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# Phong T. Vu v. Second Jud. Dist. Ct. of Nev., 123 Nev. Adv. Op. 21 (Mar. 31, 2016)

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## WRIT OF MANDAMUS: STATUTORY INTERPRETATION

### **Summary**

Under NRS 433A.310(1)(b), a district court may issue an order of involuntary admittance to a mental health facility if there is clear and convincing evidence that the person is likely to harm himself or others.<sup>2</sup> Here, the Court held that (1) a district court is not required to wait 30 days for a final order under NRS 433A.310(1)(b) before transmitting an involuntary admission to the proper agency, and (2) based on sufficient evidence, the district court properly concluded the petitioner should be admitted to a mental health facility.

### **Background**

The Sparks police department responded to a call in which a family requested assistance with petitioner Phong Vu. According to police reports, Vu threatened to murder his family and had box cutters in his pocket. With a physician's approval, the responding officers temporarily admitted Vu into a mental health facility. Vu later received a hearing in the district court where several witnesses testified as to Vu's mental state and the threat of future incidences. The witnesses testified to Vu's behavior both before admission to the facility and during Vu's stay at the facility, and concluded that Vu's behavior would likely provoke others to harm Vu if released. The witnesses believed it would be safer for Vu to remain in a facility.

Upon the evidence, the district court found that Vu needed continued assistance from a facility and there is a likely probability that Vu would be injured if not admitted. The district court then immediately forwarded a record of the involuntary admission order to the Central Repository for inclusion in the National Instant Criminal Background Check System (NICS). Vu was released twelve days later and deemed not a risk to himself or others. Vu filed this petition for a writ of mandamus and asked the court to recall the NICS record of Vu's involuntary admission.

Vu argues (1) Nevada law does not authorize the transmission of involuntary admission orders unless it is final under the law<sup>3</sup>, (2) regardless, the court's involuntary admittance of Vu was not supported by sufficient evidence.

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<sup>1</sup> By Chelsea Finnegan

<sup>2</sup> See Nev. Rev. Stat. §§ 433A.310(5) (2013)

<sup>3</sup> *Id.* The statute states: "If the court issues an order involuntarily admitting a person to a public or private mental health facility or to a program of community-based or outpatient services pursuant to this section, the court shall, notwithstanding the provisions of NRS 433A.715, cause, on a form prescribed by the Department of Public Safety, a record of such order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System."

## **Discussion**

The court granted the writ of mandamus as Vu's only appropriate legal remedy. Additionally, Vu's statutory argument presented an important issue of law for the state of Nevada. The Court concluded the following:

1. *The district court correctly filed the involuntary admission order before the order was final.*

Under Nevada law, if the court issues an involuntary admission order, the court shall send a record to the NICS.<sup>4</sup> Vu relied on a subsection of the statute that states an involuntary admission must include an order of that court that "must be interlocutory and must not become final if, within 30 days after the involuntary admission, the person is unconditionally released" pursuant to law.<sup>5</sup> Vu argued the statute requires a "final order" and the district court's involuntary admission is invalid because the order was never finalized.

The Court disagreed and found a district court must not wait for a final order to submit the papers to NICS. Vu's argument expanded the statute's plain meaning of the text, but the Court found the statute should be read more narrowly. The Court also relied on the plain language since it just states, "order" and does not discuss finality. Additionally, the Court found the statute's language does not require a court to wait to see whether its order becomes final before a record of the order can be sent to NICS.

The Court also addressed Vu's twelve-day stay in the mental health facility. The Court held that if Vu argues the result is absurd since he was released after twelve days, the release does not mean the district court's findings were erroneous. Instead, the Court found that it only means Vu was no longer a danger to himself or others twelve days later.

Lastly, the Court also found the legislature likely crafted the statute to comply with federal law, and the Court does not want to undermine compliance with federal law. The legislature enacted this subsection to incentivize states to make NICS more efficient and comprehensive, therefore the Court is hesitant to broaden the meaning of the statute.

2. *The district court made its conclusion based on sufficient evidence.*

Alternatively, Vu argued there was not sufficient evidence for the district court's determination of his involuntary admittance. According to Nevada law, involuntary admission to a mental health facility requires clear and convincing evidence and the evidence must show the person was likely to harm himself or others if not admitted.<sup>6</sup>

The Court also recognized NRS 433A.115(2), which presents several categories Vu must fall under for involuntary admission.<sup>7</sup> The Court held that upon the evidence, the district court

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<sup>4</sup> *Id.*

<sup>5</sup> See Nev. Rev. Stat. § 433A.310(1)(b) (2013).

<sup>6</sup> *Id.*

<sup>7</sup> Nev. Rev. Stat. § 433A.115(2)(a) (2013) states, "A person presents a clear and present danger of harm to himself

reasonably inferred that Vu fell under these categories and could not take care of himself or satisfy his needs for self-protection or safety.

The Court also considered other evidence presented in the district court. First, Vu's family called the police for safety and expressed concern over Vu's mental health. Second, several testimonies from physicians and psychiatrists showed Vu's risk of self-protection and safety around others. Finally, the Court held the statutes do not require specific evidence, but must only support reasonable inferences and probability of the concerns. The Court found the District Attorney presented sufficient evidence and the district court made reasonable inferences from the evidence. Therefore, the district court appropriately found Vu had a mental illness at the time of the hearing and was likely to harm himself.

### **Conclusion**

Under NRS 433A.310(1)(b), a district court must not wait 30 days for a final order to transmit an order of involuntary admission to the appropriate agency. The plain meaning of the statute suggests a final order is not required. Additionally, the district court made its conclusions based on clear and convincing evidence. Therefore, the Court denied Vu's petition for extraordinary writ relief.

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or herself if, within the immediately preceding 30 days, the person has, as a result of a mental illness: (a) Acted in a manner from which it may reasonably be inferred that, without the care, supervision or continued assistance of others, the person will be unable to satisfy his or her need for nourishment, personal or medical care, shelter, self-protection or safety, and if there exists a reasonable probability that the person's death, serious bodily injury or physical debilitation will occur within the next following 30 days unless he or she is admitted to a mental health facility . . .”