

**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

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**RESPONDENT'S MOTION TO REISSUE ORDER AS A PUBLISHED OPINION  
PURSUANT TO NRAP 36(f)**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Respondent in this matter, by and through its counsel, and pursuant to NRAP 36(f), hereby files this motion to reissue the unpublished Order of Affirmance, issued by this Court on November 30, 2023, as an opinion to be published in the Nevada Reports as follows:

### **II. CRITERIA FOR PUBLICATION**

NRAP 36(c) states that “[a]n unpublished disposition, while publicly available, may not be cited as precedent except in very limited circumstances” Whereas, “[a] published disposition is an opinion designated for publication in the Nevada Reports and **may be cited as precedent**.” NRAP 36(c) [emphasis added].

This Court decides whether to publish a disposition if it:

- (1) Presents an issue of first impression;
- (2) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
- (3) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c).

For the reasons set forth below, Respondent believes that this case is appropriate for publication because the reasoning set forth in the unpublished

disposition has precedential value to the legal community regarding (1) the jurisdiction of the district court to act while a motion for reconsideration is pending, (2) the tolling effects of a motion for reconsideration as to the timing of the filing of a notice of appeal, and (2) the filing of a motion for reconsideration before an appeal obviates the *Huneycutt/Foster* procedure's invocation. Therefore, the aforesaid order should be published as an opinion in the Nevada Reports to be cited as such.

### **III. THIS CASE IS APPROPRIATE FOR PUBLICATION**

This case is appropriate for publication in the Nevada Reports because it significantly clarifies the tolling effect of a motion for reconsideration regarding the filing of a notice of appeal in accordance with NRAP(4)(a)(6) and *AA Primo Builders, LLC* 126 Nev. 578, 584 n.2, 245 P.3d 1190, 1194 n.2 (2010), and clarifies when the procedures outlined in both *Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 586 (1978) and *Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 455-56 (2010) are to be applied and when they are not invoked, involving issues of public importance that has application beyond the parties.

Specifically, this case clearly articulates the jurisdictional impact of the premature filing of a notice of appeal when a timely motion for reconsideration is pending. The District Court, in this case, was under the mistaken impression that it lacked jurisdiction to make an award of costs and fees upon a timely filed motion for reconsideration of its original decision denying same, due to the fact that a notice

of appeal had been filed with this Court. In its order issued in this matter on November 30, 2023, this Court unmistakably articulated that timely filed motions for reconsideration are tolling motions related to the filing of a notice of appeal, and thus any notice of appeal filed while such a tolling motion is pending is premature. The effect of a prematurely filed notice of appeal is to never divest the District Court of any jurisdiction to decide issues pertaining to the motion for reconsideration since the notice of appeal never invested this Court with the jurisdiction on the matter. As the premature appeal had been dismissed prior to the District Court resolving the motion for reconsideration, the District Court was never divested of jurisdiction in the first place and was therefore within its right to have decided the issues raised on reconsideration. Moreover, once the appeal was dismissed, this Court clarified in its November 30, 2023 order that any decisions rendered by the District Court pertaining to the motion for reconsideration and the subsequent entry of a judgment related thereto what totally proper, as the District Court's jurisdiction was never divested.

Additionally, this case articulates when the procedures outlined in *Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 586 (1978) and *Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 455-56 (2010) are to be applied and when they are not invoked. This Court noted in its November 30, 2023 order that while *Huneycutt/Foster* ordinarily requires a party to seek a remand from this Court prior to seeking the District Court's modification of its own order, that procedure is never

invoked when a motion for reconsideration is filed in the District Court **before** the notice of appeal is filed. Therefore, this Court has clarified that if the *Huneycutt/Foster* procedure is not first required, the District Court is not divested of jurisdiction in the first instance and it may rule on a motion for reconsideration without any prior actions by this Court.

Publication would assist the district courts in Nevada with making determinations regarding their jurisdictional limits and powers in relation to this Court and assist the legal community in the timing of their motions and appeals and further clarifies the effects of a motion for reconsideration and its tolling effect on a potential appeal's timing.

#### **IV. No Substantial Revisions of the Unpublished Order Will be Necessary.**

NRAP 36(g)(4) states that the granting of a motion to reissue an order as a published opinion is in the sound discretion of this Court. Publication is disfavored, however, “if revisions to the text of the unpublished disposition will result in discussion of additional issues not included in the original decision.” NRAP 36(g)(4).

In this case, the Order issued by this Court on November 30, 2023, does not require revisions to the text for publication. The Order succinctly sets forth the background facts and procedural history pertinent to this Court's disposition of the appeal. Further, this Court sets forth a detailed analysis of the legal issues supporting its Order.

**V. CONCLUSION**

Based upon the foregoing, Petitioner respectfully requests the Court reissue its unpublished Order as an opinion to be published in Nevada Reports.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of December, 2023, a true and correct copy of SUBSTITUTION OF ATTORNEYS was served upon the following parties by electronic service through this Court's electronic service system.

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