IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE TRUST/ESTATE OF WALTER A. CRIPPS, DECEASED.

MICHAEL W. CRIPPS,
Appellant,
vs.
JOHN W. CRIPPS; DANIEL W. CRIPPS; LEAH CRIPPS; AND LYNN X. LIU,
Respondents.

No. 89134-COA

IN THE MATTER OF THE TRUST/ESTATE OF WALTER A. CRIPPS, DECEASED.

MICHAEL W. CRIPPS,
Petitioner,
vs.
THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO; AND THE HONORABLE KRISTON N. HILL, DISTRICT JUDGE,
Respondents,
and
JOHN W. CRIPPS; LYNN X. LIU; DANIEL W CRIPPS; AND LEAH CRIPPS,
Real Parties in Interest.

✓No. 90420-COA

25-33540

ORDER OF REVERSAL AND REMAND (DOCKET NO. 89134-COA) AND ORDER DENYING PETITION FOR WRIT OF MANDAMUS (DOCKET NO. 90420-COA)

Michael W. Cripps appeals from a district court order granting a motion to dismiss and an order denying a motion for reconsideration and granting in part attorney fees and costs in Docket No. 89134-COA. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge. The original petition for a writ of mandamus in Docket No. 90420-COA challenges a district court order of stay in a trust action. These matters are not consolidated.

The decedent, Walter Cripps, died on May 5, 2019, and is survived by his seven children, which includes appellant Michael W. Cripps. After Walter's death, his son Daniel W. Cripps filed a petition to set aside the estate of the decedent in the Fourth Judicial District Court on September 24, 2023. In October 2023, the Fourth Judicial District Court entered its order setting aside the Estate of Walter Cripps without administration.

In November 2023, Michael filed a petition in the Seventh Judicial District Court requesting that the court void transfers of property between Walter and respondents John W. Cripps (Walter's son) and Lynn Liu (John's wife) prior to Walter's death. In January 2024, Walter's daughter, Leah Cripps, recorded a notice of lis pendens on property that was conveyed from Walter to John and Lynn. Michael also filed a petition for probate of last will, requesting various relief regarding administration of Walter's estate. John and Lynn filed objections and responses to Michael's petitions. Subsequently, John and Lynn filed a motion to dismiss on the basis that the Seventh Judicial District Court lacked subject matter jurisdiction because the Fourth Judicial District Court had previously

overseen proceedings related to Walter's estate, and thus, the Fourth Judicial District Court retained exclusive jurisdiction. John and Lynn also filed a motion to expunge the lis pendens on the basis that Leah was not a party to the proceedings. Michael opposed the motion to dismiss.

Thereafter, the Seventh Judicial District Court granted the motion to dismiss and denied Michael's petitions. The court determined that exclusive jurisdiction over the estate proceedings was with the Fourth Judicial District Court pursuant to NRS 136.010(3) (the district court that first assumes jurisdiction of the settlement of an estate has exclusive jurisdiction of the settlement of that estate). The court also granted John and Lynn's motion to expunge the lis pendens, noting that the lis pendens was improperly filed because Leah was not joined as a party to the case.

Michael filed a subsequent motion for reconsideration, which John and Lynn opposed. John and Lynn moved for attorney fees under NRS 18.010(2)(a) and NRS 18.010(2)(b) and costs under NRS 18.020(1). Michael filed an opposition to the motion for fees and costs, asserting that John and Lynn were not entitled to attorney fees under NRS 18.010(2)(a) because they were not awarded a money judgment, and that fees under NRS 18.010(2)(b) were not warranted because John and Lynn failed to demonstrate Michael did not have legal or factual grounds to bring his action. Michael also argued that John and Lynn did not achieve a dismissal with prejudice and, thus, they did not qualify as prevailing parties in the action pursuant to NRS 18.010 or NRS 18.020.

The Seventh Judicial District Court issued an order denying Michael's motion for reconsideration but granted in part the motion for fees and costs. The court rejected Michael's contention that obtaining a money judgment is required to be a prevailing party under NRS 18.010(2)(a). The

court found that John and Lynn were the prevailing parties in the matter. Therefore, the court granted the motion for fees in part in the amount of $27,280 and costs in the sum of $823.93. Michael appealed the order of dismissal and the subsequent order denying reconsideration and granting in part attorney fees and costs in Docket No. 89134-COA.

In June 2024, Daniel filed a petition to reopen the estate in the Fourth Judicial District Court. Michael filed a petition, which repeated the allegations and requests for relief he presented in his petition that he filed in the Seventh Judicial District Court case. The Fourth Judicial District Court concluded that it lacked jurisdiction because of the pending appeal in Docket No. 89134-COA and stayed the case until the appeal was resolved. Michael filed a petition for a writ of mandamus in Docket No. 90420-COA challenging the Fourth Judicial District Court's stay.

Docket No. 89134-COA

On appeal, Michael challenges the district court's award of attorney fees and costs, and asserts, among other things, that John and Lynn did not qualify as prevailing parties because they did not obtain a dismissal with prejudice. Conversely, John and Lynn assert that the award of attorney fees and costs was appropriate because they successfully defended the case and obtained dismissal of the matter in its entirety.

Whether a litigant is a "prevailing party" under both NRS 18.010(2) and NRS 18.020 is a question of law reviewed de novo. *145 East Harmon II Trust v. Residences at MGM Grand – Tower A Owners' Ass'n*, 136 Nev. 115, 118, 460 P.3d 455, 457 (2020). In *East Harmon,* the Nevada Supreme Court concluded that a defendant could be considered a prevailing party when it obtained dismissal of a lawsuit with prejudice. *See 145 E. Harmon II Trust*, 136 Nev. at 120, 460 P.3d at 458. In reaching this

conclusion, the *East Harmon* court relied on various federal authorities which reasoned that a dismissal with prejudice conferred prevailing party status because it altered the legal relationship of the parties for purposes of res judicata and effectively equated to a judgment on the merits for such purposes. *Id.* at 119-20, 460 P.3d at 458-59 (citing *Anthony v. Marion Cnty. Gen. Hosp.*, 617 F.2d 1164, 1169-70 (5th Cir. 1980); *Carter v. Inc. Vill. of Ocean Beach*, 759 F.3d 159, 165 (2d Cir. 2014)). And critical to the situation at issue here, the *East Harmon* court also cited with approval to federal authorities which explained that, in contrast to a dismissal with prejudice, obtaining a dismissal without prejudice will not confer prevailing party status. *Id.* at 120, 460 P.3d at 459 (citing *Cadkin v. Loose*, 569 F.3d 1142, 1148 (9th Cir. 2009) (explaining that a "dismissal without prejudice does not alter the legal relationship of the parties because the defendant remains subject to the risk of re-filing") (quoting *Oscar v. Alaska Dep't of Educ. & Early Dev.*, 541 F.3d 978, 981 (9th Cir. 2008)); *see also Szabo Food Serv., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076-77 (7th Cir. 1987) (distinguishing between a dismissal without prejudice, which does not confer prevailing party status, and a dismissal with prejudice, which "enables the defendant to say that he has prevailed" (internal quotation marks omitted)).

Applying the forgoing analysis to the situation presented here, although the district court dismissed the case, the dismissal was for lack of jurisdiction and thus was not a ruling on the merits, akin to a dismissal without prejudice, leaving Michael free to refile his claims. *See* NRCP 41(b) (providing that a dismissal for lack of jurisdiction does not "operate[ ] as an adjudication on the merits"). Consequently, the district court's dismissal for lack of jurisdiction operated as a dismissal without prejudice and therefore did not confer prevailing party status upon John and Lynn. *See*

id.; *Cadkin*, 569 F.3d at 1145 (concluding that "[b]ecause the plaintiffs in this lawsuit remained free to refile" their claims after a dismissal without prejudice, "the defendants are not prevailing parties and thus not entitled to the attorney's fees the district court awarded them"); *see also E. Harmon*, 136 Nev. at 120, 460 P.3d at 459 (citing *Cadkin* with approval). Thus, the district court erred in finding that John and Lynn qualified as prevailing parties for purposes of awarding attorney fees under NRS 18.010(2) and costs under NRS 18.020(1). As a result, we necessarily reverse the district court's decision awarding attorney fees and costs.[1] *E. Harmon*, 136 Nev. at 120, 460 P.3d at 459.[2]

Docket No. 90420-COA

Michael filed a petition for a writ of mandamus in Docket No. 90420-COA challenging the Fourth Judicial District Court's stay pending resolution of the appeal in Docket No. 89134-COA. In light of our resolution

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[1]We note that although Leah and Daniel filed briefs in this matter, pursuant to NRAP 3A(a), only a party has standing to appeal a district court order. *See Gladys Baker Olsen Family Tr. v. Olsen*, 109 Nev. 838, 839-41, 858 P.2d 385, 385-86 (1993) (recognizing that NRAP 3A(a) limits standing to appeal to parties to the proceedings below). Leah and Daniel were not parties to the Seventh Judicial District Court proceedings below. Thus, as nonparties to the proceedings below, Leah and Daniel can only seek relief via a petition for extraordinary relief. *See Aetna Life & Cas. Ins. Co. v. Rowan*, 107 Nev. 362, 363, 812 P.2d 350, 350 (1991) (dismissing an appeal for a lack of standing where the appellant was never a party to the underlying district court proceedings and stating that an extraordinary writ petition was the proper method for appellant to seek relief from the subject order). Therefore, we do not consider Leah and Daniel's request for relief contained in their briefs on appeal.

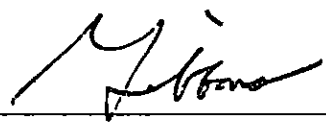
[2]Our disposition is not intended to foreclose any consideration of an appropriate award of attorney fees and costs in the related action pending in the Fourth Judicial District Court case.

of Docket No. 89134-COA, the petition for writ relief is moot. *See Smith v. Eighth Jud. Dist. Ct.*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991) (recognizing that writ relief is an extraordinary remedy and that we have sole discretion in determining whether to entertain a writ petition); *see also Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (observing that the petitioner bears the burden of showing that writ relief is warranted).[3]

Accordingly, we reverse the district court's grant of attorney fees and costs in Docket No. 89134-COA and deny the petition for writ of mandamus in Docket No. 90420-COA.

It is so ORDERED.[4]

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

[3]In light of this order, we deny as moot petitioner's request for transcript of proceedings and motion for waiver of transcript costs in Docket No. 90420-COA.

[4]Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they need not be reached given the disposition of this appeal.

cc: Chief Judge, Seventh Judicial District Court
Hon. Kriston N. Hill, District Judge
Michael W. Cripps
Daniel W Cripps
Wallace & Millsap LLC
Leah Cripps
White Pine County Clerk
Elko County Clerk