

Law Project for Psychiatric Rights  
James B. Gottstein, Esq.  
406 G Street, Suite 206  
Anchorage, Alaska 99501  
(907) 274-7686  
Alaska Bar No. 7811100  
Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ROSLYN WETHERHORN, )  
Appellant, )  
 ) Supreme Court No. S-11939  
vs. )  
 ) Trial Court Case No. 3AN 05-459 PR  
ALASKA PSYCHIATRIC INSTITUTE )  
Appellee. )

**PETITION FOR REHEARING**

Appellant, Roslyn Wetherhorn, by and through her attorney, pursuant to Appellate Rule 506(a)(2), hereby petitions this Court for rehearing with respect to the Court's affirmance of the petition for commitment in Opinion No. 6091, January 12, 2007.

In the Conclusion,<sup>1</sup> this Court held:

We conclude that the definition of "gravely disabled" in AS 47.30.915(7)(B) is constitutional if construed to require a level of incapacity so substantial that the respondent is incapable of surviving safely in freedom.

(emphasis added). This was immediately followed by:

And because we conclude that Wetherhorn's other challenges to the petition for thirty-day commitment . . . are without merit, we AFFIRM the superior court's order granting that petition.

(emphasis added).

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<sup>1</sup> This same language is also in the Court's Introduction on page 2 of the Slip Opinion, No. 6091.

The involuntary commitment petition was granted against Ms. Wetherhorn for being gravely disabled without satisfaction of the constitutional requirement that she be "incapable of surviving safely in freedom." Ms. Wetherhorn respectfully suggests that even if the "other challenges" to the petition failed, this one succeeded, and the involuntary commitment petition should therefore be vacated or reversed or the Opinion be clarified in this regard.

It seems this court overlooked this material fact or proposition of law and rehearing is appropriate under Appellate Rule 506(a)(2) to consider this point.

As it stands now, by affirming the involuntary commitment, an inference could be drawn that this Court found the "incapable of surviving safely in freedom" standard had been met when there is no evidence in the record to support it and no real indication it was the intent of the Court to find the standard had been met.

In connection with whether imminence is required,<sup>2</sup> the Court recited the following facts in the record:

The petition stated that Wetherhorn had shown a manic state, a lack of insight, and non-compliance with her medication for the past three months. And during the hearing, Dr. Kiele testified that Wetherhorn remained confused and agitated and that her difficulties with insight had not changed since she had been at the hospital. He further noted that she had struck people<sup>3</sup> and therefore presented "a direct risk of harm to others and more of an indirect risk of harm to herself." Because all these examples of

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<sup>2</sup> Although not rising to the level that would cause counsel to seek rehearing, since rehearing is being sought on another ground, it seems worth noting that Ms. Wetherhorn did not argue that "imminence" was required, but instead argued that there must be "some immediacy," *See*, Opening Brief at 19, and Reply Brief at 2.

<sup>3</sup> It is particularly unfortunate that this assertion by API went unchallenged by Ms. Wetherhorn's counsel because it is extremely suspect.

specific behavior were drawn from the recent past, they were sufficient to meet the evidentiary standards established by those states that have addressed the question of imminence.<sup>4</sup>

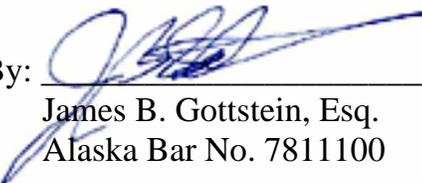
In connection with the Court's discussion of mootness the Court recited the following facts in the record:

For example, her beliefs that the owner of the local grocery store was going to transport her to the Pope's funeral and that she had bought a church indicated that she lacked insight. She was diagnosed with bipolar disorder, the most recent episode of which was manic. She had also struck people at the hospital and was alternately confused and agitated and had trouble sleeping.<sup>5</sup>

It is respectfully suggested that none of these facts establish that Ms. Wetherhorn was "incapable of surviving safely in freedom." For this reason, Ms. Wetherhorn requests rehearing to either vacate or reverse the granting of the involuntary commitment petition, or clarify that by affirming the granting of the petition for involuntary commitment, this Court was not concluding the "incapable of surviving safely in freedom" standard had been met.

Dated this 22nd day of January, 2007, at Anchorage, Alaska.

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By:   
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<sup>4</sup> Page 14 of the slip opinion.

<sup>5</sup> Page 18 of the slip opinion.