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IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of the Necessity)	
for the Hospitalization of:)	
)	
WILLIAM BIGLEY,)	Supreme Court No. S-13116
)	
Respondent.)	
<hr/>		Case No. 3AN-08-1252 PR

**OPPOSITION OF EMERGENCY MOTION TO ENFORCE STAY And
OPPOSITION TO NON-EMERGENCY MOTION FOR SANCTIONS**

The State of Alaska, Alaska Psychiatric Institute ("API"), by and through the Office of the Attorney General, hereby opposes the motions, William S. Bigley (Mr. Bigley) has filed:

1. "Emergency Motion to Enforce Stay," demanding the this Court enforce the "stay pending appeal" granted on May 23, 2008, to also include a prohibition against court-ordered administration of anti-psychotic medications granted on November 25, 2008.

2. "Non-Emergency Motion for Sanctions," demanding \$65,000 in fees awarded to him because API petitioned for court-ordered medications.

API respectfully requests the motions be denied.

I. FACTUAL BACKGROUND

In order to properly frame the issues presented in all of the motions before the court, API submits the following: Mr. Bigley was admitted to API on October 20, 2008, on an ex parte hold pursuant to AS 47.30.700.

- A petition was filed seeking a thirty day commitment and forced medication on October 20, 2008.
- A hearing was held on October 21, 2008, whereby Master Lack recommended commitment for up to 30 days, which was approved by Judge Morse on October 24, 2008.

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- 2 • API withdrew its petition for forced medication on October
- 3 24, 2008.
- 4 • API re-filed its petition for forced medication on October 27,
- 5 2008.
- 6 • On October 27, 2008, Mr. Bigley, through his attorney, filed a
- 7 motion for summary judgment and a motion to dismiss, to which an addendum was
- 8 filed on October 30, 2008.
- 9 • A hearing on the petition for forced medication was scheduled
- 10 for October 29, 2008.
- 11 • Mr. Bigley, through counsel filed a motion to vacate that
- 12 hearing on October 28, 2008.
- 13 • The court held a status conference and held that a hearing
- 14 would go forward on November 5, 2008, but allowed Mr. Gottstein to file any
- 15 motions that he deemed appropriate.
- 16 • Summary Judgment and Motion to Vacate were denied after
- 17 oral arguments in front of Judge Morse, on the first day of hearing at API,
- 18 November 5, 2008. In the written Motion to Vacate, Mr. Bigley alleged that the
- 19 October medication petition should be vacated, but offered no legal argument in
- 20 support of this. Judge Morse denied the Motion to Vacate.
- 21 • No further pleadings or motions were filed by Mr. Bigley in
- 22 opposition to the medication petition (3AN 08-1252 PR), due to the stay of May
- 23 19, 2008.
- 24 • On November 17, 2008, API petitioned the Superior Court for
- 25 a subsequent involuntary commitment of Mr. Bigley for 90 days, as per
- 26 AS 47.30.740.
- On November 21, 2008, Judge Morse heard testimony
- regarding the 90 day commitment and found Mr. Bigley to need further
- hospitalization.

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2 • On November 25, 2008, Judge Morse granted the court-

3 ordered medications petition from the October 27, 2008 petition date, and issued

4 the order granting a stay until December 15, 2008, "or until further order of this

5 Court of the Alaska Supreme Court."¹

6 • On December 1, 2008, Mr. Bigley filed the Emergency

7 Motion to Enforce Stay and Non-emergency Motion for Sanctions.

8 • On December 2, 2008, Judge Morse issued an order extending

9 the stay of 3AN -08-1252 PR, until December 17, 2008 or "until further order of

10 this Court or the Alaska Supreme Court," due to the Judge's new knowledge that

11 the Alaska Supreme Court oral argument is not scheduled until December 16,

12 2008.

12 II. ARGUMENT

13 A. By its Own Terms, The May Stay Applies Exclusively to the May

14 Order.

15 Mr. Bigley seeks to extend the Alaska Supreme Court stay granted in

16 case number 3AN 08-13116 to later proceedings between API and Mr. Bigley. He

17 claims that the May 23, 2008 stay pending appeal ("May stay") precludes the filing

18 of medication petitions for later commitments, and prevents the Superior Court

19 from granting court-ordered medications to Mr. Bigley until after the Alaska

20 Supreme Court decides the appeal.

21 In its November 25, 2008 order ("November order"), the Superior

22 Court concluded that due to the pending appeal it was necessary to stay the

23 November order until after the Supreme Court oral argument so that the November

24 order does not "effectively moot the Supreme Court's stay of the earlier (but

25 different) order and perhaps the appeal."² Given that the October petition occurred

26 some six months after the May petition, and was predicated upon different factual

¹ Case No. 3AN-08-01252 PR Order dated November 25, 2008, pg. 34.

² Case No. 3AN-08-01252 PR Order dated November 25, 2008, pg. 33.

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2 issues, the May stay should be effective only as to that case, and not for future
3 cases. Clearly, the stay of the November order was intended to allow for this
4 Court to determine these issues after oral arguments by Mr. Bigley and API on
5 December 16, 2008.

6 The May stay, issued by the Alaska Supreme Court was issued only
7 as to the May 19, 2008 order (“May order”) authorizing court-ordered medications
8 by Superior Court Judge Gleason.³ In the May stay, this Court recognized that
9 Mr. Bigley may be released from his commitment, noting the “possibility of
10 mootness is substantial,”⁴ and requested the parties anticipate the issue of mootness
11 in their briefings.⁵

12 By its own terms the May stay did not address its impact on future
13 medication petitions or emergency administration of medications. **Rather, the May**
14 **stay discussed the high likelihood that Mr. Bigley would be readmitted to API “in**
15 **the near future and that API staff will again seek a medication order.”⁶ This Court**
16 recognized the potential for the filing of “future medication petitions in its May
17 stay, and **nonetheless declined to extend the stay to cover these potential petitions.**

18 This Court did not preclude API or any concerned party from filing
19 future commitment and medications petitions; instead, the May stay prevented
20 Mr. Bigley from being medicated pursuant to the May order. No other limits were
21 placed on API in the May stay.

22 Given that—by its own terms—the May stay only applied to the May
23 order, and that the court expressly noted that there may be future petitions for
24 commitment and court ordered medication, and the Court chose not to extend the

25 ³ Supreme Court Case No. S-13116, Bigley v. API, Order of May 23, 2008,
26 page 3.
⁴ Id. At page 4.
⁵ Id. Through page 5
⁶ Supreme Court Case No. S-13116, Bigley v. API, Order of May 23, 2008,
page 3.

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2 stay to what it saw as probable future petitions, extending the May stay to all future
3 petitions is not supported by the clear language of the statute. The May stay
4 applied only to the May order.

5 **B. If the May Stay Were to Extend to Future Medication Petitions,
6 it Would Require Violation of the Law.**

7 Since May 2008, Mr. Bigley has had multiple police contacts, been
8 jailed over fourteen times, has received emergency medications in jail, has lost his
9 apartment, has a distant relationship with his court-appointed guardian, has lost
10 most of his community supports, and has been at API six times since August 2008.⁷
11 During the October admission, Mr. Bigley's treating psychiatrist, Dr. Kahnaz
12 Khari, believed that emergency situations may arise, necessitating the need for
13 emergency psychotropic medications.⁸ Under AS 47.30.839(a)(1), API is required
14 to seek court-ordered administration of medication if

15 there have been, or it appears that there will be, repeated crisis
16 situations as described in AS 47.30.838(a)(1) and the facility
17 wishes to use psychotropic medication in future crisis
18 situations; or

19 (2) the facility wishes to use psychotropic medication in a non-crisis
20 situation and has reason to believe the patient is incapable of giving
21 informed consent.⁹

22 As such, API is *required* by statute to file for medications petitions
23 when if either of these situations arise. Both situations arose in connection with
24 Mr. Bigley's October admission, requiring API to file a medications petition under
25 AS 47.30.839. As such, API followed the clear mandate of the law. Extending the
26 May stay to preclude API from filing such petitions would put API into the
27 untenable position of committing Mr. Bigley, a gravely disabled man, and then
28 being unable to provide clinically appropriate treatment and being forced to violate

29 ⁷ Hearing of November 5-17, 2008; Order Case No. 3AN 08-1252 PR,
30 page 1-3.

31 ⁸ *Id.*

32 ⁹ AS 47.30.839(A)(1).

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2 **the law.** In essence, if the May stay prospectively invalidates all future medication
3 petitions and orders, then API is effectively unable to treat Mr. Bigley regardless of
4 changed conditions or circumstances, now matter how detrimental to Mr. Bigley.

5 Mr. Bigley argues that the May stay of the May order on appeal
6 prevents the filing of a later medications petition, but this clearly cannot be a legal
7 consequence of the May stay. This Court did not authorize or expect API staff to
8 ignore due process required by statute, nor did they authorize or expect API to turn
9 Mr. Bigley away at the door, ignoring his needs, and ignoring their duty to protect
10 life.

11 **C. Neither the Petition Nor the Order Should Be Stricken, As
12 Mr. Bigley's Continued Decompensation Necessitated
13 Medication.**

14 Since the May order and stay, Mr. Bigley's mental health status has
15 decreased significantly. As noted in the November order, now, in December 2008,
16 Mr. Bigley is suffering from lack of medical intervention. Mr. Bigley has now
17 been arrested fourteen times since May, **and has no place to live.**¹⁰ Mr. Bigley has
18 decompensated to such an extent that Superior Court Judge Morse has found in his
19 Order of November 25, 2008, that Mr. Bigley cannot function outside of a
20 structured environment and that there is no less intrusive alternative available.¹¹
21 The facts leading to Mr. Bigley's admission to API on October 20, 2008, are
22 markedly different than they were in May. Mr. Bigley's condition is such that
23 medically appropriate care at API is required.

24 Recognizing Mr. Bigley's decline, Judge William Morse ordered
25 medications based on a fact specific inquiry into Mr. Bigley's present condition
26 and deterioration since May. Therefore, both the petition and the November order
were appropriate and should not be stricken. The May stayed order does not apply

¹⁰ Hearing of November 5-17, 2008; Order Case No. 3AN 08-1252 PR,
Testimony of Wendi Shackelford, and Steve Young.

¹¹ Hearing of November 5-17, 2008; Order Case No. 3AN 08-1252 PR.

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2 to future medications petitions or orders and cannot apply under the law as this
3 interpretation would force API to leave Mr. Bigley untreated, regardless of the
4 consequences.

5 **D. The Motion for Sanctions Should Be Denied Because API and**
6 **Dr. Khari Were Acting In Accordance With the Law.**

7 As discussed above, when a patient has been committed to API and
8 exhibits behaviors classified as an emergency situation under AS 47.30.838, API is
9 *required* to file a petition for the administration of court-ordered medication.¹²
10 Neither Dr. Khari nor API should be sanctioned for acting in accordance with their
11 duties as medical professionals and obligations under the law. Between the May
12 stay and the October petition, Mr. Bigley's mental health status declined
13 significantly. This required a commitment to API, and when his behaviors
14 presented a threat to his own safety and the safety of others, API/Dr. Khari were
15 *required* to act as mandated by the statute and file a medication petition. Such
16 actions – commanded by the law – should not and cannot be subject to sanctions.

17 **E. The Motion for Sanctions Should Be Denied Because the May Stay**
18 **Did Not Preclude the Filing of Future Medications Petitions.**

19 In his request for sanctions, Mr. Bigley cites *L.A.M. v. State* for the
20 proposition that civil contempt, like criminal, requires four basic elements:
21 (1) the existence of a valid order directing the alleged contemnor to do or refrain
22 from doing something and the court's jurisdiction to enter that order; (2) the
23 contemnor's notice of the order within sufficient time to comply with it;... (3) the
24 contemnor's ability to comply with the order; and (4) the contemnor's willful
25 failure to comply with the order.¹³

26 Mr. Bigley's analysis of this standard focuses on the issue of
willfulness, but ignores what API believes is the key issue at stake: the existence
of a valid order directing it to not file future medication petitions. No such order

¹² See AS 47.30.838(c).

¹³ 547 P.2d 827, 831 (Alaska 1976).

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2 exists. The May stay does not order API or any other party to not file medications
3 petitions in the future. To the contrary: the order recognizes that future
4 medications petitions may be filed based upon subsequent commitments, and yet
5 does *not* forbid API from filing such petitions. It is clear, therefore, that there is no
6 order prohibiting API from filing a medications petition, and, as such, no contempt
7 can be found.

8 Furthermore, as demonstrated in the facts section of this opposition,
9 Mr. Bigley raised these issues with Superior Court Judge Morse after API had filed
10 the October medications petition. Judge Morse considered the issue, and denied
11 Mr. Bigley's motions, reinforcing the validity of the petition itself and allowing the
12 hearing to proceed on the merits. API therefore acted in accordance with the
13 judgment of a court of law in proceeding with the medication petition. No
14 sanctions can be had on that basis.

15 Because API acted in accordance with the law and with Judge
16 Morse's decision, and because no order exists that forbids API from filing a
17 medication petition in the future, Mr. Bigley's motion for sanctions against
18 API/Dr. Khari should be denied.

19 III. CONCLUSION

20 Mr. Bigley's Emergency Motion to Enforce Stay and Non-
21 Emergency Motion for Sanctions should both be denied. The May stay has not
22 been violated as the May medication was not given. Applying the May stay to the
23 November 25, 2008, order is an overextension of this Court's order. API has not

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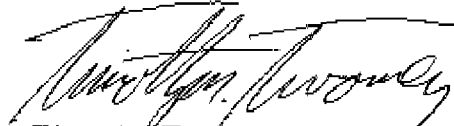
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violated the stay, but has adhered to the law. Therefore, API requests the motions be denied.

DATED: 12/4/08

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