

capacity to assimilate relevant facts about his current mental health condition. This finding is supported not only by the testimony of the health care professionals from API, the court visitor, and Mr. Cornils, but by Mr. Bigley's own demeanor during the course of the court proceedings. Mr. Bigley's demeanor in the courtroom was indicative of some limited understanding by him that the court proceedings were to address API's request for an order to administer psychotropic medication without his consent. But he was quite agitated and maintained a running monologue throughout most of the court proceedings. The evidence was clear and convincing, particularly the testimony of Dr. Maile, that Mr. Bigley denies the existence of a mental illness and is unwilling to confer with either the court visitor or API staff in an effort to assimilate relevant facts about his mental health. The evidence was also clear and convincing that Mr. Bigley is unwilling to participate in treatment decisions at all because he is unwilling to communicate or cooperate at all with API staff or with the court visitor regarding any such proposed treatment. The court visitor attempted to assess Mr. Bigley's capacity to give or withhold informed consent, but was unable to do so because of Mr. Bigley's complete refusal to cooperate with her. Mr. Bigley has indicated that he believes the hospital staff is poisoning him, both as to the food and drink he was provided as well as any medication. Counsel for Mr. Bigley asserted that Mr. Bigley's belief that the medication could poison him was a reasonable objection to the medication, given the medication's side effects. But the evidence was clear and convincing that Mr. Bigley's concern of being poisoned is not due to any potential side effect of the proposed medication; rather, it constitutes a delusional belief that API would attempt to administer a substance that is poison in the strictest sense of that term --rather than an antipsychotic medication with potentially significant side effects. The evidence is clear and convincing that Mr. Bigley does not have the capacity to participate in treatment decisions by means of a rational thought process, and is not able to articulate reasonable objections to using the proposed medication.

2. The evidence is clear and convincing that Mr. Bigley has never previously made a statement while competent that reliably expressed a desire to refuse future treatment with psychotropic medication. The court visitor testified she was unaware of any such statement. Mr. Bigley did not introduce any evidence of such a statement. Through his counsel, Mr. Bigley asserted that the fact that Mr. Bigley promptly ceased taking antipsychotic medication after his prior releases from API is demonstrative of such a statement to refuse future treatment. But this court finds that the fact that Mr. Bigley has ceased taking antipsychotic medication in the past does not, in itself, reliably express a desire to refuse such medication in the future.

3. The evidence is clear and convincing that the proposed course of treatment is in Mr. Bigley's best interest. API has proposed to administer one medication to Mr. Bigley at this time - risperadone. The proposed dosage is up to 50 mgs. every two weeks. **API presented clear and convincing evidence that the administration of this medication to Mr. Bigley meets the standard of medical care in Alaska for individuals with Mr. Bigley's medical condition.** The evidence is clear and convincing that Mr. Bigley is unable at the present time to obtain any housing or mental health services outside of API because of his current aggressive and angry behavior. He is not welcome at the Brother Francis Shelter or in any assisted living home at the present time. The option that Mr. Bigley simply be permitted to come and go from API as he chooses is not a realistic alternative for two reasons - first, it is inconsistent with API's role as an acute care facility for individuals throughout the state that are in need of acute mental health care, and second, the evidence is clear and convincing that Mr. Bigley would not avail himself of this option even if it were available to him. As such, it is not a less intrusive treatment at all. When medication has been administered in the past to Mr. Bigley, his behavior has improved to such an extent that he has been able to successfully reside in the community, albeit for short periods of time. Without the administration of medication at this time, the evidence is clear and convincing that there will not be any improvement in Mr.

Bigley's mental functioning. And this particular medication has not caused severe side effects to Mr. Bigley in the past. Evidence was introduced that Mr. Bigley has had tardive dyskinesia as a result of the long term administration of antipsychotic medication to him over a period of many years, but the risk of that condition is considerable less with risperadone than with some other medications. [See Transcript of 2003 proceedings at 42-45; 3AN-02-00277 CI] Although CHOICES has provided valuable assistance to Mr. Bigley in the recent past that has enabled Mr. Bigley to function outside of API, the testimony of Paul Cornils constitutes clear and convincing evidence that that entity is not able to provide assistance to Mr. Bigley to enable him to live in the community at the present time because Mr. Bigley is not following treatment advice to receive medication. Although Mr. Bigley presented evidence as to the potential side effects of risperadone, both long term and short term, he presented no viable alternative to such treatment at the present time. In short, the evidence is clear and convincing that in order for Mr. Bigley to be most likely to achieve a less restrictive alternative than his current placement at API, the involuntary administration of risperadone is needed. In reaching this conclusion, this court has considered that the involuntary administration of risperadone to Mr. Bigley by injection is highly intrusive, and that there is a certain degree of pain associated with the receipt of an injection, particularly if it is to be administered to a patient that is strongly opposed to its administration. And the court has considered the adverse side effects of risperadone that were presented in court, and the fact that Mr. Bigley has not experienced some of those side effects, such as diabetes or undesirable weight gain when the drug has been administered to him in the past. The drug has been in use since the early 1990's, and, as noted above, falls within the standard of care in Alaska at the present time. The risk to Mr. Bigley of nontreatment is very high- the evidence is clear and convincing that Mr. Bigley will continue to be unable to function in the community unless he receives this treatment - the only form of treatment that is available to him at the current time. As such, although highly

intrusive to Mr. Bigley in the short term, this court finds that the proposed treatment is the least intrusive means of protecting Mr. Bigley's constitutional right to individual choice in his mental health treatment over the long term.

ORDER

For the foregoing reasons, API's petition for the administration of psychotropic medication is GRANTED, solely with respect to the use of risperadone in an amount not to exceed 50 mg per two weeks during the respondent's period of commitment. If API seeks to use additional or other medication during the period of commitment, it may file a motion to amend this order. If API seeks to continue the use of psychotropic medication without the patient's consent during a period of commitment that occurs after the period in which the court's approval was obtained, the facility shall file a request to continue the medication when it files the petition to continue the patient's commitment.

Pursuant to Mr. Bigley's request at the close of the evidence in this proceeding, this decision is STAYED for a period of 48 hours so as to permit Mr. Bigley to seek a stay of this order from the Alaska Supreme Court.

5-19-08
DATE
12:30 p.m.

Sharon Gleason
SHARON L. GLEASON
Judge of the Superior Court

I certify that on 5/19/08
a copy of this order was sent to:

respondent's attorney
attorney general
treatment facility
court visitor
guardian

Clerk: A. Stanley