

Law Project for Psychiatric Rights
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Attorney for Appellant

IN THE SUPREME COURT FOR THE STATE OF ALASKA

William S. Bigley,)
Appellant,) Supreme Court No. S-13116
)
vs.)
)
ALASKA PSYCHIATRIC INSTITUTE)
Appellee.)

Trial Court Case No. 3AN 08-493 P/R

NOTICE Re: JUDICIAL NOTICE APPENDIX

Filed contemporaneously herewith are (1) Appellant's opening brief (Brief), (2) Excerpt of Record, and (3) Judicial Notice Appendix. The Judicial Notice Appendix contains copies of documents from a number of mental health and misdemeanor proceedings involving Appellant cited in his Brief of which this court may take judicial notice under *Drake v. Wickwire*, 795 P.2d 195 (Alaska 1990), and was compiled to allow the Court to easily view them.

Paragraph 3 of this Court's June 5, 2008, Opening Notice states:

3. The record in this appeal will include only the documents and proceedings in the trial court case referenced above. If either party believes that the record should contain documents or proceedings from any other related case, that party should file an appropriate motion.

Appellant has not cited to the documents in the Judicial Notice Appendix in his Brief because he "believes that the record should contain" these documents, but instead because he believes this Court should take judicial notice of them. Appellant therefore does not believe a motion is necessary under paragraph 3 of the Opening Notice, but if it is, he requests this Court to treat this as such a motion.

One of the issues on appeal is Appellant was denied due process. The Forced Drugging Petition did not contain the factual basis justifying forced drugging under *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006), and the hearing was conducted on an extremely rushed schedule. As a result, Appellant didn't have time to assemble the documents for the hearing and with respect to many, did not even know until the hearing they would be desirable or necessary. To the extent the record Appellant was able to make is insufficient for him to obtain the relief he seeks in this appeal, he suffered great prejudice from this denial of due process. The documents in the Judicial Notice Appendix demonstrate this prejudice.

For example, the proposed treatment consisted of injection of one drug, a long acting preparation of the neuroleptic¹ risperidone (Risperdal).² Dr. Khari, Alaska Psychiatric Institute (API) staff psychiatrist, testified Appellant had responded well to

¹ "Neuroleptics" are also called "antipsychotics," although as Dr. Jackson testified below, they are really "chemical lobotomizers," their main perceived benefit being that they "stop annoying behaviors" and "inhibit so much brain activity . . . that the symptoms which some people call psychotic or schizophrenic seem to be at bay." Tr. 141 (May 14, 2008).

² Findings and Order Concerning Court-Ordered Administration of Medication (Forced Drugging Order), May 19, 2008, page 3 (Exc. 210).

Risperdal in the past³ and when cross-examined, didn't know if Appellant had stopped voluntarily taking Risperdal when the hospital insisted on adding Depakote, a mood stabilizer, and Seroquel, another neuroleptic.⁴

Page 3 of the Judicial Notice Appendix is a copy of the verified 90-Day commitment petition in 3AN 06-1039 PR, in which Dr. Worrall, Appellant's treating psychiatrist at API at the time, stated Appellant was "not responding to Risperdal alone," and page 4 is the associated verified forced drugging petition, in which Dr. Worrall states Appellant "has refused mood stabilizer medication or second antipsychotic." Since the Superior Court's decision to authorize the forced psychiatric drugging of Appellant with Risperdal alone was based in no small part on Dr. Khari's testimony Appellant had responded well to Risperdal alone in the past, Appellant suffered great prejudice from the lack of notice⁵ and the extremely rushed hearing preventing him from presenting this contradictory evidence below.

Another basis for the Superior Court's conclusion the forced drugging was in Appellant's best interests is the forced drugging improved his behavior to such an extent he has been able to successfully reside in the community, albeit for short periods of time.⁶ Most of the other documents in the Judicial Notice Appendix show this is not the case;

³ Tr. 54 (May 12, 2008).

⁴ Tr. 60 (May 12, 2008).

⁵ Appellant was not even informed what drug(s) the Alaska Psychiatric Institute's was proposing be forced on Appellant until Dr. Khari testified at the hearing. Tr. 7-8 (May 12, 2008).

that it is when Appellant receives support in the community, not when he has been drugged in the hospital, that he has remained free of confinement for longer periods of time. The following table is a compilation of what these documents reveal for the period starting with his commitment at API ending January 3, 2007, through the date his confinement at API started in this case:

Case No	Days Free	Custody Date	Release Date	Days Con-fined	Comments
06-1039 PR		09/01/06	01/03/07	124	Limited CHOICES services on release
07-247 PR	50	02/22/07	04/04/07	41	Won 90-day jury trial
07-598 PR	40	05/14/07	06/26/07	43	Limited CHOICES services on release
07-1064 PR	64	08/29/07	09/14/07	16	No community services on release
USA v Bigley	5	09/19/07	10/12/07	23	No community services on release
07-1795 CR	0	10/12/07	10/23/07	11	Tranferred to API by court?
07-1311 PR	0	10/23/07	01/21/08	90	Extra Funds for Housing & Services
08-247 PR	33	02/23/08	03/14/08	20	Judge Found Not Gravely Disabled
08-3805 CR	28	04/11/08	04/15/08	4	No community services on release
08-416 PR	2	04/17/08	04/21/08	4	No community services on release
08-593 PR	4	04/25/08			

The lack of notice and extremely rushed time frame for the proceeding below did not allow Appellant to assemble and present this contradictory evidence to the trial court.

The most important issue in this appeal is whether Appellant is entitled to an order requiring API to provide a less intrusive alternative under *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238 (Alaska 2006). Page 182 of the Judicial Notice Appendix is a Status Report in 3AN 07-1311 PR, in which API reports additional funding for Appellant

⁶ Findings and Order Concerning Court-Ordered Administration of Medication (Forced Drugging Order), May 19, 2008, page 3 (Exc. 210).

was obtained for housing and community support in an assisted living facility known as the Big Lake Country Club. This document shows API (*via* the public guardian) arranged for the type of support Appellant has requested here, except the community support was contingent on Appellant taking psychiatric drugs. Appellant suffered great prejudice with respect to this issue by not being able to present this document and related evidence because he is asserting API should be ordered to provide for the same sort of support without tying it to taking psychiatric drugs.

Whether these documents are persuasive with respect to the prejudice caused by the denial of due process, or should even be considered is, of course, for this Court to determine. All the Judicial Notice Appendix does is makes it easy for the Court to view the documents to make these determinations.

Dated this 4th day of August, 2008, at Anchorage, Alaska.

LAW PROJECT FOR PSYCHIATRIC RIGHTS

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