

IN THE UTAH COURT OF APPEALS

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Michael S. Bishop,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellee,	)	
	)	Case No. 20040795-CA
v.	)	
	)	
Camille Quintana,	)	F I L E D
	)	(November 25, 2005)
	)	
Respondent.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 509</span>
_____	)	
	)	
David R. Hartwig,	)	
	)	
Party in interest and	)	
Appellant.	)	

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Second District, Ogden Department, 044900076  
The Honorable Roger S. Dutson

Attorneys: David R. Hartwig, Salt Lake City, Appellant Pro Se  
Michael S. Bishop, Murray, Appellee Pro Se

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Before Judges Bench, Greenwood, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

The trial court determined that Hartwig could not intervene to enforce his lien because, among other things, the court never approved his withdrawal as Bishop's counsel. This part of the court's rationale was erroneous. At the time Hartwig filed a proper notice of withdrawal as counsel, his withdrawal did not require court approval. See Utah R. Civ. P. 74(a).

The trial court also erroneously dismissed Hartwig's notice of lien, concluding it was premature and improperly filed in the pending action. Utah Code Ann. § 38-2-7 "allows attorneys to contract with clients for payment of attorney fees and allows

attorneys to file liens against clients' claims or counterclaims." Fisher v. Fisher, 2003 UT App 91, ¶12, 67 P.3d 1055 (analyzing earlier version of attorney's lien statute). See Utah Code Ann. § 38-2-7 (2001). Section 38-2-7 also allows an attorney to "file a notice of lien in a pending legal action in which the attorney has assisted or performed work for which the attorney has a lien." Utah Code Ann. § 38-2-7(5). In the context of a "domestic relations matter," however, section 38-2-7 authorizes an attorney to file a notice of lien in a pending action only under certain circumstances. Id. § 38-2-7(9). Hartwig's situation fits those circumstances because "the attorney/client relationship has terminated" and "the client has failed to fulfill the client's financial obligation to the attorney." Id. § 38-2-7(9)(a)-(b). Accordingly, the trial court's dismissal of Hartwig's notice of lien is reversed.

Nevertheless, we affirm the trial court's denial of Hartwig's motion to intervene. While section 38-2-7 states that "[a]n attorney may enforce a lien . . . by moving to intervene in a pending legal action," id. § 38-2-7(4), the option to intervene does not necessarily allow Hartwig to intervene as a matter of right. A party "shall be permitted to intervene" as a matter of right "when a statute confers an unconditional right to intervene," or where the party's interest will not be "adequately represented by existing parties" and the party "is so situated that the disposition of the action may as a practical matter impair or impede [the party's] ability to protect that interest." Utah R. Civ. P. 24(a).

The permissive language in section 38-2-7 indicating how an attorney "may enforce a lien," combined with the fact that section 38-2-7 only gives Hartwig the opportunity of "moving to intervene," indicates that section 38-2-7 does not confer on Hartwig the unconditional right to intervene in a pending action to enforce his attorney's lien. Utah Code Ann. § 38-2-7(4) (emphasis added). Moreover, the fact that the statute gives Hartwig another viable option for enforcing his lien--i.e., "by filing a separate legal action," id.--suggests section 38-2-7 does not confer an unqualified right to enforce his lien by intervening in such an action.<sup>1</sup> We also conclude that Hartwig is not so situated in this case as to otherwise allow him to

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<sup>1</sup>In fact, the Utah Supreme Court has noted that, absent "'special circumstances,'" an attorney's lien should be enforced in a separate action. Ostler v. Buhler, 1999 UT 99, ¶9 n.3, 989 P.2d 1073 (citation omitted).

intervene as a matter of right under rule 24.<sup>2</sup> See Utah R. Civ. P. 24(a)(2).

Accordingly, the decision whether to grant Hartwig leave to intervene in the pending action was discretionary with the trial court, see Utah R. Civ. P. 24(b) (concerning permissive intervention), and we review such a decision only for "a clear abuse of discretion." State ex rel. Department of Soc. Servs. v. Sucec, 924 P.2d 882, 887 (Utah 1996). In the instant matter, although part of its rationale was flawed, we do not see any grounds that render the trial court's ultimate decision to deny Hartwig's motion to intervene an abuse of its discretion.

The dismissal of Hartwig's lien is reversed; the denial of his motion to intervene is affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge

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<sup>2</sup>Except for his interest in being paid for his work in representing Bishop, Hartwig has no direct stake in the subject matter of the pending action. See Interstate Land Corp. v. Patterson, 797 P.2d 1101, 1108 (Utah Ct. App. 1990) (requiring the interest of a party seeking to intervene as a matter of right to "be a direct claim upon the subject matter of the action such that the applicant will either gain or lose by direct operation of the judgment to be rendered"). Moreover, Hartwig's interest in being paid for his work in this case is adequately protected by his client's interest in pursuing an award of attorney fees and child support. As a practical matter, then, Hartwig's ability to protect his interest in getting paid is not necessarily impaired or impeded if he is not permitted to intervene. See Utah R. Civ. P. 24(a) (indicating that, absent statutory conferral of the right, it is unnecessary to allow a person to intervene if that person's "interest is adequately represented by existing parties").