IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 66410

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PRESTON SANDERSON,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent.

_____/

PETITION FOR PANEL REHEARING

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Introduction

Appellant Preston Sanderson petitions this panel, under Rule 40 of the Nevada Rules of Appellate Procedure, for a rehearing of its Opinion affirming the district court in *In re P.S.*, 131 Nev. Adv. Op. 95, 2015 WL 9465753 (filed on December 24, 2015). As relevant here, NRAP 40(c)(2)(A) and (B) authorizes rehearing where the panel has "misapprehended a ... material question of law in a case, or ... misapplied ... a statute directly controlling a dispositive issue in the case." Here, this panel misapprehended (and misapplied) NRS 62B.030(4) when it concluded that the statute gives the district court discretion whether to grant a hearing de novo where a party has timely requested a hearing de novo.

Argument

NRS 62B.030(4) provides in full,

> 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.

The panel's error (misapprehension or misapplication of the statute) stems from its reading of the statute at too high a level of generality, resulting in its conclusion that the statute's

> use of the word "shall" means that the district court is required to choose one of the three options laid out in NRS 62B.030(4): (a) accept the master's recommendation in whole or in part, (b) reject the master's recommendation in whole or in part, or (c) conduct a hearing de novo if one is timely requested.

131 Nev. Adv. Op. 95 at 3.[1] To appreciate this point better, consider the following. Suppose NRS 62B.030(4) provided only as follows:

> 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;

[1] All page references to *In re P.S.* are to the certified hard copy of the panel's opinion, which was mailed to counsel.

(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, and order such relief as may be appropriate.*

If this was the statute addressed in the panel's Opinion, the panel's reasoning and result could not be faulted. This proposed statute would clearly grant the district court the *unilateral* opportunity to "choose[] one of these three options[.]" 131 Nev. Adv. Op. at 3. And the parties would be passive actors in the district court's choice; having no *pre*-decision say in the matter, and having only the option to appeal from the district court *post*-decision. But this was not the statute under consideration by this panel.

In contrast, the actual statute under consideration makes a distinction in a party's active role in subsection (4)(c). While the parties remain passive actors in subsections (a) and (b), a party becomes an *active* actor in subsection (c) by making a timely request—*pre*-decision—for a hearing de novo. But that party must *act* in a timely manner. And when the party has timely acted, the district court must hold a hearing de novo. The statute provides that the district court "shall ... [d]irect a hearing de novo ... 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)(c).

Words mean something and the active/passive distinction of the statute's specific language is the only linguistic interpretation possible. Thus this panel misapprehended and misapplied the statute by broadly reading it to ignore this distinction.[2] Moreover, a correct interpretation of the statute requires that the panel withdraw its opinion and issue a new one that reverses the district court's order denying the timely request for a hearing de novo.

In its answering brief the State worried (needlessly we think) that a correct reading of subsection (4)(c) would be used to "force" the State to re-try cases in the district court, or even allow the State to "force a new hearing in order to present additional evidence." Respondent's Answering Brief at5-6. A more pressing concern for the parties (and for future parties subject to the statute) is that under this panel's present

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[2] This point was particularly made in the Appellant's Reply Brief at 8-9, which concluded: "If subsection (4)(c) did not provide for anything more than that provided for in subsections (4)(a) and (b), then it [subsection (4)(c)] need not exist. It exists." See NRAP 40(a)(2) (requiring reference to the page of a brief where the issue was raised).

interpretation of the statute, a district court can render subsection (4)(c) nugatory by always exercising its discretion to handle a master's recommendation under subjections (4)(a) or (b), and never under subsection (4)(c).

Conclusion

This panel should withdraw its Opinion in this appeal, issue a new one that interprets NRS 62B.030(4) as suggested above, reverse the district court's order denying the timely requested hearing de novo, and remand for a hearing de novo.

DATED this 5th day of January 2016.

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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 it is proportionately spaced, has a typeface of 14 points and contains a total of 1,204 words and does not exceed ten pages. NRAP 40(b)(3).

3. Finally, I hereby certify that I have read this petition, 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 petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 40. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5th day of January 2016.

/s/ John Reese Petty
JOHN REESE PETTY
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5th day of January, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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