

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

No. 68476

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
EGAN K. WALKER, DISTRICT JUDGE,
Respondents,
And
A.A., A MINOR,
Real Party in Interest.

FILED

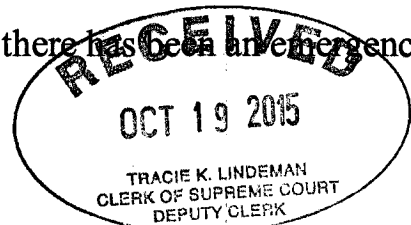
OCT 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ANSWER OF REAL PARTY IN INTEREST

The Petition for Writ of Mandamus should be denied. However, Real Party in Interest requests that this Court, if it deems necessary, issue a writ clarifying that Nevada Revised Statutes (hereafter "NRS") § 432B.6075(2) mandates a petition be filed no later than five calendar days after there has been an emergency admission.

Petitioner requests this Court interpret NRS § 432B.6075(2) in such a way as to allow more than five (5) days within which to file a Petition to involuntarily continue the placement of a child in a locked psychiatric/treatment facility after there has been an emergency admission.



Petitioner presents two issues in support of its request; first, that NRS § 432(B)6075 is silent as to when a petition must be filed, and second, that the Nevada Rules of Civil Procedure (hereafter “NRCP”) govern the computation of time thereby expanding five days to something larger.

I. Facts necessary to rule on the Petition:

- A.A. was found to be a child in the need of protection on October 13, 2014 and placed in the care of Washoe County Department of Social Services (hereafter “WCDSS”).
- On July 7, 2015 A.A. was admitted to West Hills Hospital on an emergency basis after being examined by a licensed psychiatrist.
- On July 14, 2015, WCDSS through the Washoe County District Attorney’s office filed its “Petition for Involuntary Placement of Child in Locked Facility After Emergency Admission.”
- A hearing was held on July 15, 2015 for consideration of the Petition.
- The district court heard no testimony, only argument as to the untimely filing of the Petition was presented.
- The exhibits attached to the original Petition before the district court were not offered nor admitted as evidence, as such, they are outside

the scope of this matter and should be struck from the Petition for Writ of Mandamus.¹

- The district court denied the Petition due to the fact that it was filed outside of the statutory deadline set forth in NRS § 432B.6075.

II. Argument supporting the decision of the court below:

- a. The plain language and legislative intent of NRS § 432B.6075 supports the decision of the court below - it is not silent as to how to count days.

NRS § 432B.607 et. seq. was added to the Nevada Revised Statutes in 2005, in 2009 it was amended to include the provision at issue today. The purpose was to ensure prompt judicial review of a child's loss of their constitutional right to liberty. As the district court aptly noted, "I'm putting a human being in a locked psychiatric facility or keeping them there against their will..." See, *Transcript of Proceedings*, Petitioner's Exhibit C, p. 10 lines 1-3.

In *Parham v. J.R.*, 442 U.S. 584 (1979) the United States Supreme Court noted,

¹ Alternatively, the exhibits contain private medical information regarding a minor child. By attaching these confidential materials to the Petition for Writ of Mandamus, Petitioner has made them public record and accessible to the general public. Pursuant to Nevada Supreme Court Rules, Part VII, Rule 3(4)(f), Real Party in Interest requests for this Court to seal Petitioner's "Exhibit 1" in its entirety.

“The absence of an adult who cares deeply for a child has little effect on the reliability of the initial admission decision, but it may have some effect on how long a child will remain in the hospital. We noted in *Addington v. Texas*, 441 U.S. at 428-29, that “the concern of family and friends generally will provide continuous opportunities for an erroneous commitment to be corrected.” For a child without natural parents, we must acknowledge the risk of being “lost in the shuffle.”

Id. at 619.

The drafters of NRS § 432B.6075 recognized this risk while discussing the merits of the legislation. “As residents of the State, we are the ‘parents’ of these children while they are under the care of the State.” *Minutes of the Senate Committee on health and Education regarding AB364*, May 1, 2009, at page 42.

“[A]dditional language has been added to say that if a child is admitted under an emergency admission to a facility, a petition must be filed no later than five days after the admission or the child must be released. This is to ensure that the children are being looked after and that they are not being left without someone finding out why they are there and seeing if that is the appropriate place for them.” Id.

Generally, the plain meaning of the words in a statute should be respected. Thus, when a statute is clear on its face, this court will not look beyond the plain language to determine legislative intent. *Matter of Petition of Phillip A. C.*, 122 Nev. 1284, 1293, 149 P.3d 51, 57 (2006).

This Court has held, “Courts must construe statutes and ordinances to give meaning to all of their parts and language. (Citation omitted). The court should read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation. (Citation omitted). A reading of legislation which would render any part thereof redundant or meaningless, where that part may be given a separate substantive interpretation, should be avoided.” *Bd. of County Comm’rs v. CMC of Nevada*, 99 Nev. 739, 744 (1983).

Within the original statutory section of NRS § 432B.607 et. seq. the legislature twice included language that expanded five days to mean more than five days. In NRS § 432B.6078, while providing a child the right to a second examination to determine whether they meet criteria to be judicially committed to a locked facility, the legislature provided, “A second examination must be conducted *not later than 5 business days* after the court authorizes the examination.” (Emphasis added).

Similarly, in NRS § 432B.6083, while statutorily providing for the return of a child conditionally released from a locked facility, the legislature provided, “The court shall review an order submitted...*in no event later than 5 judicial days after the child is returned to the facility.*” (Emphasis added).

Should this Court read NRS § 432B.6075 to include the word “judicial” with regard to the phrase “no later than 5 days,” it would render meaningless the

inclusion of that word later in the same statutory section. As noted above, it would also defeat the plain intent of the legislature providing for an expedient review of involuntary commitment.

During the hearing on the Petition it was argued that, “[R]equiring physicians who are not available is an undue burden for them to try to always keep things within the 5 days...” See, *Transcript of Proceedings*, page 10-11 lines 23-24 and 1. Similarly, Petitioner now argues, “...with no regard for the safety of the child, the court dismisses the Petition on procedural grounds.” (Id. at page 7).

These positions are contrary to the sensitivity the United States Supreme Court has exhibited when considering a deprivation of liberty. In the case, *Addington v. Texas*, 441 U.S. 418 (1979), while increasing the burden of proof required to justify confinements such as the one at bar, the Court hoped it would, “impress the factfinder with the importance of the decision [to involuntarily commit].” Adding, “The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state.” (Id. at page 428).

Here the state is not being asked to suffer any possible harm, just to bring their case of possible harm before the trier of fact within five days.

- b. NRS §432B.607-6085 creates special statutory proceedings by legislative mandate and therefore is not subject to the procedural rules of the Nevada Rules of Civil Procedure.

NRCP 1 provides, "These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81." Contrary to the assertions of the Petitioner, NRCP 81 excludes application of the calendaring provisions of NRCP 6, to wit: "These rules **do not** govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute." (Emphasis added).

Petitioner's reliance on Rule 81 is misplaced.

III. Conclusion:

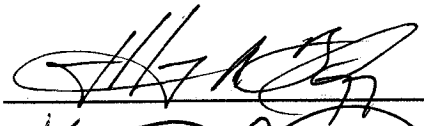
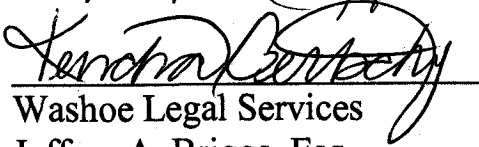
NRS § 432B.6075(2) mandates that a petition to continue a placement be filed not later than 5 days after the emergency admission. The statute is clear on its face, is unambiguous, and serves the purpose for which it was written – ensuring prompt judicial review of a deprivation of a child's liberty. The timeframe does not prejudice the filer of the petition as they are seeking to continue an **emergency** placement.

The relief sought by the Petitioner would have this Court usurp the function of the legislature, extending the five (5) day period by excluding non-judicial

days from calculation. This is a determination the legislature already made when drafting the statute, by not including such expansive calendaring (which is present in other sections of the enacted legislation) and explicitly stating 'no later than.'

While expanding the statutory five (5) day period will, as a matter of fact, deprive a child of a constitutionally protected right (for a period of time that will vary given the circumstances) it would not allay any legitimate complaints of the Petitioner.

Dated this 19 day of October, 2015.



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CERTIFICATE OF MAILING

Pursuant to NRAP 25, I hereby certify that I am an employee of Washoe Legal Services and that, on this date, I deposited for mailing through the U.S. Mail Service in Reno, Nevada postage prepaid, a true copy of the foregoing document, addressed to:

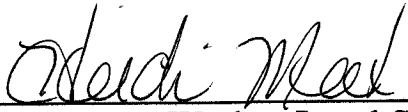
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Dated: October 19, 2015


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