

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

Electronically Filed
Mar 10 2023 09:31 AM
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT'S APPENDIX TO MOTION TO REQUIRE POSTING OF
OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY
APPELLANTS VOLUME VI**

S. BRENT VOGEL
Nevada Bar No. 6858
ADAM GARTH
Nevada Bar No. 15045
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702-893-3383
Facsimile: 702-893-3789
Attorneys for Respondent

INDEX TO APPENDIX VOLUME VI

Number	Document	Date	Pages
M	Plaintiffs' Brief in Support of Judge Linda M. Bell's Prior Decision Denying Valley Health System, LLC's Request for Increase of Bond	2/13/2023	605-701

DATED this 10th day of March, 2023.

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 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 VI** 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.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
Tel: 702.366.1888
Fax: 702.366.1940
psp@paulpaddalaw.com
Attorneys for Plaintiffs

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
*Attorneys for Defendants Dionice S.
Juliano, M.D., Conrado Concio, M.D
And Vishal S. Shah, M.D.*

By /s/ Heidi Brown

An Employee of
LEWIS BRISBOIS BISGAARD &
SMITH LLP

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

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

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

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

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

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

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

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

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

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

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

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

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

. . .

. . .

. . .

. . .

. . .

V.

STATEMENT OF RELEVANT FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI.

SUMMARY OF ARGUMENT

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

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

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

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

VII.

ARGUMENT

A. STANDARD OF REVIEW

1. Subject Matter Jurisdiction

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

2. Award Of Attorney's Fees And Costs

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

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

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

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

Beattie, 99 Nev. At 588-89.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIII.

CONCLUSION

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

/s/ Paul S. Padda

Paul S. Padda, Esq. (SBN #10417)
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorney for Appellants

Dated: January 30, 2023

CERTIFICATE OF COMPLIANCE

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

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

DATED this 30th day of January 30, 2023.

/s/ Paul S. Padda

Paul S. Padda, Esq. (SBN #10417)
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorney for Appellants

VERIFICATION

I, Paul S. Padda, declare:

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

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

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

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

/s/ Paul S. Padda

Paul S. Padda, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Paul Padda Law and that on this day, January 30, 2023, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPELLANTS' OPENING BRIEF IN CASE NO. 84861** properly addressed to the following:

S. Brent Vogel, Esq.
Adam Garth, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 South Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Counsel for VHS

/s/ Paul S. Padda
An Employee of Paul Padda Law

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
ADAM GARTH
3 Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
Telephone: 702.893.3383
6 Facsimile: 702.893.3789
Attorneys for Defendant Valley Health System,
7 *LLC dba Centennial Hills Hospital Medical*
Center
8

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
13 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
14 Heir; ISIAIAH KHORSOF, individually and as
an Heir; LLOYD CREECY, individually;;

15 Plaintiffs,
16

17 vs.

18 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
Center"), a foreign limited liability company;
19 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
20 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
21 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;,
22

23 Defendants.
24

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC'S RULE 68 OFFER TO
PLAINTIFFS**

25 TO: ESTATE OF REBECCA POWELL, through BRIAN POWELL, as Special
26 Administrator; DARCI CREECY, individually and as Heir; TARYN CREECY, individually and as
27 an Heir; ISIAIAH KHORSOF, individually and as an Heir; LLOYD CREECY, individually,
28 Plaintiffs; and

1 TO: Paul S. Padda, Esq., PAUL PADDA LAW, PLLC, 4560 S. Decatur Blvd., Suite 300,
2 Las Vegas, NV 89103, their attorneys:

3 PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68 and *Busick v.*
4 *Trainor*, 2019 Nev. Unpub. LEXIS 378, 2019 WL 1422712 (Nev., March 28, 2019), 437 P.3d 1050,
5 Defendants VALLEY HEALTH SYSTEM, LLC (doing business as “Centennial Hills Hospital
6 Medical Center”), a foreign limited liability company (“Defendant”), by and through its counsel of
7 record, S. Brent Vogel, Esq. and Adam Garth, Esq. of LEWIS BRISBOIS BISGAARD & SMITH
8 LLP, hereby offer to waive any presently or potentially recoverable attorney’s fees and costs in full
9 and final settlement of the above-referenced case. At this time, Defendant has incurred \$53,389.90
10 in attorney’s fees and \$5,124.46 in costs.

11 This Offer shall not be construed to allow Plaintiffs to seek costs, attorney’s fees, or
12 prejudgment interest from the Court in addition to the amount stated in the Offer, should Plaintiffs
13 accept the Offer.

14 Pursuant to N.R.C.P. 68, this Offer shall be open for a period of fourteen (14) days from the
15 date of service. In the event this Offer is accepted by Plaintiffs, Defendant will obtain a dismissal
16 of the claim as provided by N.R.C.P. 68(d), rather than to allow judgment to be entered against
17 Defendant. Accordingly, and pursuant to these rules and statutes, judgment against Defendant could
18 not be entered unless ordered by the District Court.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This Offer is made solely for the purposes intended by N.R.C.P. 68, and is not to be construed
2 as an admission in any form, shape or manner that Defendant is liable for any of the allegations
3 made by Plaintiffs in the Complaint. Nor is it an admission that Plaintiffs are entitled to any relief,
4 including, but not limited to, an award of damages, attorney's fees, costs or interest. By virtue of
5 this Offer, Defendant waives no defenses asserted in their Answer to Plaintiffs' Complaint.

6
7 DATED this 28th day of August, 2020

8
9 LEWIS BRISBOIS BISGAARD & SMITH LLP

10
11 By /s/ Adam Garth

12 S. BRENT VOGEL
13 Nevada Bar No. 6858
14 ADAM GARTH
15 Nevada Bar No. 15045
16 6385 S. Rainbow Boulevard, Suite 600
17 Las Vegas, Nevada 89118
18 Tel. 702.893.3383
19 *Attorneys for Defendant Valley*
20 *Health System, LLC dba Centennial Hills Hospital*
21 *Medical Center*
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 28th day of August, 2020, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC'S RULE 68 OFFER TO**
4 **PLAINTIFFS** was served by electronically filing with the Clerk of the Court using the Odyssey E-
5 File & Serve system and serving all parties with an email-address on record, who have agreed to
6 receive electronic service in this action.

7 Paul S. Padda, Esq.
8 PAUL PADDA LAW, PLLC
9 4560 S. Decatur Blvd., Suite 300
10 Las Vegas, NV 89103
11 Tel: 702.366.1888
12 Fax: 702.366.1940
13 psp@paulpaddalaw.com
14 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipleyr@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D. and Vishal S.
Shah, M.D.

15
16
17 By /s/ Roya Rokni
18 Roya Rokni, an Employee of
19 LEWIS BRISBOIS BISGAARD & SMITH LLP
20
21
22
23
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

CLERK OF THE COURT

ESTATE OF REBECCA POWELL, through)
BRIAN POWELL, as Special Administrator;)
DARCI CREECY, individually and as an Heir;)
TARYN CREECY, individually and as an Heir;)
ISAAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

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

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,)

ORDER

Defendants.

The above-referenced matter was scheduled for a hearing on November 4, 2020, with regard to Defendant Valley Health System LLC's (Valley's) and Universal Health Services, Inc.'s (Universal's) Motion for Summary Judgment Based upon the Expired Statute of Limitations. Defendants Dionice Juliano, M.D., Conrado Concio, M.D., and Vishal Shah, M.D. joined the Motion for Summary Judgment. Additionally, Defendant, Juliano's Motion for Summary Judgment and Defendants Concio and Shaw's Motion for Partial Summary Judgment on Emotional Distress Claims is on calendar. Finally, Plaintiff's Counter-Motion to Amend or Withdraw Plaintiffs' Responses to Defendants' Requests for Admissions is on calendar. Pursuant to A.O. 20-01 and subsequent administrative orders, these matters are deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it

1 would be appropriate to decide these matters on the papers, and consequently, this
2 Order issues.

3 **Defendants, Valley's and Universal's Motion for Summary Judgment Based**
4 **upon the Expiration of the Statute of Limitations.**

5 On May 3, 2017 Rebecca Powell ("Plaintiff") was taken to Centennial Hills
6 Hospital, a hospital owned and operated by Valley Health System, LLC ("Defendant")
7 by EMS services after she was discovered with labored breathing and vomit on her face.
8 Plaintiff remained in Defendant's care for a week, and her condition improved.
9 However, on May 10, 2017, Plaintiff complained of shortness of breath, weakness, and
10 a drowning feeling. In response to these complaints, Defendant Doctor Vishal Shah
11 ordered Ativan to be administered via IV push. Plaintiff's condition did not improve.
12 Defendant, Doctor Conrado Concio twice more ordered Ativan to be administered via
13 IV push, and Plaintiff was put in a room with a camera in order to better monitor her
14 condition. At 3:27 AM on May 11, 2017, another dose of Ativan was ordered. Plaintiff
15 then entered into acute respiratory failure, resulting in her death.

16 Plaintiff brought suit on February 4, 2019 alleging negligence/medical
17 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
18 emotional distress. Defendant previously filed a Motion to Dismiss these claims, which
19 was denied on September 25, 2019. The current Motion for Summary Judgment was
20 filed on September 2, 2020. Defendants Dionice Juliano, MD, Conrado Concio, MD,
21 and Vishal Shah, MD joined in this Motion on September 3, 2020. Plaintiff filed their
22 opposition September 16, 2020. Defendant filed its reply on October 21, 2020 and
23 Defendants Dionice Juliano, MD, Conrado Concio, MD, and Vishal Shah, MD joined
24 the reply on October 22, 2020.

25 Defendant claims that, pursuant to NRS 41A.097 Plaintiff's claims were brought
26 after the statute of limitations had run. In pertinent part, NRS 41A.097 states in
27 pertinent part: "an action for injury or death against a provider of health care may not
28 be commenced more than 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." NRS 41A.097(2). There appears to be no dispute that the
Complaint was filed within 3 years after the date of injury (or death). The issue is
whether the Complaint was filed within 1 year after the Plaintiffs knew or should have

1 known of the injury. Defendants claim that they fall under the definition of a “provider
2 of health care” under NRS 41A.017 and that all of Plaintiff’s claims sound in
3 professional negligence. Therefore, all the claims are subject to NRS 41A.097.

4 Defendant claims that Plaintiff was put on inquiry notice of the possible cause of
5 action on or around the date of Plaintiff’s death in May of 2017 and therefore the suit,
6 brought on February 4, 2019, was brought after the statute of limitations had tolled.
7 Defendant makes this claim based on several theories. Defendant claims that since
8 Plaintiffs are suing for Negligent Infliction of Emotional Distress, and an element of
9 that claim is contemporaneous observation, that Plaintiff was put on notice of the
10 possible claim on the date of Ms. Powell’s death. Alternatively, Defendant argues that
11 since Plaintiff ordered and received Ms. Powell’s medical records no later than June
12 2017, they were put on notice upon the reception of those records. Finally, Defendant
13 argues that since Plaintiffs made two separate complaints alleging negligence, they
14 were aware of the possible claim for negligence and thus on inquiry notice. (On May 23,
15 2017, Defendants provide an acknowledgement by the Nevada Department of Health
16 and Human Services (“HHS”) that they received Plaintiff Brian Powell’s complaint
17 made against Defendants. And on June 11, 2017, Plaintiff Brian Powell filed a
18 complaint with the Nevada State Board of Nursing alleging negligence in that Decedent
19 was not properly monitored.)

20 Plaintiff argues that the date of accrual for the statute of limitations is a question
21 of fact for the jury and summary judgment is not appropriate at this stage where there
22 are factual disputes. Plaintiffs claim they were not put on inquiry notice of Defendant’s
23 negligence until they received the February 5, 2018, HHS report and therefore the
24 complaint, filed on February 4, 2019, was brought within the one-year statute of
25 limitations. Plaintiff makes this claim based on several pieces of evidence. First, while
26 the medical records were mailed to Plaintiffs on June 29, 2017, there is no evidence
27 that shows the records were ever received. Additionally, on June 28, 2017, Plaintiffs
28 were informed via the Certificate of Death, that Ms. Powell’s death was determined to
be a suicide. This prevented Plaintiff from ever considering negligence contributed to
her death. Plaintiffs argue the first time they could have suspected negligence was
when they received the report from HHS on February 5, 2018, that stated the facility

1 had committed violations with rules and/or regulations and deficiencies in the medical
2 care provided to Decedent.

3 Plaintiff claims that Defendant's present Motion for Summary Judgment is just
4 a regurgitation of Defendant's prior Motion to Dismiss on the same facts in violation of
5 Eighth Judicial District Court Rule (EJDCR) 2.24(a). Plaintiff claims this Motion is a
6 waste of time, money, and resources that rehashes the same arguments that the court
7 had already decided, and the Motion should be denied pursuant to EJDCR 2.24(a).

8 Summary judgment is appropriate if the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show that
10 there is no genuine issue as to any disputed material fact and that the moving party is
11 entitled to a judgment as a matter of law. NRCP 56(c). The tolling date ordinarily
12 presents a question of fact for the jury. *Winn v. Sunrise Hospital and Medical Center*,
13 128 Nev. 246, 252 (2012). "Only when the evidence irrefutably demonstrates that a
14 plaintiff was put on inquiry notice of a cause of action should the district court
15 determine this discovery date as a matter of law." *Id.* A plaintiff discovers an injury
16 when "he knows or, through the use of reasonable diligence, should have known of facts
17 that would put a reasonable person on inquiry notice of his cause of action." *Massey v.*
18 *Linton*, 99 Nev. 723 (1983). The time does not begin when the plaintiff discovers the
19 precise facts pertaining to his legal theory but when there is a general belief that
20 negligence may have caused the injury. *Id.* at 728.

21 There is a suggestion in the Defendants' Reply Brief that the Plaintiffs may have
22 been arguing that any delay in filing the Complaint may have been due to a fraudulent
23 concealment of the medical records, and that such a defense needs to be specifically
24 pled. This Court has not interpreted the Plaintiff's position to be one that the records
25 were "fraudulently concealed," only that there was no evidence that they had timely
26 received them. This Court will not take a position on this issue at this time, as it is not
27 necessary as part of the Court's analysis, and it does not change the opinion of the
28 Court either way.

Although 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.

1 Since the family did not receive the report from the State Department of Health and
2 Human Services, indicating that their previously determined cause of death was in
3 error, it is possible that the Plaintiffs were not on inquiry notice until February 4, 2019.
4 This Court is not to grant a Motion to Dismiss or a Motion for Summary Judgment on
5 the issue of a violation of the Statute of Limitations, unless the facts and evidence
6 irrefutably demonstrate that Plaintiff was put on inquiry notice more than one year
7 prior to the filing of the complaint. This Court does not find that such evidence is
8 irrefutable, and there remains a genuine issue of material fact as to when the Plaintiffs
9 were actually put on inquiry notice. Such issue is an issue of fact, appropriate for
10 determination by the trier of fact. Consequently, Summary Judgment would not be
11 appropriate, and the Motion for Summary Judgment, and the Joinders thereto, must
12 be denied.

13 **Defendant, Juliano's Motion for Summary Judgment, and Defendant**
14 **Concio and Shah's Motion for Partial Summary Judgment on Emotional**
15 **Distress Claims.**

16 On or about 05/03/17, 41-year-old Rebecca Powell was transported to
17 Centennial Hospital. Rebecca ultimately died on 05/11/17. Plaintiffs allege that the
18 death was due to inadequate and absent monitoring, a lack of diagnostic testing, and
19 improper treatment. Furthermore, Plaintiffs allege that Rebecca Powell's negligent
20 death caused them Negligent Infliction of Emotional Harm.

21 Defendant, Doctor Dionice Juliano, argues that based on the discovery which
22 has taken place, the medical records, and specifically his own affidavit, there are no
23 material facts suggesting he was responsible for the care and treatment of Rebecca
24 Powell after May 9, 2017.¹ Further, Defendant argues that for a claim for Negligent
25 Infliction of Emotional to survive, the plaintiff must be physically present for the act
26 which is alleged to have inflicted that emotional distress.

27 Defendants further argue that Summary Judgment is warranted because the
28 Plaintiff failed to timely respond to Requests for Admission, and consequently,

¹ Dr. Dionice Juliano's Affidavit indicates that the patient was admitted on May 3, 2017, by the physician working the night shift. Dr. Juliano saw her for the first time on May 4, 2017, and was her attending physician, until he handed her off at the end of a "week-on, week-off" rotation on Monday, May 8, 2017. He had no responsibility for her after May 8, as he was off duty until Tuesday, May 16, 2017. The Plaintiffs' Complaint is critical of the acts or omissions which occurred on May 10 and 11, 2017.

1 pursuant to NRCP 36, they are deemed admitted. Defendants argue that Plaintiffs have
2 no good cause for not responding.

3 Plaintiffs argue that Defendants prematurely filed their motions since there is
4 over a year left to conduct discovery. Moreover, Plaintiffs argue that Defendants acted
5 in bad faith during a global pandemic by sending the admission requests and by not
6 working with Defendants' counsel to remind Plaintiffs' counsel of the missing
7 admission requests. Moreover, since Defendants have not cited any prejudice arising
8 from their mistake of submitting its admission requests late, this Court should deem
9 Plaintiffs' responses timely or allow them to be amended or withdrawn. Plaintiffs ask
10 this Court to deny the premature motions for Summary Judgment and allow for
discovery to run its natural course.

11 Pursuant to NRCP 56, and the relevant case law, summary judgment is
12 appropriate when the evidence establishes that there is no genuine issue of material
13 fact remaining and the moving party is entitled to judgment as a matter of law. All
14 inferences and evidence must be viewed in the light most favorable to the non-moving
15 party. A genuine issue of material fact exists when a reasonable jury could return a
16 verdict for the non-moving party. See NRCP 56, *Ron Cuzze v. University and*
17 *Community College System*, 123 Nev. 598, 172 P.3d 131 (2008), and *Golden Nugget v.*
18 *Ham*, 95 Nev. 45, 589 P.2d 173 (1979), and *Oehler v. Humana, Inc.*, 105 Nev. 348
19 (1987). While the pleadings are construed in the light most favorable to the non-
20 moving party, however, that party is not entitled to build its case on "gossamer threads
of whimsy, speculation, and conjecture." *Miller v. Jones*, 114 Nev. 1291 (1998).

21 With regard to the Requests for Admissions, NRCP 36(a)(3) provides that a
22 matter is deemed admitted unless, within 30 days after being served, the party sends
23 back a written answer objecting to the matters. Here, Plaintiff's counsel failed to
24 respond to Defendants' counsel request for admissions during the allotted time.
25 Defendants' counsel argues that Plaintiffs should not be able to withdraw or amend
26 their responses because their attorney was personally served six different times and
27 emailed twice as notice that they were served the admission requests. On the other
28 hand, Plaintiffs' counsel argued that their late response was due to consequences from
the unprecedented global pandemic that affected their employees and work. NRCP
36(b) allows the Court to permit the admission to be withdrawn or amended if it would

1 promote the presentation of the merits. Since Nevada courts, as a public policy, favor
2 hearing cases on its merits, and because this Court finds that the global pandemic
3 should count as “good cause,” this Court will allow Plaintiffs’ late responses to be
4 recognized as timely responses. They were filed approximately 40 days late, but the
5 Court finds that the delay was based on “good cause,” and that they will be recognized
6 as if they had been timely responses.

7 Under *State v. Eaton*, 101 Nev. 705, 710 P.2d 1370 (1985), to prevail in a claim
8 for Negligent Infliction of Emotional Distress, the following elements are required: (1)
9 the plaintiff was located near the scene; (2) the plaintiff was emotionally injured by the
10 contemporaneous sensory observance of the accident; and (3) the plaintiff was closely
11 related to the victim. The Plaintiffs argue that although there has been a historical
12 precedent requiring the plaintiff to have been present at the time of the accident. This
13 Court previously held in this case that the case of *Crippens v. Sav On Drug Stores*, 114
14 Nev., 760, 961 P.2d 761 (1998), precluded the Court from granting a Motion to Dismiss.
15 Although the burden for a Motion for Summary Judgment is different, the Court is still
16 bound by the Nevada Supreme Court’s decision in *Crippens*, which indicated, “it is not
17 the precise position of plaintiff or what the plaintiff saw that must be examined. The
18 overall circumstances must be examined to determine whether the harm to the plaintiff
19 was reasonably foreseeable. Foreseeability is the cornerstone of this court’s test for
20 negligent infliction of emotional distress.” *Id.* The Court still believes that the
21 “foreseeability” element is more important than the location of the Plaintiffs, pursuant
22 to the Court’s determination in *Crippens*, and such an analysis seems to be a factual
23 determination for the trier of fact. Consequently, Summary Judgment on the basis of
24 the Plaintiff’s failure to be present and witness the death of the decedent, seems
25 inappropriate.

26 With regard to the argument that Dr. Juliano did not participate in the care of
27 the Plaintiff during the relevant time period, the Plaintiff’s objection simply indicates
28 that the motion is premature, but fails to set forth any facts or evidence to show that
Dr. Juiliano was in fact present or involved in the care of the decedent during the
relevant time period. The Court believes that this is what the Nevada Supreme Court
was referring to when it said that a Plaintiff is not entitled to build its case on
“gossamer threads of whimsy, speculation, and conjecture.” *Miller v. Jones*, 114 Nev.

1 1291 (1998). As the Plaintiffs have been unable to establish or show any facts or
2 evidence indicating that Dr. Juliano was present during the relevant time period, the
3 Court believes that no genuine issues of material fact remain in that regard and Dr.
4 Juliano is entitled to Summary Judgment. With regard to all other issues argued by the
5 parties, the Court finds that genuine issues of material fact remain, and summary
6 judgment would therefore not be appropriate.

7 Based upon the foregoing, and good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendants Valley's and Universal's Motion
9 for Summary Judgment Based upon the Expiration of the Statute of Limitations, and
all Joinders thereto are hereby **DENIED**.


10 **IT IS FURTHER ORDERED** that Defendant Juliano's Motion for Summary
11 Judgment is hereby **GRANTED**, and Dr. Juliano is hereby Dismissed from the Action,
without prejudice.


12 **IT IS FURTHER ORDERED** that the Defendants, Concio and Shah's Motion
13 for Partial Summary Judgment on the Negligent Infliction of Emotional Distress
14 Claims is hereby **DENIED**. All joinders are likewise **DENIED**.

15 **IT IS FURTHER ORDERED** that because the Court has ruled on these
16 Motions on the papers, the hearing scheduled for November 4, 2020, with regard to the
foregoing issues is now moot, and will be taken off calendar.

17 Dated this 28th day of October, 2020.

Dated this 29th day of October, 2020

18
19
20
21
22
23
24
25
26
27
28

JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DENVER, CO 80202
Jerry A. Wiese
District Court Judge


CLERK OF THE COURT

1 **ORDR**
2 **S. BRENT VOGEL**
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 **ADAM GARTH**
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **ESTATE OF REBECCA POWELL, through**
13 **BRIAN POWELL, as Special Administrator;**
14 **DARCI CREECY, individually and as Heir;**
15 **TARYN CREECY, individually and as an**
16 **Heir; ISALAH KHOSROF, individually and as**
17 **an Heir; LLOYD CREECY, individually;**

18 **Plaintiffs,**

19 **vs.**

20 **VALLEY HEALTHSYSTEM, LLC (doing**
21 **business as "Centennial Hills Hospital Medical**
22 **Center"), a foreign limited liability company;**
23 **UNIVERSAL HEALTH SERVICES, INC., a**
24 **foreign corporation; DR. DIONICE S.**
25 **JULIANO, M.D., an individual; DR.**
26 **CONRADO C.D. CONCIO, M.D., an**
27 **individual; DR. VISHAL S. SHAH, M.D., an**
28 **individual; DOES 1-10; and ROES A-Z;**

Defendants.

Case No. A-19-788787-C

Dept. No.: 30

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

25 This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
26 accordance with the order granting the petition for a writ of mandamus issued by the Nevada
27 Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
28 2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDALAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D,
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence—that in treating Rebecca Powell, her health care providers failed “to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s
12 negligence may have caused his or her injury” triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell’s health while in Defendants’ care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor’s*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, “demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law”
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

Dated this 19th day of November, 2021

4
5 Dated: _____


DISTRICT COURT JUDGE

6
7
8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021
Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq.,
13 PAUL PADDALAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 Attorneys for Plaintiffs

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: Brad Shipley
To: Garth, Adam; Srilata Shah; Paul Padda
Cc: Vogel, Brent; Rokni, Roya; Sirsy, Shady; San Juan, Maria
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: image001.png

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

Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

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>; John Cotton <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



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

From: 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 <bshiplev@ihcottonlaw.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>; ihcotton@ihcottonlaw.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"

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

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
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



PAUL PADDA LAW
TRIAL ATTORNEYS

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

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

Sent: Friday, November 12, 2021 8:50 AM

To: Srilata Shah <ssri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshiplev@ihcottonlaw.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>; ihcotton@ihcottonlaw.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



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

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

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <ssri@paulpaddalaw.com>; Paul Padda <psp@paulpaddalaw.com>; Brad Shipley <bshiplev@ihcottonlaw.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>; ihcotton@ihcottonlaw.com

Subject: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"

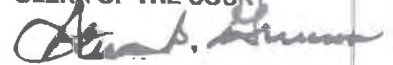
Importance: High

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



1 NOAS
S. BRENT VOGEL
2 Nevada Bar No. 6858
Brent.Vogel@lewisbrisbois.com
3 ADAM GARTH
Nevada Bar No. 15045
4 Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
5 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
6 Telephone: 702.893.3383
Facsimile: 702.893.3789
7 *Attorneys for Defendant Valley Health System,*
8 *LLC dba Centennial Hills Hospital Medical*
Center

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 ESTATE OF REBECCA POWELL, through
BRIAN POWELL, as Special Administrator;
12 DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an
13 Heir; ISALAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually;

14 Plaintiffs,

15 vs.

16 VALLEY HEALTH SYSTEM, LLC (doing
business as "Centennial Hills Hospital Medical
17 Center"), a foreign limited liability company;
18 UNIVERSAL HEALTH SERVICES, INC., a
foreign corporation; DR. DIONICE S.
19 JULIANO, M.D., an individual; DR.
CONRADO C.D. CONCIO, M.D., an
20 individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; and ROES A-Z;

21 Defendants.
22

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM, LLC DBA CENTENNIAL
HILLS HOSPITAL MEDICAL CENTER'S
NOTICE OF APPEAL**

23 Notice is hereby given that Defendant VALLEY HEALTH SYSTEM, LLC, through its
24 counsel, Lewis Brisbois Bisgaard & Smith LLP, hereby appeals to the Supreme Court of Nevada
25 from the following District Court, Clark County, Nevada order in this matter:

26 The District Court's Order denying Defendant Valley Health System, LLC's Motion For
27 Attorneys' Fees Pursuant To N.R.C.P. 68, N.R.S. §§ 17.117, 7.085, 18.010(2), and EDCR 7.60,
28

1 entered February 16, 2022, attached hereto as Exhibit A.

2 DATED this 14th day of March, 2022

3
4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ Adam Garth

7 S. BRENT VOGEL

8 Nevada Bar No. 6858

9 ADAM GARTH

10 Nevada Bar No. 15045

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 Tel. 702.893.3383

14 *Attorneys for Attorneys for Defendant Valley*

15 *Health System, LLC dba Centennial Hills Hospital*

16 *Medical Center*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 14th day of March, 2022, a true and correct copy
3 of **DEFENDANT VALLEY HEALTH SYSTEM, LLC DBA CENTENNIAL HILLS**
4 **HOSPITAL MEDICAL CENTER'S NOTICE OF APPEAL** was served by electronically filing
5 with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an
6 email-address on record, who have agreed to receive electronic service in this action.

7 Paul S. Padda, Esq.
8 PAUL PADDA LAW, PLLC
9 4560 S. Decatur Blvd., Suite 300
10 Las Vegas, NV 89103
11 Tel: 702.366.1888
12 Fax: 702.366.1940
13 psp@paulpaddalaw.com
14 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jh cotton@jh cottonlaw.com
bshipleyr@jh cottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

15 By /s/ Heidi Brown
16 An Employee of
17 LEWIS BRISBOIS BISGAARD & SMITH LLP
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



1 **NOED**

2 **PAUL S. PADDA, ESQ. (NV Bar #10417)**

3 Email: psp@paulpaddalaw.com

4 **SRILATA SHAH, ESQ. (NV Bar #6820)**

5 Email: sri@paulpaddalaw.com

6 **PAUL PADDA LAW, PLLC**

7 4560 South Decatur Boulevard, Suite 300

8 Las Vegas, Nevada 89103

9 Tele: (702) 366-1888

10 Fax: (702) 366-1940

11 Attorneys for Plaintiffs

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 ESTATE OF REBECCA POWELL, through
15 BRIAN POWELL, as Special Administrator;
16 DARCI CREECY, individually and as an Heir;
17 TARYN CREECY, individually and as an
18 Heir; ISAIAH KHOSROF, individually and as
19 an Heir; LLOYD CREECY, individually;

20 Plaintiffs,

21 vs.

22 VALLEY HEALTH SYSTEM, LLC (doing
23 business as "Centennial Hills Hospital Medical
24 Center"), a foreign limited liability company;
25 UNIVERSAL HEALTH SERVICES, INC., a
26 foreign corporation; DR. DIONICE S.
27 JULIANO, M.D., an individual; DR.
28 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 (30)

**NOTICE OF ENTRY OF ORDER AND
DECISION REGARDING VALLEY
HEALTH SYSTEM'S MOTION FOR
FEES AND COUNTERMOTION FOR
FEES AND COSTS**

1

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

Notice Of Entry Of Order And Decision Regarding Valley Health System's Motion For Fees
PPL #201297-15-06

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

1 Notice is hereby provided that the Court filed an Order and Decision pertaining to
2 Valley Health System's Motion for Fees and the Countermotion for Fees and Costs. A copy of
3 that Order and Decision is attached hereto as Exhibit A.
4

5 Respectfully submitted,

6 /s/ Paul S. Padda
7

8 Paul S. Padda, Esq.
9 Srilata Shah, Esq.
10 PAUL PADDALAW, PLLC
11 4560 South Decatur Blvd., #300
12 Las Vegas, Nevada 89103
13 Tele: (702) 366-1888

14 Counsel for Plaintiffs

15 Dated: February 16, 2022
16
17
18
19
20
21
22
23
24
25

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

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, February 16, 2022, a copy of the foregoing **NOTICE OF ENTRY OF ORDER AND DECISION REGARDING VALLEY HEALTH SYSTEM'S MOTION FOR FEES AND COUNTERMOTION FOR FEES AND COSTS** was filed and served through the Court's electronic filing system upon all parties and counsel identified on the Court's master e-service list.

/s/ Shelbi Schram

Shelbi Schram, Litigation Assistant
PAUL PADDA LAW

EXHIBIT A

EXHIBIT A

Atkinson
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;
ISALAH 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 FEES
AND COUNTERMOTION
FOR FEES AND COSTS**

INTRODUCTION

The above-referenced matter is scheduled for a hearing on 2/18/22, with regard to Defendant, Valley Health System (Centennial Hospital's) Motion for Attorneys' Fees and Countermotion for Fees and Costs. Pursuant to the Administrative Orders of the Court, as well as EDCR 2.23, these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to decide these matters 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.

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

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems', Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs.

19 SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

20 Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
21 Center (CHH) seeks attorneys' fees pursuant to NRCP 68(f) and NRS 17.117(10). CHH
22 argues that it is entitled to an award of attorneys' fees because Plaintiffs rejected CHH's
23 Offer of Judgment and then failed to obtain a more favorable judgment. See *Albios v.*
Horizon Cmty., Inc., 122 Nev. 409, 417, 132 P.3d 1022 (2006); *Logan v. Abe*, 131 Nev.
24 260, 268, 350 P.3d 1139 (2015).

25 CHH states that it served an Offer of Judgment on Plaintiffs for a waiver of any
26 presently or potentially recoverable costs, in full and final settlement of the Plaintiff's
27 claims. Plaintiffs rejected this Offer of Judgment by failing to accept it within 14 days.
28 N.R.C.P. 68(e) and N.R.S. 17.117(6). As this Court was directed by the Supreme Court to
vacate its order denying summary judgment to CHH and instead issue an order
granting CHH's summary judgment motion, Plaintiffs failed to obtain more a favorable
judgment than the one offered to them in CHH's Offer of Judgment. Thus, pursuant to

1 N.R.C.P. 68 and N.R.S. 17.117, this Court has discretion to award CHH its attorneys'
2 fees.

3 CHH cites to *Schouweiler v. Yancey Co.*, for the proposition that a Court must
4 consider the following factors in exercising its discretion to award fees: (1) whether
5 the offeree brought his claims in good faith; (2) whether the offeror's offer of judgment
6 was also brought in good faith in both timing and amount; (3) whether the offeree's
7 decision to reject the offer of judgment was in bad faith or grossly unreasonable; and
8 (4) whether the amount of offeror's requested fees is reasonable and justified.

9 *Schouweiler*, 101 Nev. 827, 833, 917 P.2d 786 (1985). CHH argues that all of the
10 *Schouweiler* factors weigh in favor of CHH.

11 As to the first factor, CHH notes that the Supreme Court determined Plaintiffs
12 were on notice of any alleged malpractice in this case, in possession of records long
13 before the statute of limitations expired, and knowingly initiated complaints to State
14 agencies manifesting definitive knowledge and belief of malpractice. Nevertheless,
15 CHH argues, Plaintiffs chose to initiate a lawsuit "which was dead on arrival,
16 continued to maintain it even after irrefutable evidence demonstrated its untenability,
17 and then used every opportunity to prevent the expenditure of additional resources in
18 order to prove the impropriety of the lawsuit." Accordingly, Plaintiffs' claims were not
19 brought in good faith.

20 With regard to the second factor, CHH argues that its Offer of Judgment was
21 brought in good faith in both timing and amount. At the time of the Offer, CHH had
22 incurred over \$58,000.00 in costs defending Plaintiffs' claims. The Offer was served
23 several days prior to CHH's Motion for Summary Judgment and about one and a half
24 years after the lawsuit's commencement. Before the Motion for Summary Judgment
25 was filed, Plaintiffs were in possession of documents that demonstrated irrefutable
26 evidence of inquiry notice. Plaintiffs were on notice of the statute of limitations issues
27 as early as July 2019 when CHH's prior counsel filed a Motion to Dismiss. Therefore,
28 given Plaintiffs' likelihood of losing on merits, the offered waiver of the right to seek
reimbursement of costs was reasonable in both timing and amount.

For similar reasons, CHH argues that Plaintiffs' decision to reject the offer of
judgment was in bad faith and grossly unreasonable. Instead of abandoning their

1 untimely filed action, Plaintiffs' decision to pursue an untenable case caused CHH to
2 incur substantial legal costs and expenses to seek dismissal.

3 CHH argues that the fourth factor regarding the reasonableness of CHH's
4 requested attorneys' fees also weighs in favor of CHH. Pursuant to NRCP 68, CHH may
5 recover their attorneys' fees from the date of service of the Offer of Judgment to the end
6 of the matter. In this case, CHH served an Offer of Judgment on 8/28/20 that expired
7 on 9/11/20. CHH states it incurred a total of \$110,930.85 in attorneys' fees alone (not
8 inclusive of expenses) from 8/28/20 to the present billing cycle (which does not
9 include all fees incurred in October 2021). Additionally, CHH incurred \$31,401.10 in
disbursements including expert fees and other expenses since 8/28/20.

10 CHH argues that the amount of its bills is reasonable, given the amount of time
11 and energy needed to defend this case, engage in extensive written discovery, extensive
12 motions and appeals practice, and, expert time and expenses, due to Plaintiffs' refusal
13 to stipulate to stay the litigation while the summary judgment issue made its way
14 through the court system. Additionally, medical malpractice cases are complex, involve
15 substantial amounts of expert testimony, and require a great deal of preparation. CHH
16 states that documents are available for in camera review by this Court, but were not
17 attached to the Motion in order to preserve attorney-client privilege and protect
information contained within the descriptions of the attorney billing.

18 With regard to the *Brunzell vs. Golden Gate* analysis, CHH indicates that
19 attorneys Mr. Garth and Mr. Vogel are experienced litigators that focus exclusively on
20 medical malpractice. Both have practiced many years and are partners at Lewis
21 Brisbois. They both billed \$225/hour on this matter. Where appropriate, work was also
22 assigned to associate attorneys (\$193.50/hour) and paralegals (\$90/hour).

23 CHH notes that medical malpractice cases are complex and require an in-depth
24 understanding of both unique legal issues as well as the medical care and course that is
25 at issue. Plaintiffs claimed that they were entitled to \$105,000,000.00 in damages
26 including \$172,728.04 billed by CHH as a recoverable expense, plus a loss of earning
capacity of \$1,348,596.

27 There were multiple highly skilled expert witnesses presented by both parties.
28 Further, nearly 14 months have passed since CHH's Offer of Judgment expired,
including the participation in motion practice regarding a motion for summary

1 judgment, two motions to stay proceedings (one in this Court and one in Supreme
2 Court), a writ petition to the Nevada Supreme Court, as well as extensive written
3 discovery. CHH argues that its requested attorneys' fees are well below the amounts
4 Nevada courts have found reasonable. Defendants are only requesting attorneys' fees at
5 a rate of \$225 and \$193.50 per hour, and a paralegal rate of \$90 per hour. CHH argues
6 that a consideration of the *Brunzell* factors shows that the recovery of the entire billed
7 amount of fees from August 28, 2020 to present is entirely appropriate. *Brunzell*, 85
8 Nev. 345, 455 P.2d 31 (1969).

9 In addition to all NRCP Rule 68 post offer fees and costs, CHH requests that
10 sanctions be imposed against Plaintiffs' counsel for all pre-NRCP Rule 68 costs and fees
11 totaling \$58,514.36 in accordance with NRS 7.085. CHH cites to EDCR 7.60, which
12 provides a further avenue of deterrence to attorneys, like Plaintiffs' counsel who engage
13 in these unnecessary and flagrantly frivolous lawsuits, which are dead before they are
14 even filed. Accordingly, CHH argues that an award of \$110,930.85 in attorneys' fees per
15 N.R.C.P. 68 and N.R.S. §§ 17.117, plus \$58,514.36 in pre-NRCP 68 offer fees and
16 expenses pursuant to N.R.S. §§ 7.085, 18.010(2) and EDCR 7.60, is justified. CHH
17 argues that it is entitled to an award of his attorney's fees and costs under NRS
18 §18.010(2)(b), as Plaintiffs maintained the lawsuit without reasonable grounds or to
19 harass the Defendants.

20 CHH's separately filed a Verified Memorandum of Costs indicates that it seeks
21 costs, pursuant to NRS 18.005 and 18.020, as well as NRCP 68 and NRS 17.117, in the
22 amount of \$42,492.03. A majority of the costs requested (\$41,724.10) are for expert
23 fees. CHH argues that the experts all meet the factors set forth in *Frazier v. Drake*.

24 In Opposition, Plaintiffs argue that the medical malpractice, wrongful death, and
25 negligent infliction of emotional distress claims on behalf of the estate and surviving
26 children of Rebecca Powell were not frivolous, and the claims for wrongful
27 death/medical malpractice and negligent infliction of emotional distress were brought
28 in good faith. Because this Court denied several dispositive motions before the Nevada
Supreme Court ultimately directed this Court to vacate its Order denying CHH's
Motion for Summary Judgment and enter judgment in favor of all the Defendants,
CHH did not "win" this matter on the merits.

1 Plaintiffs argue that the dismissal of the case on an incorrect interpretation of
2 the facts and application of inquiry notice to all the named Plaintiffs by the Supreme
3 Court does not make the claims of Plaintiffs any less meritorious. Further, pursuant to
4 NRCP 68, and NRS 17.117(10), a party is not entitled to attorney's fees simply because it
5 served an offer of judgment on the opposing party and that party failed to achieve a
6 more favorable verdict. The purpose of NRCP 68 is to encourage settlement; it is not to
7 force Plaintiffs' unfairly to forego legitimate claims. See *Beattie v. Thomas*, 99 Nev.
8 579, 668 P.2d 268 (1983).

9 Plaintiffs argue that their claims were brought in good faith, as HHS determined
10 that there were deficiencies in Ms. Powell's care and the death certificate was
11 inaccurate. Additionally, this Court repeatedly found merit in Plaintiffs' Complaint and
12 their causes of action for wrongful death, medical malpractice, and negligent infliction
13 of emotional harm.

14 Plaintiffs argue that Defendant's Offer of Judgment, to waive costs and fees, of
15 \$58,514.36 was not reasonable and nor was it in good faith considering Plaintiffs'
16 causes of action for medical malpractice, wrongful death, and negligent infliction of
17 emotional harm. Plaintiffs lost their mother, who was only 41 years old at the time of
18 her death. It was reasonable for Plaintiffs to reject Defendants' Offer of Judgment, as
19 the terms of the Offer of Judgment did not provide for any monetary recovery to
20 Plaintiffs to compensate them for the loss of their mother. CHH indicated at the time it
21 had incurred \$53,389.90 in fees and \$5,124.46 in costs, but no supporting documents
22 were provided. Moreover, this Court denied the Motion for Summary Judgment.
23 Therefore, CHH incorrectly states that given the likelihood of losing on this issue, the
24 offered waiver of right to seek reimbursement of costs was reasonable in both timing
25 and amount. Further, Plaintiffs contend that their decision to reject the Offer of
26 Judgment was not grossly unreasonable nor in bad faith because no amount was being
27 offered in damages to the Plaintiffs.

28 With regard to the fees sought, Plaintiffs argue that CHH won on a technicality
at the Supreme Court, and not on the merits or by way of a jury verdict in favor of
Defendants. Plaintiffs argue that CHH incurred so much in fees because it continued
filing motions based on the same statute of limitations theory. Thus, CHH's fees are
unreasonable and unjustified. Plaintiffs also claim they are unable to properly evaluate

1 the reasonableness of CHH's attorney's fees because Defendant only presented a
2 summary of the fees that were incurred.

3 Plaintiffs argue that it is absurd for CHH to suggest that the provisions of NRS
4 7.085 even apply to the facts of this case, and that Plaintiffs' attorneys violated NRS
5 18.010(2), NRCP 11 or EDCR 7.60. Plaintiffs further argue that CHH has not provided
6 factual support to support the request for pre-NRCP 68 costs and fees pursuant to NRS
7 7.085. Plaintiffs ask that this Court deny the application for fees and costs as the
8 Plaintiffs did not submit frivolous or vexatious claims and did not over burden the
9 limited judicial resources nor did it hinder the timely resolution of meritorious claims.
10 Similarly, Plaintiffs contend that CHH has not provided any factual support for its
11 request for attorneys' fees pursuant to EDCR 7.60 or 18.010(2).

12 In Reply, CHH argues that Plaintiffs' entire opposition is predicated on the false
13 assertion that they possessed a viable case in the first instance. CHH argues that,
14 "Plaintiffs' entire argument is that because this Court repeatedly denied dismissal
15 attempts by the respective defendants despite clear, convincing, and irrefutable
16 evidence of inquiry notice which each and every plaintiff possessed, they are somehow
17 absolved from either their malpractice or unethical practice of pursuing a case which
18 was dead on arrival when filed."

19 CHH argues that the Nevada Supreme Court held that the "district court
20 manifestly abused its discretion when it denied summary judgment." CHH argues that
21 this matter should have been dismissed a year ago at the latest.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 With regard to the requested costs, in *Frazier v. Drake*, 131 Nev. 632, 357 P.3d
24 365 (NV.Ct.of App., 2015), the Court noted that NRS 18.005(5) provides for the
25 recovery of "reasonable fees of not more than five expert witnesses in an amount of not
26 more than \$1,500 for each witness unless the court allows a larger fee after
27 determining that the circumstances surrounding the expert's testimony were of such
28 necessity as to require the larger fee." *Id.*, at 644. The Court went on to state the
following:

... we conclude that any award of expert witness fees in excess of \$1,500
per expert under NRS 18.005(5) must be supported by an express,
careful, and preferably written explanation of the court's analysis of
factors pertinent to determining the reasonableness of the requested fees
and whether "the circumstances surrounding the expert's testimony were

1 of such necessity as to require the larger fee." See NRS 18.005(5); cf.
2 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 93, 787 P.2d 777, 780
3 (1990) (requiring an "express, careful and preferably written explanation"
4 of the district court's analysis of factors pertinent to determining whether
5 a dismissal with prejudice is an appropriate discovery sanction). *In*
6 *evaluating requests for such awards, district courts should*
7 *consider the importance of the expert's testimony to the*
8 *party's case; the degree to which the expert's opinion aided*
9 *the trier of fact in deciding the case; whether the expert's*
10 *reports or testimony were repetitive of other expert witnesses;*
11 *the extent and nature of the work performed by the expert;*
12 *whether the expert had to conduct independent investigations*
13 *or testing; the amount of time the expert spent in court,*
14 *preparing a report, and preparing for trial; the expert's area*
15 *of expertise; the expert's education and training; the fee*
16 *actually charged to the party who retained the expert; the fees*
17 *traditionally charged by the expert on related matters;*
18 *comparable experts' fees charged in similar cases; and, if an*
19 *expert is retained from outside the area where the trial is held,*
20 *the fees and costs that would have been incurred to hire a*
21 *comparable expert where the trial was held.*

22 *Id.*, at 650-651.

23 The Defendant, CHH, argues the importance of the testimony of each of the
24 witnesses, and how their respective opinions were necessary for the Defendant's case.
25 CHH argues that the medical experts expended "many hours," and "prepared two
26 written reports." There was no discussion in the briefing about repetitiveness, whether
27 they had to conduct independent investigations or testing, the amount of time spent in
28 court, preparing reports, or preparing for trial, the fees charged to the Defendant, and
the fees traditionally charged, and what they charge compared to other experts, etc.
Consequently, the Court could allow the expert fee of \$1,500.00, for up to 5 expert
witnesses, if the Court were able to find that the experts were relevant and the fees
incurred, but the Court cannot allow expert fees in excess of \$1,500.00 without a
Frazier analysis.

Additionally, the Court notes that any costs awarded need to be itemized and
documented. The Nevada Supreme Court has stated that without "itemization or
justifying documentation," the Court is "unable to ascertain whether such costs were
accurately assessed." *Bobby Berosini, Ltd. V. People for the Ethical Treatment of*
Animals, 114 Nev. 1348, 1353, 971 P.2d 383 (1998). Further, when the "memorandum

1 of costs is completely void of any specific itemization," and a "lack of supporting
2 documentation," it is an abuse of discretion on the part of the Court if it awards the
3 requested costs. *Id.* The Supreme Court has further indicated that "justifying
4 documentation' must mean something more than a memorandum of costs." *Cadle Co.*
5 *v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015). The Court has
6 further indicated that "Without evidence to determine whether a cost was reasonable
7 and necessary, a district court may not award costs." *Id.*, citing *Peta*, 114 Nev. at 1353,
8 971 P.2d at 386. In this case, Defendant produced a "Disbursement Diary," but based
9 on the above-referenced cases, this is insufficient to support the requested costs. There
10 is insufficient evidence submitted for the Court to determine whether the requested
11 costs were reasonable and necessary, there was no specific itemization, other than the
12 Disbursement Diary, and there were no supporting documents.

13 Based upon the foregoing, the Court cannot award costs.

14 NRCP 68 provides in pertinent part as follows:

15 **Rule 68. Offers of Judgment**

16 (a) The Offer. At any time more than 21 days before trial, any party
17 may serve an offer in writing to allow judgment to be taken in accordance
18 with its terms and conditions. Unless otherwise specified, an offer made
19 under this rule is an offer to resolve all claims in the action between the
20 parties to the date of the offer, including costs, expenses, interest, and if
21 attorney fees are permitted by law or contract, attorney fees.

22
23 (d) Acceptance of the Offer and Dismissal or Entry of Judgment.

24 (1) Within 14 days after service of the offer, the offeree may accept
25 the offer by serving written notice that the offer is accepted.

26 (2) Within 21 days after service of written notice that the offer is
27 accepted, the obligated party may pay the amount of the offer and obtain
28 dismissal of the claims, rather than entry of a judgment.

(3) If the claims are not dismissed, at any time after 21 days after
service of written notice that the offer is accepted, either party may file
the offer and notice of acceptance together with proof of service. The clerk
must then enter judgment accordingly. The court must allow costs in
accordance with NRS 18.110 unless the terms of the offer preclude a
separate award of costs. Any judgment entered under this section must be
expressly designated a compromise settlement.

(e) Failure to Accept Offer. If the offer is not accepted within 14
days after service, it will be considered rejected by the offeree and deemed
withdrawn by the offeror. . . . Any offeree who fails to accept the offer
may be subject to the penalties of this rule.

(f) Penalties for Rejection of Offer.

1 (1) In General. If the offeree rejects an offer and fails to obtain a
2 more favorable judgment:

3 (A) the offeree cannot recover any costs, expenses, or attorney
4 fees and may not recover interest for the period after the service of the
5 offer and before the judgment; and

6 (B) the offeree must pay the offeror's post-offer costs and
7 expenses, including a reasonable sum to cover any expenses incurred by
8 the offeror for each expert witness whose services were reasonably
9 necessary to prepare for and conduct the trial of the case, applicable
10 interest on the judgment from the time of the offer to the time of entry of
11 the judgment and reasonable attorney fees, if any be allowed, actually
12 incurred by the offeror from the time of the offer. If the offeror's attorney
13 is collecting a contingent fee, the amount of any attorney fees awarded to
14 the party for whom the offer is made must be deducted from that
15 contingent fee.

16
17 NRCP 68.

18 NRCP 68 provides that the Defendant would be entitled to "reasonable attorney
19 fees, if any be allowed." The language of the Rule specifically provides that Court with
20 "discretion," as it relates to attorney's fees, and the Court's discretion will not be
21 disturbed absent a clear abuse of such discretion. *Armstrong v. Riggi*, 92 Nev. 280,
22 549 P.2d 753 (1976); *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985);
23 *Bidart v. American Title Ins. Co.*, 103 Nev. 175, 734 P.3d 732 (1987).

24 In evaluating whether to grant an award of attorney's fees, pursuant to
25 *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786 (1985), the Court must
26 consider: "(1) whether plaintiff's claim was brought in good faith; (2) whether
27 defendant's offer of judgment was brought in good faith in both its timing and amount;
28 (3) whether plaintiff's decision to reject the offer and proceed to trial was grossly
unreasonable or in bad faith; and (4) whether fees sought by the offeror are reasonable
and justified in amount." *Schouweiler* at 833, citing *Beattie v. Thomas*, 99 Nev. 579,
668 P.2d 268 (1983)(the "Beattie Factors").

In analyzing whether to award attorneys' fees, the factors which need to be
considered pursuant to *Brunzell*, include the following: (1) the qualities of the advocate:
his ability, training, education, experience, professional standing and skill; (2) the
character of the work to be done: its difficulty, intricacy, importance, the time and skill
required, the responsibility imposed and the prominence and character of the parties
when they affect the importance of the litigation; (3) the work actually performed by
the lawyer: the skill, time and attention given to the work; and (4) the result: whether

1 the attorney was successful and what benefits were derived. *Schouweiler* at 833-834,
2 citing to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969)
3 (quoting *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144, 146 (1959)).

4 With regard to the attorney's fees requested, this Motion is different from the
5 Motion for Fees filed by Drs. Concio and Shaw, in that CHH contends that it incurred
6 \$110,930.85 in attorney's fees since 8/28/20 (roughly twice the fees incurred by Drs.
7 Concio and Shaw). In considering the *Beattie* factors, the Court finds and concludes
8 that the plaintiff's claim was brought in good faith. The Court finds and concludes that
9 Defendant's offer of judgment, in the amount of \$0.00, (offering to waive
10 approximately \$58,500.00 in fees and costs), was brought in good faith in both its
11 timing and amount. The Court acknowledges that the parties disagree about this issue,
12 but as much as the Plaintiffs believed they had a valid case, the Defendants disputed
13 any liability. The Court further finds and concludes that Plaintiff's decision to reject the
14 offer and proceed to trial was not grossly unreasonable or in bad faith. Plaintiffs
15 believed they had a valid claim, and the Court cannot find that wanting some recovery,
16 as opposed to \$0.00, to be "grossly unreasonable" or in "bad faith. With regard to a
17 determination of whether the fees sought by the Defendants are reasonable and
18 justified in amount, a *Brunzell* analysis is required. *Beattie v. Thomas*, 99 Nev. 579,
19 588, 668 P.2d 268 (1983).

20 In determining the reasonableness of the fees requested, the Court has analyzed
21 the *Brunzell* factors, as follows: The Court finds that the qualities of defense counsel,
22 his ability, training, education, experience, professional standing and skill, favor an
23 award of fees. When considering the character of the work to be done - its difficulty,
24 intricacy, importance, the time and skill required, (when dealing with a professional
25 negligence/medical malpractice case), and finding that the character or prominence of
26 the parties was unremarkable, the complexity of the case warrants an award of fees.
27 The Court cannot evaluate the work actually performed by the lawyers, in this case, and
28 the skill, time and attention given to the work, without a detailed billing statement.
Although the Defendant 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 Plaintiff so that the reasonableness could have been addressed by all
parties, and by the Court. Finally, in considering the result, the Court notes that

1 although the Court found insufficient evidence to establish irrefutably that the statute
2 of limitations had expired, Defense counsel was successful in convincing the Supreme
3 Court of that, and consequently, Defendants prevailed. *Brunzell v. Golden Gate Nat'l*
4 *Bank*, 85 Nev. 345, 349, 455 P.2d 31 (1969). Based upon this NRCP 68 analysis, with
5 the exception of being able to analyze the reasonableness of the fees allegedly incurred,
6 the Court would likely have awarded at least some fees to the Defendant, at least for the
7 period of time after rejection of the Offer of Judgment. Without any evidence of the
8 fees actually accrued, and based on the amount requested, the Court cannot make a
9 finding as to the reasonableness of such fees, and consequently, the Court has no choice
under *Brunzell* and *Beattie*, to deny the request for Fees.

10 **CONCLUSION/ORDER**

11 Based upon the foregoing, and good cause appearing,

12 **IT IS HEREBY ORDERED** that the Defendants' Motion for Fees and Costs is
13 **DENIED.**

14 The Court requests that Plaintiff's counsel prepare and process a Notice of Entry
15 with regard to this Order.

16 Because this matter has been decided on the pleadings, the hearing scheduled
17 for 2/18/22 will be taken off calendar, and consequently, there is no need for any
18 parties or attorneys to appear.

19 Dated this 15th day of February, 2022

20 
21
22

23 99B B52 25DC 68DD
24 Jerry A. Wiese
25 District Court Judge
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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; AND LLOYD
CREECY, INDIVIDUALLY,

Respondents.

No. 84402

FILED

APR 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a postjudgment order denying appellant's motion for attorney fees and costs. Preliminary review of the docketing statement, the documents submitted to this court pursuant to NRAP 3(g), and the district court docket entries reveals a potential jurisdictional defect. Specifically, the notice of appeal appears to be prematurely filed under NRAP 4(a) because it appears that it was filed after the timely filing of a tolling motion for reconsideration and before that motion has been formally resolved. See *AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010) (a motion for reconsideration may be considered a tolling motion to alter or amend); *Lytle v. Rosemere Estates Prop. Owners*, 129 Nev. 923, 314 P.3d 946 (2013) (tolling motions directed at an appealable post-judgment order also toll the period to appeal from that order). A timely tolling motion terminates the 30-day appeal period,

and a notice of appeal is of no effect if it is filed after such a tolling motion is filed and before the district court enters a written order finally resolving the motion. See NRAP 4(a)(2).

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondents may file any reply within 14 days from the date that appellant's response is served.

It is so ORDERED.

 C.J.

cc: Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Paul Padda Law, PLLC

**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;)
ISAAH KHOSROF, individually and as an)
Heir; LLOYD CREECY, individually,)

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

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,)

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

Defendants.

INTRODUCTION

The above-referenced matter was scheduled for a hearing on ^{4/1/22}~~3/30/22~~, 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.

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

3 Plaintiffs brought suit on February 4, 2019 alleging negligence/medical
4 malpractice, wrongful death pursuant to NRS 41.085, and negligent infliction of
5 emotional distress. Defendants filed Motions to Dismiss and for Summary Judgment,
6 which this Court denied. After a recent remand from the Nevada Supreme Court, on
7 11/19/21, the Court entered an Order Vacating Prior Order Denying Defendant Valley
8 Health System, LLC DBA Centennial Hills Hospital Medical Center's Motion for
9 Summary Judgment and Granting Said Defendant's Motion for Summary Judgment
10 Per Mandamus of Nevada Supreme Court. A Notice of Entry of Order was entered that
11 same day. On 11/22/21, Defendant Valley Health Systems filed a Motion for Attorneys
12 Fee and Verified Memorandum of Costs. On 12/3/21, Plaintiffs filed a Motion to
13 Extend Time to Respond to Defendants' Valley Health Systems, Dr. Dionice S. Juliano,
14 Dr. Conrado Concio, and Dr. Vishal Shah's Memorandums of Costs. Plaintiffs received
15 an Order Shortening Time on 12/10/21. Following briefing, the Court entered an Order
16 denying Plaintiffs' Motion to Extend Time to Respond, because of a lack of diligence on
17 part of the Plaintiffs. On 12/20/21, Valley filed an Opposition to Plaintiff's Motion to
18 Extend Time to Retax Costs, and Countermotion for Fees and Costs. This Court
19 entered an Order on 2/15/22 denying Valley's Motion for Fees and Countermotion for
20 Fees and Costs. Thereafter, Valley filed an Appeal dealing specifically with the Court's
21 denial of fees and costs. Consequently, this Court no longer has jurisdiction to address
22 the issue of fees and costs. If the Court were inclined to reconsider its previous
23 decision, the most it could do would be to enter a *Honeycutt* Order (See *Honeycutt v.*

24 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

25 Valley Health System, d/b/a Centennial Hills Hospital (CHH) requests that the
26 Court reconsider its 2/15/22 Order denying attorneys' fees and costs and award it
27 \$110,930.85 in attorneys' fees per N.R.C.P. 68 and NRS § 17.117, plus \$58,514.36 in
28 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.

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

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

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

26 CHH argues that although the Court correctly found that CHH's offer of
27 judgment was made in good faith and its timing was proper, it erroneously found
28 "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

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

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

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

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

27 With regard to CHH's request to reconsider the denial of fees, Plaintiffs note that
28 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

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

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

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

22 In Reply, CHH argues that Plaintiff incorrectly asserts CHH "has not presented
23 any new or substantially different evidence than what it had the opportunity to present
24 when it filed its original Verified Memorandum of Costs and separate Motion for
25 Attorneys' Fees..." CHH's instant motion is predicated on this Court's clearly erroneous
26 decision to: (1) refuse to sign a judgment for an undisputed amount of legally
27 awardable costs to which CHH is entitled, and (2) to deny additional costs and
28 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.

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

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

23 Moreover, CHH states that Plaintiffs never disputed, nor to this day dispute, the
24 veracity and accuracy of the costs contained in the verified memorandum of costs. CHH
25 argues that, "There was no absence of evidence justifying the costs. The Court just
26 chose to ignore it and improperly declared they were insufficient, citing to the
27 aforementioned authority." CHH argues that the authority does stand for the proposition for
28 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.

1 CHH further states:

2 Rather than accepting the Supreme Court's decision and rationale, this
3 Court's denial of CHH's motion and the rationale behind that decision
4 continues to perpetuate the false notion that the action was either
5 brought or maintained in good faith, a fact completely dispelled by the
6 Supreme Court's decision. Thus, denying costs and attorneys' fees in light
7 of the Supreme Court's decision is not only clearly erroneous, it is also a
8 manifest abuse of discretion which the instant motion seeks to redress.

9 Again, this Court possessed admissible evidence of the work, time and
10 expenses on the original motion. This Court wanted more than that. This
11 motion gives the Court everything it could possibly need. Moreover, all of
12 this could have been obviated by a hearing with an opportunity for all
13 parties to participate to consider the totality of the evidence which has
14 now been submitted, and would have been submitted had the in camera
15 inspection thereof been considered.

16 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

21 Nevada courts have inherent authority to reconsider their prior orders. See,
22 *Trail v. Faretto*, 91 Nev. 401 (1975). A party may, "for sufficient cause shown ... request
23 that a court ... amend, correct, resettle, modify, or vacate, as the case may be, an order
24 previously made and entered ... in the case or proceeding. *Id.* at 403. A court may
25 exercise its discretion to revisit and reverse a prior ruling if any one of five
26 circumstances is present: (1) a clearly erroneous ruling; (2) an intervening change in
27 controlling law; (3) substantially different evidence; (4) other changed circumstances;
28 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

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

9 Additionally, Defendants argue that because they submitted a Memorandum of
10 Costs, which was not timely objected to, they are “entitled” to whatever they asked for.
11 This is also incorrect. A party is only entitled to costs if they are substantiated, and the
12 Court finds that such costs were reasonable, and incurred in the subject litigation.
13 *Frazier v. Drake*, 131 Nev. 632, 357 P.3d 365 (NV.Ct.of App., 2015); *Bobby Berosini*,
14 *Ltd. V. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1353, 971 P.2d 383
15 (1998); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 121, 345 P.3d 1049 (2015).

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

26 The Defendant has now submitted documentation supporting the claim for
27 attorney’s fees. Because the Court has now been presented with substantially different
28 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	<u>\$4,925.00</u>
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	<u>\$529.50</u>
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,

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

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

15 **CONCLUSION/ORDER**

16 Based upon the foregoing, and good cause appearing,

17 This Court now indicates its intention, pursuant to *Huneycutt v. Huneycutt*, 94
18 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453
19 (2010), that if this Court had jurisdiction to decide this matter, the Court would now
20 award attorney's fees of \$110,849.85, and costs of \$8,056.93.

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

25 Dated this 4th day of May, 2022

26 

27
28 **0D9 DD7 5826 D5EB**
Jerry A. Wiese
District Court Judge

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

Electronically Filed

May 12 2022 10:56 a.m.

District Court No. A-19-788787-C
Elizabeth A. Brown
Clerk of Supreme Court

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:.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

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; AND LLOYD
CREECY, INDIVIDUALLY,

Respondents.

No. 84402

FILED

MAY 16 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: S. Yarnall
DEPUTY CLERK

ORDER DISMISSING APPEAL

Cause appearing, appellant's motion for a voluntary dismissal
of this appeal is granted. This appeal is dismissed. NRAP 42(b).

It is so ORDERED.

CLERK OF THE SUPREME COURT
ELIZABETH A. BROWN

BY: Matt Linder

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

SUPREME COURT
OF
NEVADA

CLERK'S ORDER

(3) 1987 

22-15332

App. 098

Alana J. Smith
CLERK OF THE COURT

1 **JUDG**
2 **S. BRENT VOGEL**
3 Nevada Bar No. 6858
4 Brent.Vogel@lewisbrisbois.com
5 **ADAM GARTH**
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 Telephone: 702.893.3383
12 Facsimile: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **ESTATE OF REBECCA POWELL, through**
12 **BRIAN POWELL, as Special Administrator;**
13 **DARCI CREECY, individually and as Heir;**
14 **TARYN CREECY, individually and as an**
15 **Heir; ISALIAH KHOSROF, individually and as**
16 **an Heir; LLOYD CREECY, individually;**

17 **Plaintiffs,**

18 **vs.**

19 **VALLEY HEALTH SYSTEM, LLC (doing**
20 **business as "Centennial Hills Hospital Medical**
21 **Center"), a foreign limited liability company;**
22 **UNIVERSAL HEALTH SERVICES, INC., a**
23 **foreign corporation; DR. DIONICE S.**
24 **JULIANO, M.D., an individual; DR.**
25 **CONRADO C.D. CONCIO, M.D., an**
26 **individual; DR. VISHAL S. SHAH, M.D., an**
27 **individual; DOES 1-10; and ROES A-Z;**

28 **Defendants.**

Case No. A-19-788787-C

Dept. No.: 30

**DEFENDANT VALLEY HEALTH
SYSTEM LLC'S JUDGMENT OF COSTS
AND ATTORNEYS' FEES PER NRS
18.020, 18.005, 18.110, 17.117, and N.R.C.P.
68(f) AS AGAINST PLAINTIFFS**

23 Pursuant to the Order granting Defendant Valley Health System, LLC's motion for summary
24 judgment dated and entered on November 19, 2021 (**Exhibit "A"**), the Order granting Defendant
25 Valley Health System, LLC's motion for reconsideration regarding motion for attorneys' fees dated
26 and entered on May 4, 2022 (**Exhibit "B"**), and pursuant to Defendant Valley Health System, LLC's
27 notice of withdrawal of appeal dated and filed in the Nevada Supreme Court on May 12, 2022
28

1 (Exhibit "C"),

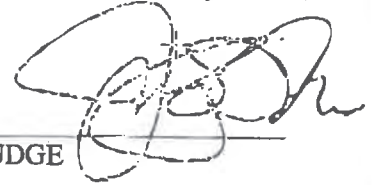
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3 That the Plaintiffs, take nothing, and that the action be dismissed on the merits.

4 Defendants Valley Health System, LLC shall be awarded their reasonable costs and
5 attorneys' fees pursuant to NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) in the amounts
6 of \$110,849.85 for attorneys' fees, and costs of \$8,056.93, for a total of \$118,906.78 in accordance
7 with the Court's orders attached hereto as Exhibits "A" and "B" based upon the withdrawal of
8 Defendant's appeal as attached hereto as Exhibit "C".

9 DATED this ____ day of _____, 2022.

Dated this 2nd day of June, 2022



DISTRICT COURT JUDGE

Respectfully Submitted By: **7B8 6E9 6A6B C7E9**
LEWIS BRISBOIS BISGAARD & SMITH LLP
Jerry A. Wiese
District Court Judge

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 6858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

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

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Agreed as to form and substance by:

2

Refused to sign

3

Paul S. Padda, Esq.

4

Srilata Shah, Esq.

5

PAUL PADDA LAW, PLLC

6

4560 S. Decatur Blvd., Suite 300

7

Las Vegas, NV 89103

8

Tel: 702.366.1888

9

Fax: 702.366.1940

10

psp@paulpaddalaw.com

11

Attorneys for Plaintiffs

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of May, 2022, a true and correct copy of **DEFENDANT VALLEY HEALTH SYSTEM LLC'S JUDGMENT OF COSTS AND ATTORNEYS' FEES PER NRS 18.020, 18.005, 18.110, 17.117, and N.R.C.P. 68(f) AS AGAINST 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.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
4560 S. Decatur Blvd., Suite 300
Las Vegas, NV 89103
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

From: Paul Padda
To: Garth, Adam; Srilata Shah
Cc: Vogel, Brent; Brown, Heidi; San Juan, Maria
Subject: [EXT] RE: Powell v Valley - CHH's Judgment for Costs #2.pdf
Date: Monday, May 16, 2022 1:26:18 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png



We cannot agree to this. Thanks.

Paul S. Padda, Esq.

PAUL PADDA LAW, PLLC
(702) 366-1888
paulpaddalaw.com



Nevada Physical Office:
4560 South Decatur Blvd, Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Physical Office:
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788

Mailing Address For All Offices:
4030 South Jones Blvd., Unit 30370
Las Vegas, Nevada 89173



PAUL PADDA LAW

IT'S NOT ABOUT THE INJURY. IT'S ABOUT THE RECOVERY.

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

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Thursday, May 12, 2022 12:43 PM
To: Paul Padda <psp@paulpaddalaw.com>; Srilata Shah <sri@paulpaddalaw.com>
Cc: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; San Juan, Maria <Maria.SanJuan@lewisbrisbois.com>
Subject: Powell v Valley - CHH's Judgment for Costs #2.pdf

Counsel,

Please see attached. Please advise if we may affix your e-signature to the judgment.

Adam Garth



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com
T: 702.693.4335 F: 702.366.9563

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

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

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

EXHIBIT A



1 **NEOJ**
2 **S. BRENT VOGEL**
3 Nevada Bar No. 06858
4 Brent.Vogel@lewisbrisbois.com
5 **ADAM GARTH**
6 Nevada Bar No. 15045
7 Adam.Garth@lewisbrisbois.com
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 T: 702.893.3383
12 F: 702.893.3789
13 *Attorneys for Defendant Valley Health System,*
14 *LLC dba Centennial Hills Hospital Medical*
15 *Center*

DISTRICT COURT
CLARK COUNTY, NEVADA

16 ESTATE OF REBECCA POWELL, through
17 BRIAN POWELL, as Special Administrator;
18 DARCI CREECY, individually and as Heir;
19 TARYN CREECY, individually and as an
20 Heir; ISAIAH KHOSROF, individually and as
21 an Heir; LLOYD CREECY, individually,;

22 Plaintiffs,

23 vs.

24 VALLEY HEALTH SYSTEM, LLC (doing
25 business as "Centennial Hills Hospital Medical
26 Center"), a foreign limited liability company;
27 UNIVERSAL HEALTH SERVICES, INC., a
28 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 an ORDER was entered with the Court in the above-captioned matter on the 19th day of November 2021, a copy of which is attached hereto.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 19th day of November, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Adam Garth
S. BRENT VOGEL
Nevada Bar No. 06858
ADAM GARTH
Nevada Bar No. 15045
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
*Attorneys for Attorneys for Defendant Valley
Health System, LLC dba Centennial Hills Hospital
Medical Center*

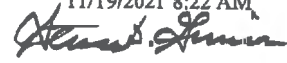
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 19th day of November, 2021, a true and correct copy of
3 **NOTICE OF ENTRY OF ORDER** was served by electronically filing with the Clerk of the
4 Court using the Odyssey E-File & Serve system and serving all parties with an email-address on
5 record, who have agreed to receive electronic service in this action.

6 Paul S. Padda, Esq.
7 PAUL PADDA LAW, PLLC
8 4560 S. Decatur Blvd., Suite 300
9 Las Vegas, NV 89103
10 Tel: 702.366.1888
11 Fax: 702.366.1940
12 psp@paulpaddalaw.com
13 *Attorneys for Plaintiffs*

John H. Cotton, Esq.
Brad Shipley, Esq.
JOHN. H. COTTON & ASSOCIATES
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
Tel: 702.832.5909
Fax: 702.832.5910
jh cotton@jh cottonlaw.com
bshipleyr@jh cottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

14
15
16 By /s/ Roya Rokni
17 An Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

ORDR
S. BRENT VOGEL
Nevada Bar No. 6858
Brent.Vogel@lewisbrisbois.com
ADAM GARTH
Nevada Bar No. 15045
Adam.Garth@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
*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; ISALIAH 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

**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**

This matter, coming before this Honorable Court on November 18, 2021 at 10:30 a.m. in
accordance with the order granting the petition for a writ of mandamus issued by the Nevada
Supreme Court dated October 18, 2021, directing that this Court vacate its order of October 29,
2020, which previously denied Defendant VALLEY HEALTH SYSTEM, LLC's motion for

1 summary judgment and co-defendants Concio and Shah's joinder thereto (collectively
2 "Defendants"), and ordering this Court to issue an order entering summary judgment in favor of
3 said Defendants due to the expiration of the statute of limitations, with Paul S. Padda, Esq. and
4 Srilata Shah, Esq. of PAUL PADDA LAW, PLLC, appearing on behalf of Plaintiffs, Adam Garth,
5 Esq., S. Brent Vogel, Esq. and Shady Sirsy, Esq., of the Law Offices of LEWIS BRISBOIS
6 BISGAARD & SMITH LLP, appearing on behalf of the Defendant VALLEY HEALTH SYSTEM,
7 LLC and John H. Cotton, Esq. and Brad Shipley, Esq. of JOHN H. COTTON AND ASSOCIATES,
8 appearing on behalf of DR. CONRADO C.D. CONCIO, M.D. and DR. VISHAL S. SHAH, M.D,
9 with the Honorable Court having reviewed the order of the Nevada Supreme Court, finds and orders
10 as follows:

11 THE COURT FINDS that Defendants argued that undisputed evidence demonstrated
12 Plaintiffs were on inquiry notice of their alleged professional negligence, wrongful death, and
13 negligent infliction of emotional distress claims by June 11, 2017, at the latest, and

14 THE COURT FURTHER FINDS that Defendants contended that Plaintiffs' February 4,
15 2019 complaint was time-barred under NRS 41A.097(2) (providing that plaintiffs must bring an
16 action for injury or death based on the negligence of a health care provider within three years of the
17 date of injury and within one year of discovering the injury, whichever occurs first), and

18 THE COURT FURTHER FINDS that the term injury in NRS 41A.097 means "legal injury."
19 *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248, 251 (1983). A plaintiff "discovers his legal injury
20 when he knows or, through the use of reasonable diligence, should have known of facts that would
21 put a reasonable person on inquiry notice of his cause of action." *Id.* at 728, 669 P.2d at 252. A
22 plaintiff "is put on 'inquiry notice' when he or she should have known of facts that 'would lead an
23 ordinarily prudent person to investigate the matter further.'" *Winn v. Sunrise Hosp. & Med. Ctr.*,
24 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quoting *Inquiry Notice*, *Black's Law Dictionary* (9th
25 ed. 2009)), and

26 THE COURT FURTHER FINDS that while the accrual date for NRS 41A.097(2)'s one-
27 year period is generally a question for the trier of fact, this Court may decide the accrual date as a
28 matter of law when the evidence is irrefutable. *Winn*, 128 Nev. at 251, 277 P.3d at 462, and

1 THIS COURT FURTHER FINDS that here, irrefutable evidence demonstrated that
2 Plaintiffs were on inquiry notice by June 11, 2017, at the latest, when Plaintiff Brian Powell, special
3 administrator for the estate, filed a complaint with the State Board of Nursing. There, Brian alleged
4 that the decedent, Rebecca Powell, “went into respiratory distress” and her health care providers did
5 not appropriately monitor her, abandoning her care and causing her death, and

6 THIS COURT FURTHER FINDS that Brian Powell’s own allegations in the aforesaid
7 Board complaint demonstrate that he had enough information to allege a prima facie claim for
8 professional negligence—that in treating Rebecca Powell, her health care providers failed “to use the
9 reasonable care, skill or knowledge ordinarily used under similar circumstances by similarly trained
10 and experienced providers of health care.” NRS 41A.015 (defining professional negligence); *Winn*,
11 128 Nev. at 252-53; 277 P.3d at 462 (explaining that a “plaintiffs general belief that someone’s
12 negligence may have caused his or her injury” triggers inquiry notice), and

13 THIS COURT FURTHER FINDS that the evidence shows that Plaintiff Brian Powell was
14 likely on inquiry notice even earlier than the aforesaid Board complaint, wherein Plaintiffs alleged
15 they had observed in real time, following a short period of recovery, the rapid deterioration of
16 Rebecca Powell’s health while in Defendants’ care, and

17 THIS COURT FURTHER FINDS that Plaintiff Brian Powell filed a complaint with the
18 Nevada Department of Health and Human Services (NDHHS) on or before May 23, 2017. Similar
19 to the Nursing Board complaint, this complaint alleged facts, such as the Defendants’ failure to
20 upgrade care, sterilize sutures properly, and monitor Rebecca Powell, all of which suggest he already
21 believed, and knew of facts to support his belief, that negligent treatment caused Rebecca Powell’s
22 death by the time he made these complaints to NDHHS and the Nursing Board, and

23 THIS COURT FURTHER FINDS that even though Plaintiffs received Rebecca Powell’s
24 death certificate 17 days later, erroneously listing her cause of death as suicide, that fact did not
25 change the conclusion that Plaintiffs received inquiry notice prior to that date, and

26 THE COURT FURTHER FINDS that Plaintiffs did not adequately address why tolling
27 should apply under NRS 41A.097(3) (providing that the limitation period for a professional
28 negligence claim “is tolled for any period during which the provider of health care has concealed

1 any act, error or omission upon which the action is based”), and

2 THIS COURT FURTHER FINDS that even if Plaintiffs did adequately address the tolling
3 issue, such an argument would be unavailing, as the medical records provided were sufficient for
4 their expert witness to conclude that petitioners were negligent in Rebecca Powell’s care. *See Winn*,
5 128 Nev. at 255, 277 P.3d at 464 (holding that tolling under NRS 41A.097(3) is only appropriate
6 where the intentionally concealed medical records were “material” to the professional negligence
7 claims), and

8 THE COURT FURTHER FINDS that the doctrine of equitable tolling has not been extended
9 to NRS 41A.097(2), and

10 THIS COURT FURTHER FINDS that Plaintiffs did not adequately address whether such
11 an application of equitable tolling is appropriate under these facts. *See Edwards v. Emperor's*
12 *Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (refusing to consider
13 arguments that a party did not cogently argue or support with relevant authority), and

14 THE COURT FURTHER FINDS that Plaintiffs had until June 11, 2018, at the latest, to file
15 their professional negligence claim, making Plaintiffs’ February 4, 2019 complaint untimely, and

16 THE COURT FURTHER FINDS that given the uncontroverted evidence demonstrating that
17 Defendants were entitled to judgment as a matter of law because the complaint was time-barred
18 under NRS 41A.097(2), *see* NRCP 56(a); *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (recognizing
19 that courts must grant summary judgment when the pleadings and all other evidence on file, viewed
20 in a light most favorable to the nonmoving party, "demonstrate that no genuine issue as to any
21 material fact [remains] and that the moving party is entitled to a judgment as a matter of law"
22 (internal quotations omitted));

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court’s prior order
24 of October 29, 2020 denying VALLEY HEALTH SYSTEM, LLC’s motion for summary judgment
25 and co-defendants’ joinder thereto is vacated in its entirety, and

26 ///

27 ///

28 ///

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
2 VALLEY HEALTH SYSTEM, LLC's motion for summary judgment and co-defendants' joinders
3 thereto are granted in their entirety due to the untimely filing of this action by Plaintiffs.

4
5 Dated: _____.

Dated this 19th day of November, 2021



DISTRICT COURT JUDGE

8 DATED this ____ day of November, 2021.

DATED this 18th day of November, 2021

Jerry A. Wiese
District Court Judge

9
10 *UNSIGNED*

11 Paul S. Padda, Esq.
12 Srilata Shah, Esq,
13 PAUL PADDALAW, PLLC
14 4560 S. Decatur Blvd., Suite 300
15 Las Vegas, NV 89103
16 Tel: 702.366.1888
17 Fax: 702.366.1940
18 psp@paulpaddalaw.com
19 Attorneys for Plaintiffs

20 DATED this 18th day of November, 2021

21 /s/ Brad Shipley

22 John H. Cotton, Esq.
23 Brad Shipley, Esq.
24 JOHN H. COTTON & ASSOCIATES
25 7900 W. Sahara Ave., Suite 200
26 Las Vegas, NV 89117
27 Tel: 702.832.5909
28 Fax: 702.832.5910
jhcotton@jhcottonlaw.com
bshipley@jhcottonlaw.com
Attorneys for Defendants Dionice S. Juliano,
M.D., Conrado Concio, M.D And Vishal S.
Shah, M.D.

/s/ Adam Garth

S. BRENT VOGEL, ESQ.
Nevada Bar No. 6858
ADAM GARTH, ESQ.
Nevada Bar No. 15045
SHADY SIRSY, ESQ.
Nevada Bar No. 15818
LEWIS BRISBOIS BISGAARD & SMITH
LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant Valley Health
System, LLC dba Centennial Hills Hospital
Medical Center

From: [Brad Shipley](#)
To: [Garth, Adam](#); [Srilata Shah](#); [Paul Padda](#)
Cc: [Vogel, Brent](#); [Rokni, Roya](#); [Sirsy, Shady](#); [San Juan, Maria](#)
Subject: [EXT] RE: Adam Garth sent you "Powell v Valley - Proposed Order Vacating Prior MSJ and Ordering SJ on SOL"
Date: Friday, November 12, 2021 10:00:14 AM
Attachments: [Image001.png](#)

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

Adam,

I believe the bracketed word [proposed] in the title caption should be removed before submission to the court, but please use my e-signature with or without making that change. Thank you for taking the time to draft the order.

Brad Shipley, Esq.
John H. Cotton & Associates, Ltd.
7900 W. Sahara ave. #200
Las Vegas, NV 89117
bshipley@jhcottonlaw.com
702 832 5909

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>; John Cotton <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



Adam Garth
Partner
Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

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

Sent: Tuesday, November 9, 2021 10:33 AM

To: Srilata Shah <sri@paulpaddalaw.com>; Paul Padda <ppsp@paulpaddalaw.com>; Brad Shipley <bshipley@ihcottonlaw.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>; ihcotton@ihcottonlaw.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"

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

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 PADDALAW, PLLC
Websites: paulpaddalaw.com

Nevada Office:
4560 South Decatur Blvd., Suite 300
Las Vegas, Nevada 89103
Tele: (702) 366-1888

California Office:
One California Plaza
300 South Grand Avenue, Suite 3840
Los Angeles, California 90071
Tele: (213) 423-7788



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

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 <bshiplev@ihcottonlaw.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>; ihcotton@ihcottonlaw.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



Adam Garth

Partner

Adam.Garth@lewisbrisbois.com

T: 702.693.4335 F: 702.366.9563

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

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

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

From: 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 <bshiplev@ihcottonlaw.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>; ihcotton@ihcottonlaw.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