict and judgment,
18 satisfying the statute.

19 Finally, fourth, the attorney must timely file and properly serve a motion to adjudicate the
20 lien. NRS 18.015(4). Here, Plaintiff Rios filed the motion to adjudicate the attorney’s lien. The
21 statute allows any party who has been served notice of the lien to file a motion to adjudicate the
22 lien. NRS 18.015(6). Thus, the statutory requirements have been met and the attorney’s lien is
23 ripe for adjudication. The briefing has raised factual issues regarding the reasonableness and
24 accuracy of the attorney’s fees sought and an evidentiary hearing will be set by separate order.

25 B. Complaint in Interpleader

26 Generally speaking, Nevada Rule of Civil Procedure 22, Interpleader, allows a plaintiff to
27 join as defendants any number of persons that may have claims against the plaintiff when the
28 claims may subject plaintiff to double or multiple liability. Typically, interpleader actions,

1 involve a “stakeholder” who deposits funds with the court allowing the named defendants to
2 litigate right or priority to the funds. See Michel v. Eighth Judicial Dist. Court, 17 P.3d 1003,
3 1007 n.4 (Nev. 2001). Nevada allows a stakeholder to interplead that also claims an interest in
4 funds. Id. When an attorney holds funds in trust for the client and two or more parties claim an
5 interest in the funds, an interpleader action is an appropriate procedure for determining the rights
6 of the respective parties, because “logic dictates that the interpleader cannot protect the
7 interpleading plaintiff from liability arising out of disputed funds that were not covered by the
8 adjudication.” Id.

9 The interpleader action filed by Agwara in state court is problematic, however, because
10 Agwara had no funds to deposit into the registry of the state court. If Agwara had the funds in his
11 trust account, then filing the interpleader would have been appropriate. See Golightly & Vannah,
12 373 P.3d 103, 106 (Nev. 2016) (stakeholder attorney need not deposit funds with court if the
13 funds are kept in attorney’s trust account). Thus, Plaintiff’s action in invoking the ancillary
14 jurisdiction of the court by removing the interpleader to the court with authority over the funds in
15 Black & LoBello’s trust account was the most efficient means of resolving the issue. See Id.
16 (allowing attorney to keep funds in trust account allows maximum efficiency). Accordingly, the
17 Court denies Agwara’s motion to remand.

18 Further, Local Rule 22-1 requires the plaintiff in an interpleader action to file a motion
19 requesting a scheduling conference within thirty days after the first defendant “answers or
20 otherwise appears.” Failure to prosecute by failing to file the motion is grounds for dismissal.
21 Agwara had thirty days after Rios’ notice of removal to file his motion and failed to do so.
22 Therefore, the interpleader action is dismissed.

23 III. Conclusion

24 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion to Adjudicate
25 Attorney’s Fee Lien (#249) is **GRANTED**;

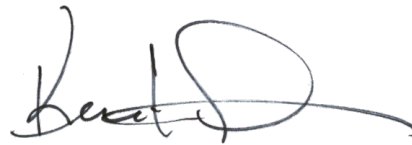
26 IT IS FURTHER ORDERED Liborious Agwara’s Motion to Remand to State Court
27 (#257) is **DENIED**;

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IT IS FURTHER ORDERED that Plaintiff's Motion to Dismiss Liborious Agwara, Esq.'s Complaint in Interpleader (#253) is **GRANTED due to Agwara's failure to comply with Local Rule 22-1.**

DATED this 18th day of September 2019.



Kent J. Dawson
United States District Judge