

APPELLATE BRIEFS

By Paul Georgeson, McDonald Carano

WHEN STATUTORY CONSTRUCTION DOCTRINES COLLIDE

We are all familiar with the “plain meaning rule” of statutory construction. Under that rule, when a statute is clear and unambiguous on its face, the courts should not go beyond its plain language by using outside sources to construe its meaning. We are also all familiar with the concept of using legislative intent to assist with determining the meaning and interpretation of statutory language. When using legislative intent to interpret a statute, the court’s goal is to construe the statute consistent with the intent of the Legislature that passed the statute. Both of these doctrines have been discussed by the Nevada Supreme Court in dozens of cases dating as far back as 1865. However, until recently, the Supreme Court had not specifically addressed the interplay between the use of legislative intent and the plain meaning rule. In *A.J. v. The Eighth Judicial Dist. Court*, 133 Nev. Adv. Op. 28 (June 1, 2017), the Court took that issue head on.

In *A.J.*, the Court considered a Writ Petition addressing NRS 62C.240. That statute relates to minor children who have engaged in prostitution or the solicitation of prostitution. The statute was enacted to ensure that children who engage in such activities are treated as victims of commercial sexual exploitation, rather than as juvenile delinquents.

The question before the Court in *A.J.* was the interpretation of NRS 62C.240. Specifically, the court was asked to address the triggering language of the statute, which provides the protections of the statute apply “if the district attorney files a petition with the juvenile court alleging that a child who is less than 18 years of age has engaged in prostitution or the solicitation of prostitution.” In *A.J.* the parties disagreed over the meaning and application of that triggering language. The State asserted that the language

was plain on its face and should be interpreted pursuant to its plain meaning; i.e., that the protections were triggered by how the district attorney prepared the petition. *A.J.*, however, argued that pursuant to the legislative intent behind the statute, more than just the district attorney’s petition should be considered. Instead, *A.J.* argued that, based on the legislative intent, the arrest and referral charge should be considered; not just the district attorney’s petition. Therefore, the wider question before the Court was whether courts can use legislative intent to interpret a statute when the statutory language is not ambiguous.

The Court began its analysis by discussing the plain meaning rule. Quoting from a prior Nevada Supreme Court case, the Court stated that “when examining a statute, this Court... ascribes plain meaning to its words, unless the plain meaning was clearly not intended.” (Citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40, 175 P.3d 906, 908 (2008)). The Court recognized the State’s argument that because the statute is unambiguous, the Court could not look beyond its plain meaning. However, in response to that argument, the Court stated that “ambiguity is not always a prerequisite to using extrinsic aids.” (Quoting 2 A Norman J. Singer and Shambie Singer, *Statutes and Statutory Construction*, § 48:1, at 554 (7th ed. 2014)). Continuing to quote from Singer, the Court stated that the plain meaning rule “is not to be used to thwart or distort the intent of [the Legislature] by excluding from consideration enlightening material from the legislative history.” Quoting the United States Supreme Court, the Court noted that “even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent.” (Quoting *Nat’l*

R.R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers, 414 U.S. 453, 458 (1974)).

Therefore, the Court agreed with *A.J.*’s argument that the legislative intent should be considered, even though there was no ambiguity on the face of the statutory language. Turning to the issue of legislative intent, the Court noted that it must evaluate the legislative history and construe the statute in a manner that conforms to reason and public policy. (Citing *Great Basin Water Network v. Taylor*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010)). The Court further noted that statutes with “protective purpose,” such as the statute at hand, should be liberally construed to effectuate the benefits intended to be obtained.

The Court then reviewed the legislative history of the statute. In doing so, the Court referenced testimony from the contemporaneous Chair of the Legislative Committee on Child Welfare and Juvenile Justice. The Court noted that the Chair’s testimony on the bill that became the statute described factual scenarios that were nearly identical to the circumstances of the *A.J.* case. Based on its review of the legislative history, the Court concluded that the circumstances leading to *A.J.*’s original delinquency adjudication are “precisely those which the Legislature intended to trigger the application of NRS 62C.240.” Thus, the Court agreed with *A.J.* that the legislative history supported his interpretation of the statute. Ultimately, in liberally construing the statute’s protective purpose, the Court concluded that the Legislature clearly intended for the circumstances surrounding the juvenile’s arrest to trigger NRS 62C.240, not the subsequent charging decisions of the prosecutor.

Therefore, in interpreting the meaning of the statute, the Court relied

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upon legislative intent, as illuminated by legislative history, even though the statute's plain language was clear. Thus, the Nevada Supreme Court has now ruled that even when a statute is plain and unambiguous on its face, the courts are permitted to evaluate legislative history to determine how the unambiguous language should be interpreted. While the Court's ruling is limited specifically to the interpretation of NRS 62C.240, it raises the question of whether the reasoning may apply in other cases involving different statutes. In every case relating to statutory construction, are the parties now free to argue that the plain language of an unambiguous statute doesn't really mean what it says, but must instead be interpreted in light of the statute's legislative history? We don't know the answer to that question now. However, based on this ruling, it is a virtual certainty that more cases will follow. Stay tuned.

Paul Georgeson is a partner at McDonald Carano and practices primarily in the areas of commercial litigation, construction law, and appellate law. He is a member of the firm's Appellate Practice Group and regularly handles appeals and writ proceedings in state and federal courts.



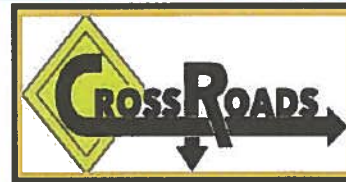
**FROM PROTECTION TO SUPPORT:
AN INNOVATIVE ALTERNATIVE TO
GUARDIANSHIP**

Second Judicial District Court Launches
a Statewide Conversation

Judge Frances Doherty, together with a group of committed partners, travelled across Northern Nevada July 17 through July 20 for a series of outreach events on Supported Decision Making as an alternative to guardianship for seniors and adults with disabilities.

The outreach team included Judge Doherty, Second Judicial District Court staff, disability and elder rights advocacy groups, attorneys, rural regional centers, public guardians, and legal aid organizations.

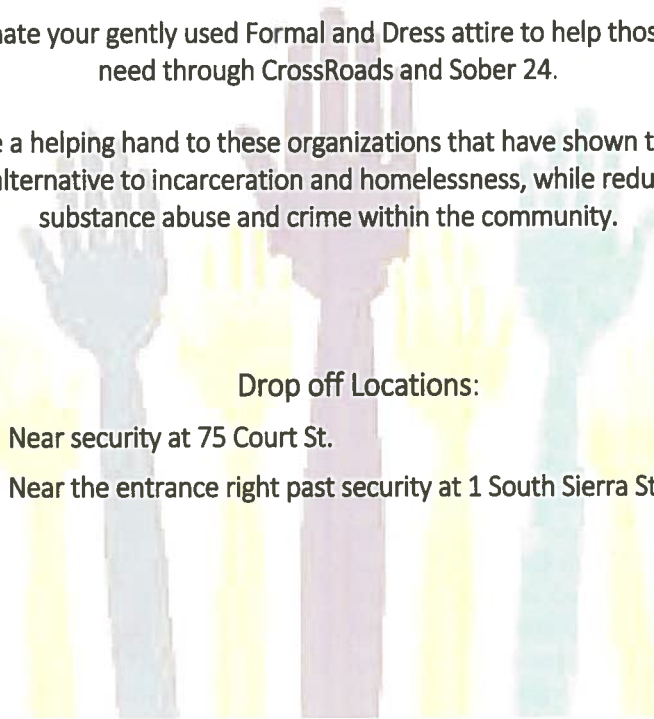
For a complete calendar of events, contact: Dept. 12 (775) 328.3164 or AdultGuardianship@washocourts.us.



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- Near the entrance right past security at 1 South Sierra St.



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