IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center"), a foreign limited liability company,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE HONORABLE JUDGE JERRY A. WIESE II,

Respondent,

and

ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; LLOYD CREECY, individually,

Real Parties In Interest,

and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH, M.D., an individual,

Additional Parties In Interest.

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Supreme Court No. 82250

District Court No. A-19-788787-C

REAL PARTIES IN INTEREST'S, ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as Heir; ISAIAH KHOSROF, individually and as Heir; and LLOYD CREECY, ANSWER TO VALLEY HEALTH SYSTEMS, LLC's PETITION FOR WRIT OF MANDAMUS

Docket 82250 Document 2021-09246

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; LLOYD CREECY, individually, were represented in the District Court by Paul Padda Law PLLC and are represented in this Court by Paul Padda Law, PLLC.

None, other than the following attorneys/firms of record:

DATED: March 30, 2021

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ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as an Heir; ISAIAH KHOSROF, individually and as an Heir; and LLOYD CREECY, Real Parties in Interest ("Plaintiffs"), request this Court to deny the petition of writ of mandamus of VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center") ["Centennial Hills"/ "Petitioner"] and allow this case to proceed on its merits through trial in the Eighth Judicial District Court of Clark County, Nevada.

The District Court's Order filed on October 29, 2020[1] denying Centennial Hill's Motion for Summary Judgment on the issue of the expiration of the Statute of Limitations correctly found and stated that "This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on the issue of the violation of the Statute of Limitations, unless the facts and evidence irrefutably demonstrate that Plaintiff was put on inquiry notice more than a year prior to filing of the complaint. This Court does not find that such evidence is irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice. Such issue is an issue of fact and appropriate for determination by the trier

[1] Notice of Entry of the Order was filed on November 2, 2020. App. 353.

of fact. Consequently, Summary Judgment would not be appropriate, and the Motion for Summary Judgment, and Joinders thereto must be denied." App. 355.[2]

In denying Centennial Hills Motion for Summary Judgment, the District Court evaluated the controlling caselaw regarding inquiry notice in a Medical Malpractice and Wrongful Death suit. Upon review, issues of fact were found to exist due to (1) the June 28, 2017 Certificate of Death issued by the State of Nevada Department of Health and Human Services ["HHS"] listing Ms. Powell's cause of death as "suicide" and (2) the February 5, 2018 HHS Report of Investigation stating that Ms. Powell's previously determined cause of death was incorrect.

No abuse of discretion or error of law was committed by the District Court in denying Centennial Hills Motion for Summary Judgment. Extraordinary relief is unwarranted as Centennial Hills has a plain, speedy and adequate remedy available in the ordinary course of law namely a trial and an appeal.

This matter is currently set for jury trial on May 23, 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert disclosures are due on August 27, 2021, and discovery is to be completed on or before October 28, 2021.

[2] App = Petitioner's Appendix

III. ROUTING STATEMENT

In its writ petition, Petitioner, Centennial Hills, requests that the Supreme Court retain original jurisdiction pursuant to NRAP 17(a)(12) allegedly raising a question of statewide public importance. Pet. at 1.

Plaintiffs disagree with Centennial Hills' assessment of its presented issues as satisfying the standards in NRAP 17(a)(12) as this writ is nothing more than Centennial Hills requesting this Court to substitute its own discretion and reverse the District Court's Order denying Centennial Hills' Motion for Summary Judgment.

Notwithstanding the foregoing, the issue of what constitutes inquiry notice has previously been decided by this Court in a professional negligence case for the purposes of establishing the statute of limitations as defined by NRS 41A.097 (2) and (c) and whether such notice may thereafter be tolled. *See* Massey v. Linton, 99 Nev. 723 (1983), Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252 (2012), Pope v. Gray, 760 P.2d 763 (Nev 1988) and Sunrise Mountainview Hosp., Inc. v. Eighth Judicial Dist. Court of State, 381 P.3d 667, (Nev. 2012). Centennial Hills fails to present any new issues requiring clarification for this Court's consideration. In denying the Motion for Summary Judgment, the District Court properly applied the controlling case law and reviewed verified documents presented by Plaintiffs subsequently finding issues of fact to exist. As this

Honorable Court recognizes, an appellate court is not an appropriate forum in which to resolve disputed questions of fact.

Centennial Hills comes to this Honorable Court for the extraordinary relief of a writ of mandamus simply because they do not agree with the analysis of the facts by the District Court in denying its Motion for Summary Judgment in which Centennial Hills alleged that Plaintiffs did not timely file their Complaint in compliance with NRS 41A.097 (2)(a) and (c).

This Petition should be denied as no question of statewide public importance is presented that needs clarification and an adequate remedy of law exists, specifically, trial on the merits and an appeal post trial.

IV. STATEMENT OF FACTS

This is a medical malpractice/wrongful death case where it is alleged that Ms. Rebecca Powell, age 42, died while in the care of Centennial Hills on account of negligence by the hospital and its medical personnel. Ms. Powell was the mother of three children, Isiah, Taryn and Darci. App. 199.

On May 3, 2017, Ms. Powell was found by EMS at her home. App. 222. Ms. Powell was unconscious, labored in her breathing, and had vomit on her face. App. 222. EMS provided emergency care and transported her to Centennial Hills where she was admitted. App. 222. Ms. Powell continued to improve during her admission. App. 223. However, on May 10, 2017, Ms. Powell complained of shortness of

breath, weakness, and a "drowning" feeling. App. 223. In response to these complaints, Defendant Dr. Shah ordered Ativan to be administered via an IV push. On May 11, 2017, Dr. Concio ordered two more doses of Ativan and ordered several tests, including a chest CT to be performed. App. 223. However, the CT could not be performed due to Ms. Powell's inability to remain still during the test. App. 223. Ms. Powell was returned to her room where she was supposed to be monitored by a camera. App. 224. Another dose of Ativan was ordered at 3:27 AM on May 11, 2017. Shortly thereafter, Ms. Powell suffered acute respiratory failure, resulting in her death on May 11, 2017. App. 224.

According to Plaintiff, Brian Powell, Ms. Powell's former husband, he could not visit with Ms. Powell while she was in the hospital because he was "turned away by the nurses." App. 267. However, he has stated under oath that, following Ms. Powell's death on May 11, 2017, "I did meet with Taryn, Isaiah and one of Rebecca's friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide any information." App. 268, 270. At this time, the family received no concrete facts or answers from Centennial Hills or its medical personnel as to the circumstances surrounding her death.

In search of further answers, Plaintiff Brian Powell filed a complaint with the HHS sometime before May 23, 2017 requesting that the agency investigate the care and services received by the Ms. Powell. App. 327. Plaintiff, Taryn Creecy, ordered

Ms. Powell's medical records on May 25, 2017, however, there were issues with delivery, and it is unclear exactly when Plaintiff received them. Additionally, Plaintiff Brian Powell filed a Complaint with the Nevada State Board of Nursing on June 11, 2017. App. 325.

On June 28, 2017, approximately six weeks after the death of Ms. Powell, Plaintiffs received the Certificate of Death, issued by HHS which stated Ms. Powell's cause of death as a **suicide** due to "Complications of Duloxetine (Cymbalta) Intoxication." App. 185.

By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an "investigation" of the facility and concluded that Centennial Hills committed "**violation(s) with rules and/or regulations."** App. 186. HHS's report noted several deficiencies in the medical care provided to Ms. Powell including, among other things, that Ms. Powell was exhibiting symptoms that should have triggered a higher level of care ("the physician should have been notified, the RRT activated, and the level of care upgraded"). App. 187. The HHS Report of Investigation stands in stark contrast to the Certificate of Death which inaccurately declared Ms. Powell's death a suicide. App. 185, 186-198. This was the first time that Plaintiffs learned the cause of death listed on Ms. Powell's Certificate of Death was inaccurate.

Within one year of the HHS investigative report dated February 5, 2018, Plaintiffs timely filed a Complaint in the Eighth Judicial District Court on February 4, 2019 in compliance with NRS 41 A.097(2)(a) and (c). App. 199.

V. PROCEDURAL HISTORY

On February 4, 2019, Plaintiffs, Estate of Rebecca Powell through Brian Powell, Special Administrator, children of Ms. Powell, Darci Creecy, Taryn Creecy and Isaiah Khosrof and father of Ms. Powell, Lloyd Creecy filed suit alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress against Defendants, Valley Health Systems (doing business as "Centennial Hills Hospital Medical Center"), Universal Health Services, Inc., Dr. Dionice S. Juliano, M.D., Dr. Conrado C.D. and Dr. Vishal S. Shah M.D. and Doe Defendants. In compliance with NRS 41A.071, the Complaint included an affidavit from Dr. Sami Hashim in support of their first cause of action alleging negligence/medical malpractice. App. 199.

The District Court matter is before Judge Jerry A. Weise, II ["Judge Wiese"] in Department 30.

On June 12, 2019, Defendants Dr. Concio and Dr. Juliano, filed a motion to dismiss pursuant to Nevada Rules of Civil Procedure ["NRCP"] 12(b)(5) alleging that Plaintiffs failed to timely file their Complaint within the statute of limitations pursuant to NRS 41A.097(2) and failed to meet the threshold requirements of NRS

41A.071 for the claims of negligent infliction of emotional distress and professional negligence. App. 228.

On June 13, 2019 Defendant Dr. Shah filed a joinder to Dr. Concio and Dr. Juliano's motion to dismiss. RP.App. 1.[3] On June 26, 2019, Defendant Centennial Hills also filed a joinder to Dr. Concio and Dr. Juliano's motion to dismiss. RP.App. 4.

On June 19, 2019, Defendant Centennial Hills filed a separate motion to dismiss pursuant to NRCP 12(b)(5) alleging Plaintiffs failed to timely file their Complaint within the statute of limitations time of one year pursuant to NRS 41A.097(2) and requested dismissal of Plaintiffs' Complaint. App. 238.

On August 13, 2019, Plaintiffs filed their opposition to the motion to dismiss filed by Defendants. App. 250.

On September 23, 2019, Defendant, Universal Health Services, Inc. joinders to Defendants Dr. Concio and Dr. Juliano's motion to dismiss. RP.App. 7.

On September 23, 2019, Defendant Universal Health Services, Inc. filed a joinder to motion to dismiss. RP.App. 7.

On September 25, 2019, counsel for Centennial Hills presented oral arguments to the District Court on their motion to dismiss. RP.App. 10.

[3] RP.App. = Real Parties In Interest's Appendix

After considering the papers on file and arguments of counsel, the District Court issued an Order dated February 6, 2021. Under the Findings of Fact and Conclusions of Law, Judge Wiese addressed the statute of limitations arguments noting that **the Supreme Court has been clear that the standard of when a claimant "knew or reasonably should have known" is generally an issue of fact for a jury to decide.** However, the District Court also noted that in this case, it does appear that the Complaint was not filed until a substantial period after the date of Rebecca Powell's death. Therefore, Judge Wiese advised that Defendants may revisit the statute of limitations issue in the future through a motion for summary judgment at which point the Court would reconsider the issue at that time. RP.App. 27 at 18:4-13.

Judge Wiese denied Centennial Hills' motion to dismiss Plaintiffs' Complaint based upon NRS 41A.097(2) and NRCP 12(b)(5). RP.App. 28 at 19:25-20:2.

In an Order dated February 6, 2021, the Court denied Defendants Dr. Concio and Dr. Juliano's motion to dismiss Plaintiffs' Complaint, and subsequent joinders. RP.App. 422. In a companion Order dated February 6, 2021, the Court also denied Centennial Hills' motion to dismiss Plaintiffs' Complaint, and subsequent joinders to that motion. RP.App. 429.

Dr. Concio, Dr. Juliano and Dr. Shah filed their answer on October 2, 2019. RP.App. 39.

On December 5, 2019, the parties stipulated to dismiss Defendant, Universal Health Services from the action without prejudice. App. 263.

On April 15, 2020, Centennial Hills filed its Answer to Plaintiffs Complaint. RP.App. 52.

In July of 2020, Centennial Hills served 86 requests for production of documents including 16 additional special requests to Plaintiffs. Discovery requests also included requests for responses to interrogatories to Plaintiffs. Responses to the discovery were provided in August and September of 2020 by Plaintiffs.

On September 2, 2020, Centennial Hills and Universal Health Services filed a Motion for Summary Judgment based upon the expiration of the Statute of Limitations contained in NRS 41A.097. App. 2. Under the statement of undisputed facts, Centennial Hills sets out the several motions to dismiss filed by Centennial Hills, co-defendants, joinders and the denial of the motions by the Court after hearing oral argument. App. 4-6. On September 3, 2020, co-defendants Dr. Concio, Dr. Shah, and Dr. Juliano joined Centennial Hills' Motion for Summary Judgment. App. 167.

On September 16, 2020 Plaintiffs filed their opposition to Centennial Hills' Motion for Summary Judgment. App.171. The opposition detailed the standard of review applicable when dealing with questions of fact and cited the seminal cases that discuss inquiry notice. Plaintiffs also pointed out that Centennial Hills had

previously raised the identical arguments in their prior motion to dismiss and joined co-defendants motion also seeking a dismissal based on the expiration of the statute of limitations. Because the prior motions to dismiss were denied by the Court after hearing oral arguments from counsel, Plaintiffs also requested reasonable fees and costs for the violation of EDCR 2.24 which disallows the filing of the same motion without seeking leave of Court. App. 171.

On October 21, 2020, Centennial Hills filed its reply to Plaintiffs opposition. App. 272. On October 21, 2020, co-defendants Dr. Concio, Dr. Shah, and Dr. Juliano filed a joinder to Centennial Hills' reply. App. 346.

In an Order dated October 29, 2020, Judge Wiese denied several motions and joinders including Centennial Hills' Motion for Summary Judgment, the subject of the instant writ.[4] App. 355. A Notice of Entry of the Order was filed on November 2, 2020. App. 353.

On November 5, 2020, Centennial Hills filed a motion seeking a stay of the lower court proceedings pending a resolution of an appellate issue pursuant to NRAP 8(a)(1)(A). RP.App. 63.

On November 19, 2020, Plaintiffs filed an opposition to Centennial Hills motion requesting a stay. RP.App. 404.

[4] The October 29, 2020 Order Granted Defendant Dr. Juliano's Motion for Summary Judgment. Dr. Juliano was dismissed from the action without prejudice.

On December 17, 2020, the District Court denied Centennial Hills Motion for Stay. In denying the stay the District Court again reiterated its reasoning for denying Centennial's Motion for Summary Judgment by stating that "the Court cannot find that the Defendants are likely to prevail on the merits, as this Court previously found, and continues to believe, that the Death Certificate identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations, in that such a conclusion or determination by the Medical Examiner, would clearly not suggest "negligence" on the part of any medical care provider. Although the Defendants suggest that the Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families questioning of the cause of death equated with inquiry notice of negligence. Consequently, this Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits." RP.App. 418.

VI. Order Denying Centennial Hills Motion for Summary Judgment

Pursuant to administrative order 20-01 and subsequent administrative orders, Honorable Jerry Wiese decided Centennial Hills Motion for Summary Judgment on the papers.

In an Order filed October 29, 2020, Judge Wiese properly held that **"This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment**

on the issue of a violation of the Statute of Limitations, unless the facts and evidence irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year prior to the filing of the complaint. This Court does not find that such evidence is irrefutable, and that there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice. Such issue is an issue of fact, appropriate for determination by the trier of fact. Consequently, Summary Judgment would not be appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must be denied." (Emphasis added.) App. 355.

In their writ, Centennial Hills incorrectly represents to this Court that the District Court based its decision on counsel's mere representations rather than evidence. In fact, Plaintiffs provided several exhibits accompanying their September 16, 2020 Opposition to Centennial Hills' Motion for Summary Judgment including (1) a copy of the Certificate of Death issued by HHS dated June 28, 2017 (App. 185); (2) the 16-page HHS investigation report citing violations by Centennial Hills dated February 5, 2018 (App. 186-198); (3) Plaintiffs' verified Complaint filed February 4, 2019 that included the 7-page notarized affidavit from Dr. Sami Hashim (App. 199-227); and (4) verified interrogatory responses of Plaintiff Brian Powell, Special Administrator (App. 267-270).

Centennial Hills requests a *vacatur* of the District Court's October 29, 2020 Order merely because the District Court did not agree with their contention that Plaintiff Taryn Creecy's request for medical records and Plaintiff Brian Powell's initiation of complaints with state agencies equated to inquiry notice.

Petitioner's writ should be denied as it seeks extraordinary interlocutory relief that is not mandated when a plain, speedy and adequate remedy at law is available. The writ also fails because the District Court committed no error, nor abused its discretion in denying Petitioner's Motion for Summary Judgment.

Contrary to Petitioner's statement, the District Court properly denied Petitioner's Motion for Summary Judgment, a determination of the case on its merits is preferred, expense of litigating a case is not a determinative factor in accepting a writ of petition.

This Answer is made and based upon the Affidavit following this Answer, Petitioner's Appendix, Real Parties In Interests' Appendix and the Memorandum of Points and Authorities filed herewith.

VII. BASIS FOR OPPOSITION AND DENIAL OF THE PETITION FOR WRIT OF MANDAMUS

The instant writ for petition seeks a reversal of the lower court's ruling denying Petitioner's Motion for Summary Judgment, which would result in the dismissal of Plaintiffs' negligence/medical malpractice and wrongful death

complaint. Plaintiffs urge this Court to deny Centennial Hills writ petition as (1) the petition improperly requests extraordinary interlocutory relief when there is an adequate remedy at law available, (2) fails to demonstrate an abuse of discretion or clear error committed by the District Court, and (3) fails to present a question of statewide public importance needing clarification.

VIII. STANDARD OF REVIEW FOR WRIT OF MANDAMUS

A writ of mandamus is available "to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *See* Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief **may** be available. Id.

Importantly, writ petitions are not appropriate to resolve outstanding factual issues. *See* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). ("As we have repeatedly noted, an appellate court is not an appropriate forum in which to resolve disputed questions of fact."). Writ relief is typically available only when there is no plain, speedy, and adequate remedy in the ordinary course of law. *See* NRS 34.170; NRS 34.330; Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). And, generally, an appeal is an adequate legal remedy precluding writ relief. *See* Pan v. Eighth Judicial Dist. Court, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Even if the appellate process

would be more costly and time consuming than a mandamus proceeding, it is still an adequate remedy. *See* County of Washoe v. City of Reno, 77 Nev. 152, 156, 360 P.2d 602 (1961). In that regard, this Court avoids piecemeal appellate review and Seeks to review possible errors only *after* a final judgment has been entered. *See* Moore v. Eighth Judicial Dist. Court, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980). Further, it is within the complete discretion of this Court to determine whether a petition will be considered. *See* Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). The Petitioner carries the burden of demonstrating that extraordinary relief is warranted. *See* Pan v. Eighth Judicial Dist. Court, 120 Nev. 222, 228, 88 P.3d 840, 844

As a general rule, "judicial economy and sound judicial administration militate against the utilization of mandamus petitions to review orders denying motions to dismiss and motions for summary judgment." *See* State ex rel. Dep't of Transp. v. Thompson, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983), as modified by State v. Eighth Judicial Dist. Court, 118 Nev. 140, 147, 42 P.3d 233, 238 (2002).

A. Petitioner Is Not Entitled To The Extraordinary Interlocutory Relief Requested In The Petition For Writ Of Mandamus As An Adequate Remedy At Law Exists

This Court has often held that it will *rarely* grant emergency or extraordinary interlocutory relief, particularly when the issues are factually and legally disputed, and when there is no need to create an emergency remedy when a sufficient remedy

exists at law. *See* e.g., Child v. Lomax, 124 Nev. 600, 604-605, 188 P.3d 1103, 1106-1107 (2008) (holding that "Mandamus is an extraordinary remedy, generally available only when a petitioner lacks a plain, speedy, and adequate alternative legal remedy").

A writ of mandamus is available "to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *See* Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Where there is no plain, speedy, and adequate remedy in the ordinary course of law, extraordinary relief may be available. Id. Writ relief is typically available only when there is no plain, speedy, and adequate remedy in the ordinary course of law. *See* NRS 34.170; NRS 34.330; Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). And, generally, **an appeal is an adequate legal remedy precluding writ relief**. *See* Pan v. Eighth Judicial Dist. Court, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Even if the appellate process would be more costly and time consuming than a mandamus proceeding, it is still an adequate remedy. *See* County of Washoe v. City of Reno, 77 Nev. 152, 156, 360 P.2d 602 (1961).

The interlocutory relief requested should be denied as Petitioner has an adequate remedy at law available, namely a trial currently set for May 23, 2022 and a post-trial appeal.

B. Petitioner Is Not Entitled To The Extraordinary Interlocutory Relief Requested In The Petition For Writ Of Mandamus As There is No Showing of Abuse of Discretion Or Clear Error By The District Court

Petitioner argues that Judge Wiese manifestly abused his discretion when he denied their Motion for Summary Judgment, therefore this Court should hear this writ. What Petitioner is requesting this Court to do is exercise its discretion to hear a writ *every time* a District Court denies a Motion for Summary Judgment. Such a request is absurd. Request is also made to hear the writ on the basis that the District Court's clear error of law will cause Petitioner to proceed through extensive discovery, and the expense associated with trial on a case which was filed well beyond the expiration of the statute of limitations. Here, Petitioner wants this Court to adopt its own theories regarding when Plaintiffs were placed on inquiry notice and dismiss the case which involved the wrongful death of Rebecca Powell, a 42-year-old woman.

The granting of the instant writ petition will result in the dismissal of the Plaintiffs' Complaint. A writ of mandamus that seeks a dismissal of the complaint is an extraordinary request for it essentially asks this Court to replace the District Court's discretion for its own, even though the District Court is the trier of fact and is closer to the evidence, witnesses, and arguments in the case. In this matter, there

is no justification for this Court to veer from its long-held disinclination to grant a writ of mandamus on a motion for summary judgment.

The District Court below prepared a detailed Order setting forth the factual basis for denying Centennial Hills' Motion for Summary Judgment. Now Petitioner attempts to use this Court as a venue to reargue its Motion for Summary Judgement. In the District Court, Plaintiffs clearly presented genuine issues of material facts in opposition to Petitioner's Motion for Summary Judgment. The District Court properly weighed the facts and denied Centennial Hills' Motion. This writ petition attempts to rebut the factual recitations contained in the October 29, 2020 Order, which is contrary to the purpose of a writ petition. Centennial Hills improperly asks this Court to reweigh the facts already determined by the District Court, which this Court *cannot do*. *See* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d at 536 (1981). ("As we have repeatedly noted, an appellate court is not an appropriate forum in which to resolve disputed questions of fact."); Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc., 128 Nev. 289, 299, 279 P.3d 166, 172–173 (2012) ("An appellate court is not particularly well-suited to make factual determinations in the first instance.") (citing Zugel v. Miller, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983)); 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE, § 3937.1 (2d ed. 1996) ("Appellate procedure is not geared to factfinding."); *See also* Anderson v. Bessemer, 470 U.S.

564, 575, 105 S.Ct. 1504 (1985) (explaining that a trial court is better suited as an original finder of fact because of the trial judge's superior position to make determinations of credibility and experience in making determinations of fact).

Centennial Hills argues at length that the Court abused its discretion by rearguing the points presented in its Motion for Summary Judgment. Centennial Hills simply cannot overcome the factual issues outlined by the District Court, particularly in the context of a writ petition. *See* Law Offices of Barry Levinson, P.C. v. Milko, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) ("[I]t is not the role of this court to reweigh the evidence."); NEC Corp. v. Benbow, 105 Nev. 287, 290, 774 P.2d 1033, 1035 (1989) ("Neither the credibility of the witnesses nor the weight of the evidence may be considered" on appeal.). As such, this Court should decline Petitioner's invitation to reweigh factual issues that have already been determined by the District Court. Therefore, this Court should reject Centennial Hills' petition on the grounds that it attempts to have this Court reweigh facts, while ignoring the District Court's factual recitations.

More importantly there is no irrefutable evidence in this case showing that Plaintiffs were on inquiry notice more than a year prior to the filing the complaint. Therefore, the determination does not move to a legal question but instead remains an issue of fact for a jury to decide. Petitioner is simply seeking to deprive Plaintiffs of a trial by a jury and a determination of the case on its merits.

C. Petitioner Is Not Entitled To The Extraordinary Interlocutory Relief Requested In The Petition For Writ Of Mandamus As There Is No Issue of Statewide Importance Requiring Clarification

Plaintiffs urge this Court to exercise its discretion and deny Centennial Hills' writ petition as they fail to present a question of statewide public importance that needs clarification.

NRS 41A.097 provides in pertinent part:

> 2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than *3 years after the date of injury* or *1 year after the plaintiff discovers* or through the use of *reasonable diligence* should have discovered the injury, whichever occurs first, for:
>
> (a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;
>
> …
>
> (c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care. (Emphasis added.)

Petitioner incorrectly poses an issue for the Court to decide which is nothing more than a red herring as the facts of this case do not need any clarification. The standard for inquiry notice has been clarified by this Court in several medical malpractice cases. Centennial Hills simply does not present any new issues for this Court to entertain.

In Sunrise Mountainview Hosp., Inc. v. Eighth Judicial Dist. Court of State, 381 P.3d 667, (Nev. 2012), this Court denied Petitioner's writ of mandamus petition which challenged a district court order denying a motion to dismiss in a medical malpractice case. Petitioner moved to dismiss the Plaintiff's complaint on the ground that Plaintiff's second amended complaint was time-barred by NRS 41A.097(2). Specifically, Sunrise contended that because Plaintiff "discovered" his "injury" at the time of his February 2010 cancer diagnosis, his June 2011 claim was barred by NRS 41A.097(2)'s 1–year discovery period. Sunrise argued that the district court was compelled to dismiss the claims against it in the second amended complaint because, from the face of the complaint, the claims were filed more than one year after Plaintiff knew or should have known of his injury.

This Courts in denying the writ petition in Sunrise, stated that in Winn v. Sunrise Hospital & Medical Center, 128 Nev. ——, ——, 277 P.3d 458, 462 (2012), this Court considered what it means to "discover" one's "injury" for purposes of triggering NRS 41A.097(2)'s 1–year discovery period. In doing so, this Court reiterated that "a plaintiff 'discovers' his injury 'when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on *inquiry notice* **of his cause of action**.' " Id. (quoting *Massey v. Litton*,99 Nev. 723, 728, 669 P.2d 248, 252 (1983) Emphasis added.). In other words, for a plaintiff to "discover" his injury, he must not only realize that he has been harmed,

but he must also "ha[ve] facts before him that would have led an ordinarily prudent person to investigate further into whether [his] injury may have been caused by someone's negligence." Id. at ____, 669 P.2d at 462.

This Court stressed in Winn that the triggering date for the 1–year discovery period is generally a question of fact, and that this date may be determined as a matter of law "[o]nly when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action." Id. at ____, 277 P.3d at 466. Thus, in Winn, this Court concluded that the district court had improperly determined the discovery date as a matter of law when the only evidence supporting the determination was that the plaintiff had been informed of an unexpectedly bad surgery result. Id. at ____, 277 P.3d at 463.

In denying the writ petition in Sunrise, this Court stated that nothing on the face of Plaintiff's second amended complaint supports petitioner's argument that Plaintiff was put on inquiry notice as a matter of law merely by learning of his cancer diagnosis. Although the complaint states that Plaintiff was diagnosed with colon cancer in February 2010, the physical harm is but one step of the analysis, as there remains to consider the question of when Plaintiff could attribute this diagnosis to his doctor's negligence. *See* Massey v. Litton, 99 Nev. 723, 728, 669 P.2d 248, 252 (1983) The trier of fact must determine when Plaintiff knew or should have known of facts giving rise to his claims. *See* Bemis v. Estate of Bemis, 114 Nev.

1021, 1026, 967 P.2d 437, 441 (1998). The district court was, therefore, not obligated to dismiss the complaint pursuant to clear authority under a statute or rule. Accordingly, this Court concluded that intervention by way of extraordinary relief was not warranted, and the petition was denied.

The medical providers of this state are well protected by NRS 41A.097(2). The District Court in denying Petitioner's Motion for Summary Judgment did not violate any law but properly determined that irrefutable evidence was not presented by Centennial Hills that warranted a granting of their Motion for Summary Judgment.

D. The District Court Properly Denied Petitioner's Motion for Summary Judgment and Found Genuine Issues of Fact

As this Court is aware in evaluating a motion for summary judgment, pleadings and documentary evidence must be construed in the light which is most favorable to the party against whom the motion for summary judgment is directed. *See* Mullis v. Nevada National Bank, 98 Nev. 510, 512 (1982). "Litigants are not to be deprived of a trial on the merits if there is the slightest doubt as to the operative facts." *See* Perez v. Las Vegas Medical Center, 107 Nev. 1, 4 (1991). The party seeking summary judgment bears the initial burden of proof to show there are no genuine issues of material fact. *See* Cuzze v. University and Community College System of Nevada, 123 Nev. 598, 602 (2007). With respect to discovery-based

causes of action, such as medical malpractice claims, NRS 41A.097 provides that a cause of action against a health care provider may not be commenced more than 3-years after the date of injury or 1 year after the plaintiff discovers, or through the use of reasonable diligence, should have discovered the injury - whichever occurs first. A person is put on inquiry notice of an injury, triggering the 1-year statute, when he or she should have known of facts that would lead an ordinarily prudent person to investigate the matter further." *See* Winn v. Sunrise Hospital & Medical Center, 129 Nev. 246, 252 (2012). Although the 1-year accrual date for NRS 41A.097 is normally a question for the trier of fact, a district court may decide the accrual date as a matter of law but only when the evidence is irrefutable. Id.

In this instance, the District Court was presented with evidence and facts as to when the Plaintiffs were placed on inquiry notice. The District Court repeatedly denied motions filed by counsel from several Defendants challenging the filing of the Plaintiffs Complaint within the statute of limitations. The District Court heard oral arguments from counsel on this particular issue and denied the motions to dismiss and Motion for Summary Judgment based on the facts in this case. The facts considered included but are not limited to the Plaintiffs initially being informed by HHS six weeks after the death of Ms. Powell that the cause of death was "suicide." It was not until further investigation was requested by Ms. Powell's ex-husband into concerns about Centennial Hills did HHS investigate the medical facility in detail

and find several violations committed by Centennial Hills, including negligence resulting in the wrongful death of Ms. Powell.

Centennial Hills alleges that Plaintiffs did not offer any admissible evidence in opposition to the Motion for Summary Judgment. This is plainly not true. The District Court reviewed the State of Nevada Death Certificate, a self-authenticating document, listing Ms. Powell's cause of death as a "suicide." The document bears an attestation as to its authenticity and is signed by both the Registrar of Vital Statistics and Dr. Jennifer N. Corneal. App. 185. In evaluating this important item of evidence, the District Court sagely concluded that "the fact that the family was notified shortly after the decedent's death that the cause of death was determined to be a 'suicide,' causes this Court some doubt or concern about what the family knew at that time period." App. 358-359. In addition to the Death Certificate, Plaintiffs also submitted the sworn interrogatory answers of Plaintiff Brian Powell, Special Administrator of Ms. Powell's Estate, who testified that he could not visit Ms. Powell in the hospital because he was "turned away" and that the risk manager "didn't provide any information" pertaining to Ms. Powell's death. App. 267. Plaintiffs also included the notarized seven-page affidavit of Dr. Sami Hashim attached to the verified Complaint in support of the medical malpractice cause of action. App. 221. Finally, Plaintiffs submitted the sixteen-page investigative report

from HHS dated February 5, 2018 that contradicted its prior Certificate of Death which incorrectly stated the cause of death as suicide. App. 186-198.

Although Centennial Hills bore the burden of proof as the party seeking summary judgment, it provided no persuasive evidence to support its arguments of inquiry notice apart from two declarations from individuals named Gina Arroyo and Melanie Thompson, each claiming to have been involved with merely providing medical records to Ms. Powell's family. Notably, neither declarant provided definitive statements as to when those records were received by the family.

Centennial Hills now urges this Court to reverse the District Court ruling and grant its Motion for Summary Judgment on the theory that a mere request for medical records, or filing of complaints with state agencies by Plaintiffs, suggests that they somehow knew, or suspected negligence was involved in the death of their loved one. These arguments were made before the District Court and rejected. The District Court denied Centennial Hills' Motion for Summary Judgment because it failed to provide *irrefutable proof* that Plaintiffs received inquiry notice prior to February 5, 2018.

In Massey v. Linton, 99 Nev. 723 (1983), the Nevada Supreme Court held that a Plaintiff "discovers" his injury "when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on ***inquiry notice of his cause of action***." (Emphasis added.) The time does not begin when

plaintiff discovers the precise facts pertaining to his legal theory but when there is a general belief that negligence may have caused the injury. Id. at 728. "While difficult to define in concrete terms, a person is put on "inquiry notice" when he or she should have known of facts that 'would lead an ordinary prudent person to investigate the matter further." *See* Winn v. Sunrise Hospital and Medical Center, 128 Nev. 246, 252 (2012) (*quoting* Black's Law Dictionary 1165 (9th ed. 2009). **The Nevada Supreme Court has held that the accrual date for NRS 41A.097's one-year discovery period ordinarily presents a question of fact to be decided by the jury.** *See* Winn, 128 Nev. at 258. "Only when the evidence irrefutably demonstrates that a plaintiff was put on inquiry notice of a cause of action should the district court determine this discovery date as a matter of law." Id.

In the Order filed October 29, 2020, Judge Wiese properly held that, "This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on the issue of a violation of the Statute of Limitations, unless the facts and evidence irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year prior to the filing of the complaint. This Court does not find that such evidence is irrefutable, and that there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice. Such issue is an issue of fact, appropriate for determination by the trier of fact. Consequently, Summary Judgment

would not be appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must be denied." App. 359.

The District Court properly found that Centennial Hills failed to present irrefutable facts to demonstrate that the Plaintiffs were placed on inquiry notice of the cause of action prior to February 5, 2018.

IX. CONCLUSION

Petitioners have not demonstrated that this matter deserves the extraordinary review and relief from this Court. Therefore, based on the record and the arguments presented, Real Parties in Interest respectfully ask this Court to deny the Petition for Writ of Mandamus.

DATED: March 30, 2021

PAUL PADDA LAW, PLLC

/s/ Srilata R. Shah

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X. ATTORNEY'S CERTIFICATE PER NRAP 28.2

1. I hereby certify that this response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type of style requirements of NRAP 32(a)(6) because:

   This response has been prepared in a proportionally spaced typeface using Times New Roman, 14 point as provided in Microsoft Word.

2. I further certify that this response complies with the page- or type-volume limitations of NRAP 32(a)(7)(A)(1) because it is either:

   Proportionately spaced, has a typeface of 14 points or more, and contains 6693 words; and does not exceed 30 pages, exclusive of the Verification and Certificate of Service.

3. Finally, I recognize that under NRAP 32, I am responsible for timely filing this response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a response. I therefore certify that the information provided in this response is true and complete to the best of my knowledge, information, and belief.

DATED: March 30, 2021.

/s/ Srilata R. Shah
Attorney for Real Parties in Interest

XI. CERTIFICATE OF SERVICE

Pursuant to NRAP 21 this REAL PARTIES IN INTEREST'S, ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as Heir; ISAIAH KHOSROF, individually and as Heir; and LLOYD CREECY, ANSWER TO VALLEY HEALTH SYSTEMS, LLC's PETITION FOR WRIT OF MANDAMUS is being served by the following means:

Electronic notification will be sent to the following:

S. Vogel, Esq.
Paul S. Padda, Esq.
John Cotton, Esq.

Notification by traditional means (U.S. Mail) will be sent to the following:

Adam Garth, Esq.
Brad Shipley, Esq.
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118

DATED: March 30, 2021.

/s/ Jennifer C. Greening
Employee of Paul Padda Law, PLLC