IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARDSON CONSTRUCTION, INC., A NEVADA CORPORATION; AND HARTFORD FIRE INSURANCE COMPANY,
Appellants,
vs.
CLARK COUNTY SCHOOL DISTRICT, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,
Respondent.

No. 50000

FILED

NOV 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order awarding costs in a third-party construction contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

A subcontractor sued the general contractor, appellant Richardson Construction, Inc., over work performed on a public project. Richardson then filed a third party complaint against respondent Clark County School District, the public owner, in part for contribution and indemnification. During those proceedings, Richardson discovered that, at some point before or during the public work project, the subcontractor lost its license, purportedly stripping it of its right to sue in the first instance under NRS 624.320. Consequently, the district court dismissed the main action and, ultimately, dismissed the third-party action.

Thereafter, the School District moved for attorney fees and costs based on its alleged "prevailing party" status and its rejected offer to Richardson for judgment to be taken against it. The district court denied the motion, and the School District appealed. On December 26, 2006, we affirmed the order to the extent that the district court denied the School

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District attorney fees, and we reversed the order to the extent that the district court denied the School District its costs.[1]

Following our December 26 order, the School District again moved the district court for costs. The district court ultimately granted the motion, and this appeal followed.

Currently before us is the School District's "Motion for Summary Affirmance," requesting that we affirm the district court's award of costs based on our December 26 order, without considering any further argument from the parties. Richardson and appellant Hartford Fire Insurance Co. have opposed the motion. Having considered the motion and opposition, we conclude that summary affirmance is warranted.

Specifically, in our December 26 order we plainly noted that the "district court [abused its discretion] when it denied [the School District] its costs under NRS 17.115(4)"—i.e., the costs that the School District had sought in the district court.[2] Thus, the School District, based on the plain language of our December 26 order, was entitled to the costs it initially sought in the district court.

Consequently, following our December 26 order, the School District moved for an identical amount of costs,[3] which the district court

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[1]See Clark Co. School Dist. v. Richardson Const., Docket No. 45679 (Order Affirming in Part and Reversing in Part, December 26, 2006).

[2]Id. Indeed, we specifically declined to address Richardson's challenge to the sufficiency of the School District's verified memorandum offered to support the amount of costs that it sought because Richardson failed to object in the district to its submission. Id.

[3]The School District's second request for costs varied from the first only with respect to the amount of interest, which had increased due to

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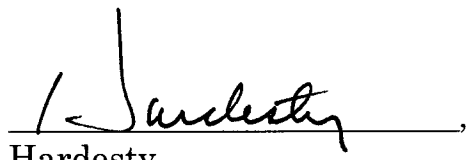
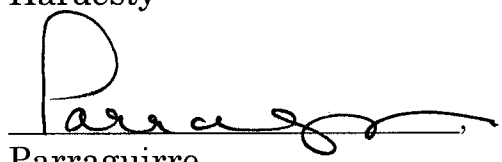
was without discretion to evaluate given our order. Had we intended for the district court to exercise its discretion with respect to any costs award, we would have remanded the matter.[4] But we did not. And once we subsequently issued the remittitur, the action was terminated "[a]s to all matters encompassed by the judgment concerned in the first appeal."[5] The district court thus was mandated to proceed according to our December 26 order and did not err in awarding the costs as previously requested.[6]

Accordingly, we grant the School District's motion, and we summarily affirm the district court's order.

It is so ORDER.



_____, J.
Hardesty



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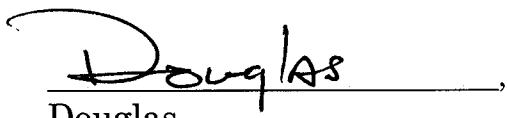
Parraguirre



_____, J.
Douglas

. . . *continued*
the passage of time between the School District's first and second requests.

[4]See Black's Law Dictionary 1319 (8th ed. 2004) (defining "remand" as "[t]o send (a case or claim) back to the court . . . from which it came for some further action").

[5]See Budget Financial Corp. v. System Inv. Corp., 89 Nev. 306, 307, 511 P.2d 1047, 1047-48 (1973).

[6]Id.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Parker Nelson & Arin, Chtd.
Kolesar & Leatham, Chtd.
Eighth District Court Clerk