

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Attorney for Appellant

FILED
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APPELLATE COURTS
OF THE
STATE OF ALASKA

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In the Matter of the Necessity)
of the Hospitalization of) Supreme Court No. S-16393
)
L.M.)

Trial Court Case No. 3AN-16-01656PR

**MOTION FOR RECONSIDERATION RE:
EMERGENCY MOTION FOR STAY OF FORCED DRUGGING**

Pursuant to Appellate Rule 503(h)(2)(B), Appellant moves for full court reconsideration of the July 28, 2016, Order denying Appellant's Emergency Motion for Stay of Forced Drugging (Stay Denial).

**A. The Evidence Presented Through Appellant's Objections
Was Before the Superior Court**

The Stay Denial concluded that Appellant was not likely to be successful on the merits because the evidence presented through Appellant's Objections to Magistrate Judge's Objections (Objections)¹ was not before the Magistrate Judge. It was not required to be. Under Probate Rule 2(f)(1), when a party files objections to the recommendations of the Magistrate Judge, "The superior court may permit . . . the taking of further evidence." The Superior Court allowed and considered the additional evidence

¹ Exhibit D to Emergency Motion for Stay.

presented by Appellant. The Superior Court did not find that evidence sufficient, but did consider it. Thus, it seems to Appellant that reliance in the Stay Denial on its conclusion that "L.M. has likely failed to preserve" her arguments because the evidence was not presented to the Magistrate Judge is not correct.

B. Appellant Showed There Was a Feasible Less Intrusive Alternative

In finding Appellant's showing that there was a feasible less intrusive alternative insufficient the Stay Denial relied on Soteria-Alaska having been closed. However, this Court held in *Bigley v. Alaska Psychiatric Institute*,² that if there is a feasible less intrusive alternative, the state must either provide it or release the patient without treatment. It is respectfully suggested the State is not constitutionally allowed to drug someone against their will when there is a feasible less intrusive alternative that has been closed due to insufficient funding.

In this case, Dr. Saylor, who used to run the Alaska Psychiatric Institute (API), affied that in his opinion "Soteria-Alaska would have been ideal for Appellant, dramatically improving her long-term prospect of recovering from her current mental problems and resuming her life."³ It is respectfully suggested that under *Bigley* the State cannot infringe Appellant's fundamental right to decline medication by not providing sufficient funding for a feasible less intrusive alternative.

² 208 P.3d 168, 185, 187-188 (Alaska 2009).

³ Exhibit D to Emergency Stay Motion, page 48, ¶17.

**C. It Was Error to Find By Clear and Convincing Evidence
that Appellant had Never Previously Expressed a Desire
to Refuse Psychotropic Medication**

The Stay Denial found Dr. Saylor's Affidavit inadequate with respect to Appellant's previously expressed desires to refuse psychotropic medication because Dr. Saylor did not have personal knowledge of Appellant's previously expressed desires. Under *Myers v. Alaska Psychiatric Institute*,⁴ this Court held that it was the state's burden to prove by clear and convincing evidence that the patient never previously made a statement while competent that reliably expressed a desire to refuse future treatment with psychotropic medication. It is respectfully suggested that Dr. Saylor's Affidavit⁵ is sufficient to preclude the State from having proven by clear and convincing evidence that Appellant had never previously made such a statement. Here, the Court Visitor did not look for any such previously expressed desire and then reported that she had found none. It is respectfully suggested that when Dr. Saylor's Affidavit was submitted detailing Appellant's previously expressed desires, at a minimum, before granting the petition to medicate her against her will, it was incumbent upon the Superior Court to further explore this issue, which might have included ordering the Court Visitor to follow-up or having the identified witnesses testify.

⁴ 138 P.3d 238, 242-243 (Alaska 2006).

⁵ Exhibit D to Emergency Stay Motion, page 48, ¶s 14 & 15.

Even if the Court determines Appellant has not clearly shown probable success on the merits, it is respectfully suggested she has raised serious and substantial questions going to the merits and the balance of hardships favors granting the stay.

D. The Balance of Hardships Favor Granting the Stay

The Stay Denial acknowledges that Appellant may face long-term irreparable harm from being given neuroleptics against her will, but denied the stay based on its finding that she also faces short-term harm if the stay is granted. The short-term harm, however, was not termed irreparable, nor should it have been. The additional evidence produced by Appellant in support of her Objections⁶ documented extreme harm, including dramatically reducing her chances of recovery from being put on the neuroleptics, as well as serious physical harm and likely early death from long-term use. Confinement, itself, the harm to Appellant identified in the Stay Denial on the other hand is not irreparable. In addition, Appellant has made the choice that she would rather be confined than take psychotropic drugs.

That leaves whether API can be adequately protected. As set forth in the Original Motion, if API truly feels it needs to drug Appellant for safety reasons, there is the AS 47.30.838 process for "crisis situations."

It is respectfully suggested API is adequately protected and the balance of hardships favors granting the stay.

⁶ Exhibit D to Emergency Stay Motion.

E. Conclusion

For the foregoing reasons, it is respectfully requested that:

(1) Appellant's Motion for Reconsideration of this Court's July 28, 2016, Order denying Appellant's Emergency Motion for Stay of Forced Drugging be **GRANTED**, and

(2) Appellant's July 26, 2016, Emergency Motion for Stay of Forced Drugging also be **GRANTED**.

DATED August 1, 2016.

Law Project for Psychiatric Rights

By: 

James B. Gottstein, ABA # 7811100

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date he hand delivered a copy hereof to:

Joanne M. Grace
Department of Law
1031 W 4th Ave #200
Anchorage, AK 99501.

Dated: August 1, 2016.


Jim Gottstein