IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF PRESTON S., A MINOR CHILD,

No. 66410

_____/

PRESTON SANDERSON,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent.

_____/

Appeal from Order after Hearing on Objection to Master's Recommendation for Order in JV14-00030A
The Second Judicial District Court of the State of Nevada
Honorable Egan Walker, District Judge, Family Division

APPELLANT'S OPENING BRIEF

JEREMY T. BOSLER
Washoe County Public Defender
Nevada State Bar No. 4925
JOHN REESE PETTY
Chief Deputy Public Defender
Nevada State Bar No. 10
350 South Center Street, 5th Floor
P.O. Box 11130
Reno, Nevada 89520-0027
(775) 337-4827
jpetty@washoecounty.us

Attorneys for Preston Sanderson

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I. STATEMENT OF JURISDICTION

On July 31, 2014, Family District Court Judge Egan Walker filed an order that denied Appellant Preston Sanderson's (Preston) request for a hearing de novo, and affirmed the juvenile court master's recommendation on restitution. JA 77-78 (Order after Hearing on Objection filed June 26, 2014) (Order).[1] On August 27, 2014, the Washoe County Public Defender's Office timely filed a notice of appeal from that order. JA 79-80 (Notice of Appeal). Thus, this Court possesses appellate jurisdiction pursuant to Rules 3A(b)(1) and 4(a) of the Nevada Rules of Appellate Procedure, and NRS 62D.500 (providing that appeals "from the orders of the juvenile court may be taken to the Supreme Court in the same manner as appeals in civil cases.").

II. STATEMENT OF THE LEGAL ISSUE PRESENTED

NRS 62B.030(4)(c) provides that "[a]fter reviewing the recommendations of a master of the juvenile court and any objection to the master's recommendations, the juvenile court *shall*: Direct a hearing de novo before the juvenile court if, not later than 5 days after the master provides notice of the master's recommendations, a person

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[1] "JA" stands for the Joint Appendix filed together with this opening brief. Pagination conforms to NRAP 30(c)(1).

who is entitled to such notice files with the juvenile court a request for a hearing de novo before the juvenile court" (italics added).

Did Judge Walker violate this statute when he denied Preston's timely request for a de novo hearing before the juvenile court following receipt of the master's recommendation?

III. STATEMENT OF THE CASE AND FACTS

The State initially charged Preston with malicious destruction of property, a gross misdemeanor. JA 1-3 (Petition). Later the State downgraded the charge to malicious destruction of private property, a simple misdemeanor, JA 4-6 (Amended Petition), and Preston admitted to the offense. JA 7-8 (Master's Recommendation and Order after Plea Hearing) (noting that on May 14, 2014 Preston admitted to the offense in open court). A restitution hearing was set before the juvenile court master. *Id.* at 8. On June 3, 2014, following a contested restitution hearing, the juvenile court master filed her recommendation that Preston be individually "responsible for restitution in the amount of $2,731.49." JA 19 (Master's Recommendation for Order after Restitution Hearing) (underlining and bold print omitted).

On June 10, 2014, Preston's counsel, Washoe County Deputy Public Defender Tobin Fuss, filed a notice of objection to the juvenile master's recommendation, which specifically requested a hearing de novo before the juvenile court. JA 22 (Notice of Objection to Master's Recommendation for Order after Restitution Hearing) ("The minor requests that the court impose an amount consistent with the amount of restitution for the repair of the glass itself and not the door frame. Further, *the minor requests a hearing De Novo* to determine what needs to be replaced and what it will cost.") (italics added). A hearing was set for July 17, 2014. JA 24-25 (Notice of Hearing). Prior to the hearing, the parties filed points and authorities. See JA 26-30 (Objection to Master's Recommendation for Order after Restitution Hearing); JA 31-36 (Response to Minor's Objection to Master's Recommendation); and JA 37-41 (Reply to Response to Minor's Objection to Master's Recommendations).

As relevant here, the State objected to a de novo hearing arguing that no extraordinary grounds warranted such a hearing. JA 32-33 (Response to Minor's Objection to Master's Recommendation). Here the State relied upon Rule 32(1)(b) of the local family district court rules,

(WDFCR), which states, "[i]n extraordinary circumstances the court may grant a de novo trial," otherwise an objection "shall be in the form of a review of the record with oral argument, unless otherwise expressly ordered by the court." In response Preston argued that the mandatory language of NRS 62B.030(4)(c) required a de novo hearing where a timely request for a de novo hearing has been made. JA 37-39 (Reply to Response to Minor's Objection to Master's Recommendations). NRS 62B.030(4)(c) states:

> After reviewing the recommendations of a master of the juvenile court and any objection to the master's recommendations, the juvenile court shall: Direct a hearing de novo before the juvenile court if, not later than 5 days after the master provides notice of the master's recommendations, a person who is entitled to such notice files with the juvenile court a request for a hearing de novo before the juvenile court.

Judge Walker denied Preston's request for a de novo hearing.

Despite the statute's clear language, Judge Walker said "NRS 62B.030 does not require a trial de novo upon the demand of a party.

Rather, the decision of whether or not a trial de novo should occur rests at the discretion of the District Judge." JA 77 (Order).[2]

Because Judge Walker's conclusion—that "the decision of whether or not a trial de novo should occur rests at the discretion of the District Judge"—is unmoored from the statute, Preston appeals.

IV. SUMMARY OF ARGUMENT

NRS 62B.030(4)(c) provides that a juvenile court, after it has reviewed the recommendations of a juvenile court master (and the objection thereto) "shall: Direct a hearing de novo before the juvenile

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[2] Judge Walker's conclusion is consistent with the comments and observations he made regarding the de novo question at the hearing (actually oral argument) below, JA 53-54 (noting that for purposes of the hearing he was relying "on the record below"). See e.g., JA 46-47 (concluding that NRS 62B.030(4)(c) makes NRS 62B.030(4)(a) [*sic*] "nugatory"); JA 48 ("The question becomes, though, who decides whether or not you get a trial de novo... ."); JA 48-49 ("And so now I'm to the heart of it with you, Mr. Fuss, because it seems like if I read [the statute] the way you would have me read it, (c) only, you get a trial de novo every single time. What difference would any of the rest of this language make?"); JA 50 ("I don't believe [the statute] requires a trial de novo, and I don't think the Legislature or the Supreme Court intended that a District Judge would be boxed into a trial de novo on demand."); JA 53 ("I believe that the decision about whether or not a trial de novo should occur rests at the discretion of the District Judge."); and 74 ("Well, the Court rules take the least precedence to me, you know, the local court rules because they're out-of-date, and again, inconsistent, and it's just remarkable to me how out of step Title 5 continues to be with a lot of other processes. It just really does.").

court if" a timely request for a hearing de novo before the juvenile court is filed by "a person entitled to" notice of the juvenile master's recommendations. The interpretation of NRS 62B.030(4) is a matter of law. This Court attributes the plaining meaning to a statute that is not ambiguous. The use of the word "shall" in a statute imposes a duty to act and prohibits judicial discretion. The text of NRS 62B.030(4) is unambiguous and can be read as a whole without injury to any of the mandatory duties it imposes (including the duty to hold a de novo hearing upon a timely request by an entitled person).

Here, a juvenile court master filed a recommendation to which Preston (an "entitled" person under the statute) filed a timely objection and request for a hearing de novo before the juvenile court. However, Judge Walker denied Preston's request for a de novo hearing despite the statute's clear mandatory language. Judge Walker reasoned that he had plenary discretion to hold or not to hold a de novo hearing stating, "NRS 62B.030 does not require a trial de novo upon the demand of a party. Rather, the decision of whether or not a trial de novo should occur rests at the discretion of the District Court." Judge Walker's conclusion contradicts the statutory text. And, to the extent Judge

Walker grounded his conclusion regarding his discretionary power in the case of *In the Matter of A.B.*, 128 Nev. ____, 291 P.3d 122 (2012) (establishing standards for the review of a *dependency* master's findings of fact and recommendations), his reliance on that case was misplaced.

In sum, governing statutes govern, and NRS 62B.030(4)(c) governed here. Accordingly, Judge Walker violated this statute when he denied Preston's timely request for a hearing de novo before the juvenile court.

V. ARGUMENT

CONTRARY TO JUDGE WALKER'S CONCLUSION THAT NRS 62B.030(4)(c) "DOES NOT REQUIRE A TRIAL DE NOVO UPON THE DEMAND OF A PARTY," THE PLAIN TEXT OF NRS 62B.030(4)(c) DOES REQUIRE A JUVENILE COURT TO DIRECT A HEARING DE NOVO BEFORE THE JUVENILE COURT UPON A TIMELY REQUEST.

Standard of Review

"The interpretation of a statute presents a question of law and is subject to de novo review." *Mendoza-Lobos v. State*, 125 Nev. 634, 642, 218 P.3d 501, 506 (2009) (citing *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004). This Court "attribute[s] the plain meaning to a statute that is not ambiguous," *Id.*, and will not look beyond statutory plain language when the meaning is clear. See *Sheriff v. Witzenburg*,

122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006). A statute is ambiguous when it "lends itself to two or more reasonable interpretations." *Mendoza-Lobos v. State*, 125 Nev. at 642, 218 P.3d at 506 (quoting *State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (internal quotation marks omitted).

The text of NRS 62B.030(4) is unambiguous and can be read as a whole without injury to any of the mandatory duties it imposes

In its entirety NRS 62B.030(4) states:

> After reviewing the recommendations of a master of the juvenile court and any objection to the master's recommendations, the juvenile court *shall*:
>
> (a) Approve the master's recommendations, in whole or in part, and order the recommended disposition;
> (b) Reject the master's recommendations, in whole or in part, and order such relief as may be appropriate; or
> (c) Direct a hearing de novo before the juvenile court if, not later than 5 days after the master provides notice of the master's recommendations, a person who is entitled to such notice files with the juvenile court a request for a hearing de novo before the juvenile court. (Italics added.)

Statutes "must be construed as a whole and not read in a way that would render words or phrases superfluous or makes a provision

nugatory. Further, every word, phase, and provisions of a statute is presumed to have meaning." *Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71, 81 (2004) (internal quotation marks and footnotes omitted). Statutes impose duties through the use of the word "shall." See NRS 0.25(1)(d) ("Shall" imposes a duty to act."); *Goudge v. State*, 128 Nev. ____, ____, 287 P.3d 301, 304 (2012) ("[W]hen used in a statute, the word 'shall' imposes a duty on the party to act and prohibits judicial discretion and, consequently, mandates the result set forth by statute.") (citing *Johanson v. Dist. Ct.* 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008) for the proposition that "shall is mandatory and does not denote judicial discretion." (internal quotation marks omitted)).

NRS 62B.030(4) mandates, through the use of the disjunctive term "or," three possible courses of action for a juvenile court[3] after it has reviewed the recommendations of a juvenile court master (and the objection thereto). Under subsections (a) and (b) the juvenile court must either approve or reject, in whole or in part, the master's recommendations and enter an appropriate order. However, under

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[3] NRS 62A.180(1) defines "juvenile court" as "each district judge who is assigned to serve as a judge of the juvenile court pursuant to NRS 62B.010 or court rule."

subsection (c), the juvenile court must "direct a hearing de novo before the juvenile court" where a timely request for a de novo hearing is requested by "a person who is entitled to" notice of the master's recommendations. Thus, contrary to Judge Walker's belief—See JA at 46-47 (concluding that subsection (c) makes the rest of the statute "nugatory") and JA at 48-49 (concluding that subsection (c) allows for a trial de novo "every single time" so "[w]hat difference would any of the rest of the [statutory] language make?")—subsection (c) does not obliterate the rest of the statute because invocation of subsection (c) requires, as a condition precedent, two things: (1) a timely request; made by (2) an "entitled" person. Absent such an authorized request, the juvenile court is not required to direct a de novo hearing before the juvenile court and is, instead, free to resolve the master's recommendations (and the objection thereto) under subsections (a) or (b). However, when a timely request for a de novo hearing before the juvenile court is received, the juvenile court is not free to deny a de novo hearing, and nothing in the statute credits the juvenile court the plenary discretion or authority to ignore its plain language. Thus, Judge Walker's conclusion that the decision to hold a de novo hearing "rests at

the [sole] discretion of the District Judge," and his belief that neither the Legislature nor this Court would box a district judge "into a trial de novo on demand," JA 50, are wrong as a matter of law.[4]

Preston's request for a de novo hearing before the juvenile court was timely made

As noted in the preceding section, under NRS 62B.030(4)(c) a juvenile court must direct a hearing de novo before the juvenile court if two conditions are met: (1) a timely request is made; by (2) an "entitled" person. Preston, as the juvenile in this matter, is clearly an "entitled" person under the statute.

Although not raised as an issue below, it is important here to show that Preston's request for a de novo hearing before the juvenile court was timely made. The juvenile master's recommendation was filed on June 3, 2014. JA 12 (Master's Recommendation for Order after

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[4] Having said that, Preston informs the Court that forty-two years ago in the case of *Trent v. Clark Cnty. Juvenile Court Services*, 88 Nev. 573, 576, 502 P.2d 385, 387 (1972), this Court concluded that a timely request for a hearing under then NRS 62.090(4)—which was repealed in 2003 and replaced by NRS 62B.030(4)—did not require the juvenile court to hold a de novo hearing. Notably, that repealed statute—reproduced in footnote 6 of the Court's opinion—did not specifically provide for a de novo hearing (only "a hearing"). Today, NRS 62B.030(4)(c) does. Preston submits that the legislative action taken since *Trent* renders that case inapposite and no longer controlling authority.

Restitution Hearing). Preston's notice of objection and request for a de novo hearing was filed on June 10, 2014. JA 21 (Notice of Objection to Master's Recommendation for Order after Restitution Hearing). NRS 62B.030(4)(c) requires that the request for a de novo hearing be filed "not later than 5 days after the master provides notice of the master's recommendations." The Second Judicial District Court uses an eFlex (or electronic-filing) system. The district court's Administrative Order 2013-03[5] provides that "[t]he three additional days to respond to a paper served by mail or electronic means provided under NRCP 6(e) shall apply to computation of time to respond to papers served via the eFlex filing system." Thus, because the juvenile master's recommendation was filed on June 3, 2014, Preston had at least until June 11, 2014, to file his request for a de novo hearing (5+3 days). Preston's request was filed on June 10, 2014. Accordingly, Preston's request for a de novo hearing under NRS 62B.030(4)(c) was timely made.

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[5] This administrative order was filed on December 3, 2013, captioned: "In the Administrative Matter of: Computation of Time to Respond to Documents Served Using the Electronic Filing System."

WDFCR 32(1)(b) does not compel a different result

WDFCR 32(1)(b) states:

> A hearing on an objection to a master's recommendation shall be in the form of a review of the record with oral argument, unless otherwise expressly ordered by the court. In extraordinary circumstances the court may grant a de novo trial.

Judge Walker did not rely upon this local court rule in denying Preston's request for a de novo hearing before the juvenile court.[6] However, the State did argue below that this rule precluded de novo review, JA 32-33 (Response to Minor's Objection to Master's Recommendation), so it is important to show why this rule is not preclusive, even if applicable. There are at least two alternative reasons why the local court rule does not compel a different result.

First, not every juvenile court master's recommendation is going to generate an objection, and not every objection is going to generate a

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[6] Perhaps Judge Walker did not rely on WDFCR 32(1)(b) because local court rules, in his view, are "out-of-date, and again inconsistent." JA 74. Judge Walker's view here is similar to his views on Title 5 of the Nevada Revised Statutes. See *Id.* (stating that "it's just remarkable to me how out of step Title 5 continues to be with a lot of other processes."); and JA 52 (stating that NRS 62B.030(4)(c) "like many statutes in Title 5, is inconsistent internally and with process in other cases.").

request for a de novo hearing before the juvenile court. Thus, this Court can harmonize[7] WDFCR 32(1)(b) with NRS 62B.030(4)(c) by simply equating the "timely request made by an entitled person" requirement of the statute with the "extraordinary circumstances" standard in the local court rule. As a result, a timely request under the statute authorizes a de novo hearing under the local court rule—and those objections that are handled under subsections (a) or (b) of NRS 62B.030(4), will naturally conform to that part of WDFCR 32(1)(b) that allows "a review of the record with oral argument." Second, in the absence of a harmonic reading, the local court rule must give way to the statute. See *Knox v. Eighth Judicial Dist. Court*, 108 Nev. 354, 357, 830 P.2d 1342, 1344 (1992) (holding that "a district court may not use its local rules to defeat the right of litigants to access to the court."); *cf. Western Mercury, Inc. v. The Rix Co.*, 84 Nev. 218, 223, 438 P.2d 792,

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[7] See *Quinlan v. Camden USA, Inc.*, 126 Nev. ____, ____, 236 P.3d 613, 615 (2010) ("this court will interpret a rule or statute in harmony with other rules and statutes, especially where, as here, one provision is silent on specifics included in another") (quoting *Albios v. Horizon Communications, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028, 1030-31 (2006) (internal quotation marks omitted)); *Williams v. Clark Cnty. Dist. Attorney*, 118 Nev. 473, 485, 50 P.3d 536, 543 (2002) (recognizing this Court's obligation to construe statutory provisions in harmony with each other when possible).

795 (1968) (noting that although the district courts "have rule making power, ... the rules they adopt must not be in conflict with the Nevada Rules of Civil Procedure.").

If this Court finds that WDFCR 32(1)(b) and NRS 62B.030(4)(c) can be construed harmoniously, then Preston is entitled to a de novo hearing before the juvenile court because he satisfied the statute's filing requirements. If this Court concludes that the local court rule and the statute cannot be read in harmony, then the statute controls and Preston, having satisfied the statute's requirements, is entitled to a hearing de novo before the juvenile court.

Judge Walker's reliance on *In the Matter of A.B.* was misplaced

In his order and at the hearing below Judge Walker relied on *In the Matter of A.B.*, 128 Nev. ____, 291 P.3d 122 (2012), in concluding that he had plenary discretionary power to decide whether a de novo hearing would be held. See JA 78 (Order) (noting that the Court "has exercised its independent review of the facts" pursuant to *In the Matter of A.B.*); and JA 48 (Transcript of Proceedings: Hearing on Objection to Master's Findings) (finding process set out in *In the Matter of A.B.* the same as the one he has "always applied" to objections to a master's

findings and recommendations, i.e. that a judge "may order de novo fact-finding or alternatively, the judge may rely on the Master's findings."). But *In the Matter of A.B.* was a dependency case, not a delinquency case, and there this Court did not have the occasion to construe the mandatory terms of NRS 62B.030(4)(c). Notably, in that opinion this Court noted that it was only "address[ing] the standard of review governing a juvenile court's review of a *dependency master's* findings of fact and recommendations." *In the Matter of A.B.*, 128 Nev. at ____, 291 P.3d at 126 (italics added). In that case this Court concluded that a "master's findings and recommendations are only advisory," and that to the extent the juvenile court "chooses to rely on the master's findings, it may do so only if the findings are supported by the evidence and are not clearly erroneous." 128 Nev. at ____, 291 P.3d at 127-28 (citations omitted). Such a standard is no doubt applicable—and can easily be extended to—subsections (a) or (b) of NRS 62B.030(4), but this standard has no applicability to subsection (c) of the statute—requiring de novo review. Thus, Judge Walker's reliance on the standard announced in *In the Matter of A.B.* was misplaced. That case

did not grant him plenary discretion to deny Preston's timely request for a de novo hearing before the juvenile court.

VI. CONCLUSION

Governing statutes govern, and NRS 62B.030(4)(c) governed here. Judge Walker violated the statute when he denied Preston's timely request for a de novo hearing before the juvenile court. Accordingly, this Court must vacate Judge Walker's Order and remand with instructions to hold the requested hearing de novo before the juvenile court.

DATED this 24th day of November 2014.

JEREMY T. BOSLER
WASHOE COUNTY PUBLIC DEFENDER

By: */s/* *John Reese Petty*
JOHN REESE PETTY
Chief Deputy, Nevada Bar No. 10
jpetty@washoecounty.us

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts of the brief though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 3,475 words. NRAP 32(a)(7)(A)(i), (ii).

3. Finally, I hereby certify that I have read this appellate brief, 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 NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. 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 24th day of November 2014.

/s/ John Reese Petty
JOHN REESE PETTY
Chief Deputy, Nevada State Bar No.10

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 24th day of November, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy
Washoe County District Attorney

I further certify that I served a copy of this document by electronically mailing a true and correct copy thereof, postage pre-paid, addressed to:

Shelly K. Scott, Deputy District Attorney
(skscott@da.washoecounty.us)

John Reese Petty
Washoe County Public Defender's Office