

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NEELU PAL, M.D.,
Appellant,
vs.
ESTATE OF JACOB HAFTER; JACOB
HAFTER TRUST; HAFTER FAMILY
TRUST; JACLYN HAFTER; AND
BRANDON L. PHILLIPS, ESQ.,
Respondents.

No. 80478-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Neelu Pal, M.D., appeals from an order of dismissal in a civil matter. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.¹

Appellant Neelu Pal, M.D., retained attorney Jacob Hafter, Esq., and his firm, HafterLaw, LLC, to represent her in two separate cases. HafterLaw obtained a judgment in Pal's favor in the first case (the state case), collecting over \$2 million as part of that judgment, but HafterLaw withdrew as counsel in the second case (the federal case) before it was finally resolved. In the proceedings below, HafterLaw filed suit against Pal

¹Although the Honorable Bonnie Bulla, Judge, was the discovery commissioner during the early stages of the underlying proceeding, she did not have any involvement in any decision relevant to the issues presented on appeal and, therefore, Judge Bulla participated in the decision of this matter.

for breach of contract, asserting that it was entitled to over \$100,000 in attorney fees for its representation of Pal in the federal case before it withdrew, pursuant to the parties' amended contingent fee agreement, and that Pal refused to pay the fees. Pal filed an answer and counterclaim alleging legal malpractice.

In 2014, HafterLaw moved for summary judgment and sought dismissal of Pal's counterclaims. Notably, HafterLaw indicated in its motion for summary judgment that it disbursed the \$2 million it received in satisfaction of the judgment obtained in the state case. As part of that distribution, HafterLaw retained its contingency fee for work done in the state case, paid third party costs, and distributed over \$1 million to Pal. Additionally, HafterLaw indicated that it also retained \$130,000 in its IOLTA account as security pending the outcome of the instant action regarding the attorney fees HafterLaw asserted it was owed relating to its representation in the federal case.

The district court granted HafterLaw's motion for summary judgment and motion to dismiss Pal's counterclaims, and Pal appealed. This court affirmed the district court's grant of summary judgment in favor of HafterLaw as to liability, but reversed and remanded as to the district court's determination of the amount of fees owed because HafterLaw sought summary judgment on liability only, and reversed and remanded as to the court's dismissal of Pal's counterclaims. *Pal v. HafterLaw, LLC*, Docket No. 67473-COA (Order Affirming in Part, Reversing in Part and Remanding, March 11, 2016).

After remand, pursuant to this court's order, the district court set the matter for trial as to Pal's counterclaims and as to damages only on HafterLaw's claims, and discovery commenced. In 2017, Pal moved for an order of restitution, asserting that, before this court issued its decision in Docket No. 67473-COA, HafterLaw obtained a writ of execution for a total amount of \$168,836.09 based on the district court's entry of summary judgment. In the writ of execution, HafterLaw indicated that \$130,000 of the judgment had been satisfied, having been transferred from its IOLTA account in March 2015, and that the balance remaining to be levied was \$40,889.56. Pal asserted in her motion that HafterLaw obtained \$40,889.56 from Pal's bank account in April 2015, pursuant to the writ of execution. The district court denied Pal's motion for an order of restitution, concluding that because liability was established and affirmed by this court on appeal, such that the only remaining issue as to HafterLaw's complaint was damages, the question of whether Pal was entitled to restitution should not be considered until final adjudication of the claims.

In October 2017, Pal moved to voluntarily dismiss her counterclaims, which the district court granted. Following Hafter's death, in December 2018, the district court entered an order granting Pal's motion to join and/or substitute respondents Estate of Jacob Hafter, Jacob Hafter Trust, Hafter Family Trust, Jaclyn Hafter, and Brandon Phillips into the action below as HafterLaw's successors in interest, and ordering that the clerk of the court add the respondents to the case caption. In October 2019, Pal moved to dismiss the complaint pursuant to NRCP 41(e), as the case had not proceeded to trial within five years, and reasserted her request for

restitution. The district court granted her motion to dismiss, entering an order dismissing the complaint with prejudice pursuant to NRCP 41(e), but concluding that there would be no additional relief. This appeal followed.

On appeal, Pal challenges, amongst other things,² the district court's denial of her request for restitution, asserting that the district court erred by refusing to order respondents to return her money to her after dismissal of the complaint with prejudice. In their answering briefs, respondents assert that the district court did not err in denying Pal's request for restitution because she voluntarily dismissed her counterclaim, such that she had no causes of action upon which to obtain any relief and that she is judicially estopped from asserting any counterclaims in this action.

Our supreme court has held that, “[u]pon the reversal of the judgment against him, the appellant is entitled to the restitution from the respondent of all the advantages acquired by the latter by virtue of the erroneous judgment.” *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 267, 71 P.3d 1258, 1262 (2003) (quoting *Jaksich v. Guisti*, 36 Nev. 104, 112, 134 P. 452, 455 (1913)). While the district court has discretion to order restitution to a party when the opposing party has collected money upon a judgment that is subsequently reversed, and the supreme court has noted that a motion for restitution “may be denied in exceptional cases,” the court has further stated that allowing a party who collected money upon a

²We note that there is no challenge to the order of dismissal before us and thus we do not disturb the district court's dismissal pursuant to NRCP 41(e).

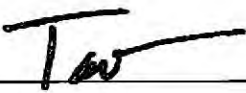
judgment that was later reversed to retain the money “would in most cases result in unjust enrichment.” *Id.* at 267, 71 P.3d at 1262-63 (internal quotation marks omitted).

Here, in denying Pal’s request for restitution, the district court only stated that, “based on the current status of the pleadings,” no additional relief would be granted, suggesting that the district court, like respondents, believed Pal was not entitled to restitution because she voluntarily dismissed her counterclaims. But contrary to this assertion, Pal did not seek restitution as a form of damages for any cause of action that she dismissed. Rather, Pal asserted that she was entitled to restitution based on HafterLaw’s obtaining money—namely, retaining the \$130,000 of her funds obtained pursuant to the judgment entered in the state case and obtaining another \$40,889.56 from Pal’s bank account through a writ of execution—pursuant to a judgment that was subsequently overturned on appeal. And although this court did not reverse the judgment as to liability in Docket No. 67473-COA, the award of damages was reversed by this court and HafterLaw’s complaint was subsequently dismissed for failure to prosecute, such that it never obtained a money judgment that would entitle it to keep any money collected under the prior summary judgment order. Thus, based on the record before us, we cannot conclude that the district court properly considered Pal’s request for restitution in light of the dismissal of all claims for want of prosecution. *See Wheeler Springs Plaza*, 119 Nev. at 267-68, 71 P.3d at 1262-63. Accordingly, we reverse the district

court's denial of Pal's request for restitution and remand for further proceedings consistent with this order.³

It is so ORDERED.⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Neelu Pal, M.D.
Solomon Dwiggin & Freer, Ltd.
Brandon L. Phillips
Eighth District Court Clerk

³As to respondents' assertions that they are not proper parties to this action and cannot be held liable for any restitution owed to Pal, the district court should consider those arguments on remand, should the court determine that restitution is warranted.

⁴Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.