

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman  
Clerk of Supreme Court

STATE OF NEVADA,

Petitioner,

No. 68476

v.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
AND THE HONORABLE EGAN WALKER,  
DISTRICT JUDGE,

Respondents.

and

AYDEN ANDERSON-LAKING,

Real Party in Interest.

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REPLY TO ANSWER OF REAL PARTY IN INTEREST

COMES NOW, Petitioner, the State of Nevada, by and through counsel, Courtney E. Leverty, Deputy District Attorney and hereby replies to the Answer of the Real Party in Interest. Real Party in Interest makes two points supporting the decision of the Court. The first point is that NRS §432B.6075 is not silent as to five (5) days. The second argument is that

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

## POINTS AND AUTHORITIES

### I.

#### Argument

#### A. The Petition for Involuntary Placement of Child in Locked Facility After Emergency Admission was Timely Filed

Nevada Rules of Civil Procedure Rule 6 states as follows:

In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or non-judicial day, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a non-judicial day or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of these aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and non-judicial days shall be excluded in the computation except for those proceedings filed under Titles 12 and 13 of the Nevada Revised Statutes.

Nev. R. Civ. Pro. Rule 6.

Step by step this Petitioner will show the Petition for Involuntary Placement of Child in Locked Facility after Emergency Admission (“Petition

for Involuntary Commitment”) was timely filed and the District Court erred in dismissing the Petition for Involuntary Commitment on procedural grounds.

On July 7, 2015, Ayden Anderson Laking (“Ayden”) was admitted to West Hills Hospital on an emergency basis after being examined by a licensed psychiatrist. In reading Nev.R.Civ.Pro. Rule 6, “*the day of the act, event or default from which the designated period of time begins to run shall not be included.*” *Id.* (Emphasis Added). Because the day Ayden was admitted to West Hills Hospital was July 7, 2015, July 7, 2015 should not be included in computing the period of time. July 8, 2015 should be considered day number one for calculating the period of time to file the Petition for Involuntary Commitment.

Nev. R. Civ. Pro. Rule 6, then goes on to state, “The last day of the period so computed shall be included, *unless it is a Saturday or Sunday, or non-judicial day*, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a non-judicial day...” *Id.* (Emphasis Added). Five (5) days from July 8, 2015 would be calculated to Sunday, July 12, 2015. Because it falls on a Sunday, the period of time runs over to the next day, Monday, July 13, 2015. However, the statute does not stop there. The statute continues to state, “When the period of time *prescribed or allowed is less than 11 days, intermediate Saturdays,*

*Sundays and non-judicial days shall be excluded* in the computation except for those proceedings filed under Titles 12<sup>1</sup> or 13<sup>2</sup> of the Nevada Revised Statutes.” *Id.* (Emphasis Added). The period of time prescribed under NRS §432B.607<sup>5</sup> for filing a Petition for Involuntary Commitment is five (5) days. Because five (5) days is less than eleven (11) days, then *intermediate Saturdays, Sundays and non-judicial days shall be excluded* in the computation. The time to file the Petition for Involuntary Commitment includes 1) Wednesday, July 8, 2015 (the date when the time starts to run), 2) Thursday, July 9, 2015, 3) Friday, July 10, 2015,<sup>3</sup> 4) Monday, July 13, 2015 and 5) Tuesday, July 14, 2015. Pursuant to Nev. R. Civ. Pro. Rule 6, the Petition for Involuntary Commitment needed to be filed on July 14, 2015. Petitioner filed such on July 14, 2015. Therefore, the District Court erred by dismissing this Petition for Involuntary Commitment on procedural grounds.

B. Even if the District Court Properly Dismissed the Case, the District Court still erred by not Considering Other Information pursuant to NRS §432B.607(7).

In Petitioner’s review of the legislative intent in 2009, NRS §432B.605 states:

If a court which receives a petition filed pursuant to section 7 of this act for the court-ordered admission to a facility of a child who is in the custody of an agency which provides child welfare

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<sup>1</sup> Title 12 deals with Wills and Estates of Deceased Persons.

<sup>2</sup> Title 13 deals with Guardianships; Conservatorships; Trusts

<sup>3</sup> The calculation of time excludes: Saturday, July 11, 2015 and Sunday, July 12, 2015.

services determines pursuant to subsection 2 of section 8 of this act that the child could be treated effectively in a less restrictive appropriate environment than a facility, the court must order the placement of a child in a less restrictive environment. In making such a determination, the court may consider any information provided to the court, without limitation: (a) any information provided pursuant to subsection 4; (b) any suggestion of psychologist, psychiatrist, or other physician who have evaluated the child concerning the appropriate environment for the child, and (c) any suggestion of *licensed social workers or other professionals* or any adult caretakers who have interacted with the child and have information concerning the appropriate environment for the child.

Laws 2009, c. 111 § 3, eff. July 1, 2009. (Emphasis Added)

In reviewing the District Court's decision in Ayden's case and other cases that have come before it, the District Court erred in dismissing this matter on procedural matters when the District Court has the ability to look at other information to determine that Ayden could be treated in a less restrictive, appropriate environment pursuant to NRS §432B.607(7). The District Court has essentially done away with taking testimony of the clinical social workers who have interacted with the child and have knowledge of the appropriate environment, and instead direct Petitioner for a second affidavit of a physician, psychiatrist or licensed psychologist to make a determination whether the child meets criteria for a locked facility. Clearly, this was not the legislature's intent as it requires the District Court to consider all of the information, including licensed social workers, or *other professionals* or any adult caretakers who have interacted with the

child and have information concerning the appropriate environment for the child. *See*, NRS §432B.6077.

In this case, the District Court erred by not eliciting the testimony of the clinical worker responsible for Ayden's case so the Court could determine if there was a least restrictive and more appropriate environment for Ayden than West Hills Hospital. And yet, the District Court continues to err by requesting a second affidavit from the psychologist, psychiatrist, or other physician if the psychiatrist who admitted the child is not available for the commitment hearing. The District Court's new requirement of a second affidavit from the psychologist, psychiatrist, or other physician is beyond the scope of the statute and the intent of the legislature when it enacted the law.

C. The Supreme Court Should Place No Weight in the Answer of Real Party In Interest

The Real Party in Interest asserts the legislature has already made a decision that five (5) days is not expanded. In support of this, the Real Party in Interest points to two separate sections in NRS 432B.607 et. al. where the language expanded five (5) days to mean more. One that deals with the right of the child to a second examination and another that deals with the District Court's review of a child who is conditionally released from the facility. Neither section relates to the filing of the Petition after the emergency admission of a child. As such, the Supreme Court should place

no weight in the Réal Party in Interests argument that the plain language and legislative intent of NRS 432B.6075 defines five (5) days.

II.

Conclusion

Petitioner urges this Court to provide an answer whether Respondent should be applying five (5) calendar days or five (5) judicial days to NRS 432B.6075(2) and whether Respondent should be requiring Petitioner to file a second affidavit from the psychologist, psychiatrist, or other physician.

DATED: November 4, 2015.

CHRISTOPHER J. HICKS  
DISTRICT ATTORNEY

By: /s/ Courtney E. Leverty  
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ATTORNEYS FOR PETITIONER

## **CERTIFICATE OF MAILING**

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

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DATED: November 4, 2015

/s/ Michelle Johnson  
Michelle Johnson  
Washoe County District Attorney's Office