IN THE SUPREME COURT OF THE STATE OF NEVADA

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, INDIVIDUALLY,

Appellants,

vs.

VALLEY HEALTH SYSTEM, LLC, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER, A FOREIGN LIMITED LIABILITY COMPANY,

Respondent.

Supreme Court No. 84861
District Court Case No. A-19-788787-C

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RESPONDENT'S CLAIM OF IMPERMISSIBLE MOTION IS AN UNQUESTIONABLE MISSTATEMENT OF LAW

NRAP 8 explicitly requires that a party seeking a stay, in this case, Appellants ("Plaintiffs") move first in District Court for such relief[1], that approvals of supersedeas bonds[2] and any modifications of injunctions pertaining to any appeal[3], which include modifications to supersedeas bonds, be made first in District Court, but if such relief is either denied or impracticable, said motion may be made before this Court,[4] which may condition any relief for a stay or injunction on a party's filing a bond or other appropriate security in the District Court.[5] "After a bond for costs on appeal is filed, a respondent may raise for determination by the district court clerk objections to the form of the bond or to the sufficiency of the surety."[6]

NRCP 62(d) provides for a stay pending an appeal if a party posts a proper appeal bond. NRCP 62(g) does not limit an appellate court's jurisdiction to suspend, modify, restore, or grant an injunction while an appeal is pending relating

[1] NRAP 8(a)(1)(A)
[2] NRAP 8(a)(1)(B)
[3] NRAP 8(a)(1)(C)
[4] NRAP 8(a)(2)
[5] NRAP 8(a)(2)(E)
[6] NRAP 7(c)

to the stay imposed or to issue an order to preserve the status quo or the effectiveness of the judgment to be entered. "The purpose of security for a stay pending appeal 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, 122 P.3d 1252, 1254 (2005); *see also McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983) ("The purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment.").

A bond is usually set in an amount that will permit full satisfaction of the judgment. *See Nelson, supra*, 121 Nev. at 834–35, 122 P.3d at 1253; see also NRS 108.2415 (in the context of a mechanic's lien release pending appeal, setting minimum bond amount at 1.5 times the judgment). In other words, it is a precondition for a stay of enforcement that an appeal bond sufficient to cover any judgment at issue be provided. Modifications to any stay of enforcement, which necessarily include the amount of the appeal bond are most definitely authorized by both rule and statute. For Plaintiffs to assert that the instant motion is impermissible contradicts the very statutes and rules allowing for it and misrepresents the state of the law.

II. PLAINTIFFS' REFERENCE TO DISTRICT COURT DEFERENCE IS INAPPLICABLE

As demonstrated in Respondent's ("VHS") motion in chief, VHS requested

that the District Court order an increase in the bond amount to the amount of the judgment, plus accrued interest (**Vol. I, Exhibit "H", pp. 279:16 – 280:1**[7]). VHS's request was denied as the District Court questioned whether it even had jurisdiction to make that determination given the appellate posture of the case (**Vol. I, Exhibit "H", pp. 278:10-19; 280:15-17**). The District Court did not rule on the merits of such a motion, having declined to make any substantive determinations regarding this matter pending the outcome of the pending appeal. For Plaintiffs to even suggest that the District Court resolved "any factual disputes concerning the adequacy of any proposed security. . ."[8] is disingenuous at best.

Furthermore, to suggest that a $500 appeal bond is sufficient to permit full satisfaction of the judgment which amount with interest now exceeds $120,000.00 defies and contradicts the purpose of an appeal bond as articulated in *Nelson*. *See Nelson, supra*, 121 Nev. at 834–35, 122 P.3d at 1253; see also NRS 108.2415.

III. THE *NELSON* FACTORS ALL WEIGH IN FAVOR OF GRANTING VHS'S MOTION

Plaintiffs' opposition not only fails to properly analyze this Court's decision in *Nelson, supra* regarding the purpose and adequacy of an appeal bond, their conclusion regarding the need for a bond makes no sense. VHS's initial motion

[7] Exhibit references are to the Appendix of Exhibits filed with VHS's motion in chief.
[8] Plaintiffs' opposition, p. 2

demonstrated how each of the *Nelson* factors inures in favor of VHS and will not be repeated here. Plaintiffs' essential argument (without any evidence to support it), is that they lack the resources to pay a judgment, so therefore they are entitled to proceed without a bond sufficient to cover the judgment already on file. In other words, according to Plaintiffs, they are free to pursue an appeal, and since they are effectively judgment proof, they should not be required to post a bond to permit VHS to recover on their judgment if they lose their appeal. Not only is this argument absurd, but it defies the very purpose of an appeal bond. Plaintiffs may attempt to pursue an appeal, but they cannot do so without following the rules. Those rules require a bond, and the law requires the bond to have a value sufficient to cover the amount of the judgment obtained. Any less defeats the purpose of the rule in the first place.

IV. NRS § 20.037 CONTEMPLATES INCLUSION OF INTEREST IN DETERMINATION OF AMOUNT OF APPEAL BOND

NRS § 20.037 limits the amount required for an appear bond to be the lesser of $50,000,000 or the amount of the judgment. In this case, the amount of the judgment is $118,906.78. Plaintiffs do not dispute that amount. Plaintiffs' claim, however, that even if required to post a bond, they cannot be compelled to post a bond for more than that amount. Since the purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the

judgment, the amount should usually be set in an amount that will permit full satisfaction of the judgment. See, *McCulloch, supra.* Preserving the status quo and preventing prejudice to the creditor arising from the stay are the purposes behind a bond's posting (See, *Nelson*, *supra* 121 Nev. at 835-36, 122 P.3d at 1254), and post judgment interest is a necessary component of the judgment itself, which remains unpaid. Plaintiffs should not be given a free ride to pursue an appeal without having satisfied the their obligations to VHS which includes post-judgment interest from June 2, 2022 ($3,552.54), the date of the judgment, up through and including the date of the hearing (November 16, 2022) for a total amount of $122,459.32.

DATED this 29th day of December, 2022.

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By /s/ *Adam Garth*

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2022, a true and correct copy of **RESPONDENT'S REPLY TO APPELLANTS' OPPOSITION TO MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

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