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IN THE SUPREME COURT FOR THE STATE OF ALASKA

WILLIAM S. BIGLEY,)
Appellant,)
vs.)
ALASKA PSYCHIATRIC)
INSTITUTE)
Appellee.)

Supreme Court No. S-13353

Trial Court Case No. 3AN 08-1252 PR

**GUARDIAN'S OPPOSITON TO EMERGENCY MOTION FOR STAY OF ORDER
AUTHORIZING FORCED PSYCHIATRIC DRUGGING**

The Office of Public Advocacy, public guardian, on behalf of its ward, William Bigley, opposes the Emergency Motion for Stay of Order Authorizing Forced Psychiatric Drugging. The Law Project for Psychiatric Rights (Psychrights) does not have the authority to file this motion. Mr. Gottstein was notified that the public guardian is opposed to any appeal of Judge Morse's November 25th Order (Order), however he has continued to file pleadings attempting to invalidate it. The guardian is filing today its appearance on behalf of its ward with the superior court in the instant case and has moved to enjoin Psychrights from further representing Mr. Bigley in both this case and in Mr. Bigley's guardianship case, 3AN-04-545 PR. In the instant case, the Public Defender Agency has moved for a representation hearing with the trial court. Thus, this Court should not rule on any motion brought by Psychrights until the representation issue is resolved.

Secondly, although the Emergency Motion is filled with frantic language, the sense of urgency is exaggerated. Psychrights essentially requests two things with

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1 this motion: 1) to prohibit the Alaska Psychiatric Institute (API) from exercising its
2 emergency duty to protect the safety of Mr. Bigley and other patients; and 2) to stay
3 Judge Morse's Order of November 25. With regards to the first request, Psychrights
4 has not provided any actual evidence to this Court to show that API has abused or will
5 abuse its authority under AS 47.30.838. To the contrary, API documented instances to
6 the lower court in which there were legitimate occasions when Mr. Bigley required
7 emergency medication to protect his safety. Order p.3-4. API must be able to protect
8 the physical health and safety of all of its patients in such emergencies. Thus, the
9 legislature passed AS 47.30.838.
10

11 Pscyrights' second request is not a valid one either. First, the decision
12 is not yet ripe for review. Judge Morse *sua sponte* stayed the effectiveness of his order
13 until December 17, 2008. Whether or not a stay is even necessary (from Psychrights'
14 point of view) is partially dependent on whether this Court determines that the stay it
15 issued in S-13116, the appeal of Mr. Bigley's May 2008 medication order, applies to
16 any and all of Mr. Bigley's succeeding commitments or merely that particular case. It is
17 the guardian's understanding this Court has not yet ruled on that issue, so this issue is
18 not yet ripe for action by this Court. Secondly, Psychrights argues that Mr. Bigley will
19 suffer irreparable harm if the Order is not stayed, or in the alternative, attempts to prove
20 the success of its appeal on the merits in accordance with the test laid out in State, Div.
21 of Elections v. Metcalfe, 110 P.3d 976,978 (Alaska 2005). Psychrights fails to
22 demonstrate either factor. The record below and Judge Morse's Order make clear that
23 Mr. Bigley will be harmed more *by not taking* psychotropic medication than he will be by
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1 taking it. See, Order p.26 (finding that the longer Mr. Bigley is without psychotropic
2 medication, the lower his baseline level of functioning will become when he is restored
3 to capacity).¹ The trial court held an extensive hearing and performed a thorough
4 analysis of the issues this Court highlighted in Myers v. Alaska Psychiatric Institute, 138
5 P.3d 238 (Alaska 2006) as befitting the serious nature of the decision to order someone
6 to take psychotropic medication. It recognized that Mr. Bigley might suffer side-effects,
7 including a shortened lifespan, if forced to take the prescribed medication, yet it
8 determined that the benefits from taking the medication far outweighed any risks
9 associated with it. Order p.27-28.
10

11 Despite the fact that there are many similar issues between S-13116 and
12 this matter, they are two separate cases predicated on separate facts occurring at
13 separate times which lead to Mr. Bigley's hospitalization. While this Court did issue a
14 stay in S-13116, that does not mean that it will automatically issue a similar stay in the
15 instant case, nor does the fact of that stay necessarily imply anything about the
16 success of that appeal. Believing that one has a likelihood of success and actually
17 having a likelihood of success are two entirely different things. While Psychrights has
18 certainly shown the former, it has failed in demonstrating the latter. Therefore, because
19 it is impossible to predict the future to know whether or not Mr. Bigley will experience
20 an emergency that will require that the hospital act to protect him or others around him
21 and because Psychrights fails to show either that Mr. Bigley will suffer irreparable harm
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24 ¹ Given recent circumstances in Mr. Bigley's life, that is the same conclusion the guardian has
25 made and why it has gone to the unusual step of seeking to remove Psychrights from any
26 further representation of Bigley. It is clear that Psychrights is now pursuing its own objectives
and not the objectives of Mr. Bigley.

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or that it has a likelihood of success on the merits, the Emergency Motion for Stay should be denied.

DATED this 11th day of December 2008 at Anchorage, Alaska.

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