

Law Project for Psychiatric Rights  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETTA BAVILLA, )  
 )  
 Plaintiff, )  
 )  
 )  
 ALASKA DEPARTMENT OF )  
 CORRECTIONS, )  
 )  
 Defendant. )  
 )

Case No. 3AN 04-5802 CI

**MEMORANDUM IN SUPPORT OF CONTINGENT**  
**MOTION FOR INJUNCTIVE RELIEF PENDING**  
**APPEAL**

Plaintiff Etta Bavilla has moved pursuant to Civil Rule 62(c) that, in the event the Court denies the contemporaneously filed Motion for Reconsideration, it grant injunctive relief pending appeal prohibiting Defendant from involuntarily medicating Plaintiff under Defendant's Policy #807.16, Involuntary Psychotropic Medication, pending further order of this or the Supreme Court.

Because of the exigency that will be caused by the denial of the contemporaneously filed Motion for Reconsideration, this motion is being filed contingently in order to allow this Court an opportunity to consider the issue of injunctive

relief pending appeal. *See, e.g., Powell v. City of Anchorage*, 536 P.2d 1228, 1230 (Alaska 1973).

We think that it is a sound policy for the superior court to first consider applications for stays of judgment. Exceptions from this rule should be made where the applicant makes a showing that relief in the superior court is unavailable; or that relief to be effective must be immediate, and that it is improbable the superior court can afford such immediate relief.

In *Powell*, 536 at 1229 the Alaska Supreme Court also made clear this applied to motions for injunctive relief pending appeal and specified the proper procedure and criteria for considering a motion to grant an injunction pending appeal.

Under Alaska Rule of Civil Procedure 62(c) the superior court is empowered to . . . grant' an injunction pending an appeal from a final judgment . . . In considering whether to grant such an injunction, the lower court must consider criteria much the same as it would in determining whether to grant a preliminary injunction.

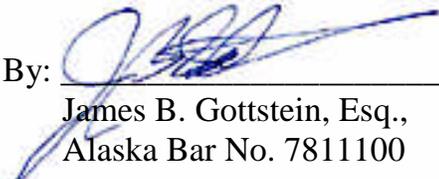
(footnotes omitted).

A Motion For Preliminary Injunction has been pending in this Court since May 20, 2004. Prior to that, on April 2, 2004, a motion for a temporary restraining order was filed and denied the same day in a two sentence Order prior to Plaintiff having been served with Corrections' opposition (TRO Opposition). The TRO Opposition conclusively established facts *via* admissions showing the forced psychiatric drugging procedures under Corrections policy #807.16 are unconstitutional and these facts were incorporated into the Motion for Preliminary Injunction.

As set forth in the Memorandum in Support of Motion for Preliminary Injunction, which is incorporated herein by reference as though fully set forth, this entitled Ms. Bavilla to issuance of the requested preliminary injunction. Therefore, under *Powell*, this Court should grant this Motion for Injunctive Relief Pending Appeal in the event the Court denies the contemporaneously filed Motion for Reconsideration. An Order Granting Motion for Interim Injunctive Relief Pending Appeal to do so is lodged herewith.

Dated this \_\_\_\_ day of July, 2004, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

By:   
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