Law Project for Psychiatric Rights
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Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

FAITH J. MYERS, Appellant, vs. ALASKA PSYCHIATRIC INSTITUTE Appellee.	)	Supreme Court No. S-11021

Trial Court Case No. 3AN 03-00277 PR

OPPOSITION TO MOTION TO DISMISS APPEAL AS MOOT

COMES NOW, Appellant, Faith Myers, by and through her attorney and opposes the State's Motion to Dismiss Appeal As Moot (Motion to Dismiss).

A. This Appeal is Not Moot.

The threshold question is whether this case is actually moot. The grounds for the claim of mootness rests on the fact that Ms. Myers was ultimately released without the Forced Medication Order on appeal here having been implemented due to the stay pending appeal still being in place when the then extant petitions for involuntary commitment and forced medication were dismissed with prejudice after the jury trial thereon had commenced.[1] In Washington v. Harper, 494 U.S. 210, 218, 110 S.Ct. 1028,

[1] See, Attachment 5 to State's Motion to Dismiss.

1035, 108 L.Ed.2d. 178 (1990), the United States Supreme Court held the appeal there was not moot even though the appellant was no longer subject to the forced medication order because he was not unlikely to be faced with a new forced medication effort. There, the United States Supreme Court held this meant "a live case or controversy between the parties remains." Not only is Ms. Myers at risk of future forced medication orders, she has already been summarily subjected to one during the pendency of this appeal through a new case being filed.[2] Petitions for commitment and forced medication were filed against her on October 28, 2003, under Case No. 3AN 03-1413 P/S;[3] the Public Defenders Office was automatically appointed to represent her;[4] the hearing was held the same day the petitions were filed;[5] and a forced medication order issued the same day.[6] While the State, in support of its mootness argument, brings in the subsequent proceeding leading to the dismissal with prejudice without the forced medication order at issue here being implemented,[7] it fails to mention this additional

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[2] See, Exhibit A. The Court may take judicial notice of these official Superior Court filings for the same reasons stated in footnote 4 of the Motion to Dismiss.

[3] See, Exhibit A, pp 1-3.

[4] See, Exhibit A, p. 4.

[5] See, Exhibit A, pp. 4, 6, and 8.

[6] See, Exhibit A, pp. 8-10.This Order was signed Nunc Pro Tunc as of October 28, 2003, the same day the petition was filed and the hearing held. The forced medication of Ms. Myers presumably began on October 28th, immediately following the hearing.

[7] Attachment 5 to Motion to Dismiss.

proceeding under which Ms. Myers was forcibly medicated.[8] Ms. Myers continues to be at risk of additional forced medication orders and respectfully submits, under the holding of the United States Supreme Court in Washington v. Harper, supra., this appeal is not moot.[9]

B. The Public Interest Exception to the Mootness Doctrine Applies.

Even if this appeal is technically moot, Ms. Myers respectfully suggests this court should decide the case on the merits. Whether or not to hear a moot appeal "ultimately rests in the discretion of this court." Peninsula Marketing Ass'n., v. Alaska, 817 P.2d 917

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[8] The Affidavit of Ronald M. Adler (Attachment 4 to the Motion to Dismiss) also does not mention this subsequent proceeding. In fact, it appears this subsequent involuntary commitment, which resulted in an implemented forced medication order was redacted from page 3 of attachment 4 to the Motion to Dismiss. Counsel is not suggesting the State was purposefully attempting to hide these later commitment and forced medication petitions and Ms. Myers' being subjected to court ordered forced medication through them. However, if the subsequent dismissal with prejudice under a completely new set of petitions for involuntary commitment and forced medication without the forced medication order being implemented is cited by the State as grounds for dismissal for mootness, the subsequent actual forced medication of Ms. Myers under yet another set of involuntary commitment and forced medication petitions is relevant.

[9] In Alaska v. United Cook Inlet Drift Association, 895 P.2d 947, 950 (Alaska 1994), this Court held that so long as the underlying judgment has not been vacated by the superior court or vacated or reversed by this court, the case was not moot. Here, the term of the Forced Medication Order expired by the passage of time, but it has never been vacated or reversed. Thus, it seems under the logic of Cook Inlet Drift Ass'n., this appeal is not moot on the ground that the judgment has never been vacated or reversed. However, in the much earlier case of RLR v. Alaska, 487 P.2d 27, 45 (Alaska 1971), this court discussed the analogous situation to here where "juvenile sentences very often do not last as long as the appellate process" in a way that suggests expiration of an order does render an appeal moot. There this Court seems to hold this gives rise to an automatic exception to the mootness doctrine, which would seem to be applicable here as well.

(Alaska 1991). In most cases, this court applies the "public exception to the mootness doctrine," to analyze when to decide a case on the merits notwithstanding mootness, but as Peninsula Marketing suggests, there may be other reasons for doing so as well.

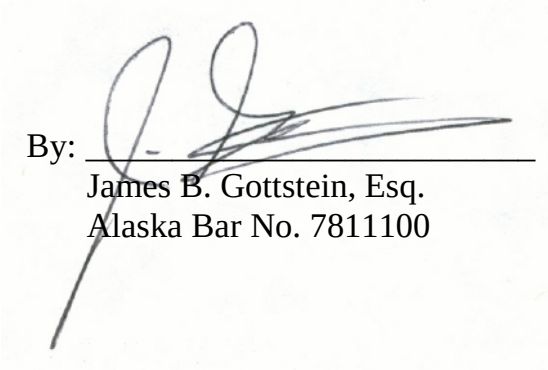
The State virtually concedes the public interest exception to the mootness doctrine applies here, arguing however, that since no one has ever brought such a case before it is unlikely to be repeated. In other words, the State does not dispute the issue is important, nor that the disputed issues are capable of repetition. The State just suggests the court should not invoke the public interest exception because no similar appeal has ever been filed before. Even assuming that the cases cited by the State for the proposition that the likelihood of repetition is a factor actually stand for that proposition,[10] that no appeals have ever been brought over such an important constitutional issue or, for that matter, over any other case involving involuntary commitment or forced medication under AS 47.30, is more a statement on the level of the Public Defenders Office's level of representation than anything else. The Law Project for Psychiatric Rights, counsel here, was incorporated in November of 2002, with a mission to fight unwarranted court

[10] That this Court may have noted the existence of multiple cases to demonstrate that the issue is capable of repetition is not a holding changing the criteria from "capable of repetition and evading review" to one in which this Court will wait until numerous cases on the same issue have evaded review to invoke the public interest exception to the mootness doctrine. Clearly, the issue is both capable of repetition and capable of evading review.

ordered psychiatric medication[11] and representation in this case began in February of 2003. There should be no question that if this court dismisses this appeal without reaching the merits there will be a new one coming up. Ms. Myers respectfully submits that for the reasons stated, this court should DENY the Motion to Dismiss and hear this appeal on the merits.[12]

Dated this 17th day of December, 2003 at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS



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[11] See, http://psychrights.org/.

[12] The State also states that the issue was insufficiently raised below as an additional ground for dismissal, but this doesn't pertain to the mootness question at all. This issue is addressed in Section II.B., of the State's Brief of Appellee and is addressed by Appellant in her Reply Brief.