IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: PRESTON S.,
A MINOR CHILD,
_____/

No. 66410

PRESTON SANDERSON,

Appellant,

v.

STATE OF NEVADA,

Respondent.
_____/

RESPONDENT'S ANSWERING BRIEF

JEREMY T. BOSLER
Public Defender

JOHN REESE PETTY
Chief Appellate Deputy
P.O. Box 11130
Reno, Nevada 89520

ATTORNEYS FOR APPELLANT

CHRISTOPHER J. HICKS
District Attorney

SHELLY K. SCOTT
Deputy District Attorney
P.O. Box 11130
Reno, Nevada 89520

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authority

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: PRESTON S., No. 66410
A MINOR CHILD,
_____/
PRESTON SANDERSON,
Appellant,
v.
STATE OF NEVADA,
Respondent.
_____/

RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF FACTS AND THE CASE

The State filed an Amended Petition on May 7, 2014, alleging the Appellant, minor Preston Sanderson, committed the delinquent act of property destruction as defined in NRS 206.330. JA pp. 004-006. On May 17, 2014, Appellant admitted to the petition as alleged, was placed under supervision of the Department of Juvenile Services and the juvenile court pursuant to NRS 62C.230, and a hearing was set to determine the amount of restitution owed. JA pp. 007-011. On June 3, 2014, after a full evidentiary hearing, the juvenile master recommended that the amount of restitution

owed by Appellant be set at $2731.49. JA pp. 012-020.

Appellant objected to the Master's Recommendation for Order and requested a “de novo” hearing. JA pp. 021-023. Appellant set forth two arguments. First, Appellant asserted that NRS 62B.030(4)(c) requires the district judge to hold a hearing de novo upon request. Second, Appellant asserted that a de novo hearing is warranted in this case to "determine the appropriate amount for the cost to repair the glass and frame in the sliding door" (JA pp. 027-028) and to present evidence to the juvenile court judge that Appellant failed to elicit at the evidentiary hearing before the juvenile master. JA pp. 049, 060. The State responded that the local court rules (WDFCR Rule 32(1)(b)) outline the manner in which the juvenile court judge carries out his duties of review under NRS 62B.030 and that absent "extraordinary circumstances" the review of any objection to a master's recommendation, "shall be in the form of a review of the record with oral argument…." JA pp. 031-036.

On July 17, 2014, the parties appeared before the Honorable Egan Walker, District Judge, for a hearing on Appellant's objection. Judge Walker denied the request for hearing de novo stating:

> I believe that the decision about whether or not a trial de novo should occur rests at the discretion of the District Judge. And I've reviewed the evidence in this case, I've reviewed the testimony in this case, and all the records in the file, and I do not find that additional factual evidence would assist me in deciding. The second step of the Supreme Court holding in the case entitled *In the Matter of A.B.*, is:

> The Court determines the applicable facts and requires an - the exercise of independent judgment to determine, based on the facts and the law, the case's proper resolution. ... So the facts are those which have been developed, and I have the exhibits available to me.

JA pp. 053.

After taking arguments from counsel, Judge Walker affirmed the recommendations of the juvenile court master. JA pp. 077-078. The minor now appeals from that Order, filed July 31, 2014. JA pp. 079-080.

II. STATEMENT OF THE LEGAL ISSUES PRESENTED

1) Does NRS 62B.030(4)(c) mandate a "hearing de novo" upon request or is a hearing de novo only one of many options for judicial review outlined in NRS 62B.030(4) (a)-(c) and left to the discretion of the juvenile court judge?

2) Does Judge Walker's independent review of the evidence presented, the testimony taken, and the record of the case constitute a "hearing de novo" as contemplated by NRS 62B.030 (4)(c)?

III. ARGUMENT

A. WHEN READ AS A WHOLE, NRS 62B.030 SUPPORTS JUDGE WALKER'S CONCLUSION THAT THE DISTRICT JUDGE HAS THE DISCRETION TO DETERMINE THE FORM OF THE HEARING ON THE OBJECTION.

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, phrase, and provision of a statute is presumed to have meaning." *Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71, 81 (2004). Accordingly, we must look at NRS 62B.030 in its entirety to appropriately interpret the

language of the statute.

NRS 62B.030 (1)-(3) and the local court rules (WDFCR 24 and 31) outline the authority and duties of a master of the juvenile court. The master is empowered to swear witnesses, take evidence, make findings and recommendations, and conduct all proceedings of the juvenile court, subject to review by the juvenile judge. The master is also required to provide notice of those findings and recommendations:

> A master of the juvenile court shall provide to the parent or guardian of the child, the attorney for the child, the district attorney and any other person concerned, written notice of:
> (a) The master's findings of fact;
> (b) The master's recommendations;
> (c) The right to object to the master's recommendations; and
> (d) The right to **request** a hearing de novo before the juvenile court as provided in subsection 4.

NRS 62B.030(3), emphasis added.

Notably the statute does not provide the parties or parents with notice that they have a right to a hearing de novo, only a right to request one. In contrast, the ability to object to a master's findings and recommendations is given as a matter of right.

The duty of the juvenile court judge to conduct a review of the master's findings and recommendations is set forth in NRS 62B.030(4):

> After reviewing the recommendations of a master of the juvenile court and any objections 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.

NRS 62B.030(4), emphasis added.

The State concurs that the juvenile court is required to act on any findings or recommendations made by the juvenile master in one of three ways. We disagree that a timely request by a person entitled to make a request for a hearing de novo, **mandates** the juvenile court to direct a de novo hearing. As written, subsection 4 (c) contemplates that the juvenile court must **consider** the option of a de novo hearing only if the condition precedent, a timely request, is met. So long as the juvenile court approves, rejects **or** directs a hearing de novo on the master's recommendations and findings, he has complied with the statute.

The local court rules are consistent with this interpretation of the statute. WDFCR 32(b) describes the manner in which the required review may be carried out when an objection is filed. The rules mandate that a hearing on an objection "shall be in the form of a review of the record with oral argument, unless otherwise expressly ordered by the court."

If the court were to adopt the Appellant's reading of the statute, either the minor or the State could force a second trial or hearing for every case

brought before the juvenile master. A minor could force the State to re-try cases where the master had made a finding of delinquency in hopes for a better result. Additionally as here, a minor could force a new hearing in order to present evidence that the minor failed to proffer at the hearing before the master. Arguably, the State could likewise also force a new hearing in order to present additional evidence in cases where the master had not issued a finding of delinquency, because the recommendation of the master is not effective until expressly approved by the juvenile court judge.[1]

B. THE REORGANIZATION OF NRS CHAPTER 62 BY THE LEGISLATURE DOES NOT ALTER THE APPLICABILITY OF THIS COURT'S CONCLUSIONS IN *TRENT* TO THE CASE AT BAR.

The precise issue now presented by Appellant was addressed by this court previously in the matter of *Trent v. Clark County Juvenile Court Services*, 88 Nev. 573, 502 P.2d 385 (1972). There, as here, the minor asserted that NRS 62.090(4) (re-numbered in 2003 as NRS 62B.030(4)) and the local

[1]NRS 62B.030(5), WDFCR 31(6); *see also*, *Swisher v. Brady*, 438 U.S. 204, 98 S.Ct. 2699, 57 L.Ed. 2d 705 (1978), which found no double-jeopardy bar to a judge's review of a master's findings. ("[I]t is for the State, not the parties, to designate and empower the factfinder and adjudicator. And here Maryland has conferred those roles only on the Juvenile Court judge. Thus, regardless of which party is initially favored by the master's proposals, . . . the judge is empowered to accept, modify, or reject those proposals."); *In re Anderson*, 272 Md. 85 A.2d 516 (1974), holding that a hearing before a master is not such a hearing as places a juvenile in jeopardy; *In re Henley*, 9 Cal.App.3d 924, 930-931, 88 Cal.Rptr. 458 (1970), the order of the referee dismissing the petition was a conditional order subject to be set aside by the judge of the juvenile court. It was not a final adjudication of acquittal by a court of competent jurisdiction, but in effect was subject to review and approval by such judge.

rules were in conflict and that per the statute he was entitled, as a matter of right, to a new evidentiary hearing in front of the juvenile judge upon request. This Court fully addressed Appellant's arguments in that decision and found Appellant's reading of the statute erroneous. In *Trent*, *supra*, this Court held that the purpose and intent of the statute (NRS 62.090) was to "provide a more expeditious manner of hearing and disposing of juvenile cases" and to read NRS 62.090(4) as mandating a new evidentiary hearing in front of the juvenile judge upon request of the parties would make the statute meaningless. *Trent*, *supra*. supports Judge Walker's decision, that upon the request for a re-hearing the district judge must review the record of the proceedings before the master and may, but is not required to, conduct a new evidentiary hearing.

In 2003, the Legislature passed Senate Bill 197 that repealed and reorganized all sections of the Nevada Revised Statutes dealing with juvenile justice to make them more manageable and easier for the public and practitioners to navigate. Appellant correctly points out that as enacted, the term "de novo" was added to the statute during the course of that reorganization and renumbering. Where NRS 62.090(4) provided that "a hearing by the court shall be allowed...," the reorganized and renumbered statute, NRS 62B.030(4) provides for a "hearing de novo before the juvenile court...." The question then becomes, what is meant by the phrase "hearing

de novo"?

Although it does not appear that the Nevada Supreme Court has addressed the meaning of "hearing de novo" as contemplated in NRS 62B.030(4), that phrase has been utilized by this Court to mean both "without deference" to the earlier hearing (*City of North Las Vegas v. Eighth Judicial District Court*, 122 Nev. 1197, 147 P.3d 1109 (2006)) and a "re-hearing on the merits including new evidence" (*Diaz v. Golden Nugget*, 103 Nev. 152, 734 P.2d 720 (1987)). Likewise, *Black's Law Dictionary* 738 (8th ed. 2004) has defined the phrase "hearing de novo" as when the reviewing court conducts a new hearing on a matter and **either** (1) merely gives "no deference" to the lower tribunal's rulings, **or** (2) treats the matter "as if the original hearing had not taken place." (Emphasis added). Appellant asserts the term "hearing de novo" mandates the taking of new evidence as if "the original hearing had not taken place." Whereas Respondent argues the appropriate interpretation of that phrase is that the juvenile court has the option of giving "no deference" to the master's findings and recommendations when an objection is raised. This ambiguity in the statute can be clarified by looking at the legislative intent contained in the history of SB 197.

"When interpreting a statute, legislative intent is the controlling factor." *State v. Lucero*, 127 Nev. ___, ___, 249 P.3d 1226, 1228 (2011) (internal quotation marks omitted). To determine legislative intent of a statute, this

court will first look at its plain language. *Id.* "But when the statutory language lends itself to two or more reasonable interpretations, the statute is ambiguous, and [this court] may then look beyond the statute in determining legislative intent." *Id.* (internal quotation marks omitted). When interpreting an ambiguous statute, "we look to the legislative history and construe the statute in a manner that is consistent with reason and public policy." *Id.* "Additionally, statutory construction should always avoid an absurd result." *Sheriff, Clark County. v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008) (internal quotation marks omitted).

A review of the Senate Committee Minutes makes it clear that no substantive changes were intended by the massive undertaking in SB 197. Senator Valerie Weiner said:

> The bill before you represents an exceptional effort in reviewing and reorganizing in a manageable chapter, every section of Nevada law relating to juvenile justice, juvenile corrections, and interstate compact. In that vein I want to stress one point. The intent of our efforts was to reorganize the statutes. We did not go into this project with any effort to address substantive issues.

(Minutes of the Senate Committee on Judiciary, March 7, 2003; Supplemental Appendix, pp. 1-16.)

This Court's recent analysis contained in *In the Matter of AB v. Eighth Judicial District Court*, 291 P.3d 122, 128 Nev. Adv.Op. 70 (2012) supports the position that the juvenile court must exercise its independent evaluation of the

facts adduced at a hearing before the juvenile master:

> Although the juvenile court may adopt the master's findings of fact unless they are clearly erroneous, a master's findings and recommendations are only advisory, and the juvenile court is not obligated to adopt them. The juvenile court [meaning district judge] ultimately must exercise its own independent judgment when deciding how to resolve a case.

Appellant's assertion that *In the Matter of AB* is inapplicable here because that case occurred in the context of a dependency action rather than a delinquency case, is misplaced. The Court in *In the Matter of AB*, examined the role of the master in a juvenile proceeding and the proper function of the juvenile court judge. The powers of a master in a dependency proceeding closely mirror those powers assigned to a master of the juvenile delinquency court. *Compare*, NRS 62B.030, NRS 62A.180(2), NRCP 53, WDFCR 31. Likewise, the function of the juvenile court in reviewing either the delinquency or dependency master's findings of fact and recommendations is the same. *Swisher v. Brady*, 438 U.S. 204, 98 S.Ct. 2699, 57 L.Ed. 2d 705 (1978), illustrates the two step approach in delinquency matters:

> it is for the State, not the parties, to designate and empower the factfinder and adjudicator. And here Maryland has conferred those roles only on the Juvenile Court judge. Thus, regardless of which party is initially favored by the master's proposals, ... the judge is empowered to accept, modify, or reject those proposals.

Because the intent of the 2003 Nevada Legislature was not to alter the substantive meaning of NRS 62.090, and this Court previously determined that a new evidentiary hearing was not mandated by that statute, the

appropriate reading of NRS 62B.030(4) is that the juvenile court in conducting a "hearing de novo" of the record below, must give no deference to the findings and recommendations of the juvenile master. Therefore, where, as here, the juvenile court reviewed the entirety of the record, including the physical evidence presented, all testimony taken, and all legal rulings made by the juvenile master and has determined that no error of law occurred and no additional testimony would assist him in determination of the issue of the case, a de novo review was in fact conducted. Such reading of the statute, is also consistent with Rule 32(1)(b) which sets forth the manner in which an objection is to be reviewed by the juvenile court.

IV. CONCLUSION

NRS 62B.030 requires that the juvenile court review a master's findings and recommendations and it gives the juvenile court the discretion to determine how the recommendation is reviewed. Where, as here, an independent evaluation of the facts and the law occurred, Judge Walker completed the required review and his Order filed July 31, 2014 should be affirmed.

DATED: January 23, 2015.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: SHELLY K. SCOTT
Deputy District Attorney

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 Corel WordPerfect X3 in 14 Georgia font. However, WordPerfect's double-spacing is smaller than that of Word, so in an effort to comply with the formatting requirements, this WordPerfect document has a spacing of 2.45. I believe that this change in spacing matches the double spacing of a Word document.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

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 appropriate references to the page and volume number, if any, of the transcript or appendix where the matter relied on 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: January 23, 2015.

By: SHELLY K. SCOTT
Deputy District Attorney
Nevada Bar No. 6819
P. O. Box 11130
Reno, Nevada 89520
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 23, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Appellate Deputy
Washoe County Public Defender's Office

Shelly Muckel
Washoe County District Attorney's Office