

IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

In the Matter of the Necessity
for the Hospitalization of
W.S.B.,

Respondent.

_____/

No. 3AN-07-247 PR

PETITION FOR 30 DAY COMMITMENT

PAGES 1 THROUGH 17

BEFORE THE HONORABLE ANDREW BROWN
MASTER

Anchorage, Alaska
September 10, 2007
2:01 p.m.

APPEARANCES:

FOR STATE OF ALASKA: Elizabeth Russo
Attorney General's Office
Human Services Division
1031 West 4th Avenue, Suite 200
Anchorage AK 99501

FOR W.S.B.: James Gottstein

406 G Street, Suite 206
Anchorage AK 99501

Also Present: W.S.B.
D. Taylor

PROCEEDINGS

1 THE COURT: This is -- you can be seated.
 2 This is the case involving the hospitalization for
 3 William Bigley, file number 07-1064.
 4 Sit down, Mr. Gottstein.
 5 So, Ms. Russo, what's the cause of the delay?
 6 MS. RUSSO: Thank you, Your Honor. I guess
 7 there's a couple causes of the delay. The largest one,
 8 though, is that Mr. Bigley apparently is not in court.
 9 The hospital was planning on asking to hold the
 10 petition in abeyance and not necessarily go forward
 11 with more evidence today, because the doctor has been
 12 talking with Mr. Bigley's case manager. He's still
 13 present in the back of the courtroom, and between him
 14 and Dr. Douglas Smith in Juneau, who has agreed to
 15 supervise the medical treatment of Mr. Bigley while
 16 he's out, the plans are that Mr. Bigley will be...
 17 THE COURT: I don't want to get into the
 18 possible merits. I just was...
 19 MS. RUSSO: No, no, no.
 20 THE COURT: ...just asking, what's the cause
 21 of the delay?
 22 Sit down, Mr. Gottstein. Hold on.
 23 MS. RUSSO: So that the cause, basically, is
 24 that -- I guess I -- the doctor knew I would be asking

1 to hold the petition in abeyance and not do evidence.
 2 I guess there was a misunderstanding that the hearing
 3 was still going to happen at all today.
 4 THE COURT: The court gave no -- no one any
 5 reason to believe otherwise.
 6 MS. RUSSO: No. I know. And I'm really
 7 sorry, I just don't know. I believe that we just found
 8 a number. Mr. Bigley is still at API right now. He
 9 can be on the telephone right now for this portion, and
 10 then I don't know if the court wishes to recess so that
 11 Mr. Bigley can come down.
 12 THE COURT: Well, it's up to Mr. Gottstein.
 13 Do you want your client here?
 14 MR. GOTTSTEIN: Yes, Your Honor, I do.
 15 THE COURT: Well, I can't proceed without Mr.
 16 Bigley being here. So you better tell your client to
 17 get him down here...
 18 MS. RUSSO: Yes, Your Honor.
 19 THE COURT: ...right now. We'll be in recess
 20 again until he gets here.
 21 MR. GOTTSTEIN: Half an hour, or?
 22 THE COURT: Well, whenever he gets here. I
 23 mean, I can't tell them to go through red lights, but,
 24 it's your client, Ms. Russo.
 25 MS. RUSSO: No. I'm sorry, Your Honor. I

1 don't know where the miscommunication came from.
 2 THE COURT: It wasn't the court, and I doubt
 3 it was Mr. Gottstein, because he doesn't control Mr.
 4 Bigley's transportation.
 5 MS. RUSSO: Uh-huh (affirmative).
 6 THE COURT: All right. We're in recess.
 7 (Off record - 2:03 p.m.)
 8 (On record - 2:48 p.m.)
 9 THE COURT: Please be seated.
 10 Hello, Mr. Bigley.
 11 MR. BIGLEY: How you doin'. Good to see you.
 12 THE COURT: This is the resumption of the case
 13 of William Bigley, file number 07-1064. And we left
 14 off last time -- actually, we took you out of order --
 15 the witness order, and we have to resume with Dr.
 16 Worrall's direct examination, unless the direct
 17 examination was over, I don't know. But there are some
 18 preliminary things I have to deal with, because this
 19 morning there was a motion for expedited consideration
 20 filed by Mr. Bigley; a motion for injunctive relief.
 21 The State has already responded to the
 22 expedited consideration motion, filing its opposition.
 23 So I just marked "not used," the order granting
 24 expedited consideration because it's sort of moot. And
 25 I don't know if -- it would probably be best if the

1 attorneys want to comment at the end of the proceeding
 2 about that motion for conjunctive relief, rather than
 3 now, because we're right in the middle of the
 4 evidentiary hearing.
 5 Mr. Gottstein?
 6 MR. GOTTSTEIN: Your Honor, well, the -- I
 7 think the supreme court is expecting something in about
 8 three weeks. Maybe it's been filed already. But I
 9 looked at this and there's a sentence on the first page
 10 in the third paragraph of their opposition that says,
 11 "Until there is a final decision on the petition for
 12 the administration of psychotropic medication, Mr.
 13 Bigley will not receive any emergency medication."
 14 And if the court would just so order that, I
 15 think that we can just say that it's been resolved.
 16 THE COURT: Well, Ms. Russo, do you want to
 17 comment?
 18 MS. RUSSO: Your Honor, I don't understand why
 19 -- the matter is moot. I attached the page from Mr.
 20 Bigley's chart where there's clearly an order that
 21 says, "discontinue PRN", Haldol, Ativan and Benadryl
 22 IM." So the matter is moot. It's not gonna happen.
 23 And I don't know -- you know, I don't think there is
 24 any necessary -- the court doesn't need to act when the
 25 matter is moot.

1 THE COURT: Uh-huh (affirmative). Okay. Mr.
2 Gottstein?

3 MR. GOTTSTEIN: Well, Your Honor, the
4 hospital, you know, blatantly violated AS 47.30.38, and
5 it would be -- and there is really n -- basically, if
6 this is ordered, then if they don't live up to it, then
7 it's contempt of court. Whereas, now, there's really
8 not much of a remedy. So -- they were supposed to
9 follow 838, and they didn't, and now they say they're
10 gonna do this, and they -- and it should just be so
11 ordered. They say they're gonna do it, so I don't know
12 why they would object to an order.

13 MS. RUSSO: Your Honor, the entry of an order
14 would indicate that Mr. Bigley's motion -- that the
15 facts that he alleges in the motion have been proven.
16 The hospital is admitting -- has admitted nothing,
17 except for the fact that this has -- I mean, there have
18 been crisis situations. Mr. Bigley has been given
19 emergency medication, but it's been -- ah -- the three
20 times that are gr -- that are allowed for in the
21 statute, have happened, and it's not gonna happen
22 anymore. So, I don't...

23 MR. BIGLEY: (Indiscernible) -- the -- the
24 hospital knows -- they've been notified.

25 THE COURT: Okay. Mr. Gottstein, I'm just

1 going to proceed with this evidentiary hearing, then at
2 the end I may make oral findings, or I may reserve them
3 to written findings, but I feel that I can just
4 proceed, and that this pending motion does not have to
5 be commented on by me until we're done with the
6 evidentiary phase. So, with that, we're going to
7 resume.

8 Ms. Russo, is Dr. Worrall on the phone?

9 MS. RUSSO: Well, no, Your Honor. That was
10 the other thing that, I think, had caused the delay
11 earlier today, and I have to apologize again for any
12 miscommunication.

13 THE COURT: Uh-huh (affirmative).

14 MS. RUSSO: The hospital is actually -- has
15 been working with Mr. Bigley's case manager, and...

16 MR. BIGLEY: (Indiscernible).

17 MS. RUSSO: ...is planning on discharging him
18 on Thursday. We would ask to hold the petition in
19 abeyance until Mr. Bigley is discharged from the
20 hospital with the intent to withdraw the petition then
21 at that time. But I -- even if we had been able to
22 start on time today, I don't know that we would have
23 been able to finish the proceedings today, and then
24 having to continue any other evidentiary -- I just
25 don't quite know the point...

1 THE COURT: Okay. Let -- let me ask you
2 this...

3 MS. RUSSO: Yes.

4 THE COURT: ...because, I mean, often when we
5 -- the State has maybe this kind of petition -- they
6 would have discussed it with the other side, and, so, I
7 -- then I would hear Mr. Gottstein's response, or maybe
8 there would be a stipulation, I don't know. Have you
9 discussed this with Mr. Gottstein?

10 MS. RUSSO: I mentioned it to Mr. Gottstein.
11 I had only just confirmed it with Dr. Worrall right
12 before -- like, at around 1:15 this afternoon, that
13 that, indeed, was definitely where we were headed. So
14 I mentioned it to Mr. Gottstein at one point.

15 THE COURT: Do the parties want some time to
16 talk. I'll take another recess, if so. I mean, Mr.
17 Gottstein, do you want time to think about? Discuss
18 with your client? Discuss with Ms. Russo? Whatever.
19 I mean, this is just brand new to me, so.

20 MR. GOTTSTEIN: Your Honor, as I understand,
21 the basic proposal to hold that in abeyance, I think,
22 is fine for now. I've got -- and which I put in my
23 pleadings -- I've got a real problem with where we're
24 at on the involuntary commitment. My understanding is,
25 no recommendation had been made to the superior court

1 yet. So, having said that...

2 THE COURT: Well, (indiscernible) corrected --
3 there's already the order.

4 MR. GOTTSTEIN: Huh?

5 MR. BIGLEY: (Indiscernible).

6 MR. GOTTSTEIN: A commitment order?

7 MS. RUSSO: Yes.

8 MR. GOTTSTEIN: I don't have it.

9 MR. BIGLEY: (Indiscernible).

10 THE COURT: Huh. The order for 30 day
11 commitment was signed September 4th and it was faxed to
12 respondent's attorney, mailed to respondent's attorney,
13 to the Attorney General, treatment facility. Is that -
14 - you did that to Mr. Gottstein?

15 UNIDENTIFIED FEMALE: (Indiscernible).

16 MR. GOTTSTEIN: I think...

17 THE COURT: Anyway, it's already entered.

18 MR. GOTTSTEIN: Okay. I haven't seen it.
19 Okay.

20 THE COURT: Anyway...

21 MR. GOTTSTEIN: And the only other thing I
22 think that we need to deal with right now is, I filed a
23 motion for reconsideration on your order to close the
24 public file. That's a very important constitutional
25 right that my client has. And so I think that should

1 really be dealt with very quickly.

2 THE COURT: I don't know about any
3 reconsideration order, but that's not something I have
4 to do right this second.

5 MR. BIGLEY: It's on the radio too -- PB.

6 MR. GOTTSTEIN: Okay. So I think we can put
7 it off for a while, then, at this point.

8 THE COURT: Putting off the medication...

9 MR. GOTTSTEIN: Yeah.

10 THE COURT: ...petition? Okay. But, I mean,
11 this is all very unusual. So, when you say -- well,
12 actually, Ms. Russo says, "Put it off," and Mr.
13 Gottstein says, "Put it off." And what does it mean to
14 me? Am I saying, I reached -- am I -- do I tentatively
15 put this back on my calendar at some time, or is the
16 petition being dismissed?

17 MS. RUSSO: Your Honor, what I'm envisioning
18 happening is that Mr. Bigley will indeed be discharged
19 on Thursday, and at that time the hospital would
20 withdraw the petition.

21 THE COURT: Okay.

22 MS. RUSSO: If, for some reason, Mr. Bigley
23 wasn't being discharged, according to those plans, I
24 would probably expect that I would be on the phone with
25 Mr. Gottstein and we'd be calling over to court to find

1 out when it could be scheduled for.

2 THE COURT: Hold on, Mr. Gottstein. Let me --
3 don't try -- again, this is all so unusual. So what it
4 would be, according to -- from what I hear from Ms.
5 Russo is, during the remainder of Mr. Bigley's
6 commitment, that the hospital wouldn't be planning to
7 go forward with this medication petition anymore,
8 unless they feel he's gonna be -- because they believe
9 he is going to be discharged on Thursday. But then if
10 he's not going to be discharged Thursday, they could
11 end up coming back and say, "We want to finish the
12 medication petition for the remaining, about 10 days of
13 the commitment period, because, that's, I think, what
14 it would be, about up to that point.

15 MS. RUSSO: Uh-huh (affirmative).
16 (Background conversation)

17 THE COURT: Right, Ms. Russo?

18 MS. RUSSO: Yes, Your Honor.

19 THE COURT: Okay. So, Mr. Gottstein?

20 MR. GOTTSTEIN: I think that's right. And I
21 maybe have kind of a slightly different, either
22 expectation or desire, in terms of the resolution.

23 THE COURT: All right.

24 MR. GOTTSTEIN: I think that the State has
25 some obligations to Mr. Bigley upon discharge, and what

1 I would like to see is some kind of settlement...

2 MR. BIGLEY: (Indiscernible).

3 MR. GOTTSTEIN: ...-- some kind of settlement
4 that would, you know, maximize his chances for not
5 having to go through th -- this again.

6 MR. BIGLEY: Since I've been (indiscernible)
7 Bush gave me, ah, the jet...

8 THE COURT: Well, that would be between the
9 parties. The court...

10 MR. BIGLEY: ...in my name.

11 THE COURT: ...can't take a position about
12 what the parties should settle on...

13 MR. BIGLEY: Hilary called me, too.

14 THE COURT: ...at this point, as far as I
15 know. Because the statute doesn't -- only speaks as to
16 the types of hearing the court has. The 30 day, 90
17 day, 180, medication petition. And if the parties are
18 going to reach some kind of stipulation outside of the
19 strict confines of the statutes, well, that would be up
20 to the parties.

21 MR. BIGLEY: (Indiscernible).

22 SMITH: But I guess -- I've just stopped this
23 hearing now, and just see what develops. Right?

24 MR. GOTTSTEIN: Yes, Your Honor. I think
25 there is one other thing...

1 THE COURT: Uh-huh (affirmative).

2 MR. GOTTSTEIN: ...to consider, Section 2 of
3 what I -- Roman Number II of what I filed this morning,
4 talks about the status of representation. And, so I
5 think that really needs to be resolved.

6 MR. BIGLEY: (Indiscernible).

7 MR. GOTTSTEIN: So it may become moot. I
8 think it almost -- it's -- I'd give it a pretty high
9 probability that that would become moot, but if it --
10 there's a 90 day petition, that's gonna be a big
11 problem.

12 MR. BIGLEY: (Indiscernible).

13 MR. GOTTSTEIN: I don't expect that to happen.

14 THE COURT: Okay. All right. So, I guess --
15 I just recess this proceeding, without any further
16 specific hearing, and then if Mr. Bigley is released
17 from API on Thursday or before, the State is going to
18 file a notice to the court, and then we dismiss the
19 pending medication petition. I mean, we do that sua
20 sponte once we have a notice of his dismissal --
21 dismissed from API, it moots the medication petition.
22 Right?

23 MR. GOTTSTEIN: Yes, sir, that's true.

24 THE COURT: Okay. Otherwise, if we get -- we
25 have to get notice one way or the other. That's what

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1 I'll require.

2 MS. RUSSO: Right.

3 THE COURT: Mr. Russo, and you file something

4 by the end of Thursday.

5 MS. RUSSO: Yes.

6 THE COURT: If he's being dismissed, or -- I'm

7 sure we'll hear, for finishing up this hearing.

8 Okay. Now, Mr. Gottstein, you mentioned about

9 a reconsideration motion. I don't...

10 MR. BIGLEY: (Indiscernible).

11 THE COURT: I don't -- my order from last week

12 -- I don't think I've seen...

13 MR. GOTTSTEIN: But it was in -- in the --

14 kind of a -- Section 4 of what I filed this morning.

15 THE COURT: Section 4. Oh, hold on. Oh, I

16 see. Oh. Okay. Well, I'll review that. Since it is

17 a reconsideration motion, if Ms. Russo wants to

18 respond, I'm going to grant her the right -- or, the

19 State the right, I should say.

20 MR. BIGLEY: (Indiscernible) million dollars

21 in the jet.

22 THE COURT: Ms. Russo, would it be possible,

23 you know, by some time Wednesday, you could respond to

24 just that part?

25 MS. RUSSO: Okay.

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1 THE COURT: You're not required, but I have to

2 allow you the opportunity under Civil Rule 77.

3 MR. BIGLEY: (Indiscernible).

4 THE COURT: Ms. Taylor, I guess, for you, it's

5 just a matter of waiting to see what develops, and then

6 there's gonna be a further hearing. You will certainly

7 be notified, like everyone else, and if the case is

8 being dismiss, you'll be notified, like everyone else.

9 Okay?

10 MS. TAYLOR: Sure. Thank you.

11 THE COURT: We got your report this morning.

12 I appreciate that.

13 MS. TAYLOR: Thank you.

14 THE COURT: So, I guess, with all that, we'll

15 be recessing this matter.

16 Anything else, Ms. Russo?

17 MS. RUSSO: No, Your Honor. I just want to

18 confirm. It's the response to the open or closure by

19 close of business on Wednesday?

20 THE COURT: Yeah, that will be fine with me.

21 MS. RUSSO: Okay.

22 THE COURT: Yeah. Mr. Gottstein, anything

23 else?

24 MR. GOTTSTEIN: I think that's it, Your Honor.

25 THE COURT: All right. Ms. Russo, thank you

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1 for getting Mr. Bigley down here.

2 MR. BIGLEY: (Indiscernible).

3 THE COURT: Appreciate that. Thank you.

4 ***END***

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1 CERTIFICATE

2

3 SUPERIOR COURT)

4) SS.

5 STATE OF ALASKA)

6

7 I, Georgi Ann Haynes, Certified Professional

8 Court Reporter for the Third Judicial District, State

9 of Alaska and verbatim reporter for Pacific Rim

10 Reporting, Inc., hereby certify:

11 That the foregoing transcript is a

12 transcription of testimony of said proceedings to the

13 best of my ability, prepared from tapes recorded by

14 someone other than Pacific Rim Reporting, therefore

15 "indiscernible" portions may appear in the transcript;

16 I am not a relative, or employee, or

17 attorney, or counsel of any of the parties, nor am I

18 financially interested in this action.

19 IN WITNESS WHEREOF, I have hereunto set my

20 hand and affixed my seal this 1st day of October, 2007.

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Notary Public in and for Alaska
My commission expires: 10/05/2007