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**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,

Supreme Court Case No. 82559  
District Court Case No. 09OC005791B

**PETITION FOR EN BANC  
RECONSIDERATION**

Appellant,

vs.

JED MARGOLIN, an individual,

Respondent.

\_\_\_\_\_ /

Appellant, 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 (“Appellant” and/or “Zandian”), by and through his attorneys, Mark Forsberg, Esq. and Oshinski & Forsberg, Ltd., hereby files his Petition for en banc Reconsideration (“Petition”).

## INTRODUCTION

The opening sentence of this Court's decision in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007) states "This proper person appeal presents us with an opportunity to clarify the proper procedure for judgment renewal under NRS 17.214 and to address whether creditors are required to strictly comply with the statute's requirements." Appellant Zandian asks that the Court recognize its jurisdiction -- as it implicitly did in *Leven* -- as to a special order after judgment and to take this opportunity to address whether judgment creditors are required to strictly comply with NRS 17.150(4), the analogous statute at issue here.

This Petition seeks en banc reconsideration of orders by this Court dismissing Appellant's appeal filed February 16, 2022, and denying rehearing filed March 23, 2022. The Petition for en banc reconsideration is timely filed in accordance with NRAP 40A. Both the order of dismissal and the order denying rehearing (consisting of a single sentence) are based on the Court's incorrect conclusion that it lacks jurisdiction to consider the appeal, which was brought pursuant to NRAP 3A(b)(8) allowing appeals from special orders after judgment. Appellant's substantive argument is that, like NRS 17.214, the statute at issue in *Leven*, NRS 17.150(4), the statute at issue here, demands strict compliance on the part of a judgment creditor, compliance that indisputedly is absent in this case.

## SUMMARY OF ARGUMENT

The Order Dismissing Appeal relied on *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002), and concluded that the appeal should be dismissed because the order appealed from did not affect “the rights of some party to the action, growing out of the judgment previously entered.” The Court stated that “Accordingly, post judgment orders that do not affect rights already incorporated in a judgment are not appealable as SOAFJs.” In reaching this result, the Court expressly considered Respondent Margolin’s right to execute on his default judgment that arose from the judgment itself, but fails to assess Appellant Zandian’s right to have any lien arising out of the judgment perfected in strict adherence to NRS 17.150(4). This conclusion overlooks the central holding of *Gumm* that to be appealable under NRAP 3A(b)(8), the order appealed from must affect the rights of *some party* to the appeal. Thus, the order dismissing the appeal misapplies *Gumm*. Moreover, if the reasoning of the panel had been applied in *Leven and Worsnop v. Karam*, 458 P.3d 353 (Nev. 2020), this Court would have dismissed both of those appeals on jurisdictional grounds because both appeals concern themselves solely with post-judgment procedures required by statute and not on the rights of either party based solely on the judgment itself. Appellant therefore respectfully urges that the order of dismissal is incorrect and that the Court has jurisdiction over Appellant’s appeal, which should not have been dismissed.

## ARGUMENT

### A. This Court's Precedent Establishes the Existence of Jurisdiction.

In *Frey* and in *Worsnop v. Karam*, 458 P.3d 353 (Nev. 2020), this Court considered and decided issues regarding the compliance with statutory requirements, or lack thereof, by judgment creditors in post-judgment activities. Neither decision makes any statement regarding the basis of the Court's jurisdiction. However, the docketing statements for both cases are instructive. The docketing statement in *Worsnop*, in response to question number 21(a), stated that the basis of jurisdiction for the appeal was NRAP 3A(a)(8), citing *McClandon v. Eighth Jud. Dist. Ct.*, 2016 WL 7031827 (Nov. 29, 2016 Nev.) and *Leven*. Presumably, by hearing and deciding the case the Court concurred with this statement of its jurisdiction.

*Leven* was a proper person appeal and no docketing statement appears in the court's records. However, recognizing the importance of the issue presented, the court *sua sponte* invited briefs by *amici curiae*. See docket no. 07-05141. The Court did not make any statements with regard to its jurisdiction in that order. An amicus brief was filed; see docket no. 07-18214. It also failed to address the Court's jurisdiction and did not contest it. Nonetheless, the Court implicitly acknowledged its jurisdiction by seeking briefs of *amici* and deciding the case.

The panel's decision that it lacked jurisdiction over this analogous case is a clear departure from the precedent established by *Leven* and *Worsnop*. And, since

it denied a petition for rehearing, en banc reconsideration is both appropriate and necessary.

**B. *Gumm v. Mainor* Supports Jurisdiction in this Case.**

*Gumm* is dispositive and provides the proper analytical framework for determining whether a special order after final judgment establishes the jurisdiction of this Court to hear an appeal. The issue in *Gumm*, as here, was whether the special order after judgment affected the rights of a party established by the judgment. In *Gumm*, the question was the interpretation of this Court’s statement in *Wilkinson v. Wilkinson*, 73 Nev. 143, 145, 311 P.2d 735, 736 (1957) that such an appeal “must affect the rights of the *parties* growing out of final judgment.” (Emphasis added.) The *Gumm* court clarified that the post-judgment order need not affect the rights of both parties under the judgment, but only *some* party under the judgment. Therefore, in *Gumm*, where the subject of the appeal would have affected one but not both parties to the appeal and thus would not have qualified as a basis for jurisdiction under *Wilkinson*, the court held that the correct interpretation of the rule is that jurisdiction arises if the appeal of the special order after judgment affects the rights of any party.

Here, while the panel decision expressly recognized that the rights of the Respondent were rooted in the judgment itself, it failed to consider or address the rights of the Appellant to the benefits of NRS 17.150(4) and to the strict application

of the mandatory timing requirements set forth therein for the perfection of a lien, compliance with which are a necessary prerequisite to execution on the judgment. Argument on this subject was presented in Appellant's Opening Brief. *See, Argument, Sections B and C, pp. 9-19* and Reply Brief at *Argument, Section A, pp. 2, et seq.*

It is beyond dispute that this appeal affects the rights of Respondent Margolin. If successful, it would ultimately deprive him of the right to execute on the judgment at all because of his failure to strictly comply with NRS 17.150(4). That effect on the rights of Margolin in and of itself establishes the jurisdiction of this Court under NRAP 3A(b)(8). But the appeal also plainly affects the rights of Appellant Zandian, irrespective of the substance of the judgment itself. As set forth in the Opening Brief at *Argument, Section C, beginning at p. 17*, Zandian demonstrated that he is entitled to strict compliance with NRS 17.150(4), a process which would render the district court's order enabling the execution on the judgment erroneous and the lien void as having not been perfected in accordance with the statute.

Unlike this case, cases decided after *Gumm* that relied upon the holding have turned only on whether the special order after judgment affected the specific rights of a party under the terms of judgment rather than, for example, merely delayed or reapportioned the judgment rights. Thus, in *Murray v. A Cab Taxi Serv. LLC*, No. 81641, 2020 WL 6585946 (Nev. Nov. 9, 2020) (order dismissing appeal), cited by

this Court in its order dismissing Zandian’s appeal, the Court dismissed the appeal because the district court’s post-judgment order did not alter the amount of the appellant’s judgment or distribute any portion of the judgment to other parties, nor did it reduce respondent’s liability or obligations under the judgment, but only stayed the enforcement proceedings during the pendency of the appeal. Therefore, in that case, the rights of either party were not affected by the appeal, and it was dismissed. Here, in contrast, if successful, this appeal would eliminate Zandian’s obligations under the judgment entirely because the lien to enforce it was never perfected, therefore also affecting the rights of Respondent Margolin. The order appealed from is no mere procedural reapportioning order. It enters judgment against Zandian and orders deeds conveying property to Zandian voided. Without question the order profoundly affects Zandian’s rights.

In *Davidson v. Davidson*, 382 P.3d 880, 882 (Nev. 2016), the court found that it had jurisdiction to consider an appeal under NRAP 3A(b)(8) where the district court denied the appellant’s claim for one-half of the equity in marital property, and thus affected the appellant’s rights “growing out of the judgment previously entered.” Similarly, this appeal affects the rights to both parties growing out of the judgment previously entered, and the Court therefore has jurisdiction.

This Court implicitly recognized its jurisdiction over an appeal challenging the process used in executing on a judgment in *Leven*, where the appellant did not

challenge the validity of the underlying judgment, just as Zandian does not do so here. Rather, the appellant in *Leven* argued that the judgment could not be enforced because the judgment creditor had not properly renewed the judgment in strict compliance with a statute. Had the court in *Leven* applied the reasoning this Court relied upon in dismissing Zandian’s appeal, it would not have reached the substance of the appeal and would simply have dismissed it for lack of jurisdiction because, as here, the appeal did not change the rights of either party established by the judgment itself, which was not being challenged. Similarly, in *Worsnop* the challenged post-judgment order denied a motion to set aside a renewed judgment and to declare void an expired judgment, and the court took jurisdiction of the appeal notwithstanding the fact that it did not alter the rights of the parties established by the judgment itself. Had this Court treated the *Worsnop* appeal as it did Zandian’s appeal here, it would have dismissed the appeal for lack of jurisdiction on the ground that the appellant’s “right to execute on his default judgment arises from the default judgment itself, not the subsequent enforcement order.” Here, Zandian’s challenge is to the subsequent enforcement order, not the default judgment itself.

**C. The Court of Appeals Recognized the Issue Raised Here is Unresolved.**

Finally, it is respectfully urged that this Court bear in mind that the question of statutory interpretation raised in Zandian’s appeal has been presented to the Court



of Appeals but not decided. In *Secured Holdings, Inc. v. Eighth Judicial Dist. Court of State*, (Nev. App. 2017, No. 73158), the Court of Appeals was presented the issue raised by Zandian: whether 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, as required by NRS 17.150(4). That case came before the Court of Appeals on a writ rather than an appeal. The Court of Appeals did not reach the issue because it did not perceive a clear statutory duty of the district court to dismiss the case on those grounds and therefore determined that writ relief was not available. The appeals court invited the writ petitioner to raise the issue on appeal, recognizing that a challenge to a post-judgment execution process is a special order after final judgment appealable under NRAP 3A(b)(8). However, the issue has not subsequently been decided by either the Court of Appeals or this Court. The opinion in *Secured Holdings* identifies no jurisdictional issues that would be raised as a result of the writ appealing on that issue and implies that there is no jurisdictional bar as a result of NRAP 3A(b)(8).

### **CONCLUSION**

For the above reasons, Appellant respectfully requests en banc reconsideration of the panel's decision to dismiss the appeal for lack of jurisdiction. It is difficult to conceive of a circumstance in which an appellant could challenge post-judgment orders with regard to execution on judgments under the reasoning of

the Court in the Order Dismissing Appeal. If, as the Court of Appeals has held, an aggrieved party cannot obtain writ relief from a judgment lien not perfected in accordance with NRS 17.150(4), and this Court lacks jurisdiction if the rights of the parties set forth in the judgment itself are not modified by the post-judgment order, a party wishing to challenge an improperly perfected lien on the basis of the statute would have no remedy at all, a result inconsistent with the Court's previous jurisprudence.

Dated this 20th day of April, 2022.

OSHINSKI & FORSBERG, LTD.

By Mark Forsberg, Esq.  
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## CERTIFICATE OF SERVICE

I certify that and that on April 20, 2022, I filed a true and correct copy of the foregoing **Petition for en banc Reconsideration** 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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