

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS R. STOREY,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
VALORIE J. VEGA, DISTRICT JUDGE,  
Respondents,  
and  
JOHN P. KELLEHER,  
Real Party in Interest.

No. 55561

**FILED**

JUL 20 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This proper person original petition for a writ of mandamus challenges a district court order denying a motion seeking the return of attorney fees.

The related appeal in Docket No. 51324 challenged a district court judgment awarding real party in interest specific performance of the parties' contract and attorney fees and costs. On December 4, 2009, this court entered an order affirming the district court's award of specific performance but reversing its attorney fees award.<sup>1</sup> See Storey v. Kelleher, Docket No. 51324 (Order Affirming in Part and Reversing in Part, December 4, 2009). Based on this court's order, petitioner filed a motion in the district court, requesting that the district court issue an order directing the district court clerk to return the attorney fees award that he had deposited with the clerk. The district court denied the motion

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<sup>1</sup>The costs award was left intact.

as moot, given that the district court clerk had already released the attorney fees to real party in interest.

Petitioner filed this petition for a writ of mandamus, essentially arguing that, in light of this court's order reversing the attorney fees award, he is entitled to the return of the attorney fees award. Real party in interest has filed an answer in which he contends that because the district court clerk released the funds, granting petitioner's motion was impossible.

Having reviewed the petition, answer, and supporting documentation, we are not persuaded that our intervention by way of extraordinary relief is warranted. See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (providing that petitioner bears the burden of demonstrating that extraordinary relief is warranted). As the district court clerk had already released the attorney fees award, the district court could not grant petitioner the relief that he requested. Accordingly, the district court did not manifestly abuse its discretion in denying petitioner's motion, and we thus deny the petition.<sup>2</sup> See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

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<sup>2</sup>Nonetheless, although the district court could not issue an order directing the district court clerk to return the funds, we note that the court has the authority, pursuant to a proper motion by petitioner, to relieve petitioner from the portion of its judgment that we reversed by ordering restitution—that real party in interest return the attorney fees award to petitioner. See, e.g., Rogers v. Bill & Vince's, Inc., 33 Cal. Rptr. 129, 131 (Ct. App. 1963) (recognizing that the trial court has "inherent power" to order restitution to a party after reversal of its judgment against the party); Smith v. Phillips, 143 So. 47, 48 (La. 1932) (recognizing that a party could recover the amount paid by the court clerk in execution of the district court's judgment, when that judgment is later reversed on appeal);

*continued on next page . . .*

It is so ORDERED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Valorie Vega, District Judge  
Thomas R. Storey  
Mary F. Chapman  
Eighth District Court Clerk

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*... continued*

Turner v. Ewald, 174 S.W.2d 431, 436-37 (Ky. 1943) (providing that, although the appellate court's decision did not "indicate[] what steps should be taken upon a reversal, . . . the restoration of the parties to the status quo, including restitution . . . was consequential relief, the right to which was necessarily implied"); De Mayo v. Lyons, 228 S.W. 2d 691, 692-93 (Mo. 1950) (recognizing that "upon reversal of a judgment against him, the appellant is entitled to restitution from the respondent of all benefits acquired under the erroneous judgment" and that "a motion for restitution is a proper method of obtaining such relief in the trial court"); cf. NRCP 60(b) (noting the district court's power to relieve a party from a void order or judgment); see also Restatement (First) of Restitution § 74 cmt. b (1937) ("Where money has been paid [under a judgment subsequently reversed], a court issuing such a judgment nevertheless has power to remedy the consequences of its error and to order restitution.")