

IN THE SUPREME COURT OF THE STATE OF NEVADA

REZA ZANDIAN, A/K/A
GOLAMREZA ZANDIANJAZI, A/K/A
GHOLAM REZA ZANDIAN, A/K/A
REZA JAZI, A/K/A J. REZA JAZI,
A/K/A G. REZA JAZI, A/K/A
GHONOREZA ZANDIAN JAZI, an
individual,

Appellant,

vs.

JED MARGOLIN, an individual,

Respondent.

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Elizabeth A. Brown
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Supreme Court Case No. 82559
District Court Case No. 09OC005791B

On Appeal from *Order Granting Plaintiff's Motion To Void Deeds, Assign
Property, For Writ Of Execution And To Convey*
dated January 19, 2021
in the First Judicial District Court, Carson City
The Honorable James T. Russell Presiding

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record for Appellant certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

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Rick Oshinski, Esq.
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3. If litigant is using a pseudonym, the litigant's true name: N/A.

Dated this 11th day of August, 2021.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg
MARK FORSBERG, NSB 4265

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JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRAP 3A(8) which establishes the appealability of special orders of the District Court after final judgment. Here, the District Court's entry of a default judgment against Appellant was a final judgment. Respondent moved post-judgment to execute on the default judgment, making the granting of that order appealable under the rule. *See also, Rawson v. Ninth Judicial Dist. Court of State*, 133 Nev. Adv. Op. 44, 396 P.3d 842 (2017) citing *Osman v. Cobb*, 77 Nev. 133, 360 P.2d 258 (1961) ("In Nevada, void orders have historically been appealable. . . This court . . . has since its beginning held that an appeal from a void judgment might properly be considered and acted upon."). *See also Smith v. Sixth Judicial Dist. Court*, 63 Nev. 249, 256-257, 167 P. 2d 648, 651 (1946) (holding that void orders may be collaterally attacked at any time).

ROUTING STATEMENT

NRAP 17(a) enumerates cases that are to be heard and decided by the Supreme Court. NRAP 17(a)(12) provides that this Court will hear matters raising as a principal issue a question of state-wide public importance. Appellant urges that this case is of state-wide importance because while this Court has held that time periods prescribed by statute must be strictly construed, it has not reached the question of whether the time period prescribed by NRS 17.150(4) must be so construed or whether failure to comply with the time period will result in a judgment lien being void.

STATEMENT OF ISSUES

1. Did the District Court err by granting a motion that allowed execution on a judgment lien that was never created because the recording of the judgment did not strictly comply with NRS 17.150(4)?

STATEMENT OF THE CASE

This is an appeal from an order of the District Court, *ROA 3524*, granting Respondent's Motion to Void Deeds, Assign Property, For Writ of Execution and To Convey (the "Motion" or "Motion to Void"). *ROA 3162*. The Motion and order followed a default judgment. The judgment being executed upon was recorded in 2013, but an affidavit of judgment was not recorded "at that time" as required by NRS 17.150(4) for the perfection of a lien upon which the judgment creditor could

execute. Because strict compliance with the statute is required, the failure to record the affidavit of judgment resulted in no lien being created and the District Court erred in granting a motion that allowed execution on the judgment. Appellant timely appeals from the order of the District Court granting the post-judgment motion.

STATEMENT OF FACTS

This case was commenced in the District Court by filing a complaint on December 11, 2009. *ROA 1*. The District Court entered a default judgment against Appellant on June 24, 2013. *ROA 1255*. Respondent recorded the default judgment in the official records of the Washoe County Recorder on August 16, 2013 as document number 4269631. *Affidavit of Renewal of Judgment, ROA 3498 at 3499*. The default judgment was also recorded in a number of other Nevada counties. *Id.*

Appellant moved to set aside the default judgment, and the motion was denied by the District Court. *ROA 1558*. Appellant appealed the order and this Court issued its Order of Affirmance on October 21, 2015.

Respondent filed his Motion to Void Deeds, Assign Property, For Writ of Execution and To Convey on May 3, 2016. *ROA 3162-3172*. However, on June 3, 2016, the District Court issued a Notice of Bankruptcy Filing and Automatic Stay. *ROA 3491-3493*. While the stay was still in effect, on May 2, 2019, Respondent filed his Affidavit of Renewal of Judgment in the District Court (“Affidavit of

Renewal”). *ROA 3498*. The Affidavit of Renewal contained the following statement by Respondent:

However, in the adversary proceeding in the United States Bankruptcy Court, District of Nevada, adversary case no. 17-0516-btb, the Court granted a partial motion for summary judgment against Margolin for quiet title and declaratory relief in favor of Star Living Trust and Koroghli Management Trust, declaring the Sheriff’s deeds void ab-initio on July 20, 2018. Margolin intends to appeal the bankruptcy court’s order declaring the Sheriff’s deeds void ab-initio. Notwithstanding the above, Margolin has not received any payments from Judgment Debtor [Appellant].

Id. at 3503. The Affidavit of Renewal of Judgment provided no additional information regarding the basis for the order of the Bankruptcy Court, nor did it attach a copy of that order to the affidavit. Its oblique reference to the Bankruptcy Court’s decision is the only mention of this issue in the entire record on appeal and creates questions that were never resolved below but are apparent in the record and now.

On January 15, 2021, Respondent filed his Notice of Termination of Bankruptcy Proceedings. *ROA 3511-3513*. The Notice of Termination of Bankruptcy Proceedings provided no additional information to the District Court regarding the Bankruptcy Court’s order declaring the Sheriff’s deeds void *ab initio*. The notice also made no mention of the appeal referenced in the Affidavit of Renewal of Judgment, *ROA 3503*, including whether an appeal was filed or the

outcome of any appeal. The Notice of Termination of Bankruptcy Proceedings, *ROA 3511*, resubmitted the Motion to Void.

Attached to the Notice of Termination of Bankruptcy Proceedings was the Bankruptcy Court's order dismissing the Chapter 15 case brought by Appellant. *ROA 3515 et seq.* The order vacated the court's previous Order granting partial motion for summary judgment but did not explain the reasons for its actions or discuss the basis for previously granting the partial motion for summary judgment.

The District Court granted the Motion to Void. *ROA 3524-3528.* The District Court's order made no findings of fact or conclusions of law. The order voided a number of transfers of real property made by Appellant to others and ordered each of those pieces of real property be executed upon and conveyed to Respondent. The District Court made no findings in support of granting injunctive relief. It made no finding that Respondent had filed, at the time of recording the default judgment, an affidavit of judgment as required by NRS 17.150(4). In fact, the record on appeal contains no evidence that such an affidavit of judgment was recorded at the time the default judgment was recorded.

On March 11, 2021, an Affidavit of Judgment was filed with the District Court. *ROA 3548-3552.* The Affidavit of Judgment identifies the default judgments recorded in six Nevada counties in August of 2013 as the judgments subject to the affidavit and August, 2013 as the dates of recording. The Affidavit of Judgment

present in the record contains no recording information suggesting that it was recorded at the time the judgments themselves were recorded as required by NRS 17.150(4).

STANDARD OF REVIEW

This Court reviews statutory construction *de novo* and similarly, whether a statute's procedural requirements must be complied with strictly or substantially. These questions present questions of law subject to this Court's plenary review. *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007).

SUMMARY OF ARGUMENT

The central question in this case is whether, having obtained a default judgment, Respondent ever perfected a lien against the real property of the judgment creditor upon which execution could be had. The answer to that question is that Respondent failed to perfect a lien in the manner prescribed by Nevada statutes, which require strict, not substantial, compliance. Because Respondent failed to comply with the statutory requirements and therefore failed to perfect the lien, the District Court committed error when it granted Respondent's Motion to Void Deeds, Assign Property, For Writ of Execution and To Convey.

The District Court was aware from Respondent's Affidavit of Renewal at the time it granted the Motion that the Bankruptcy Court had held that the sheriff's deeds conveying real property upon which execution was sought in the Motion were void

ab initio and that Respondent intended to appeal that ruling. Respondent's statement to the District Court on this subject, proffered in his Affidavit of Renewal of Judgment filed during the pendency of the bankruptcy stay, lacked the candor to the tribunal required by NRPC 3.3(a)(2), as it did not explain to the District Court the basis of the decision by the Bankruptcy Court, the basis upon which Respondent intended to appeal or the outcome of any such appeal. Moreover, when Respondent resubmitted the Motion after the bankruptcy stay was terminated, Respondent again failed to address the issue of the appeal or its outcome, or to establish that a lien had been perfected as required by the statute, or to disclose to the District Court that an affidavit of judgment had not been filed or recorded as required by NRS 17.150(4), thus failing to provide the District Court with legal authority known to the lawyer to be directly adverse to the to the position of the client. Thus, the District Court was left with the incorrect understanding that the lien had been perfected and execution could proceed.

Nonetheless, the record shows that at the time the Motion was granted the sheriff's deeds had been declared void and there was no evidence before the District Court that a lien had been perfected, and indeed it had *not* been perfected. Respondent failed to comply with NRS 17.150(4) and therefore failed to perfect a lien. Strict, not substantial, compliance with the statute is required. Therefore, the District Court erred by granting the Motion and its order doing so should be reversed.

ARGUMENT

A. This Court Has Not Addressed the Effect of A Failure to Strictly Comply with the Statutory Requirements For Perfecting A Lien Under NRS 17.150(4).

This Court has addressed the failure of a judgment creditor to strictly comply with the time requirements for renewing a judgment prescribed by NRS 17.214. *See Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007). However, the Court has not specifically addressed the effect of failure of a judgment creditor to comply with the analogous timing requirements of NRS 17.150(4). In *Secured Holdings, Inc. v. Eighth Judicial Dist. Court of State* (Nev. App. 2017, No. 73158), the Court of Appeals was asked to address the argument that a judgment creditor's lien-related claims should be dismissed because of the failure of the judgment creditor to file an affidavit of judgment at the same time it recorded the judgment. In that case, the district court had decided that although the statute requires an affidavit to be *filed*, the affidavit is not a condition precedent to the creation of a valid lien and the statute does not expressly provide that the lien is invalid if the affidavit is not filed. Although it is not clear from the decision of the court of appeals, it appears that the required affidavit of judgment was neither filed in the district court nor recorded. The court of appeals recognized that this issue had not been addressed by a Nevada appellate court but declined to reach the issue because "the statute does not clearly

mandate dismissal on the failure to comply with NRS 17.150(4), and petitioner has provided no other authority otherwise demonstrating that dismissal was required.” The court of appeals concluded that the petitioner “failed to demonstrate that dismissal was required by clear authority, and thus, that writ relief is warranted on this basis.”

Appellant in this case asserts, as the petitioner failed to do in *Secured Holdings*, that this is an important issue of law needing clarification from this Court and is properly before the Court as set forth in Appellant’s *pro per* docketing statement filed March 11, 2021. The court of appeals, furthermore, at footnote 2 noted that nothing in its order in *Secured Holdings* precluded the petitioner from raising its NRS 17.150(4) arguments in any appeal from an adverse final judgment in that case. This open question is now before this Court and its determination will be dispositive of this appeal.

B. The Requirements of NRS 17.214 and NRS 17.150 Are Analogous And *Leven v. Frey* Should Therefore Control.

NRS 17.150(2) provides that a copy of any judgment or decree of a district court “may be recorded in the office of the county recorder in any county, and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.”

Subsection (4) of the statute provides:

In addition to recording the information described in subsection 2, a judgment creditor who records a judgment or decree for the purpose of creating a lien upon the real property of the judgment debtor pursuant to subsection 2 shall record at that time an affidavit of judgment stating:

(a) The name and address of the judgment debtor;

(b) If the judgment debtor is a natural person:

(1) the last four digits of the judgment debtor's driver's license number or identification card number and the state of issuance;
or

(2) the last four digits of the judgment debtor's social security number;

(c) If the lien is against real property which the judgment debtor owns at the time the affidavit is recorded, the assessor's parcel number and the address of the real property, and a statement that the judgment creditor has confirmed that the judgment debtor is the legal owner of that real property.

→ All information included in an affidavit of judgment recorded pursuant to this subsection must be based on the personal knowledge of the affiant, and not upon information and belief.

Here, it can be inferred from the record that Respondent recorded the judgment in counties where Respondent believed real property owned by the judgment creditor was located. However, there is *no* evidence in the record that Respondent recorded, at the time the judgment was recorded, the affidavit of judgment required by NRS 17.150(4). Respondent did file an affidavit of judgment on March 11, 2021, nearly eight years after the judgment was recorded in six Nevada counties in August of 2013. That affidavit of judgment, *ROA 3498*, did not assert that the judgment to which it applied was entered when the court granted the Motion on January 19, 2021, *ROA 3524*, but referred back to the default judgment recorded

in 2013. *ROA 3499*. The grossly untimely filing of the affidavit of judgment was an act apparently reflecting Respondent's recognition after the filing of Appellant's notice of appeal on February 21, 2021, *ROA 3539*, that he had failed to comply with the statute and attempting a retroactive cure for that failure. And, notwithstanding the **filing** of the untimely affidavit of judgment, there is no evidence in the record that the untimely affidavit of judgment was **recorded** anywhere in compliance with NRS 17.150(4).

NRS 17.150, the statutory procedure for perfecting a lien, and NRS 17.214, the statutory scheme for renewing a judgment that was analyzed in *Leven v. Frey, supra*, both prescribe steps a judgment creditor must take to achieve the respective benefits each provides. NRS 17.214 requires timely filing of an affidavit with the court, timely recording of the affidavit of renewal if the judgment was one that was previously recorded, and timely service on the judgment debtor in order to successfully renew a judgment. Similarly, NRS 17.150 provides that a judgment creditor who records a judgment for the purpose of creating a lien must record the judgment in accordance with subsection (2) and in addition to recording the information described in subsection (2), must record the affidavit of judgment **at the time the judgment is recorded**. The affidavit of judgment must contain specific information identifying the judgment debtor: his name and address, the last four digits of numbers shown on identifying documents, the assessor's parcel number,

the address of the real property and a statement that the judgment creditor has confirmed that the judgment debtor is the legal owner of that real property. The statute contains additional specific requirements where the lien sought would be against a mobile or manufactured home. Finally, all of the information included in an affidavit of judgment recorded pursuant to subsection (4) must be based on the personal knowledge of the affiant and not on information and belief.

The court in *Leven* began its analysis of NRS 17.214 by examining the language of the statute. It found that the statute's requirements are plainly set forth and "must be followed for judgment renewal." *Id. at 168 P.3d 715*. The court found no ambiguity or a lack of clarity in the requirements of the statute that an affidavit must be filed with the district court within 90 days before the judgment's expiration, the recording of the affidavit within three days of filing and service of the affidavit on the debtor within three days of filing. Completing these tasks in the prescribed time periods creates a lien on the debtor's real property in a particular county when the judgment is also recorded in that county. *Id.* The court explained that if a previously recorded judgment were renewable without recordation of the renewal affidavit, the lien created by NRS 17.150(2) and reflected in the public records would continue without any recorded notice that the judgment had been renewed and the lien remained in effect. It further noted that requiring recordation of the renewal affidavit ensured that anyone performing title searches would discover the

continuing existence of the lien. Finally, the court held that the requirement of service on the judgment debtor within three days of filing is also plain and its meaning clear and that such notice is a due process requirement in any such proceeding. Citing *Browning v. Dickson*, 114 Nev. 213, 217, 954 P.2d 74 (1998).

Like the provisions of NRS 17.214, the requirements of NRS 17.150 are clear as to the time and content of the items that must be filed and recorded. The judgment creditor must, in order to perfect a lien, record a copy of the judgment, certified by the clerk of the court where the judgment or decree was rendered, in any county where the judgment debtor's real property may be found. If the document to be recorded is an abstract, it must contain the title of the court and a number identifying the action, the date of entry of the judgment or decree, the names of the judgment debtor and judgment creditor, the amount of the judgment or decree and the location where the judgment or decree is entered in the minutes or judgment docket. *NRS 17.150(3)*.

NRS 17.150 doesn't stop there: It imposes additional requirements on a judgment creditor who records a judgment for the purpose of creating a lien on the real property of the judgment debtor, in subsection (4). Those requirements are that an affidavit of judgment must be recorded at the time the judgment itself is recorded. The affidavit must contain statements of the name and address of the judgment debtor and, if the judgment debtor is a natural person, identifying information

derived from the judgment debtor's driver's license and social security number. In addition, where the lien is against real property owned by the judgment debtor at the time the affidavit of judgment is recorded, the affidavit must contain the parcel number and address of the real property and a statement that the judgment creditor has confirmed that the judgment debtor is the legal owner of that property. Finally, subsection (4) prescribes that all the information included in the affidavit of judgment must be based on personal knowledge.

There is nothing unclear or ambiguous about the requirements under NRS 17.150(2) and (4) for perfecting a lien. Thus, as to these matters, the court's analysis in *Leven* can also be applied here to NRS 17.150. In *Leven* and here, as noted by the court of appeals in *Secured Holdings, supra*, neither NRS 17.214 nor NRS 17.150 expressly identify the consequences of failure to comply with the provisions of the statute. In *Leven*, therefore, the court turned to the legislative history of NRS 17.214 to discern the intent of the legislature in enacting the statute. It determined that the statute was intended to establish a procedure for judgment renewal to allow judgment creditors to extend the time for collecting payments after the original judgment would otherwise expire. It recognized that a 1995 amendment required that affidavits of renewal be recorded to ensure that real property liens are apparent in title searches and concluded that the filing of an affidavit with the court alone would not renew a previously recorded judgment, as recordation was also required.

Here, the Court should follow the same analytical process. As set forth below, the provisions of NRS 17.150(4) requiring the recording of an affidavit of judgment were added to subsection (4) by a 2011 amendment found at *2011 Statutes of Nevada, p. 2409*. Moreover, the legislative history of that amendment shows the intent of the legislature to protect property owners in general from liens on their property where they were not, in fact, the intended judgment debtor, to protect judgment debtors by requiring investigation and acknowledgment of the status of the judgment and ownership of property before a lien could be perfected, and to facilitate the work of county recorders in assuring that judgment liens attached to real property and not simply to judgment debtors by name.

As in *Leven*, failure to adhere to the timing and content requirements of NRS 17.150(4) would defeat the legislative intent as it would expose judgment debtors to foreclosure or other collection activities after a lien expired and interpreting the statute to not require recording of the affidavit of renewal would fail to comply with “our rules of statutory interpretation, as it would render the statute’s express recording and service requirements meaningless, and thus produce an unreasonable result.” *Id.*

A similar result was reached more recently in *Worsnop v. Karam*, 458 P.3d 353 (2020). There, a judgment creditor timely filed an affidavit of renewal with the court but failed to record the affidavit within the time allowed by NRS 17.214. The

creditor argued that it was possible to renew a judgment under common law and thus avoid the statutory requirements, and that equitable tolling should be applied to avoid the harsh result of his judgment expiring. The Nevada Supreme Court determined that the delay in recording the affidavit of renewal voided the renewal and the judgment expired. The court relied on *Leven*'s holding that the statute must be strictly complied with and that failure to strictly comply voided the renewal. Separately, the court rejected the argument that equitable tolling was a possible means of salvaging the renewal.

NRS 17.150(4) must be interpreted in the same manner as NRS 17.214 to avoid an absurd result, that being that the requirement of recording an affidavit of judgment could be ignored without consequence and the legislative intent thwarted. The case before the Court now exposes just such a circumstance and unreasonable result. Respondent here failed to record an affidavit of judgment, not just *at the time* the judgment itself was recorded or even near the time, but not until nearly eight years later. This thwarted the legislative intent that a judgment creditor show diligence by establishing by its personal knowledge that the property was owned by the judgment creditor at the time the judgment was recorded and meeting the other requirements identifying the judgment debtor. It also meant that the judgment failed to distinguish between the three defendants against whom the default judgment was taken: Optima Technology, a California corporation, Optima Technology, a Nevada

corporation and Reza Zandian, an individual. What may have occurred to resolve these ownership and identity issues behind the scenes and out of the public record remains opaque to the courts, the public, title companies examining the public records and to county recorders attempting to keep the record straight. The Respondent's disregard of NRS 17.150(4) must have an analogous consequence as disregard of NRS 17.214 if the former is to have any meaning or effect. In this case, the lien should be viewed as unperfected and not subject to execution; in *Leven*, the failure to comply with the statute resulted in the judgment not being renewed and expiring. The same must be true here. These are the only results that comply with the plain meaning of the statute and the legislative intent underlying the enactment of the language at issue.

C. Strict Compliance with NRS 17.150(4) is Required.

The court in *Leven* analyzed the level of compliance required under the statute, weighing strict versus substantial compliance. The court began with the general statement that in determining whether strict or substantial compliance of the statute is required, courts examine the statute's provisions, as well as policy and equity considerations. The court noted that with respect to NRS 17.214, it had never indicated that substantial compliance with specific timing requirements is sufficient in the context of recording and service of documents required by the statute:

To the contrary, since the statute includes no built-in grace period or safety valve provisions, its explicit three day language leaves little room

for judicial construction or “substantial compliance” analysis. Although statutes allowing for a “reasonable time” to act are subject to interpretation for substantial compliance, those that set time limitations are not. Our interpretation of the statute’s timing requirements and our conclusion that those requirements must be complied with strictly is consistent with the general tenet that “time and manner” requirements are strictly construed, whereas substantial compliance may be sufficient for “form and content” requirements.

In *Leven*, the court applied these principles to determine that where Frye failed to meet the statutory three-day requirement for recording the affidavit of renewal, the attempt to renew the judgment failed and it expired. The court held that any other interpretation would undermine the legislative intent and that substantial compliance would create situations in which a title search would indicate that a judgment lien had terminated when, in fact, it had not. Applying these principles to the case at hand, NRS 17.150(4) contains a clear and unmistakable time requirement for filing the affidavit of judgment: it must, without any grace period or room for substantial compliance analysis, be recorded at the time the judgment itself is recorded. As in *Leven*, permitting a delay in recording the affidavit of judgment defeats the legislative intent of having the public record accurately reflect the status of any lien, protecting the general public from mistaken efforts to execute on a lien, and protecting judgment debtors by requiring diligence on the part of judgment creditors. Therefore, subsection (4) of NRS 17.150 demands strict compliance and the result of a failure to strictly comply in that regard will be that the lien is not

perfected and thus the judgment cannot be executed upon. Here, the egregious failure to comply with the recording requirements of NRS 17.150(4) would fail to meet muster even under substantial compliance principles. In short, Respondent never perfected a lien against Appellant's real property anywhere, never created or attempted to create a record in the District Court of compliance with the statute and did not file, let alone record, the required affidavit until nearly eight years after the judgment was recorded and after filing of the notice of appeal. The District Court erred in allowing Respondent to execute on Respondent's unperfected lien when he had not strictly complied with the statute.

D. The Legislative History of NRS 17.150(4) Shows That Strict Compliance is Required.

In *Leven v. Frey*, this Court determined that NRS 17.214, requiring the timely filing of an affidavit and timely service of a renewal of a judgment on the judgment debtor, when read in conjunction with NRS 17.150(2) was ambiguous only as to the effect of failure to comply. The court found that NRS 17.214(3)'s requirement that an affidavit of renewal be served on the judgment debtor within three days of filing was plain and its meaning clear. The court reasoned that:

NRS 17.150(2) creates a lien on a debtor's real property in a particular county when a judgment is recorded in that county; this lien remains in place for six years from the date that the judgment was docketed and continues automatically "each time the judgment...is renewed" if a previously recorded judgment could be renewed under 17.214 without recordation of the renewed affidavit, then the lien created by NRS

17.150(2) would continue without any recorded notice that the judgment has been renewed and that the lien therefore remains in effect. Instead, requiring recordation of the renewal affidavit for the renewal of a recorded judgment ensures that anyone performing title searches will know that the lien continues.

Id. at 168 P.3d at 715. The court determined that while NRS 17.214's provisions for affidavit filing, recordation and notice were unambiguous and clear, subsection (2) was ambiguous with regard to the effects of filing the affidavit. Therefore, the court reviewed the legislative history of NRS 17.214(2). That subsection states that "[t]he filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit." The court found this language to be susceptible to different interpretations. First, it could be construed to mean that the mere filing of the affidavit renewed the judgment. Alternatively, the language could be construed to mean that the filing of the affidavit simply established the amount owed and did not, in and of itself, renew the judgment. To resolve this discrepancy the court looked at the legislative history of NRS 17.214. The court reviewed a 1995 amendment to the statute that added a recording requirement and distinguished between the filing of the renewal and the recording of it. The court determined that the 1995 amendment focused on requiring that affidavits be recorded to ensure that real property liens are apparent in title searches and that even though the amendment did not specifically address the meaning of the provision regarding effective filing of the affidavit, the amendment made clear that recording the affidavit was necessary to carry out the

intent of the legislature to provide notice of the renewal in the public records where the judgment had been previously recorded.

In reaching this conclusion, the court determined that it was necessary to examine “the context and the spirit of the law or the causes which induced the Legislature to enact it. The entire subject matter and policy may be involved as an interpretative aid.” After performing this analysis, the court concluded that permitting a previously recorded judgment to be renewed by simply filing the affidavit of renewal with the clerk of the court would render meaningless the amendment requiring that the affidavit also be recorded in order to give notice in the public records of the renewal.

Here, with respect to NRS 17.150(4) the legislature amended the statute in 2011 to require that, for the purpose of creating a lien on real property of a judgment debtor pursuant to subsection (2) of NRS 17.150, a judgment creditor must record at the time of filing the affidavit of judgment, a statement providing the name and address of the judgment debtor, and, if the judgment debtor is a natural person, the last four digits of the judgment debtor’s driver’s license number or identification card number and the state of issuance. In addition, the 2011 amendment added a provision requiring that the affidavit of judgment contain additional information about the property:

If the lien is against real property which the judgment debtor owns at the time the affidavit of judgment is recorded, the assessor’s parcel

number and the address of the real property and a statement that the judgment creditor has confirmed that the judgment debtor is the legal owner of that property.

This language is now contained in subsection (c) of NRS 17.150(4). The amendment also added the provision of subsection (4) requiring that all information included in an affidavit of judgment recorded be based on the personal knowledge of the affiant, and not upon information and belief.

All these amendments are found at *211 Statutes of Nevada, p. 2409*. They were enacted into law after being proposed as Senate Bill 186.

The legislative history of SB 186 demonstrates that the intent of the legislature in enacting the amendment was to *require* the *recording* of the affidavit of judgment and not the mere filing of it with the clerk of the court. At the March 2, 2011 of the Senate Committee on Judiciary, Lora E. Myles, on behalf of Nevada's county recorders, testified that "Senate Bill 186 is a simple fix to a growing problem caused by an increase in foreclosures and creditor judgments. People obtain judgments and then do not tie them to real property or mobile homes. As a result, when the mobile home or real property is foreclosed upon or sold, those judgments are not satisfied because they are not tied to the property. They are tied to a person's name." In addition, Myles testified that the amendment was necessary to show that judgment creditors have personal knowledge that the judgment debtor actually owns the property, to avoid having the lien inadvertently affect the property of another

person with the same name. Therefore, Myles testified that it was necessary that the judgment creditor record a statement showing that the judgment creditor has verified the information in the affidavit of judgment and knows it to be true.

Carson City Clerk-Recorder Alan H. Glover testified in favor of SB 186 and described an example where property was foreclosed on based on an affidavit of judgment filed with the court but was not recorded, and thus a foreclosure took place without the Carson City Public Administrator having notice of that action. Glover testified “from the county recorder’s standpoint, the bill cleans up the language regarding how liens are filed, and it will work well for recorders and administrators of the states.”

Similar testimony was received by the committee at its March 17, 2011 meeting. Testimony was given that the bill would require information based on personal knowledge in an affidavit be recorded in a civil judgment to identify the judgment debtor’s real property. At that meeting, the bill passed out of committee unanimously.

The Assembly Committee on Judiciary took up the bill on April 20, 2011. Again, Carson City Clerk-Recorder Glover testified that the purpose of the bill would be to ensure that the information in the affidavit of judgment is for the right person and the right piece of property and that the information was on all necessary documents to record a lien. He testified that the amended provisions would benefit

consumers. Ultimately, the bill passed out of the Assembly Committee on Judiciary unanimously on April 26, 2011.

In short, the legislative history demonstrates unequivocally that the purpose of the 2011 amendment adding the recording requirement for an affidavit of judgment was to protect judgment debtors from suffering executions on judgments or foreclosures where the recorded judgment did not contain confirmation of the judgment debtor's identity and the judgment debtor's ownership of real property to which a judgment lien would attach. Moreover, it is clear that evidence was received that induced passage of the bill showing that it would benefit county recorders and also judgment creditors.

In this case, Respondent recorded a default judgment, but failed as required by NRS 17.150(4) to record (or file) an affidavit of judgment at the same time. In fact, the affidavit of judgment based on the default judgment against Appellant was not *filed* with the clerk of the court until March 11, 2021 (*ROA 3548*), almost eight years after the judgment was recorded. The failure of Respondent to record an affidavit of judgment at the time the default judgment was recorded in 2013 not only clearly fails to meet the statutory requirements set forth in NRS 17.150(4), but also runs afoul of the unmistakable intent of the legislature in imposing the recording requirements.

CONCLUSION

For the reasons stated above, Appellant urges this Court to reverse the order of the District Court that allowed execution on a judgment for which no lien was perfected in the manner prescribed by NRS 17.150(4) because no affidavit of judgment was recorded. Appellant requests that in doing so, the Court clarify that perfection of a lien on real property by judgment creditors requires strict compliance with the timing and recording provisions of NRS 17.150(4).

Respectfully submitted this 11th day of August, 2021.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg
Mark Forsberg NSB 4265

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1. This brief has been prepared using Microsoft Word with a Times New Roman font (proportional spacing) with a 14 point font size.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 6391 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11th day of August, 2021.

OSHINSKI & FORSBERG, LTD.

By /s/ Mark Forsberg
Mark Forsberg NSB 4265

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Oshinski & Forsberg, Ltd., and that on August 11, 2021, I filed a true and correct copy of the foregoing **Appellant's Opening Brief** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of August, 2021, in Carson City, Nevada.

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