

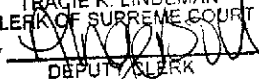
IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MCKINNEY,  
Appellant,  
vs.  
RICK MARTINEZ PERSONALLY AND  
IN ANY RELATED CORPORATE  
CAPACITY; SHANNON MARTINEZ  
PERSONALLY AND IN ANY RELATED  
CORPORATE CAPACITY; AND FIRE  
EXTINGUISHER SERVICE CENTER,  
LLC,  
Respondents.

No. 60017

**FILED**

**JAN 29 2014**

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order, entered on remand, dismissing a contract action. Tenth Judicial District Court, Churchill County; William Rogers, Judge.

This court previously resolved an appeal in this case in Docket No. 49172. As background, appellant formerly worked for respondents, and during his employment entered into a contract to take over payments on a pickup truck. After his employment ended, appellant stopped making payments and the truck was sold by respondent Rick Martinez. Appellant filed suit alleging several causes of action against respondents. Following a trial, the jury found in respondents' favor. But the district court entered a partial judgment as a matter of law in appellant's favor. Appellant then executed on the judgment and received a sum of money. The parties cross-

appealed from the district court's judgment in Docket No. 49172. This court reversed the district court's judgment and remanded the case for a new trial.

On remand, respondents sought a return of the money appellant obtained when he executed on the judgment. Based on the reversal of the judgment in appellant's favor, the district court ordered appellant to repay the money. After appellant failed to comply with that order, the district court entered an order dismissing the case. The district court explained in its order that it had authority to dismiss the action based on appellant's failure to make restitution as previously ordered, and that this failure caused hardship on respondents, thus preventing them from being able to adequately proceed to trial. On appeal, appellant challenges the district court's orders requiring repayment of the money received and the dismissal of his case.

Initially, we reject appellant's argument that the payment of money to satisfy the judgment resulted in a waiver of the ability to challenge the judgment on appeal. In *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 71 P.3d 1258 (2003), this court held that the coercive payment of money to satisfy a judgment pending appeal does not waive a party's right to appeal the judgment. *Id.* at 265, 71 P.3d at 1261. We also reject appellant's argument that based on language in an earlier district court order, he should not be required to repay the money. The order specifically stated that it was subject to any adverse ruling by this court.

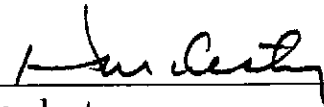
Next, appellant incorrectly argues that he had no obligation to repay the money that he obtained, after the judgment in his favor was

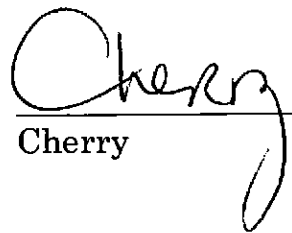
reversed and the district court ordered restitution. We have previously held that a party who obtains money based on a judgment that is reversed may be ordered to pay restitution. *Id.* at 267-68, 71 P.3d at 1262-63. This court recognized that restitution is permitted in order to avoid unjust enrichment in favor of the party whose judgment was overturned. *Id.* at 267, 71 P.3d at 1262. The decision whether to order restitution is within the discretion of the district court, *id.* at 267, 71 P.3d at 1263, and we conclude that the district court did not abuse its discretion in ordering restitution here.

We also uphold the district court's decision to dismiss the case after appellant failed to comply with the restitution order. A district court has authority to dismiss a case for failure to comply with a court order under both NRCP 41(b) and its inherent authority. *See Moore v. Cherry*, 90 Nev. 390, 393, 528 P.2d 1018, 1020 (1974). We review a district court order that dismisses, based on a failure to comply with a court order, for an abuse of discretion. *Id.* at 393-95, 528 P.2d at 1020-21. But, we also recognize that dismissal "is a harsh remedy to be utilized only in extreme situations" and should be "weighed against the policy of law favoring the disposition of cases on their merits." *Id.* at 393, 528 P.2d at 1021. Still, the question we address on appeal is whether the dismissal was within the court's discretion. *Id.* at 394-95, 528 P.2d at 1021. Here, we conclude that the district court did not abuse its discretion, as it noted that the failure to comply with the restitution order caused hardship and prejudice to

respondents and their ability to defend themselves in any further proceedings.<sup>1</sup> Accordingly, we

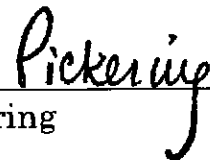
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Cherry

PICKERING, J., dissenting:

I respectfully dissent from the order of affirmance.

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. William Rogers, District Judge  
Carolyn Worrell, Settlement Judge  
Martin G. Crowley  
James F. Sloan  
Churchill County Clerk

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<sup>1</sup>Appellant's argument that the district court showed bias against appellant and failed to properly consider his various filings is not supported by the record, and therefore, does not warrant reversal.