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

In the Matter of the Hospitalization of:)
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Faith J. Myers,)
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Respondent.)
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3AN-03-277 PR

Order

This is a civil commitment proceeding. A Petition for Involuntary Commitment of Ms. Myers was filed on February 21, 2003. I issued an Ex Parte Order that same date for Ms. Myers to be delivered into the temporary custody of the Alaska Psychiatric Institute (API) for examination. API then submitted a subsequent Petition on February 25 requesting court approval for administration of psychotropic medication to Ms. Myers. I held a lengthy hearing on March 3¹, during which the State and Ms. Myers' attorney presented argument and evidence on both Petitions, including Ms. Myers' own testimony.

After hearing the testimony presented by the State and by the Respondent, I am most persuaded by Ms. Myers' own testimony. I found her to be a sincere and credible witness. Though she testified to some statements of fact that I find to be

¹An involuntarily committed respondent is normally entitled to a court hearing within 72 hours of the respondent's meeting with facility evaluation personnel. AS 47.30.725(d). On February 25, Ms. Myers' counsel filed a waiver under AS 47.30.725(f) of the 72-hour post-commitment time limit and allowed the time for hearing to be continued until March 4. Ms. Myers' counsel explained that he wishes to present lengthier testimony than could normally be accommodated at API by Master Duggan.

incorrect, I do not find that she testified untruthfully. Rather, I find that Ms. Myers is aware of that she has been unable to accurately perceive events and circumstances around her in recent years. She reported as much in her testimony.

Ms. Myers testified that she has suffered an unspecified sort of break down over 20 years ago, when she had 2 small children, her husband was out of town, she was under economic duress and she was trying to return to college. Her family physician referred her to a psychiatrist who admitted her to a general hospital. She was given medication to help her sleep for 2 days. She recalls her physician telling her that she had had "a war-like experience" and that she would be all right if she had sufficient rest and good nutrition.

Unfortunately, the stressors returned in her life and she was prescribed Navane. Ms. Myers acknowledges that she was prescribed Navane for many years, and that she functioned on this medication though it made her tired and sleepy. She seems to trace a sharp escalation in her symptoms to the onset of her treatment at Southcentral Crisis Treatment Center, in the spring of 1998, where she was prescribed Respridol in addition to the Navane. She testified that it was at this point that she began to see lights, feel dizzy and experience waves of drowsiness. She testified that while driving, she mistook red lights for green lights and green lights for red lights. She began hearing voices, one of which claimed to be the voice of God that commanded her to drive all over the City. According to her testimony, she asked that her physicians taken her off of the Respridol, but they refused. Her testimony is that her symptoms continued to escalate after that point.

In May of 1999, Ms. Myers asked her son to take her to Alaska Psychiatric Institute. She stated that she was referred from there to Southcentral Crisis Treatment Center where she stayed for 7 – 10 days, was told by the care providers that she was depressed and was prescribed Paxil in addition to the two other medications. Ms. Myers testified that she objected to this because she did not feel depressed, that she felt happy and was enjoying her life. However, she agreed to begin taking Paxil in addition to the other two medications. Her testimony is that the voices escalated further, and that the voices were trying to manipulate her. She found it exhausting to try to control the voices.

In the summer of 1999, Ms. Myers decided to wean herself from Paxil. Her plan was to also wean herself from Respridol, but to continue taking Navane. She said it became apparent to her that she also needed to wean herself from the Navane. She did not explain how or why this became apparent to her.

By October of 1999, Ms. Myers had weaned herself from all of these medications. She continued to experience what she described as “special effects” that included seeing lights and hearing voices.

Ms. Myers was in serious financial duress at this point because she was not employed and was homeless. She testified that she was living in her car because she had no other place to live, and that the cold made it hard for her to sleep which worsened her difficulties.

In December of 1999, Ms. Myers had a conference with her son and agreed that in exchange for his agreement to pay for an apartment for her, she would resume taking medication. She went to API on a voluntary basis and was convinced to try Zyprexa. She testified that she did not want to do this, but did so in light of

the promise she made to her son and because she was convinced by Dr. Hanowell that if she did not, the psychiatrists at API would obtain a court order to have her committed involuntarily and medicated involuntarily.

Ms. Myers testified that she was released from API in February of 2001 and that she married shortly after her release. She testified that the person she married was someone she met in the hospital, who was controlling, rigid and restrictive. Her testimony on this point was offered because, in her view, the Zyprexa that was given to her while in API (and which she continued to take for a year) impacted her ability to think and reason clearly. It is her view that she would not have entered into her second marriage, which she described as a difficult and unhealthy one, if she had not been under the influence of Zyprexa.

Ms. Myers's family testified that after her release from API in February of 2001, she functioned very well. The testimony from the care providers at API concurred that she did well on the medication given to her while admitted to API in early 2001. Ms. Myers' daughter testified that she visited her mother often during this period and that Ms. Myers had a boyfriend and seemed to be doing well. Ms. Myers testified that she felt she had a purpose in life because she was serving as an advocate for patients with mental illness, and that she had a home and a steady personal relationship.

By the summer of 2001, Ms. Myers testified that her problems were returning "in full force". She blames Zyprexa for the downturn in her condition, saying that it was a "door that opened up real problems". Again, she began weaning herself from her prescribed medication. Initially, she told no one of her decision to take herself off the medication. The prescribing physician at

Southcentral Crisis Center did not learn of her decision to stop taking her medication until March of 2002. At that point, Ms. Myers testified that her treatment at Southcentral was terminated because they were no longer willing to treat her if she was unwilling to take her prescription. Ms. Myers testified very briefly that at that point she began having difficulties with the police and that she had many arrests. There was no further testimony on this point.

In January of 2003, Ms. Myers' daughter received a call from Ms. Myers' father. He told her that Ms. Myers had no apartment. The family made arrangements to assist Ms. Myers in obtaining an apartment shortly thereafter. By February of 2003 when Ms. Myers' daughter visited her there, she found the condition of the apartment to be alarming. She considered it to be unclean and testified that there were piles of things around in odd locations, including small piles of dirt and pinecones in a corner. Photographs were admitted into evidence depicting the apartment on February 14 and February 22nd. Ms. Myers' daughter and her sister-in-law took the photos. One photo shows an open trap door leading to a crawl space. In the crawl space under the apartment, someone had placed a pillow, blanket, a liter bottle of what appears to be water or soda, a bag of tortilla chips and an open book. The crawl space has no flooring other than a sheet of plastic laid directly onto the earth. Ms. Myers' daughter testified that it appeared her mother had been sleeping there. Ms. Myers testified that she did put those things in the crawl space but stated that she had not been sleeping under the apartment. Instead, she stated that she suspected that others had entered her apartment through the space and that she put her things there in order to mark her

territory and establish a boundary to other apartment tenants, presumably so that they should not enter her home through the trap door.

In February of 2003, Ms. Myers' daughter received a telephone call from the wife of the apartment manager at Ms. Myers' apartment complex. The caller apparently asked that Ms. Myers be removed from the building because she was frightening the neighbors. There was no definitive testimony regarding Ms. Myers' actions toward the neighbors. Ms. Myers testified that she tried to tell them that they ought not put electrical lines around the trees outside the apartment complex because doing so could wind up killing the trees.

Ms. Myers' daughter and daughter-in-law saw Ms. Myers at her apartment in February 2003, shortly before she was involuntarily committed to API. Ms. Myers stated that when she took exception to the state of Ms. Myers' apartment, to Ms. Myer' statement that she was feeding wild animals (including leaving a cabbage on her porch for moose), leaving garbage on the front steps and leaving food sitting out within the apartment to "feed critters", Ms. Myers became angry. She made fists and yelled at her relatives. Of particular concern was her daughter's testimony that Ms. Myers yelled that babies are monsters and said that "Alyssa knows what I am talking about". Ms. Myers' daughter was holding her grandchild, Alyssa, at the time. Alyssa is 18 months old.

Ms. Myers testified that what appears to other people as small piles or "offerings" on the floor of her home, consisting of food and photographs and other items, were actually learning centers for children who came to her home. When asked whether the children were her grandchildren, she stated that she was unsure. At least one of them she recognized as a small girl she taught at Tundra Tykes

approximately 5 years ago. She volunteered that the child should be 10 now, but that she appeared last week, in her apartment, as a 5-year-old.

Ms. Myers was involuntarily committed to Alaska Psychiatric Institute on February 21, 2003. Dr. Hanowell conducted an assessment of her there. According to his testimony, Ms. Myers reported to him that she did not believe that she suffers from a mental illness. When he asked whether she was hearing or seeing things not objectively observable by others, Ms. Myers reportedly responded by mentioning Shakespeare's work, Hamlet. She referenced that Hamlet heard ghosts.

Dr. Hanowell considered Ms. Myers' affect to be inappropriate in that the outward appearance of her emotional state did not match her inward appearance. He also stated that Ms. Myers reported to him that God had told her that she would live only another 18 months, that there were cameras in her apartment and that she had been under surveillance by the government. Ms. Myers told Dr. Hanowell that she suspected a person she knows had been previously replaced by an imposter and stated to a different staff member that she believed she was pregnant and that the staff at API was trying to harm her unborn child. When Dr. Hanowell attempted to discuss medication options with Ms. Myers, she refused, stating that what she needed was good nutrition.

Dr. Kletti also testified. He is the Medical Director at API. Dr. Kletti testified that the administration of anti-psychotic medication is the accepted standard of care in the professional psychiatric community. This testimony was consistent with Dr. Hanowell's testimony. He concurred with Dr. Hanowell's diagnosis that Ms. Myers suffers from schizophrenia of the paranoid type, and

stated that when he served as Ms. Myers' treating physician for her previous admission in 2000, he reached the same diagnosis.

Dr. Kletti and Dr. Hanowell both concur that it is appropriate to administer anti-psychotic medications to Ms. Myers.

Ms. Myers offered the testimony of two experts in the field of psychiatry: Dr. Loren Mosher and Dr. Grace Jackson. I find both to be qualified experts in this field. Dr. Mosher's credentials and experience in the area of schizophrenia are particularly impressive. The testimony of these experts and the articles they offered forcefully present their differing views on the advisability of administering anti-psychotic medications to patients suffering from schizophrenia. Neither of these physicians have had the opportunity to observe Ms. Myers or work with her in a therapeutic relationship. Dr. Mosher testified that anti-psychotic medications should be avoided and that counseling and other supports should be used to assist Ms. Myers through her psychotic episodes. Dr. Mosher did not testify that he has knowledge of the services available to Ms. Myers in Alaska or whether there are adequate support services available in this community for her, short of commitment in a psychiatric facility and the administration of anti-psychotic medications.

I have reviewed the exhibits offered by Ms. Myers' experts. The relevant conclusion that I draw from them is that there is a real and viable debate among qualified experts in the psychiatric community regarding whether the standard of care for treating schizophrenic patients should be the administration of anti-psychotic medications. However, Dr. Mosher agreed with the testimony offered by

the API psychiatrists, that the current standard of care that is generally accepted calls for the administration of this class of medications to patients suffering from schizophrenia.

Analysis

Under Alaska law, in order for the State's Petition for Involuntary Confinement to be granted, the State must prove, by clear and convincing evidence, that Ms. Myers suffers from a mental illness, that she poses a threat to herself or to others or that she is gravely disabled. AS 47.30.735(c). As I stated on record at the conclusion of the March 5, 2003 hearing, I find, without reservation that the State has met this burden of proof and that the required showing for its Petition was met.

In particular, this conclusion is supported by Ms. Myers' testimony that she has had chronic battles against the "special effects" she has experienced for the past 2-3 years. The special effects include hearing voices, seeing lights and being visited by persons she recognized could not have visited her (including a 5-year-old girl she knows from the past, and who she knows must now be a 10-year-old girl). Ms. Myers lacked the insight into her own condition to recognize that these are symptoms of her mental illness. Ms. Myers did not perceive her actions toward others to be threatening, but her daughter, a care provider at API, and apparently at least some of her neighbors felt threatened by her behavior. Ms. Myers testified that proximity to certain people or to certain telephone numbers caused her to hear a certain tone that scrambles her memories or erases them. She also said that she found it difficult to go to the grocery store on occasion because the proximity to certain people she passed on the way to the store made her feel "kind of slimed". Ms. Myers reported being spoken to by a voice that insisted it is the voice of God,

that informed her of the length of her remaining life and that commanded her to do things such as drive all around the city. From the evidence presented to me, it appears that Ms. Myers was sleeping or at least reading and eating in the crawl space on the earth below her apartment. I find that she lacked the appreciation that this is dangerous, that in the event of a fire rescue personnel would not look for her there, or that in the event of a sudden drop in temperature staying in the crawl space could cause her to become hypothermic. There were at least 3 writings by Ms. Myers introduced into evidence. I found all of them to show confused, disjointed thoughts.

In order to obtain court approval for the involuntary use of psychotropic medication, the State must meet the standards in AS 47.30.839(a)(2). That statute provides that an evaluation or designated treatment facility may obtain court approval of psychotropic medication if the facility wishes to use such medication in a non-crisis situation and has reason to believe the patient is incapable of giving informed consent. "Informed consent" means the patient is competent to make treatment decisions, and the consent is informed and voluntary. AS 47.30.837(a). Under Subsection (d), a patient is competent if he or she:

- 1) has capacity to assimilate relevant facts and appreciate the patient's situation;
 - 2) can appreciate that he or she suffers from a mental disorder if the evidence so reflects;
 - 3) has capacity to participate in treatment decisions by a rational thought process;
- and
- 4) is able to articulate reasonable objections to proposed medications.

“Voluntary” means having genuine freedom of choice; consent obtained by force, threats or coercion is not voluntary. Subsection (d)(3).

If the court determines that the patient is competent to provide informed consent, the court shall order the facility to honor the patient’s decision about the use of psychotropic medication. AS 47.30.839(f).

Under AS 47.30.839(g), to approve the facility’s proposed involuntary use of psychotropic medication, the court must determine:

1) that the patient is not competent to provide informed consent; and

2) that there is clear and convincing evidence to demonstrate that the patient was not competent to provide consent at the time of patient’s previously expressed wishes in an advance directive.

AS 47.30.839(d) also requires that a court-appointed visitor “gather pertinent information and present it to the court in written or oral form...” This information must include the following:

1) the patient’s responses to a capacity assessment instrument administered by the visitor;

2) the patient’s expressed wishes regarding medication, including prior written or oral statements, or conversations with significant persons in the patient’s life as remembered by such persons.

At the time of the hearing in this case, no report from the court appointed visitor had been received. I entered an order requiring that visit be made by the court appointed visitor, and that a report be made of the visit by the close of business on March 10, 2003. That report has been considered in this opinion, though the visitor was not able to administer the capacity assessment indicator due to Ms. Myers decision not to answer the questions. The visitor did not make a recommendation to the court regarding the administration of medication.

At the March 5, 2003 hearing, Ms. Myers presented testimony from experts arguing that the treatment plan proposed by API involving the administration of psychotropic medications could worsen her condition and cause her harm. The State repeatedly objected to the introduction of this expert testimony, arguing that it was not relevant under the statute. The basis for the State's argument was that, in light of the statutory scheme set out above, the only relevant inquiry for the trial court is Ms. Myers' competence to make an informed decision about her health care. I overruled these objections, ruling that the evidence is relevant. Ms. Myers testified that she considered herself an advocate for the mentally ill in the period after she was released from API in the winter of 2001. By the testimony of the care providers at API, Ms. Myers was competent at that time. She alluded to her work as an advocate and appeared to me to be knowledgeable about the ongoing debate regarding the efficacy of psychotropic medications. Had there not been evidence of a viable debate supported by competent individuals, that fact would have been relevant to me in determining whether Ms. Myers has the capacity to make a rational and informed choice, albeit one against medical advice, to refuse the administration of psychotropic medication. In this case, I find that there is indeed real and credible evidence supporting the conclusion that a genuine difference of opinion exists between credible psychiatric experts regarding these medications.

Applying the statutory factors for assessing informed consent, I find that Ms. Myers does have the capacity to assimilate many relevant facts, and appreciate her situation. She knows she is in API against her wishes. She knows that her children are of the opinion that she is mentally ill. She reported that she is aware that one of

the people who visited her recently, appearing to her to be a five-year-old, must in fact be a ten-year-old at this time. I further find that Ms. Myers does not appreciate that she suffers from a mental disorder, even though she is able to articulate the voices that have spoken to her and commanded her to do things, and that proximity to certain telephone numbers caused her memories to become scrambled or lost. It is unclear whether Ms. Myers has the capacity to participate in treatment decisions by a rational thought process, because the prior administration of medication reportedly left her in the position of functioning well and yet there is a viable debate in the psychiatric community regarding whether the administration of this type of medication might actually cause damage to her or ultimately worsen her condition. Ms. Myers is very much aware of that debate. I do find that she has articulated a reasonable objection to the proposed medication, in that she traces a significant escalation in her mental illness and her loss of memories to the time when she was prescribed psychotropic medications in 1998.

Conclusion

I find this case troubling. I ruled on record that the State had satisfied its burden of showing by clear and convincing evidence that Ms. Myers is mentally ill and that she presents a likelihood of serious harm to herself or others. I found that the State met its burden on that petition, without reservation.

While it is a more difficult question whether the State met its burden for forced medication, I conclude that it has and therefore grant its Petition for Administration of Psychotropic Medication. I do not reach this decision lightly. Ms. Myers is obviously an intelligent person who is familiar with the treatment of the mentally ill in our community. She has amply demonstrated that there

is a real debate about the advisability of following the treatment path recommended by the psychiatrists in her case. However, for the reasons stated above, I ultimately conclude that she is not competent to provide informed consent under AS 47.40.839(g).

DATED 3/14/03

Morgan Christen
Morgan Christen
Superior Court Judge

I certify that on this 14th day of March, 2003, a true and correct copy of the foregoing was served by
() mail () fax () hand upon:
JAMES GOTTSTEIN
JEFFREY KILLIP

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~~Hilary Williams~~ MICHAEL SHAFER
Administrative Assistant