

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

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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 VII**

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INDEX TO APPENDIX VOLUME VII

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	702-757
N	Recorder's Transcript of Hearing: Further Proceedings: Supreme Court Limited Remand on February 14, 2023	2/24/2023	758-773
O	Notice of Entry of Order and Order Denying Motion Requesting Increase and/or Posting of Supersedeas Bond	3/9/2023	774-786

DATED this 10th day of March, 2023.

LEWIS BRISBOIS BISGAARD &
SMITH LLP

By /s/ Adam Garth

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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 VII** was served by electronically filing with the Clerk of the Court using the Odyssey E-File & Serve system and serving all parties with an email-address on record, who have agreed to receive electronic service in this action.

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By /s/ Heidi Brown

An Employee of
LEWIS BRISBOIS BISGAARD &
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1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **Estate of Rebecca Powell,**
7 **Plaintiff(s)**

CASE NO: A-19-788787-C

8 **vs.**

DEPT. NO. Department 30

9 **Valley Health System, LLC,**
10 **Defendant(s)**

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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EXHIBIT B



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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; ISALIAH KHOSROF, individually and as
an Heir; LLOYD CREECY, individually,

15 Plaintiffs,

16 vs.

17 VALLEY HEALTH SYSTEM, LLC (doing
18 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 Defendants.
23

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

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

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CERTIFICATE OF SERVICE

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

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Shah, M.D.*

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

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

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

Plaintiffs,

vs.

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

Defendants.

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

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

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 *Honeycutt*, 94 Nev. 79, 575 P.2d 585 (1978); and *Foster v. Dingwall*, 126 Nev. 49, 228
25 P.3d 453 (2010)), indicating its intention.

26 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

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

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. Fareto*, 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 documented, must be reduced to \$8,056.93.

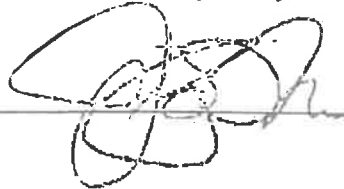
16 **CONCLUSION/ORDER**

17 Based upon the foregoing, and good cause appearing,

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

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

26 Dated this 4th day of May, 2022

27 

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

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC,

Appellant,

vs.

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

Respondents.

Supreme Court No.: 84402

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
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Attorneys for Plaintiffs

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



NOAS
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Email: psp@paulpaddalaw.com
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Las Vegas, Nevada 89103
Tele: (702) 366-1888

Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. XXX (30)

PLAINTIFFS' NOTICE OF APPEAL

Pursuant to the provisions of Nevada Rules of Appellate Procedure 3 and 4, Plaintiffs
hereby appeal to the Nevada Supreme Court from the Judgment entered by this Court on June
2, 2022 awarding costs and attorney's fees in favor of Defendant Valley Health System, LLC

1

Estate of Rebecca Powell, et. al. vs. Valley Health System, LLC, et. al.
Eighth Judicial District Court, Case No. A-19-788787-C (Dept. 30)
Plaintiffs' Notice Of Appeal
PPL #201297-25-01

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

(Notice of which was entered on June 7, 2022). This appeal encompasses all interlocutory orders leading to the entry of the monetary Judgment that is the subject of this appeal, including the Court's May 4, 2022 Order granting reconsideration of its prior denial of attorney's fees and costs to Valley Health System, LLC.

PAUL PADDA LAW

/s/ Paul S. Padda

Paul S. Padda, Esq.
Nevada Bar No. 10417
4560 South Decatur Boulevard, Suite 300
Las Vegas, Nevada 89103

Attorney for Plaintiffs

Dated: June 7, 2022

CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, the undersigned hereby certifies that on this day, June 7, 2022, a copy of **PLAINTIFFS' NOTICE OF APPEAL** was served upon all parties/counsel in the above-entitled matter through the Court's electronic filing system.

/s/ Karen Cormier

Karen Cormier, Paralegal
PAUL PADDA LAW



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 ESTATE OF REBECCA
9 POWELL,

10 Plaintiff,

11 vs.

12 VALLEY HEALTH SYSTEM,
13 LLC,

Defendant.

CASE NO. A-19-788787-C

DEPT. NO. VII

14 BEFORE THE HONORABLE LINDA MARIE BELL,

15 DISTRICT COURT JUDGE

16 WEDNESDAY, NOVEMBER 16, 2022

17 **RECORDER'S TRANSCRIPT OF HEARING:**

18 **ALL PENDING MOTIONS**

19 APPEARANCES:

20 For the Plaintiff:

PAUL PADDA, ESQ.,

21
22 For the Defendant:

ADAM GARTH, ESQ.,
Appeared by Video

23
24
25 RECORDED BY: KIMBERLY ESTALA, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, November 16, 2022

2 [Hearing commenced at 10:17 a.m.]

3
4 THE COURT: Page 17 case number A788787.

5 MR. PADDA: Good Morning, Your Honor, Paul Padda on
6 behalf of plaintiffs.

7 MR. GARTH: Good Morning, Your Honor, Adam Garth on
8 behalf of the defendant judgement creditors.

9 THE COURT: So Mr. Garth -- just because you weren't here
10 because you can't see what happened but Mr. Shetler was fixing Mr.
11 Padda's attire which was --

12 MR. PADDA: A bit ironic.

13 THE COURT: Yes. Yeah okay,

14 MR. GARTH: I don't know if I want to know.

15 THE COURT: All right.

16 MR. GARTH: That may be too much information for this
17 morning but.

18 THE COURT: Okay, so we have this on today for a, hold on,
19 a *Motion for Stay*. All right, so -- Odyssey's being very uncooperative
20 with me this morning. Mr. Padda, go ahead.

21 MR. PADDA: Thank you, Your Honor. We filed -- so Mr.
22 Garth, after we filed our *Motion to Stay* Mr. Garth filed a *Counter-motion*
23 *for Contempt* or --

24 THE COURT: Yeah.

25 MR. PADDA: He asked for all kinds of relief including

1 imprisonment of my client. We then filed a reply brief and a lot of the
2 main argument here is in the reply brief and I filed an appendix. And
3 really the record in this case speaks for itself. What happened was
4 Judge Wiese originally denied Valley Health Systems *Motion for Fees*
5 *and Costs*. Then Valley Health System through Mr. Garth filed an appeal
6 to the Nevada Supreme Court. While that appeal was pending he filed a
7 *Motion for Reconsideration* with Judge Wiese. Judge Wiese once a
8 again denied his *Motion for Fees and Costs*, stating I do not have
9 jurisdiction to entertain this matter because it's on appeal. The best I can
10 do is give you a *Huneycutt* Order and you can take this and certify it with
11 the Supreme Court and then they'll give you a limited remand and you
12 can come back here. But I don't have the power to do anything other
13 than that. That's all he did. There was never a decision in this case, of
14 any kind, awarding fees and costs to Mr. Garth's client. Mr. Garth then
15 voluntarily dismissed his appeal in response to a Show Cause Order
16 from the Nevada Supreme Court saying, tell us why we have jurisdiction
17 over this matter. Now he could have said well you have jurisdiction to
18 give me a limited remand based on *Huneycutt* I have a ruling here from
19 Judge Wiese, he chose not to do that. He dismissed his appeal and he
20 put in there, I think it was a declaration or a representation to the
21 Supreme Court that, I realize that by dismissing this appeal my client will
22 waive the right to ever pursue this issue again. So now it comes, the
23 appeal is dismissed. Then what Mr. Garth does is he prepares a
24 judgement. He sends it to me and I refuse to sign it. I said I'm not going
25 to sign this under protest. I said I completely disagree with this. And in

1 his judgement he references the reconsideration order and then sends it
2 to Judge Wiese's chambers. Now, our entire system works on a certain
3 level of trust, right? Judges don't necessarily scrutinize every judgement.
4 If you get something that comes in court staff is going to look at it and
5 what happened here is they affixed Judge Wiese's electronic signature
6 to that judgement awarding \$100,000.00 in fees and costs.

7 THE COURT: Okay but Mr. Padda that's not -- that order the
8 judgment was entered before the appeal was dismissed. I mean the
9 judgment I have in the file was signed by Judge Wiese on June 2nd of
10 2022.

11 MR. PADDA: Well he wouldn't have had jurisdiction to sign it.
12 And he said in his decision I don't have jurisdiction over this.

13 THE COURT: I understand what you're saying --

14 MR. PADDA: So --

15 THE COURT: -- I'm just telling you what I have in the court
16 file is that he issued the Order regarding the *Motion for Reconsideration*
17 on May 4th and in that it goes through everything in quite a bit of detail
18 but the -- it says in the last paragraph this Court now indicates its
19 indication pursuant to *Huneycutt vs Huneycutt* and *Foster vs Dingwall*
20 that if the Court had jurisdiction to decide the matter the Court would
21 now award attorney's fees and costs and it gives the amounts.

22 MR. PADDA: But an intent to do something is not --

23 THE COURT: And there was -- okay so the Court requests
24 counsel prepare a notice -- prepare a *Notice of Entry* and convey the
25 decision to the Supreme Court. So that's May 4th. The -- there is a May

1 16th *Order Dismissing the Appeal* that was filed in the Nevada Supreme
2 Court. And then following that there was a Judgement for the attorney's
3 fees and costs that was sent to the Court and signed on June 2nd after
4 the appeal was dismissed. I don't --

5 MR. PADDA: So that makes it procedurally defective.

6 THE COURT: I don't know if there was a remitter.

7 MR. PADDA: Absolutely not.

8 THE COURT: I don't see that I don't know. But that's -- and
9 then there's a new *Notice of Appeal*. So there was a new *Notice of*
10 *Appeal* from that judgement that you filed on June 2nd but I'm not sure, I
11 mean, there's multiple -- because I don't know what -- I mean one
12 appeal was dismissed and then there's an *Order Dismissing Appeal as*
13 *Abandoned* but I don't know what--

14 MR. PADDA: And that was Mr. Garth's appeal by the way.

15 THE COURT: Okay so what was -- what was voluntarily
16 dismissed?

17 MR. PADDA: Mr. Garth's appeal.

18 THE COURT: Okay --

19 MR. PADDA: So but my basic point is that it's -- its really just
20 is hornbook law 101 that you cannot --

21 THE COURT: So --

22 MR. PADDA: You can't have a judgment unless there's a
23 decision.

24 THE COURT: So then I get -- there's a remitter issued July
25 20th but what is the status of your appeal? Your June 2nd appeal.

1 MR. PADDA: It's still live and pending.

2 THE COURT: Okay.

3 MR. PADDA: And that's what we intend to impart argue in
4 that appeal. Although I have filed -- we filed yesterday because of some
5 technical snafu it didn't get filed so it's going to be -- I think it was filed
6 this morning was a *Motion to Set Aside the Judgement* on the Rule 60.

7 THE COURT: I've got that.

8 MR. PADDA: So that's pending and but the point --

9 THE COURT: Well I don't --

10 MR. PADDA: Yeah.

11 THE COURT: I don't know that I can do anything right now.

12 MR. PADDA: You may not have jurisdiction, Your Honor, but
13 you're in the same position that Judge Wiese was in.

14 THE COURT: Okay --

15 MR. PADDA: And what Judge Wiese said is that this is like
16 the Supreme Court decision that's a seminal authority is *Huneycutt*
17 which is a judge -- and under *Foster v Dingwall* a judge does not have
18 authority to grant a motion but a judge does have authority to deny a
19 motion and once that motion is denied then the proper procedure is you
20 take that and you go back to the Supreme Court and you say now Court
21 can you give me a limited remand so I can go, this is what the judge's
22 intention is. That never happened here.

23 THE COURT: Mr. Garth.

24 MR. GARTH: Lots to unpack, Judge. Okay, in the first
25 instance let me address several issues that were raised by Mr. Padda's

1 reply. Not the least of which was a material misrepresentation that our
2 opposition was late. So we were in court before you on September 28th
3 based upon his after business filing the night before of this nonsensical
4 motion. Once that happened I asked the court --

5 THE COURT: Mr. Garth.

6 MR. GARTH: -- for 30 days to --

7 THE COURT: Mr. Garth. Mr. Garth you've got to do me a
8 favor okay. I'm just trying to sort out this issue --

9 MR. GARTH: Well --

10 THE COURT: If we can just focus on the facts and you know.

11 MR. GARTH: Well the facts are as follows.

12 THE COURT: Okay.

13 MR. GARTH: The issues that Mr. Padda is now raising were
14 not raised until his reply. This is entirely new material that he never
15 addressed on his original motion because what he wanted to do was to
16 sandbag or else he wakes up to gee I didn't --

17 THE COURT: Okay, Mr. Garth there's not --

18 MR. GARTH: This was never addressed in his original motion
19 Judge.

20 THE COURT: Okay, I got that, right, but I don't need the
21 name calling, right. It just doesn't help me. It's very distracting. I want to
22 just try and figure this out. It's very complicated. There's layers of
23 appeals and things that got filed that seem I don't even know if the court
24 had jurisdiction to file. I need to sort that out and when you get upset
25 with Mr. Padda because you disagree with how he handled something

1 that's very distracting to the actual issue that I need to decide. So if we
2 could focus on that without getting into our opinions about peoples
3 arguments or whatever it would be very helpful to me.

4 MR. GARTH: Okay, Your Honor, one of the problems is that
5 all the issues that are being raised here should not even be raised.
6 There's a rule where you are only supposed to be replying to materials
7 that are raised in the opposition. Anything that is new material should
8 have been put into your original motion. So everything, number 1, that
9 Mr. Padda is raising here today is based upon what our -- what we have
10 not been given an opportunity to properly oppose and reply to and other
11 courts have stricken this very -- kind of behavior. So basically what I'm
12 saying is these issues should not even be before you because they
13 weren't raised initially in his motion.

14 THE COURT: Okay, so --

15 MR. GARTH: He only came --

16 THE COURT: So --

17 MR. GARTH: So that's number 1.

18 THE COURT: Okay.

19 MR. GARTH: All right. Then there's a bunch of other things
20 which I can help straighten things out a little bit for you.

21 THE COURT: Sure.

22 MR. GARTH: Okay so then we can make a little bit more
23 sense of it. The citations that he is making to *Huneycutt* and its progeny
24 are inaccurate. And the problem there is that he hasn't quoted the
25 appropriate part of the Supreme Court's decision, which is whether or

1 not the Supreme Court even has jurisdiction to deal with an appeal when
2 a *Motion for Reconsideration* is pending. Now it's quite confusing in the
3 statute and in the appellate rules and I checked Rule 4 of the appellate
4 rules to try to ascertain when an appeal can be done. And a *Motion for*
5 *Reconsideration* is not listed among those. But the Supreme Court never
6 the less is interpreting it that way. And in the *Foster vs Dingwell* case it
7 states specifically the court has repeatedly held that the timely -- filing of
8 a *Notice of Appeal* divest the District Court of jurisdiction to act and vest
9 jurisdiction in this Court. I will refer you, Your Honor, to the decision or
10 the *Order to Show Cause* that was issued by the Nevada Supreme
11 Court on April 29th, and it says specifically the *Notice of Appeal* appears
12 to be prematurely filed under NARP 4a because it appears that it was
13 filed after the timely filing of a tolling *Motion for Reconsideration* and
14 before that motion had been formally resolved. Therefore the Supreme
15 Court was determining that the Notice of Appeal wasn't timely filed
16 because it was prematurely filed. The Supreme Court never had
17 jurisdiction under those circumstances to be dealing with the issue. And
18 even if they did we abandoned the appeal because after receiving Judge
19 Wiese's decision we said okay, he's giving us a hair cut off of what
20 should be over \$200,000.00 in fees but we'll agree to take that and
21 [Indiscernible] take any problems off the table for Judge Wiese we will
22 withdraw our appeal. And we provided Judge Wiese with a copy of the
23 judgement and the prior -- decision that he made. We provided him a
24 copy of the withdrawal notice. There was never at that point, once we
25 withdrew the appeal there was never anything pending in front of the

1 Supreme Court. So when he received the judgment for which Mr. Padda
2 did zero to deal with until today's filing this morning. The judgement
3 stood. There wasn't any hoodwinking of anybody. There wasn't any
4 attempt to mislead anybody. In fact there was no misleading anybody. It
5 was all done out in the open. Mr. Padda was given a copy of the
6 judgment to review and agree to sign. He didn't say, and I have a copy
7 of the email, because I save everything from him. I have a copy of the
8 email, all he said was I won't sign it. There wasn't any commentary or
9 anything, I won't sign it. Okay, I submitted his email to the Court along
10 with the judgement indicating that he refused to sign it. There wasn't
11 anything about jurisdictional problems. There wasn't anything about any
12 problem other than the fact that this was a judgement against his clients
13 which presumably he didn't want filed. Oh well. But we took it off the
14 table by withdrawing the appeal and the Supreme Court itself never had
15 jurisdiction. In other words, Judge Wiese always had jurisdiction to
16 render the decision and render the judgement. Because apparently
17 because of the lack of clarification in the appellate rules we wanted to
18 preserve our clients rights to an appeal so we filed the *Notice of Appeal*
19 and we also filed the *Motion for Reconsideration*. Since the Court -- the
20 Supreme Court is now interpreting that rule and expanding it beyond the
21 statutory provisions of those orders that are listed in there under the
22 sections of the Civil Practice Rules that they say stay any, you know,
23 any need to pursue the appeal. We received the *Order to Show Cause*. I
24 said okay no problem appeal withdrawn, done. So there was no need for
25 the Supreme Court to act. The Supreme Court was indicating that they

1 themselves had no jurisdiction and therefore if they'd ever had
2 jurisdiction in the first place Judge Wiese always had the jurisdiction. So
3 he was supplied with everything. Then for Mr. Padda to suggest that
4 somehow the judge didn't review any of the paperwork I think is a little
5 ridiculous. He had copies of everything. If Mr. Padda had a proposed
6 judgement or an objection he could have filed it when I filed it with the
7 Court. He was copied on it. The judge could have refused to sign it. He
8 was given a copy of the withdrawal notice --

9 THE COURT: Mr. Garth.

10 MR. GARTH: -- a copy of his decision. A copy of the
11 judgement. Everything --

12 THE COURT: Mr. Garth.

13 MR. GARTH: -- was there.

14 THE COURT: Can you explain something to me?

15 MR. GARTH: Sure.

16 THE COURT: I'm a little confused by the May 16, 2022 *Order*
17 *Dismissing Appeal* and then the June 22nd, 2022 *Order Dismissing*
18 *Appeal as Abandoned*.

19 MR. GARTH: There were multiple appeals here, Your Honor,
20 I don't -- I haven't to be honest with you I haven't unpacked all of them.
21 We filed a -- an appeal which you're aware of.

22 THE COURT: Right.

23 MR. GARTH: That led to the *Summary Judgement Motion*.
24 That was one thing disposed of. Then we filed a -- we pursued costs
25 subsequent to that.

1 THE COURT: Okay.

2 MR. GARTH: Mr. Padda did not file an appropriate objection
3 to any of that memorandum of costs and therefore Judge Wiese ordered
4 -- said while he wasn't going to grant costs because he wanted to have
5 some kind of hearing which I volunteered to have. I asked for
6 reconsideration of that motion and supplied over 600 pages to him
7 saying this is what I was going to give Mr. Padda and you for the hearing
8 to show all of the time that we spent on the case, all of the expenses we
9 laid out. He said okay, well I didn't know you were going to do that even
10 though I volunteered to do it in my original papers. But he -- I didn't want
11 to trot out all of my clients expenses and our firms time sheets in the
12 public forum. So I said we would have an in camera hearing to make this
13 determination, certainly Mr. Padda could -- appear for, make any
14 objections he wanted to with respect to any costs that he believed were
15 inappropriate, and not an issue. He didn't object to any of the costs
16 either. Judge Wiese came back after seeing the 6, 700 pages worth of
17 timesheets and expenses that we laid out on behalf of the clients and
18 that's where he issued his decision. Beyond that Mr. Padda then filed an
19 appeal. We filed an appeal originally based upon the denial of the -- of
20 our *Motion for Costs*, which we withdrew and was no longer an issue on
21 the table. And then Mr. Padda filed an appeal. And that's the one that's
22 pending which is also concerning because having taken just a brief
23 gander at his motion and then Rule 60 if his appeal is pending there's
24 no, you can't be filing motions that effect a judgement without first
25 getting permission of the Nevada Supreme Court. So the motion he just

1 filed today is totally out of order as is all of his commentary on the
2 original motion.

3 MR. PADDA: So that --

4 MR. GARTH: So those are I think the 3 appeals that were
5 being handled. One the original one on the summary judgement motion,
6 the second one was based upon our -- appeal which we withdrew, and
7 the third I believe was Mr. Padda's that's now pending with a briefing
8 date of I believe January 9th.

9 THE COURT: Okay. Mr. Padda, I'm sorry you were saying
10 something.

11 MR. PADDA: Let me just start with the argument about the
12 reply. First of all what Mr. Garth filed was an opposition to our *Motion to*
13 *Stay* and then he combined a counter motion for sanctions in that. We
14 filed a response. We filed a response to his opposition and to his
15 counter motion. He had the opportunity to file a reply up until whenever,
16 he's not done that.

17 MR. GARTH: Not true.

18 MR. PADDA: He hasn't filed a reply, there's no reply to his --
19 there's no reply to our opposition to his countermotion. So what you
20 have before you, what he labels only as a reply was also information
21 that I think is pertinent to Your Honor, as far as making a ruling whether
22 there's actually an enforceable judgment in this case and whether you --
23 you were asked here's an *Ex Parte Application* please order all these
24 things and make these people come here and produce all kinds of
25 documents and there's a valid order in place, a judgment. If that's at

1 issue then he could have addressed it in the reply, he didn't do that.

2 Anyways, going back to Judge Wiese's decision on the
3 reconsideration I don't think it could be any clearer. He stated right there
4 and its page 96 of the appendix that I filed, he said that Judge
5 entertained the *Motion for Reconsideration* but did not change his
6 opinion or alter or modify his prior finding that plaintiffs decision to reject
7 the offer of judgement was not grossly unreasonable or in bad faith. And
8 then he went on to say quote I no longer have jurisdiction to address the
9 issue of fees and costs. And so, you know, what Mr. Garth's talking
10 about here as far as well Mr. Padda should -- court doesn't have the
11 jurisdiction to enter a Rule 60b motion, well that's the whole point. That's
12 what Judge Wiese said, he said I can't even grant you any relief all I can
13 do is give you a *Huneycutt* order. If you want to take it in response to the
14 *Order to Show Cause* present it to the Supreme Court, ask for a limited
15 remand that was Mr. Garth's opportunity. Then come back to Judge
16 Wiese and say Judge the Supreme Court has given me the authority to
17 come back to you under *Huneycutt* and now ask you to make this
18 decision. That never happened.

19 THE COURT: Well I mean I'm not -- I suppose I'm not
20 commenting any on the procedural merits of what happened but it
21 appears what happened was that after the appeal was dismissed but it's
22 not clear to me which appeal was dismissed. But one of the appeals was
23 dismissed then Judge Wiese entered a judgement based on his decision
24 to award the fees. So --

25 MR. PADDA: Well again I would say no --

1 THE COURT: I mean --

2 MR. PADDA: Maybe the devils in the details but if a Judge

3 says --

4 THE COURT: Right.

5 MR. PADDA: -- I can't I'm not awarding fees and costs but I

6 might be -- but that might be my intention to do so. And then I should

7 also point out what the Supreme Court said was not that it didn't have

8 jurisdiction it -- that's the whole the clue should have been the title *Order*

9 *to Show Cause* whether we have jurisdiction or not that was Mr. Garth's

10 opportunity to say hey this is what I want to accomplish and instead his

11 response was he didn't respond at all he just said okay I'm going to

12 dismiss my appeal.

13 THE COURT: Yeah so this is what I would like to do at this

14 point because I would like to not make things worse than they already

15 are. I am going to grant the *Motion for Stay of Execution* while the

16 appeal is pending. I'm going to deny the *Motion to Set Aside* because I

17 don't think I can do anything while the appeal is pending and I think if I

18 do were going to cause more problems than already exist. So I don't

19 know if there's a hearing date on that but if there is --

20 MR. PADDA: Well the motion was just filed yesterday.

21 THE COURT: Yeah there's no hearing date set on that. I'm

22 just going to I'm going to --

23 MR. PADDA: That's fine.

24 THE COURT: I'm going to --

25 MR. PADDA: But in denying it will you give us a *Huneycutt*

1 decision -- so basically what --

2 THE COURT: I'm not making any decision at all. I don't think
3 that's going to be helpful at all. I think we need to let the Nevada
4 Supreme Court consider what they have in front of them and make a
5 ruling on that.

6 MR. PADDA: Well you'll be there soon.

7 THE COURT: Well I'm not going to be deciding on this lucky
8 for me. So thank you --

9 MR. PADDA: For many reasons.

10 THE COURT: -- for having this in front of me today. So and
11 then I am going to deny the *Counter Motion for Sanctions* I just think
12 given the -- I understand everybody is frustrated here and I understand
13 why but, you know, I think there's some procedural concerns with this
14 case that have created frustrations on both sides. So *Motion for Stay* is
15 granted. *Counter Motion* is denied. The *Motion to Set Aside* I'm just
16 going to vacate it, I'm not ruling on it. I'm just going to vacate it I don't
17 believe I have jurisdiction to consider it. And then I am happy to set a
18 status check just to see when we get a ruling on from the Nevada
19 Supreme Court in 90 days or something 120 days.

20 MR. PADDA: That would be fair.

21 THE COURT: Or I can just --

22 MR. GARTH: Your Honor, -- if I may.

23 THE COURT: Yes.

24 MR. GARTH: One of the things that we have been asking for
25 is an appeal bond or some guarantee as to costs. There has been no

1 proof whatsoever that he is entitled to proceed without an appeal bond.
2 We've provided ample statutory and case authority indicating that an
3 appeal bond is required.

4 THE COURT: I show --

5 MR. GARTH: And Mr. Padda --

6 THE COURT: -- an appeal bond posted July 7th of 2022.

7 MR. GARTH: There was no -- I don't see anything, Your
8 Honor.

9 THE COURT: Well you wouldn't see it but I have a receipt for
10 it. It's not -- it's filed as a non-docketable event in -- I have it --

11 MR. GARTH: Then -- that's probably why we haven't seen it.
12 Mr. Padda has indicated that he wasn't filing any appeal bond and that
13 he didn't have to file one.

14 THE COURT: Well I have one, I don't know. I have one that
15 was filed, it was filed July 7th it was \$500.00 so that's what I have.

16 MR. GARTH: Okay so I guess at this point -- do you have
17 jurisdiction for us to make a motion since we weren't informed about that
18 bond until literally this second to object to the bond and request that it be
19 increased to the amount of the costs that were awarded in the
20 judgment? We need to be able to protect our client's rights here. We
21 have no means of collection. Mr. Padda -- you've already indicated we
22 can't have a hearing to determine what assets these folks have. Mr.
23 Padda has represented that his clients are indigent. So we have no
24 means of collecting on any judgment should it be affirmed. And that is
25 the very purpose of these appeal bonds. And \$500.00 is far shy of

1 \$120,000.00.

2 MR. PADDA: There are significant jurisdictional issues here,
3 Your Honor. We filed our appeal bond. If he wanted to make an
4 objection he should -- you can't just come to court unprepared and then
5 say well I'm going to make a motion right now. That's not how it works.
6 That's why we are in the mess we are because he didn't even follow
7 proper procedure. But my point is simply that if you don't have
8 jurisdiction on that I think the time has come and gone for him to make a
9 motion on the appeal bond. It is what it is. Supreme Court's going to
10 make a ruling and I'm very confident they're going to rule in our favor
11 and find that not only did Mr. Garth not follow procedure --

12 THE COURT: Yeah well --

13 MR. PADDA: -- but that Judge Wiese the judgement was
14 improperly executed.

15 THE COURT: There was a bond filed I again I'm happy to set
16 a status check or no as you would prefer. I'm not going to address
17 anything else today.

18 MR. GARTH: Well Mr. Padda's original appeal was due, the
19 briefing was originally due on November 9th. He asked me as a courtesy
20 to agree to extend it by 60 days due to some apparently some medical
21 issues that he was going to be --

22 THE COURT: How about -- all right --

23 MR. GARTH: -- and I agreed to do that.

24 THE COURT: -- how about I do a status check in about 6
25 months?

1 MR. PADDA: That sounds great.

2 THE COURT: That way things don't fall through the cracks

3 and it probably won't be done by then but we'll just have it on

4 somebody's radar.

5 MR. PADDA: That makes sense. Judge would you like me to

6 prepare the order?

7 THE COURT: Yes please.

8 MR. PADDA: Thank you

9 THE COURT: Thank you.

10 MR. PADDA: Have a very nice day.

11 THE COURT: Thanks you too.

12 MR. GARTH: Do we have a date for the status check, Your

13 Honor?

14 THE COURT: Yeah hold on just a second the Clerks getting

15 it.

16 THE COURT CLERK: Wednesday, June 7, 2023 at 9:00 a.m.

17 MR. PADDA: I think that's the day my Myers trial starts.

18 THE COURT: All right, well I mean I think it will probably end

19 up getting moved anyway so all right.

20 MR. PADDA: No problem.

21 //

22 //

23 //

24 //

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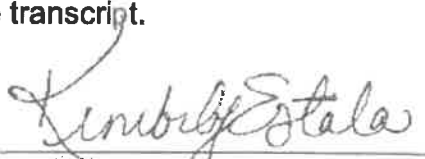
THE COURT: Great thank you.

MR. PADDA: Thank you, Judge.

[Hearing concluded at 10:49 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note; Technical glitches which resulted in distortion in the Bluejeans audio/video and/or audio cutting out completely were experienced and are reflected in the transcript.



Kimberly Estala
Court Recorder/Transcriber

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Electronically Filed
12/9/2022 11:51 AM
Steven D. Grierson
CLERK OF THE COURT



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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

NOTICE OF ENTRY OF ORDER
DECLINING TO RULE UPON
MOTION TO SET ASIDE JUDGMENT
AND RELATED RELIEF

PLEASE TAKE NOTICE that the Order Declining to Rule Upon Motion to Set Aside
Judgment and Related Relief was entered in the above-entitled matter on the 1st day of December

...

...

...

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

2022, a copy of which is attached hereto.

DATED this 9th day of December 2022.

PAUL PADDA LAW, PLLC

By: /s/ Paul S. Padda

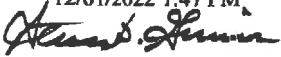
PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 9th day of December 2022, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above- entitled matter through hand service and/or efileNV eservice.

/s/ Shelbi Schram

Shelbi Schram, Paralegal
PAUL PADDALAW


CLERK OF THE COURT**ORD****PAUL S. PADDA, ESQ.**

Nevada Bar No. 10417

Email: psp@paulpaddalaw.com**STEPHANIE MAZZEI, ESQ.**

Nevada Bar No. 11648

Email: stephanie@paulpaddalaw.com**PAUL PADDA LAW, PLLC**

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Attorney for Plaintiffs

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

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 JULIANO, M.D., an individual; DR.
 CONRADO C.D. CONCIO, M.D., an
 individual; DR. VISHAL S. SHAH, M.D., an
 individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

**ORDER DECLINING TO RULE UPON
MOTION TO SET ASIDE JUDGMENT
AND RELATED RELIEF**

Plaintiffs filed a motion on November 16, 2022 seeking to set aside the June 2, 2022
 Judgment (Notice of which was filed on June 7, 2022) and for related relief.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED that the Court will decline to rule on the motion to set aside judgment and for related relief given its finding regarding lack of jurisdiction. Defendant Valley Health System, LLC is not required to respond to the motion at this time and until further notice from the Court. Any hearings related to the motion filed by Plaintiffs on November 16, 2022 to set aside judgment are hereby vacated.

Dated this 1st day of December, 2022

83B C1C A91E 4C41
Linda Marie Bell
District Court Judge

Paul S. Padda, Esq.
Stephanie Mazzei, Esq.
Counsel for Plaintiffs

Brent Vogel, Esq.
Adam Garth, Esq.
Counsel for Valley Health System, LLC

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Tuesday, November 29, 2022 11:08 AM
To: Paul Padda <psp@paulpaddalaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Stephanie Mazzei <Stephanie@paulpaddalaw.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Powell

You may use my e-signature on both orders.

Adam Garth



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

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From: Paul Padda <psp@paulpaddalaw.com>
Sent: Tuesday, November 29, 2022 10:34 AM
To: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>
Cc: Stephanie Mazzei <Stephanie@paulpaddalaw.com>
Subject: [EXT] Re: Estate of Powell

Please review the attached Orders. The first pertains to stay of judgment. The second pertains to the Court's declination to rule on the motion to set aside judgment because of lack of jurisdiction.

Please provide you approval to add your e-signature if you approve the Orders. If we do not receive a response by 5 pm today, we will submit to Chambers and note your lack of a response.

Paul S. Padda, Esq.
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PAUL PADDA LAW

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1 **NEO**
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6 4560 South Decatur Boulevard, Suite 300
7 Las Vegas, Nevada 89103
8 Tele: (702) 366-1888

9 Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

10 ESTATE OF REBECCA POWELL, through
11 Brian Powell as Special Administrator; DARCI
12 CREECY, individually; TARYN CREECY,
13 individually; ISAIAH KHOSROF,
14 individually; LLOYD CREECY, individually;

15 Plaintiffs,

16 vs.

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

26 Defendants.

CASE NO. A-19-788787-C

DEPT. 7

NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO STAY
ENFORCEMENT OF JUDGMENT

27 PLEASE TAKE NOTICE that the Order Granting Motion to Stay Enforcement of
28 Judgment was entered in the above-entitled matter on the 1st day of December

...

...

...

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2022, a copy of which is attached hereto.

DATED this 9th day of December 2022.

PAUL PADDA LAW, PLLC

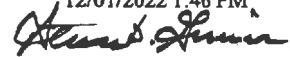
By: /s/ Paul S. Padda

PAUL S. PADDA, ESQ.
Nevada Bar No. 10417
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I certify that I am an employee of Paul Padda Law, PLLC and that on this 9th day of December 2022, I served a true and correct copy of the above and foregoing document on all parties/counsel of record in the above- entitled matter through hand service and/or efileNV eservice.

/s/ Shelbi Schram
Shelbi Schram, Paralegal
PAUL PADDA LAW


CLERK OF THE COURT**ORD**

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Nevada Bar No. 10417
Email: psp@paulpaddalaw.com

STEPHANIE MAZZEI, ESQ.
Nevada Bar No. 11648
Email: stephanie@paulpaddalaw.com

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Attorney for Plaintiffs

DISTRICT COURT**CLARK COUNTY, NEVADA**

ESTATE OF REBECCA POWELL, through
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individually; ISAIAH KHOSROF,
individually; LLOYD CREECY, individually;

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vs.

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CONRADO C.D. CONCIO, M.D., an
individual; DR. VISHAL S. SHAH, M.D., an
individual; DOES 1-10; ROES A-Z;

Defendants.

CASE NO. A-19-788787-C

DEPT. 7

**ORDER GRANTING MOTION TO STAY
ENFORCEMENT OF JUDGMENT**

Plaintiffs filed a motion on September 27, 2022 seeking to stay enforcement of a
judgment entered on June 7, 2022 and related judgment debtor examination proceedings.

1 Defendant Valley Health System, LLC filed an opposition and a countermotion requesting
2 contempt findings, attorney's fees and sanctions.

3 A hearing was held on November 16, 2022 regarding the motion, opposition and
4 countermotion. The Court allowed oral argument from both sides in addition to the briefing
5 already submitted to the Court.

6 **BASED UPON A FINDING OF GOOD CAUSE, THE COURT HEREBY ORDERS**
7 that Plaintiffs' motion for stay of enforcement of the judgment entered on June 7, 2022 is hereby
8 granted. This stay shall apply to all proceedings, including any scheduled judgment debtor
9 examinations. Defendant Valley Health System, LLC's countermotion for contempt, attorney's
10 fees and sanctions is hereby denied.

11
12 IT IS SO ORDERED:

13
14 Dated this 1st day of December, 2022

15
16 
DISTRICT COURT JUDGE

Date

17
18 Respectfully submitted:

A78 6AF 3A9E 1D79
Linda Marie Bell
District Court Judge

19 /s/ Paul S. Padda

20 Paul S. Padda, Esq.
21 Stephanie Mazzei, Esq.
22 Counsel for Plaintiffs

23 /s/ Adam Garth

24 Brent Vogel, Esq.
25 Adam Garth, Esq.
26 Counsel for Valley Health System, LLC

From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Tuesday, November 29, 2022 11:08 AM
To: Paul Padda <psp@paulpaddalaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Stephanie Mazzei <Stephanie@paulpaddalaw.com>; Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>
Subject: RE: Estate of Powell

You may use my e-signature on both orders.

Adam Garth



Adam Garth
Partner
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Subject: [EXT] Re: Estate of Powell

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Please provide you approval to add your e-signature if you approve the Orders. If we do not receive a response by 5 pm today, we will submit to Chambers and note your lack of a response.

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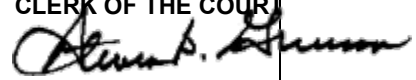
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EXHIBIT N



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ESTATE OF REBECCA
POWELL,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM,
LLC,

Defendant.

CASE NO. A-19-788787-C

DEPT. NO. XXV

BEFORE THE HONORABLE KATHLEEN E. DELANEY,

DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 14, 2023

RECORDER'S TRANSCRIPT OF HEARING:

FURTHER PROCEEDINGS: SUPREME COURT LIMITED REMAND

APPEARANCES:

For the Plaintiff:

PAUL S. PADDA, ESQ.

For the Defendant:

ADAM GARTH, ESQ.

RECORDED BY: VELVET WOOD, COURT RECORDER

1 Las Vegas, Nevada; Tuesday, February 14, 2023
2 [Hearing commenced at 9:12 a.m.]
3

4 THE COURT: Page 2. The Estate of Rebecca Powell versus
5 Valley Health System.

6 MR. PADDA: Good morning, Your Honor. Paul Padda on
7 behalf of the Plaintiff's.

8 THE COURT: Good morning, Mr. Padda. And Mr. Garth
9 must be with us --

10 MR. GARTH: Good morning, Your Honor.

11 THE COURT: -- online. There he is. You hear us okay?

12 MR. GARTH: Adam Garth representing Valley Health.

13 THE COURT: All right. Thank you so much.

14 So, this one was a little odd to the Court. You know, I put a
15 little attitude probably in my minute order more than I should have, but I
16 was like, what is happening here? Because I went back through the
17 briefs when I saw the remand -- limited remand come in. This is the
18 case, of course, where the Supreme Court wanted the Court -- the
19 District Court to make a determination on the bond issue first.

20 I really don't understand once it's up how that isn't something
21 that can be taken up there. But, fair enough they sent it back but it
22 seemed the impression was that the Court it was being sent back to
23 would be knowledgeable of all the prior arguments and all the prior
24 circumstances which, of course, was not the case for a number of
25 reasons.

1 But, regardless, I very much appreciate. I can be honest with
2 you, I did not anticipate hundred plus pages filings. So I do apologize
3 that my request for some insight on what the ask was and how it was
4 supported prompted that. But in any event, we had all the briefing that
5 related to why one side believes no -- the stay should be allowed to go
6 forward without any increase or additional bond. And the other side
7 believes that basically the judgement should be protected with a bond in
8 the full amount plus some additional moneys.

9 So, I'm going to go ahead, and I think because it is Valley
10 Health System that is seeking to increase the bond, I'll start with their
11 argument. And, whatever you would like to highlight out of your
12 supplemental brief. And then I'll come over to Mr. Padda and then we'll
13 -- we'll see where we land on this; okay?

14 Mr. Garth?

15 MR. GARTH: Thank you, Your Honor. We pretty much laid it
16 out clearly. One of -- one of the problems that we've been facing is that
17 there's absolutely zero evidence of what moneys these judgement
18 debtors actually have in order to pay the judgement.

19 We -- a hearing was scheduled back in, I believe, September
20 before Judge Bell and the day before the hearing we got an email from
21 Mr. Padda about 2:30 or so in the afternoon saying that his clients were
22 not coming. There was also an order -- there was an order from Judge
23 Bell that -- that his clients appear for the hearing and there was an order
24 than certain materials demonstrating what their assets were -- were
25 contained -- were to be provided two weeks prior to the hearing. None

1 of that happened.

2 The evening of -- before the hearing, Mr. Padda filed a motion
3 to stay enforcement of the proceedings. And when we showed up,
4 Judge Bell asked Mr. Padda a number of questions and I believe we've
5 attached a copy of that hearing transcript which the Judge asked, well,
6 you know, you were supposed to show up -- your clients were supposed
7 to show up, why didn't you do anything after you received a copy of the
8 order to show up; to which there was no answer.

9 So, we have zero evidence of any ability to pay because the
10 judgement debtor proceeding never proceeded. And now we're faced
11 with a situation where the law entitles Valley Health to a bond. The
12 entire purpose of an appeal bond in the supersedeas bond is to protect
13 a judgement creditor when you have a judgement. And the law is
14 abundantly clear.

15 So, what we -- what we have is zero knowledge of what
16 assets they have. We have no bond that's been posted, except for a
17 \$500 bond that we never received any notice of until the November 16th
18 hearing because Mr. Padda never served us with a copy. And Judge
19 Bell confirmed that we would not have access to it, that apparently the
20 Court has some kind of a shadow docket where these things are
21 maintained. But unless we're served with a copy of the bond, we don't
22 have any knowledge of its existence.

23 When I said, well we then want an increase on this bond, Mr.
24 Padda said, well I came to the hearing unprepared because he never
25 served me with the very document that I'm supposed to be prepared for.

1 And the Court acknowledged that I would have no reason to have
2 knowledge of it because there's no access to that for me.

3 So, what we have is a judgement for \$118,900 some odd
4 dollars plus interest that we've totaled up and we've shown have we've
5 arrived at that calculation of over \$5,000. So, in round numbers, it's
6 about \$125,000 as of today.

7 We have a \$500 bond which is, by my math, very far from
8 \$125,000. There is no reason why the bond can't be posted. As I
9 understand it, appeal bonds generally cost about 1% to 3% of their face
10 value and then you need to demonstrate what kind of assets you have.
11 Now, Mr. Padda somehow believes that he's entitled to proceed on the
12 appeal with a -- an existing judgement whether he agrees with its
13 efficacy or not, that's an issue for the Supreme Court to decide.

14 The fact remains, there is a preexisting judgement that he is
15 seeking to appeal. There is -- if his clients want to pursue that, they're
16 obligated to file a bond and post the necessary assets in order to get the
17 bond or post those assets with the Court.

18 Valley Health, regardless of any arguments you're going to
19 hear about how much money they make and that they're this big
20 company and how horrible they are and how wonderful the Plaintiff's
21 are, that's of no moment. What happened in the underlying case and
22 any allegations of malpractice are of no moment here. We are long past
23 that. Mr. Padda's client's lost. They received an offer of judgement for a
24 -- for waiver of costs if they drop the lawsuit, they declined. They lost.
25 There is a price to pay for that. And that was the judgement that Judge

1 Wiese ultimately signed.

2 Again, all the issues concerning the judgement itself are in the
3 hands of the Supreme Court and we're going to let them decide it. The
4 only issue before this Court is whether these folks have a right to pursue
5 an appeal with a preexisting judgement for which they have posted
6 nothing to assure its payment. They have refused to participate in a
7 hearing, Judge Bell refused to hold them in contempt of Court for
8 defiance of two Court orders to produce records and to show up for a
9 hearing. Mr. Padda never reached out to me to ask me whether or not
10 these folks these could appear through some alternate means to avoid
11 them having to fly here to Nevada. Which I would have more than had
12 been happy to accede to. There could have been a bunch of things
13 worked out. Absolutely nothing happened.

14 So, I have zero information, I have zero evidence, the Court
15 has zero evidence of any ability to pay this judgement. And we are --
16 under the law, we have cited statutes, appellate rules, cases all on all
17 four saying we are entitled to this bond and the Court needs to issue
18 that. But it needs to direct that a bond be issued in that amount. And
19 there is nothing contained in any of the papers, no evidence whatsoever,
20 that says the contrary.

21 Thank you.

22 THE COURT: Thank you. Mr. Garth, before I hear from Mr.
23 Padda, because as I noted, I'm trying to truncate the arguments here a
24 little bit today and this might help and Mr. Garth's probably not going to
25 like this because he's pretty adamant as to how he's interpreting these

1 statutes. But, Mr. Garth, if your argument were completely accurate
2 under the law, then there really would be no reason to have NRAP 8 and
3 NRCP 62, because by your argument, you cannot appeal if there's a
4 judgement against you unless you post the value of the judgement.
5 That's simply not the law in the State of Nevada.

6 The law in the State of Nevada absolutely allows folks to ask
7 for a stay without a bond. If you want the automatic stay, then, yes, you
8 must following 62 and that typically requires a bond in the amount of the
9 judgement. But there's absolutely a basis, there's discretion in the
10 appellate and there's, by any reading of the federal counterpart, federal
11 laws that are persuasive or our case law, you can have a stay without a
12 bond.

13 The issue is can you meet the *Heer* factors to do that? And --
14 and, I don't know if I'm pronouncing the case correctly or not, but that's
15 how I pronounce it. But, in the end, it's absolutely not a mandatory
16 requirement that you have a bond in the amount of the judgement. I
17 don't disagree with you that one of the things that we're looking at is
18 maintaining, you know, some abilities to collect on the judgement, that
19 the stay does not create some delay that then would prevent the
20 collection of the judgement and that there should be some potentially
21 analysis that could create a bond commensurate with that analysis.

22 But the factors in the *Heer* case are clear and they simply -- I
23 appreciate that you're saying we don't know that they can pay we also
24 don't know that they can't pay. And the analysis requires the analysis of
25 all the factors.

1 So, Mr. Padda, whatever you want to highlight. But with the
2 understanding where the Court is at at the moment, if you could keep it
3 tight, I'd appreciate it.

4 MR. PADDA: Thank you, Your Honor. You have accurately
5 summarized the law.

6 In my experience with Mr. Garth, he has a lot of points, very
7 rarely does he have any authorities.

8 First of all, apart from the *Heer* factors, what he's asking for is
9 that the Plaintiff's post the entire amount of the purported judgement
10 which is illegal under NRS 20.035 and 20.037 which mandates that the
11 cumulative sum of all bonds required from all the appellants involved in
12 a civil action must not exceed the lesser of \$50,000 or the amount of the
13 judgement. So, the lesser of. So, the most he could get would be
14 \$50,000 so what he's asking for is presumptively or statutorily illegal.

15 There's another larger issue here and we point this out in our
16 brief which is that under Nevada Rule of Appellate Procedure 7, no bond
17 is required if there's no award of costs and fees. And so this becomes
18 now --

19 THE COURT: But here's what's interesting, you said the
20 decision. As you are arguing the things unfolded with Judge Wiese --

21 MR. PADDA: Yes.

22 THE COURT: -- and the circumstances, the decision wasn't
23 made to award them. They disagree --

24 MR. PADDA: Yes.

25 THE COURT: -- they think that -- that they were entitled to put

1 through. And he did in fact sign a judgement that had the fees and
2 costs. So, technically, I understand --

3 MR. PADDA: Yeah.

4 THE COURT: -- the decision to post the \$500 bond. And
5 there's no shadow docket, that was an interesting term. At the end of
6 the day, things like that are left-side filed but they have financial
7 information on them and otherwise. But, at the end of the day, a \$500
8 bond is what everybody posts when they file an appeal.

9 MR. PADDA: Exactly.

10 THE COURT: The question is, if you want a stay --

11 MR. PADDA: Right.

12 THE COURT: -- do you need to post more? Now technically
13 where I'm going to side, perhaps, with Mr. Garth's side is typically when
14 you want the stay, you file the request for the stay and you make the
15 argument as to why the, again I call it the *Heer* case, but the *Nelson*
16 *versus Heer* factors --

17 MR. PADDA: Yes.

18 THE COURT: -- would apply to warrant the stay without the
19 bond. You kind of got away with not having a bond without really going
20 through that process.

21 MR. PADDA: Well, we did post a bond and Judge Bell
22 checked the record --

23 THE COURT: No. No. No. No. You posted the appeal
24 bond, everybody has to do that, its \$500, everybody knows what it is
25 and it goes in.

1 MR. PADDA: Right.

2 THE COURT: Because you know that there's that judgement

3 --

4 MR. PADDA: Yes.

5 THE COURT: -- whether you think the judgement should be
6 what it is or not. I'm talking about your stay request --

7 MR. PADDA: Yeah.

8 THE COURT: -- and the fact that you sought a stay and the
9 fact that you were granted a stay. And there really isn't in the record this
10 -- this argument for motion for analysis of why you should be entitled to
11 the stay without the bond.

12 MR. PADDA: Mm-hmm.

13 THE COURT: We kind of have some of that record now --

14 MR. PADDA: Yes.

15 THE COURT: -- but my point is is that's where that issue
16 comes in. We're conflating the \$500, you know, cost bond, appeal bond
17 --

18 MR. PADDA: Understood. Understood.

19 THE COURT: -- with the getting a stay without a supersedeas
20 bond. Again, had you posted the amount of the judgement as a bond or
21 maybe \$50,000 as the amount of bond, you might have gotten the
22 automatic stay. That's not the issue here. The issue is, you have a stay
23 --

24 MR. PADDA: Mm-hmm.

25 THE COURT: -- and whether the stay should be -- should

1 have been granted and should still be granted with no additional bond
2 amount to -- to ensure the status quo and ensure that the stay -- the
3 delay caused by the stay of collection doesn't somehow prejudice, harm,
4 or otherwise impact their ability to collect. So --

5 MR. PADDA: Yeah. And to that point, Your Honor, we do
6 discuss all of the *Heer* factors set -- they're set forth on page 10 and 11
7 of our brief. And I can go through all those factors but I think you have it
8 there in front of you, in fact --

9 THE COURT: I do.

10 MR. PADDA: Yeah. So I don't want to belabor the point. But,
11 under all of those factors, not just one, all of them, they all weigh favor of
12 our client's. I mean, that's the whole point of a bond is to make --

13 THE COURT: Well you kind of acknowledged that one of
14 them doesn't which is the ability to pay the judgement is so plain that the
15 bond would be a waste of money. You've indicated maybe we don't --
16 and Mr. Garth has argued we don't have that information.

17 Also, the flip side of that may be arguably is that the
18 Defendant is in a precarious financial position so if we demand the bond
19 or demand the moneys then other creditors might be in -- in difficulty.
20 So those are a couple of them. I'm not sure we can say all five of apply,
21 but --

22 MR. PADDA: Well, I would say the overwhelming majority.
23 Let's put it that way.

24 THE COURT: You're saying they militate in favor of your
25 client.

1 MR. PADDA: 100%. Correct.

2 THE COURT: Anything else?

3 MR. PADDA: That's it, Your Honor.

4 THE COURT: Mr. Garth, final word?

5 MR. GARTH: Yes, Your Honor. I need to correct the record,
6 Mr. Padda misstated what the law is; 20.035 doesn't say \$50,000 it says
7 \$50 million. So he is dead wrong.

8 THE COURT: Understood. Most of the time, it's the amount
9 of the judgement when people want the automatic bond, automatic stay,
10 they do the supersedeas bond in the amount of the judgement. But, we
11 don't have that here. And there's clear case law that indicates that a
12 supersedeas bond is not an automatic requirement to get a stay. And
13 as we sit here right now, there is a stay with no bond. You want the stay
14 to have a bond, I saw your argument.

15 Is there anything final in rebuttal you want to highlight?

16 MR. GARTH: No, Your Honor.

17 THE COURT: All right. I really do appreciate the argument.
18 I'm not trying to be flip at all and I'm certainly, like I said, not trying to
19 truncate your time on the arguments because -- because they are
20 important. And -- and I agree with much of what both sides have said, in
21 all candor, that obviously if we're going to have a stay and we're going to
22 have a stay without additional bond or security requirement, then we
23 need to analyze the *Heer* factors to make sure that they're applicable.

24 And it is, in the end, this Court's determination -- it doesn't
25 have anything to do with the wealth of Valley Health System, give or

1 take whatever that is. And it doesn't necessarily have anything to do
2 with the fact that there may have been some hearings in which the
3 Plaintiff should have been or shouldn't have been.

4 The final analysis for me is old school. It's *Nelson versus*
5 *Heer* factors and do they militate for or against having further security
6 while this appeal is stayed. The collection is stayed upon this appeal.
7 And, in the end, in the analysis of the factors, the Court determined that
8 the stay may continue without the need for further security.

9 And, again, the five factors, the complexity of the collection
10 process, there really isn't any complexity of the collection process. The
11 collection process prior to the stay and after the stay is the same.
12 They're going to collect with whatever methodology is available. The
13 amount of time required to obtained a judgement after the -- it affirmed
14 on appeal, really we have the judgement already that's nonissue. The
15 collection can commence as soon as the appeal is complete.

16 The degree of competence that the District Court has in the
17 availability of the funds to pay, well there is some lack of information
18 there, admittedly, to know exactly what can happen. But we certainly
19 don't have any evidence that these individuals aren't otherwise out there
20 gainfully employed and in a position where, if judgement is brought, that
21 they would have assets to collect upon. There's no indication to the
22 contrary. And while sometimes the posture is that the Plaintiff's put out
23 there that they're solvent and they don't need to have, you know, they
24 can do this without a bond. And sometimes the Defendant's put out
25 there that they have reason to believe that they're not and there should

1 be a bond.

2 At the end of the day, in this particular case, we're just lacking
3 evidence to indicate that there's inability to pay. And I think that that
4 ultimately militates in favor of the Plaintiff's. Again, we don't have the
5 ability to pay is so plain that the bond would be a waste of money. We
6 don't necessarily have a precarious financial condition on the opposing
7 side of that that a bond would place creditors in harm. So, really the
8 third, fourth, and fifth are a little difficult to ascertain but not in a way that
9 precludes the Court determining that everything here can remain as
10 status quo.

11 I see no prejudice to Valley Health System for some delay in
12 the timeframe needed to begin collection upon appeal. That's assuming
13 that everything is affirmed on appeal and this judgement can be
14 collected as is.

15 In review of the docket, it does appear that there may be
16 some question as to this judgement staying in the amounts and in the
17 circumstances that they are. But at the end, that's going to be an
18 Appellate Court's decision. The only issue I have here today is is it
19 necessary that there be further security to protect the interest of the
20 judgement creditor to be able to collect when the time comes. And I see
21 no evidence that requires the Court to require additional security of that.

22 Yes, would it be ideal that there's a bond in the full amount of
23 the judgement so if and when the appeal doesn't go Plaintiff's way, the
24 Defendant can jump right in and grab those moneys, I guess. That
25 certainly is always a valid argument. But our case law is clear;

1 supersedeas bond is not the sole method in which you couldn't get a
2 stay and when you especially look at the federal case law applying the
3 counterpart to our combination of NRAP 8 and NRCP 62, there are
4 many ways in which a bond can be requested -- sorry, a stay can be
5 requested without further security. And in this particular case, the
6 factors that this Court has analyzed helps us determine that no
7 additional security it needed.

8 Mr. Padda, you'll prepare the order, please. Allow Mr. Garth
9 an opportunity to review it. And, if you can, please, submit it within 10
10 days, we'd appreciate it.

11 MR. PADDA: Thank you, Your Honor.

12 THE COURT: Thank you very much.

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15 [Hearing concluded at 9:32 a.m.]

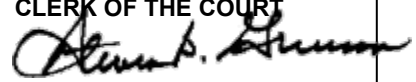
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed
21 the audio/video proceedings in the above-entitled case to the best of my
22 ability.

23
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25 

Velvet Wood
Court Recorder/Transcriber

EXHIBIT O



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13 *Attorneys for Judgment Creditor Valley Health*
14 *System, LLC dba Centennial Hills Hospital*
15 *Medical Center*

9
10 EIGHTH JUDICIAL 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; ISALIAH KHOSROF, individually and as
17 an Heir; LLOYD CREECY, individually,

18 Plaintiffs,

19 vs.

20 VALLEY HEALTH SYSTEM, 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,;

29 Defendants.

Case No. A-19-788787-C

Dept. No.: 30

NOTICE OF ENTRY OF ORDER

30 PLEASE TAKE NOTICE that a Order Denying Motion Requesting Increase and/or Posting
31 of Bond was entered with the Court in the above-captioned matter on the 8th day of March, 2023, a
32 copy of which is attached hereto as **Exhibit A**.

33 ///

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9th day of March, 2023, a true and correct copy of **NOTICE OF**
3 **ENTRY OF ORDER** was served by electronically filing with the Clerk of the Court using the
4 Odyssey E-File & Serve system and serving all parties with an email-address on record, who have
5 agreed to receive electronic service in this action.

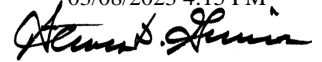
6 Paul S. Padda, Esq.
7 PAUL PADDALAW, PLLC
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14
15
16 By /s/ Heidi Brown
17 an Employee of
18 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A


CLERK OF THE COURT

PAUL PADDA LAW, PLLC
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ORD

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Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-19-788787-C

DEPT. XXV (25)

**ORDER DENYING MOTION
REQUESTING INCREASE AND/OR
POSTING OF SUPERSEDEAS BOND**

By Order filed February 3, 2023, this matter was remanded to this Court by the Supreme Court of Nevada "for the limited purpose of allowing the district court to consider the motion to increase the supersedeas bond on its merits." The Supreme Court's Order, citing Nelson v. Heer, 121 Nev. 832 (2005), states "the district court is better positioned to resolve any factual disputes

1 concerning the adequacy of any proposed security while this court [the Supreme Court] is ill
2 suited to such task.”

3 Following remand, the respective parties fully briefed the issues before the Court and
4 the Court convened a hearing on February 14, 2023. At the hearing, counsel for the parties
5 presented arguments and the Court, following careful consideration of the arguments, briefing
6 and evidence submitted, rendered a decision denying Valley Health System, LLC’s¹ motion for
7 increase and/or posting of supersedeas bond. This Order memorializes the Court’s findings and
8 conclusions of law.

9 This Court having carefully considered all of the factors identified by the Supreme Court
10 under the Nelson v. Heer case hereby renders the following findings and conclusions of law:

11 1. The Court finds there is no complexity to the collection process in this case. The
12 collection process prior to the stay and after the stay is the same. VHS is going to collect with
13 whatever methodology is available.

14 2. The Court further finds that the amount of time to obtain a judgment after it is
15 affirmed on appeal, if that does in fact occur, is not a factor of significance because the
16 judgment is already in place and collection can commence as soon as the appeal is complete.

17 3. The Court further finds that while there is some lack of information regarding the
18 availability of funds to pay the judgment, there is no contrary information indicating that the
19 Plaintiffs/Judgment Debtors cannot in fact pay. At the end of the day, and in this particular
20 case, there is a lack of evidence to indicate that there is an inability on the part of the
21 Plaintiffs/Judgment Debtors to pay. Accordingly, this factor, like the prior two factors, militates
22 in favor of Plaintiffs/Judgment Debtors.

23 4. The Court further finds that there is, again, a lack of information regarding whether
24
25
26
27

28 ¹ “VHS”

1 the Plaintiffs/Judgment Debtors' ability to pay the judgment is so plain that the cost of a bond
2 would be a waste of time. Since the goal of the Court is to maintain the status quo between the
3 parties, this factor also weighs in favor of Plaintiffs/Judgment Debtors.

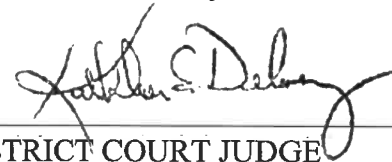
4 5. Finally, the Court finds that, with respect to whether Plaintiffs/Judgment Debtors are
5 in such a precarious financial situation that the requirement to post a bond would place other
6 creditors in an insecure position, there is again a lack of information such that the better course
7 is for the Court to simply maintain the status quo.

8 In sum total, weighing up all of the Nelson v. Heer factors and taking into consideration
9 the evidence before the Court, this Court finds that there are no facts/evidence that require the
10 imposition of additional security in this case.

11 In light of the foregoing, it is hereby ordered that VHS's motion to increase and/or
12 require the posting of a supersedeas bond is denied and no additional security is required in this
13 case.

14 IT IS SO ORDERED:

15 Dated this 8th day of March, 2023

16
17 
18

DISTRICT COURT JUDGE

19 Respectfully Submitted By:

20 /s/ Paul S. Padda

21 Paul S. Padda, Esq.
22 Counsel for Plaintiffs/Judgment Debtors

23 Approved As To Form & Content:

24 Per attached email, counsel declined to review or sign.

25 Brent Vogel, Esq.
26 Adam Garth, Esq.
27 Counsel for Valley Health System, LLC
28

Paul Padda

From: Paul Padda
Sent: Wednesday, March 1, 2023 12:20 PM
To: Garth, Adam; Vogel, Brent
Cc: Brown, Heidi; DeSario, Kimberly; Kim-Mistrille, Gaylene
Subject: RE: Re: Powell Order Denying Supersedeas Bond

Mr. Garth,

I am disappointed by your emotional reaction and overheated rhetoric. It's completely unnecessary. Since you don't want to focus on the issue at hand, I will submit our proposed order to the court with your email below. I believe the Court's preference would be for the parties to work cooperatively. Clearly, you do not wish to do that.

In case you didn't know, the State Bar has enacted a Creed of Professionalism and Civility. You should read it: <https://nvbar.org/for-lawyers/ethics-discipline/creed-of-professionalism-and-civility/>

In the meantime, I sincerely hope you can find some time to relax and enjoy the remainder of this week.

Regards
Paul Padda

Paul S. Padda, Esq.

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Las Vegas, Nevada 89173

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From: Garth, Adam <Adam.Garth@lewisbrisbois.com>
Sent: Wednesday, March 1, 2023 8:17 AM
To: Paul Padda <psp@paulpaddalaw.com>; Vogel, Brent <Brent.Vogel@lewisbrisbois.com>
Cc: Brown, Heidi <Heidi.Brown@lewisbrisbois.com>; DeSario, Kimberly <Kimberly.DeSario@lewisbrisbois.com>; Kim-Mistrille, Gaylene <Gaylene.Kim-Mistrille@lewisbrisbois.com>
Subject: RE: Re: Powell Order Denying Supersedeas Bond

Since you failed to comply with the court's directive and submit your order to us or the court in a timely manner, we undertook the responsibility of submitting the order on Monday as you are aware. Therefore, we find no need to involve ourselves with the one you prepared.

Moreover, stop lying to the court or misrepresenting facts. You didn't order the transcript, I did. You didn't pay for it, I did. These constant misrepresentations to the court are getting old. Behave like a professional.



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

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From: Paul Padda <psp@paulpaddalaw.com>
Sent: Tuesday, February 28, 2023 6:43 PM
To: Vogel, Brent <Brent.Vogel@lewisbrisbois.com>; Garth, Adam <Adam.Garth@lewisbrisbois.com>
Subject: [EXT] Re: Powell Order Denying Supersedeas Bond

Please advise if we can affix your e-signature to this Order and submit to Chambers.

Paul S. Padda, Esq.
PAUL PADDA LAW, PLLC
(702) 366-1888

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Estate of Rebecca Powell,
7 Plaintiff(s)

CASE NO: A-19-788787-C

8 vs.

DEPT. NO. Department 25

9 Valley Health System, LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 3/8/2023

16 Paul Padda	psp@paulpaddalaw.com
17 S. Vogel	brent.vogel@lewisbrisbois.com
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19 Jessica Pincombe	jpinnacle@jhcottonlaw.com
20 John Cotton	jhcotton@jhcottonlaw.com
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