

# In the Supreme Court of the State of Alaska

Glenn Bohn & Lorraine Phillips, )

Petitioners, )

) Supreme Court No. S-15409

In the Matter of the Protective Proceedings )

for Bret Byron Bohn )

## Order

) Date of Order: 12/26/13

\_\_\_\_\_ )  
Trial Court Case # 3AN-13-02737PR

Petitioners Glen Bohn and Lorraine Phillips filed an Emergency Motion for Stay of further proceedings in the superior court (explained below) until the supreme court decides whether to grant petitioners’ concurrently filed Emergency Petition for Review. The Emergency Motion for Stay is **DENIED**. The individual justice ruling on the Emergency Motion makes the following preliminary comments for the consideration of the superior court and the parties.

The record before the supreme court is sparse and incomplete. But based on a preliminary review, **it appears there may be merit to petitioners’ arguments that their due process rights have been violated.**

It appears that Bret Bohn gave his parents a general power of attorney and a health care power of attorney predating Bret Bohn’s medical illness and incapacity. It appears the superior court was aware of this fact, and that the parents had asserted their rights to make medical decisions for their son when the court on November 14, 2003 signed its Findings and Order of Temporary Guardianship, appointing the Office of Public Advocacy (OPA) as temporary guardian. **The superior court ordered that “[t]he**

appointment of the Office of Public Advocacy is in the best interest of the ward, *because there are no other individuals who are willing to be appointed and act in the best interest of the respondent*” yet in the same order it ruled that “[a]ny powers of attorney currently in place are suspended pending further court action.” (Emphasis added.) Without the benefit of findings of fact explaining its order, it seems odd that the first order could be issued given that the parents clearly appear willing and desirous of being appointed as guardian and indeed have legal priority for consideration. There may have been good reason not to appoint them and to suspend their power of attorney, but the record before the court includes no findings or explanation.

Perhaps most troubling, it does not appear the parents received notice of the State’s petition for temporary guardianship and to date have not been given an opportunity to be heard and to challenge the State’s evidence. It appears no testimony or evidence (other than a stipulation of counsel — that is, counsel for Adult Protective Services and appointed counsel for the respondent) was presented to the court supporting the petition for temporary guardianship. Yet the State had the burden to prove by clear and convincing evidence that the respondent was in need of a temporary guardian. And yet again, the parents — who had their son’s health care directive and general power of attorney, and who have legal preference to be considered — received no notice and were not present to contest the stipulation.

It appears things have advanced, yet the court still had taken no evidence or testimony, and the parents/petitioners object to now being put to the burden of removing the OPA temporary guardian when, they allege, OPA’s appointment was

invalid because of the State's (alleged) violation of due process. At some point, with all parties present, the superior court probably needs to hear from all parties and make findings and conclusions to explain or amend its decisions.

All of these issues are important and will be resolved at some point. But in the meantime, the following seems established on the record before this court.

1. Bret Bohn is seriously ill and cannot make his own health care decisions.
2. His current health care providers have been unable to diagnose his condition.
3. His health care providers have arranged to get Johns Hopkins Medical Institute, an internationally recognized health care facility, to accept him as a patient (even though he himself appears to be uninsured).
4. Johns Hopkins has an available bed — difficult to come by, and unknown if another bed will become available later if the current availability is rejected.
5. No showing has been made that a transfer to Johns Hopkins will be detrimental to Bret Bohn, and his current care providers, who have been unable to diagnose him, think Johns Hopkins can help him.

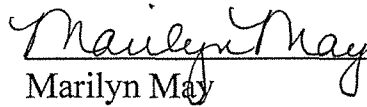
For these reasons, and based on the limited record before this single justice, the Emergency Motion for Stay is being denied. A hearing will be held in the superior court at 2:00 p.m. today, and that court can proceed to take evidence and argument to decide whether to order Bret Bohn's transfer, and perhaps to address the due process issues argued by petitioners and other parties. In the meantime, a recommendation on the Emergency Petition for Review will be made to the full court and when members of

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the court return (some are now on leave for the holidays), a decision on the petition will be made.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts

  
Marilyn May

cc: Supreme Court Justices  
Judge Marston

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