IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 84861

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

Appellants,

v.

VALLEY HEALTH SYSTEM, LLC

Respondent.

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

APPELLANTS' REPLY BRIEF

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

Attorney for Appellants

Dated: April 12, 2023

RULE 26.1 DISCLOSURE

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

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

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

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

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

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

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

/s/ *Paul S. Padda*

_____

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

Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s):

Cases

INTRODUCTION

VHS's position in this appeal is predicated upon an assertion of fact that is clearly erroneous (i.e., that the district court awarded fees and costs to VHS)[1] and upon an argument that is demonstrably flawed. Namely, that the Powell parties waived their right to challenge the judgment at issue in this case by failing to object to the decision pertaining to reconsideration. *See* Answering Brief, 13-15. This is an illogical argument. There was no reason for the Powell parties to object to or appeal the decision regarding reconsideration since the decision was plainly favorable to their interests. As the Powell parties have argued in their Opening Brief, what this case is about is "whether the district court committed error when it ostensibly approved and signed the monetary judgment presented to it by VHS **despite never having awarded VHS fees and costs**" through any order or decision. Opening Brief, p. 6. (emphasis supplied).

VHS's argument requires this Court to decide what if anything was granted by way of the reconsideration decision below. If the answer is nothing except the right to pursue *Honeycutt*[2] type relief, then the judgment is void *ab initio* because it

---

[1] Answering Brief, pp. 26.

[2] Huneycutt v. Huneycutt, 94 Nev. 79 (1978).

exceeded what was being granted through reconsideration. Further to this point, whether the trial judge was mistaken about whether he had jurisdiction (as asserted by VHS in its Answering Brief) is irrelevant to the issue presented in this appeal of whether a monetary judgment could ever be issued in favor of VHS in the absence of a decision awarding fees and costs to VHS. Although, the judge's belief that he lacked jurisdiction is highly instructive in understanding his state of mind and the fact that he was clearly not intending to award VHS any fees and costs because he explicitly stated he could not do so based upon lack of jurisdiction. Thus, as further argued by the Powell parties in their Opening Brief, "[e]ven if the district court had jurisdiction to issue the judgment in question, it abused its discretion when it did so because there was no written decision issued by the district court setting forth any analysis supporting an award of fees and costs," let alone any decision awarding fees and costs. Opening Brief, p. 13. Instead, the primary analysis by the district court was that it lacked jurisdiction and therefore it was limited to granting only *Honeycutt* type relief. Everything else was simply dicta.

There was simply no reason for the Powell parties to appeal the favorable ruling from the district court denying fees and costs for lack of jurisdiction. It was not until the district court, for the first time, made an actual monetary award through a judgment that the Powell parties had reason to even file an appeal.

In its Answering Brief VHS claims the lower court was not under "any restrictions . . . to order or award attorneys' fees and costs." *See* Answering Brief, p. 41. Whether that is actually true is again irrelevant because the judge clearly believed he was under a jurisdictional restriction and he cited that as the reason for why he was granting only *Honeycutt* relief.

Logic dictates that whether a court has the power to do something and whether it actually does it are two separate issues. Indeed, notwithstanding whether the district court was or was not under any restriction and whether the district judge's beliefs regarding the same were reasonable, the irrefutable fact remains in this case that the lower court did *not* award VHS fees and costs but merely stated an intent to do so *if* it had jurisdiction. See 6 AA 597 ("**If the court were inclined to reconsider its previous decision [flatly denying fees and costs in their entirety], *the most it could do* would be to enter a *Honeycutt* Order**").[3] A judge's expression of intent is not the same as an actual decision. Rather, it is merely dicta.

VHS could have sought reconsideration and further clarity from the district court regarding the reconsideration decision (if it truly believed the court never lost jurisdiction as it suggests in its Answering Brief) but it chose not to do so thereby

---

[3] Emphasis supplied.

waiving the right to now challenge the fact that the decision granted anything other than only *Huneycutt* relief. Simply put, there was never a monetary award rendered via a decision that would support the judgment obtained by VHS. The judgment, therefore, must now be set aside based upon that indisputable fact. Finally, it is worth noting that every issue raised by VHS in this appeal was previously and prospectively waived when it knowingly declared, through its counsel, that "*any issues that were or could have been brought* in this appeal [referring to the appeal filed on March 14, 2022] are forever waived." 6 AA 606-608 (emphasis supplied).

TIMELINE OF KEY EVENTS

Set forth below is a timeline of key facts/events pertinent to this appeal:

DATE	FILING/DOCUMENT	APPELLANT'S APPENDIX
February 15, 2022	The district court issues order denying VHS fees and costs and finding that Powell parties's case was brought in good faith and that their rejection of offer of judgment was neither grossly unreasonable or in bad faith.	4 AA 495
February 23, 2022	VHS files motion for reconsideration of the 2/15/2022 order denying it fees and costs.	5 AA 497-525
March 14, 2022	While its motion for reconsideration is still pending, VHS files notice of appeal with the Nevada Supreme Court challenging the 2/15/2022 Order denying it fees and costs.	5 AA 571-573
May 4, 2022	The district court denies VHS motion for reconsideration citing lack of jurisdiction	6 AA 597

	and noting "**the most it could do would be to enter a Honeycutt [O]rder**."	
May 12, 2022	VHS withdraws its appeal stating "any issues that were or could have been brought in this appeal are forever waived."	6 AA 606-608
May 16, 2022	The Supreme Court dismisses VHS' appeal.	6 AA 609
June 2, 2022	The district court signs a judgment in favor of VHS awarding over $100,000 in fees and costs despite having previously stated in the decision on reconsideration (presumably the basis for the judgment) that the most it could do would be to enter a *Honeycutt* order. Counsel for Powell parties objects by stating "we cannot agree to this."	6 AA 614-618
June 7, 2022	Powell parties file notice of appeal from the judgment	6 AA 657-658

ARGUMENT

I. SINCE A MONETARY JUDGMENT CANNOT ISSUE WITHOUT AN ORDER/DECISION AWARDING A PARTY MONETARY RELIEF IN THE FIRST INSTANCE, THE JUDGMENT AT ISSUE IN THIS APPEAL IS VOID *AB INITIO* AND MUST BE SET ASIDE

This appeal turns on a fairly simple and straightforward issue. Can a district court issue a monetary judgment that far exceeds and/or outright ignores what is actually granted in an order/decision? Would the adoption of such a procedure be legally permissible or would it be void ab initio? Common sense would dictate that what happened in this case is highly impermissible and exceeded the district court's authority rendering its action void ab initio. Chaos would ensue if district

courts could simply issue judgments awarding monetary relief to a party in the absence of any decision or order supporting the award. And yet, that is precisely what occurred here. VHS presented a monetary judgment for the district court's approval that exceeded what the district court actually granted VHS in its May 4, 2022 decision/order.[4]

VHS argues in its Answering Brief that the Powell parties have waived their right to challenge the judgment in this appeal because they should have appealed the reconsideration decision issued by the district court on May 4, 2022. *See* 6 AA 596-605. In order to prevent this argument from appearing patently absurd, given that the reconsideration decision clearly favored the Powell parties' interests and did not necessitate an appeal for that reason, VHS invents a fiction that the district court actually awarded fees and costs to VHS. *See* Answering Brief, pp. 10 ("the order granting VHS's motion for reconsideration of its motion for costs and

---

[4] Although this issue was clearly presented and properly framed in the Opening Brief, to the extent there is any suggestion that it is being raised for the first in this Reply, it should be noted that the Court has the prerogative to consider issues a party raises in its reply brief and "we will address those issues if consideration of them is in the interests of justice." *See* Powell v. Liberty Mutual Fire Insurance Co., 127 Nev. 156, 161 n.3 (2011). *See also* Maide, LLC v. DiLeo for DiLeo, 138 Nev. Adv. Op. 9 (2022); Bertsch v. Eighth Judicial District Court, 133 Nev. 240 (2017). In this case, justice requires that a VHS not benefit from a monetary judgment that is unsupported by any order or decision. In fact, given the manner in which the judgment was obtained (clearly exceeding what the district court actually granted by way of reconsideration) what occurred in this case was in fact a perversion of justice.

attorneys' fees"); 26 ("its decision to award costs and attorneys' fees cannot be considered either arbitrary or capricious. However, no such thing ever happened. But in order to bolster its position in this appeal, VHS engages in misdirection by arguing that "Plaintiffs [Powell parties] failed to timely file a notice of appeal regarding the [d]istrict [c]ourt's decision on VHS's motion for reconsideration making any arguments raised by Plaintiff's in this regard jurisdictionally defective and improper and limits Plaintiffs solely to the judgment signed by the [d]istrict [c]ourt." Answering Brief, p. 41.

As noted earlier and in the Opening Brief, what this case is about is "whether the district court committed error when it ostensibly approved and signed the monetary judgment presented to it by VHS despite never having awarded VHS fees and costs" through any order or decision. Opening Brief, p. 6. Further, "[e]ven if the district court had jurisdiction to issue the judgment in question, it abused its discretion when it did so because there was no written decision issued by the district court setting forth any analysis supporting an award of fees and costs," let alone any decision awarding fees and costs. Opening Brief, p. 13.

There can be no reasonable dispute that the district court clearly did not award any monetary relief to VHS in its May 4, 2022 order/decision. In fact, what the district judge stated was that "[i]f the court were inclined to reconsider its previous decision, the most it could do would be to enter a Honeycutt Order." 6

AA 597. The district court's use of the phrase "the most it could do" clearly demonstrated that the court was only granting *Honeycutt* relief and nothing else because the judge understood that to be the limits of his authority. In fact, the district court concluded its order by instructing VHS to transmit the decision to the Nevada Supreme Court rather than prepare an actual judgment. 6 AA 605.

Whether the district court "mistakenly stated that it lacked jurisdiction"[5] as claimed by VHS in its "statement of facts," is not actually informative of anything. Once again, what is relevant is that the district court declined to award VHS fees and costs. VHS could have sought further clarification or reconsideration of that decision but it chose not to do so.

After it dismissed its appeal, and presumably recognizing that it failed to timely seek clarification or reconsideration, VHS sought to fix the problem by brazenly presenting the district court with a judgment for signature – even though the May 4, 2022 decision awarded VHS no monetary relief. The fact that the district court signed the judgment was more than simply abuse of discretion (because discretion would mean the judge had authority to sign the rogue judgment), it was an act that was void *ab initio*[6] given the lack of any decision or

---

[5] Answering Brief, p. 9.

[6] Something that is void ab initio is null from the beginning and cannot be validly further acted upon. Dekker/Perish/Sabatini, Ltd. v. Eighth Judicial District Court,

order supporting the judgment. It was simply not a procedure the district court could lawfully adopt.

CONCLUSION

For the reasons set forth in the Opening Brief and this Reply, the Court should vacate the judgment at issue in this appeal on the grounds that it is void *ab initio*.

/s/ *Paul S. Padda*

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

Attorney for Appellants

Dated: April 12, 2023

---

137 Nev. 525, 529 (2021). "An order is void ab initio if entered by a court in the absence of jurisdiction of the subject matter or over the parties, if the character of the order is such that the court had no power to render it, ***or if the mode of procedure used by the court was one that the court could not lawfully adopt***." Id (*citing* Singh v. Mooney, 261 Va. 48 (2001)) (emphasis supplied). Legal questions, such as whether an act is void ab initio, are reviewed de novo by this Court. *See* Scenic Nevada, Inc. v. City of Reno, 132 Nev. 469 (2016).

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **APPELLANTS' REPLY BRIEF IN CASE NO. 84861**, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. This brief complies with the type-volume limitation provided in NRAP 32(a)(7)(A)(ii) as it contains **3,457 words**, or no more than 7,000 words.

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

DATED this 12th day of April 2023

/s/ *Paul S. Padda*

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

Attorney for Appellants

VERIFICATION

I, Paul S. Padda, declare:

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

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

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April 2023 in Clark County, Nevada.

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Paul Padda Law and that on this day, April 12, 2023, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPELLANTS' REPLY BRIEF IN CASE NO. 84861** properly addressed to the following:

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

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