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 APPENDIX TO MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS VOLUME V

S. BRENT VOGEL
Nevada Bar No. 6858
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Attorneys for Respondent

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I	Defendant/Judgment Creditor Valley Health System, LLC's Opposition to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents and Countermotion for Contempt and Attorneys' Fees	10/28/2022	493-524
J	Plaintiffs' Response to Defendant/Judgment Creditor Valley Health System, LLC's Opposition to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs Including Stay of Examination of Judgment Debtors and Production of Documents and Countermotion for Contempt and Attorneys' Fees	11/4/2022	525-547
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DATED this 10th day of March, 2023.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ *Adam Garth*

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ADAM GARTH
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Tel. 702.893.3383
Attorneys for Respondent Valley Health System, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2023, a true and correct copy of **RESPONDENT'S APPENDIX TO MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS VOLUME V** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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By */s/ Heidi Brown*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Tuesday, November 9, 2021 10:33 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

Adam Garth
Partner
Las Vegas Rainbow
702.693.4335 or x7024335

From: Garth, Adam
To: Paul Padda; Srilata Shah; Brad Shipley
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria; jhcotton@jhcottonlaw.com
Subject: RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 9:59:40 AM
Attachments: image001.png
image002.png

We are not willing to do that. As you were unwilling to stay anything at our request, we will return the courtesy.

From: Paul Padda <psp@paulpaddalaw.com>
Sent: Friday, November 12, 2021 9:56 AM
To: Garth, Adam <Adam.Garth@lewisbrisbois.com>; Srilata Shah <sri@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

As you know, there is a motion for rehearing pending in the Supreme Court. Given that fact, and the lack of prejudice to Defendants, please advise if Defendants are willing to stay enforcement of the Supreme Court's decision which is the subject of a motion for rehearing? Thanks.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
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PAUL PADDA LAW

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>

Sent: Friday, November 12, 2021 8:50 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: FW: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel,

As a reminder, we have not heard from any party with respect to an agreement on submitting the proposed order to the Court. Given that the hearing is scheduled for 11/18, we previously indicated that if we did not hear from all parties by 12:00 noon today, we would proceed to submit this order to the court indicating no agreement between the parties. Please advise your position on this proposed order. Many thanks.

Adam Garth

LEWIS BRISBOIS

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

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Tuesday, November 9, 2021 10:33 AM
To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshipley@jhcottonlaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Rokni, Roya <Roya.Rokni@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>; Sirsy, Shady <Shady.Sirsy@lewisbrisbois.com>; jhcotton@jhcottonlaw.com
Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Importance: High

Counsel:

Attached is a proposed order reflecting the Supreme Court's ruling on the writ petition for Judge Wiese's consideration and signature. In accordance with the Supreme Court's order, Judge Wiese was directed to vacate his order denying the respective summary judgment motions and issuing a new order granting said motions. This proposed order does exactly that and reflects the rationale utilized by the Supreme Court in its decision. It is our intention to submit this proposed order to Judge Wiese in advance of the hearing he scheduled for November 18, 2021. Please respond whether we have your consent to use your e-signature on the proposed order prior to submission. If you have proposed changes, please advise accordingly and we can see whether they can be incorporated. We would like to submit the order on or before Friday, November 12, 2021, so please indicate your agreement to the order or if you have an objection. If we do not hear from you by before 11/12 by 12:00 noon, we will submit the order with a letter of explanation as to those parties unwilling to sign and they will have an opportunity to submit any competing order to the Court. Many thanks for your attention to this matter.

Adam Garth

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Partner
Las Vegas Rainbow
702.693.4335 or x7024335

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)	CASE NO: A-19-788787-C DEPT. NO. Department 30

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

Service Date: 11/19/2021

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EXHIBIT B

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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,

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; and ROES A-Z;.

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Order Regarding Valley Health System's Motion for Reconsideration Regarding Motion for Attorneys' Fees was entered on May 4, 2022. a true and correct copy of which is attached hereto.

///

///

DATED this 4th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

S. BRENT VOGEL
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6385 S. Rainbow Boulevard, Suite 600
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Tel. 702.893.3383
Attorneys for Attorneys for Defendant Valley Health System, LLC dba Centennial Hills Hospital Medical Center

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2022, a true and correct copy of **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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By /s/ Heidi Brown
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

Electronically Filed
05/04/2022 8:48 AM
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

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

Defendants.

CASE NO.: A-19-788787-C
DEPT. NO.: XXX

ORDER RE: VALLEY HEALTH SYSTEM'S MOTION FOR RECONSIDERATION RE MOTION FOR ATTORNEYS' FEES

SOMERVILLE DISTRICT COURT 2022 JUL -7 AM 11:25

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ~~3/30/22~~ 4/1/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Reconsideration of the Court's Order re: Defendant's Motion for Attorneys' Fees. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On May 3, 2017, Rebecca Powell ("Plaintiff") was taken to Centennial Hills Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant") by EMS services after she was discovered with labored breathing and vomit on her face. Plaintiff remained in Defendant's care for a week, and her condition improved.

However, on May 10, 2017, her condition began to deteriorate and on May 11, 2017, she suffered an acute respiratory failure, resulting in her death.

Plaintiffs brought suit on February 4, 2019 alleging negligence/medical malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment, which this Court denied. After a recent remand from the Nevada Supreme Court, on 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for Summary Judgment and Granting Said Defendant's Motion for Summary Judgment Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano, Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's denial of fees and costs. Consequently, this Court no longer has jurisdiction to address the issue of fees and costs. If the Court were inclined to reconsider its previous decision, the most it could do would be to enter a *Honeycutt* Order (See *Huneycutt v. Huneycutt,* 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall,* 126 Nev. 49, 228 P.3d 453 (2010)), indicating its intention.

SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it $110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus $58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S.§§ 7.085, 18.010(2) and EDCR 7.60. Additionally, CHH requests this Court sign the judgment already submitted for the undisputed $42,492.03.

CHH contends that this Court conflated two issues- (1) the memorandum of costs and disbursements previously submitted totaling $42,492.038, "an amount which is undisputed, and for which this Court has refused to sign a judgment," and (2) the additional costs, disbursements and attorneys' fees addressed by CHH's instant motion and the initial motion which sought $110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S.§§ 17.117, plus $58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S.§§ 7.085, 18.010(2) and EDCR 7.60.

With regard to first "issue," CHH argues that because the Court denied Plaintiff's Motion to Extend Time to Retax Costs, the $42,492.03 claimed in CHH's Verified Memorandum of Costs is undisputed and therefore judgment must be signed and entered. CHH stated that, "[t]his Court cannot revisit an issue which has been finally decided and therefore, at a minimum, a judgment for the unchallenged $42,492.03 in statutory costs and disbursements must be signed.

The majority of CHH's Motion for Reconsideration concentrates on the second "issue," that this Court's decision to deny CHH's request for an additional $169,445.21 in costs, disbursements and attorneys' fees was clearly erroneous. See *Masonry & Tile Contractors v. Jolley, Urga & Wirth Ass'n,* 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). As a preliminary matter, CHH is concerned by the Court's comparison to the Motion for Fees filed by Drs. Concio and Shaw. Further, CHH contends it is "more concerning," that the Court's prior order stated, "Finally, in considering the result, the Court notes that although the Court found insufficient evidence to establish irrefutably that the statute of limitations had expired, Defense counsel was successful in convincing the Supreme Court of that, and consequently, Defendants prevailed." According to CHH, "the record needs to be corrected here- there was no convincing the Supreme Court of anything."

CHH argues that although the Court correctly found that CHH's offer of judgment was made in good faith and its timing was proper, it erroneously found "Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs believed they had a valid claim, and the Court cannot find that wanting some recovery, as opposed to $0.00, to be 'grossly unreasonable' or in 'bad faith'." CHH contends that this finding is unreasonable in light of the Nevada Supreme Court's determination that Plaintiffs were on notice of any alleged malpractice

no more than one month after decedent's death. Similarly, CHH argues that this Court incorrectly found Plaintiffs' decision to reject the Offer of Judgment was not made in bad faith and was not grossly unreasonable.

As for the reasonableness of the attorneys' fees requested pursuant to NRCP 68, CHH states that it offered to present the Court supporting documentation for in camera review, but, "instead of granting a hearing to which Plaintiffs could interpose whatever opposition they may have had, the Court rejected this offer and suggestion." In addition, Plaintiffs did not oppose the amount of costs and fees incurred in the original motion, even without the attached bills. Additionally, CHH provides that, "[s]ince this Court insisted that the bills be attached, CHH has provided the entirety thereof for judicial review and review by Plaintiffs."

In Opposition, Plaintiffs argue that CHH's Motion must be summarily denied, without the Court addressing the merits of the Motion because CHH did not present any new or substantially different evidence than what it had the opportunity to present when it filed its Verified Memorandum of Costs and separate Motion for Attorney's Fees on 11/22/21. Further, Plaintiffs contend that CHH's Motion for Reconsideration is "clearly a transparent attempt to bolster a potential appeal by inviting the Court to engage with the merits," because a motion for reconsideration is only appealable if decided on the merits. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589 (2010).

Further, Plaintiffs argue that CHH falsely claims that it attached evidence to its Motion for Reconsideration that "was originally submitted to this Court." Plaintiffs also state that CHH's Motion lacks any authority showing the Court's denial of costs was clearly erroneous, and it does not even engage with the authorities cited on pages 7 through 9 of the Court's 2/15/22 Order. Plaintiffs argue they should not be liable for CHH's negligence in failing to follow both the statutory and common law requirements for establishing entitlement to costs. Plaintiffs argue that this Court was thus correct in denying CHH costs in their entirety for lack of proper documentation and reliable evidence.

With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that the Court's denial was based upon its finding that (1) Plaintiffs did not act in bad faith or in a grossly unreasonable manner when they rejected CHH zero dollar Offer of

Judgment and (2) the documentation in support of the request for attorney's fees was lacking. While the first finding by itself ends the inquiry into whether fees can be awarded, in this case the Court also found that "[a]lthough the Defendant [CHH] has offered to submit a billing ledger to the Court in camera, it would have been necessary for the Defendant to have submitted such ledger, and disclosed it to the Plaintiffs so that the reasonableness could have been addressed by all parties, and by the Court." Plaintiffs argue that since this never happened, there was no reasonable basis for this Court to assess the reasonableness of fees being claimed by CHH. Plaintiffs argue that CHH merely rehashes the same arguments presented in its original Motion for Fees.

Moreover, Plaintiffs argue that the Court's decision to deny fees was not clearly erroneous because the disposition of this case turned on a legal question, which the Nevada Supreme Court decided, well after the time Plaintiffs rejected the Offer of Judgment. It would be ridiculous to expect Plaintiffs, grieving the death of their mother, to anticipate the legal issue and foresee its resolution by the Nevada Supreme Court when they rejected the Offer of Judgment. CHH itself acknowledges this fact when it admits, "[m]edical malpractice cases are complex and require an in-depth understanding of both unique legal issues as well as the medical care and course that is at issue." VHS' Motion for Reconsideration, p. 21 (lines 1-2).

Finally, Plaintiffs argue that the CHH fails to address the deficiency of withholding a billing ledger when it made its fee request and instead asking the Court to rely only upon the declaration of its counsel.

In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented any new or substantially different evidence than what it had the opportunity to present when it filed its original Verified Memorandum of Costs and separate Motion for Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous decision to: (1) refuse to sign a judgment for an undisputed amount of legally awardable cots to which CHH is entitled, and (2) to deny additional costs and attorneys' fees stemming from Plaintiff's commencement and maintenance of an action that the Supreme Court found was not only untimely, but that this Court's decision to deny summary judgment in light of the evidence was a manifest abuse of discretion.

Noting that the Court decided the underlying Motion on the papers and without oral argument, CHH contends that this Court ignored the request for in camera review of any evidence it required, with Plaintiffs' opportunity to review same as well. The Court also denied any request for statutorily permitted costs and fees, which was never opposed by Plaintiffs, and denied the discretionary motion for attorneys' fees and costs predicated on other legal and statutory bases. CHH suggests that these denials were based upon this Court's abuse of its discretion and refusal to accept the underlying findings of the Supreme Court pertaining to the evidence Plaintiffs knowingly possessed which demonstrated clear inquiry notice within one month of the decedent's death.

CHH argues that this Court erroneously concluded that CHH submitted no documentary evidence or explanation of costs attendant to the verified memorandum of costs. However, the verified memorandum of costs contained not only a complete listing of disbursements which are allowable under the law for these purposes, but the declaration explained that the expenses were accurate and were incurred and were reasonable. Moreover, the memorandum explained and justified each of the costs, supported by case authority and an application of the respective factors considered to the specific facts and circumstances of this case. As such, CHH claims there was more than ample evidentiary justification for the costs claimed including court filing fees and the expert fees which were justified by the explanations contained in the verified memorandum. For this Court to somehow assert complete ignorance of the legal and appellate history of this case was clearly erroneous.

Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the veracity and accuracy of the costs contained in the verified memorandum of costs. CHH argues that, "There was no absence of evidence justifying the costs. The Court just chose to ignore it and improperly declared they were insufficient, citing to the aforenoted authority." CHH argues that the authority does stand for the proposition for which they are cited or was misapplied by the Court. The authority cited involved no evidence or documentation. CHH not only provided evidence, it justified the costs, especially of the voluminous number of experts needed for retention due to the blunderbuss of allegations.

CHH further states:

> Rather than accepting the Supreme Court's decision and rationale, this Court's denial of CHH's motion and the rationale behind that decision continues to perpetuate the false notion that the action was either brought or maintained in good faith, a fact completely dispelled by the Supreme Court's decision. Thus, denying costs and attorneys' fees in light of the Supreme Court's decision is not only clearly erroneous, it is also a manifest abuse of discretion which the instant motion seeks to redress.
>
> Again, this Court possessed admissible evidence of the work, time and expenses on the original motion. This Court wanted more than that. This motion gives the Court everything it could possibly need. Moreover, all of this could have been obviated by a hearing with an opportunity for all parties to participate to consider the totality of the evidence which has now been submitted, and would have been submitted had the in camera inspection thereof been considered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to EDCR 2.24(a), "[n]o motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced by reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties."

Nevada courts have inherent authority to reconsider their prior orders. See, *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered ... in the case or proceeding. *Id.* at 403. A court may exercise its discretion to revisit and reverse a prior ruling if any one of five circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in controlling law; (3) substantially different evidence; (4) other changed circumstances; or (5) that manifest injustice would result if the prior ruling is permitted to stand. *United States v. Real Prop_. Located at Incline Village*, 976 F. Supp. 1327, 1353 (D.Nev. 1997). A motion for reconsideration should be granted where new issues of fact or law are raised which support a "ruling contrary to the ruling already reached." *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976).

Although the Defendants take offense at the language the Court used in its previous Order, this Court intended nothing negative by indicating that Defendants were able to "convince" the Supreme Court of their position. Such statement was made

simply to convey the "fact" that the Supreme Court was "convinced" that the Defendant's position was correct. Defendants argue that the Court's denial of fees and costs was somehow a continuation of the Court's position in favor of the Plaintiff, but this is also incorrect. In fact, the Court found that the *Beattie* and *Brunzell* factors weighed in favor of the Defense, but since the Defense had not supported its request for fees and costs, as required by the Nevada Supreme Court, this Court was unable to award fees and costs. *Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268 (1983); *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969).

Additionally, Defendants argue that because they submitted a Memorandum of Costs, which was not timely objected to, they are "entitled" to whatever they asked for. This is also incorrect. A party is only entitled to costs if they are substantiated, and the Court finds that such costs were reasonable, and incurred in the subject litigation. *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini, Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383 (1998); *Cadle Co. v. Woods & Erickson*, LLP, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

Finally, Defendants suggest that the Court would have been able to review the supporting documents, which Defendant failed to initially provide, if the Court had held a "hearing" and allowed the Defendant to present such documents. Part of the Court's previous inability to award fees was based on the Defendant's failure to provide support for the fees requested, although such documentation was offered to the Court "in camera." It is simply not "fair" to an opposing party, to offer supporting documents "in camera," implying that the opposing party will not have the opportunity to challenge such documents. Based on the Defendant's suggestion that they would make billing records available to the Court "in camera," the Court was led to believe that such documents would not be provided to the Plaintiff.

The Defendant has now submitted documentation supporting the claim for attorney's fees. Because the Court has now been presented with substantially different or additional evidence, reconsideration is appropriate.

Defendant has now provided billing records indicating the following:

5/27/20	$725.00
6/1/20-6/28/20	$3,510.00
7/1/20-7/31/20	$10,192.50
8/10/20-8/28/20	$8,865.00
9/1/20-9/25/20	$19,642.50

10/1/20-10/29/20	$12,559.50
11/2/20-11/30/20	$14,392.80
12/1/20-12/22/20	$3,690.00
1/5/21-1/21/21	$4,449.00
2/4/21-2/19/21	$1,489.50
3/4/21-3/30/21	$2,150.00
4/2/21-4/30/21	$11,200.00
5/5/21-5/21/21	$905.00
6/4/21-6/25/21	$6,629.50
7/7/21-7/29/21	$1,026.50
8/3/21-8/31/21	$5,841.50
9/8/21-9/30/21	$4,375.00
10/1/21-10/27/21	$10,700.00
11/9/21-11/23/21	$2,826.50
12/2/21-12/29/21	$7,975.00
1/3/22-1/25/22	$4,925.00
Total:	**$138,069.80**

Defendant has now provided documentation supporting the following costs:

American Legal Investigation	$27.43
Ruffalo & Associates	$4,350.00
	$1,800.00
	$10,350.00
Abraham Ishaaya, M.D.	$6,710.00
	$1,375.00
	$6,187.50
	$2,970.00
	$3,437.50
	$4,675.00
Cohen Volk Economic Counseling	$688.50
	$3,855.60
JAMS	$3,000.00
Filing Fees	$529.50
Total:	**$49,956.03**

Defendant argues that it is entitled to $42,492.03, and $110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S.§§17.117, plus $58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S.§§ 7.085, 18.010(2) and EDCR 7.60.

On August 28, 2020, Defendant served an Offer of Judgment on Plaintiff pursuant to N.R.C.P. 68, N.R.S. 17.1151, and *Busick v. Trainor*, 2019 Nev. Unpub. LEXIS 378, 437 P.3d 1050 (2019) for a waiver of any presently or potentially recoverable costs in full and final settlement of the matter. At the time of the Offer,

Defendants' expended costs and fees totaled $58,514.36. The Offer was not accepted by Plaintiff and expired on September 11, 2020.

Since the date of the Offer of Judgment, Defendant argues that it incurred $106,619.85 in attorney's fees, and paralegal's fees in the amount of $4,230.00. This Court finds and concludes that the fees incurred by Defendant were reasonable and necessarily incurred in the defense of the case. This Court adopts by reference its prior reasoning and analysis relating to the requested attorney's fees, and now that the Court has been provided with the documentary support of such fees, and finds that such fees were reasonable, pursuant to *Beattie* and *Brunzell*, the Court finds and concludes that such fees are appropriate and recoverable. The Court further finds that the Defendant has now met the requirements of *Frazier,* with regard to documenting the costs incurred. The Court is still not convinced that the expert fees, in addition to the $1,500 recoverable by statute, are necessary or recoverable. Consequently, in reducing each of the expert's fees to $1,500.00, the above-referenced costs, which have been documented, must be reduced to $8,056.93.

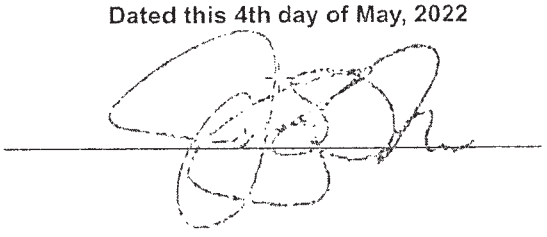
CONCLUSION/ORDER

Based upon the foregoing, and good cause appearing,

This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt,* 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall,* 126 Nev. 49, 228 P.3d 453 (2010), that if this Court had jurisdiction to decide this matter, the Court would now award attorney's fees of $110,849.85, and costs of $8,056.93.

Because this matter has been decided on the pleadings, any future hearings relating to this matter are taken off calendar. The Court requests that counsel for Defendant prepare and process a Notice of Entry with regard to this matter, and convey this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall.*

Dated this 4th day of May, 2022



0D9 DD7 5826 D5EB
Jerry A. Wiese
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)	CASE NO: A-19-788787-C DEPT. NO. Department 30

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District 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:

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EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

ESTATE OF REBECCA POWELL, DARCI CREECY, TARYN CREECY, ISAIAH KHOSROF, and LLOYD CREECY,

Respondents.

Supreme Court No.: 84402

District Court No.: A-19-788787-C

NOTICE OF WITHDRAWAL OF APPEAL

VALLEY HEALTH SYSTEM, LLC, appellant named above, hereby moves to voluntarily withdraw the appeal mentioned above.

I, Adam Garth, Esq., as counsel for the appellant, explained and informed VALLEY HEALTH SYSTEM, LLC of the legal effects and consequences of this voluntary withdrawal of this appeal, including that VALLEY HEALTH SYSTEM. LLC cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, VALLEY HEALTH SYSTEM, LLC hereby consents to a voluntary dismissal of the above-mentioned appeal.

VERIFICATION

I recognize that pursuant to N.R.A.P. 3C I am responsible for filing a notice of withdrawal of appeal and that the Supreme Court of Nevada may sanction an attorney for failing to file such a notice. I therefore certify that the information provided in this notice of withdrawal of appeal is true and complete to the best of my knowledge, information and belief.

DATED this 12th day of May, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

S. BRENT VOGEL
Nevada Bar No. 006858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2022, a true and correct copy of **NOTICE OF WITHDRAWAL OF APPEAL** 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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Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

By */s/ Heidi Brown*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Estate of Rebecca Powell, Plaintiff(s) vs. Valley Health System, LLC, Defendant(s)	CASE NO: A-19-788787-C DEPT. NO. Department 30

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Vendor No.: **15868** **Commonwealth of Massachusetts** Check No.: **200009**

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
6/30/22	BOS-01745	Filling fee for Domestication of Foreign Judgement in Massachusetts on 6/30/22.	5	2915482	28094-190	195.00
					Total Amount:	**195.00**

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ATTORNEYS
ONE INTERNATIONAL PLACE, SUITE 350
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(857) 313-3950

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16-1606/1220

DATE **06/30/2022**

$ ****************195.00**

PAY: **One Hundred Ninety-Five and 00/100**

Draft void 120 days from issued
LEWIS BRISBOIS BISGAARD & SMITH LLP

TO THE ORDER OF
Commonwealth of Massachusetts
LaFayette City Center
2 Avenue de Lafayette
Boston, MA 02111

⑈0200009⑈ ⑆122016066⑆ 2109206609⑈

EXHIBIT E

CRCL

Adam Garth, Esq. (15045) Lewis Brisbois Bisgaard & Smith LLP
(Name)
6385 S. Rainbow Blvd, Suite 600
(Address)
Las Vegas, NV 89118
(City, State, Zip)
702-893-3383
(Telephone)
Adam.Garth@lewisbrisbois.com
(E-mail Address/Facsimile)

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of:

REBECCA ANN POWELL

Deceased.

Case No.: P-19-098361-E
Dept. No.: PC-1

CREDITOR'S CLAIM

1. ☐ I, *(state your name)* _____, am the creditor in the above-referenced matter.

or:

☒ I, *(state your name)* Adam Garth, Esq., am not the creditor, but I am authorized to file and am doing so because *(explain why you are filing and not the actual creditor)* I am the attorney of record for the judgment creditor, Valley Health System, LLC which entity is located in the Commonwealth of Pennsylvania and incorporated in the State of Delaware.

2. Creditor presents a claim against the Estate of the above-named Decedent.

a. The claim amount, without interest, is *(state the amount of your claim without interest)* $118,906.78

b. Interest *(if no interest, leave this entire line blank)* at the rate of 5.25 (June), 6.75 (July) on the claim is $ 2,650.97

c. The total amount of the claim *(claim + interest)* is $121,557.75

d. This claim is based on *(describe claim and attach copies of supporting documentation)*

Judgment obtained in District Court Case No.A-19-788787-C,

per NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) as Against Plaintiffs,

including the Estate of Rebecca Ann Powell

3. I affirm that the amount of the claim is justly due or is a just demand and will become due on the date set forth above; that all payments have been credited; that there are no offsets known to affiant which have been credited.

4. The address listed on page 1 is my mailing address.

5. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 6th day of October, 2022.

/s/ Adam Garth
(Signature)

Adam Garth
(Your name)

STOP HERE. DO NOT FILL OUT BELOW THIS LINE. It is for the Personal Representative to complete.

The foregoing claim filed in the Estate of the above-named Decedent is:

☐ Rejected

☐ Allowed in the sum of $ _____.

_____
Personal Representative

_____
Date

***Creditor*: If your claim is rejected, you have 20 days to petition the court or 60 days in which to file suit or the claim is forever barred. NRS 147.130.**

EXHIBIT J

RSPN
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
PAUL PADDA LAW, PLLC
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888
Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, 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; 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. 7 **PLAINTIFFS' RESPONSE TO DEFENDANT VALLEY HEALTH SYSTEM, LLC'S OPPOSITION TO MOTION TO STAY EXECUTION ON JUDGMENT FOR ATTORNEYS' FEES AND COSTS (INCLUDING STAY OF JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS) AND PLAINTIFFS' OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR CONTEMPT AND ATTORNEYS' FEES** **Hearing Date: November 9, 2022** **Hearing Time: 9 a.m.**

Plaintiffs (collectively referred to as "the Powell parties") submit this response to Defendant Valley Health System's ("VHS") opposition to *Plaintiffs' Motion to Stay Execution on Judgment for Attorney's Fees and Costs Including Stay of Examination of*

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Judgment Debtors and Production of Documents. Plaintiffs' also respond here to VHS' "Countermotion for Contempt and Attorneys' Fees." VHS' opposition is untimely (and has no substantive merit) and its countermotion for contempt is simply frivolous.

In these proceedings, VHS, a subsidiary[1] of Universal Health System, Inc.,[2] seeks to collect in excess of $100,000 in attorney's fees and costs against the grieving family of a military nurse that died in the care and custody of VHS. As explained further in this response, the entire basis for VHS' pursuit of fees and costs is predicated upon a judgment that is void *ab initio*. VHS and its counsel failed to follow the proper procedures established by the Nevada Supreme Court in Foster v. Dingwall, 126 Nev. Ad. Op. No. 5. that would allow them to properly obtain the relief they now seek to enforce. So instead, they tricked the Court into signing a judgment unsupported by any prior decision of the Court. That behavior should leave this Court very concerned and disturbed about how the judgment at issue was obtained.

This response (which is also an opposition) is based upon the points and authorities below, the attached Declaration of Lloyd Creecy, the separately filed Appendix[3] in support of this response/opposition, all papers on file herein and any other argument the Court may choose to entertain in this matter.

---

[1] https://www.valleyhealthsystemlv.com/about

[2] A publicly traded company with about 11 billion in yearly revenue in 2020 alone. *See* https://ir.uhs.com/

[3] "App. ____." refers to the page(s) of the Appendix filed this same day in support of this submission. The Appendix is filed separately with the Court. All documents contained in that Appendix are incorporated by reference in this Response.

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I.

BACKGROUND

A. THE FACTS AND CIRCUMSTANCES OF REBECCA POWELL'S DEATH

This case arises from a medical malpractice/wrongful death case in which it was alleged that Ms. Rebecca Powell, age 42, died while in the care of Centennial Hills Hospital (a part of VHS) on account of negligence by the hospital and its medical personnel. Rebecca, a military nurse, was the mother of three children, Isiah, Taryn and Darci and the daughter of Lloyd Creecy. Exhibit A.[4]

On May 3, 2017, Rebecca was found by her daughter at her home. She was unconscious, labored in her breathing, and had vomit on her face. Emergency services arrived and provided immediate care and transported her to Centennial Hills where she was admitted. At first, Ms. Powell improved during her admission. However, on May 10, 2017, she complained of shortness of breath, weakness, and a "drowning feeling." In response to these complaints, one of the Defendant physicians ordered Ativan to be administered via an "IV push."

On May 11, 2017, another Defendant physician ordered two more doses of Ativan and ordered several tests, including a chest CT to be performed. Ms. Powell was returned to her room where she was supposed to be monitored by a camera (which was in fact inoperable).

[4] None of them reside in Nevada.

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Another dose of Ativan was ordered at 3:27 a.m. on May 11, 2017. Soon after, Ms. Powell suffered acute respiratory failure and died.

On June 28, 2017, approximately six weeks after the death of Ms. Powell, Plaintiffs received a Certificate of Death, issued by Nevada's Department of Health and Human Services stating, incredibly, that Ms. Powell's cause of death while in the care and custody of the hospital was a **suicide** due to "Complications of Duloxetine (Cymbalta) Intoxication." Ms. Powell's former husband, Brian Powell, with whom she remained friends, could not visit with Ms. Powell while she was in the hospital because he was "turned away by the nurses." He testified under oath that, following Ms. Powell's death on May 11, 2017, "I did meet with Taryn, Isaiah and one of Rebecca's friends to speak with the doctor and risk manager after Rebecca's death, but they didn't provide any information." Therefore, in search of further answers, Brian filed a complaint with HHS sometime before May 23, 2017 requesting that the agency investigate the care and services received by the Ms. Powell.

By letter dated February 5, 2018, HHS notified Brian that it conducted an "investigation" of Centennial Hills and that the hospital committed multiple "**violation(s) with rules and/or regulations.**" HHS's report noted several deficiencies in the medical care provided to Ms. Powell including, among other things, that she was exhibiting symptoms that should have triggered a higher level of care ("the physician should have been notified, the RRT activated, and the level of care upgraded"). The HHS Report of Investigation stood in stark contrast to the Certificate of Death which inaccurately declared Ms. Powell's death a suicide.

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Within one year of the HHS' investigative report putting them on notice of potential negligence, Plaintiffs began this litigation. See App. 1-30. Plaintiffs attached a detailed medical affidavit (App. 23-29) to their Complaint in which Dr. Sami Hashim, M.D. characterized Defendants' actions as, among many other things, a "**shameful and gross example of below standard of care.**" App. 28.

B. THE PROCEDURAL HISTORY OF THIS CASE

After the start of the litigation, VHS served Plaintiffs with a zero dollar offer of judgment on August 28, 2020 while its motion for summary judgment raising statute of limitations issues was pending with the Court. App. 66. The offer expired without Plaintiffs accepting it. Two months later, the judge assigned to this case at the time, the Hon. Jerry A. Wiese, denied VHS' motion for summary judgment on October 29, 2020 finding that "[a]lthough the Complaints filed by Brian Powell suggest that Plaintiff may have at least been on inquiry notice in 2017, the fact that the family was notified shortly after the decedent's death that the cause of death was determined to be a 'suicide,' causes this Court some doubt or concern about what the family knew at that time period." App. 33. Judge Wiese further added that "there remains a genuine issue of material fact as to when the Plaintiffs were actually put on inquiry notice" and that "[s]uch issue is an issue of fact, appropriate for determination by the trier of fact." App. 34.

VHS filed a Writ petition with the Nevada Supreme Court and prevailed on the statute of limitations issue. App. 40-51. The Nevada Supreme Court imputed whatever knowledge it believed Brian Powell to have possessed to the other plaintiffs and dismissed their entire case.

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Judge Wiese then vacated his prior order denying summary judgment and dismissed the case per the Supreme Court's directive. App. 40-51.

Subsequently, VHS sought fees based on its offer of judgment and costs pursuant to statute. Judge Wiese denied costs finding that VHS failed to properly document any costs. App. 64 ("the Court cannot award costs"). As for fees, he denied those as well finding that "**Plaintiffs' decision to reject the offer and proceed to trial was not grossly unreasonable or in bad faith**" because they believed "**they had a valid claim, and the Court cannot find that wanting some recovery, as opposed to $0.00, to be 'grossly unreasonable' or in 'bad faith**.'" App. 66. By decision dated February 15, 2022, he decided that "Defendant's Motion for Fees and Costs is DENIED." App. 89.

Following this denial of fees and costs, VHS filed a notice of appeal in the Nevada Supreme Court on March 14, 2022 which divested the trial court of further jurisdiction. App. 70-91. After this divestiture, and with an active appeal pending in the Nevada Supreme Court, VHS then sought reconsideration from Judge Wiese. The judge entertained the motion for reconsideration but did not change his opinion (or alter or modify his prior finding that Plaintiffs' decision to reject the offer of judgment was not grossly unreasonable or in bad faith). App. 96. He denied VHS's request to vacate his prior order which denied fees and costs by finding that the Court "no longer has jurisdiction to address the issue of fees and costs." App. 96.[5] Without vacating his prior decision, the judge also commented that only "[i]f the Court

[5] "If the Court were inclined to reconsider its previous decision, ***the most it could do*** would be to enter a *Honeycutt* Order . . . indicating its intention." App. 96 (emphasis supplied).

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were inclined to reconsider its previous decision, the most it could do would be to enter a *Honeycutt* Order." App. 96. He ended his decision by opining that if he had jurisdiction, he would **"now award attorney's fees of $110,849.85 and costs of $8,056.93**." App. 104. Apart from simply saying this, he did not award any fees and costs to VHS, nor did he ***vacate his prior order denying fees and costs***. App. 104. Instead, he merely directed counsel for VHS to "convey this Decision to the Supreme Court, pursuant to *Huneycutt* and *Dingwall*." App. 104. Counsel for VHS declined to follow Judge Wiese's recommendation and instead filed a "Notice of Withdrawal of Appeal" with the Nevada Supreme Court on May 12, 2022 representing that VHS understands it "cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived." App. 115-116. The Supreme Court later obliged VHS' request and dismissed its appeal. App. 118.

Judge Wiese signed a judgment on June 2, 2022 that was drafted and presented to him by VHS' counsel. App. 107-108. "Notice" of entry of that judgment was filed on June 7, 2022. Counsel for VHS filed an "Ex Parte Application for Judgment Debtor Exam" on July 19, 2022 which the Court granted. Plaintiffs filed a motion on September 27, 2022 to stay execution of the judgment and any judgment debtor exam.

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II.

ARGUMENT

A. VHS'S OPPOSITION TO PLAINTIFFS MOTION IS UNTIMELY

At the last Court hearing in this case (September 28, 2022), counsel for VHS provided the Court with a long monologue about his various grievances and the need for litigants to comply with the rules. In doing so, he comported himself in a disappointing and unprofessional manner engaging in unnecessary attacks upon the Powell parties and undersigned counsel. For all the histrionics on display at the last hearing, it is ironic that VHS' opposition to the Powell parties' pending motion for a stay is untimely.

The Powell parties filed their motion, the subject of the current proceedings, on September 27, 2022. Under Eighth Judicial District Court Rule 2.20, VHS had 14-days, or until October 11, 2022, to file its Opposition. Instead, VHS, filed its Opposition on October 28, 2022. The record is clear that VHS did not file a written stipulation or motion requesting to file its Opposition after the deadline. Under EDCR 2.22(c), "[a]ll interested parties to a motion may stipulate to continue the day fixed for the filing of an opposition or reply thereto" but any stipulation in "ineffective" unless it is in writing and "filed with the clerk before the day fixed for filing the opposition."[6]

[6] EDCR 2.20 and 2.25 contemplate motions being in writing. According to EDCR 2.25, *ex parte* motions will ordinarily not be granted. In this case, VHS did not file any motion or stipulation with the Court seeking to file its Opposition out of time.

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Given that VHS' Opposition is untimely, the Court should disregard it and construe it as an admission in favor of granting the Powell parties' motion to stay judgment and any judgment debtor examinations. By failing to timely respond, as required by the rules of this Court, VHS has conceded the merits of the Powell parties' motion.

B. VHS IS NOT A PROPER "JUDGMENT CREDITOR" BECAUSE THE POWELL PARTIES HAVE NEVER BEEN ORDERED BY THIS COURT, OR ANY OTHER COURT, TO PAY VHS ANYTHING

What is essential as a starting point to any discussion regarding the issues before the Court is acknowledgment of the indisputable fact that Judge Wiese denied VHS' motion for fees and costs on February 15, 2022 (App. 56-67) and never vacated that order/decision. Indeed, he specifically declined to do so on reconsideration. App. 95-104. Thus, the purported judgment drafted by VHS' counsel and presented to the Court for signature on June 2, 2022 falsely cited the reconsideration decision as a basis for "awarding" fees and costs. App. 107. The judgment itself, the basis for any judgment debtor examination, failed to vacate the February 15, 2022 decision/order denying fees and costs to VHS. Thus, the judgment was, and remains, void *ab initio* because it did not properly express the clear findings of the Court's prior decisions denying fees and costs. Stated another way, there was never a decision rendered by the Court that supports the monetary award set forth in the judgment nor can VHS's counsel cite any.

Indeed, given the clear record in this case, VHS's counsel made a deliberate and false representation when they drafted a judgment referencing "the Order granting Defendant Valley Health System, LLC's motion for reconsideration regarding motion for attorney's fees dated

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and entered on May 4, 2022"[7] knowing full well that no such order existed. As this Court can readily observe for itself, the language in the judgment is unsupported by any decision rendered by Judge Wiese and counsel for VHS that appeared at the last hearing knew this because Judge Wiese explicitly stated in the order cited in the judgment drafted by VHS that he no longer had "jurisdiction to address the issue of fees and costs." App. 96. Accordingly, and most importantly, ***he never vacated his earlier order and never granted reconsideration of anything***, instead stating only that "if" he was inclined to reconsider his prior decision the most he could do would be to enter a "*Huneycutt* Order." App. 96 (lines 20-23). It is axiomatic that the mere expression of an intention to do something is not the same as an actual affirmative act. Once Judge Wiese issued the decision on reconsideration, where he refused to exercise jurisdiction, that closed the door on fees and costs.

After Judge Wiese issued his *Huneycutt*[8] order, VHS could have followed his directive set forth in that decision (App. 104) and presented it to the Nevada Supreme Court, ***where VHS's appeal was still pending***, for the purpose of obtaining a limited remand for the purpose

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[7] App. 107.

[8] In *Huneycutt*, the Supreme Court adopted a procedure where a party, believing a basis exists to alter, vacate or otherwise modify an order or judgment challenged on appeal after an appeal from that order or judgment has been perfected, must first file a motion for relief from the order or judgment in district court prior to filing a motion for remand in the Supreme Court. Huneycutt v. Huneycutt, 94 Nev. 79 (1978). Despite the general rule that the perfection of an appeal divests the district court of jurisdiction, the district court retains limited jurisdiction to review motions made in accordance with this procedure but it lacks jurisdiction to enter an order granting such a motion. Id. However, the district court does have jurisdiction to deny such requests. Id.

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of modifying or vacating the order denying attorney's fees. Indeed, VHS could have responded to the Nevada Supreme Court's show cause order (App. 113-114) and urged that Court to exercise jurisdiction by seeking a *Huneycutt* remand. Instead, on the advice of its counsel, VHS chose to dismiss its appeal foreclosing its ability to seek a modification of Judge Wiese's denial of attorney's fees.

Presumably recognizing this fatal error, counsel for VHS sought to fix the problem by presenting the Court with a judgment predicated upon a false representation. Given Judge Wiese's prior decisions dated February 15, 2022 (App. 56-67) and May 4, 2022 (App. 95-104), it was a ***clear and deliberate fraud upon the Court*** to suggest that there was any basis for an award of attorney's fees and costs when the reconsideration order specifically declined to vacate its prior decision due to lack of jurisdiction. App. 96 ("***this Court no longer has jurisdiction to address the issue of fees and costs***").

In light of the foregoing, the Court should grant the Powell parties' motion to stay judgment and any judgment debtor examinations because the irrefutable facts demonstrate that the judgment at issue in this case is void *ab initio*. Indeed, at the time, undersigned counsel for the Powell parties even protested the fraudulent judgment by stating "[w]e cannot agree to this." App. 111. Judge Wiese's staff may have affixed his electronic signature to the judgment, viewing it as a ministerial act, without recognizing that the judgment contained false statements of fact – specifically, the false suggestion that there was an actual decision awarding VHS fees and costs. As this Court is aware, no such decision exists. As officers of the court, VHS's counsel owed a duty to the Court to abstain from knowingly presenting a document to the Court

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for signature when they unquestionably knew that there was never any decision by Judge Wiese granting fees and costs.[9]

Given the foregoing, the Court should immediately grant the Powell parties' motion for stay of enforcement of the judgment and any judgment debtor examinations.

C. THE JUDGMENT AGAINST THE ESTATE AND EFFORTS TO ENFORCE AND EXECUTE ON ASSETS IS SUBJECT TO REQUIREMENTS OF PROBATE

Putting aside the fact that there has never been a decision awarding VHS fees and costs, the statute relied upon by Defendant VHS to support its contempt campaign against Plaintiffs and their counsel, NRS § 21.270(3), applies to "judgment debtors" that are not specially administered estates subject to probate administration. *See* Opposition, at p. 5, lines 21-23. *Why?* Since one of the Judgment Debtors, in this case, is a decedent's "estate" in probate proceedings by special administration compliance with probate statutes with respect to enforcement, execution, and related efforts geared toward execution of assets, necessarily apply.

The Judgment is, as Defendant VHS' admits in its Opposition, "a penalty imposed upon the Estate by this Court for their rejection of a valid offer of judgment." See Defendant VHS Opp. and Motion, at p. 19, lines 15-16.[10] Although claiming to do so ony in "an abundance of

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[9] The Nevada Rules of Professional Conduct mandate that every attorney act competently and with candor toward the tribunal. *See* NRPC 1.1 and 3.3(a).

[10] Indeed, the fact it was "imposed upon the Estate" as a penalty is one of the grounds to stay execution or otherwise set aside the Judgment. No matter how much Defendant VHS tries to minimize the role of probate proceedings in the enforcement and execution of its Judgment against the Estate, by statute, the administration of debts of the probate estate must be made through the probate.

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caution," Defendant VHS recently did what they were supposed to do originally, as Plaintiffs argue in their Motion, and that is to file a proper claim for its Judgment as "imposed on the Estate" with the probate court. Having done so, probate statutes are controlling.

NRS § 147.200(3) imposes an automatic stay of execution on all Judgments entered against an Estate in probate. As stated in the Plaintiffs' Motion, and not otherwise refuted, NRS § 147.200(3) specifically provides that "***no execution may issue upon the judgment,*** **nor does it create any lien upon any property of the estate, nor give the judgment creditor any priority of payment."** Nev. Rev. Stat. § 147.200(3) (emphasis added).[11] The statute cannot be any more to the point: Defendant VHS cannot execute upon its Judgment on the Estate. Period. This statutory prohibition necessarily includes efforts to discover assets of the Estate and of its individual beneficiaries-heirs that are made in furtherance of Defendant VHS' efforts to enforce and execute upon said Judgment.

After all, unless VHS' true purpose included a veiled intention to harass, annoy, and/or intimidate the individual Plaintiffs and or their counsel, to pay up, Defendant VHS certainly would not have sought *ex parte* Judgment Debtor examinations of each of the Judgment Debtors if it not in furtherance of its ongoing efforts to enforce and execute upon its Judgment.[12] In

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[11] In general, NRCP Rule 62 (a)(1) similarly addresses "stay of proceedings to enforce a judgment" and provides for "automatic stay" of the enforcement of judgments such that "**no execution may issue on a judgment, nor may proceedings be taken to enforce it** until 30 days have passed after service of written notice of its entry unless the court orders otherwise." NRCP Rule 62(a)(1) (emphasis added).

[12] Certainly, as Defendant points out filing a Motion for a Protective Order can guard against these concerns, but this is not the only means available to Plaintiffs. If there is an automatic

addition to obtaining an order for judgment debtor examinations, Defendant VHS' aggressive efforts to enforce and execute the Judgment, notwithstanding an automatic stay of execution as to Judgment against the Estate, extended to the State of Ohio, where Defendant VHS made a failed bid to levy assets of an elderly and infirm Plaintiff Lloyd Creecy. See **Ex. 6**, to the Plaintiffs Motion.

Plaintiffs should not be held in contempt for not complying with an Order to appear for a judgment creditor examination when the Judgment which provides the basis to allow for the debtor examination is "enforced against the Estate," and Nevada probate statutes prohibit the execution of such judgments upon the Estate. Moreover, Plaintiffs have advanced a good faith argument that the Judgment itself does not explicitly impose joint and several liability of the individual Plaintiffs/Judgement Debtors, who are beneficiaries of the estate as decedent's "heirs."

One of the problems with the Judgment and Order, as drafted, is that it summarily lumps multiple Plaintiffs together in a single Judgment/Order, without language explicitly providing for joint and several liability. If there is only one Judgment, and that same Judgment is "against the Estate and the Plaintiffs," it follows that a statutory automatic stay on the Estate Judgment operates as a stay on the execution of judgment as to the individual Plaintiffs as well, especially when part of the Plaintiffs claims in the case are made in alternate capacity as "heirs" or Estate beneficiaries whose claims stands to be reduced by judgments or claims entered against the Estate.

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stay imposed by statute with respect to the execution of Judgments against the Estate and Plaintiffs have a well-grounded, good-faith basis for requesting a stay of execution based on the statute and other reasons and for setting aside judgement and requesting relief from the same, it would be a waste of time, money and resources for everyone.

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In securing its Judgment and taking efforts consistent with execution and enforcement of the Estate Judgment, Defendant VHS obviously did not quite think through the ramifications and applicable statutes governing judgments entered against an Estate – judgments which by their nature affect the rights of the beneficiaries of the Estate also known as decedent's "heirs."

D. VHS' COUNTERMOTION FOR CONTEMPT IS COMPLETELY BASELESS

Given that VHS's counsel knowingly presented a judgment to Judge Wiese's chambers for signature knowing there was never any decision awarding fees and costs in this case, it is hypocritical that VHS seeks to hold the Powell parties in contempt and even urges their imprisonment.

As a matter of law, a finding of contempt under NRS § 21.270(3) is discretionary, not mandatory. *See* Nev. Rev. Stat. § 21.270(3). Furthermore, any suggestion of arrest as a criminal sanction or made pursuant to a bench warrant, as stated in Defendant VHS' Opposition and countermotion, is unconstitutional absent "constitutionally required procedural safeguards" including, without limitation, "the right to a jury trial, and the right to proof of all elements of the crime beyond a reasonable doubt." Detwiler v. Eighth Judicial District Court, 137 Nev. 202, 209, 137 Nev. Adv. Op. 18 (May 6, 2021); see Opposition & Countermotion, at p. 6, lines 1-17.

As noted in the supporting Declaration of Lloyd Creecy, there were compelling reasons why he and his grandchildren could not appear at the judgment debtor examination. *See* Exhibit B. Putting aside the fact that there is no actual basis for a valid judgment debtor examination, (because the judgment at issue in this case was fraudulently obtained) the Court should decline

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to hold the Powell parties in contempt. Given their own obvious misconduct, it is shameful that VHS's counsel request the Court imprison a 76-year-old man and his grandchildren in a case in which they simply sought answers regarding the death of their precious loved one.

As explained at the hearing on September 28, 2022, there was no intentional violation of the Court's directives. Mr. Creecy is 76-years old and in very poor health. Both he and his grandchildren, like millions of people in this country, are facing very difficult financial circumstances. Most people cannot afford to drive 20 miles let alone spend thousands of dollars on airfare to travel to Las Vegas for a judgment debtor examination. It is offensive that a company the size of UHS, through VHS and its counsel, would urge the Court to imprison the family of a wrongful death victim, especially where the judgment purporting to award fees and costs to VHS was obtained through deception and fraud.

III.

CONCLUSION

Based upon the foregoing, the Powell parties respectfully request that the Court immediately stay execution of the fraudulently obtained judgment and deny VHS's countermotion for contempt.

Respectfully submitted,

/s/ Paul S. Padda

Paul S. Padda, Esq.
Counsel for Plaintiffs

Dated: November 4, 2022

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CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned certifies that on this day, November 4, 2022, a copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT VALLEY HEALTH SYSTEM, LLC'S OPPOSITION TO MOTION TO STAY EXECUTION ON JUDGMENT FOR ATTORNEYS' FEES AND COSTS (INCLUDING STAY OF JUDGMENT DEBTORS AND PRODUCTION OF DOCUMENTS) AND PLAINTIFFS' OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR CONTEMPT AND ATTORNEYS' FEES** was filed with the Court and served upon all parties/counsel of record (identified on the master service list) in the above-entitled matter through the Court's electronic filing system - efileNV e-service.

/s/ Ashley Pourghareman

Ashley Pourghareman, Paralegal
PAUL PADDA LAW

EXHIBIT A

EXHIBIT A

EXHIBIT B

EXHIBIT B

DECLARATION OF LLOYD CREECY

I, Lloyd Creecy, do hereby declare the following:

1. I am offering this declaration based upon my personal knowledge. I am above the age of 18 and I am competent to testify to the matters set forth herein if called upon to do so. I am a party to the matter pending before the Court.

2. I wish to advise the Court that in providing this declaration, I am speaking on behalf of myself and my grandchildren, Isaiah Khosrof, Taryn Creecy and Darci Creecy. I am in regular communication with each of them and have discussed this declaration with them. I am also very familiar with their personal and financial circumstances.

3. I understand my attendance was required on September 28, 2022 for a legal proceeding. I wish to sincerely apologize to the Court for any inconvenience occasioned by my failure to appear, as well as my grandchildren's failure to appear. I would like the Court to know that I am 76 years old and have been under the care of a neurosurgeon due to significant issues and pain with my spine. In fact, I am having a major medical procedure on November 18, 2022 and will be unable to travel after that for a significant period of time. I would like the Court to know that I am not able to travel from both a physical and financial standpoint. As the sole caregiver for my wife, I am unable to leave Ohio, where I reside, and travel to Las Vegas. Additionally, because of my very limited income, relying primarily upon social security disability payments, I have no financial means to afford travel.

4. I have discussed this matter with my grandchildren and they are similarly situated. Each is currently under financial hardship, like so many other people in America right now, and unable to travel to Las Vegas for any legal proceedings. For example, Isaiah has had an uneven employment history and has had difficulty finding employment. Darci is a new mother with limited financial means and unable to travel due to

financial and family considerations. Taryn and has had to move in with two roommates simply to make ends meet. None of my grandchildren, including myself, have the financial means to travel, let alone satisfy the claimed debt in this case.

5. The death of my daughter, Rebecca, was a tragedy that has significantly impacted our lives. There is not a day that goes by when each of us does not think about her. The fact that we might be financially liable to Centennial Hills Hospital for simply seeking answers about why she died is astounding to me and leaves me wondering what justice exists in the world. To be perfectly honest, I feel like my family is being victimized twice.

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

/s/ Lloyd Creecy

Lloyd Creecy

Dated: November 4, 2022

EXHIBIT K

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.

No. 84861

FILED

FEB 03 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER

On December 2, 2022, respondent filed a motion requesting this court increase the supersedeas bond. Appellants oppose the motion and respondent has filed a reply. At a November 16, 2022, hearing, respondent requested the district court increase the supersedeas bond amount from the already posted $500 amount. The district court denied respondent's request based on concerns over its jurisdiction to consider the request. However, this court remands the matter for the limited purpose of allowing the district court to consider the motion to increase the supersedeas bond on its merits. *See* NRAP 8(a)(1); *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005) (stating that the requirement that a party move first in district court is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case, and 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). The district court shall have 30 days after entry of this order to determine the appropriate security amount. Appellants shall have 30 days from the date of the district court's order to provide any additional security ordered and to submit proof of security to the clerk of this court.

On January 9, 2023, appellants filed a motion seeking a third extension of time to file the opening brief. Respondent opposes the motion and appellants have filed a reply. Having reviewed these filings, appellants' motion is granted.[1] NRAP 26(b)(1)(B). The opening brief and appendix were filed on January 30, 2023. However, the six-volume appendix was filed as a single submission and should have been filed as six separate submissions. Accordingly, the clerk shall strike the appendix filed on January 30, 2023. Appellants shall have 7 days from the date of this order to re-file the six-volume appendix in six separate submissions. Respondent shall have 30 days from the date of this order to file and serve the answering brief.

It is so ORDERED.

_____, C.J.

cc: Hon. Jerry A. Wiese, Chief Judge
Paul Padda Law, PLLC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

[1]Respondent's motion to dismiss this appeal is denied.

EXHIBIT L

SB

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DISTRICT COURT

CLARK COUNTY, NEVADA

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, 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; and ROES A-Z;, Defendants.	Case No. A-19-788787-C Dept. No.: 25 **DEFENDANT/JUDGMENT CREDITOR VALLEY HEALTH SYSTEM, LLC'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO REQUIRE POSTING OF OR INCREASE TO SUPERSEDEAS BOND BY PLAINTIFFS** **Hearing Date: February 14, 2023** **Hearing Time: 9:00 a.m.**

Defendant and Judgment Creditor, VALLEY HEALTH SYSTEM, LLC ("VHS"), by and through its counsel of record, S. Brent Vogel, Esq. and Adam Garth, Esq. of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH LLP, hereby file their Supplemental Brief In Support Of Motion To Require Posting Of Or Increase To Supersedeas Bond By Plaintiffs. This supplemental brief is based upon the Memorandum of Points and Authorities below, the Appendix filed herewith, the

pleadings and papers on file herein, the order of the Nevada Supreme Court dated February 3, 2023 directing this Court to rule on this issue, and any oral argument which may be entertained by the Court at the hearing of this matter.

DATED this 10th day of February, 2023

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Adam Garth*

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MEMORANDUM OF LAW

I. INTRODUCTION

This is a professional negligence case that arises out of the care and treatment Defendant/Judgment Creditor Valley Health System, LLC dba Centennial Hills Hospital Medical Center ("Defendant" or "VHS") as well as co-defendant physicians provided to decedent Rebecca Powell from May 3-11, 2017. Given the fact that this Court has not had a background in this matter, an abbreviated case history is provided in this section as a reference.

This case has a storied history involving one decision from the Nevada Supreme Court overturning Judge Wiese's denial of summary judgment and multiple motions in both District Court and the Nevada Supreme Court regarding the subsequent award of fees and costs against Plaintiffs and in favor of VHS and the ensuing judgment. It was Plaintiffs' counsel's failure to consider firmly established legal precedent and uncontroverted evidence, in which he was in exclusive possession, demonstrating the commencement of inquiry notice in this case. Plaintiffs were given a graceful means of extricating themselves from this judgment long ago, when they were presented with an offer of judgment for a waiver of all costs and fees in exchange for dismissal of their case after the aforenoted evidence of inquiry notice was presented. They rejected that offer, no doubt on the advice of counsel, and now face the legal consequences of their collective decision.

Plaintiffs commenced their action in this matter on February 4, 2019 alleging professional negligence. NRS 41A.097(2) imposes a statute of limitations of 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first.

VHS moved for summary judgment on September 2, 2020 demonstrating the late filed action, which motion was denied by Judge Wiese on October 29, 2020. On October 18, 2021, the Nevada Supreme Court issued an order granting the VHS's writ petition and directed the Supreme Court Clerk to issue a writ of mandamus directing Judge Wiese to vacate his order denying VHS's motion for summary judgment and enter summary judgment in favor of all defendants. The District Court entered judgment in favor of Defendants on November 19, 2021.

Summary judgment in favor of VHS entitled it to an award of attorneys' fees pursuant to N.R.C.P. 68, N.R.S. 17.117, and interpreting case authority. Moreover, NRS §§ 7.085 and 18.010(2) along with EDCR 7.60 entitled VHS to costs and attorneys' fees due to the Plaintiffs' frivolous filing of a lawsuit 8 months after the statute of limitations expired. Those statutes and rules, along with the cases interpreting them justified the requested costs and fees.

Pursuant to N.R.C.P. 68, VHS served Plaintiff with an Offer of Judgment on August 28, 2020. In that Offer of Judgment, VHS offered to waive any presently or potentially recoverable costs in full and final settlement of the claims. At the time of the Offer, VHS's incurred costs were $58,514.36. The Offer was not accepted by Plaintiffs and expired on September 11, 2020.

During the pendency of this matter before Judge Wiese, the parties engaged in extensive written discovery. Discovery disputes emerged during that time necessitating conferences pursuant to EDCR 2.34 and supplements to previously provided requests for production and interrogatories. Moreover, due to the wide ranging allegations in this matter and considering VHS's potential liability not only as a direct defendant, but also under the concept of ostensible agency, VHS engaged three medical experts to address the issues raised by Plaintiffs, namely a pharmacologist, a hospitalist and an intensivist, each of which was directed to the allegations leveled by Plaintiffs in their Complaint. In response to Plaintiffs' expert disclosure, VHS engaged in an economist to rebut the Plaintiffs' economist's report which was predicated on not one shred of evidence, but based upon a supplemental interrogatory response from the decedent's ex-husband (dated one day before the economist's report), who provided no basis for his guess about his ex-wife's prior earnings.

During discovery, Plaintiffs produced records demonstrating that Plaintiffs specifically notified two State agencies of their concerns about the decedent's treatment at VHS within a month of decedent's death. They specifically alleged malpractice on VHS's part, and requested investigations by those agencies into their allegations of malpractice by VHS, both of which were initiated just days after the decedent's death. Moreover, Plaintiffs did not deny obtaining the decedent's medical records from VHS in June, 2017, several weeks after the decedent's death, but their counsel attempted to impose an improper burden on VHS to prove Plaintiffs received the

medical records which were sent, in derogation of the statutory presumption that documents mailed are presumed received unless sufficient evidence of non-receipt is demonstrated. No such demonstration occurred by Plaintiffs. Moreover, Plaintiffs obtained the medical affidavit of a physician to support their Complaint who based his opinions on the very medical records Plaintiffs obtained from VHS (since the case had not yet been filed and there was no other avenue for Plaintiffs to have obtained said records), further disproving their counsel's allegation that the records were not received.

VHS thereafter moved Judge Weise for a stay pending the filing of a writ petition and the court denied the motion with Plaintiffs' vehement opposition. After VHS filed its writ petition, VHS moved Judge Wiese to reconsider his decision denying VHS's request to stay the proceedings in an effort to avoid future litigation costs. Again, Plaintiffs' vehemently opposed the stay and it was denied. VHS moved the Supreme Court for a stay which Plaintiffs opposed and the stay was denied. Litigation proceeded with greatly increased costs for things such as expert exchanges, leaving only depositions of the parties and experts to be conducted.

After the Supreme Court's reversal of Judge Wiese's decision and summary judgment was granted, VHS moved for $110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S.§§ 17.117, plus $58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S.§§ 7.085, 18.010(2) and EDCR 7.60. Judge Wiese denied VHS's motion, claiming that it was not sufficiently supported with invoices and billing statements reflecting every moment of work performed on this case, that somehow the declaration of an officer of the Court attesting to the hours spent by all timekeepers on this case was insufficient. Additionally, Judge Wiese denied the request to conduct an *in camera* hearing at which time any supporting evidence could be presented before opposing counsel and the Court without having to publicly trot out VHS's private bills and expenses related hereto.

Judge Wiese conflated multiple issues, namely the memorandum of costs and disbursements previously submitted totaling $42,492.03 (an amount which was undisputed due to Plaintiffs' counsel's failure to timely object to same, and for which Judge Wiese initially refused to sign a judgment), and the additional costs, disbursements and attorneys' fees addressed by

VHS's motion which sought $110,930.85 in attorneys' fees per N.R.C.P. 68 and N.R.S.§§ 17.117, plus $58,514.36 in pre-NRCP 68 offer fees and expenses pursuant to N.R.S.§§ 7.085, 18.010(2) and EDCR 7.60.

In initially denying VHS's requests for costs and fees, Judge Wiese implied that the amount of attorneys' fees specified in VHS's motion was somehow excessive, by asserting that it far exceeded those of co-defense counsel, an implication which was subsequently dispelled by the production of all bills and invoicing supporting the very request made of the Court. VHS demonstrated that it spearheaded considerable motions and engaged in extensive appellate practice due to Judge Wiese's refusal to either dismiss this case from its inception, or at the very least, grant summary judgment when the uncontroverted evidence necessitated that result. These extraordinary legal fees resulted from having to engage in extensive discovery, engaging multiple experts due to the Plaintiffs' blunderbuss of allegations, the law of ostensible agency which implicated VHS in any alleged negligence of any physician credentialed at its hospital, the multiple stays Judge Wiese denied while the appeal was pending, and Plaintiffs' counsel's refusal to consent to a stay of proceedings while the appeal was pending. All of these actions combined with the finding of the Supreme Court that Judge Wiese manifestly abused his discretion in failing to grant summary judgment in the wake of the overwhelming evidence requiring dismissal is what brought the parties to where we are now. Plaintiffs' counsel and his clients cost VHS over $200,000 with those fees continuing to accrue as their counsel pursues untenable legal positions.

As if Judge Wiese had not already afforded Plaintiffs every courtesy and advantage up to this point in the case in his initial denial of VHS's motion for costs and fees, he found that "the Court notes that although the Court found insufficient evidence to establish irrefutably that the statute of limitations had expired, Defense counsel was successful in convincing the Supreme Court of that, and consequently, Defendants prevailed." By so finding, Judge Wiese incorrectly implied that his findings on summary judgment were correct, but VHS somehow convinced the Supreme Court otherwise. Judge Wiese, in subsequently granting VHS costs and fees, attempted to explain his statement in this regard, backing off of his implication contained in his first order.

Upon VHS's motion for reconsideration of Judge Wiese's order pertaining to the award of

costs and attorneys' fees, Judge Wiese granted VHS's motion, but the amount requested was not fully realized in the order. Instead of opposing the motion for reconsideration on the merits or ever interposing any opposition to the attorneys' fees or costs incurred by VHS, Plaintiffs instead chose to request Judge Wiese not consider the substance of VHS's reconsideration motion and deem it improper. Plaintiffs have never disputed the fees and costs at any time.

Thereafter, VHS agreed to accept the award amounting to nearly $120,000, withdrew its appeal pertaining to Judge Wiese's initial denial of VHS's motion for costs and fees, converted Judge Wiese's order into a judgment and provided him with a copy of the appeal withdrawal, which was signed by Judge Wiese and filed both with the Court as well as with the County Recorder for what was the enforcement thereof in the absence of a proper appeal bond being filed by Plaintiffs.

II. STATEMENT OF FACTS SPECIFICALLY PERTAINING TO NEED FOR INCREASED BOND

VHS obtained a judgment as against Plaintiffs served with notice of entry on June 7, 2022 (**Exhibit "A", pp. 1-49**[1]). Plaintiffs filed their notice of appeal and case appeal statement on June 7, 2022 (**Exhibit "B", pp. 50-57**). Neither the docket sheet from this Court (**Exhibit "C", pp. 58-97**), nor the docket sheet from the Nevada Supreme Court (**Exhibit "D", pp. 98-99**) reflected that any supersedeas bond was ever posted in this case by Plaintiffs as required by NRAP 7.

On September 27, 2022, one day prior to a scheduled judgment debtors' examination, and two weeks after Judge Linda Bell (now Justice Bell) ordered Plaintiffs to supply documentary evidence of their respective assets (**Exhibit "E", pp. 100-107**), Plaintiffs filed a motion to stay execution of judgment in this Court (**Exhibit "F", pp. 108-243**). In direct contravention of then Judge Bell's order, Plaintiffs failed to appear for the judgment debtors' examination and failed to provide the court ordered documentary evidence two weeks earlier. A transcript of that appearance is annexed hereto (**Exhibit "G", pp. 244-261**).

At the date of the originally scheduled hearing for the judgment debtors' examination on

[1] Page references are to the Bates numbers of the Appendix filed conterminously herewith.

September 28, 2022, then Judge Bell set a hearing on Plaintiffs' stay motion for November 9, 2022, which the District Court continued on its own until November 16, 2022. A copy of the transcript from that hearing is annexed hereto (**Exhibit "H", pp. 262-282**). VHS opposed Plaintiffs' motion and countermoved for contempt and costs (**Exhibit "I", pp. 283-524**), to which Plaintiffs interposed an improper reply and opposition, raising for the first time issues not raised in their original motion and not addressed to the countermotion before this Court (**Exhibit "J", pp. 525-547**). Instead of addressing the improprieties of Plaintiffs' conduct, the contempt issues, the improperly interposed legal argument on reply, and the Plaintiffs' misstatement and misapplication of multiple legal arguments, Judge Bell summarily denied VHS's countermotion and granted Plaintiffs' motion to stay enforcement proceedings until the Nevada Supreme Court determined the outcome of Plaintiffs' appeal.

At the same hearing, VHS requested that Plaintiffs post an appeal bond equivalent to the amount of the judgment **(Exhibit "H", pp. 278:24 – 280:7**), based upon Plaintiffs' counsel's representations in court (**Exhibit "G", p. 255:14-19),** in his motion and reply that Plaintiffs lacked even the available funds to appear in Nevada (**Exhibit "F", pp. 119-120; Exhibit "J", pp. 540:22-24; 546-547**), thus demonstrating a clear inability to pay the judgment should Plaintiffs' appeal prove unsuccessful.

Plaintiffs maintained throughout the aforenoted motion practice that no appeal bond was even necessary (**Exhibit "F", pp. 119-120**). At that time, Judge Bell indicated that an appeal bond in the amount of $500 was posted July 7, 2022 (**Exhibit "H", p. 279:4-6**). As evidenced from the docket sheets from both this Court and the Nevada Supreme Court (**Exhibits "C" and "D", pp. 58-99**), no appeal bond was ever posted. VHS represented to the District Court that it was never served with nor notified that any appeal bond had been posted, yet another violation of the rules by Plaintiffs, to which Judge Bell noted that it would not be reflected in any of the filings to which VHS would have been privy (**Exhibit "H", p. 279:7-15**). At that point, VHS requested that an order be issued to increase the bond amount to the amount of the judgment, plus accrued interest (**Exhibit "H", pp. 279:16 – 280:1**). VHS's request was denied as Judge Bell questioned whether she even had jurisdiction to make that determination given the appellate posture of the case (**Exhibit "H", pp. 278:10-19; 280:15-17**).

Moreover, Plaintiffs' counsel even had the temerity to assert that VHS's request to increase the bond amount was improper since VHS came to the hearing unprepared on the issue (**Exhibit "H", p. 280:2-11**), a completely absurd claim, since it was readily apparent that VHS was never notified of the bond's posting nor served with it, Judge Bell acknowledged that such a filing was not reflected in any public record of which VHS would have been made aware, and Plaintiffs continually asserted that they were exempt from posting a bond. Thereafter, Judge Bell issued an order (**Exhibit "K", pp. 548-557**) granting Plaintiffs' motion to stay enforcement of the judgment against Plaintiffs pending the outcome of the appeal (despite Plaintiffs' having posted only a $500 bond against a judgment exceeding $120,000 including interest).

Given Judge Bell's refusal to act on the request to increase the bond or even entertain the issue, and the improper ordering of a stay of enforcement of the judgment without adequate security as the law requires, VHS was left with no choice but to seek such relief in the Nevada Supreme Court pursuant to NRAP 8. After the matter had been fully briefed before the Nevada Supreme Court, the Supreme Court issued an order on February 3, 2023 (**Exhibit "L", pp. 558-560**) which refused to consider the motion without this Court having first made findings of fact and conclusions of law on this issue, and directed this Court to issue such findings and conclusions within 30 days of said order, i.e., March 6, 2023.

III. LEGAL ARGUMENT

NRAP 7 states in pertinent part:

> (a) When Bond Required. In a civil case, unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking that includes security for the payment of costs on appeal, the appellant shall file a bond for costs on appeal or equivalent security in the district court with the notice of appeal. But a bond shall not be required of an appellant who is not subject to costs.
>
> (b) Amount of Bond. The bond or equivalent security shall be in the sum or value of $500 unless the district court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the Supreme Court or Court of Appeals may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $500 is given, no approval thereof is necessary.
>
> (c) Objections. 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.

NRAP 8 ordinarily requires that motions pertaining to stay and bond postings are to be made first in the District Court, unless deemed impracticable. As previously noted, Judge Bell's refusal to act on anything further in this matter without a decision from the Nevada Supreme Court made a formal motion before her impracticable, thus necessitating Supreme Court intervention. Given the recent Supreme Court order, this Court has been ordered to make its findings and conclusions on this issue of the amount of the bond. A District Court maintains jurisdiction during an appeal to adjust the security as appropriate. *See, e.g.*, NRS 108.2425(3) (for lien release bond).

NRS § 20.037 states in pertinent part:

> 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 obligates a party who is otherwise obligated to post a bond for appeal (Plaintiffs so qualify), to post a bond for at least the amount of the judgment entered, which is $118,906.78 plus post judgment interest from June 2, 2022 ($5,934.75), the date of the judgment, up through and including at least the date of the hearing, February 14, 2023 (06/02/2022 - 06/30/2022 $495.99 (29 days @ $17.10/daily @ 5.250%/year); 07/01/2022 - 12/31/2022 $4,046.09 (184 days @ $21.99/daily @ 6.750%/year); 01/01/2023 - 02/14/2023 $ 1,392.68 (45 days @ $30.95/daily @ 9.500%/year)) for a total amount of $124,841.53.

Additionally, NRCP 62 states in pertinent part:

> **(a) Automatic Stay; Exceptions for Injunctions and Receiverships.**
>
> **(1) In General.** Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise.
>
> * * *
>
> **(d) Stay Pending an Appeal.**

> **(1) By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay is effective when the supersedeas bond is filed.
>
> **(2) By Other Bond or Security.** If an appeal is taken, a party is entitled to a stay by providing a bond or other security. Unless the court orders otherwise, the stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security.

"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). A bond may be set in a lesser amount, or other security may be permitted, where other appropriate and reliable alternatives exist for maintaining the status quo and protecting the judgment creditor during the appeal. *See Nelson, supra* 121 Nev. at 834–35, 122 P.3d at 1253; *see, e.g., Ries v. Olympian*, 103 Nev. 709, 711, 747 P.2d 910, 911 (1987) (suggesting that a discretionary stay could be appropriate when "the prevailing party retained title and possession of collateral far exceeding the amount of the judgment").

In this case, however, a lesser amount would be insufficient given the Plaintiffs' counsel's representations that the Plaintiffs lack the necessary funds to pay a judgment (**Exhibit "G", p. 255:14-19; Exhibit "F", pp. 119-120; Exhibit "J", pp. 540:22-24; 546-547**) (a fact which has not been independently confirmed since Plaintiffs refused to comply with prior court orders to provide asset information, appear for a hearing, and improperly obtained a stay of enforcement proceedings without the posting of a bond sufficient to cover the judgment in this case. **Exhibit "F", pp. 108-243; Exhibit "K", pp. 548-557**).

In *Nelson, supra,* Plaintiff, a buyer of a cabin, discovered it had a preexisting broken water pipe which caused severe mold damage. He sued defendant, the seller, and obtained a large judgment against her. The Nevada District Court granted a stay pending appeal and rejected defendant's request to use of alternate security, in lieu of a supersedeas bond. Defendant then filed a motion in the Nevada Supreme in relation to the supersedeas bond issue.

The record showed defendant had difficulty obtaining a supersedeas bond. Further, plaintiff promptly obtained a judgment lien on all of her real property, and he began to execute on the judgment by garnishing her slot route operator income. According to defendant, the garnishment threatened the viability of her businesses, primarily two small bars, for which she had several employees. She asserted that without said income, she would have been unable to pay other creditors and certain mortgages.

The Nevada Supreme Court denied defendant's motion, noting the district court was in the best position to weigh the relevant considerations in determining whether "alternate security" was warranted. Alternate security in lieu of a bond may be acceptable if it is adequate to "maintain the status quo and protect the judgment creditor pending appeal." *See Nelson, supra* 121 Nev. at 835–36, 122 P.3d at 1254 (doing away with the "unusual circumstances" requirement and providing a framework of five factors to consider when determining security for a stay). However, the Supreme Court clarified its prior opinion of *McCulloch v. Jeakins*, 99 Nev. 122, 659 P.2d 302 (1983) which allowed for alternate security (other than a supersedeas bond), only in "unusual circumstances." As to when a full supersedeas bond could be waived and/or alternate security substituted, the Nevada Supreme Court adopted a five factor analysis set forth by the *United States Seventh Circuit Court in Dillon v. City of Chicago,* 866 F.2d 902 (7th Cir. 1988). In general, those factors were applied with respect to the unique circumstances of each case.

Specifically, *Nelson* set forth five factors to consider in determining when a full supersedeas bond may be waived and/or alternate security substituted:

> (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.
>
> We conclude that this framework provides a useful analytical tool, and we adopt it for Nevada. Therefore, **when confronted with a motion to reduce the bond amount or for alternate security, the district court should apply these factors**. In considering the second factor, the district court should take into account the length of time that the case is likely to remain on appeal.

Nelson, supra 121 Nev. at 836, 122 P.3d at 1254 (emphasis supplied). It is significant that *Nelson* refers to when a motion is pending to either reduce the bond amount or provide for alternate security to consider these factors.

Taking each point in seriatim, the collection process is incredibly complicated. The Creecy Plaintiffs each reside in Ohio, and in two different counties. The Khosrof Plaintiff resides in Massachusetts. The Estate is a Nevada entity. As evidenced by the judgments in those respective jurisdictions (**Exhibit "M", pp. 561-693**), a considerable effort needed to be employed to authenticate and obtain full faith and credit for the Nevada judgments. Separate enforcement mechanisms in the respective jurisdictions must be employed to obtain judgment enforcement and it is already evident that Plaintiffs have refused to pay the judgments in their respective jurisdictions despite presentment of the judgments for payment.

Second, the amount of time to obtain judgment after appeal is unknown at this time, however, as the *Nelson* Court advised, when considering this factor, the time within which the case is scheduled to be on appeal needs to be factored. Plaintiffs filed their notice of appeal on June 14, 2022. They already sought three separate extensions of their briefing time in the Nevada Supreme Court, and just filed their opening brief on January 30, 2023. At the earliest, the case will not be fully submitted until April 5, 2023, possibly longer. It is likely, given the average time for appeals to make their way through the Supreme Court or the Court of Appeals, that an additional 6 months to 1 year from the submission of all briefing would a decision render, extending the execution of any judgment for nearly two years of obtaining same. Such a time period is extreme and endangers the viability of collection without some safeguard to guarantee payment.

Third, the degree of confidence that this Court has in the availability of funds to pay the

judgment, is completely unknown. Plaintiffs' counsel has not bothered to interpose **any evidence** of funding sources. The very purpose of the now scuttled judgment debtors' proceeding was to ascertain just such information. Plaintiffs' represented that they lacked funds necessary to travel to Nevada to testify at a judgment debtors' proceeding (**Exhibit "F", pp. 119-120; Exhibit "J", pp. 540:22-24, 546-547**), leading to the logical conclusion that they lack sufficient funds to pay the over $120,000 judgment. If Plaintiffs lack the requisite funds to pay a validly obtained judgment, all the more reason to obtain a proper mechanism to secure it. If Plaintiffs' counsel's claims of their virtual "judgment proof" status are correct, the question is raised why bother pursuing a stay and pursuing an appeal. The answer is simple – either Plaintiffs have the resources, or posting a bond with the likelihood of a loss by Plaintiffs on appeal will result in the forfeiture of the bond and expenses associated with same.

Fourth, the judgment debtors' ability to pay, is most definitely a question. Again, the scuttled judgment debtor proceedings were designed to elicit that very information, not for their counsel to profess his opinions. If Plaintiffs are as destitute as Plaintiffs' counsel would have this Court believe, this factor weighs astonishingly high in VHS's favor.

Fifth, whether the judgment debtors' financial position is so precarious as to place other creditors at risk, is also an open question. For all of the reasons cited above, this factor weighs heavily in VHS's favor.

Given the above statutory and case authority, the supersedeas bond should be posted by Plaintiffs for the amount of the judgment plus post-judgment interest to at least the date of this hearing (February 14, 2023) in the amount of $124,841.53.

IV. CONCLUSION

Due to the absence of notice to VHS of an insufficient bond posting by Plaintiffs, Judge Bell's refusal to entertain any further proceedings pending the appeal of this matter, and the procedural posture of the appeal itself, the law obligates Plaintiffs to post a bond in the amount of the pending judgment now entered plus post judgment interest all totaling at least $124,841.53 as security while the pending appeal is being briefed and decided.

DATED this 13th day of February, 2023

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By */s/ Adam Garth*

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2023, a true and correct copy of **DEFENDANT/JUDGMENT CREDITOR VALLEY HEALTH SYSTEM, LLC'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO REQUIRE POSTING OF OR INCREASE TO SUPERSEDEAS BOND BY PLAINTIFFS** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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DISTRICT COURT

CLARK COUNTY, 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; 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. No. XXV (25)

PLAINTIFFS' BRIEF IN SUPPORT OF JUDGE LINDA M. BELL'S PRIOR DECISION DENYING VALLEY HEALTH SYSTEM, LLC'S REQUEST FOR INCREASE OF BOND

Hearing Date: February 14, 2023
Hearing Time: 9 a.m.

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This matter is before the Court "for the limited purpose of allowing the district court to consider the motion [filed by Valley Health System, LLC[1] in the Nevada Supreme Court[2]] to increase the supersedeas bond on its merits." App. 12.[3] Although VHS never previously filed an actual written motion with this Court seeking an increase in the bond amount, its counsel, Adam Garth, Esq., raised the issue after the previously assigned district court judge (Hon. Linda M. Bell)[4] signaled her intent to grant Plaintiffs' motion to stay execution of the judgment which was entered in this case on June 7, 2022. Judge Bell, after entertaining argument from VHS's counsel, declined his spontaneous request to increase the bond above the $500.00 which was previously posted by Plaintiffs in this case.[5] She did so, not because of "lack of jurisdiction"[6] as erroneously cited in the NSC's Order filed February 3, 2023, but instead because she apparently found no merit in VHS's argument. App. 157-158.

Viewed in the proper light of these proceedings, VHS' latest attempt to increase the bond in this case is nothing more than a retaliatory effort to continue punishing a family that

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[1] Referred to herein as "VHS."

[2] "NSC."

[3] "App. ___." refers to the page(s) of the Appendix filed with this Brief.

[4] Prior to Judge Bell's assignment to this case, it was assigned to Judge Jerry A. Wiese.

[5] Both the NSC and Judge Bell have confirmed that Plaintiffs has in fact posted a $500.00 cost bond in this case. App. 12; 157.

[6] The NSC is confused presumably based upon representations made to it by Mr. Garth. Judge Bell declined to entertain Plaintiffs' Nevada Rule of Civil Procedure 60(b) motion citing lack of jurisdiction because of the pending appeal. App. 165.

had the temerity to sue for medical malpractice over the death of their loved one. Equally disturbing, and which is partly the subject of Plaintiffs' current appeal in the NSC, VHS seeks to enforce a judgment that was obtained under *highly* improper circumstances that implicate issues involving Nevada Rule of Professional Responsibility 3.3 and Nevada Rule of Civil Procedure 11.

For the reasons set forth in this Brief (submitted pursuant to this Court's Minute Order issued on February 7, 2023 – App. 1), the Court should deny VHS's request to increase the bond in this case for the same reasons already set forth in a filing by Plaintiffs in the NSC. *See* App. 2-11. In support of this Brief, Plaintiffs rely upon the memorandum of points and authorities below, the attached Appendix and any additional arguments the Court may entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The facts underlying this case are set forth in the Opening Brief filed by Plaintiffs in their appeal currently pending before the NSC. *See* App. 14-41. For the sake of brevity, those facts (App. 21-31) will not be repeated here but are incorporated by reference herein.

PROCEDURAL HISTORY

1. On August 28, 2020, with a motion for summary judgment pending, VHS served Plaintiffs with a zero dollar Offer Of Judgment. App. 42-45.

2. On October 28, 2020, Judge Weise denied Defendant VHS' Motion for Summary

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Judgment finding, among other things, that there were genuine issues of material fact regarding the timeliness of Plaintiffs' lawsuit. App. 46-53.

3. On November 19, 2021, Judge Weise issued an order vacating his prior order and granted summary judgment per mandamus granted by the NSC. App. 46-53.

4. On February 15, 2022, Judge Weise denied VHS' Motion for Attorneys' Fees and Costs which was based upon the previously served Offer of Judgment. App. 71-82.

5. Following this denial of fees and costs, VHS filed an appeal of Judge Wiese's decision with the NSC. App. 63-82.

6. After VHS perfected its appeal, the NSC issued an "Order To Show Cause" noting that VHS, after filing its appeal, had filed a motion for reconsideration in the district court with Judge Wiese regarding his denial of fees and costs. App. 83-84.

7. By Order filed May 4, 2022, while VHS's appeal was still pending before the NSC, Judge Wiese issued an Order (App. 85-94) finding that he lacked jurisdiction to award fees and costs. App. 86 ("[c]onsequently, this Court no longer has jurisdiction to address the issue of fees and costs"). His decision advised VHS of the steps it would need to take to obtain a remand and that if VHS wished to preserve its right to fees and cost it needed to "convey this Decision to the Supreme Court pursuant to *Huneycutt* and *Dingwall*."[7] App. 94.

8. Instead of following Judge's Wiese's directives, VHS simply moved to withdraw its

[7] Citing Huneycutt v. Huneycutt, 94 Nev. 79 (1978) and Foster v. Dingwall, 126 Nev. 49 (2010).

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appeal. App. 95-97. In so doing, VHS's counsel stated, under penalty of sanction, that "any issues that were or could have been brought in this appeal are forever waived." App. 95-96.

9. Judge Wiese's May 4, 2022 Order never having been conveyed to the NSC and VHS's counsel having requested a withdrawal, the NSC dismissed VHS's appeal.

10. Notwithstanding that Judge Wiese had declined to award fees and costs based upon lack of jurisdiction, VHS's counsel presented the judge's chambers with a Judgment for fees and costs in its favor "for a total of $118,906.78." App. 99-100. Counsel for Plaintiffs objected to this improper Judgment. App. 103. Counsel for VHS misrepresented to the Court and its Chambers that Judge Wiese had granted its motion for reconsideration awarding it fees and costs. App. 99. The Court affixed Judge Wiese's electronic signature to the Judgment.

11. On June 7, 2022, Plaintiffs filed an appeal with the NSC challenging the issuance of the Judgment. App. 139-140.

12. After VHS sought to enforce the judgment, Plaintiffs filed motion to stay enforcement of the Judgment and to have it set aside. Judge Bell, to whom the case had been transferred after Judge Wiese became Chief Judge, convened a hearing on the issues on November 29, 2022. App. 141-160. During the hearing, Judge Bell confirmed that the Court's docket reflects that Plaintiffs filed an appeal bond in the amount of $500.00. App. 157 ("an appeal bond [was] posted July 7th of 2022"). She reiterated this point: "Well I have one, I don't know. I have one that was filed, it was filed July 7th it was $500.00 so that's what I have." App. 157.

13. Judge Bell declined to rule upon Plaintiffs' motion to set aside the Judgment citing

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the pending appeal and her lack of jurisdiction. App. 161-167. However, she granted Plaintiffs' motion to stay enforcement of the Judgment given the pending appeal and based upon her finding of "good cause." App. 168-174.

ARGUMENT

I. THE DECISION TO INCREASE AN APPEAL BOND IS DISCRETIONARY

The decision by a district court to increase a bond pending appeal is subject to review by an appellate court under an abuse of discretion standard. Nelson v. Heer, 121 Nev. 832, 836 (2005) (*citing* Dillon v. City of Chicago, 866 F.2d 902 (7th Cir. 1988); App. 3-4 (incorporated by reference herein). The NSC has consistently held that the decision of the district court in issuing a stay or setting a bond is favored and entitled to deference. TRP Fund VI, LLC v. PHH Mortgage Corporation, 138 Nev. Adv. Op. 21 (2022).

II. PLAINTIFFS WERE NOT REQUIRED TO POST ANY BOND IN THIS CASE GIVEN THAT THE DISTRICT COURT DECLINED TO AWARD FEES AND COSTS BASED UPON LACK OF JURISDICTION

Under Nevada Rule of Appellate Procedure 7(a), "a bond shall not be required of an appellant who is not subject to costs." In this case, there is no written decision that VHS's counsel can cite for this Court awarding fees and costs in favor of VHS. The judgment was based upon the May 4, 2022 decision (App. 85-94) from Judge Weise but that decision specifically declined to make an award of fees and costs citing lack of jurisdiction. App. 86. Instead, that decision merely expressed the Court's intent subject to VHS following proper *Huneycutt* remand procedures.

It is axiomatic that a district court loses jurisdiction when an appeal is pending

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and under *Huneycutt* the most a court can do is deny a motion instead of granting one. *See* Foster v. Dingwall, 126 Nev. 49 (2010); Huneycutt v. Huneycutt, 94 Nev. 79 (1978). That's what Judge Wiese essentially did. He stated an intent but denied the motion for lack of jurisdiction. Indeed, the Court could not have been any clearer when it stated, "this Court no longer has jurisdiction to address the issue of fees and costs." App. 86. Undeterred by this pronouncement, counsel for VHS engaged in acts of deception and deceit (presumably hoping to fix their fatal mistake when they voluntarily dismissed VHS' appeal) when they nonetheless presented a judgment to the Court for execution knowing *full well* that the Court had declined to award fees and costs and directed VHS's counsel to follow the *Huneycutt*[8] procedures in order to seek a remand for the purpose of fees and costs.

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[8] In *Huneycutt,* the NSC held that a motion for relief from judgment should be filed and heard in the district court, which if inclined to grant relief should so *certify* to the Supreme Court, at which point a request for remand of appeal from portions of contested order would be appropriate. *Huneycutt,* 94 Nev. at 575; *Dingwall*, 228 P.3d at 453, (citing NRCP Rule 59(a) and 60(b)). In *Dingwall*, the Supreme Court clarified that "a party seeking to alter, vacate, or otherwise change or modify an order or judgment challenged on appeal should file a motion for relief from the order or judgment in the district court," *Id.* "As demonstrated by our *Huneycutt* decision, despite the general rule that the perfection of an appeal divests the district court of jurisdiction to act except with regard to matters collateral to or independent from the appealed order, the district court nevertheless retains a limited jurisdiction to review (certain) motions made in accordance with this procedure." *Id.* (internal case citations omitted) (emphasis added). "In considering such motions, the district court has jurisdiction to direct briefing on the motion, hold a hearing on the motion, and enter an order denying the motion, ***but lacks jurisdiction to enter an order granting such a motion.***" *Id.* (internal case citations omitted) (emphasis added). Thus, "if the district court is inclined to grant the relief requested, then it **may certify its intent to do so**." *Id.* (citing *Mack-Manley v. Manley*, 122 Nev. 855, 138 P.3d 530 (2006)) (emphasis supplied). This is exactly what Judge Weise contemplated in his May 4, 2022 Order when he specifically cited *Huneycutt* and *Dingwall*. But, VHS' counsel forever foreclosed on its own client's ability to recover *any* fees or costs from the Plaintiffs by withdrawing VHS' appeal (with prejudice) and declining to notify the NSC of Judge Wiese's decision. App. 95-97.

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In light of the foregoing, Plaintiffs have done more than they were required to do in this case when they posted a $500.00 bond on July 7, 2022. They were not required to post any bond but they did so exceeding what was required of them. Because there is no decision awarding VHS costs, the Court should deny the request to increase the bond.

III. ALL FACTORS THAT THIS COURT SHOULD CONSIDER TO DETERMINE INCREASING THE BOND FAVOR DENYING AN INCREASE

As the purpose of a supersedeas bond is to protect against prejudice to a judgment creditor's ability to collect caused by a stay, VHS must demonstrate how waiting the length of the stay would make the judgment more difficult to collect than it currently is. 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).

The *Heer* 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

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ability to collect, and not about compensating for delay.[9] Id, 121 Nev. at 836 (*citing* Dillon v. City of Chicago, 866 F. 2d 902 (7th Cir. 1988)).

VHS has previously failed to provide any explanation whatsoever as to how Plaintiffs' ability to satisfy the judgment, or 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 cannot challenge the sufficiency of the security previously upheld by the district court.

In examining each of the *Dillon* factors adopted by the NSC 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 has previously argued 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.

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9 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 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.

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

VHS has complained in the NSC 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 other stay on appeal.

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

VHS has argued before that it believes the judgment debtors are currently unable to pay the judgment because they are indigent. 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."

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 has been 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 has previously argued to the NSC that Plaintiffs hold a precarious financial position to the point that the bond would put their other creditors at risk. This argument militates in favor of relaxing the bond requirement. If the interpretation is not clear from the

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text of the rule itself, the cases previously cited by VHS 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.").[10] VHS has previously taken the position that it believes Plaintiffs will 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.

IV. VHS' HAS PREVIOUSLY REQUESTED A BOND EXCEEDING THE MAXIMUM ALLOWED BY STATUTE WHICH IS ILLEGAL

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.**
>
> 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.**

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

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See 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 request before this Court (which it is not given that no court has ever rendered a decision awarding VHS costs) 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 is demonstrably improper (undermining the entire credibility of VHS's position) as 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, as it argued to the NSC, is simply illegal.

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CONCLUSION

For the reasons set forth above, VHS's attempt to seek an increase in the $500.00 bond *already* posted by Plaintiffs (which they were not even required to post in the first place) is frivolous and vindictive. VHS is a subsidiary of Universal Health Services, Inc. (a publicly traded company earning record profits in the billion) that is simply seeking to financially ruin Plaintiffs (all of whom are indigent) for having questioned Rebecca Powell's tragic demise while in the care and custody of Centennial Hills Hospital. The request for an increase in the bond amount should be denied.

Respectfully submitted,

/s/ *Paul S. Padda*

Paul S. Padda, Esq.
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Attorney for Plaintiffs

Dated: February 13, 2023

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CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned certifies that on this day, February 13, 2023, a copy of the foregoing **PLAINTIFFS' BRIEF IN SUPPORT OF JUDGE LINDA M. BELL'S PRIOR DECISION DENYING VALLEY HEALTH SYSTEM, LLC'S REQUEST FOR INCREASE OF BOND** was filed with the Court and served upon all parties/counsel of record (identified on the master service list) in the above-entitled matter through the Court's electronic filing system - efileNV e-service.

/s/ *Ashley Pourghahreman*

Ashley Pourghahreman, Paralegal
PAUL PADDA LAW

APPENDIX

DISTRICT COURT
CLARK COUNTY, NEVADA

Malpractice - Medical/Dental	COURT MINUTES	February 07, 2023

A-19-788787-C Estate of Rebecca Powell, Plaintiff(s)
vs.
Valley Health System, LLC, Defendant(s)

February 07, 2023 **7:00 AM** **Minute Order Scheduling Matter for Further Proceedings**

HEARD BY: Delaney, Kathleen E. **COURTROOM:** Chambers

COURT CLERK: April Watkins

JOURNAL ENTRIES

- The Nevada Supreme Court having entered an Order remanding the matter for the limited purpose of asking the district court to consider on its merits a motion to increase Plaintiff's $500 appeal (supersedeas) bond filed on July 7, 2022; the Supreme Court indicating in its Order that the Court's predecessor considered the matter at a November 16, 2022 hearing but declined to rule on the merits based on concerns over its jurisdiction to consider the request; the Court's minutes from the November 16, 2022 making no mention of a motion, oral or written, and containing no discussion of the appeal bond issue specifically; the Court otherwise finding only passing mention of the appeal bond issue in Defendant/Judgment Creditor Valley Health System LLC's Opposition to Plaintiffs' Motion to Stay Execution on Judgment for Attorneys' Fees and Costs [Dkt. No. 162]; and good cause appearing:

COURT ORDERED this matter set for Further Proceedings: Supreme Court Limited Remand on Tuesday, February 14, 2023 at 9:00 a.m.

COURT FURTHER ORDERED counsel for the parties to file supplemental briefings no later than 2:00 p.m. on February 13, 2023, in order to assist the Court, which otherwise is newly assigned and has no greater familiarity with the facts and circumstances of the case, to determine the appropriate security amount, as directed.

CLERK S NOTE: Copy of this Minute Order served on all counsel and pro se parties through the Court's electronic filing system. /aw 2/7/2023

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.

Electronically Filed
Dec 23 2022 03:31 PM
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

Docket 84861 Document 2022-40393

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

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[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.**
>
> 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*

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*

Shelbi Schram, Paralegal

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.

No. 84861

FILED

FEB 03 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER

On December 2, 2022, respondent filed a motion requesting this court increase the supersedeas bond. Appellants oppose the motion and respondent has filed a reply. At a November 16, 2022, hearing, respondent requested the district court increase the supersedeas bond amount from the already posted $500 amount. The district court denied respondent's request based on concerns over its jurisdiction to consider the request. However, this court remands the matter for the limited purpose of allowing the district court to consider the motion to increase the supersedeas bond on its merits. *See* NRAP 8(a)(1); *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252 (2005) (stating that the requirement that a party move first in district court is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case, and 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). The district court shall have 30 days after entry of this order to determine the appropriate security amount. Appellants shall have 30 days from the date of the district court's order to provide any additional security ordered and to submit proof of security to the clerk of this court.

On January 9, 2023, appellants filed a motion seeking a third extension of time to file the opening brief. Respondent opposes the motion and appellants have filed a reply. Having reviewed these filings, appellants' motion is granted.[1] NRAP 26(b)(1)(B). The opening brief and appendix were filed on January 30, 2023. However, the six-volume appendix was filed as a single submission and should have been filed as six separate submissions. Accordingly, the clerk shall strike the appendix filed on January 30, 2023. Appellants shall have 7 days from the date of this order to re-file the six-volume appendix in six separate submissions. Respondent shall have 30 days from the date of this order to file and serve the answering brief.

It is so ORDERED.

_____, C.J.

cc: Hon. Jerry A. Wiese, Chief Judge
Paul Padda Law, PLLC
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk

[1]Respondent's motion to dismiss this appeal is denied.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 84861

ESTATE OF REBECCA POWELL; DARCI CREECY; TARYN 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

PAUL PADDA LAW, PLLC
Paul S. Padda, Esq. (SBN #10417)
4560 South Decatur Blvd., Suite 300
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Tele: (702) 366-1888

Attorney for Appellants

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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Attorney for Appellants

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TABLE OF AUTHORITIES

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 Judgement 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.

Appellants[2] 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.

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[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