IN THE SUPREME COURT OF THE STATE OF NEVADA

PHONG T. VU,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; THE HONORABLE CHUCK WELLER, DISTRICT JUDGE, FAMILY DIVISION,
Respondents,
and,
RICHARD A. GAMMICK, DISTRICT ATTORNEY,
Real Party In Interest.
_____/

No.

PETITION FOR WRIT OF MANDAMUS

JEREMY T. BOLSER
Washoe County Public Defender
Nevada State Bar Number 4925
JOHN REESE PETTY
Chief Deputy
Nevada State Bar Number 10
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PETITION

TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE NEVADA SUPREME COURT:

Petitioner Phong T. Vu petitions this Court for a writ of mandamus directing Chuck Weller, a Judge of the Second Judicial District Court, Family Division, to vacate his Order in Response to Request for Court Ordered Involuntary Admission (commitment order). See PA 70-72.[1] Alternatively, Petitioner seeks a writ of mandamus requiring Judge Weller to re-call or have removed the record of Petitioner's involuntary civil commitment from the central repository for Nevada Records of Criminal History and as presently included in the National Instant Criminal Background Check System.

Petitioner seeks this Court's intervention because Judge Weller's commitment order is not supported by substantial evidence in the record, and thus the decision to commit Mr. Vu was arbitrary and capricious and, therefore, a manifest abuse of discretion. Additionally, Judge Weller manifestly abused his discretion and exceeded his authority when he directed his court clerk to forward a record of

[1] "PA" stands for Petitioner's Appendix. Pagination conforms to Rule 30(c)(1) of the Nevada Rules of Appellate Procedure.

Petitioner's involuntary civil commitment to the central repository for Nevada Records of Criminal History for inclusion in the National Instant Criminal Background Check System before the commitment order had become a final order. See NRS 433A.310(1)(b) (noting that an involuntary commitment order "must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally released pursuant to NRS 433A.390").

Petitioner has no other remedy at law.

Parties

1. Petitioner, Phong T. Vu, is a mentally ill person who was subjected to involuntary civil commitment by court order in Washoe County Nevada.

2. Respondent, Second Judicial District Court, is a constitutionally created court of general jurisdiction. Nev. Const. Art. VI, §1 and §5. Washoe County constitutes the Second Judicial District. NRS 3.010.

3. Respondent, Chuck Weller, is the duly elected Judge in Department 11 of the Second Judicial District Court, Family Division. Judge Weller has administrative responsibilities over involuntary civil

commitments. See Second Judicial District Court Administrative Order 2014-2 (paragraph 7).

4. Real Party In Interest, Richard A. Gammick, is the duly elected District Attorney for Washoe County and, either personally or by deputy, "is responsible for the presentation of evidence, if any, in support of the involuntary court-ordered admission of a person to a mental health facility." NRS 433A.270(5).

Facts

5. On January 29, 2014, Dr. Nicole Pavlatos petitioned the district court for the court-ordered involuntary commitment of Petitioner Phong T. Vu. PA 1-8 (Petition For Court Ordered Involuntary Admission). In her form petition Dr. Pavlatos alleged that Mr. Vu was "a person with a mental illness" who, as a result of that mental illness was "likely to harm [himself] or others" and who "pose[d] a risk of imminent harm to himself or others." *Id.* at 2.

6. A hearing on the petition was held before Respondent Judge Chuck Weller on February 6, 2014. PA 12-69 (Transcript of Proceedings). Deputy District Attorney Blaine Cartlidge appeared on behalf of Washoe County. Chief Deputy Public Defender Kathleen M.

O'Leary appeared on behalf of Mr. Vu pursuant to NRS 433A.270(1) (authorizing the appointment of the public defender).

7. Dr. Melissa Piasecki, the court appointed psychiatrist who evaluated Mr. Vu, *Id.* at 17, testified on direct examination that Mr. Vu suffered from a mental illness (chronic psychotic disorder or psychosis not otherwise specified), and that as a result of that mental illness Mr. Vu could not "meet [his] basic needs"—those needs being "safety and self protection." *Id.* at 17-19.[2] Dr. Piasecki explained that "safety and self protection" in this context meant Mr. Vu might put himself at risk because third persons might respond negatively to his behavior. *Id.* at 44-45. Cross-examination of Dr. Piasecki established that she did not believe Mr. Vu was a danger to others. *Id.* at 23 and *Id.* 38-39 (noting that an isolated chart entry concerning Mr. Vu and a resident at the hospital did not constitute a threat). Additionally, Dr. Piasecki testified there was information in Mr. Vu's hospital chart that his mother had obtained an apartment for him that he could go to upon his discharge from the hospital. *Id.* at 31-32. Further, that Mr. Vu had money and credit cards at his disposal. *Id.* at 32. And that he could prepare his own

[2] At the hearing, Dr. Pavlatos' allegation that Mr. Vu was a danger to himself or to others was not pursued by the District Attorney.

meals. *Id.* at 33-34. In sum, Mr. Vu could meet his basic needs for shelter and food. *Id.* at 33. Finally, there was nothing in the chart indicating Mr. Vu was a danger to himself. *Id.* at 38. Dr. Piasecki testified that one concern in the chart dealt with Mr. Vu's spending "extended periods of time in one position." The worry was Mr. Vu "might develop a blood clot or something like that." But that concern "went away after he complied with a request to get up and move a little bit every hour." *Id.* at 38. This was the only concern about his physical well-being Dr. Piasecki saw in the chart. *Id.*

8. Dr. Richard Lewis, the court appointed psychologist who examined Mr. Vu, testified that Mr. Vu suffered from a mental illness—psychotic disorder not otherwise specified. *Id.* at 47. Dr. Lewis felt that Mr. Vu could not meet his safety needs because other people felt "intimidated by him." *Id.* at 48-49. And although he could not "predict that anybody would assault him," he "fe[lt] there's certainly a risk of that." *Id.* at 49. Asked by the State if he believed Mr. Vu "can prepare his own food by himself and live by himself, if released today," Dr. Lewis answered: "Let me put it this way, I found nothing that would

lead me to believe that he couldn't do that." Mr. Vu's ability to care for himself was not his concern. *Id.* at 51.

9. Judge Weller found Mr. Vu suffered a mental illness (psychosis not otherwise specified) that made him a danger to himself "if allowed to his liberty." *Id.* at 66. He found Mr. Vu had intimidated his family and one hospital resident and "glean[ed] that there exists a reasonable probability that a serious bodily injury will occur if he's discharged soon because of the fact that that's how people have reacted to him in recent days." *Id.* at 65-66. Judge Weller also concluded "there exists a reasonable probability that a serious bodily injury will occur within the next 30 days unless admitted to a mental health facility and adequate treatment is provided." *Id.* at 67.[3] Judge Weller did not address or comment upon the evidence showing that if released Mr. Vu had shelter (an apartment), food and the ability to pay for other necessities (cash and credit cards).

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[3] Dr. Piasecki provided no testimony in support of this finding so it can only rest on Dr. Lewis' "yes" answer to the question whether he includes the 30 day criteria for commitment in his "normal course every Wednesday and every time you testify." PA 56. Dr. Lewis' answer is insufficient to support Judge Weller's finding. Notably, Dr. Lewis did not specifically testify how that criteria applied to Mr. Vu.

Judge Weller granted the petition and directed his court clerk to "forward a record of this determination to the central repository for Nevada Records of Criminal History for inclusion in the National Instant Criminal Background System." *Id.* Ms. O'Leary objected noting that the court's order was, for the next 30 days, only an interlocutory order. She argued that the record of the proceeding should be transmitted only after the order had become a final order. PA 67-68. Judge Weller overruled the objection. *Id.* at 68.

10. Judge Weller's written commitment order was filed on February 6, 2014. The order stated that Mr. Vu was "mentally ill and unable to meet his ... basic needs" and placed Mr. Vu for treatment at Northern Nevada Adult Mental Health Services (NNAMHS). *Id.* at 70-72. Twelve days later Mr. Vu was unconditionally discharged from NNAMHS. *Id.* at 73-74 (Notice of Patient Discharge and Withdrawal of Advocate) (noting that Mr. Vu was discharged from the hospital on February 18, 2014).

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Reasons to Grant the Petition

11. In Nevada, as relevant to these facts[4], a person with a mental illness may be involuntary committed to a mental health facility by court order only if "there is clear and convincing evidence that the person ... has a mental illness and, because of that illness, is likely to harm himself or herself or others if allowed his or her liberty." However, that order "must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally discharged pursuant to NRS 433A.390." NRS 433A.310(1)(b). The commitment order issued by Judge Weller never became final.

By statute, a person presents "a clear and present danger of harm to himself or herself if, within the immediately preceding 30 days, the person has, as a result of the mental illness: Acted in a manner from which it may reasonably be inferred that, without the care, supervision or continued assistance of others, the person will be unable to satisfy his or her need for nourishment, personal or medical care, shelter, self-protection or safety, and if there exists a reasonable probability that the

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[4] Judge Weller's findings implicate NRS 433A.115(2)(a) but not (2)(b) (attempted or threatened suicide) or (2)(c) (mutilation or attempted mutilation of self) or NRS 433A.115(3) (harm to others).

person's death, serious bodily injury or physical debilitation will occur within the next 30 days unless he or she is admitted to a mental health facility pursuant to the provisions of NRS 433A.115 through 433A.330, inclusive, and adequate treatment is provided to the person." NRS 433A.115(2)(a) (emphasis added). Under this statute then, Mr. Vu could be involuntarily court committed to a mental health facility only if it was established by clear and convincing evidence that he would be unable to satisfy his need for nourishment, personal or medical care, shelter, self-protection or safety without the care, supervision or continued assistance of others, and that there existed a reasonable probability that his death, serious bodily injury or physical debilitation would occur within the next 30 days unless he was admitted to a mental health facility. The evidence presented to Judge Weller did not meet either essential criterion.

12. "Commitment to a psychiatric facility constitutes a deprivation of liberty, regardless of whether the commitment occurs as a result of a court order or referral, or an involuntary commitment proceeding." *Scarbo v. District Court*, 125 Nev. 118, 124, 206 P.3d 975 (2009). And such "[l]oss of liberty calls for a showing that the individual

suffers from something more serious than is demonstrated by idiosyncratic behavior." *Addington v. Texas*, 441 U.S. 418, 427 (1979).

Issues Presented

(1) Whether Judge Weller's commitment order was supported by substantial evidence? And,

(2) Whether Judge Weller manifestly abused his discretion and exceeded his authority when he directed his court clerk to forward a record of Petitioner's involuntary civil commitment to the central repository for Nevada Records of Criminal History for inclusion in the National Instant Criminal Background Check System before the commitment order had become a final order?

13. Petitioner has no other plain, speedy and adequate remedy at law. Judge Weller's order was an interlocutory, not final, order. Rule 3A(b)(1) of the Nevada Rules of Appellate Procedure allows an appeal only from a final judgment. Judge Weller's commitment order is not a final order. No other rule or statute provides for an appeal from an interlocutory involuntary civil commitment order.

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RELIEF SOUGHT

Petitioner Phong T. Vu petitions this Court for a writ of mandamus directing Chuck Weller to vacate the commitment order at issue. Alternatively, Petitioner seeks a writ of mandamus requiring Judge Weller to re-call or have removed the record of Petitioner's involuntary civil commitment from the central repository for Nevada Records of Criminal History and presently included in the National Instant Criminal Background Check System.

Additionally, Petitioner seeks an order from the Court directing Judge Weller to, in the future, send records of involuntary commitment proceedings to the central repository for Nevada Records of Criminal History only in those cases where the commitment order has become final pursuant to NRS 433A.310(1)(b).

Respectfully submitted, this 23rd day of April, 2014.

John Reese Petty
JOHN REESE PETTY
Chief Deputy

Kathleen M. O'Leary
KATHLEEN M. O'LEARY
Chief Deputy

AFFIDAVIT OF KATHLEEN M. O'LEARY

STATE OF NEVADA)
:
COUNTY OF WASHOE)

I, Kathleen M. O'Leary, do hereby swear under penalty of perjury that the assertions of this affidavit are true.

1. I am an attorney, duly licensed to practice law in the State of Nevada, and that I, in my capacity as a Chief Deputy and representative of the Washoe County Public Defender's Office, appeared with and represented Petitioner, Phong T. Vu, at his involuntary civil commitment hearing presided over by Respondent Judge Chuck Weller.

2. That I am familiar with the facts and circumstances set forth in this Petition for Writ of Mandamus and know the contents to be true, except to those matters stated upon information and belief, and as to those matters, believes them to be true.

3. That Petitioner has no other plain, speedy and adequate remedy at law.

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4. That this Petition is brought in good faith and not for delay or any other improper purpose.

KATHLEEN M. O"LEARY

Subscribed and sworn to before me by Kathleen M. O'Leary this 23rd day of April, 2014.

DEBBIE BRUNNER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 2-22-16
Certificate No: 89-0295-16

Notary Public.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Standards for Writ Relief

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from the office, trust or station; or to control a manifest abuse of discretion or which has been exercised in an arbitrary or capricious manner. *Stromberg v. Dist. Ct.*, 125 Nev. 1, 4, 200 P.3d 509, 511 (2009). The writ "will issue where the petitioner has no plain, speedy and adequate remedy in the ordinary course of the law." *Id.* (internal quotation marks and citations omitted). And this Court will entertain a mandamus petition when (1) "judicial

economy and sound judicial administration militate" for the writ; or (2) "where an important issue of law requires clarification." *Id.* (internal quotation marks and citations omitted).

Argument

Judge Weller's commitment order was not supported by substantial evidence in the record and therefore constitutes an arbitrary and capricious abuse of discretion

Standard of Review

District court findings of fact will be upheld if they are supported by substantial evidence. "Substantial evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion." *Bopp v. Lino*, 110 Nev. 1246, 1249, 885 P.2d 559 (1994) (citations omitted). "A decision that lacks support in the form of substantial evidence is arbitrary and capricious and therefore an abuse of discretion." *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 623, 528, 96 P.3d 756, 760 (2004) (internal quotation marks and footnote omitted).

Discussion

"The United States and Nevada Constitutions provide that no person shall be deprived of liberty without due process of law. U.S.

Const. amend. XIV, § 8(5)." *Scarbo v. Dist. Ct.*, 125 Nev. at 124, 206 P.3d at 979. "Commitment to a psychiatric facility constitutes a deprivation of liberty, regardless of whether the commitment occurs as a result of a court order or referral, *or an involuntary commitment proceeding*. *Id.* (italics added, citation omitted); accord *O'Connor v. Donaldson*, 422 U.S. 563, 580 (1975) (Burger, C.J., concurring) ("There can be no doubt that involuntary civil commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law").

Beyond the deprivation of personal liberty, "[i]t is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual and that [w]hether we label this phenomena stigma or choose to call it something else ... we recognize that it can occur and that it can have a very significant impact on the individual." *Vitek v. Jones*, 445 U.S. 480, 491-92 (1980) (internal quotation marks and citation omitted, alteration in the original); Note, The Search for Due Process in Civil Commitment Hearings: How Procedural Realities Have Altered Substantive Standards, 61 VAND. L.

REV. 959, 960 (2008) ("In addition to [loss of immediate liberty] individuals who have been committed bear the social and legal stigma of past hospitalization after their release) (footnotes omitted).

Because a person's loss of liberty under an involuntary civil commitment proceeding must be based on something more than "idiosyncratic behavior," an "increased burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered." *Addington v. Texas*, 441 U.S. at 427. In Nevada, consistent with "due process demands," 441 U.S. at 432-33, the District Attorney's burden of proof is one of "clear and convincing evidence." NRS 433A.310. This Court has said "clear and convincing evidence" is evidence that is "strong and cogent" proof. It must establish "every factual element to be highly probable," and must be "so clear as to leave no substantial doubt." *In re Discipline of Drakulich*, 111 Nev. 1556, 1566-67, 908 P.2d 709, 715 (1995) (citations omitted).

Evidence presented by the District Attorney established that Mr. Vu was mentally ill (psychosis not otherwise specified). But a finding of mental illness alone cannot justify locking a person up against his will.

O'Connor v. Donaldson, 422 U.S. 563, 575 (1975).[5] Evidence established that Mr. Vu was not a danger to himself or to others. PA 23, 38. That is, there was no evidence Mr. Vu had attempted to commitment suicide or had mutilated himself or had attempted to inflict serious bodily harm on any person or had committed acts in furtherance of a threat of harm to another person. Nor was it disputed that if released Mr. Vu had money and a place to live thus meeting his basic need for shelter and food. See PA 31-33, 51.

Thus, in order to have Mr. Vu involuntarily committed by the Court the District Attorney had to established by clear and convincing evidence both that Mr. Vu would be unable to satisfy his need for nourishment, personal or medical care, shelter, self-protection or safety without the care, supervision or continued assistance of others, and that there existed a reasonable probability that his death, serious bodily injury or physical debilitation would occur within the next 30 days unless he was admitted to a mental health facility. As to the first criteria the District Attorney argued for Mr. Vu's deprivation of liberty

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[5] See PA at 33 (Dr. Piasecki's agreement with principle that "people with a mental illness have the right to be in our community even if they're psychotic and not taking medicines, so long as they're not a danger to themselves or other people").

based on the notion that if he were released unidentified third persons might respond negatively to his behavior. PA 44-45 (Dr. Piasecki); 49 (Dr. Lewis). But even here the concern was, at best, speculative. PA 49 (Dr. Lewis could not predict anyone would assault Mr. Vu). Dr. Lewis' opinion that there was a "risk" of assault was simply conjecture masking as opinion. And there was nothing presented to Judge Weller showing that Mr. Vu had been assaulted in the past because of his "intimidating" behavior. See *In re Doe*, 78 P.3d 341, 367 (Hawai'i 2003) ("While the evidence indicated that Doe's inappropriate remarks had upset other HSH patients and embarrassed her family in public, there was no evidence that any member of the public had ever retaliated or threatened to retaliate against Doe for her racist remarks in public"[6]); and *O'Connor v. Donaldson*, 422 U.S. at 575 ("Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty"). Accordingly, Judge Weller's "finding" that Mr. Vu was a danger to himself was not supported by substantial evidence in the record. Judge Weller's decision, unsupported by substantial evidence,

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[6] The court added its belief that "must urban residents would realize that individuals such as Doe are mentally ill and respond with compassion, rather than anger and violence, when confronted by such individuals." 78 P.3d at 367.

was arbitrary and capricious and therefore constituted an abuse of discretion. *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. at 528, 96 P.3d at 760. Judge Weller's finding must be reversed.

The District Attorney's argument addressing the second criteria for Mr. Vu's deprivation liberty fairs no better, and in fact fairs worse. Here the County asserted that if Mr. Vu were released there was a reasonable probability that his death, serious bodily injury or physical debilitation would occur within the next following 30 days. Yet, there was absolutely no evidence, let alone clear and convincing evidence, presented to support this argument. Dr. Piasecki was not even asked by Deputy District Attorney Cartlidge to testify on this necessary element. As for Dr. Lewis, his one-word response ("Yes") to the question whether he considered this element in his evaluations generally, PA 56, does not reach the "increased burden of proof" of clear and convincing evidence necessary to show Mr. Vu met this element. Mr. Cartlidge could have attempted to flesh out an answer from Dr. Lewis, but he did not. Notwithstanding the lack of evidence, Judge Weller found Mr. Vu would probably suffer death, serious bodily injury or physical debilitation

within the next 30 days.[7] A court's exercise of discretion should not be arbitrary or capricious, or founded on prejudice or preference, or exceed the bounds of reason or law. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001); *State v. Dist. Ct. (Armstrong)*, 127 Nev. ____, ____, 267 P.3d 777, 780 (2011). Here, Judge Weller's commitment decision was arbitrary and capricious and exceeded the bounds of reason and law. Accordingly, this finding too must be reversed.

The Court's reversal of either finding (or both findings) requires this Court to grant the Petition and direct Judge Weller to vacate his interlocutory commitment order. Although Mr. Vu is no longer at NNAMHS pursuant to the commitment order, he nonetheless suffers the stigma attached to that commitment order. *Vitek v. Jones*, 445 U.S. at 491-92. Thus, although Mr. Vu is no longer at NNAMHS, the issue presented is ripe for review.

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[7] The fact that Mr. Vu was unconditionally released from NNAMHS twelve days later serves to underscore the lack of substantial support for Judge Weller's finding.

Judge Weller also abused his discretion and exceeded his authority when he directed his clerk to forward a record of Petitioner's involuntary commitment before the order had become a final order

Standard of Review

Questions of statutory construction are reviewed *de novo*. *State v. Javier C.*, 128 Nev. ____, ____, 289 P.3d 1194, 1195 (2012) (citing *State v. Lucero*, 127 Nev. ____, ____, 249 P.3d 1226, 1228 (2011)).

Discussion

Twelve days after Judge Weller committed Mr. Vu to NNAMHS, the hospital unconditionally released him. NRS 433A.310(1)(b) makes clear that the court's commitment order "must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally released pursuant to NRS 433A.390." This language has been an important part of Nevada's involuntary civil commitment statutes since 1989 when it was enacted by the Legislature during the Sixty-Fifth Legislative Session as part of Senate Bill 490. It was enacted to address instances where persons had been committed "under marginal circumstances" and then suffered the stigma of having been committed to a mental health facility. *Minutes of*

the Senate Committee on Human Resources and Facilities, June 9, 1989, p. 4-5 (Robert Larsen, Assistant Public Defender, Clark County).[8]

Relying on subsection (5) of NRS 433A.310, which provides in part: "If the court issues an order involuntarily admitting a person to a public or private mental facility ... the court shall ... cause, on a form prescribed by the Department of Public Safety, a record of such order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System," Judge Weller directed his court clerk to forward a record of Mr. Vu's involuntary civil commitment before it had a chance to become final. Subsection (5) was enacted in 2008 by the Legislature during its Seventy-Fifth Session as part of Assembly Bill 46. Notably, the interlocutory nature of a commitment order was not considered or addressed during consideration of AB 46.[9] However, this Court reads statutes

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[8] The complete legislative history of S.B. 490 can be found at: http://www.leg.state.nv.us//Division/Research/Library/LegHistory/LHs/1989/SB490.1989.pdf

[9] See http://www.leg.state.nv.us./Session/75th2009/Reports/history.cfm?ID=1

harmoniously to avoid absurd results and "presume[s] that the Legislature enact[s a] statute with full knowledge of existing statutes relating to the same subject." *Nevada Attorney for Injured Workers v. Nevada Self-Insurers Ass'n*, 126 Nev. ____, ____, 225 P.3d 1265, 1271 (2010) (quotation marks and citations omitted). Here, subsection (5) was enacted almost ten years after subsection (1)(b) of NRS 433A.310.

When examining a statute this Court ascribes to its words their plain meaning "unless this meaning was clearly not intended." *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007) (footnote omitted). And this Court construes statutes "such that no part of the statute is rendered nugatory or turned to mere surplusage," *Id.* (internal quotation marks and footnote omitted), or "inconsequential." 123 Nev. at 94, 157 P.3d at 702. If a word is used in different parts of a statute, it will be given the same meaning unless it appears from the whole statute that the Legislature intended to use the word differently. *National M. Co. v. Dist. Ct.*, 34 Nev. 67,78, 116 P.2 996, 1000-01

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(1911).[10] The word here is "order" and the "order" referred to in subsection (5) is the same "order" issued in subsection (1)(b).

This Court should start with subsection (1)(b) of the statute. The interlocutory command of NRS 433A.310(1)(b) was first in time and is mandatory: "The order of the court must be interlocutory and must not become final if, within 30 days after the involuntary civil admission, the person is unconditionally released ... ." (emphasis added). *Fourchier v. McNeill Const. Co.*, 68 Nev. 109, 122, 227 P.2d 429, 435 (1951) ("must" is a mandatory term). The command in Subsection (1)(b), that an order cannot become final unless a specific condition is met, must also extend to subsection (5)'s use of the word "order" because they are the same order and must bear the same meaning.

Because for any given involuntary commitment the referenced "order" in subsection (5) is the same "order" referenced in subsection 1(b) of NRS 433A.310, the requirement in subsection (5) that the court shall notify the central repository of an involuntary civil commitment can only come into being after that "order" has become a final order.

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[10] See also Antonin Scalia and Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170-73 (2012) ("Presumption of Consistent Usage").

That is, only after the condition precedent of subsection 1(b) has been satisfied, should the provisions of subsection (5) be considered by the district court. Put another way, an interlocutory involuntary civil commitment order is insufficient to trigger the reporting provisions set out in subsection (5). Accordingly, Judge Weller manifestly abused his discretion when he used subsection (5) before Mr. Vu's commitment order was final.

Conclusion

For the reasons set out in this Petition this Court should grant the Petition. This Court should find that Judge Weller acted arbitrarily and capriciously and therefore manifestly abused his discretion. This Court should issue a writ of mandamus.

Respectfully submitted, this 23rd day of April, 2014.

By: *John Reese Petty*
JOHN REESE PETTY
Chief Deputy

By: *Kathleen M. O'Leary*
KATHLEEN M. O'LEARY
Chief Deputy

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I hand-delivered a true copy of the foregoing document to:

Hon. Chuck Weller, District Judge
Department 11 (Family Division)
One South Sierra Street, Third Floor
Reno, Nevada 89501

Blaine E. Cartlidge, Deputy District Attorney
Washoe County District Attorney's Office
One South Sierra Street, Fourth Floor
Reno, Nevada 89501

DATED this 23rd day of April, 2014

JOHN REESE PETTY