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 REPLY BRIEF

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The facts are not in dispute. The State agrees that Preston Sanderson (Preston) timely requested a hearing de novo before the juvenile court. Respondent's Answering Brief (RAB) at 1-2. The State defends Judge Walker's decision not to honor that request—despite the mandatory language of NRS 62B.030(4)(c)—first by a reading of the statute that renders statutory language meaningless, and second by an attempt to revive *Trent v. Clark Co. Juv. Services*, 88 Nev. 573, 502 P.2d 385 (1972), via a selective glace at legislative history. This Court should find neither defense persuasive.

Under the statute, the right to "request a hearing de novo" is the right to have a hearing de novo

The State notes that a juvenile court master is obligated by statute to "provide notice of [her] findings and recommendations," including "[t]he right to **request** a hearing de novo before the juvenile court as provided in subsection 4." RAB at 4 (quoting NRS 62B.030(3)(d)) (bold in the original). The State says this language does not grant the right to have a hearing de novo, but only creates a "right to request one." *Id.* That is an odd reading of the statute.

"[T]here is a presumption that every word, phrase and provision in [a statute] has meaning." *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497, 502-03, 797 P.2d 946, 949 (1990), overruled on other grounds by *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000) (citation omitted). What good is a right to "request" a hearing de novo if that request can be completely ignored by the juvenile court? And, what point is served by specific statutory language identifying where the statutory right to a hearing de novo can be found—*i.e.*, "The right to request a hearing de novo before the juvenile court as *provided in subsection 4"* (italics added)—if compliance with subsection (4)(c) does not safeguard that the request will be honored by the juvenile court (under a mistaken notion of its plenary discretion)? The better view is that NRS 62B.030(3)(d) provides notice of the right to request a hearing de novo and NRS 62B.030(4)(c) provides the procedure to timely exercise that right, and to have a hearing de novo. In contrast, the State's interpretation of the statute—as merely giving the right to request a de novo hearing with no guarantee that that request will be honored—defies the actual language of the statute and renders the right created meaningless.

The word "shall" in NRS 62B.030(4)(c) eliminates judicial discretion

The State next argues that 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 made." RAB at 5 (bold in the original). The State contends that if the juvenile court, in its consideration, either approves or rejects or directs a hearing de novo, the court has complied with the statute. *Id.* But the State misuses the term "consider" here. NRS 62B.030(4)(c) provides that "[a]fter reviewing the recommendation of a master of the juvenile court and any objection to the master's recommendations, the juvenile court *shall:*

> (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). In NRS 62B.030(4)(c) the word "shall" is mandatory "and does not denote judicial discretion." *Johnson v. Eighth Judicial Dist. Court*, 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008). Rather, "[t]he use of the word 'shall' in the statute divests the district court of judicial discretion." *Goudge v. State*, 128 Nev. ____, ____, 287 P.3d 301, 304 (2012) (citations omitted). Under this statute, in the face of a timely

request for a de novo hearing, there is nothing optional for the juvenile court to "consider." See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) ("[t]he words of a governing text are of paramount concern").

Finally, the State worries that if this Court agrees with Preston then "either the minor or the State *could* force a second trial or hearing *in every case* brought before the juvenile master." RAB at 5-6 (italics added). One supposes such a result is possible. However, the opposite is possible too. See Appellant's Opening Brief (AOB) at 14-15 ("not every [master's] recommendation is going to generate an objection, and not every objection is going to generate a request for a de novo hearing before the juvenile court."). It is fair for this Court to assume that professional and conscientious attorneys would not mindlessly invoke NRS 62B.030(4)(c) in every instance, particularly in those matters that do not require a hearing de novo. The State's argument is baseless conjecture at best, and in any event, does not change the clear mandatory statutory text. This Court should not change or rewrite the statute. *Cf. Holiday Retirement Corporation v. State*, 128 Nev. ____, ____, 274 P.3d 759, 761 (2012) (noting that it "is the prerogative of the

Legislature, not this court, to change or rewrite a statute") (citation omitted).

Trent v. Clark Co. Juv. Services has been superseded by legislative action

In the Opening Brief, AOP at 12, n.4, Preston acknowledged the existence of *Trent v. Clark Co. Juv. Services*, 88 Nev. 573, 502 P.2d 385 (1972), and noted that the Court in that case interpreted a statute that has since been repealed and replaced by NRS 62B.030(4). The State attempts to revive *Trent*. RAB at 6-7. However, the statute (since repealed) at issue in *Trent* provided:

> 4. Notice in writing of the master's findings and recommendations, together with the notice of right of appeal as provided herein, shall be given by the master, or someone designated by him(,) to the parent, guardian or custodian, if any, of the child, to the child's attorney, to the district attorney, and to any other person concerned. A hearing by the court shall be allowed upon the filing with the court by such person of a request for such hearing, provided that the request is filed within 5 days after the giving of notice. In case no hearing by the court is requested, the findings and recommendations of the master, when confirmed or modified by an order of the court, become a decree of the court.

Trent, supra 88 Nev. at 576, n. 6, 502 P.2d at 387, n. 6 (alteration in the original). Notably, this statute provided for a "hearing," but did not

expand on the meaning of the term. In contrast, the current statute specifically requires a "hearing de novo," upon a timely request by an entitled person. The Court's interpretation of NRS 62.090(4) in *Trent* has been superseded by legislative action and is not applicable to the current statute.

Nonetheless, the State argues that *Trent* is still good law because legislative history suggests that no "substantive issues" were addressed in 2003 when the current statute was enacted. See RAB at 9 (quoting Senator Valerie Weiner). But the State leaves out this part of the Senator's remarks (which follows the last sentence quoted by the State):

> However, the mere exercise of reorganization requires *some substantive changes to produce a consistent, coherent document.* I want to add I have stressed to the legislative participants the urgency of passing this important piece of legislation this session. The history that has been built around S.B. 197 is quite exceptional, and I am not sure we would be able to repeat it any time in our lifetimes. If participants find before the next session other issues we need to address, we can certainly do that next session.

Supplemental Appendix at 2 (*Minutes of the Senate Committee on Judiciary*, March 7, 2003, p. 2) (italics added). One piece of the current "consistent, coherent" legislation is the right to request, NRS

62B.030(3)(d), and to have, NRS 62B.030(4)(c), a hearing de novo. This language has been untouched since it was enacted in 2003.

The hearing de novo in NRS 62B.030(4)(c) is a new merits hearing, not non-deferential review

The de novo hearing identified in NRS 62B.030(3)(d) and NRS 62B.030)4)(c) clearly contemplates a new merits hearing before the juvenile court and not simply non-deferential review. NRS 62B.030(3)(d) states in relevant part that "[a] master of the juvenile court shall provide ... written notice of: (d) The right to request a hearing de novo before the juvenile court as provided in subsection 4." Subsection 4 in turn mandates that the juvenile court "[d]irect a hearing de novo before the juvenile court," if a timely request is made. If, as suggested by the State, this language was intended to give the juvenile court "the option of giving 'no deference' to the master's findings and recommendations when an objection is raised," RAB at 8, why not state that more clearly? Moreover, since the statute already allows for non-deferential review under subsections (4)(a) and (b), what would be the point of specifically identifying the right to a hearing de novo under subsection (4)(c) unless it was to secure a new merits hearing before the juvenile court? As noted earlier, "there is a

presumption that every word, phrase and provision in [a statute] has meaning." If subsection 4(c) did not provide for anything more than that provided for in subsections (4)(a) and (b), then it need not exist. It exists.

CONCLUSION

NRS 62B.030(4)(c) requires a hearing de novo upon the timely request by an entitled person. Here Preston made a timely request for a de novo hearing before the juvenile court. Judge Walker abused his discretion and committed legal error in denying that hearing. Judge Walker's explanation—*i.e.* his belief that "the decision about whether or not a trial de novo should occur rests at the discretion of the District Judge"—cannot be squared with the controlling statute. Accordingly, this Court must reverse Judge Walker and remand for a hearing de novo.

DATED this 19th day of February 2015.

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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 2,102 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 19th day of February 2015.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19th day of February 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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