

IN THE SUPERIOR COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF)
)
WILLIAM BIGLEY,)
)

Case No. 3AN-08-247 PR

REPRESENTATION HEARING
BEFORE THE HONORABLE MARK RINDNER

Thursday, March 6, 2008

APPEARANCES:

FOR THE STATE: Timothy M. Twomey
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PROCEEDINGS

THE COURT: We're on the record in probate case 3AN-08-247 Probate in the matter of the hospitalization of William Bigley.

Present in the courtroom, let's see. We have Mr. Twomey, who is the assistant general, with Ms. Russo.

MS. RUSSO: Your Honor, excuse me. I'm representing the Office of Public Advocacy.

THE COURT: Represents the Office of Public Advocacy. Ms. Brennan and Ms. Gibson are here currently representing Mr. Bigley. And we have got Mr. Bigley, and Mr. Gottstein for Mr. Bigley for the forced drug petition only.

This is going to be short and sweet, but I'll probably have to make it a little bit longer. This case involves a petition filed by the state for court approval of the administration of psychotropic medication, as well as for a 30-day commitment.

The public defender was appointed to represent Mr. Bigley in this case. There was a hearing that was supposed to be held in front of Judge Lack yesterday. Judge Lack -- apparently, at the hearing, Mr. Bigley said that he wanted Mr. Gottstein to represent him in this matter.

And so this matter was referred to me, because the case was assigned to me as the superior court judge for a representation hearing.

This morning, Mr. Gottstein has filed what he called a submission for a representation hearing and appendix to the submission for the representation hearing, and then affidavits from Robert Whitaker, Ronald Bassman, Ph.D., Paul Corneals (phonetic).

And it appears that -- well, I'll just read -- Mr. Gottstein talks about whom he works for, the Law Project for Psychiatric Rights, and he feels that in these commitment proceedings, the public defender doesn't do an adequate job of representing the people that they are charged with representing.

And he concludes on page three of his thing: "In the instant case, when Mr. Bigley employed me to represent him, I decided I was simply not in a position at that time to zealously represent him because of impending deadlines; however, I am prepared to represent Mr. Bigley with respect to the forced drugging petition only, so that's the petition for involuntary drug -- to force Mr. Bigley to take drugs that he doesn't -- to force Mr. Bigley to take drugs."

I'll leave it like that. "Only upon the consideration and motions which follow."

Just to be clear, Mr. Gottstein, so you know, although it's not going to matter, as I'm going to explain in a second, I wasn't prepared to negotiate your representation. You were either in or you're out, and then if you were in, you could file motions and then I would decide what -- I would consider the motions as I might normally consider any motions.

But in reading the material that Mr. Gottstein filed, it's clear that he makes -- that an issue in this case that has likely developed deals with the use of second generation antipsychotic drugs and the side effects of those drugs.

I am currently trying a case, the United States versus Eli Lilly Company -- or State of Alaska versus Eli Lilly Company where much of that information is at issue. And I have concluded that for me to hear that information and be involved in this case would effectively affect my ability to be fair and impartial in the case that I'm currently have impaneled a jury and I'm taking evidence on that's scheduled to last four weeks, so I am recusing myself in this case right away before I start getting fed a lot of information by Mr. Gottstein that, in my view, would constitute ex parte communications or would be problematic for me in handling that other case, because the state and Lilly

aren't there, even though I'm getting information that clearly would be the same kind of information, but maybe different information than I'm going to get in the case that I'm currently trying.

So I am recusing myself in this case. I have spoken to the presiding judge, although the paperwork hasn't happened yet, and the magic wheel has spun and Judge Michalski has been assigned to this case.

Judge Michalski is available to have a hearing at 3:00 tomorrow, so this hearing is continued until 3:00 tomorrow in front of Judge Michalski because I'm recusing myself.

MS. GIBSON: Your Honor, may I just mention one thing?

THE COURT: Sure.

MS. GIBSON: I know that you may recuse yourself on the substantive issues, but would you be able to deal with the representation issue?

THE COURT: If I have to recuse myself from the case, I have to recuse myself from the case. It's not like pieces that I can do. And given that Mr. Gottstein wants somebody to basically review the substance and, as I understand it, only upon considerations and motions which filed, and he has got motions, somebody has got to decide what they are going

1 to do about all of that stuff.

2 And it ought to be the judge who is actually
3 going to try the case.

4 MR. GOTTSTEIN: Your Honor, I apologize.
5 It's nice to meet you, Your Honor. I did this in a
6 rush, so there might have been things that probably
7 should only have come out -- and if I should clarify
8 things, I will file an entry of appearance with respect
9 to the forced drugging petition, because the --
10 (indiscernible) -- probably should have come out of
11 that, but I missed that.

12 THE COURT: Okay. Anyway, I mean, there is
13 all this stuff, which, again, I saw the headings and ran
14 away from it real quick, but there is all this stuff
15 about Zyprexa and Risperdal, and I don't remember
16 whether any of the other ones were mentioned, but that's
17 everything that's going on in this trial, which I have
18 got two floors of the Captain Cook involved in and it's
19 a big trial that's going on and will last four weeks.

20 And I just don't want to do anything that
21 would involve my getting information in this case when
22 the parties to that case aren't present that might
23 affect my ability and cause a mistrial in that case, and
24 so I'm not going to handle this case.

25 MS. GIBSON: Your Honor, just to be clear,

1 my recusal and the assignment to Judge Michalski will
2 catch up with this, but the next -- this is continued
3 until 3:00 tomorrow in his courtroom.

4 MR. GOTTSTEIN: Your Honor, would it be
5 possible for me to get a copy of the file so far?

6 THE COURT: It will be, but, I mean, most of
7 the file is you, Mr. Gottstein. Right now, all we have
8 in the file, I'll just tell you, is the petitions and
9 kind of the appointments of OPA and the appointments of
10 the notice of the 30-day hearing and the stipulation to
11 continue the hearing and the log notes from yesterday,
12 the recusal notice of Master Duggan and the assignment
13 of the case to me. That's what there is.

14 MR. BIGLEY: We need the paperwork.

15 THE COURT: Excuse me?

16 MR. BIGLEY: We need the paperwork. The
17 Secret Service knows -- (indiscernible).

18 THE COURT: So the file will be available as
19 soon as -- what I'm going to do is do the paperwork for
20 the recusal, get it signed by the presiding judge and
21 I'm going to bring the file to Judge Michalski's
22 chambers, and so if you need it, you can contact Judge
23 Michalski's chambers.

24 We'll be off record then.
25

1 we're still seeking a representation hearing.

2 THE COURT: Right, and that's what Judge
3 Michalski will give you tomorrow, but he has been -- I'm
4 recusing myself and, like I said, I advised the
5 presiding judge of that and she then told me so that you
6 could know who the judge would be and I could talk to
7 that judge and find out when they could handle this
8 thing promptly.

9 And the case was assigned to Judge Michalski
10 and he said 3:00 tomorrow.

11 MS. GIBSON: And just one more issue, Your
12 Honor. Would it be possible for us to talk to Judge
13 Michalski after you get off record? 3:00 is when I am
14 due to be handling API hearings.

15 THE COURT: I have no idea what his -- I
16 mean, he was up in his chambers five minutes ago when I
17 explained to him what had happened and asked him when he
18 wanted to tell me you were going to do this thing, or he
19 could do this thing.

20 Whether -- I don't know. You know, if it
21 were my chambers, I kind of handle requests to move a
22 hearing pretty informally, but I don't know whether
23 Judge Michalski does.

24 You probably know better than me. Sorry.

25 We'll be off record, and, like I said, the paperwork of

1 TRANSCRIBER'S CERTIFICATE

2
3 I, SONJA L. REEVES, hereby certify that the foregoing
4 pages numbered 1 through 9 are a true, accurate and
5 complete transcript of proceedings in Case No.
6 3AN-08-247 PR transcribed by me from a copy of the
7 electronic sound recording to the best of my knowledge
8 and ability.
9

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11 _____
12 DATE SONJA L. REEVES, TRANSCRIBER
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