

In the Superior Court at Anchorage Alaska

**Media No.:** 3AN6108-192

**Judge:** W. Morse

**Date:** Monday, November 03, 2008

**Clerk:** J. Shine

**Case Title:**

**In the Matter of:**

**Case Number:**

Necessity for the Hospitalization of  
William S Bigley

3AN-08-1252PR

**Type of Proceedings:** Status Hearing

**Parties Present:** Assistant Attorney General:  
Mr Bigley:

Laura Derry, Telephonic  
James Gottstein, Present

**Court Orders/Master Recommends:**

- Motion to dismiss 838, Denied
- States motion to commit, Moot
- Motion for Summary, Held in abeyance until court has reviewed documents
- Motion to Hold Hearing at Courthouse, Denied
- Expedited Motion in regards to discover and depositions, granted
- Motion for Protective Order, Denied
- Motion to Quash Deposition Notice, Denied
- Court to issue protective order until November 12

Believe this was just as to 11/5  
hearing and will decide on 11/5 about  
future hearings. J. Gottstein

**Summary of Proceedings:**

8:47:35 AM

**On record**

Court identifies case and parties

Court

- I set this on this morning to issue rulings on various pending motions
- there was an original petition filed October 21 for commitment and medication, second October 27
- motion to dismiss 838 petition

8:48:42 AM

Gottstein

-the motion to dismiss has two basis, one under review then the police power

Court

- Motion to dismiss 838, Denied
- States motion to commit, Moot

Gottstein

-its one of two counts and has nothing to do with commitment

Court

-Motion for Summary Judgment...

Not Confidential.  
Jim Gottstein

**CONFIDENTIAL**

Derry

-I ran it over Friday and filed it to probate and a copy to chambers

Court

-I haven't seen it do I wont rule until I have the opposition

Court

-I will review the request of the entire setting

-Motion for expedited consideration with depositions and discovery

-Expedited motion, granted

-Motion for protective order, Denied

-Motion to quash deposition notice, Denied

8:55:56 AM

Gottstein

-I think we have an understanding if the court denied motion to quash, we would hold the deposition tomorrow at 9am

Derry

-it resolves Mr Adlers problem, he is in Kenai so I wont be able to speak to him but I think that will work

-we can meet to discuss that

Court

-the state has filed a lengthy witness list, how long do you think the states case and chief will last?

Derry

-if I need to call all of those witnesses it would take a day including cross

8:57:42 AM

Gottstein

-I did file a preliminary witness list, we might assume a day too

-I filed a lot of testimony in writing, I still think a day

Court

-I know there is a package that showed up today, but the state will have to go through that and raise objections they want

-parties ready to go Thursday?

Gottstein

-yes your honor

Derry

-yes your honor

Court

-we will assume Wednesday and Thursday

Derry

-the issues are whether or not the patient is capable of consent and the medicating is in the best interest, if we agree those are the issues and stick to them then my witness list would be come much smaller

Gottstein

-as an initial matter, the harm of drugs and lack of benefit is an important part

-with respect to the police power court under 47.30.838 there are a lot of issues if they are entitled  
-we will have to sort out the requirements

9:02:08 AM

Court

-838 is the administering of medication, can I assume that the state wants to proceed on 839>

Derry

-yes because he has been committed the hospital is doing everything they can, another option is to restrain him

-the hospital is not comfortable doing that

-we are asking to move forward and bring up only what the statute says

Court

-seeking emergency powers wouldn't be necessary if I granted the other motion

Derry

-I have to because the hospital is having to medicate

-I am asking to move forward on medication petition which is required by 838

9:04:34 AM

Court

-I have two options, deny 839

Gottstein

-there is some confusion, if you look at the petition, there are two boxes checked

-there is another one that if the hospital administers medication over a certain amount of time then they have to have the court approval

-that is why I called it the 838 count

Court

-let me look at 839 again

9:07:15 AM

Derry

-under 838 C, because they aren't continually medicating Mr Bigley, they are having to wait

-they are required to seek the court order

Court

-lets assume that I grant the 839 petition because he is incapable of giving consent

-doesn't that moot 838?

Derry

-the hospital has done what is necessary

-they are also required to do whatever it takes to protect Mr Bigley and patients at the hospital

Court

-so doesn't it make sense for state to proceed in first incidence

-if I grant that petition, any need for 839 A1 is moot

9:10:07 AM

Derry

-that is basically what the hospital is having to do

-I want to stick to the statute

Court

- how we focus your presentation so we deal with one set of evidence instead of all
- Derry
- it would moot it out if the other was granted

Gottstein

- I think this is where the Supreme Court stay comes into effect

Court

- if there is no stay in place, doesn't it moot out A 1 if I grant the other?

Gottstein

- yes, what I could say is what you are suggesting benefits my client
- statute gives them 3, 72 hour periods
- I think that their petition makes sense and am ok with limiting 839 A2

Court

- if I grant the petition I will have to deal with what do I do with the Supreme Courts stay
- I am going to wait the state to tell me where Mr Bigley has been or if at all I grant the medication I will have to deal with the prior stay
- if the stay is obsolete, I will give Mr Bigley and Gottstein to go to the Supreme Court
- I want them to have a history

9:15:15 AM

Gottstein

- may I have an idea of how long I might have to prepare for a 838 hearing?

Derry

- we are actually being forced to deviate from the statute

Court

- this case will be done Thursday or shortly after
- I will issue an order on 839 A 2 petition
- then Mr Gottstein can tell me why you might not have been prepared, I will deal with that assertion when its given to me

Gottstein

- I will continue preparation

Derry

- the protective order?

Court

- is there an objection to me issuing an order saying the depositions cannot be disseminated to the public

9:18:02 AM

Gottstein

- I do object and have filed a response
- I said I will hold those confidential for a week and she can make an application for a protective order and we will know what the testimony is

Court

-is there an objection to me issuing a protective order until at least November 12

9:19:26 AM

Off record