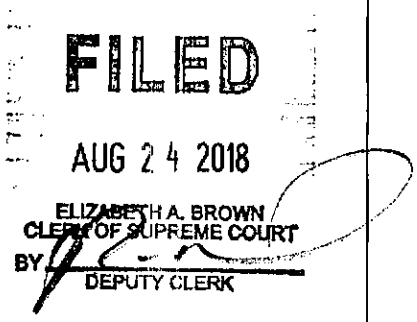
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LIBORIUS AGWARA, ESQ.,
INDIVIDUALLY AND D/B/A AGWARA
& ASSOCIATES,
Appellant,
vs.
EGLET WALL CHRISTIANSEN,
Respondent.

No. 71719



ORDER OF AFFIRMANCE

Liborius Agwara, Esq. appeals an order granting Eglet Wall Christiansen's motion for disbursement of funds.[1] Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Agwara appeals an order granting Eglet Wall Christiansen's ("Eglet") motion for disbursement of funds from a $15,000 settlement arising from a personal injury action filed by Marilyn Salmela.[2] Agwara raises several issues on appeal. He argues primarily that the district court should not have awarded Eglet attorney fees, raising issues of improper interpleader and an unenforceable attorney lien. He also argues that the district court should not have awarded Eglet costs for its malpractice claim against Agwara and that the district court judge should have recused herself because of a conflict of interest. As to the latter two issues, based on the record before us, Agwara did not raise these arguments below. Accordingly, he waives them on appeal. *See Old Aztec Mine, Inc. v. Brown*,

[1]We note the jurisdictional issue Eglet raises in its brief and conclude its argument is unpersuasive and we need not further address it in light of our disposition.

[2]We do not recount the facts except those necessary to our disposition.

97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). We turn to Agwara's remaining claims.

On appeal, Agwara argues that the district court erred because it awarded Eglet attorney fees even though Eglet did not perform legal work or obtain the $15,000 settlement. He also argues that Eglet did not possess any interpleader funds so it did not have standing to file an interpleader action.

Standard of review

"The proper construction of NRS 18.015 is a question of law that we review de novo." *Leventhal v. Black & LoBello*, 129 Nev. 472, 476, 305 P.3d 907, 910 (2013). An "attorney fees award is reviewed under an abuse of discretion standard." *Argentena Consol. Min. Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 531, 216 P.3d 779, 782 (2009) *abrogated on other grounds by Fredianelli v. Fine Carman Price*, 133 Nev. ___, ___, 402 P.3d 1254, 1256 (2017) (reviewing an award of attorney fees granted through an attorney lien).

The district court properly awarded Eglet attorney fees under NRS 18.015

Agwara argues that the district court erred by determining this was a case of "competing attorney liens." He contends that Eglet should not recover fees under an attorney lien because it did not obtain the settlement in Salmela's case. Instead, Agwara maintains that he should receive all of his requested fees because he obtained the $15,000 settlement for Salmela. Agwara also argues that his lien was perfected and served to counsel representing the insurance company in the personal injury case. Thus, he contends that his lien should have received priority under NRS 18.015(1) and the district court erred by not referencing it in its order.

Eglet counters that Agwara did little or nothing for five years to fully resolve the personal injury case and that Eglet was the one to file the interpleader action to finish the matter by actually recovering the $15,000 agreed to in the settlement. Eglet also argues that Agwara did not serve his lien until about four and a half years after the personal injury case was dismissed. It also argues that Agwara did not perfect his lien per NRS 18.015 because he did not serve written notice to his client. Eglet, however, argues that it perfected its lien.[3]

"Nevada recognizes two kinds of attorney's liens"—"a special or charging lien" or "a general or retaining lien." *Argentena*, 125 Nev. at 531-32, 216 P.3d at 782 (citation and internal quotation marks omitted).[4] A charging lien, under NRS 18.015, provides for an attorney lien when there is a "claim . . . which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted."

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[3]Eglet also argues that Agwara did not raise these lien arguments below, and therefore, they are waived on appeal. A review of the record, however, shows that Agwara made similar arguments below. Thus, we will consider his arguments as to that point on appeal.

[4]The "general or retaining lien [ ] allows a discharged attorney to withhold the client's file and other property until the court, at the request or consent of the client, adjudicates the client's rights and obligations with respect to the lien." *Argentena*, 125 Nev. at 532, 216 P.3d at 782; *see also* NRS 18.015(1)(b). Agwara asserts on appeal that he allowed Salmela to take her file to make a copy with the understanding that she would return it, but she never did. He does not raise this issue in the context of arguing that he has a retaining lien and does not use the fact to support his other appellate arguments. Thus, he has waived an argument regarding a retaining lien on appeal. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (concluding that this court does not have to consider claims not cogently argued or supported by relevant authority).

NRS 18.015(1)(a); *see also Argentena*, 125 Nev. at 534, 216 P.3d at 783-84. "An attorney lien . . . is only enforceable when it is attached and perfected pursuant to statute." *Golightly & Vannah, PLLC v. TJ Allen, LLC*, 132 Nev. ___, ___, 373 P.3d 103, 105 (2016). "Because an attorney[']s charging lien is a creature of statute, the attorney must meet all of the statutory requirements before the lien can be enforced." *Id.* at ___, 373 P.3d at 105.

An attorney lien is perfected once the attorney has served "notice in writing, in person or by certified mail, return receipt requested, upon his or her client and, if applicable, upon the party against whom the client has a cause of action, claiming the lien and stating the amount of the lien." NRS 18.015(3). Additionally, the lien "attaches to any . . . money . . . which is recovered on account of the suit or other action . . . from the time of service of the notices required by this section." NRS 18.015(4)(a).

Here, the fact that Agwara secured a dismissal of the personal injury case after obtaining the agreement for a $15,000 settlement for Salmela does not mean Salmela received the recovery necessary to satisfy NRS 18.015, or that Eglet was precluded from also seeking an attorney lien under the statute. *See Leventhal*, 129 Nev. at 477, 305 P.3d at 910 ("A charging lien cannot attach to the benefit gained for the client by securing a dismissal; it attaches to the tangible fruits of the attorney's services" and those "fruit[s]" [are] "generally money, property, or other actual proceeds gained by means of the claims asserted for the client in the litigation." (internal quotation marks omitted)); *see also Argentena*, 125 Nev. at 534, 216 P.3d at 784 (concluding, in a case in which Argentena was the defendant below, that even though a law firm "obtained a dismissal of all claims against Argentena, the settlement did not result in a recovery for

Argentena."); *see generally, Van Cleave v. Osborne, Jenkins & Gamboa, Chtd.*, 108 Nev. 885, 888, 840 P.2d 589, 592 (1992) (awarding attorney fees to the firm that more efficiently resolved a matter, regardless of the length of time its representation, in comparison to the prior firm that litigated the same case for six years without resolution). Eglet correctly points out that it filed the interpleader to recover the $15,000 settlement money for Salmela.

Thus, Eglet performed work that qualifies for an attorney lien under NRS 18.015. *See Leventhal*, 129 Nev. at 477, 305 P.3d at 910. Accordingly, Agwara's claim that Eglet was not entitled to fees because it did not obtain the dismissal of the personal injury action fails because Agwara did not finalize the matter and it was not until Eglet recovered the $15,000 that Salmela would be able to resolve the case.

Agwara's additional argument that he perfected his attorney lien also fails. Agwara may have properly served counsel for the insurance company that was holding the $15,000 in settlement funds, yet, aside from an unsigned letter purportedly from Agwara to the insurance company's attorney, that evidence is not in the appellate record. Even so, the statute requires in-person or certified mail service to the attorney's client. NRS 18.015(3). Agwara does not argue how he made proper service to Salmela and so we may consider the argument waived. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Even if he had raised the argument, at most, the record contains a notice of an attorney lien that Agwara faxed to Salmela's counsel. Notice sent via fax does not satisfy the requirements of NRS 18.015, and therefore, Agwara sent defective notice and did not perfect his lien per NRS 18.015. *See* NRS 18.015(3) (requiring notice "in person or by certified mail").

Eglet appropriately filed an interpleader for Salmela

Agwara also argues on appeal that because Eglet did not possess settlement funds when it filed its interpleader, it did not have standing so it was an "improper party" to this case. Thus, he contends that the district court erred by allowing Eglet's interpleader to proceed.

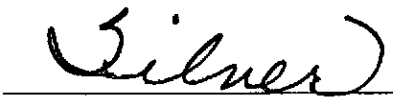
Eglet responds by arguing that while it did not have the funds, there were potentially several claims against Eglet and Salmela for the settlement proceeds so an interpleader action was appropriate. Further, it argues that if there was any error it was harmless because Salmela's case was resolved and Agwara received $3,921.68 in attorney fees through Eglet's interpleader action.

"[U]nder NRS 18.015(3), the lien attaches to a judgment, verdict, or decree entered, or to money or property recovered, *after* the notice is served." *Leventhal*, 129 Nev. at 478, 305 P.3d at 911. "Thus, if an attorney waits to perfect the lien until judgment has been entered and the proceeds of the judgment have been distributed, the right to the charging lien may be lost." *Id.* at 478-79, 305 P.3d at 911; *see also Michel v. Eighth Judicial Dist. Ct.*, 117 Nev. 145, 151, 17 P.3d 1003, 1007 (2001) (concluding that in an interpleader action, the entire amount of money in dispute must be under the court's jurisdiction and then applying NRS 18.015 "[o]nce the funds have been submitted for judicial distribution").

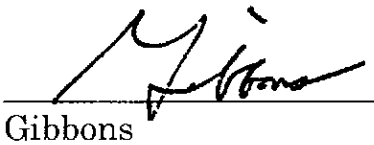
The record reveals that Eglet perfected its lien pursuant to NRS 18.015. Because Eglet perfected its lien, it appropriately filed an interpleader action. Therefore, Agwara's argument fails. Based on the

foregoing, we conclude that the district court did not err by granting Eglet's motion for disbursement of funds.[5] Accordingly, we[6]

ORDER the judgment of the district court AFFIRMED.



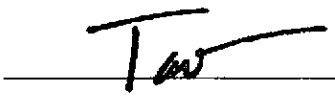
_____, C.J.
Silver



_____, J.
Gibbons

TAO, J., concurring:

I concur in the result only.



_____, J.
Tao

cc: Hon. Nancy L. Allf, District Judge
Lansford W. Levitt, Settlement Judge
Agwara & Associates
Dimopoulos Injury Law
Richard Harris Law Firm
Clark County District Attorney/Civil Division
Eighth District Court Clerk

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[5]Because we conclude that the district court did not err under a de novo standard of review, we necessarily conclude that it did not abuse its discretion under the less stringent abuse of discretion standard of review.

[6]All other points raised on appeal are unpersuasive.