

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 84861

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Jan 30 2023 10:57 PM

Elizabeth A. Brown
Clerk of Supreme Court

ESTATE OF REBECCA POWELL; DARCI CREECY; TARIK CREECY;
ISAIAH KHOSROF AND LLOYD CREECY;

Appellants,

v.

VALLEY HEALTH SYSTEM, LLC

Respondent.

On appeal from the Eighth Judicial District Court, Clark County, Nevada
(Dept. XXX, Hon. Jerry A. Wiese); District Court Case No. A-19-788787-C

APPELLANTS' OPENING BRIEF

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Dated: January 30, 2023

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as described in Nevada Rule of Appellate Procedure (“NRAP”) 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Estate of Rebecca Powell was established and approved by the Clark County District Court to administer the affairs of Rebecca Powell (deceased). Brian Powell was appointed the Estate’s Special Administrator for purposes of litigation.

Darci Creecy is an individual and the daughter of Rebecca Powell.

Taryn Creecy is an individual and the daughter of Rebecca Powell.

Isaiah Khosrof is an individual and the son of Rebecca Powell.

Lloyd Creecy is an individual and the father of Rebecca Powell.

The Estate and each individual identified above have been represented by attorneys from the law firm of Paul Padda Law.

/s/ Paul S. Padda

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I.

JURISDICTIONAL STATEMENT

This is an appeal from the district court's issuance of a judgment on June 2, 2022 awarding Respondent Valley Health System, LLC its requested attorneys' fees and costs ("the Judgment"). *See* 6 AA 614-656.¹ The Judgment is a final determination within the meaning of NRAP 3A(b)(1) ("A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered"). Notice of the Judgment was filed on June 7, 2022. 6 AA 610-612.

Appellants² timely filed their notice of appeal (along with a case appeal statement) on June 7, 2022. 6 AA 657-663. This Court can properly exercise jurisdiction over this appeal because the Powell parties are appealing a final judgment.

¹ "___ AA ___" refers to the volume of Appellants' Appendix (filed contemporaneously with this brief) proceeded by specific reference to the page number(s) within that volume.

² For ease of reference, Appellants shall be referred to collectively within this Opening Brief as "the Powell parties." Respondent Valley Health System, LLC shall be referred to as "VHS."

II.

ROUTING STATEMENT

The Judgment at issue in this appeal is for an amount of less than \$250,000. 6 AA 614-615. Accordingly, and pursuant to NRAP 17(b)(5), this appeal should be referred to the Court of Appeals for adjudication.

III.

ISSUES PRESENTED

Whether the district court erred in granting Judgment in favor of VHS given that it lacked jurisdiction to award attorney fees and costs, a fact that it expressly acknowledged.

Whether the district court abused its discretion by awarding attorney fees and costs in favor of VHS through a judgment *after* finding that the Powell parties' rejection of an offer of judgment was neither grossly unreasonable nor made in bad faith and that their claims were brought in good faith.

IV.

STATEMENT OF THE CASE

This litigation arises from deeply tragic circumstances. Rebecca Powell was a registered nurse working in the intensive care unit of the Mike O'Callahan Hospital located on Nellis Air Force base (4 AA 390) when she was transported on May 3, 2017 to Centennial Hills Hospital (owned and operated by VHS) by

emergency medical services after being found in her home “unconscious with labored breathing, and with vomituous on her face.” 1 AA 56. While in the care and custody of Centennial Hills Hospital for more than a week, Rebecca died on May 11, 2017. 1 AA 73. She was approximately 42-years old at the time of her death. 4 AA 387. Her death certificate listed “complications of Cymbalta intoxication” as her sole cause of death. 1 AA 74.

After more than a year had passed following her death, Rebecca’s family retained Paul Padda Law to explore a malpractice action against Centennial Hills Hospital and the physicians who provided medical care to her. Litigation was commenced in the district court on February 4, 2019 through the filing of a complaint. 1 AA 8; 51-71. The complaint was accompanied by an affidavit from Dr. Sami Hashim, M.D. (1 AA 72-79) who, among other things, is a Professor of Internal Medicine at Columbia University’s College of Physicians & Surgeons. 1 AA 73.

In his supporting affidavit filed with the complaint, Dr. Hashim opined that Rebecca could not have died from the Cymbalta intoxication as suggested by her death certificate and instead her death was the “direct consequence of respiratory failure directly due to the below standard of care violations indicated by her medical records” 1 AA 74. Dr. Hashim further stated, under oath, that “to a reasonable degree of medical probability, the failure to properly diagnose the

patient before she became acutely critical on 5/11/2017, the failure of the healthcare provider staff to adequately monitor the patient (also stated in the HHS-Investigative Report), the failure to properly diagnose the patient, the failure to provide proper treatment (lacking review of the patient's medications) and administering the drug (Ativan) several times [via] IV-Push in a respiratory compromised patient, inclusively and directly led to the patient's wrongful death." I AA 78.

During the early stage of this litigation, VHS filed a motion to dismiss raising a statute of limitations argument based upon the fact that the lawsuit was filed more than a year after Rebecca's death. 1 AA 82-94. The district court denied that motion. 1 AA 103-104. On August 28, 2020, VHS served the Powell parties with an offer of judgment pursuant to Nevada Rule of Civil Procedure 68 under the terms of which it offered to waive all fees and costs allegedly incurred as of the date the offer was made. 1 AA 121-124. Having just prevailed on the statute of limitations issue before the district court, the Powell parties rejected VHS' offer.

After serving the Powell parties with its offer of judgment, VHS moved for summary judgment – again raising the same statute of limitations argument previously asserted. 2 AA 125-142. That motion was also denied by the district court. 2 AA 180-189. Shortly thereafter, VHS filed a petition for writ of

mandamus with the Nevada Supreme Court. 3 AA 190-228. The writ was granted. 3 AA 229-234. The Supreme Court found that the Powell parties' case was untimely. 3 AA 229-234.

Approximately one month later, on November 19, 2021, and based upon the Supreme Court's granting of VHS's writ, the district court vacated its prior summary judgment decision and instead granted summary judgment in favor of VHS on the statute of limitations issue. 4 AA 270-281. Subsequently, VHS moved for an award of fees and costs on the basis that the Powell parties had not achieved a more favorable result than the offer of judgment previously served by VHS. 4 AA 282-305; 306-357. By order entered February 16, 2022, the district court denied VHS's request for fees and costs. 4 AA 481-496. VHS moved for reconsideration of the district court's decision and a hearing was set for March 19, 2022. 5 AA 497-525; 526.

Before the district court could decide the motion for reconsideration or convene a hearing on the motion, VHS filed a notice of appeal challenging the district court's initial denial of fees and costs. 5 AA 539-560. The appeal was perfected with the Nevada Supreme Court on March 14, 2022. 5 AA 571-592.

By decision (notice of which was entered on May 4, 2022), the district court denied VHS's motion for reconsideration noting that it lacked jurisdiction to award fees and costs given VHS's appeal ("[c]onsequently, this [c]ourt no longer has

jurisdiction to address the issue of fees and costs”). Following receipt of that order, VHS filed a notice of withdrawal of its appeal with the Nevada Supreme Court on May 12, 2022. 6 AA 606-608. The Supreme Court then dismissed VHS’s appeal regarding the denial of fees and costs on May 16, 2022. 6 AA 609.

Although the district court never awarded fees and costs to VHS, as evidenced by both the initial denial (4 AA 481-496) and the denial for lack of jurisdiction of the reconsideration request (6 AA 593-605), VHS drafted and presented a “judgment” to the district court for an award of “a total of \$118,906.78” in fees and costs in favor of VHS. 6 AA 615. The district court affixed a “stamp” signature of the district court judge purporting to approve the Judgment. Id.

Stripped to its essentials, this case is principally about whether the district court committed error when it ostensibly approved and signed the monetary Judgment presented to it by VHS despite never having awarded VHS fees and costs.

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V.

STATEMENT OF RELEVANT FACTS

1. On February 4, 2019 the Powell parties filed a complaint alleging medical negligence on the part of VHS as well as others that rendered medical care and treatment to Rebecca Powell. 1 AA 51-71. The complaint, filed by Rebecca's two daughters (Darci and Taryn), her son (Isaiah), her father (Lloyd) and her former husband (Brian) acting as the Special Administrator of her Estate, was accompanied by an affidavit from Dr. Sami Hashim, M.D. who offered the opinion that defendants committed medical negligence. 1 AA 79. The complaint was properly served upon VHS. 1 AA 80-81.

2. On June 19, 2019, VHS, doing business as Centennial Hills Hospital, filed a motion to dismiss the complaint on the grounds that it was allegedly barred by the applicable statute of limitations. 1 AA 82-94. The Powell parties opposed the motion (1 AA 94-102). The district court denied VHS' motion to dismiss noting that there was an issue of fact as to when the Powell parties had inquiry notice. 1 AA 104.

3. After its motion to dismiss was denied, VHS filed an answer. 1 AA 105-115. The district court then issued a scheduling order setting a trial date. 1 AA 116-120.

4. On August 28, 2020, VHS served the Powell parties with an offer of judgment (citing NRCP 68) which offered to “waive any presently or potentially recoverable attorney’s fees and costs in full and final settlement” of the case. 1 AA 121-124. The Powell parties did not accept the offer.

5. After the Powell parties declined to accept VHS’ offer of judgment, VHS moved for summary judgment on statute of limitations grounds. 2 AA 125-142. Once the issues were fully briefed (2 AA 143-156; 157-179), the district court issued an order denying summary judgment on the basis that it could not find that based upon the facts and evidence presented that VHS irrefutably demonstrated that Plaintiff was “put on inquiry notice more than one year prior to the filing of the complaint.” 2 AA 186.

6. VHS then filed a petition for writ of mandamus in this Court arguing that the district judge (Hon. Jerry A. Wiese) abused his discretion by failing to enter summary judgment in its favor on statute of limitations grounds. 3 AA 190-228. The Supreme Court granted the writ finding that “irrefutable evidence demonstrates that the real parties in interest were on inquiry notice by June 11, 2017 at the latest, when real party in interest Brian Powell, special administrator for the estate, filed a complaint with the State Board of Nursing.” 3 AA 231-232. The Court further added that “Brian’s own allegations in this Board complaint demonstrate that he had enough information to allege a prima facie claim for

professional negligence . . .” 3 AA 232. The Court then instructed the district court to “vacate its order denying petitioner’s motion for summary judgment and enter summary judgment in favor of petitioners.” 3 AA 233.

7. The Powell parties sought rehearing and *en banc* consideration from the Supreme Court noting that there was no evidence, nor did the Supreme Court cite any, demonstrating that the children of Rebecca Powell were on inquiry notice at the same time Brian Powell (who is not their father – 3 AA 238) is alleged to have been. 3 AA 239. Despite the fact that the complaint to the State Board of Nursing (cited as the key evidence by the Supreme Court panel) was only signed by Brian Powell and received by him (and no one else), the Supreme Court imputed his inquiry notice to all other plaintiffs and denied rehearing and *en banc* consideration. *See* 3 AA 259-260; 268-269.

8. On November 19, 2021, the district court vacated its prior order and entered summary judgment in favor of VHS. 4 AA 270-281.

9. Three days later, on November 22, 2021, VHS filed a memorandum of costs (4 AA 282-305) and a motion for attorney’s fees (306-357) seeking in excess of \$100,000 in fees and costs from the Powell plaintiffs. After the issues were fully briefed, the district court, by order dated February 15, 2022, denied VHS’ requests for fees and costs in their entirety. 4 AA 496. With respect to costs, the district court found that VHS failed to properly itemize and document its claimed

costs. 4 AA 492-493. On the issue of fees, the Court made an explicit finding that that the Powell parties claims were brought in good faith and their decision “to reject the offer [of judgment] and proceed to trial was not grossly unreasonable or in bad faith.” 4 AA 495.

10. Following the denial of its request for fees and costs, VHS sought reconsideration of the district court’s decision. 5 AA 497-525. The district court issued notice that it would conduct a hearing on VHS’s motion for reconsideration on March 30, 2022. 5 AA 526. However, while the motion for reconsideration was pending and before any hearing on that motion could be convened, VHS filed notice of appeal and attached a copy of the district court’s February 15, 2022 order denying fees and costs to its notice. 5 AA 539-560. The appeal was subsequently perfected by VHS on or about March 14, 2022. 5 AA 571-592.

11. With an active appeal pending before the Nevada Supreme Court, the district court, by order dated May 4, 2022, declined to issue a decision on VHS’ motion for reconsideration noting that the court “no longer has jurisdiction to address the issue of fees and costs” and that “[i]f the [c]ourt were inclined to reconsider its previous decision, the most it could do would be to enter a *Honeycutt* Order . . .” 6 AA 597. The district court ended its order by directing counsel for VHS to convey “this Decision to the Supreme Court” if VHS was interested in a remand on the issue of fees and costs. 6 AA 605.

12. VHS did not submit a copy of the district court's May 4, 2022 order to the Supreme Court as directed by the district court; nor did it seek a remand of any kind from this Court. Instead, VHS filed a notice of withdrawal of appeal accompanied by a verification from its counsel attesting to the veracity and accuracy of the statements in the notice which included the representation that "any issues that were or could have been brought in this appeal are forever waived." 6 AA 606. Acting upon VHS' notice and request, the Supreme Court dismissed the appeal pertaining to VHS's challenge to the district court's denial of fees and costs. 6 AA 609.

13. Despite the clear language in the district court's May 4, 2022 decision that declined to grant reconsideration on the issue of fees and costs (citing lack of jurisdiction) VHS nonetheless submitted a "judgment" to the district court for signature. 6 AA 614-656. The district court affixed a stamp signature of the judge to the judgment on June 2, 2022. 6 AA 615. Counsel for the Powell parties declined to sign the proposed judgment noting "[w]e cannot agree to this." 6 AA 618. Notice of the Judgement was filed on June 7, 2022. 6 AA 610-612.

14. That same day, June 7, 2022, the Powell parties filed notice of appeal to this Court from the district court's Judgment which had been executed on June 2, 2022.

15. On December 1, 2022, the district court (Hon. Linda M. Bell) granted the Powell parties' motion to stay enforcement of the Judgment. 6 AA 668.

VI.

SUMMARY OF ARGUMENT

When VHS filed notice of appeal on March 14, 2022 (65 AA 539-560), and perfected that appeal in this Court (5 AA 571-592), with both events occurring prior to the district court's adjudication of VHS' motion for reconsideration on the issues of fees and costs, the district court was divested of jurisdiction thereby rendering the subsequently procured judgment void *ab initio*. Simply put, the district court lacked subject matter jurisdiction to issue the Judgment (6 AA 610-656) that is the subject of this appeal.

VHS had a remedy after filing its appeal. It could have requested a remand pursuant to Foster v. Dingwall, 126 Nev. 49 (2010). However, it waived that remedy by dismissing its appeal with the express acknowledgment that "any issues that were or could have been brought in this appeal are forever waived." 6 AA 606. VHS's decision to abandon its appeal and to forfeit pursuit of the type of remand permitted by Foster was a clear and deliberate choice. Whether VHS subsequently came to regret that choice it could not *sua sponte* re-confer jurisdiction upon the district court through presentment of a Judgment. However, that is what it did when it drafted and presented for signature a judgment that gave

it all the monetary relief the district court previously refused to give due to lack of jurisdiction.

Even if the district court had jurisdiction to issue the Judgment in question, it abused its discretion when it did so because there is no written decision issued by the district court setting forth any analysis supporting an award of fees and costs.

VII.

ARGUMENT

A. STANDARD OF REVIEW

1. Subject Matter Jurisdiction

Whether a district court has subject matter jurisdiction is question of law that is reviewed by this Court *de novo*. Ogawa v. Ogawa, 125 Nev. 660, 667 (2009). The validity of a judgment depends on whether the district court had subject matter jurisdiction and not whether it reached the correct result. Bradford v. Eighth Judicial District Court, 129 Nev. 584, 587 (2013). This Court is not required to give any deference to the district court decision being challenged when conducting a *de novo* review. City of North Las Vegas v. Warburton, 127 Nev. 682, 686 (2011).

2. Award Of Attorney's Fees And Costs

Under NRCP 68 and NRS 17.117, either party may make an offer of

judgment and serve it on another party to the case before trial. If the party to whom the offer is made rejects it and then fails to obtain a more favorable judgment, the district court may order that party to pay the offeror “reasonable attorney fees.” NRCp 68(f)(2); NRS 17.117(10)(b).

In determining whether to award attorneys fees pursuant to NRCp 68 or NRS 117.117, the trial court must evaluate the factors enumerated under Beattie v. Thomas, 99 Nev. 579 (1983). See Frazier v. Drake, 131 Nev. 632, 641-42 (Ct. App. 2015). The Beattie factors which a trial court is required to evaluate are the following:

“(1) whether the plaintiff’s claim was brought in good faith, (2) whether the defendants’ offer of judgment was reasonable and in good faith in both its timing and amount, (3) whether the plaintiff’s decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.”

Beattie, 99 Nev. At 588-89.

Ultimately, however, the decision to award attorney’s fees rests within the trial court’s discretion and this Court will only review a trial court’s decision as to an award of attorney’s fees for an abuse of discretion. Frazier, 131 Nev. at 642.

“[A]n abuse occurs when the court’s evaluation of the *Beattie* factors is arbitrary or capricious.” Id. An arbitrary or capricious exercise of discretion is “one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law.” State v. Eighth Judicial District Court, 127 Nev. 927

(2011). A manifest abuse of discretion is “[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” State, 127 Nev. at 932 (quoting Steward v. McDonald, 330 Ark. 837 (Ark. 1997)).

**B. ONCE THE DISTRICT COURT LOST JURISDICTION, VHS
COULD NOT *SUA SPONTE* RE-CONFER THAT JURISDICTION
THROUGH THE PRESENTMENT OF A MONETARY
JUDGMENT IN ITS FAVOR**

This Court reviews the scope of the district court’s jurisdiction de novo. Argentina Consolidated Mining Co. v. Jolley Urga Wirth Woodbury & Standish, 125 Nev. 527, 531 (2009). A timely notice of appeal generally “divests the district court of jurisdiction to act and vests jurisdiction in this [C]ourt.” Mack-Manley v. Manley, 122 Nev. 849, 855 (2006); Rust v. Clark County School District, 103 Nev. 686, 688 (1987).

Notwithstanding the foregoing, in Huneycutt v. Huneycutt, 94 Nev. 79, (1978), this Court “adopted a procedure whereby, if a party to an appeal believes a basis exists to alter, vacate or otherwise modify or change an order or judgment challenged on appeal after an appeal *from that order or judgment* has been perfected in this Court, the party can seek to have the district court certify its intent to grant the requested relief and thereafter the party may move this Court to

remand to the district court for the entry of an order granting the requested relief.”³
Foster v. Dingwall, 126 Nev. 49, 52 (2010) (citing Honeycutt, 94 Nev. at 79-81).

In this case, and as correctly noted by the district court itself, once VHS filed its notice of appeal on March 14, 2022 (5 AA 571-592), the court “no longer [had] jurisdiction to address the issue of fees and costs” and that “[i]f the [c]ourt were inclined to reconsider its previous decision, the most it could do would be to enter a *Honeycutt* Order . . .” 6 AA 597. At that point, and per the directives of this Court in Foster, VHS could have filed a motion with this Court seeking a remand to the district court for entry of an order granting the requested relief. *See Foster*, 126 Nev. at 53. Rather than transmit the district court’s ruling that was filed on May 4, 2022 (6 AA 596-605) to this Court and file an appropriate motion for remand, all of which are required by Foster, VHS instead chose to withdraw its appeal and acknowledge that it could not “hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived.” 6 AA 606.

³ There is no ambiguity regarding what VHS was appealing since it attached a copy of the decision denying it fees and costs to its notice of appeal. *See* 5 AA 571-592.

Given the foregoing, it was highly inappropriate for VHS counsel⁴ to present the district court with a judgment awarding fees and costs to VHS when only a few months earlier the same district court acknowledged it lacked jurisdiction to grant fees and costs. Once the district court was divested of jurisdiction by virtue of VHS' appeal, VHS could not simply re-confer jurisdiction upon that court through the presentment of a judgment in which it crafted an award of fees and costs for itself despite the district court previously notifying it that it lacked jurisdiction to grant those fees and costs.

The only order of any validity was the original order issued by the district court denying VHS fees and costs. *See* 4 AA 481-496. The subsequent order by the district court in which it acknowledged it lacked jurisdiction to award fees and costs (6 AA 593-605) did nothing to alter the original order because it was of no legal effect given the appeal that was then pending in this Court. Thus, the subsequent Judgment that was obtained by VHS under questionable circumstances was, and remains, void *ab initio* for lack of subject matter jurisdiction. For this reason and presumably concerned about how VHS had obtained the Judgment at

⁴ Nevada Rules of Professional Responsibility 3.1 and 3.3 impose obligations upon Nevada lawyers that require pursuing only meritorious claims and contentions and acting with candor towards a tribunal. There can be no reasonable dispute in this case that when counsel for VHS presented the district court with the Judgment for signature, they were fully aware that the same court had previously declined to award fees and costs for lack of jurisdiction and had specifically informed them of the same.

issue, Judge Linda Bell granted the Powell parties' motion to stay enforcement of the Judgment.

C. IT WAS ARBITRARY AND CAPRICIOUS FOR THE DISTRICT COURT TO ENTER A JUDGMENT FOR FEES AND COSTS AFTER DECLINING TO AWARD FEES AND COSTS THROUGH WRITTEN ORDER

The only decision rendered by the district court *when it had jurisdiction* to decide the issue of fees and costs was the decision filed on February 15, 2022 *denying* VHS fees and costs. See 4 AA 485-496. The subsequent decision filed on May 4, 2022 by the district court was of no consequence because the court itself acknowledged it had no jurisdiction to do anything other than issue a *Huneycutt* order, which VHS chose not to pursue with the Nevada Supreme Court before which it had an active appeal at the time. See 6 AA 596-605.

In light of the foregoing if the only valid order issued by the district court was the order denying VHS's fees and costs, it was a clear abuse of discretion (and certainly arbitrary and capricious) for the district court to completely reverse course and award fees and costs through a Judgment that was issued after it lost jurisdiction over the case. The Judgement was a clear and arbitrary departure from the district court's February 15, 2022 decision.

There is no legal or factual basis to support the Judgment that is being challenged in this appeal. Indeed, the district court initially determined the Beattie factors weighed in favor of the Powell parties only to change course in a Judgment

that departed from all of those factors. The district court clearly abused its discretion by departing from its original analysis applying the Beattie factors in its February 15, 2022 decision to rendering a written Judgment approximately 4-months later which provides no analysis whatsoever in explaining the decision to award fees and costs.

VIII.

CONCLUSION

For the reasons set forth herein, the Court should vacate the Judgment at issue in this appeal as the district court lacked subject matter jurisdiction to issue it. Alternatively, the Judgment should be set aside as an abuse of discretion because it provides no basis for the award of fees and costs, especially in light of the fact that the very court that issued it previously denied fees and costs after applying the Beattie factors.

/s/ Paul S. Padda

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Dated: January 30, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **APPELLANTS' OPENING BRIEF IN CASE NO. 84861**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. This brief complies with the type-volume limitation provided in NRAP 32(a)(7)(A)(ii) as it contains **6,236 words**, or no more than 14,000 words.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 30th day of January 30, 2023.

/s/ Paul S. Padda

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Attorney for Appellants

VERIFICATION

I, Paul S. Padda, declare:

I am an attorney with Paul Padda Law, counsel of record for Appellants. My Nevada Bar License is No. 10417.

I verify that I have read the foregoing **APPELLANTS' OPENING BRIEF IN CASE NO. 84861**; that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of January 2023 in Clark County, Nevada.

/s/ Paul S. Padda
Paul S. Padda, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Paul Padda Law and that on this day, January 30, 2023, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing

APPELLANTS' OPENING BRIEF IN CASE NO. 84861 properly addressed to the following:

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