

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.

Electronically Filed
Apr 28 2021 05:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No. 82250

District Court No. A-19-
788787-C

**Real Parties In Interest, 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, Opposition to Motion for Stay Pending Decision on Writ of Mandamus**

PAUL S. PADDA, ESQ.

Nevada Bar No. 10417

psp@paulpaddalaw.com

SRILATA R. SHAH, ESQ.

Nevada Bar No. 6820

sri@paulpaddalaw.com

PAUL PADDA LAW, PLLC

4560 S. Decatur Boulevard, Ste. 300

Las Vegas, NV 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Attorneys for Real Parties In Interest

I. RELIEF REQUESTED

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** VALLEY HEALTH SYSTEM, LLC’s (doing business as “Centennial Hills Hospital Medical Center”) [“Centennial Hills”/“Petitioner”] Motion for Stay Pending Decision on Writ of Mandamus and allow this case to proceed in the Eighth Judicial District Court of Clark County, Nevada pending decision of Petitioner’s Writ of Mandamus.

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

II. 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.

On May 3, 2017, Ms. Powell was found by EMS at her home. Ms. Powell was unconscious, labored in her breathing, and had vomit on her face. EMS provided emergency care and transported her to Centennial Hills where she was admitted. Ms. Powell continued to improve during her admission. However, on May 10, 2017, Ms. Powell complained of shortness of breath, weakness, and a “drowning” feeling. In response to these complaints, Ms. Powell was administered several doses of Ativan

on May 11, 2017. Shortly thereafter, Ms. Powell suffered acute respiratory failure, resulting in her death on May 11, 2017.

On June 28, 2017, Plaintiffs received the 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.”

By letter dated February 5, 2018, HHS notified Mr. Powell that it conducted an “investigation” of the facility and concluded that VHS committed “**violation(s) with rules and/or regulations.**”

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).

III. PROCEDURAL HISTORY

On February 4, 2019 Plaintiffs filed suit alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress against Petitioner, Universal Health Services, Inc., Dr. Dionice S. Juliano, M.D., Dr. Conrado C.D. and Dr. Vishal S. Shah M.D. In compliance with NRS 41A.071, the Complaint included a notarized affidavit from Dr. Sami Hashim in support of their first cause of action alleging negligence/medical malpractice.

On June 12, 2019, Defendants Dr. Concio and Dr. Juliano, filed a motion to dismiss pursuant to Nevada Rules of Civil Procedure [“NRCPP”] 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. Joinders to the motion to dismiss were filed by all remaining defendants.

On June 19, 2019, Petitioner 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.

On August 13, 2019, Plaintiffs filed their opposition to the motion to dismiss filed by Defendants. On September 25, 2019, counsel for Centennial Hills presented oral arguments to the District Court on their motion to dismiss. In an Order dated February 6, 2021, the District Court denied Defendants Dr. Concio and Dr. Juliano's motion to dismiss Plaintiffs' Complaint, and subsequent joinders. In a companion Order dated February 6, 2021, the District Court also denied Centennial Hills' motion to dismiss Plaintiffs' Complaint, and subsequent joinders to that motion.

On September 2, 2020, Petitioner filed a Motion for Summary Judgment based upon the expiration of the Statute of Limitations contained in NRS 41A.097. Co-defendants filed joinders to the motion. On September 16, 2020 Plaintiffs filed their opposition to the motion. On October 21, 2020, Petitioner filed its reply to Plaintiffs opposition, and the remaining defendants joined same. In an Order dated October 29, 2020, the District Court denied several motions and joinders including Petitioner's Motion for Summary Judgment. A Notice of Entry of the Order was filed on November 2, 2020.

On November 5, 2020, Petitioner 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). (*See* App. 24-365.)¹ On November 19, 2020, Plaintiffs filed an opposition to the motion requesting the stay. (*See* App. 367-376.) In a Notice of Entry of Order dated and filed on December 17, 2020 (**incorrectly stated as October 29, 2020 by Petitioner**) the District Court denied Petitioner's Motion for Stay pending resolution of an appellate issue. *See* Order dated December 17, 2020 denying Petitioner's request for a stay (RP.App 1-8.)²

After a period of 110 days, on April 6, 2021, Petitioner filed a Motion to Reconsider the Order dated December 17, 2020 denying their Motion for Stay. On April 20, 2021, the District Court **denied** Petitioner's Motion to Reconsider their request for a stay of all proceedings in District Court pending the decision on the writ petition as Petitioner's Motion to Reconsider **was untimely**. *See* Order denying Petitioner's Motion to Reconsider Motion to Stay (RP.App 9-16.)

On December 20, 2020, Petitioner filed the Petition for Writ of Mandamus. Petitioner files the instant motion **four months** after the filing of their writ petition seeking a stay of all proceedings in the District Court solely based on this Court requesting an answer be filed to the writ petition. Petitioner could and should have sought the stay with this Court when it filed its Petition for Writ of Mandamus on December 20, 2020 but chose not to.

The instant request for stay should be denied as it is nothing more than a delay tactic on the part of the Petitioner from preventing this wrongful death matter to

¹ App = Appendix to Petitioner's Motion to Stay

² RP.App = Appendix to Real Parties in Interest's Opposition to Motion for Stay Pending Decision on Writ of Mandamus

proceed with discovery as the Petitioner's Petition for Writ of Mandamus has no merit.

IV. PETITIONER'S REQUEST FOR A STAY OF ALL PROCEEDINGS FOUR MONTHS AFTER THE FILING OF THE PETITION FOR WRIT OF MANDAMUS MUST BE DENIED AS THE REQUEST FAILS TO MEET THE REQUIREMENTS OF NRAP 8(c)

Petitioner brings the instant motion **four months** after the filing of their Petition for Writ of Mandamus on December 22, 2020.

NRAP 8(a)(1)(A) requires a party to seek a stay at the District Court before seeking a stay in this Court. Petitioner was **unsuccessful** in moving for a stay in the District Court on two separate occasions. The District Court evaluated all the factors presented and did not see Petitioner prevailing on the merits on their Petition for Writ of Mandamus. *See* RP.App 1-8.

In denying the Petitioner's request for a stay, the District Court weighed the following factors in considering whether to issue a stay in the proceedings when an appellate issue is pending before the Nevada Supreme Court: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP 8(c) and Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000). This Court has not indicated that any one factor carries more weight than the others, although in Fritz, this Court recognizes that if one or two factors are especially strong, they may counterbalance other weak factors. Mikhon Gaming Corporation

v. McCrea, Jr., 120 Nev. 248, 251(2004).

As stated by Judge Weiss in his decision dated December 17, 2020, “Defendant VHS argues that each of the 4 factors weigh in favor of granting a stay. The Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the “potential” Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The only injury or damage that the Petitioner would suffer if the stay were denied, would be continued litigations and the costs associated therewith. The Court has consistently held that ongoing litigation and the expenses associated therewith do not cause “irreparable harm.” Consequently, the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a fact applies to all witnesses equally Plaintiff’s witnesses as well as Defendants’ witnesses. Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury if the stay were granted. 4) The Court cannot find that the Petitioners 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." *See* RP.App 1-8.

The Petitioner presents the identical arguments to this Court as their motion dated November 5, 2020 to the District Court when it requested a stay of all proceedings. The District Court conducted a full analysis of the factors applicable when seeking a stay and denied Petitioner's request. (App. 24-365.)

Contrary of Petitioner's position, the object of the writ petition will not be defeated if the stay is denied. It is very likely that this Court's decision regarding Centennial Hills' writ petition will be received prior to the commencement of the trial set for May 23, 2022. This matter should proceed with discovery in the interim. Accordingly, the first stay factor does not mandate that a stay is warranted.

Petitioner **will not** suffer irreparable or serious injury if the stay is denied. Petitioner argues that it should not be required to participate in the expense of discovery, engaging experts, trial preparation, and trial. Such litigation expenses, while potentially substantial, are neither irreparable nor serious. *See, e.g., Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987) (noting that, with respect to injunctive relief, irreparable harm is harm for which compensatory damages would be inadequate, such as the sale of a home at trustee's sale, because real property is unique).

Plaintiffs **will** suffer irreparable or serious injury if the stay is granted. The Complaint was filed on February 4, 2019. The underlying proceedings would be unnecessarily delayed by a stay, particularly when the District Court has denied the Motion for Summary Judgment and Petitioner's requests for a stay after conducting a full analysis of the law and facts.

Denial of the stay is mandated as Petitioner does **not have a likelihood of prevailing on the merits**. Petitioner's Petition for Writ of Mandamus 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. The request for a stay should be denied as (1) the writ petition improperly requests extraordinary interlocutory relief when there is an adequate remedy at law available, namely a trial and an appeal; (2) fails to demonstrate an abuse of discretion or clear error committed by the District Court; and further (3) fails to present a question of statewide public importance needing clarification.

In denying Petitioner's Motion for Summary Judgment, the District Court considered documents including but not limited to 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 the February 5, 2018 HHS Report of Investigation stating that Ms. Powell's previously determined cause of death was incorrect.

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). Petitioner failed to present any new issues requiring clarification for this Court’s consideration in its writ petition. As this Honorable Court recognizes, an appellate court is not an appropriate forum in which to resolve disputed questions of fact.

An analysis of the above factors overwhelming supports a denial of the request for a stay sought by Petitioner.

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

. . .

V. CONCLUSION

As Petitioner's writ petition has no merit, Petitioner has not demonstrated that this matter needs to be stayed pending the decision by this Court on Petitioner's Writ of Mandamus. Therefore, based on the record and the arguments presented, Real Parties in Interest respectfully request this Court to deny Petitioner's Motion for Stay Pending Decision on Writ of Mandamus.

DATED: April 28, 2021

PAUL PADDA LAW, PLLC

/s/ Srilata R. Shah

PAUL S. PADDA, ESQ.

Nevada Bar No. 10417

SRILATA R. SHAH, ESQ.

Nevada Bar No. 6820

4560 S. Decatur Boulevard, Ste. 300

Las Vegas, NV 89103

Attorneys for Real Parties In Interest
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

VI. CERTIFICATE OF SERVICE

Pursuant to NRAP 21 this REAL PARTIES IN INTEREST, 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, Motion for Stay Pending Decision on Writ of Mandamus is being served by the following means:

Electronic notification will be sent to the following:

S. Brent Vogel, Esq.
Adam Garth, Esq.
Lewis Brisbois Bisgaard & Smith LLP
Petitioner

John Cotton, Esq.
Brad Shipley, Esq.
John H. Cotton & Associates
*Attorneys for Additional Parties in
Interest Dionice S. Juliano, M.D.,
Conrado Concio, M.D. and Vishal S.
Shah, M.D.*

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

The Honorable Jerry A. Wiese, II
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101
Respondent

Aaron Ford, Esq.
Attorney General
Nevada Department of Justice
100 N. Carson Street
Carson City, NV 89701
Counsel for Respondent

DATED: April 28, 2021

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

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.

Supreme Court No. 82250

District Court No. A-19-
788787-C

**Real Parties In Interest, 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, Opposition to Motion for Stay Pending Decision on Writ of Mandamus**

REAL PARTIES IN INTEREST'S APPENDIX

Volume 1

Pages 1-16

PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
psp@paulpaddalaw.com
SRILATA R. SHAH, ESQ.
Nevada Bar No. 6820
sri@paulpaddalaw.com

PAUL PADDA LAW, PLLC
4560 S. Decatur Boulevard, Ste. 300
Las Vegas, NV 89103
Tele: (702) 366-1888
Fax: (702) 366-1940

Attorneys for Real Parties In Interest

INDEX TO REAL PARTIES IN INTEREST'S APPENDIX – VOLUME 1

No.	Document	Date	Vol.	Pages
1	Order Denying Defendant Valley Health System, LLC's Motion to Stay on Order Shortening Time	December 17, 2020	1	1-8
2	Order Denying Defendant Valley Health System, LLC's Motion to Reconsider Motion to Stay Pending Petition for Writ of Mandamus on Order Shortening Time	April 28, 2021	1	9-16

PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

ORDR

PAUL S. PADDALAW, ESQ.
Nevada Bar No.: 10417
Email: psp@paulpaddalaw.com
JAMES P. KELLY, ESQ.
Nevada Bar No.: 8140
Email: jpk@paulpaddalaw.com

PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator;
DARCI CREECY, individually; TARYN
CREECY, individually; ISIAH KHOSROF,
individually; LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; 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; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C
DEPT. 30

**ORDER DENYING DEFENDANT
VALLEY HEALTH SYSTEM, LLC'S
MOTION TO STAY ON ORDER
SHORTENING TIME**

The above-referenced matter was scheduled for a hearing on November 25, 2020 with regard to Defendant Valley Health System's Motion for Stay. Pursuant to Administrative Order 20-01, and subsequent administrative orders, this matter was deemed "non-essential," and as

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30

1 such, this Court has determined that it would be appropriate to decide this matter on the papers.
2 A minute order was circulated on November 23, 2020 to the parties, the contents of which
3 follows:

4 On May 3, 2017, Plaintiff was found by EMS at her home. She was unconscious, labored
5 in her breathing, and had vomit on her face. EMS provided emergency care and transported her
6 to Defendant Hospital, and she was admitted. Plaintiff continued to improve while she was
7 admitted. However, on May 10, 2017 Plaintiff complained of shortness of breath, weakness, and
8 a "drowning feeling." One of her doctors ordered Ativan to be administered via an IV push. On
9 May 11, another doctor ordered two more doses of Ativan and ordered several tests, including a
10 chest CT to be performed. However, the CT could not be performed due to Plaintiff's inability to
11 remain still during the test. She was returned to her room where she was monitored by a camera
12 to ensure she kept her oxygen mask on. Plaintiffs, in their complaint, alleged the monitoring was
13 substandard and Defendant should have used a better camera or in person monitoring, among
14 other theories of substandard care. Another dose of Ativan was ordered at 3:27 AM and Plaintiff
15 entered into acute respiratory failure, which resulted in her death. The other named Plaintiffs
16 claimed they were in Decedent's hospital room and observed Defendant's negligence.

17 Plaintiffs ordered Decedent's medical records on May 25, 2017; however, there were
18 issues with delivery, and it is unclear exactly when Plaintiffs received them. Decedent's husband,
19 a named Plaintiff, filed a complaint with the State of Nevada Department of Health and Human
20 Services ("HHS") sometime before May 23, 2017. Approximately six weeks after the death of
21 Decedent, Plaintiffs received the death certificate which listed the cause of death as a suicide from
22 Cymbalta Intoxication. On February 5, 2018 HHS responded to Plaintiff's complaint. The letter
23 said that after an investigation, HHS concluded that the facility had committed violations by not
24

1 following rules and/or regulations as well as finding there were deficiencies in the medical care
2 provided to Decedent.

3 On February 4, 2019, Plaintiff's filed suit alleging negligence/medical malpractice,
4 wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendant
5 did not file an answer but filed a Motion to Dismiss on June 19, 2020 alleging the statute of
6 limitations had tolled. Plaintiff answered the motion. The court denied the Motion to Dismiss on
7 September 25, 2019. Defendant filed an Answer to Plaintiff's complaint on April 15, 2020.
8

9 Defendants Valley Health System, LLC and Universal Health Services, Inc. then filed a
10 'Motion for Summary Judgment Based Upon the Expiration of the Statute of Limitations.'
11 Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the
12 Motion for Summary Judgment. Additionally, Defendant Juliano filed a Motion for Summary
13 Judgment, and Defendants Concio and Shaw filed a Motion for Partial Summary Judgment on
14 Emotional Distress Claims. Plaintiffs filed a Counter-Motion to Amend or Withdraw Plaintiffs
15 Responses to Defendants Requests for Admissions. All of these items were on the November 04,
16 2020 calendar. An Order deciding these motions was filed on October 29, 2020. The Order denied
17 Defendants, Valley Health System and Universal's Motion for Summary Judgment and related
18 Joinders; granted Defendant Juliano's Motion for Summary Judgment, and dismissed Dr. Juliano
19 from the case without prejudice; and denied Defendants Concio and Shah's Motion for Partial
20 Summary Judgment on the Emotional Distress Claims.
21
22

23
24 Now, Defendant Valley Health System, LLC (VHS) seeks an order staying the case
25 pending an appeal of the October 29, 2020, Order denying its Motion for Summary Judgment
26 Based Upon the Expiration of the Statute of Limitations. Defendant VHS alleges that it may be
27 irreparably prejudiced by having to continue defending this action and potentially being forced
28

1 to try all issues when the matter raised by the aforesaid Motion is case dispositive.

2 This matter has been pending since February, 2019. It is currently set for trial on May 23,

3 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert

4 disclosures are due on August 27, 2021, and discovery is to be completed on or before October

5 28, 2021. Valley argues that it is currently preparing a Petition for Writ of Mandamus, and is first

6 seeking a stay with the district Court pursuant to NRAP 8(a)(1)(A). The decision whether to grant

7 a motion for a stay in proceedings is left to the sound discretion of the Court. Nevada Tax

8 Commission v. Brent Mackie, 74 Nev. 273, 276 (1958). The factors to be considered by the Court

9 when considering whether to issue a stay in the proceedings when an appellate issue is pending

10 before the Nevada Supreme Court are (1) whether the object of the writ petition will be defeated

11 if the stay is denied; (2) whether the petitioner will suffer irreparable or serious injury if the stay

12 is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay

13 is granted; and (4) whether petitioner is likely to prevail on the merits in the writ petition. NRAP

14 8(c); Fritz Hansen A/S v. Eighth Judicial District Court, 116 Nev. 650, 657 (2000).

15

16 Defendant, VHS argues that each of the 4 factors weigh in favor of granting a stay. The

17

18 Plaintiffs, on the other hand, argue that none of the factors weigh in favor of the Defendant. This

19

20 Court finds and concludes as follows: 1) Trial is currently not scheduled until May of 2022, and

21 consequently, even if a stay is denied, it is likely that the Supreme Court would rule on the

22 "potential" Writ of Mandamus, prior to the parties going to Trial. Consequently, the Court does

23 not find that the purpose of the writ petition would be defeated if the stay were denied. 2) The

24 only injury or damage that the Petitioner would suffer if the stay were denied, would be continued

25 litigations and the costs associated therewith. The Court has consistently held that ongoing

26 litigation and the expenses associated therewith do not cause "irreparable harm." Consequently,

27

28

1 the Court does not find that the Petitioner would suffer irreparable harm or serious injury if the
2 stay were denied. 3) Although the Plaintiffs are correct that memories dim as time passes, such a
3 fact applies to all witnesses equally Plaintiff's witnesses as well as Defendants' witnesses.
4 Consequently, the Court does not find that the Plaintiffs would suffer irreparable or serious injury
5 if the stay were granted. 4) The Court cannot find that the Petitioners are likely to prevail on the
6 merits, as this Court previously found, and continues to believe, that the Death Certificate
7 identifying Ms. Powell's cause of death as a "suicide," may have tolled the statute of limitations,
8 in that such a conclusion or determination by the Medical Examiner, would clearly not suggest
9 "negligence" on the part of any medical care provider. Although the Defendants suggest that the
10 Plaintiffs possessed inquiry notice much earlier, the Court could not find that the families
11 questioning of the cause of death equated with inquiry notice of negligence. Consequently, this
12 Court concluded that when the Plaintiffs knew or should have known, of the alleged negligence
13 of the Defendants, was an issue of fact which overcame the Defendants' Motion for Summary
14 Judgment. Consequently, the Court cannot find that there is a likelihood of success on the merits.

15
16
17
18 Another issue which is important in this Court's analysis, is the fact that a Writ has
19 apparently not yet been filed. If the Court were to grant the Stay as requested, it is possible that 6
20 months, or even a year from now, the Writ may still not be filed, so the Court would have stayed
21 the case for no reason.

22
23
24
25 ...

26 ...

27 ...

28

PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

1 Based upon all these reasons, considering the relevant factors set forth above, finding that
2 they weigh in favor of the non-moving party, and good cause appearing,

3 **IT IS HEREBY ORDERED** that the Defendant's Motion for Stay is hereby **DENIED**.

4 Dated this _____ day of December, 2020.

Dated this 17th day of December, 2020



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 30
APR 22 3 06 PM '20
JERRY A. WIESE
District Court Judge

5
6
7
8
9
10 *Respectfully submitted by:*

11 **PAUL PADDA LAW**

12 /s/ Paul S. Padda

13 Paul S. Padda, Esq.
14 Nevada Bar No. 10417
15 James P. Kelly, Esq.
16 Nevada Bar No. 8140
17 4650 S. Decatur Boulevard, Ste. 300
18 Las Vegas, Nevada 89103

19 *Attorneys for Plaintiffs*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 12/17/2020

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Johana Whitbeck	johana.whitbeck@lewisbrisbois.com
22 Brad Shipley	bshipley@jhcottonlaw.com
23 Tony Abbatangelo	Tony@thevegaslawyers.com
24 Adam Garth	Adam.Garth@lewisbrisbois.com
25 Royak Rokni	roya.rokni@lewisbrisbois.com

1	James Kelly	jpk@paulpaddalaw.com
2		
3	Arielle Atkinson	arielle.atkinson@lewisbrisbois.com
4	Paul Padda	civil@paulpaddalaw.com
5	Marlenne Casillas	marlennec@paulpaddalaw.com
6	Jennifer Greening	jennifer@paulpaddalaw.com
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

ORDR

PAUL S. PADDALAW, ESQ.
Nevada Bar No.: 10417
Email: psp@paulpaddalaw.com
SRILATA R. SHAH, ESQ.
Nevada Bar No.: 6820
Email: sri@paulpaddalaw.com
PAUL PADDALAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ESTATE OF REBECCA POWELL, through
Brian Powell as Special Administrator; DARCI
CREECY, individually; TARYN CREECY,
individually; ISIAH KHOSROF, individually;
LLOYD CREECY, individually;

Plaintiffs,

vs.

VALLEY HEALTH SYSTEM, LLC (doing
business as “Centennial Hills Hospital Medical
Center”), a foreign limited liability company;
UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; 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;
DOES 1-10; ROES A-Z;
Defendants.

CASE NO. A-19-788787-C
DEPT. 30

**ORDER DENYING DEFENDANT
VALLEY HEALTH SYSTEM, LLC’S
MOTION TO RECONSIDER MOTION
TO STAY PENDING PETITION FOR
WRIT OF MANDAMUS ON ORDER
SHORTENING TIME**

Defendant Valley Health System, LLC’s (doing business as “Centennial Hills Hospital
Medical Center”) Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus
was scheduled for a hearing on April 21, 2021. Pursuant to the administrative orders of the Court,
including A.O. 21-03, this matter may be decided after a hearing, decided on the pleadings, or
continued. Additionally, EDCR 2.23 provides that any matter may be decided with or without

Estate of Rebecca Powell, et al. v. Valley Health System, LLC, et al.
District Court Case No. A-19-788787-C, Dept. 30

1 oral argument. This Court has determined that this matter may be decided on the pleadings. The
2 hearing set for April 21, 2021 will be taken off calendar. A minute order was circulated on April
3 20, 2021, and the court finds the following:

4 This matter has been pending since February 2019. It is currently set for trial on May 23,
5 2022. Initial expert disclosures are to be made on or before June 18, 2021, rebuttal expert
6 disclosures are due on August 27, 2021, and discovery is to be completed on or before October
7 28, 2021.

9 Defendant Valley Health System LLC (aka CHH; doing business as “Centennial Hills
10 Hospital Medical Center”) moved this Court for summary judgment based upon an alleged
11 expiration of the statute of limitations. CHH argued that Plaintiffs sought and received Ms.
12 Powell's complete medical records from CHH just weeks after her death demonstrating their
13 suspicion of alleged malpractice, and that Plaintiffs were therefore on inquiry notice when they
14 received the medical records in June 2017 since their own expert testified that he had sufficient
15 evidence therein to allege malpractice.

17 CHH also argued that Plaintiffs failed to submit any admissible evidence whatsoever in
18 opposition to that motion.

20 The Court issued an order denying CHH’s motion on October 29, 2020. CHH then moved
21 this Court for a stay of all proceedings prior to filing a Petition for a Writ of Mandamus. On
22 December 17, 2020, this Court issued an order denying CHH’s motion for a stay, due in part to
23 the lack of likelihood that CHH would prevail on the merits, and the fact that a writ petition had
24 not been filed. CHH has since filed its petition with the Nevada Supreme Court. In an order dated
25 March 9, 2021, the Nevada Supreme Court issued an order directing an answer to CHH’s writ
26 petition, setting a briefing schedule of Plaintiffs’ opposition by March 30, 2021 and CHH’s reply
27
28

1 by April 13, 2021. In its order, the Court stated, "Having reviewed the petition, it appears that an
2 answer may assist this court in resolving this matter." Defendant Valley Health System LLC's
3 instant Motion to Reconsider the decision on the Motion for Stay Pending Petition for Writ of
4 Mandamus was filed on 04/06/21 on OST.

5
6 Defendant CHH now argues that the Supreme Court's request for an Answer suggests a
7 likelihood of success on the merits, and the Writ Petition has now been filed, so the Court should
8 now grant the stay that was previously requested.

9
10 In opposition, the Plaintiff argues that the Motion is procedurally defective because a
11 Motion for Reconsideration needs to be filed within 14 days from the 12/17/20 Notice of Entry
12 of Order, which was filed by the Defendant. (See EDCR 2.24)

13 EDCR 2.24 states in pertinent part as follows:

14 EDCR 2.24 Rehearing of motions
15 (b) A party seeking reconsideration of a ruling of the court, other
16 than any order that may be addressed by motion pursuant to NRCP
17 50(b), 52(b), 59 or 60, must file a motion for such relief within 14
18 days after service of written notice of the order or judgment unless
19 the time is shortened or enlarged by order. A motion for rehearing
20 or reconsideration must be served, noticed, filed and heard as is any
21 other motion. A motion for reconsideration does not toll the period
22 for filing a notice of appeal from a final order or judgment.

23 . . .
24 . . .
25 . . .
26 . . .
27 . . .
28

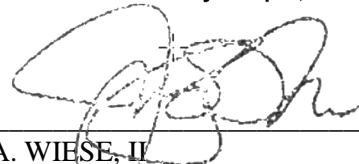
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888 • Fax (702) 366-1940

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Defendant Valley Health System's Motion to Reconsider Motion for Stay Pending Petition for Writ of Mandamus is hereby DENIED as untimely. The Court notes that this decision does not preclude the filing of a Motion to Stay with the Supreme Court.

Dated this _____ day of _____, 2021.

Dated this 28th day of April, 2021



JERRY A. WIESE, II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 30
D18-956 552C 5144
Jerry A. Wiese
District Court Judge

Respectfully submitted by:

Approved as to Form and Content By:

PAUL PADDA LAW

LEWIS BRISBOIS BISGAARD & SMITH

By: /s/ Srilata R. Shah
Paul S. Padda, Esq.
Nevada Bar No. 10417
Srilata R. Shah, Esq.
Nevada Bar No. 6820
4650 S. Decatur Boulevard, Ste. 300
Las Vegas, Nevada 89103

By: /s/ Adam Garth
S. Brent Vogel, Esq.
Nevada Bar No. 6858
Adam Garth, Esq.
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Ste. 600
Las Vegas, Nevada 89118

Attorneys for Plaintiffs

*Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center*

Dated this 22nd day of April 2021.

Jennifer Greening

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, April 22, 2021 12:18 PM
To: Jennifer Greening
Cc: Vogel, Brent; Rokni, Roya; Armantrout, Heather; Atkinson, Arielle; Brad Shipley; Paul Padda; Srilata Shah; Amoroso, Elsa
Subject: RE: Powell v. CHH ,et al. - Proposed Order on Motion to Reconsider Motion to Stay

The order is fine except that there is a typo on p.1. The date should read April 21, 2021, not April 12, 202. As long that that change is made, we will approve the proposed order.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: Jennifer Greening <Jennifer@paulpaddalaw.com>
Sent: Thursday, April 22, 2021 9:49 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Armantrout, Heather <Heather.Armantrout@lewisbrisbois.com>; Atkinson, Arielle <Arielle.Atkinson@lewisbrisbois.com>; Brad Shipley <bshipley@jhcottonlaw.com>; Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>; Amoroso, Elsa <Elsa.Amoroso@lewisbrisbois.com>
Subject: [EXT] Powell v. CHH ,et al. - Proposed Order on Motion to Reconsider Motion to Stay

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning, Mr. Garth-

Attached please find the proposed Order on Motion to Reconsider Motion to Stay for your review.

Thank you.

Jennifer C. Greening

Paralegal

PAUL PADDA LAW, PLLC

Jennifer@paulpaddalaw.com

www.paulpaddalaw.com



Nevada Office:

4560 South Decatur Blvd, Suite 300

Las Vegas, Nevada 89103

Tele: (702) 366-1888

Fax: (702) 366-1940

Mailing Address:

4030 S. Jones Boulevard, Unit 30370

Las Vegas, Nevada 89173

California Office:

300 South Grand Avenue, Suite 3840

Los Angeles, California 90071

Tele: (213) 423-7788

CONFIDENTIALITY NOTICE: The information in this electronic mail communication contains confidential information which is the property of the sender and may be protected by the attorney-client privilege and/or attorney work product doctrine. It is intended solely for the addressee. Access to this e-mail by anyone else is unauthorized by the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of the contents of this e-mail transmission or the taking or omission of any action in reliance thereon or pursuant thereto, is prohibited, and may be unlawful. If you received this e-mail in error, please notify us immediately of your receipt of this message by e-mail and destroy this communication, any attachments, and all copies thereof. Thank you for your cooperation.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 30

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/28/2021

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
18 Jody Foote	jfoote@jhcottonlaw.com
19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
21 Brad Shipley	bshipley@jhcottonlaw.com
22 Tony Abbatangelo	Tony@thevegaslawyers.com
23 Adam Garth	Adam.Garth@lewisbrisbois.com
24 Royak Rokni	roya.rokni@lewisbrisbois.com
25 James Kelly	jpk@paulpaddalaw.com

1	Arielle Atkinson	arielle.atkinson@lewisbrisbois.com
2		
3	Paul Padda	civil@paulpaddalaw.com
4	Jennifer Greening	jennifer@paulpaddalaw.com
5	Diana Escobedo	diana@paulpaddalaw.com
6	Srilata Shah	sri@paulpaddalaw.com
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		