August 29, 2008

Hello,

Wayne B v. Alaska Psychiatric Institute

This morning the Alaska Supreme Court issued its Opinion (Decision) in *Wayne B v. Alaska Psychiatric Institute*. We raised two issues, in the appeal:

1. the court's finding that Wayne B was "gravely disabled" was clearly erroneous, and
2. the court's commitment and forced drugging orders based on the Probate Master's recommendations were erroneously entered because no transcript of the master's hearing was filed with the Superior Court as required by Civil Rule 53(d)(1)

The Court ducked the first one saying the commitment order had expired and therefore moot. Even though moot, the Court decided the second one "because it is an important and recurring issue and application of the mootness doctrine would shield it from appellate review". Frankly, the same is true of the first issue, but for whatever reason, they didn't want to decide it, at least in this case.

Transcript Requirement. The reason why the transcript requirement was important to PsychRights' efforts is the failure to comply with the rule was part of the assembly-line way in which commitments and forced drugging petitions are processed in Anchorage (as they are in most places) with the judges essentially rubber-stamping the Master's recommendations arising from *pro forma* (perfunctory) hearings. PsychRights argued the Superior Court judge has to have the transcript in order to decide if the Master's recommendation should be adopted, including whether there is even sufficient evidence to support granting the petitions. In today's Decision, the Alaska Supreme Court agreed:

> We take a strict view of the transcript filing requirement because, as we noted in *Wetherhorn v. Alaska Psychiatric Institute*, involuntary commitment for a mental disorder is a "massive curtailment of liberty."FN5 Given the nature of the liberty interest at stake, it was critical that the superior court have full knowledge of the evidence that was said to justify committing Wayne B. to a mental institution.
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> Rule 53(d)(1) permits a judge in an order of reference to direct that no transcript of master's proceedings be filed. This grant of discretion could suggest that a more forgiving standard should be applied where the transcript requirement is not followed. To be sure, an order of reference waiving a transcript may be made where case-specific facts justify such a waiver. But in involuntary commitments, such as the present, it is difficult to imagine circumstances that would justify such a waiver. We except from this observation cases where a judge intends to listen to a recording of the proceedings.
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> Where no transcript is filed, but a judge actually listens to a recording of the full proceedings conducted by a master, the error in failing to comply with the transcript requirement should be considered cured. The adjudicative responsibilities of a judge can be fulfilled at least as well based on a recording of proceedings as from a transcript.FN6 But there is no indication that this occurred in this case.
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> FN5. 156 P.3d at 375 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)).
> FN6 Listening to a recording of proceedings is much more time consuming than reading a transcript; this may explain the rule's preference for a transcript.

Definition of Gravely Disabled. In the *Wetherhorn* decision the Alaska Supreme Court cites above, another of PsychRights' cases, the Alaska Supreme Court held it was unconstitutional to commit someone for being gravely disabled unless the "level of incapacity [is] so substantial that the respondent cannot survive safely in freedom." In this appeal, we essentially tried to get the

Alaska Supreme Court to give some idea of what "survive safely in freedom" means. You can see what the evidence was in our Opening Brief, which we said was insufficient to meet the unable to survive safely in freedom standard. At oral argument, I was asked by the newest member of the Alaska Supreme Court, Justice Winfree, what "unable to survive safely in freedom meant." I responded that I didn't really know, that it was the Alaska Supreme Court which had said that was the standard (picking it up from the United States Supreme Court case of *O'Connor v. Donaldson*, 422 US 563 (1975)), and something like, but it certainly had to be serious enough to justify the massive curtailment of liberty involved in locking someone up. In any event, the Alaska Supreme Court chose not to use this case to give some guidance on what it means. I haven't found anything from any other jurisdiction that sheds much light on it either, although there may be some. Since this is an issue that will always be moot by the time the Supreme Court could decide it, it will always evade review unless it decides to invoke an exception to the mootness doctrine in another case. I might also note that it appears to me it is not moot under the federal constitution under *Washingon v. Harper*, 494 U.S. 210 (1990) because the person can be faced with a future forced drugging petition. *Harper*
involved forced drugging, but it is hard to see why the same logic doesn't apply to involuntary commitment.

Esmin Green Follow-Up

On August 14, 2008, after assembling the research about neuroleptics causing fatal blood clots, PsychRights wrote to the Medical Examiner asking (demanding) that he re-open his investigation on Ms. Green dying on camera at Kings County Hospital psychiatric emergency room in New York City while being ignored by workers, to include whether Ms. Green's fatal blood clot was likely caused by the administration of psychiatric drugs and report back on the results. We also made a Freedom of Information Law request for the medications Ms. Green was prescribed. A lawyer in the Medical Examiner's office wrote back, denying the Freedom of Information Law request and, with respect to looking into whether neuroleptics caused the fatal blood clot:

> The Office of Chief Medial Examiner has concluded its inquiry into the cause and manner of Ms. Esmin Green's death. The OCME is satisfied with our determination.

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James B. (Jim) Gottstein, Esq.
President/CEO

Law Project for Psychiatric Rights
406 G Street, Suite 206
Anchorage, Alaska 99501
USA
Phone: (907) 274-7686) Fax: (907) 274-9493
jim.gottstein[[at]]psychrights.org
http://psychrights.org/

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The Law Project for Psychiatric Rights is a public interest law firm devoted to the defense of people facing the horrors of forced psychiatric drugging. We are further dedicated to exposing the truth about these drugs and the courts being misled into ordering people to be drugged and subjected to other brain and body damaging interventions against their will. Extensive information about this is available on our web site, http://psychrights.org/. Please donate generously. Our work is fueled with your IRS 501(c) tax deductible donations. Thank you for your ongoing help and support.