

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESTATE OF REBECCA POWELL,  
THROUGH BRIAN POWELL, AS  
SPECIAL ADMINISTRATOR; DARCI  
CREECY, INDIVIDUALLY AND AS  
HEIR; TARYN CREECY,  
INDIVIDUALLY AND AS HEIR;  
ISAIAH KHOSROF, INDIVIDUALLY  
AND AS HEIR; AND LLOYD  
CREECY, INDIVIDUALLY,

Appellants,

vs.

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

Respondent.

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

Electronically Filed  
Apr 10 2023 10:59 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

---

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

---

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

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. APPELLANTS' OPPOSITION EXCEEDS PERMISSIBLE LIMIT**

NRAP 27(d)(2) imposes a 10-page limit on any motion to opposition thereto. Appellants' ("Plaintiffs") opposition exceeds the permissible page limit and they have not moved for relief seeking to exceed same. Respondent ("VHS") filed a letter opposition to the non-compliant document on April 6, 2023, requesting it be rejected and that VHS's instant motion be granted without opposition due to the extraordinary delays precipitated by Plaintiffs and the repeated rule defiance in which their counsel has engaged. VHS renews this request on reply.

### **II. APPELLANTS' CLAIM OF IMPERMISSIBLE MOTION IS AN UNQUESTIONABLE MISSTATEMENT OF LAW**

NRAP 8 explicitly requires that a party seeking a stay, in this case VHS, move first in District Court for such relief<sup>1</sup>, that approvals of supersedeas bonds<sup>2</sup> and any modifications of injunctions pertaining to any appeal<sup>3</sup>, which include modifications to supersedeas bonds, be made first in District Court, but if such relief is either denied or impracticable, said motion may be made before this Court,<sup>4</sup> which may condition any relief for a stay or injunction on a party's filing a bond or other appropriate security in the District Court.<sup>5</sup> "After a bond for costs on appeal is filed,

---

<sup>1</sup> NRAP 8(a)(1)(A)

<sup>2</sup> NRAP 8(a)(1)(B)

<sup>3</sup> NRAP 8(a)(1)(C)

<sup>4</sup> NRAP 8(a)(2)

<sup>5</sup> NRAP 8(a)(2)(E)

a respondent may raise for determination by the district court clerk objections to the form of the bond or to the sufficiency of the surety.”<sup>6</sup>

NRCP 62(d) provides for a stay pending an appeal if a party posts a proper bond. NRCP 62(g) does not limit an appellate court’s jurisdiction to suspend, modify, restore, or grant an injunction while an appeal is pending relating to the stay imposed or to issue an order to preserve the status quo or the effectiveness of the judgment to be entered. “The purpose of security for a stay pending appeal is to protect the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the status quo and preventing prejudice to the creditor arising from the stay.” *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *see also McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983) (“The purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment.”).

A bond is usually set in an amount that will permit full satisfaction of the judgment. *See Nelson, supra*, 121 Nev. at 834–35, 122 P.3d at 1253; *see also* NRS 108.2415 (in the context of a mechanic’s lien release pending appeal, setting minimum bond amount at 1.5 times the judgment). In other words, it is usually a precondition for a stay of enforcement that a bond be sufficient to cover any judgment at issue be provided. Modifications to any stay of enforcement, which

---

<sup>6</sup> NRAP 7(c)

necessarily include the amount of the appeal bond are most definitely authorized by both rule and statute. For Plaintiffs to assert otherwise is belied by law.

**III. THE DISTRICT COURT MANIFESTLY ABUSED ITS DISCRETION IN FAILING TO REQUIRE THE POSTING OF A SUPERSEDEAS BOND BY PLAINTIFFS IN THE AMOUNT OF THE JUDGMENT**

The record reflects (Vol. VII, Exhibit “N”, pp. 771-773; Exhibit “O”, pp. 780-781) that the District Court not only conducted a cursory analysis of the *Nelson* factors, but did so acknowledging that Plaintiffs “got away with not having a bond without really going through that process” (Vol. VII, Exhibit “N”, p. 767:19-20) and “there really isn’t in the record this -- this argument for motion for analysis of why you should be entitled to the stay without the bond” (Vol. VII, Exhibit “N”, p. 768:9-11). After considering the briefing submitted by the parties, the District Court concluded that despite a judgment on file against the respective Plaintiffs, which is the subject of the pending appeal, Plaintiffs would be permitted a “free ride” in obtaining a stay of enforcement of the judgment while the matter proceeds on appeal without having to post any security for that privilege. Despite this Court’s remand and belief that the District Court’s prior case familiarity would permit a more insightful analysis, it was no more insightful upon remand, as Justice Bell was the previously assigned judge on the matter having imposed the stay originally, and Judge Delaney had no prior connection with the facts of this case upon remand. When analyzed, it is clear that her analysis was flawed and provides zero protection

for VHS while Plaintiffs have no stake in the appeal whatsoever. In essence, they bear no risk and VHS is precluded from pursuing its judgment enforcement in direct defiance of what established case law was enshrined in precedent. *See Nelson, supra*, 121 Nev. at 834–35, 122 P.3d at 1253; see also NRS 108.2415.

**IV. THE NELSON FACTORS ALL WEIGH IN FAVOR OF GRANTING VHS’S MOTION**

Plaintiffs’ opposition and the District Court’s analysis not fails to properly analyze this Court’s decision in *Nelson, supra* regarding the purpose and adequacy of a supersedeas bond. VHS’s initial motion demonstrated how each of the *Nelson* factors inures in favor of VHS and will not be repeated here. Plaintiffs’ essential argument (without any evidence to support it), is that they lack the resources to pay a judgment, so therefore they are entitled to proceed without a bond sufficient to cover the judgment already on file. In other words, according to Plaintiffs, they are free to pursue an appeal, and since they are effectively judgment proof, they should not be required to post a bond. Not only is this argument absurd, but it defies the very purpose of a supersedeas bond. The law requires the bond to have a value sufficient to cover the amount of the judgment obtained. Any less defeats the purpose of the rule in the first place.

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

NRS § 20.037 limits the amount required for an appeal bond to be the lesser

of \$50,000,000 or the amount of the judgment. In this case, the amount of the judgment is \$118,906.78. Plaintiffs do not dispute that amount. The purpose of a supersedeas bond is to protect the prevailing party from loss resulting from a stay of execution of the judgment, the amount should usually be set in an amount that will permit full satisfaction of the judgment. See, *McCulloch, supra*; see also, *Nelson, supra* 121 Nev. at 835-36, 122 P.3d at 1254), and post judgment interest is a necessary component of the judgment itself, which remains unpaid. Plaintiffs should not allowed to pursue an appeal without having satisfied the their obligations to VHS which includes post-judgment interest from June 2, 2022, date of the judgment, up through the present.

DATED this 10<sup>th</sup> day of April, 2023.

LEWIS BRISBOIS BISGAARD &  
SMITH LLP

By /s/ Adam Garth

S. BRENT VOGEL

Nevada Bar No. 006858

ADAM GARTH

Nevada Bar No. 15045

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Respondent Valley Health  
System, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of April, 2023, a true and correct copy of **RESPONDENT'S REPLY TO APPELLANTS' OPPOSITION TO MOTION TO REQUIRE POSTING OF OR INCREASING AMOUNT OF SUPERSEDEAS BOND BY APPELLANTS** was served upon the following parties by electronic service through this Court's electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

Paul S. Padda, Esq.  
PAUL PADDALAW, PLLC  
4560 S. Decatur Blvd., Suite 300  
Las Vegas, NV 89103  
Tel: 702.366.1888  
Fax: 702.366.1940  
[psp@paulpaddalaw.com](mailto:psp@paulpaddalaw.com)  
*Attorneys for Plaintiffs*

By

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