IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON DEVI HOYT,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 57501

FILED

MAR 17 2011

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a judicial determination of competency. Petitioner Daimon Devi Hoyt challenged his competency in the trial court. The trial court referred the matter to Eighth Judicial District Court Judge Jackie Glass (Department 5) for a competency determination. Subsequently, Department 5 concluded that Hoyt was incompetent, and he was sent to Lake's Crossing for treatment. Eventually, mental health professionals at Lake's Crossing determined that Hoyt was competent and he returned to Department 5, where he challenged the competency findings. After a lengthy evidentiary hearing, Department 5 determined that Hoyt was

competent to stand trial. He now challenges that competency determination on three grounds.[1]

First, Hoyt argues that the trial court, rather than Department 5, should have determined his competency pursuant to Fergusen v. State, 124 Nev. 795, 803, 192 P.3d 712, 718 (2008) (concluding that local district court rules permitted chief judge to assign all initial competency determinations to particular department but that "the determination of a defendant's ongoing competency thereafter and during trial must vest with the trial judge who has been assigned to hear the matter"). In this, he argues that the Eighth Judicial District's procedure of referring competency matters to Department 5, except where competency questions arise after trial commences, is not grounded in legal authority. Here, however, the trial court's referral of Hoyt's competency determination to Department 5 comported with our mandate in Fergusen and nothing in his submissions suggests that the trial court will refuse to consider any future competency issue he may raise. Therefore, we conclude that extraordinary relief is not warranted.

Second, Hoyt argues that Department 5 erroneously determined that he is competent to stand trial. The evidentiary hearing extended over several days and included the testimony of five mental

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[1]We grant Hoyt's motion for leave to supplement the statement of pertinent facts received via E-FLEX on January 14, 2011, and his request to file a supplement to the writ petition received via E-FLEX on March 10, 2011.

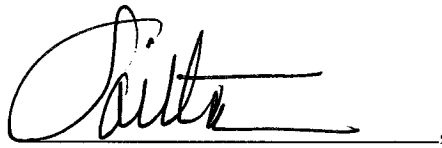
health professionals who provided conflicting opinions as to Hoyt's competency. Resolving the conflicting evidence presented at a competency hearing falls within the purview of the trier of fact, see Ogden v. State, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980), and based on the evidence adduced here, we conclude that Hoyt failed to show that Department 5 manifestly abused its discretion by determining that Hoyt was competent to stand trial.

Third, Hoyt argues that Lake's Crossing failed to comply with NRS 178.455 because the competency evaluation completed at that institution did not include a "neutral" member of the evaluation team, that is, an evaluator who was not a State employee. In this, Hoyt contends that the legislative history and evolution of NRS 178.455 shows that the Legislature intended to have a "neutral" certified licensed psychologist or psychiatrist participate in the evaluation of a defendant's competency. NRS 178.455 requires that, in addition a licensed psychiatrist and licensed psychologist from the treatment team, a third licensed psychiatrist or psychologist who is not a member of the treatment team be appointed to determine a defendant's competency. Because the plain language of the statute does not require the appointment of a "neutral" evaluator as Hoyt suggests, see State v. Sargent, 122 Nev. 210, 128 P.3d 1052, 1054 (2006) (observing that statutory construction rules require this court to determine legislative intent from statute's plain language and this court "'will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended'" (quoting

State v. Quinn, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001))), we conclude that extraordinary relief is not warranted on this ground.

Having considered the petition and the supporting documents, we are not satisfied that this court's intervention by way of extraordinary writ is warranted. Accordingly, we deny the petition. See NRAP 21(b).

It is so ORDERED.



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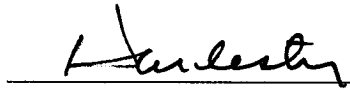

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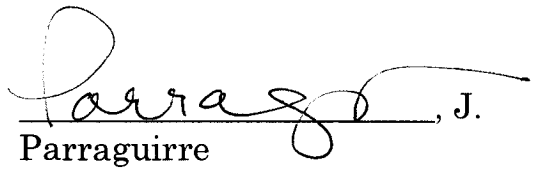

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk