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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

No. 34,007

5 **CHRISTOPHER GLOMSKI,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY**

8 **James Lawrence Sanchez, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

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13 for Appellee

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16 Camille Cordova

17 Albuquerque, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **KENNEDY, Judge.**

1 {1} Defendant appeals a district court's order requiring him to make restitution. We
2 dismiss the appeal as premature, pursuant to *State v. Candy L.*, 2003-NMCA-109, ¶ 6,
3 134 N.M. 213, 75 P.3d 429.

4 **I. BACKGROUND**

5 {2} Defendant pleaded guilty to four charges. The district court accepted
6 Defendant's plea, and sentenced him, requiring him to pay restitution as a condition
7 of his probation, pursuant to NMSA 1978, Section 31-17-1 (2005). The district court
8 issued an order setting the amount of restitution at \$32,893.11. The order also required
9 Defendant to work with probation and parole to prepare a restitution plan and submit
10 that plan to the district court for approval or modification. Defendant appealed the
11 district court's order. Nothing in the record indicates that a restitution plan was ever
12 filed with the district court.

13 {3} Defendant's challenge on appeal goes to the very order itself; he claims that the
14 district court erred in awarding restitution. The State, on the other hand, suggests that
15 this appeal is premature, as no restitution plan has yet been entered in the district
16 court. Though the amount of restitution has been set, nothing in the record indicates
17 the manner in which Defendant is to satisfy his restitution obligation.

18 **II. DISCUSSION**

19 {4} The State suggests that this appeal is premature for lack of a final order,

1 pursuant to *Candy L.*, 2003-NMCA-109, ¶ 6. This Court in *Candy L.* determined,
2 under analogous factual circumstances, that although the amount of restitution was set
3 by order, appeal of that order prior to the filing of a restitution plan rendered the
4 appeal premature. *Id.* In that case, the order did not dispose of the case to the fullest
5 extent possible, as it contemplated the subsequent preparation of a restitution plan. *Id.*;
6 see *Kelly Inn No. 102, Inc. v. Kapnison*, 1992-NMSC-005, ¶ 14, 113 N.M. 231, 824
7 P.2d 1033 (stating the general rule on finality: “an order or judgment is not considered
8 final unless all issues of law and fact have been determined and the case disposed of
9 by the trial court to the fullest extent possible” (internal quotation marks and citation
10 omitted)). We reasoned that the order therefore was not final because the respondent
11 could contend that the plan created was too onerous or impossible to carry out, and we
12 could be presented with a second appeal regarding the restitution plan once it was
13 filed with the district court. *Candy L.*, 2003-NMCA-109, ¶ 6. Because the restitution
14 plan is a substantive determination regarding the manner in which restitution is to
15 paid, it was not merely a ministerial act, and the order was not final for purposes of
16 appeal.

17 {5} Though the district court in this case specifically ordered restitution and set the
18 amount of restitution to be paid, it also contemplated that a restitution plan would be
19 prepared and filed with the court. In fact, it made compliance with that plan a

1 condition of Defendant's probation.

2 {6} We note that Defendant attempts to counter the State's assertion regarding
3 finality by asserting that he has already begun to be executed against for restitution
4 in an amount more than \$2,000 from his wages as of the date that the briefs were filed.

5 Although this allegation is concerning, we find no order or evidence for this
6 proposition in the record and Defendant points to no evidence demonstrating its
7 existence. As this appeal is premature for the lack of a final order concerning
8 restitution, to the extent that execution on a non-final restitution order may be taking
9 place, such garnishment or other execution may be as well. However, for reasons of
10 non-finality discussed above, we do not consider Defendant's argument. *See Headley*

11 *v. Morgan Management Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076
12 (declining to review an argument made in the reply brief that was underdeveloped and
13 made without any citation to the record). While inviting the district court to review the
14 status of its restitution orders in this case, we follow the precedent set forth in *Candy*
15 *L.*, 2003-NMCA-109, ¶ 6, and err on the side of avoiding piecemeal appeals and
16 enhancing judicial efficiency, dismissing this appeal without prejudice for lack of a
17 final order. Defendant will also have the opportunity to address any premature
18 garnishment issues that may be occurring prior to the approval of the restitution plan

1 once this matter is remanded to the district court.

2 {7} **IT IS SO ORDERED.**

3

4

RODERICK T. KENNEDY, Judge

5 **WE CONCUR:**

6

7 **TIMOTHY L. GARCIA, Judge**

8

9 **J. MILES HANISEE, Judge**