IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC (doing business as "Centennial Hills Hospital Medical Center"),

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal No. 84861

APPELLANTS' OPPOSITION TO RESPONDENT'S MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS

Respondent Valley Health System ("VHS"), LLC, by and through its counsel, attacks the Hon. Linda M. Bell for her decision staying the judgment underlying this appeal and denying VHS's request "to increase the bond amount to

the amount of the judgment, plus accrued interest."[1] Respondent's motion, which is frivolous and without legal merit, should be denied by this Court.[2]

I. THIS COURT'S STANDARD OF REVIEW REQUIRES DEFERENCE TO THE DISTRICT COURT BELOW

This Court has consistently held that the decision of a district court in issuing a stay or setting a bond is favored and entitled to deference. *See* TRP Fund VI, LLC v. PHH Mortgage Corporation, 138 Nev. Adv. Op. 21 (2022) ("[T]his court's strong policy favoring an initial stay decision from the district court is based on that court's vastly greater familiarity with the facts and circumstances of the case and better position to resolve such factual issues, including those of duration and bond necessity and amount."). The Court has further noted that "**the district court is better positioned to resolve any factual disputes concerning the adequacy of any proposed security, while this court is ill suited to such a task**. Nelson v. Heer, 121 Nev. 832, 836 (2005) (emphasis supplied).

The United States Court of Appeals for the Seventh Circuit, from which the Nevada Supreme Court has adopted much of its jurisprudential standards in this area, has noted that "[r]esponsibility for deciding whether to require a bond as a

[1] See Respondent's Motion, p. 3.

[2] The shrill tone and tenor of Respondent's motion, including the personal attacks, are both disappointing and unprofessional.

condition of staying execution of the judgment pending appeal is vested initially in the district judge, and we shall reverse his decision only if convinced that he has acted unreasonably." Dillon v. City of Chicago, 866 F. 2d 902 (7th Cir. 1988).

In light of the foregoing, the applicable standard of review in this area is whether an abuse of discretion occurred by the lower court. Id.

II. RESPONDENT'S MOTION IS NOT PERMITTED BY ANY RULE OR STATUTE

In Nevada, appellate courts are courts of limited jurisdiction and no appeal may be brought unless explicitly permitted by rule or statute. Pengilly v. Rancho Santa Fe Homeowners Association, 116 Nev. 646 (2000); Taylor Construction Company v. Hilton Hotels Corporation, 100 Nev. 207 (1984).

While Nevada Rule of Appellate Procedure ("NRAP") 8(a)(2) allows for certain motions to be brought before this Court without being required to be directly appealable matters, such motions are explicitly limited to those matters contained in NRAP 3A ("appealable determinations"). Similarly, NRAP (8)(a)(1) allows for certain motions but only after the same motion has been first made in the district court. The rule is limited to motions for a stay, a motion for approval of a supersedeas bond, and an order for an injunction. *See* NRAP (8)(a)(1).

It is clear that the present motion is not a motion for stay, nor for an injunction. The remaining type of motion which is allowed (a motion for approval

of a supersedeas bond) has similarities to the present motion filed by VHS as they both involve the subject of a supersedeas bond but that is where the similarity ends. Indeed, a motion seeking to have a *bond approved* in the first instance is clearly distinct in purpose from a motion challenging the *sufficiency of a bond* (or waiver of bond) that was approved by the district court.

Defendant's present motion is clearly one described by NRAP 7(c), which allows for objections to the form or sufficiency of the security to be raised *in the district court* and not the appellate courts.

Because a motion challenging the sufficiency of security for a stay is not authorized by NRAP 3A, nor by NRAP 8, it is not a matter "permitted by rule or statute" that can be raised to the appellate courts.

III. THE DISTRICT COURT'S DETERMINATION WAS APPROPRIATE UNDER ALL APPLICABLE FACTORS

The amount and sufficiency of the bond, which was explicitly within the discretion of the district court, cannot be appealed to this Court pursuant to NRAP 8. However, even if it were allowed, VHS would have to demonstrate a clear abuse of discretion by the district court.

As the purpose of a supersedeas bond is to protect against prejudice to a judgment creditor's ability to collect caused by the stay, VHS must demonstrate

how waiting the length of the stay would make the judgment more difficult to collect than it currently is. Respondent/Defendant (i.e. VHS) appears to be operating under the misplaced assumption that the purpose of the bond is to guarantee its ability to collect; it is not. The purpose of a supersedeas bond on appeal under current law is to "protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay." Nelson v. Heer, 121 Nev. 832, 835 (2005). That case explicitly abandoned the standard of "unusual circumstances" and instead adopted the rule that the bond was to ensure that the delay during appeal did not make collecting the judgment at the end of the appeal more difficult. Id. Further, the factors adopted by the Court in the Heer case clearly show that the concern was solely about protecting the ability to collect, and not about compensating for delay.[3] Id, 121 Nev. at 836 (*citing* Dillon v. City of Chicago, 866 F. 2d 902 (7th Cir. 1988)).

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3 The *Dillon* factors are: "(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position." Nelson v. Heer, 121 Nev. 832, 836 (2005). Notably, none of these factors involve compensation for

VHS's motion provides no explanation whatsoever as to how Plaintiffs'/Appellants' ability to satisfy the judgment, or Defendant VHS's ability to collect the judgment would be harmed by waiting the course of the stay. Absent a clear showing of such harm, VHS (the Defendant/Respondent) cannot challenge the sufficiency of the security set by the district court.

In examining each of the *Dillon* factors adopted by this Court in Heer, it is clear that none argue against a waiver or reduction of bond in this case.

1. **The complexity of the collection process**

VHS argues that this case involves a complex collection process because some Plaintiffs live out of state. While it is true that Plaintiffs do live outside of Nevada, there is no indication that such complexity would be increased by the length of the stay; nor has VHS provided any credible facts to support this claim.

2. **The amount of time required to obtain a judgment after it is affirmed on appeal**

VHS complains about the length of time involving appeals in Nevada. The time cited by VHS is no greater than any other appeal before the Nevada appellate courts. Thus, this argument cannot justify imposing any greater burden than any

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delay. Instead, all relate to either the judgment debtor's ability to pay the bond or whether the delay would significantly change the ability to collect.

other stay on appeal. Further, the bare conclusion set forth on page 9 of VHS's motion that this "endangers the viability of collection," with no explanation as to how or why, must be simply disregarded as a meaningless statement with no support.

3. The degree of confidence that the district court has in the availability of funds to pay the judgment

VHS argues that it believes the judgment debtors are currently unable to pay the judgment. Again, VHS fails to explain how this would change during the course of the stay. Common sense dictates that if the ability to pay today is zero and the ability to pay at the conclusion of the stay is also zero, then VHS would suffer no prejudice to its ability to collect "arising from the stay." In making this argument, VHS undermines its own position urged in this appeal.

4. Whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money

Regardless of Plaintiffs' actual ability to pay (as such information is not contained in the record), it is clear that their ability to pay is not "plain." While this factor does not necessarily weigh in Plaintiffs' favor, it also does not weigh against Plaintiffs as there is no showing by VHS that this would change during the course of the stay.

5. Whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position

VHS's interpretation of the final factor is novel as it appears to suggest that Plaintiffs holding a precarious financial position, to the point that the bond would put their other creditors at risk, would argue against relaxing the bond requirement. If the interpretation is not clear from the text of the rule itself, the cases cited in support of that element make absolutely clear that a precarious financial position is interpreted as an argument in ***favor*** of relaxing the bond requirement. *See* Olympia Equipment Leasing Company v. Western Union Telegraph Co., 786 F. 2d 794 (7th Cir. 1986) (*cited* by Dillon as the basis for element #5) ("[A]n inflexible requirement of a bond would be inappropriate in two sorts of cases: where the defendant's ability to pay the judgment is ... plain ... and — the opposite case ... — where the requirement would put the defendant's other creditors in undue jeopardy.").[4] VHS has clearly taken the position in its motion that it believes Plaintiffs would be unable to pay the judgment. Assuming this is true, then this factor must weigh heavily in favor of waiving the bond, as a bond requirement was never intended to be used to close off a party's access to a lawful appeal.

[4] Dillon, 866 F. 2d at 902 (7th Cir. 1988).

IV. VHS' MOTION REQUESTS A BOND EXCEEDING THE MAXIMUM ALLOWED BY STATUTE

State law, specifically NRS 20.037(1), sets the maximum bond amount allowable. The statute provides as follows:

> **NRS 20.037 Limitation on amount of bond to secure stay of execution of judgment pending appeal; exceptions.**
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> 1. Notwithstanding any other provision of law or court rule, and except as otherwise provided in this section and NRS 20.035, if an appeal is taken of a judgment in a civil action in which an appellant is required to give a bond in order to secure a stay of execution of the judgment during the pendency of any or all such appeals, **the total cumulative sum of all the bonds required from all the appellants involved in the civil action must not exceed the lesser of $50,000,000 or the amount of the judgment**.

NRS 20.037(1)(emphasis added). This statute was passed by the Nevada legislature in the 2015 session for the stated intent of limiting the discretion of courts to set supersedeas bonds above a set amount. Even if VHS were entitled to bring the present motion before this Court (which it is not) and even if review of the *Dillon* factors demonstrated that the determination of the district court was a clear abuse of discretion (which it was not), the amount of bond that VHS is seeking ($122,459.32) is demonstrably improper (undermining the entire credibility of VHS's position) because it clearly exceeds the amount allowable by NRS 20.037 -- which limits a bond to the amount of the judgment. The statute

could not be any clearer. Thus, VHS's attempt to seek a bond *greater* than the judgment amount is simply illegal.

V. CONCLUSION

For the reasons set forth herein, VHS's motion must be denied.

Respectfully submitted,

/s/ *Paul S. Padda*

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Paul S. Padda, Esq.
Counsel for Appellants

Dated: December 23 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Appellate Procedure, I hereby certify that on this day, December 23, 2022, the foregoing document entitled **APPELLANTS' OPPOSITION TO RESPONDENT'S MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS** was filed with the Supreme Court of Nevada through its electronic filing system. Service of the foregoing document shall be made in accordance with the Master Service List upon all registered parties and/or participants and their counsel.

/s/ *Shelbi Schram*

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Shelbi Schram, Paralegal