
IN THE SUPREME COURT FOR THE STATE OF ALASKA

GLENN BOHN AND LORRAINE PHILLIPS,

Petitioners,

In the Matter of the Protective Proceedings for

BRET BYRON BOHN.

CFC FC

On Petition for Review from the Superior Court for the State of Alaska
Third Judicial District at Anchorage
The Honorable Erin Marston Presiding
Case No. 3AN-13-02737PR

EMERGENCY PETITION FOR REVIEW

December 24, 2013

By: _____
MARIO LINCOLN BIRD (ABA #1211083)
Ross & Miner, PC
327 East Fireweed Lane, Suite 201
Anchorage, Alaska 99503
(907) 276-5307
Counsel for Petitioners

Filed in the Alaska Supreme Court on _____.

Deputy Clerk, Alaska Supreme Court

EMERGENCY PETITION FOR REVIEW

Petitioners GLENN L. BOHN and LORRAINE PHILLIPS, by and through their attorneys ROSS & MINER, PC, pursuant to Alaska Appellate Rule 403, hereby submit their emergency petition for review to this court.

I. STATEMENT OF FACTS

Petitioners Glenn Bohn and Lorraine Phillips are the parents of the 26-year-old ward, Bret Bohn. Glenn lives in Wasilla, Lorraine in Anchorage. Bret is a licensed hunting guide and outdoorsman, and—when in civilization—spends his time between his father and mother’s home.

A. BRET’S ADVANCE HEALTH CARE DIRECTIVE.

On May 3, 2007, while of sound mind and body, Bret executed an advance health care directive, naming his mother, Lorraine, as his agent for medical decisions, and his father, Glenn, as alternate agent. Bret also executed a general power of attorney, nominating Glenn as his guardian.

Bret had surgery for nasal polyps a few years ago, which caused him to lose his sense of smell intermittently. He was prescribed Prednisone, a steroid. He was told that taking this steroid under stress can have adverse side effects.

While guiding a bear hunt on the Alaska Peninsula in early October 2013, Bret took Prednisone. As a result, he suffered insomnia, which continued upon his return to his father’s home in Wasilla. After over a week of not sleeping, his parents took him to Providence Alaska Medical Center (“Providence”) in Anchorage on Wednesday, October

16, 2013. There, Bret was diagnosed with exhaustion, and prescribed Lorazepam for anxiety, and Zolpidem for sleep. He was discharged, and his parents took him home.

Things did not go well. Not only did Bret not sleep, but he suffered a seizure on October 18, 2013. On or about October 20, 2013, his parents drove him back to Providence. While at Providence, Bret suffered three more seizures, and was placed in intensive care.

B. BRET IS RULED INCOMPETENT - OCTOBER 25, 2013.

On or about October 25, 2013, a team of Providence doctors found Bret to be medically incompetent. Issues arose whether and to what extent Bret should be medicated. Glenn and Lorraine informed Providence that they were named by Bret as his agents for medical decisions, and informed Providence verbally that they were exercising that right. Providence informed Glenn and Lorraine that, without an advance health care directive in Bret's medical records, they would refuse to honor Glenn and Lorraine's assertions.

On October 31, 2013, and then on November 1, 2013, Lorraine supplied Providence with Bret's advance health care directive and asked for a copy of his medical records. But rather than honor this document, give Lorraine Bret's medical records, or even inform Glenn and Lorraine that they refused to honor it, Providence surreptitiously asked the State of Alaska, Adult Protective Services ("APS") to take guardianship of Bret. In a letter penned by Dr. Peter Abraham and social worker Sarah Blanning, Providence accused Lorraine of "interfering" with Bret's medical treatment, and also of

encouraging Bret to commit suicide. This letter was not provided to Glenn and Lorraine, nor were there any accusations made against Glenn.

C. THE STATE PETITIONS FOR GUARDIANSHIP WITHOUT NOTICE, AND THE COURT SUSPENDS THE ADVANCE HEALTH CARE DIRECTIVE - NOVEMBER 14, 2013.

On November 4, 2013, APS, in the person of Tony Bove, initiated this action by submitting a petition for a temporary guardianship order to Anchorage Superior Court. A hearing was scheduled before Probate Master Una Gandbhir at 11:30 a.m. on November 14, 2013. Despite Mr. Bove's actual knowledge that Glenn and Lorraine were Bret's parents, that they were visiting Providence on a daily basis, that Lorraine had given Mr. Bove their personal phone numbers, and that Glenn and Lorraine were named as agents in Bret's health care directive, Glenn and Lorraine received no notice of the guardianship proceeding, or the November 14, 2013 hearing. Instead, APS served notice on a defunct address.

On November 14, 2013, two hours before the hearing at or around 9:00 a.m., Mr. Bove left a voice message regarding the hearing on Lorraine's cell phone. Because Glenn and Lorraine were busy and on their way to visit Bret at Providence, Lorraine did not hear her phone.

When the 11:30 a.m. temporary guardianship hearing was held, Glenn and Lorraine were unaware that this proceeding was going on, much less present to advocate their interests. Yet, despite the lack of opposition, APS elicited no sworn testimony, two attorneys testified as witnesses, and no exhibits were admitted into evidence. APS did manage to tender a copy of Bret's advance health care directive and a copy of his general

power of attorney to Master Gandbhir. For reasons known only to herself, Master Gandbhir deemed “the allegations” against Lorraine sufficient to suspend both Glenn and Lorraine’s agency powers, and appointed the Office of Public Advocacy (“OPA”) as Bret’s public guardian. Master Gandbhir’s decision was ratified by Superior Court Judge Erin Marston later that day.

D. GLENN AND LORRAINE PETITION FOR GUARDIANSHIP, SEEK DISCLOSURE OF RECORDS, AND MOVE TO ENJOIN PSYCHOTROPIC MEDICATION - NOVEMBER 18, 2013.

The afternoon of November 14, 2013, Mr. Bove called Lorraine to inform her that the State had taken guardianship of Bret. Mr. Bove then called Glenn later that evening to confirm the same. Glenn and Lorraine were terribly upset, and immediately faxed *pro se* petitions to Judge Marston’s chambers. Later, on Monday November 18, 2013, they filed petitions to remove the state as Bret’s guardian.

On November 21, 2013, undersigned counsel entered his appearance for Glenn and Lorraine, and moved for disclosure of court records on an expedited basis. On November 22, 2013, this motion was opposed by APS, on two grounds: 1) defective service, and 2) Glenn and Lorraine were not parties to the case. Master Gandbhir denied Glenn and Lorraine’s motion on November 25, 2013, and Judge Marston upheld this denial on December 2, 2013.

On December 4, 2013, without an explanation, Glenn and Lorraine were denied all visitation rights with Bret at Providence. Therefore, still without a court record or Bret’s medical records, they filed a motion asking for injunctive relief in four provisions: 1) immediate halting of the administration of psychotropic drugs to Bret, 2) immediate

reinstatement of visitation privileges for Bret's family and friends, 3) an order keeping Bret in Alaska until further order of court, 4) reinstatement of the advance health care directive, naming Lorraine and Glenn as Bret's agents for medical decisions. A hearing was scheduled before Master Gandbhir for 10:30 a.m. on December 9, 2013.

At the hearing, Glenn and Lorraine were prepared to put on evidence that Bret was continuing to receive psychotropic drugs, that his family and friends could not visit him, that Providence planned to ship Bret out of state, and that Glenn and Lorraine were the proper agents for medical decisions. However, Master Gandbhir refused to hear any evidence, and instead scheduled a five-hour evidentiary hearing before Judge Marston from 8:30 to 1:30 on December 19, 2013. Significantly, Master Gandbhir ruled that Glenn and Lorraine were parties to the case and, as a result, should be allowed to access the court and medical records.

E. GLENN AND LORRAINE ARE GRANTED ACCESS TO RECORDS - DECEMBER 10, 2013.

On December 10, 2013, undersigned counsel listened to the audio CD of the November 14, 2013 hearing for the first time. At that time, the degree and nature of the violations of due process at the hearing became clear. In addition to the lack of notice to Glenn and Lorraine, Master Gandbhir's findings were based on the following improprieties:

1. No sworn testimony proffered by the petitioner;
2. Unsworn testimony by two attorneys;
3. No exhibits offered into evidence;
4. Master Gandbhir's acknowledgment that a "springing power-of-attorney" existed;

5. Master Gandbhir's suspension of the advance health care directive based on "allegations" against Glenn and Lorraine.

Based on these due process violations, Glenn and Lorraine submitted their objections to Master Gandbhir's findings to Judge Marston on December 12, 2013.

On December 17, 2013, Glenn and Lorraine submitted a pre-trial brief that addressed these and further due process violations, to wit:

6. Per AS 13.26.140(c), a petitioner must prove a temporary, court-appointed guardian is in the best interests of the respondent by clear and convincing evidence;
7. "The clear and convincing evidence standard . . . applies to any determination which may lead to the imposition of guardianship"¹;
8. "Due process does require a heightened standard of proof in certain categories of civil cases"²;
9. Per AS 13.26.113(a), a respondent has a right to present evidence on his behalf, to cross-examine adverse witnesses, to remain silent, to have the hearing open or closed to the public, be present, and to be tried by jury on the issue of capacity;
10. Per AS 13.26.107(a)(3) and (4), the court visitor must leave a written copy of a respondent's rights with the respondent and offer assistance in contacting an attorney.

F. THE EVIDENTIARY HEARING - DECEMBER 19, 2013.

At the evidentiary hearing, co-counsel Wayne Ross enumerated the due process concerns above, and asked Judge Marston to restore Bret's advance health care directive and hold a *de novo* hearing.³ Judge Marston declined, and asked the parties to put forward evidence. Undersigned counsel further explained that, unless the due process

¹ *In re O.S.D.*, 672 P.2d 1304, 1306 (Alaska 1983).

² *Demuptiis v. Unocal Corp.*, 63 P.3d 272, 278 (2003).

³ Hearing Log Notes, 12/19/13, page 3.

violations were corrected, Glenn and Lorraine would be “behind the eight-ball,” i.e. the burden would be upon Glenn and Lorraine to prove why OPA should be removed as guardian, rather than the burden being on the State to show why guardianship should be imposed, by clear and convincing evidence. But Judge Marston again declined, both to reinstate Bret’s advance health care directive and to hold a *de novo* hearing with the burden on the State. Therefore, Glenn and Lorraine moved for a stay of proceedings in order to petition for review to this Court.

G. NON-PARTY PROVIDENCE MOVES FOR A HEARING TO SHIP BRET TO JOHNS HOPKINS - DECEMBER 23, 2013.

Despite being a non-party to the proceeding, Providence filed an emergency motion to have Bret shipped down to Johns Hopkins in Maryland on December 23, 2013. Judge Marston—awaiting neither for an opposition from Glenn and Lorraine, nor a motion to intervene from Providence—has now scheduled a hearing on this matter at 2:00 p.m. on December 26, 2013.

II. STATEMENT OF THE QUESTIONS.

1. Whether the State can petition to suspend an advance health care directive without providing notice and service of process to the named healthcare-decision agent?
2. Whether the burden is on the State to prove at a temporary guardianship hearing, by clear and convincing evidence, that an advance health care directive should be suspended?

III. STATEMENT OF TRIAL DATE.

An emergency hearing is currently scheduled for December 26, 2013, from 2:00 p.m. to 4:30 p.m., to determine whether Bret should be transferred to Johns Hopkins.

The only other hearing scheduled in this matter is a guardianship hearing on May 14, 2014 at 9:00 a.m.

IV. REVIEW SHOULD NOT BE POSTPONED UNDER APPELLATE RULE 402(b) BECAUSE ADVANCE HEALTH CARE DIRECTIVES INVOLVE IMPORTANT QUESTIONS OF LAW AND POLICY, AND NORMAL APPELLATE RELIEF WILL BE UNTIMELY.

1. Per App. Rule 402(b)(1), this Court may review a petition when postponement will result in injustice because of impairment of a legal right.

Here, Glenn and Lorraine's rights to make health care decisions for Bret without judicial approval—and, by extension, Bret's right to decide on his health care agent—is provided for in AS 13.52.010(i). But in this case, those rights were first ignored by Providence, then suspended without notice of a hearing by Master Gandbhir and Judge Marston. This is unjust.

2. Per App. Rule 402(b)(2), this Court may review a petition when an order involves an important question of law on which there is substantial ground for difference of opinion, and an immediate review may advance termination of litigation or advance an important public interest.

Here, an important question of law exists: whether the superior court can—solely by receiving a petition, and without requiring notice to the health care agent—indefinitely suspend an advance health care directive. This is important public policy, as many Alaskan have executed advance health care directives, and will rely upon them in the years to come in matters of life and death. This Court should quickly and decisively

pronounce the due process requirements when a health care provider seeks out the State to impose guardianship over and above a duly-executed advance health care directive.

3. Per App. Rule 402(b)(3), this court may review a petition when the trial court has so far departed from the usual course of proceedings as to call for the appellate court's power of supervision.

Here, Judge Marston and Master Gandbhir have made findings without receiving any evidence and without hearing sworn testimony. In lieu thereof, they have accepted the unsworn testimony of attorneys. Finally, Judge Marston has now granted an expedited motion for a hearing by a non-party, Providence, without hearing opposition or requiring—much less ruling upon—a motion to intervene. These are not the marks of usual judicial proceedings.

4. Per App. Rule 402(b)(4), this Court may review a petition when the issue might otherwise evade review, and immediate decision is needed for the guidance of the lower courts or the public interest.

Here, any evidentiary hearing held by Judge Marston on the issue of guardianship needs to be guided by this court so that the evidentiary burden is properly allocated to the movant (i.e. the State), and so that the heightened requirement of clear and convincing evidence is required to impose guardianship.

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V. JUDGE MARSTON’S DECISION TO SUSPEND BRET’S ADVANCE HEALTH CARE DIRECTIVE IS ERRONEOUS BECAUSE IT VIOLATES DUE PROCESS AND NEGLECTS TO FOLLOW THE “POLICY OF RESTRAINT” ENUNCIATED BY THIS COURT REGARDING CIVIL LIBERTIES.

Per AS 13.26.140(c), a petitioner must prove a temporary, court-appointed guardian is in the best interests of the respondent by clear and convincing evidence. Clear and convincing proof “require[s that] there must be induced a belief that the truth of the asserted facts is highly probable.”⁴ Under Alaska law, “the clear and convincing evidence standard . . . applies to any determination which may lead to the imposition of guardianship.”⁵ (Emphasis added). This is a “policy of restraint,”⁶ based on the well-established principle that “[d]ue process does require a heightened standard of proof in certain categories of civil cases.”⁷

In this case, Bret executed an advanced medical directive in 2007, naming his parents, Lorraine Phillips and Glenn Bohn, as his attorneys-in-fact for medical decisions. As noted by Master Gandbhir, this was a “springing” power-of-attorney,⁸ i.e. it went into effect as soon as Bret was declared mentally incompetent, and was in effect at the date of the November 14, 2013 court hearing. For Master Gandbhir to “impose guardianship” in this circumstance, she would have had to find clear and convincing evidence that Glenn

⁴ *Denuptiis*, 63 P.3d at 275 n.3.

⁵ *In re O.S.D.*, 672 P.2d at 1306.

⁶ *Id.*

⁷ *Denuptiis*, 63 P.3d at 278.

⁸ See 11/14/13 Hearing Transcript, 13:7 - 13:8.

and Lorraine were unfit to be Bret's guardians. This never occurred. No party entered offered any formal evidence to the court at the November 14, 2013 hearing. The court visitor admitted that "I haven't met the family or spoke to the family actually."⁹ Because there has not been clear and convincing evidence offered or admitted as to why a state-appointed guardian should be imposed on Bret, this Court should remove the imposed state guardian and restore Bret's advance health care directive.

VI. RELIEF SOUGHT.

Glenn and Lorraine seek the following relief:

1. Stay in superior court proceedings, including the hearing scheduled for December 26, 2013;
2. Reinstatement of Bret's advance health care directive, naming Lorraine as agent and Glenn as alternative agent;
3. Removal of the State guardian;
4. Remand for a *de novo* temporary guardianship hearing;
5. Clarification of the evidentiary burden, and to whom it is allocated, when the State petitions to impose public guardianship over an advance health care directive.

VII. DATE OF RELIEF.

An emergency stay in this matter is required before the December 26, 2013 hearing. All other forms of relief are requested as soon as is reasonably possible, as Bret remains secluded from visitors and in the custody of Providence until this Court rules otherwise.

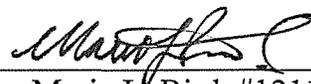
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⁹ See 11/14/13 Hearing Transcript, 9:19 - 9:20.

Respectfully submitted at Anchorage, Alaska this 24th day of December 2013.

ROSS & MINER, P.C.
Attorneys for Plaintiff



Mario L. Bird, #1211083

ATTACHMENT A
Orders

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceeding of)
BRET BYRON BOHN,)
Respondent.)
_____) Case No. 3AN-13-02737PR

HEARING ORDER

----- An evidentiary hearing in this matter is scheduled for December 26, 2013

at 2:00 p.m. before Judge Erin B. Marston, at the Nesbett Courthouse, 825 West
Fourth Avenue, Courtroom 302, Anchorage, Alaska. The purpose of the hearing is
to address Providence Alaska Medical Center's Emergency Motion to Transfer
Bret Bohn to John Hopkins, and any opposition thereto.

The State of Alaska and/or Providence Hospital shall make available,
either in person or telephonically, Dr. Peter Abraham, DO, Sarah Blanning,
LMSW and Heather Brock to testify to Bret Byron Bohn's current medical
condition, the availability of medical care at Johns Hopkins Medicine and the
urgency of securing additional care for the patient. If none of these
individuals are available, another doctor that has reviewed the medical files
and is competent to testify shall be made available. The court will also
inquire into the patient's medical treatment since being admitted to the
hospital and the actions of Bret Byron Bohn's parents leading up to

Providence Hospital's November 1, 2013 letter to Adult Protective Services

seeking a temporary guardian to act in Bret Bohn's best interests.

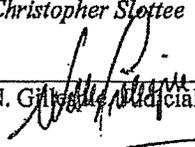
DATED in Anchorage, Alaska this 23rd day of December 2013.



Erin B. Marston
Superior Court Judge

I certify that on Dec 23, 2013
copy of the above was mailed & emailed to the
parties of record:

Nevhiz E. Calik Russell *Mario Lincoln Bird*
John A. Bove *Elizabeth M Russo*
Carolyn A. Perkins
Christopher Slottee


N. Gilman, Judicial Assistant

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Bret Byron Bohn et al,
Respondent,

CASE NO: 3AN-13-02737PR

Department of Health and Social Services,
Petitioner.

CALENDARING NOTICE

This case is scheduled for:

Date: December 26, 2013

Time: 2:00 pm

Event: Motion Hearing: Superior Court

Judge: Erin B Marston

Location: Courtroom 302, Nesbett Courthouse

Court: 825 W 4th Ave

Anchorage, Alaska 99501

12/23/2013

Date

NGillespie

Calendarling Clerk

I certify that on 12/23/2013
a copy of this notice was emailed to:

Nevhiz E. Calik Russell
John A. Bove
Carolyn A Perkins
Christopher Slottee

Mario Lincoln Bird
Elizabeth M Russo

Clerk: NGillespie 

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceeding of)
BRET BYRON BOHN,)
Respondent.)
_____) Case No. 3AN-13-02737PR

SCHEDULING ORDER

An evidentiary hearing in this matter is scheduled for December 19, 2013 at 8:30 a.m. before Judge Erin B. Marston, at the Nesbett Courthouse, 825 West Fourth Avenue, Courtroom 302, Anchorage, Alaska.

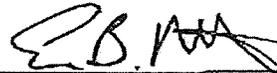
Witness lists shall be filed and exchanged by **December 17, 2013**.

The report of any expert that a party intends to call at the hearing shall be served and filed in chambers by **December 17, 2013**.

Exhibits are to be marked and exchanged no later than **December 17, 2013**.

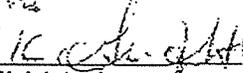
Hearing briefs, if any, shall be exchanged and filed in chambers no later than **December 17, 2013**.

DATED in Anchorage, Alaska this 12 day of December 2013.



Erin B. Marston
Superior Court Judge

I certify that on 12/12/13 a copy of the above was mailed to the parties of record:

AG
Bird
Dove, MRS
Brett Dringman
C. P. ...
E. Russo

K. Griffith, Judicial Assistant

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceedings of:)
BRET BYRON BOHN,)
Respondent.) Case No. 3AN-13-02737 PR

**MASTER'S FINDINGS AND RECOMMENDATIONS
ON GUARDIANSHIP HEARING**

This case came on for hearing on December 9th, 2013 at 9:30 before Magistrate Judge Una S. Gandbhir. Present in the courtroom were: Elizabeth Russo, Office of Public Advocacy; Mary Stark, temporary guardian for Respondent; Mario Bird and Nick Lewis, counsel for Glenn L. Bohn and Lorraine Phillips, Respondent's parents; Glenn L. Bohn and Lorraine Phillips; Nehviz Calik-Russell, State of Alaska, attorney for Adult Protective Services; Tony Bove, Adult Protective Services; Carolyn Perkins, court-appointed guardian-ad-litem for Respondent, and Ms. Brianne Bohn, Respondent's sister. Collene Brady-Dragomir, the Court Visitor, participated telephonically. Several witnesses for Mr. Bohn and Ms. Phillips were present but were asked to leave until called due to the confidentiality of the proceedings.

The court and parties reviewed a number of issues in this case, including the numerous motions that have been filed by Respondent's parents. After hearing the respective positions of the parties, it is clear that the Guardian ad litem, Court Visitor, and Adult Protective Services will require additional time to prepare and several hours in order to present all needed testimony and evidence. Therefore, a hearing has been scheduled before Judge Marston on **December 19, 2013 from 8:30 – 1:30 p.m.** A

scheduling order will be issued regarding deadlines for submitting witness lists and evidence lists.

The court made findings on a couple of pending issues. First, the court finds that Respondent's parents, Glen L. Bohn and Lorraine Phillips, are parties to the guardianship case. The parents are not only holders of Respondent's general power of attorney and the health care power of attorney, they also fall into a category listed in the Alaska Statutes for preference to be appointed as guardians. Further, the State made attempts to serve them with notice of the emergency hearing held in November.

The parties agreed that Mr. Bohn and Ms. Phillips should be given access to the court file and all confidential records including medical records. The guardian indicated that those records will be provided to Mr. Bird, counsel for Mr. Bohn and Ms. Phillips.

The court finds that the issues raised in the Motion for Preliminary Injunction have either been resolved pending the next hearing or are not appropriate for relief at this time without all evidence being heard. Specifically, Mr. Bohn and Ms. Phillips have requested that the court issue a preliminary injunction 1) to stop administration of psychotropic medication, 2) to prevent the guardian from sending the ward out of state for further evaluation and treatment, 3) to appoint Mr. Bohn and Ms. Phillips as guardians, and 4) to order Providence to comply with the family's visitation requests.

With regard to psychotropic medication, Ms. Stark indicated that Mr. Bohn was being tapered off Risperdal and melatonin, which was being given for sleep issues. No other psychotropic medications are planned to be administered before the next hearing. Ms. Stark also stated that there are no plans to move the ward out of state prior to the next hearing.

The issue of who should be appointed as guardian remains in contention. In particular, Ms. Calik-Russell indicated that Adult Protective Services objected to the appointment of the parents and would be presenting evidence to support the continued appointment of Office of Public Advocacy. This evidence was not presented and will be presented at the next hearing. Until that time, the court finds that the continued appointment of Office of Public Advocacy as temporary guardian remains the most appropriate option for Mr. Bohn.

Finally, with regard to visitation, the guardian, GAL and Adult Protective Services all represented that they have nothing to do with Providence preventing or limiting family visitation with Mr. Bohn. Providence is not a party to this case, which is a confidential proceeding, and the court has no basis on which to issue an order on visitation as requested, especially without hearing evidence from relevant witnesses and parties.

The ward's parents also filed a separate motion to join Providence as a party to this case, in part because of the visitation issue. However, no one from Providence was present to express a position on that motion. Ms. Calik-Russell stated that her client would be calling witnesses from Providence at the December 19th hearing, during which any visitation issues could be addressed along with other concerns, including the question of whether Providence should be joined as a party for any reason.

ORDER

Therefore, it is ORDERED as follows:

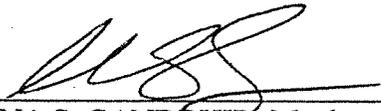
- 1) Mr. Bohn and Ms. Phillips are parties to this case and shall have access to all confidential records, including the court file and medical records.

- 2) A hearing is scheduled before Judge Marston on December 19th, 2013 from 8:30 – 1:30 p.m. to address the parents' request to be appointed as guardians. A scheduling order will be issued with filing deadlines for witness and evidence lists and any pretrial briefing.
- 3) All other outstanding motions are held in abeyance at this time, pending the December 19th hearing.
- 4) The Court Visitor will file a report no later than December 18th, 2013.

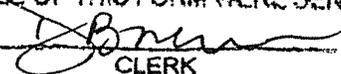
Dated this ____ day of December, 2013.

ERIN MARSTON
Superior Court Judge

Recommended for approval on December 18th, 2013.



UNA S. GANDBHIR, Magistrate Judge

CERTIFY THAT ON 12-11-13
COPIES OF THIS FORM WERE SENT
TO 
CLERK

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Bret Byron Bohn,
Respondent,

CASE NO: 3AN-13-02737PR

Department of Health and Social Services,
Petitioner.

CALENDARING NOTICE

This case is scheduled for:

Date: December 09, 2013

Time: 10:30 am

Event: Evidentiary Hearing: Superior Court

Judge: Una Gandbhir

Location: Courtroom 500, Nesbett Courthouse

Court: 825 W 4th Ave

Anchorage, Alaska 99501

12/6/2013

Date

DBrunton

Calendarling Clerk

I certify that on 12/6/2013
a copy of this notice was mailed to:

File Copy Mario Lincoln Bird

Collene Brady-Dragomir

Nevhiz E. Calik Russell

Carolyn A Perkins

Clerk: DBrunton

Hearing/Event information for this case is also available online at
<http://www.courtrecords.alaska.gov/>.

FILE COPY

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceedings of:)
BRET BYRON BOHN,)
Respondent.)

Case No. 3AN-13-02737 PR

ORDER

IT IS SO ORDERED. The Motion for Expedited Consideration of Motion and Memorandum for Disclosure of Confidential Records is DENIED.

DATED: 12/2/2013

[Signature]
SUPERIOR COURT JUDGE

Recommended for approval:

[Signature]
Probate Master

Dated: 11/25/13

Recommend denial - since
all parties required and
any oppositions due by December
5, 2013.

Glaucus Bohn and Lorraine Phillips are parties
to this case as nominated persons and parents.
The court makes no finding at this time regarding
validity of the parents' priority to serve.

NOV 22 2013

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1081 W. FOURTH AVENUE, SUITE 2100
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-6100

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
Protective Proceeding of)
BRET BYRON BOHN,)
Ward or Protected Person.)

) CASE NO. 3AN-13-02737PR

ORDER

Having considered Petitioners' motion for expedited consideration, it is hereby ordered:

- Petitioner's motion is GRANTED.
- Attorneys for the State and Bret Bohn shall file any opposition to Petitioners' Motion for Disclosure of Confidential Record by Tuesday 26 November.

Denied. Petitioners must serve the court with a temporary guardian; any oppositions must be filed by December 5th, 2013.

NOV 21 2013

LAW OFFICES OF
ROSS & MINER
A PROFESSIONAL CORPORATION
327 EAST FIREWED LANE, SUITE 201
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 276-4307
FAX (907) 276-6872

11/28/13
Date

[Signature]
Superior Court Judge/Magistrate Judge

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DEC 03 2013

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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the)
5 Protective Proceeding of:)
6 BRETT BYRON BOHN,)
7 Respondent.)

Case No. 3AN-13-02737 PR

8
9 **FINDINGS AND ORDER OF TEMPORARY GUARDIANSHIP**

10 This matter came to the attention of the superior court in a hearing on temporary
11 guardianship on November 14, 2013. Present were: John "Tony" Bove, petitioner with
12 Adult Protective Services; Nevhiz E. Calik Russell, assistant attorney general;
13 Collene Brady-Dragomir, court visitor; William Schneider, Office of
14 Public Advocacy; and Carolyn Perkins, respondent's attorney. Also present was/were:
15

16
17 This court, having been presented with a stipulation by counsel for the respondent
18 and the petitioner concerning the necessity of the temporary guardianship and having
19 reviewed the recommendations of the court visitor's report makes the following findings:

- 20 1. It has been shown by clear and convincing evidence that the respondent is in
21 need of a temporary guardian, pending a hearing on the Petition for Guardianship.
22 2. The respondent is in need of immediate services he is unable to procure as a
23 result of his current condition.
24 3. A temporary guardian is required to make decisions concerning:
25 a. Medical care.
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- b. Any mental health treatment that is necessary.
- c. Housing.
- d. Personal care, educational and vocational services necessary for the physical and mental welfare of the respondent.
- e. Application for health and accident insurance and any other private or governmental benefits to which the respondent may be entitled.
- f. Physical and mental examinations necessary to determine the respondent's medical and mental health treatment needs.
- g. Control of the respondent's estate and income in order to pay for the cost of services. The respondent is not able to manage the respondent's income and assets in order to acquire the services the respondent needs.

4. A basis for giving the guardian the powers of a conservator exists pursuant to AS 13.26.165(2) and .195(c).

THEREFORE, IT IS ORDERED:

1. The Office of Public Advocacy is appointed as a temporary guardian for the respondent. The appointment of the Office of Public Advocacy is in the best interest of the ward, because there are no other individuals who are willing to be appointed and act in the best interest of the respondent.

2. The guardian's authority shall encompass the full guardianship powers and duties set forth in AS 13.26.150(c). *Any powers of attorney currently in place are suspended pending further court order.*

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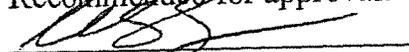
3. The ward shall pay the Office of Public Advocacy, public guardian, a monthly fee for guardianship services in accordance with AS 13.26.410 and 2 AAC 60.070-.120.

4. The appointment of the respondent's attorney is converted to Guardian Ad Litem.

DATED: 11/14/2013


SUPERIOR COURT JUDGE

Recommended for approval:


Probate Magistrate

Dated: 11/14/13

I certify that on 11/14/13, OPA
copies of this form were sent to AB
CLERK AP AJR
CU

I.T.M.O.: Bret Byron Bohn
Findings and Order of Temporary Guardianship

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the)
5 Protective Proceeding of:)
6 BRETT BYRON BOHN,)
7 Respondent.)

Case No. 3AN-13-02737 PR

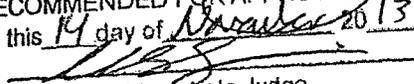
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9 LETTERS OF TEMPORARY GUARDIANSHIP

10 On the petition by the State of Alaska, through the Office of the Attorney General,
11 and after hearing and findings, the Office of Public Advocacy, public guardian, is hereby
12 appointed as temporary guardian of the respondent, Bret Byron Bohn.

13 The duties and powers of the temporary guardian of the respondent shall be those
14 provided in the Findings and Order of Temporary Guardianship.

15 DATED: 11/14/2013

16
17 
18 SUPERIOR COURT JUDGE

19
20
21 RECOMMENDED FOR APPROVAL/DENIAL
22 this 14 day of November 2013
23 
24 Magistrate Judge
25 Superior Court

26 I certify that on 11/14/13, OPA
copies of this form were sent to AG
CLERK AP AJR
CU

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

11/14/13

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 In the Matter of the)
5 Protective Proceeding of:)
6 BRETT BYRON BOHN,)
7 Respondent.)

Case No. 3AN-13-02737 PR

8
9 ACCEPTANCE OF APPOINTMENT AS TEMPORARY GUARDIAN
10 AND ACKNOWLEDGMENT OF DUTIES

11 I am a public guardian and on behalf of the Office of Public Advocacy, accept the
12 duties of temporary guardian of the ward named above.

13 I have read and understand the duties and powers of a guardian in AS 13.26.150
14 and the powers and duties of a conservator in AS 13.26.245-.315. I understand that I am
15 being granted only the powers set forth in the court's order appointing me temporary
16 guardian. I solemnly swear to perform the duties set forth in my appointment order.

17 I understand that I must file any reports the court asks me to file. I further
18 understand that my temporary appointment will end when a long-term guardian is
19 appointed for the ward or when the petition for a long-term guardian is dismissed.

20
21 DATED: 11/14/13

22
23 William Schuele For Mary Stark
24 Public Guardian
25 Office of Public Advocacy
26 900 West 5th Avenue, Suite 525
Anchorage, Alaska 99501
(907) 269-3500

27 I certify that on 11/14/13
28 copies of this form were sent to OPA
CLERK AP AG
ASR
CV

I hereby certify that this is a true and correct
copy of the original on file in my office.
ATTEST:
Clerk of the Trial Courts at Anchorage
By [Signature] 11/14/13
Date

ATTACHMENT B

Transcripts:

- 1) 11/14/13 Hearing
- 2) 12/9/13 Hearing

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

IN THE MATTER OF:)
BRET BYRON BOHN,)
An Incapacitated Person.)
_____) Case No. 3AN-13-2737 PR

TRANSCRIPT OF PROCEEDINGS

November 14, 2013 - Pages 2 through 17
December 9, 2013 - Pages 18 through 63

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ORIGINAL

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EMERGENCY GUARDIANSHIP HEARING

BEFORE THE HONORABLE UNA S. GANDBHIR
Magistrate

Anchorage, Alaska
November 14, 2013
11:34 o'clock a.m.

APPEARANCES:

FOR THE STATE
OF ALASKA:

MS. NEVHIZ CALIK-RUSSELL
Assistant Attorney General
1031 West 4th Avenue
Suite 200
Anchorage, Alaska

FOR MR. BOHN:

MS. CAROLYN A. PERKINS
Office of Public Advocacy
900 West 5th Avenue
Suite 525
Anchorage, Alaska

COURT VISITOR:

MS. COLLENE BRADY-DRAGOMIR
Office of Public Advocacy
900 West 5th Avenue
Suite 525
Anchorage, Alaska

FOR ADULT PROTECTIVE
SERVICES:

MR. BOVE
Alaska Adult Protective
Services
550 West Eighth Avenue
Anchorage, Alaska 99501

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1 APPEARANCES (cont.):

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PROPOSED
GUARDIAN AT LITEM:

MR. SCHNEIDER
Office of Public Advocacy
900 West 5th Avenue
Suite 525
Anchorage, Alaska

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P R O C E E D I N G S

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11:34:28

THE CLERK: Court is now in session before the Honorable Una Gandbhir residing.

THE COURT: You can all be seated. All right, this is case number 13-2737, this is an emergency guardianship hearing for Bret Bohn. And the petition was filed by Adult Protective Services and let me just make sure I know who's here. Ms. Russell is here on behalf of the -- on behalf of Adult Protective Services, Ms. Perkins is here on behalf of the respondent, the respondent's not present. Ms. Brady-Dragomir is here, the court visitor, and Mr. Schneider is here as the proposed guardian from the Office of Public Advocacy.

So Ms. Russell, I'm going to go ahead and ask you if anything, first of all, has changed since the petition was filed?

MS. RUSSELL: No, Your Honor, not from our point of view and Mr. Bove is here too. But I think other parties have visited with Mr. Bohn so they can provide probably more updated information if the court needs it.

THE COURT: All right.

MS. RUSSELL: And we're still asking for a temporary guardianship.

THE COURT: I'm sti -- and when you said that Mr. Bohn,

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1 you're the.....

2 MS. RUSSELL: Mr. Bove is here.

3 MR. BOVE: Bove.

4 THE COURT: Oh, Mr. Bove.

5 MS. RUSSELL: Yeah.

6 THE COURT: Okay. Just want to be clear because it
7 doesn't look like there's any family of the respondent present
8 right now is that correct?

9 MS. RUSSELL: And we did try to -- we sent him a
10 notice, Your Honor, the notice returned back to our office. We
11 sent a courier out there yesterday, they -- the name on the
12 door did not match to the address that was given to us, but
13 that was the only address we had and.....

14 THE COURT: And this was for the mother?

15 MS. RUSSELL: Yeah, for -- I think the respondent used
16 to live there as well, so there's only one home that we know
17 of.

18 THE COURT: All right.

19 MS. RUSSELL: So we left the notice there and then Mr.
20 Bove left a message this morning as well with the time and the
21 date of the hearing too.

22 THE COURT: Okay. And the other question I had is if
23 by any chance you have a copy of the power of attorney.....

24 MS. RUSSELL: Yes, Your Honor, I do.

25 THE COURT:that's at issue and if I could get a

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1 copy of that.

2 (Whispered comment)

3 MS. RUSSELL: I also distributed some correspondence
4 that the mother has been sending to the hospital that cc'd Mr.
5 Bove on it to the parties so that if.....

6 THE COURT: All right. And everyone's received a copy
7 of that?

8 MR. SCHNEIDER: Well I.....

9 MS. RUSSELL: I think Mr. Schneider didn't but I didn't
10 know that he was going to be covering for Mrs. Dart (ph) today
11 so. I just saw it, I don't know where it is.

12 THE COURT: All right. Well you -- yeah, you can just
13 go ahead and look for that and provide it when you can find it.

14 MS. RUSSELL: All right.

15 THE COURT: And let me ask Ms. Perkins, does your --
16 have you had a chance to meet with your client and does he have
17 a position at this time?

18 MS. PERKINS: Your Honor, I was able to meet with him
19 last week in the hospital and I did attempt to talk with him
20 and he's in a -- he's in -- where he's at right now is he's not
21 able to finish sentences and he sometimes -- he couldn't -- he
22 couldn't really talk -- he couldn't really talk to me. So
23 today I'm asking to be converted to guardian ad litem and I
24 would say it's in his best interest to have OPA appointed as
25 guardian. I -- if -- for Your Honor's information I did talk

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1 to the social workers there, there was some disturbing things
2 that Bret's mother was doing to -- one to Bret and two talking
3 about having him leave the hospital and suicide, which there's
4 no way my client could form a thought to commit suicide at this
5 point. . I mean, he's -- we know he's --- he can say words and he
6 -- I think Mr. Bove was able in an hour to get some ideas from
7 him and communicate, but for me in the time I was there he
8 wasn't able to communicate and it's clear he didn't understand
9 the guardianship.

10 But there's -- so the concern is for what his mother
11 and father are doing or what they would do and that's why I'm
12 not saying they should be appointed his -- as his guardian
13 today, I'm saying OPA should be appointed as the guardian.
14 Also the hospital has limited their -- the mother -- the
15 family's visits to supervised visits and I think it's an hour a
16 day only, only.

17 UNIDENTIFIED SPEAKER: Uh-huh (affirmative).

18 MR. BOVE: Yes.

19 MS. PERKINS: Because of the anxiety they're causing
20 and the potential danger to Bret. So I am recommending that
21 OPA be appointed temporary guardian today.

22 THE COURT: All right. And do you -- I don't know if
23 you have the chance to look into this or maybe Ms. Brady-
24 Dragomir did, did you have a chance to determine whether he's
25 likely -- his condition's likely to improve, has this been an

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1 ongoing situation with him or is this.....

2 MS. PERKINS: I think what we're learning and Mr. Bove
3 has too is they don't know the cause of it. They don't -- and
4 so they -- and, you know, what I heard from the social workers
5 is it's -- that he'd had an MRI and it was clear. So you're
6 not talking about a stroke or, you know, they couldn't
7 pinpoint, and I think.....

8 THE COURT: And there's no history of mental illness?

9 MS. PERKINS: No.

10 MR. BOVE: Unh-unh (negative). No.

11 THE COURT: Okay.

12 MS. RUSSELL: And they don't -- I think what we assumed
13 -- what they're telling us or at least they told Ms. Brady-
14 Dragomir is that they think it's not really actually a mental
15 illness and they're planning to send him possibly to the
16 University of Washington Medical Center because they -- they
17 kind of exhausted the, you know, tests that they could do up
18 here. And that's another reason that we wanted to get a
19 temporary guardian so that if there's going to be any kind of a
20 change in where he's going to be getting treatment at that
21 decision needs to be made by somebody so.

22 THE COURT: All right. So, yeah, it doesn't sound like
23 at this time there was any ongoing medical situation prior to
24 what just transpired and it sounds like from what I'm seeing in
25 the petition and from what both parties are saying that the

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1 mother's actively interfering in what would be appropriate
2 medical treatment, and I do see a letter here from the social
3 worker, is this who you spoke to Ms. Perkins, Sarah Blanning
4 (ph)?

5 MS. PERKINS: I think there was two, yeah, the.....

6 THE COURT: The social worker?

7 MR. BOVE: Uh-huh (affirmative).

8 MS. RUSSELL: There was two.

9 THE COURT: Okay. It looks like there's Pete
10 Abraham.....

11 (Whispered comment)

12 MS. RUSSELL: Yeah.

13 THE COURT:and there's a resident there and a --
14 and then Sarah Blanning?

15 MS. PERKINS: Uh-huh (affirmative).

16 THE COURT: All right. And Ms. Brady-Dragomir, have
17 you had a chance to investigate?

18 MS. BRADY: I have, I did go to the hospital, I met
19 with Mr. Bove there. I haven't met with the family or spoke to
20 the family actually. I just got this case two days ago but I
21 did meet with him and I obviously did meet with the hospital
22 personnel and they are as mentioned trying to figure out what
23 this issue is, they're trying to tease out if it's a mental
24 illness. If it was that they are able to identify that it is a
25 mental illness then their plan would be to send him to API for

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1 treatment. But at this point in time they're thinking it's
2 probably not mental illness. They're also running whole
3 toxology screens and panels to try to figure out if he was
4 poisoned.

5 They did look at and they are continuing to look at
6 Munchausen by proxy disorder that I'm sure everybody's familiar
7 with. But they're kind of trying -- they're thinking that
8 they're going to rule that potentially out too because he's
9 been in a secure environment under supervised care and he still
10 continues to demonstrate the same level of cognition that he
11 has. So they really do not know. As mentioned they were
12 thinking about the University of Washington to try to figure
13 out what's going on here.

14 When I met with him he was ambulatory, he was able to
15 walk around, he's in good physical shape, he just is -- he's
16 not able to -- he's very -- and you can tell he gets very
17 frustrated when you talk to him because he like grasps, like he
18 leans toward you like he really tries to understand, and he'll
19 say one word and then it gets lost and he can't complete a
20 sentence and he can't nod yes or no, it doesn't seem like he's
21 tracking the conversation.

22 THE COURT: All right. So it is your recommendation at
23 this time that Office of Public Advocacy be appointed?

24 MS. BRADY: Yes, absolutely.

25 THE COURT: All right.

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1 MS. BRADY: And I would recommend that a temporary, you
2 know, because, you know, we could -- it gives us the
3 opportunity to tease this out a little bit more and talk to the
4 family and try to figure it out.

5 THE COURT: Yeah, and I was going to mention it looks
6 like it was filed on an expedited basis, but since we don't
7 know what's going on with the family and since there's this
8 power of attorney issue, I think it probably makes sense to do
9 it as a full temporary guardianship and conservatorship at this
10 time. We don't know anything about assets or anything like
11 that.....

12 MS. BRADY: No.....

13 THE COURT:I'm assuming right now. Or whether
14 he's going to need any kind of application for public
15 assistance.....

16 MS. BRADY: Correct.

17 THE COURT:or if he has resources to pay for
18 care. So, all right. Let me go ahead first, Ms. Perkins, I
19 forgot. I didn't address your issue. I'm going to go ahead and
20 convert your appointment to that of a guardian ad litem with
21 the understanding that if he does recover to the point where
22 he's able to communicate with you more meaningfully you can
23 resume acting as an attorney in that capacity. But for now it
24 sounds like he's not able to interact with you in any
25 meaningful way so we'll go ahead and switch that appointment to

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1 that of a GAL. And did you happen to find the power of
2 attorney?

3 MS. PERKINS: Yes, Your Honor, and I also have the
4 proposed order so.

5 THE COURT: Oh, okay. That's wonderful. So I just
6 want to take a look at the power of attorney and see what it
7 is.

8 MS. PERKINS: And I'm just going to give the acceptance
9 to Mr. Schneider (ph - low speaking).

10 MR. BOVE: And mom never did produce a -- the actual
11 original document.

12 MS. RUSSELL: Okay.

13 MR. BOVE: It's just the copy.

14 (Pause)

15 THE COURT: Okay. Is -- so there's a power of attorney
16 for health care, is there a -- do you know which page, is it
17 the second -- it must be this one. Okay, the pages are all
18 mixed up so. This looks like a duplicate page. All right.
19 And are these your copies or.....

20 MS. PERKINS: Yeah, that's -- but I can get another
21 copy from my client, Your Honor.

22 THE COURT: Okay. Because what I'm going to do is I'm
23 going to enter a temporary -- I'm going to recommend that a
24 temporary guardianship and conservatorship be put in place and
25 I'm going to suspend the power of attorney, I'm not going to

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1 terminate it at this time, but I'm going to suspend the
2 authority of the agent to make decisions under the power of
3 attorney pending, you know, further -- other further court
4 orders at the next hearing when we know more. I don't think
5 it's appropriate to terminate it since we don't have any of the
6 family members here to discuss the power of attorney and what's
7 going on. But it is a springing (ph) power of -- it looks like
8 it's a springing power of attorney for health care. So -- and
9 I'm not really clear, it looks like maybe somebody else filled
10 it out -- all out.....

11 MS. PERKINS: Yeah.

12 THE COURT:and he just signed it but I can't
13 really tell. So if you can get me -- you know, if you can get
14 the court a copy of this from the other parties.....

15 MS. PERKINS: Okay.

16 THE COURT:that would be great. And I'm going to
17 -- actually, you know what, I'm going to have the clerk make
18 copies so I can refer to it specifically in the order, unless
19 you have something in the order stating that it's suspended.

20 MS. PERKINS: No, Your Honor, I didn't make any.....

21 THE COURT: Okay.

22 MS. PERKINS: I can give you the order, I think
23 Mister.....

24 THE COURT: Okay. I'm just going to go ahead and write
25 then in there just to make it clear that the hospital doesn't

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1 have to try to honor the power of attorney or anything like
2 that. And then Mr. Schneider, you're willing to serve as the
3 guardian I assume?

4 MR. SCHNEIDER: Yes, yes our office is willing to
5 serve.

6 THE COURT: All right.

7 (Pause)

8 (Whispered comments)

9 THE COURT: I'm just going to write in here under
10 paragraph 2 the power of attorney currently -- any powers of
11 attorney currently in place are suspended at this time. Okay,
12 it looks like you already have the acceptance here and
13 everything else that we need to sign, so I'm going to go ahead
14 and make some findings. I'm going to find that the court has
15 jurisdiction, that venue is appropriate, that Mr. Bohn is in
16 need of the services of a temporary guardian and conservator at
17 this time to protect his -- both his health and financial
18 interests. That the parents who I believe -- he doesn't have
19 any children, he's not married, so the parents who are the
20 people that have priority to serve are not appropriate parties
21 to serve at this time due to the nature of the allegations and
22 therefore we're going to override the statutory priority and
23 appoint Office of Public Advocacy at this time as temporary
24 guardian and conservator.

25 And that we'll go ahead and schedule a status or -- a

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1 status hearing and what time frame do you think would be
2 appropriate, Ms. Russell, do you think.....

3 MS. RUSSELL: I would think the usual six months, Your
4 Honor.

5 THE COURT: Six months is.....

6 MS. RUSSELL: And if anything comes up we can always
7 request a hearing earlier.

8 THE COURT: All right.

9 MS. RUSSELL: Yeah.

10 THE COURT: So we'll go ahead and schedule a status
11 hearing in six months on a permanent guardian -- or we'll
12 schedule the permanent guardianship hearing, I guess not
13 instead of a status hearing, in six months and if something
14 changes the parties can come back to court, the parents can
15 come to court if they want to and explain their position if
16 they have a position. And otherwise -- and if -- if Mr. Bohn's
17 health situation changes and he's able to communicate with Ms.
18 Perkins more effectively about what he wants then that can be
19 expressed, but I do have concerns about the way the agent is
20 acting. And so -- and it sounds like counsel for -- or the GAL
21 at this point does too, so I think that needs to be carefully
22 considered if he gets better and can revoke the power of
23 attorney if he feels that that's appropriate, then that's
24 another option. But we'll just have to see how he does. And
25 then the court visitor will have a chance to look into

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1 everything and file her report and the temporary guardian can
2 hopefully try to figure out what's going on and if he can get
3 the help he needs.

4 So I'm going to go ahead and recommend entry of the
5 temporary guardianship and conservatorship orders and if
6 there's nothing else then that'll be the findings of the court
7 and we can be in recess. Is there anything else the parties
8 need to address?

9 MS. RUSSELL: Your Honor, I just wanted to ask how soon
10 do you think the orders will be able to make it?

11 THE COURT: I will go ahead and recommend them today
12 and it's assigned to Judge Marston, is it -- it sounds like
13 it's kind of a, you know, emergency situation so I'll go ahead
14 and have them walked up to chambers and see if we can get them
15 out as soon as we can. Is -- let me ask you, is the hospital
16 aware that this is happening and that.....

17 MS. RUSSELL: Yes, Your Honor, that's.....

18 THE COURT: Okay.

19 MS. RUSSELL:why we attached the letter and
20 they're just waiting on it so.....

21 THE COURT: Okay. So but.....

22 MS. RUSSELL: Because this is very unusual for them not
23 to comply with a durable power of attorney that's I think what
24 they were concerned about.

25 THE COURT: Yeah. Yeah, but it does sound, I mean,

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1 Munchausen, I don't know, that was -- occurred to me when I was
2 reading it but I -- that's just, you know,.....

3 MS. RUSSELL: Yeah.

4 THE COURT:speculation at this point but it
5 sounds like they have good reason to be worried about it. So
6 I'll go ahead and do my best to get it signed as soon as we
7 can. And do you want a call when they're done?

8 MS. RUSSELL: Ye -- that'll be fine, Your Honor.

9 THE COURT: All right.

10 MS. RUSSELL: And we can come and get it.

11 THE COURT: Okay. All right, that sounds good, then
12 that's what we'll do and we can be in recess at this time,
13 thanks.

14 THE CLERK: Court stands in recess.

15 11:51:07

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MOTION HEARING

BEFORE THE HONORABLE UNA S. GANDBHIR
Magistrate

Anchorage, Alaska
December 9, 2013
10:30 o'clock a.m.

APPEARANCES:

FOR THE STATE OF
ALASKA:

MS. NEVHIZ E. CALIK-RUSSELL
Assistant Attorney General
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Suite 200
Anchorage, Alaska 99501

FOR THE PETITIONER:

MS. ELIZABETH RUSSO
MS. MARY STARK
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MR. MARIO L. BIRD
MR. NICK LEWIS
Ross & Miner
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APPEARANCES (cont.):

FOR MR. BOHN:

MS. CAROLYN A. PERKINS
Office of Public Advocacy
900 West Fifth Avenue
Suite 525
Anchorage, Alaska 99501

FOR ADULT PROTECTIVE
SERVICES:

MR. TONY BOVE
Alaska Adult
Protective Services
550 West Eighth Avenue
Anchorage, Alaska 99501

COURT VISITOR:
(telephonically)

MS. COLLEEN BRADY-DRAGOMIR
Office Of Public Advocacy
900 West Fifth Avenue
Suite 525
Anchorage, Alaska 99501

P R O C E E D I N G S

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2 500

3 10:30:00

4 THE CLERK: Pardon?

5 THE COURT: Is there anyone on the phone?

6 THE CLERK: Colleen Brady-Dragomir.

7 THE CLERK: Oh, okay.

8 THE CLERK: Yes, I.....

9 THE COURT: Ms. Brady-Dragomir, are you there?

10 MS. BRADY-DRAGOMIR: Yes, Your Honor.

11 THE COURT: All right. Just making sure. All right.

12 We are on record. This is case number 13-2737 and I'm just
13 going to make sure I know and that everyone else knows who all
14 the parties are. I know there are several witnesses here and
15 we have a limited amount of time today so I'm going to kind of
16 outline what we're going to be addressing and see if the
17 parties have any input as to the best way to address those
18 because there are several motions pending, there were several
19 issues raised in those motions. So let me go through and just
20 make sure I know who's here. I see Ms. Calik-Russell is here
21 on behalf of the State and you, sir, are.....

22 MR. BOVE: Tony Bove for APS.

23 THE COURT: Okay. You're Mr. Bove from APS? Okay. I
24 don't think I've met you before and let me see.....

25 MR. BIRD: Judge, I'm Mr. Bird for Glenn Bohn and

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1 Lorraine Phillips and.....

2 THE COURT: All right.

3 MR. BIRD:Brianne Bohn and my clients are here and
4 this is Nick Lewis who's also an attorney at Ross and Miner.

5 THE COURT: Okay. And your clients are where?

6 MR. BIRD: Glenn Bohn, Lorraine Phillips.....

7 THE COURT: Hi.

8 MR. BIRD:and Brianne Bohn.

9 THE COURT: Okay. Thanks. And Ms. Brady-Dragomir, the
10 court visitor, on the phone and I see, Ms. Perkins, you're
11 stuck in the back. Do you have a chair?

12 MS. PERKINS: I don't have a chair, Your Honor, and I
13 would like these proceedings to be confidential for.....

14 THE COURT: Okay. I'm going to address that in a
15 minute.

16 MS. PERKINS: Okay.

17 THE COURT: So.....

18 MS. PERKINS: I do have a chair but I don't have a
19 table. It's just my.....

20 THE COURT: I understand. This is not the most
21 comfortable room to be in for proceedings like this. All
22 right. Is there anyone else who is a party or a purported
23 party to the case here? Oh, yes, and, of course, we have the
24 guardian. Sorry about that. Ms. Stark and Ms. Russo is here
25 from Office of Public Advocacy.

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1 So I am going to start with addressing Ms. Perkins'
2 concern that these proceedings are technically confidential
3 which means that parties who are not part of the case are not
4 allowed to be in the room unless there are -- unless there's
5 consent by all the parties involved. I understand there's a
6 number of witnesses. I take it that everybody on this side is
7 a witness and what I'm going to do is I'm going to ask that
8 those witnesses step out until we can address some of the
9 issues that are going on and see if we can narrow down what
10 we're actually going to be addressing today sort of on a
11 priority basis because, having reviewed the motions, I think
12 there are some things that are more pressing than others in
13 terms of issues. So -- and then once we determine that, you
14 can -- it is determined whether your witnesses are all here on,
15 you know, the same issue and how we can address that.

16 MR. BIRD: Yes, Your Honor.

17 THE COURT: So is that all right?

18 MR. BIRD: Yes, Your Honor, that's fine.

19 THE COURT: All right. So if I could ask you all just
20 to -- anyone who's a witness here to step out at this time and
21 I am going to actually discuss a couple of the motions that are
22 pending and I'm going to just let everybody go out that -- all
23 right. So I realize we have a lot of issues pending and my
24 intent was to treat this as a sort of status review hearing
25 because I'm not sure where things stand today with Bret and

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1 also as an evidentiary hearing to the extent that evidence
2 needs to be heard on any issues that haven't been resolved. We
3 basically have an -- we had an hour. I realize we started a
4 little late getting everyone settled so I'm willing to go a
5 little longer and -- but if the parties think that you need
6 more than two hours, we'll have to schedule this in front of
7 Judge Marston. I just want to let you know.

8 So let me just go through and outline based on my
9 review of the case what I think the issues are at this point
10 and make sure the parties are on board with that. One issue --
11 and I think this is resolved but I do want to just make it
12 clear is whether Bret's parents are parties to this and I
13 think, based on both Alaska Statutes and the fact that they are
14 -- they have filed their powers of attorney, I believe they are
15 parties and entitled to participate. And a corollary to that
16 is whether they should be given access to confidential records.
17 Obviously, the parties are entitled to whatever's in the court
18 file. Whether there's other confidential records that are in
19 dispute, I don't know and I haven't heard from the State other
20 than an opposition. I believe there was an opposition to
21 expedited consideration on the motion for that issue but I
22 haven't heard from the State on whether there's an actual
23 opposition to providing any other confidential records that are
24 sought.

25 The next issue, I believe, is who should be appointed

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1 as guardian and that's where there's a dispute about the power
2 of attorney and the need for the State to be the guardian
3 versus the parents. I do want to just point out that I review
4 -- you know, reviewing the power of attorney, that Mr. Bohn is
5 not -- he's nominated as the guardian, he's not appointed as
6 the guardian because a guardianship is a court appointment. So
7 your nomination in the paperwork does not mean that you are
8 automatically a court-appointed guardian. I just want to
9 clarify that. It's a nomination and, as such, it's entitled to
10 weight in the proceeding but a guardianship is technically a
11 court appointment. So I just want to make sure that
12 terminology is clear.

13 And then there's a question of whether the injunctive
14 relief should be granted as requested and I want to hear from
15 the parties on that and with regard to the administration of
16 psychotropic medication, I'm pretty familiar with the law there
17 and an understanding of that but I do want to hear from the
18 parties. And then the last issue that I just saw today unless
19 there's something new in these exhibits that were filed is
20 whether Providence should be joined as a party to the case and
21 that is something that needs to be addressed also.

22 What I'd like to start with is what Bret's current
23 condition is and whether anything has changed to the point
24 where he's able to participate meaningfully in this process in
25 which case I believe he has the absolute right to participate

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1 as long as he does have capacity. And at the last hearing,
2 things were pretty unclear about what was actually going on.
3 So I'd actually like to hear first from the court visitor on
4 that. So, Ms. Brady-Dragomir, do you have any -- do you want
5 to have -- give any update on that if you're aware and
6 then.....

7 MS. BRADY-DRAGOMIR: I'm sorry, Your Honor, I have no
8 update. I haven't been involved in this case except for in the
9 initial proceeding when we had that hearing.

10 THE COURT: Okay. Let me ask Ms. Perkins then if you've
11 had a chance to meet with your client because I know that you
12 were switched over to a GAL at the last proceeding. Has there
13 been any -- have you had a chance to meet with them again?

14 MS. PERKINS: Not prior to the service of all these
15 motions. I think that the -- adult protective services can
16 give us an update.....

17 THE COURT: Okay.

18 MS. PERKINS:but as far as not prior to the
19 service of all -- no, I met with my client prior to the
20 guardian -- may I approach, Your Honor?

21 THE COURT: Yeah, absolutely. I know this room is.....

22 MS. PERKINS: I met with my client prior to the
23 guardianship hearing and at this point, I don't have any new
24 information for the court and I don't have any information that
25 his condition has changed.

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1 THE COURT: All right. Thank you. Mr. Bove, do
2 you.....

3 MS. PERKINS: We hadn't seen Your Honor since here on
4 the 14th.....

5 THE COURT: All right.

6 MS. PERKINS:here.

7 THE COURT: Okay. And I know that the parents do have
8 some concerns about that.

9 MS. PERKINS: Your Honor, we have the temporary guardian
10 as well so.....

11 THE COURT: Right. So let me ask the guardian then.

12 MS. PERKINS: Yeah.

13 THE COURT: Is your client in the same position that he
14 was when you were appointed? Have things improved?

15 MS. STARK: Your Honor, they -- I think he's the same.
16 They haven't come out with a diagnosis. I did see him on
17 Saturday. There didn't seem to be any change in his condition,
18 just -- they just don't know what's wrong with him.

19 THE COURT: Okay. And Mister -- I apologize, I'm -- I
20 need to write names down or -- wait, I have them on this sheet
21 of paper here -- or I thought I did. Okay. I'm sorry, what
22 was your name again?

23 MR. BIRD: Mr. Bird.

24 THE COURT: Mr. Bird.

25 MR. BIRD: Sure, no problem.

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1 THE COURT: Let me -- I will remember that now.

2 MR. BIRD: Oh no, no problem, Your Honor.

3 THE COURT: Yeah. So -- okay. So what's your client's
4 position out there?

5 MR. BIRD: Well.....

6 THE COURT: I understand they have a position on all of
7 the issues I outlined but.....

8 MR. BIRD: You are exactly right. May I approach, Your
9 Honor?

10 THE COURT: Sure.

11 MR. BIRD: So, first of all, we see things exactly the
12 same as the court as far as the four discrete issues that are
13 before the court at this time which is no surprise because
14 we've moved the court on all of those issues.

15 As far as change in Bret's status, we certainly can
16 take testimony from the family regarding the change in status
17 as applied to Mr. Bohn. I think it might be the best use of
18 the court's time to particularly inquire into the visitation
19 and the fact that that's now been restricted. I just find it
20 overwhelming that nobody in this courtroom has visited this
21 young man since Providence totally restricted him from seeing
22 any visitors, not even the court visitor. That's just unheard
23 of. I -- I'm just -- I'm aghast and I think that if anything
24 comes out of this hearing, this court needs to deal with a
25 young man who has unilaterally been deprived of his family and

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1 friends, much less his guardian or court visitor but they can
2 speak to that and give you their explanations as to why they
3 have not been able to pay Mr. Bohn a visit to find out his
4 status since the last hearing.

5 As far as what this court wants to deal with today, I
6 think, as I said, the most important things on my client's list
7 is an injunction stopping psychotropic medication, reinstating
8 visitation privileges and making sure that Mr. Bohn is not
9 moved out of state either to John's Hopkins or to the Mayo
10 Clinic without an order from this court. My client's position
11 is that Providence is unilaterally using their powers of being
12 Bret's physicians to determine what the legal ramifications of
13 his treatment may be which includes the visitation from friends
14 and family and possibly now moving out of state. So I think
15 the court needs to hear testimony on that. We're ready to
16 provide testimony.

17 I would also like to bring to the court's attention
18 because Ms. Stark did not do so that I believe the State's
19 position regarding guardianship is that there is a duly-
20 executed power of attorney for health care decisions that this
21 court has a copy of. We have the original here and Ms. Russo
22 can speak to this if I speak inappropriately but my
23 understanding is their position is guardianship can go back to
24 the parents. That's where it was intended to be when Bret
25 executed the document on May 3rd, 2007. That's where it should

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1 have been when my clients gave that power of attorney to
2 Providence. You can take testimony from them on that. We've
3 got documented proof, certified mailings that went to
4 Providence showing that that power of attorney was in their
5 hands. We have documented proof that Mr. Bove who is here in
6 this courtroom received that power of attorney document and did
7 nothing with it except give it to this court without giving any
8 sort of hearing to my clients. That is just uncalled for. The
9 laws of the State of Alaska do not provide for this sort of
10 lack of notice, particularly with people who are on the top of
11 the list when it comes to guardianship preference. They were
12 named as the agent and the nominated guardian and they had no
13 notice of the hearing. So they can give testimony on that but
14 I think the court needs to be aware of the fact that the State
15 is willing now to yield that guardianship back to where it
16 should have been in the first place where Providence should
17 have honored it.

18 And that brings us to the last portion of our motions
19 before this court. The joinder of Providence may or may not be
20 necessary depending on what Your Honor does and what Judge
21 Marston does with your recommendations. If guardianship is
22 returned to the parents, my guess is that a court order to that
23 effect will nullify any of our concerns that the joinder of
24 Providence is necessary to this case but that's all up to the
25 court. And I apologize, I'm a little flushed but I just feel

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1 that justice needs to be done in this case and I am grateful to
2 this court for granting us a hearing that should have occurred
3 three weeks ago. Thank you.

4 THE COURT: All right. With regard to your statement
5 about people visiting, one of the findings that was made at
6 that initial hearing was that this was a temporary guardianship
7 where a status hearing would be scheduled in six months. And
8 so there was -- you know, I don't believe that anybody other
9 than the guardian necessarily felt that there was a need to see
10 him. I don't know, I was actually gone in the week that a lot
11 of this paperwork was filed and it's kind of a flurry, as you
12 know. And so let me ask Ms. Russo if what Mr. Bird is
13 representing is the case because that would either lead me to
14 believe that a lot of these issues would be resolved or that
15 mediation may be an appropriate way to resolve it.

16 MS. RUSSO: Your Honor, I think it -- I know that Mr.
17 Bird hasn't done so many guardianship proceedings so our
18 position, as the State, is basically different than APS's
19 position as the State and different than Mr. Bird's attorn --
20 or GAL's position as his state-appointed guardian ad litem.

21 THE COURT: Oh, understood.

22 MS. RUSSO: The public guardian's position in this case
23 at the present time is that it appears that there is somebody
24 -- there have always been the parents but there is also Mr.
25 Bird -- or, excuse me, Mr. Bohn did nominate somebody to be his

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1 court-appointed guardian. He nominated his father. The court
2 can hear evidence on that and go with a different priority but
3 if there's now new evidence that the family has presented that
4 shows this nomination not just a parental family preference but
5 that Mr. Bohn did make this nomination, the court needs to
6 consider that evidence and needs to consider the evidence of
7 the petitioner in this case if they're asking for somebody
8 different because the court can certainly always make -- excuse
9 me, court can always make a finding based on the best interest
10 of the individual. That is the court's responsibility in these
11 proceedings. So.....

12 THE COURT: Okay.

13 MS. RUSSO:that's the public guardian's position.
14 We're not -- that's what it is.

15 THE COURT: All right.

16 MS. RUSSO: Okay?

17 THE COURT: I think I understand that and, yes, and
18 you're correct, the court -- and that is why I found that the
19 parents were parties to this case, because they're the parents.
20 They're listed in the priorities scheme under the statute and
21 they have a power of attorney that would give them priority
22 although the court is free to override that if evidence is
23 presented that a different appointment would be in the best
24 interest of the ward. And at the emergency hearing, that
25 evidence was presented and I found it to be clear and

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1 convincing and compelling given what I was -- what I heard at
2 that time. So -- and, yeah, Mr. Bird, yeah, it is a little
3 confusing because there is a state-appointed guardian. There
4 is also a -- an Office of Public Advocacy attorney appointed
5 separately to represent Mr. Bohn as the ward and then there is
6 the State of Alaska Adult Protective Services and, technically,
7 those are three separate -- though the State is not one -- of
8 one clear entity and position. And, having heard Ms. Russo's
9 position and the position of the guardian, I guess the next
10 question, Ms. Calik-Russell, is what Adult Protective Services'
11 position is at this time.

12 MS. CALIK-RUSSELL: Your Honor, we think -- first of
13 all, we're not ready to proceed today. I didn't know that this
14 was going to be a full-blown evidentiary hearing. I didn't
15 actually receive the exhibits until I walked in this
16 morning.....

17 MS. RUSSO: No, I did not.....

18 MS. CALIK-RUSSELL:and then I -- you know, I have
19 no witness lists from the other side and I think this hearing
20 was set by a Superior Court Judge basically calling our office
21 through the clerk and they just set it on. So if there's going
22 to be a hearing, we would like it to be a longer hearing and
23 for us to have some time to prepare for it. It's -- I don't
24 know how many witnesses they're going to call. I'm assuming
25 we're going to have a couple witnesses at least from the

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1 hospital for our side so I don't think that we're going to -- I
2 don't think that we can be done in two hours to let you know --
3 because you were saying that if this needs to be more than two
4 hours, we need to be in front of Superior Court. That might be
5 the case.

6 In terms of the -- we are of the opinion that -- we
7 will be contesting the appointment of the parents at this
8 point. We are not -- and I think we agree with the Office of
9 Public Advocacy that if needs be, the court has to make some
10 findings if -- since they have the priority under statute but
11 we don't believe that their appointment will be in the best
12 interest of Mr. Bohn at this point.

13 In terms of the injunctive relief, Your Honor, and the
14 psychotropic medications, Office -- the Adult Protective
15 Services sought the appointment of a guardian and we asked for
16 the Office of Public Advocacy to be appointed. We did not
17 really -- we do not have any authority in terms of the
18 treatment plan for Mr. Bohn and we are not in the -- we have no
19 authority, actually, to consent in terms of the visitations or
20 what medications he's going to be on or anything of those
21 issues. So to the extent that we need to take a position on
22 that, I don't think we can.

23 The other thing is that in terms of Providence joining
24 this case, I think that motion -- we will have some -- a little
25 bit of a -- or a limited opposition in that because I think

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1 there's a misunderstanding as to what Providence is doing as
2 maybe State mandated or there's a State relationship with
3 Providence that's taken away and we would have to provide
4 evidence to that because we don't really have a relationship
5 with Providence. Providence is a mandatory reporter. They
6 report to Adult Protective Services and then -- and that's how
7 we take the actions. So to that extent, we wouldn't really
8 have a position, I guess, on that part.

9 We also have numerous affidavits filed and I think now
10 there's two CD's filed with the court in terms of what actions
11 Mr. Bove or Adult Protective Services have taken. We would
12 definitely need time to look into those and file affidavits and
13 provide other evidence as well into what we believe has
14 happened in terms of the facts.

15 So I don't know if that answers all your questions.

16 THE COURT: I think it does. Let me just go through and
17 make sure that I.....

18 MS. CALIK-RUSSELL: Sure.

19 THE COURT:have my.....

20 MS. CALIK-RUSSELL: And, Your Honor, I'm sorry, we also
21 have not had a court visitor report in this case.

22 THE COURT: Oh, do -- yes, no, that is correct and I
23 would need to hear from the court visitor in more detail
24 because even at the last hearing, there was not time for her to
25 have filed a full report and we were not sure how things would

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1 progress with -- if Mr. Bohn was just temporarily incapacitated
2 or how things were going to go. Do you have a position on the
3 access to records?

4 MS. RUSSO: If they're a party, Your Honor, they are --
5 they have access to the court records.

6 THE COURT: The court records, yes, but I believe you're
7 asking for medical records, right?

8 MS. RUSSO: They have not -- I don't think anybody has
9 made a request APS records in this case so we will look into
10 it. I don't know what they're looking for in terms of the APS
11 records so.....

12 THE COURT: All right.

13 MS. RUSSO:but we can talk to Mr. Bird and
14 just.....

15 THE COURT: All right.

16 MS. RUSSO: Yeah.

17 THE COURT: Ms. Perkins, did you.....

18 MS. PERKINS: Yes, Your Honor, I'd like to be heard on
19 the issues too.

20 THE COURT: Yes, absolutely.

21 MS. PERKINS: Mr. Bird had accused Ms. -- the court
22 visitor and I not -- of not doing our job and I think there's a
23 fundamental understanding of what my job is and what the court
24 visitor is and your -- you explained it to him but I want to go
25 through a couple of the issues.

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1 So my job was to represent what Mr. Bohn wanted, if he
2 wanted a guardianship. If he didn't understand guardianship
3 proceedings, I was to speak on his behalf. I agreed with Ms.
4 Russell at the hearing that his parents were not the
5 appropriate guardians at the time because the hospital had very
6 serious concerns about their conduct, especially the mother's
7 conduct in the hospital. They are preferred. I mean, you'd
8 rather have the family involved with him but at this stage,
9 nothing has changed to indicate that it should be different and
10 if Your Honor's going to hold a hearing on that, I'd like to be
11 able to present evidence as well including my client. There
12 may be a way I can get a video conferencing in because I think
13 some of the issues too are what the -- whether he's communicat
14 -- my client's communicating to them something different than
15 he's communicating to us. In fact, he's not communicating to
16 us and so I think, Your Honor, if you're going to make a
17 decision on who should be his guardian, needs to see my client
18 and if we can't physically get him here, then we'll try with
19 video conferencing.

20 So my -- that was my job. Then we got this flurry of
21 motions and stuff and my job would be to see my client prior to
22 a hearing set on who's going to be the guardian. Okay. So the
23 visitation privileges has no business being in a guardianship
24 hearing. We're only here for the guardianship. This is a
25 guardianship case, who should be Bret Bohn's guardian. So when

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1 Mr. Bird's asking for Nevis, us, Your Honor to allow visits at
2 Providence Hospital, Providence Hospital's not a party and
3 Providence Hospital is not here and should not -- it's not even
4 an issue for guardianship. That's something that they need to
5 take up with Providence.

6 Sorry, I'm getting over a cold. I do believe they
7 should be parties and should get all the information that we
8 have and, ideally, the family would be involved in the
9 guardianship. As far as -- but visitation, there is a great
10 concern -- so now we have the State as guardian -- as to their
11 not wanting Mr. Bohn to go out of state. The reason the
12 hospital wants him to go out of state is because they don't
13 know what's wrong with him so they want him to go to a better
14 hospital, a more -- you know, to do even more tests to figure
15 out what's wrong with him and so I am concerned that they're
16 asking you to enjoin the hospital to stop him from going --
17 from them taking him out of state but, again, not an issue for
18 the guardianship unless Your Honor changes who the guardian is.
19 But right now, the decision would be with the Office of Public
20 Advocacy and I don't think that we've had enough time to
21 prepare or, you know, I don't think that decision should be
22 changed today. And I am greatly concerned about their not
23 wanting him to go out of state. I mean, that -- because we
24 know, all of us living in Anchorage, that sometimes that has to
25 happen for better hospitals.

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1 The other issue, I think, was so Your Honor -- oh,
2 joining Providence as a party. No, this is a guardianship
3 case. Providence -- they need to sue Providence separately if
4 they -- so Providence has limited their visitation out of
5 concern for Mr. Bohn. Is that right or wrong? That needs to
6 be in a -- their lawsuit against Providence, not in our
7 guardianship case. The only issue before the court would be a
8 review hearing as to who should be the guardian and they could
9 present on what witnesses -- we can present witnesses. At the
10 first guardianship hearing, there was enough evidence to
11 appoint OPA and I don't think that should be changed today. I
12 certainly would like to prepare for a bigger hearing as to who
13 should change and, ideally, it would be parents but right now,
14 we're dealing with the hospital who believes that they are a
15 concern to Bret. But Providence should not be joined. They
16 have nothing to do with the guardianship case. The parties to
17 the guardianship case are the individuals sitting here, OPA,
18 Nevis and the potential parents and family members. It has
19 nothing to do with Providence Hospital. Their injunctive relie
20 -- whatever they're seeking from Providence needs to be filed
21 in a separate lawsuit outside of the guardianship proceedings.

22 And on behalf of my client, I can't change my position
23 today because I still think he can't communicate although
24 they're saying they've got -- I think they have evidence that
25 they have some video that he is but I'm not sure -- I -- we

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1 need to have him come testify for the court or appear by video
2 conference before any decision about changing guardianship is
3 made.

4 THE COURT: All right. Thank you, Ms. Perkins.

5 MR. BIRD: May I respond to that?

6 THE COURT: Yes, you can, Mr. Bird. And I do -- oh, no,
7 go ahead and then I'll ask you my question.

8 MR. BIRD: I'm sorry. Well, just on the issue that Ms.
9 Perkins touched on that this court doesn't have or shouldn't
10 maybe draw in Providence, two points on that. Number one,
11 obviously, everybody is in the dark about what in the world is
12 going on with Mr. Bohn. I've heard from OPA and the guardian
13 and Ms. Perkins who represents -- forgive me, Ms. Perkins, the
14 ward, right?

15 MS. PERKINS: Yeah.

16 MR. BIRD: All of them don't have a clear idea of what
17 Providence is doing as far as restricting visitation. I've got
18 evidence that that visitation has been completely obliterated.
19 This young man is now no longer allowed to see any friends or
20 family and if we have the entire panoply of State participants
21 that don't have a clear idea and are saying Providence knows,
22 we don't but then doesn't -- they don't want to bring
23 Providence in, that just doesn't seem to make sense to me.
24 Who's going to find out what's going on with the kid?

25 The second issue is -- sorry, Your Honor.

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1 THE COURT: No, it sounds like at least the State --
2 well, not -- by the State, I mean Adult Protective Services is
3 intending to call witnesses from Providence to testify in that
4 regard and I think that would probably be the most helpful. I
5 think there's no doubt that having witnesses from Providence
6 would be helpful. Whether the -- generally, the court's
7 position is not to micro-manage what's going on with the
8 guardian although, you know, limited guardianships or sort of
9 specific appointments to the guardian for a specific purpose do
10 happen but, for the most part, it makes -- it doesn't make
11 sense to limit a guardianship when you don't know what's going
12 on. However, I do believe it would be helpful to hear from
13 Providence. I don't know that that means that joining them as
14 a party is necessary and it sounds like that could happen.

15 MR. BIRD: Can I address that, Your Honor?

16 THE COURT: Yes, you can.

17 MR. BIRD: So -- and the second point I was going to
18 make was under the state guardianship statutes -- this is
19 13.52.140 -- the -- this court has equitable powers available
20 to it and so that is why we pled that in our injunction.
21 That's why we're pleading that here today. This is a case that
22 is, unfortunately, defying most cookie cutter guardianship
23 cases, from what I can tell, and, in large part, it's because
24 there's a valid, executed power of attorney for health
25 decisions that has been ignored or who knows what to do with it

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1 at this point. I know that this court has suspended it but my
2 clients weren't heard on that.

3 And I'd like to conclude by saying about the hearing
4 concerns that I think all of the State attorneys have brought
5 up. Yes, there have been a flurry of motions and, yes, in any
6 other circumstance, I would be prepared to concede and go to
7 bat for them. They need the notice. Not in this circumstance.
8 My clients didn't have the notice. Because my clients didn't
9 have the notice, that power of attorney was deprived from them.
10 They were not able to come in and make their case to you, Your
11 Honor, of why they were fit to be and continue to be fit to be
12 Mr. Bohn's guardian and his attorney- in-fact for health care
13 decisions. Because there is a deprivation of due process to
14 begin with, I cannot agree to what Ms. Calik-Russell and what
15 Ms. Perkins say, that they need more time. Time is of the
16 essence to this whole thing. Mr. Bohn has not had visitors for
17 almost a week now. We don't have any clear knowledge of what
18 sort of medication is being given to him. My clients are ready
19 to testify that that medication goes right to the heart of what
20 Article I, Section 22, of our State Constitution says, the
21 right to privacy entitles any person in this state to a
22 hearing, to notice of that hearing, to be able to review
23 medical records and then the burden on the State is clear and
24 convincing evidence that psychotropic medication is the only
25 available route and there is no less intrusive alternative.

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1 That simply hasn't happened here.

2 THE COURT: All right. Let me -- I just want to address
3 one issue there because that is an issue that I reviewed fairly
4 thoroughly. In a -- and I'm familiar with the cases you've
5 cited, *Bigley* and the other cases that are on point with regard
6 to psychotropic medication. The difference there that I would
7 point out is that those cases apply in a civil commitment
8 proceeding where somebody has been involuntarily committed and
9 I realize that the family may feel like that is essentially
10 what's going on here but those cases apply to a situation where
11 a court has ordered that somebody be civilly committed to a
12 mental health facility and at that point, the guardian no
13 longer has the authority to make a decision regarding
14 psychotropic medication because the psychotropic -- the forced
15 medication has to be through a petition to the court and a
16 court order.

17 However, we're not in the position of a commitment
18 proceeding and, under those circumstances, the guardian, like
19 the power of attorney would have if they were the power of
20 attorney, does have the authority to consent or withhold
21 consent to medication including psychotropic medication. And
22 it sounds like your clients are asserting that they would have
23 the right to make that decision as well if they were in the
24 position of guardian or power of attorney. So those -- I would
25 distinguish those cases as applying to civil commitment

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1 proceedings but I understand the concern. I do -- let me ask
2 the parties because there's just not any possibility that we're
3 going to get through witnesses and I don't know what the
4 witnesses are going to be addressing. I have not had a chance
5 to look at these exhibits. The Clerk, Madam Clerk has
6 contacted Judge Marston's chambers and -- or his judicial
7 assistant and we can have a hearing in front of him -- or you
8 all can have a hearing in front of him on the 13th at 8:30 if
9 -- I don't know if that's enough time. I don't know how much
10 time is needed but we can get a hearing in front of Judge
11 Marston. I think this is probably going to take a lot more
12 than two hours.

13 MS. PERKINS: And I have some information that would, I
14 think, help the parents and make them feel -- they are planning
15 on stopping the psychotropic medications. They're tech -- this
16 is what I've heard from the.....

17 MS. STARK: No, I -- Your Honor, I can.....

18 THE COURT: Go ahead, Ms. Stark, why don't you just come
19 up?

20 MS. STARK: I can address the medications.

21 THE COURT: All right. And, you know, I think -- I
22 don't know what, if any, communication's been going on but that
23 may be helpful as well. If we need to do it here, we can do it
24 here so if you want to go ahead and address that?

25 MS. STARK: Your Honor, I did speak to Mr. Bohn on the

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1 telephone I believe on Friday. The medication, the Risperdal,
2 was being tapered off at 0.2 milligrams twice a day and he was
3 on Melatonin for sleeping, three to six milligrams in the p.m.
4 and those are the only two medications that he is currently
5 taking at this point. And their plan is to taper him off so
6 he's not really on any psychotropics. They're taking him down
7 off of it.

8 THE COURT: All right.

9 MS. STARK: And I have informed Mr. Bohn of that on the
10 phone, given that information and.....

11 THE COURT: All right.

12 MS. STARK:they continue to test him because they
13 don't know. They're trying to figure things out so they're
14 still working on -- the Melatonin they'll continue to give him
15 because he's not sleeping but he is being informed and asked if
16 he wants to take the medications. He's being told that what
17 he's getting with the dosages and he is consenting. So.....

18 THE COURT: All right. Let me go back to the question I
19 asked initially. How much time do the parties thing they would
20 need? I saw you had about eight witnesses here, is that right?

21 MR. BIRD: Yes, Your Honor.

22 THE COURT: And that doesn't include your clients who
23 I'm assuming will want to testify. I believe the State has --
24 will have witnesses as well and so it seems to me that this may
25 be a full day hearing. By a full day, I mean two four-hour

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1 blocks unless you all think you could get done sooner.

2 MS. STARK: Did you have a date? Did.....

3 THE COURT: Well, Judge Marston has the 13th available
4 from 8:30 to 12:00. I'm not sure that's enough time for
5 everybody to get everything that they need but that's a -- you
6 know, since I agree that time is of the essence on some of
7 these issues, I think.....

8 MS. PERKINS: Your Honor, I'm actually going to be on
9 medical leave so -- from the 11th through the 13th and possibly
10 the 16th as well so that won't work for me.

11 THE COURT: Okay. We can see what the next available
12 dates are.

13 MS. PERKINS: And I don't think anybody else really can
14 cover this case for me from my office.

15 THE COURT: No, I un -- okay. And that may be too short
16 a time frame if we need more than one day. So do you have an
17 estimate of how long you think your witnesses will take and
18 what you're going to address? And the other thing I think
19 would be extremely helpful is if Ms. Perkins is able to figure
20 out a way to have her client participate if that's possible,
21 video conferencing, and it -- you know, if we're not in this
22 room, other courtrooms might be better equipped to have that
23 kind of participation and I think that would be really key
24 because he's obviously the reason that this proceeding is
25 occurring. So do you have.....

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1 MR. BIRD: You want me to address that?

2 THE COURT: Yeah, if you would.

3 MR. BIRD: Okay. So I would simply say that pending
4 whether or not they -- I don't know who would have discretion
5 among our three state entities to concede that we can look at
6 the medical records to have our own expert look at the medical
7 records but if they were to concede that, that would certainly
8 allow us to be better prepared for any hearing that we would be
9 addressing, both the dosage and the course of psychotropic
10 medication and also the reasonableness of the parents in
11 objecting to it. I think probably everybody in this room would
12 agree that my clients are not experts when it comes to
13 medication.

14 THE COURT: I don't mean to cut you off but I -- I'm
15 just -- I don't think there is any objection. Let me just ask
16 both Ms. Russo and Ms. Calik-Russell.

17 MS. PERKINS: We just got medical records from
18 Providence. We could give it to Mr. Bird or we can talk to
19 Providence and have -- deliver these for them to receive so
20 that's.....

21 THE COURT: All right. I don't think there's any
22 objection.....

23 MR. BIRD: Okay.

24 THE COURT:and I would be inclined to rule that
25 way if I were considering it but since the parties are agreeing

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1 to that, I think the parents have a right to review that and
2 look at it.

3 MS. PERKINS: And I'd just ask all parties get a copy of
4 these so.....

5 UNKNOWN: Yes, Your Honor, whatever is least.....

6 THE COURT: Yeah, including the court visitor. Ms. --
7 oh, gosh, I'm blanking out. There's so many people here.

8 MR. BIRD: Ms. Brady-Dragomir?

9 THE COURT: Ms. Brady-Dragomir. Sorry about that. Do
10 you want -- we're going to go ahead and have you served with a
11 copy of the records. Is there any -- what -- let me ask you
12 what time frame -- are you out of town, Ms. Brady-Dragomir?

13 MS. BRADY-DRAGOMIR: No, I am covering, as you know,
14 probably for the entire month of December API.

15 THE COURT: Right.

16 MS. BRADY-DRAGOMIR: So I am not available to just come
17 on quick notice to hearings, unfortunately.

18 THE COURT: Understood. Are you -- okay. So because
19 they -- well, generally, since that's in the afternoon. Are
20 you available mornings for a hearing with notice?

21 MS. BRADY-DRAGOMIR: With notice.

22 THE COURT: Okay. And would you be able to get a court
23 -- some type of a report into the court?

24 MS. BRADY-DRAGOMIR: Yeah, but I have 50 reports due the
25 month of December and I also have 30 due in January so it

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1 depends on how soon we need that report but I would do my best.

2 THE COURT: Okay. Well, I think if Judge Marston were
3 -- because he has not been following -- you know, I mean,
4 it.....

5 MS. BRADY-DRAGOMIR: But the one thing I want to be
6 really clear on is that I am not a medical expert and if it's
7 about, you know, a debate of medications, that would not be an
8 appropriate area for me to explore.

9 THE COURT: No, and that's not what I would need a
10 report on because we'll have medical records and ex -- and
11 witnesses testifying as to that but a report on the status of
12 things generally so that.....

13 MS. BRADY-DRAGOMIR: Yes.

14 THE COURT:because, as you know, you know, the
15 judicial officers rely on that just for a summary of the
16 proceedings and that may be helpful to Judge Marston in this
17 case.

18 MS. BRADY-DRAGOMIR: Yes, absolutely. It's no problem
19 giving an update to the court.

20 THE COURT: All right. And then these -- the exhibits
21 that you filed is -- I have not had a chance to go over them.
22 It looks like some of them are things that were filed but some
23 are not and so have all the parties received that -- those
24 exhibits? Okay. So those are not being accepted into evidence
25 at this time but I'm assuming you'll be presenting them at the

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1 hearing and, Ms. Calik-Russell, do you have any idea how much
2 time you would expect to take?

3 MS. CALIK-RUSSELL: Yes, Your Honor, I actually would
4 like to have some type of a schedule or something to respond to
5 these motions because there's a bunch of motions, you know,
6 with a motion for expedited considerations so I kind of want to
7 have some kind of a deadlines on those.....

8 THE COURT: All right. Well, let's go through this.

9 MS. CALIK-RUSSELL:and then a witnesses deadline
10 and the exhibit list deadline. I don't know -- for all of us
11 and then maybe we can give a deadline to Ms. Brady-Dragomir in
12 terms of her report and also I kind of want some -- to set some
13 parameters as to what the APS, as the petitioner, has to prove
14 in this case are we have to prove incapacity for the long-term
15 guardianship and also we have to prove, you know, our position
16 is that the parents are not in the be -- their appointment is
17 not in the best interest of the client. To the extent that the
18 psychotropic medications and the consent issue, I don't know
19 how deep it's going to be getting into, Your Honor, you know,
20 in terms of like a -- because the civil commitment statutes now
21 are being referenced. So I just want to make sure that the
22 case is just limited to the guardianship statutes and those
23 that are burdens. That's what I wanted to say.

24 THE COURT: Right. Let me find out. I think before I
25 can give you any deadlines.....

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1 MS. CALIK-RUSSELL: Sure.

2 THE COURT:I need to find out when the hearing --
3 when we can have the hearing and let's just go through the
4 outstanding motions. There's a motion for the preliminary
5 injunction. There was a -- kind of a motion to address the
6 issue of whether the parents were parties. I think we've
7 addressed that. We've addressed the motion for disclosure of
8 confidential records. Essentially, the parties are agreeing
9 that those can be exchanged. Is that correct?

10 MR. BIRD: Yes, Your Honor, for most.....

11 THE COURT: The -- because that was your motion, the
12 motion for expedited consideration of the records. So,
13 effectively, the outstanding motions would be for the
14 preliminary injunction and then there is, of course, the issue
15 of the parents having priority as guardian and the evidence
16 that you would be presenting in opposition.

17 MS. CALIK-RUSSELL: There's also the motion for joinder,
18 Your Honor.

19 THE COURT: Oh, and the motion for joinder and are you
20 going to be presenting evidence on that or is that.....

21 MR. BIRD: For joinder, Your Honor?

22 THE COURT: Yes.

23 MR. BIRD: Well, again, I think we're at a point where
24 everybody wants to know what Providence is thinking and doing
25 with Mr. Bohn and nobody knows without somebody from Providence

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1 being here. I've heard that the State is -- excuse me, APS is
2 going to call and Ms. Perkins will also call Providence
3 employees as witnesses but one of the reasons that I would like
4 from this order a court -- not only for the injunction but even
5 for the medical records is that my clients have not been able
6 to get medical records even upon producing the power of
7 attorney before it was suspended. That's -- that was part of
8 our exhibits for today. We need a court order because, for
9 whatever reason, Providence is not willing to give us the
10 records.

11 THE COURT: All right. I am -- let me just take a look
12 at your order and how it was worded. And I am willing.....

13 MS. RUSSO: Your.....

14 THE COURT: Yeah.

15 MS. RUSSO: I would -- I mean, the guardian can get the
16 records and we've agreed that the guardian will give them the
17 records. Providence was never served with the motion for
18 joinder at Providence and I don't think that you're.....

19 THE COURT: I think that just -- yeah, that was just
20 filed today, right? So.....

21 MS. PERKINS: No.

22 MS. RUSSO: No, it was filed last week.....

23 THE COURT: Oh, was it? Yeah, I just got it today.

24 MS. RUSSO: And I don't think you're -- I don't think
25 this court has any authority over Providence Hospital, what

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1 they're asking of Providence. What we have auth -- what you
2 have authority of is we can -- whatever records that the
3 guardian gets goes to all the parties and we're all agreeing to
4 that but.....

5 THE COURT: Well, right, and I think that's part of the
6 discovery, the exhibit lists.

7 MS. RUSSO: But what counsel has asked for Your Honor
8 can't issue an order to Providence. I mean, this is a
9 guardianship case regarding who should be the guardian and is
10 my client incapacitated. It's not a case -- they -- the -- I
11 hear their -- and it's really sad that they have been
12 completely denied visits but I think they need to go into a
13 different court and file a civil lawsuit against Providence to
14 allow them to have visits. That's a whole different proceeding
15 and I think they can seek injunctive re -- or they could seek
16 emergency relief in that civil court but it doesn't have to do
17 with our guardianship case.

18 THE COURT: No, I think that's correct. I believe that
19 there's been an agreement with the parties and there should be
20 an exchange of any documents that are going to be used in the
21 proceeding.

22 MS. RUSSO: Right.

23 THE COURT: So I don't know that there needs to be
24 injunctive relief with regard to that and I don't know that
25 that's -- that this court can compel Providence to -- if it --

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1 it doesn't sound like it's the guardian saying I'm not allowing
2 visits at this point, is that correct? It's Providence, right?

3 MR. BOVE: Yes, Your Honor, it's Providence.

4 THE COURT: So the guardian is not -- I mean, if it were
5 the guardian doing that, I could enjoin the guardian from doing
6 that but it doesn't sound like that's the situation.

7 MR. BIRD: And I think Your Honor hits right on the
8 nail -- the nail on the head as to why we want to join
9 Providence to this and I respectfully differ with Ms. Perkins.
10 I think they are -- they can be joined under the civil rules
11 and under the equitable relief contemplated by that particular
12 provision in the guardianship statutes.

13 THE COURT: Well, given that it sounds like APS is
14 calling them as a witness, I think Judge Marston can decide at
15 that, based on what they say, whether it makes sense to bring
16 them into the proceeding in some way, shape or form but at this
17 time, I think we need to probably hear from them before and it
18 sounds like they'll be called as witnesses. So somebody from
19 there and we can find out what the position is on why they are
20 taking the actions that they're taking. So at this time, I'm
21 not going to make a finding on that.....

22 MR. BIRD: Okay.

23 THE COURT:but there is a -- so there's -- the
24 next available date is the 19th at from 8:30 to 1:30 in front
25 of Judge Marston.

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1 MR. BIRD: Excuse me, Your Honor, did you rule on the
2 injunction or no?

3 THE COURT: I am going to -- well, I need to -- I
4 haven't had a chance to revisit it in light of what we talked
5 about here because I think your injunctive -- your motion
6 included both -- included some requests, the -- you had a
7 motion for a preliminary injunction regarding the -- stopping
8 the administration of psychotropic medication, is that right?
9 Is that the one you're talking about?

10 MR. BIRD: Yes.

11 THE COURT: Okay. And then are you talking separately
12 about.....

13 MR. BIRD: We moved for, I believe, four provisions of
14 relief, the stopping of the psychotropic medication, the
15 reinstatement of visitation privileges, an order forbidding Mr.
16 Bohn to be moved out of state without a court order and the
17 restoration of the guardianship to my clients. I think what
18 I'm hearing from the court is that that guardianship issue will
19 be dealt with at the hearing but my question to the court is
20 whether you will be ruling on the injunctive relief today
21 because if that relief is not granted, I can -- my guess is my
22 clients will want to file an appeal for -- a petition for
23 review and ask for a stay of any sort of administration of
24 psychotropic medication until they have a chance to review the
25 case, until hearing occurs and there's evidence taken because

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1 we have evidence that he continues to receive medication. And
2 I understand we don't have time to see it today but I've pled
3 that and that's what my clients want the court to address, I
4 think, more than anything else.

5 THE COURT: All right. As far as moving Mr. Bohn
6 before -- let me ask you if there's any plan to move him
7 before this hearing because I do believe he has the right to be
8 at the hearing and if he can be, we'd like to -- I think it
9 makes sense to have him at the hearing.

10 MS. STARK: There's no plan, Your Honor.....

11 THE COURT: All right.

12 MS. STARK:to move him immediately. If
13 contemplated, the consulting with Duke and John's Hopkins
14 trying to determine -- they will accept him not -- I -- they
15 didn't tell me that they will accept him but removing him, they
16 need to inform me when they plan to move him and they have not
17 informed me.

18 THE COURT: All right. So what I am -- based on the --
19 based on having heard all the evidence but also recognizing
20 that there's going to be a hearing, hopefully, very shortly
21 before Judge Marston, what I'm inclined to do is deny the
22 motion for injunctive relief but do a separate recommendation
23 that -- based on Mr. Bohn not being moved prior to that
24 hearing, that -- recommending that he not be flown out of state
25 prior to an evidentiary hearing on that issue of -- on all the

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1 issues that we're discussing, who should be the guardian, what
2 should be his -- you know, what should be the plan of care with
3 regard to psychotropic medication which, as I stated, I believe
4 the guardian does have the discretion to address. But it
5 sounds like that issue is not as pressing as it may have been
6 when these motions were filed because he's being taken off
7 those medications. And so I'm going to deny this motion for
8 injunctive -- for the preliminary injunction and do a separate
9 recommendation to have -- send up to the judge on those
10 particular issues.

11 MR. BIRD: Will Your Honor have that out by the end of
12 the day or.....

13 THE COURT: I will make every attempt to do so.

14 MR. BIRD: Okay.

15 THE COURT: I have -- yeah, I -- hopefully, my calendar
16 this afternoon will allow me to have the time to do that and
17 then if you want to file an appeal, hopefully, get the
18 recommendations out and that'll go up to the judge for
19 signature so.....

20 MR. BIRD: Thank you, Your Honor.

21 THE COURT: As far as a calendar, if we are agreed on
22 this hearing date, then we can have Judge Marston issue a.....

23 MS. PERKINS: What was the date and time?

24 THE COURT: The 19th -- was it the 19th at -- oh, what
25 did I do with the other little note there. The 19th from 8:30

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1 to 1:30?

2 THE CLERK: December 19th, yeah.

3 MS. RUSSO: 8:30 to 1:30?

4 THE COURT: Yes.

5 MS. RUSSO: And, Your Honor, it does provide it that
6 Providence -- I mean, I don't know what my -- availability of
7 my witnesses are. They might know but I don't so.....

8 THE COURT: Well, and you had a number of witnesses. I
9 don't know what their availability -- you know, what their
10 availability would be but it would be -- but also I'd like to
11 give Ms. Perkins time to have her -- make arrangements for her
12 client to appear telephonically or video, by video conference,
13 if possible. Does that date work for your clients and for you?

14 MR. BIRD: December 19th at 8:30 is that.....

15 THE COURT: 8:30 to 1:30 and that'll be in front of
16 Judge Marston.

17 MR. BIRD: Yeah, I would just simply say, you know, it's
18 going to be hard for me to explain to my clients why the
19 panoply of the State attorneys were able to put on evidence
20 when they weren't here and now they've assembled all of their
21 friends and family who are still restricted from seeing Mr.
22 Bohn and they're here to give evidence. That's just before the
23 court and I realize that's Your Honor's decision to make but I
24 think that needs to be in the forefront of the court's mind and
25 to the resolution of this hearing.

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1 THE COURT: That is understood. However, I believe even
2 if we'd started, we would not have gotten through everything
3 today and I don't think that it makes sense to hear half the
4 issues and not be able to make a decision. I think it makes
5 far more sense for Judge Marston to hear it all and to make a
6 decision that addresses the issues globally because I think
7 there is -- there's a set of issues that, if addressed, may get
8 rid of other issues. For example, if after that hearing it's
9 determined that the parents should be the guardian, then the
10 bulk of the other issues are resolved by default. If a
11 different finding is made, then, you know, those issues may
12 need to each be resolved individually. So I'm not inclined to
13 make a half -- sort of a half informed finding today. I
14 haven't had a chance to look through these exhibits and I
15 understand I -- and -- their position. As you know, the court
16 calendar is what it is and I'm not able to have more than tow-
17 hour evidentiary hearings though. Ms. Perkins?

18 MS. PERKINS: And not one of us has anything to do with
19 their visitation like at Providence.

20 THE COURT: No, no, and that -- yeah.

21 MS. PERKINS: I mean, not -- and not even Your Honor --
22 like it has nothing to do with us. I mean.....

23 THE COURT: Right. No, and I think there are -- you un-
24 -- I mean, that's been explained. I hope that's what's.....

25 MR. BIRD: I understand your.....

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1 THE COURT: But it's -- but I'm not saying the
2 visitation is the primar -- his -- that's not.....

3 MR. BIRD: That is one of a -- our primary reasons for
4 coming to this hearing and pleading injunctive relief. I
5 realize Your Honor has now ruled on two of the provisions of
6 injunctive relief and possibly a third. You've ruled that
7 you're not going -- you're going to deny our recommen -- or
8 deny our injunctive relief for the psychotropic medication.
9 You're going to deny guardianship to the parents. You're going
10 to deny but make recommendations regarding shipping out of
11 state but our fourth pleading for injunctive relief was
12 reinstatement of visitation. I'm hearing from all three of the
13 State participants that they have no power over visitation. I
14 certainly know my clients don't have any power over visitation.
15 I am arguing that this court has equitable powers to issue an
16 order that my clients can go into Providence and show whoever
17 is restricting them on the fifth floor that they have a court
18 order that visitation privileges are reinstated. That's what
19 I'm asking for in that particular provision, Your Honor.

20 THE COURT: In order to -- I believe that in order to
21 grant that, I would have to hear from Providence and I
22 understand you -- that's what you were maybe attempting to do
23 by.....

24 MR. BIRD: Joining them.

25 THE COURT:joining them as party -- as a party but

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1 even if we did that today, they're not here. I need to hear
2 from them on what is going on and why that visitation is an
3 issue. Short of the guardian being the one to do that in some
4 way or one of the parties being, you know, involved in that, I
5 just don't see how I can, without knowing what's going on
6 there, issue an order and just say this is what you need to do,
7 Providence.

8 MR. BIRD: Thank you, Your Honor.

9 MS. CALIK-RUSSELL: Your Honor, will that.....

10 THE COURT: I think -- I don't -- I mean, and, that
11 said, you know, I don't know whether the parties have talked to
12 the guardian about going in together and having -- I mean, I'm
13 not going to mediate the situation but I think there are
14 options short of a court order that may resolve that issue in a
15 more productive manner. Ms. Calik-Russell?

16 MS. CALIK-RUSSELL: Yeah, I just wanted to see if we can
17 check with the court because they're just -- to see if, you
18 know, December 19th's a feasible time to expect some type of a
19 report from her at all.

20 THE COURT: Yeah, let me ask you, Ms. Brady-Dragomir, is
21 that a -- is it reasonable to have something from you by the
22 19th? And, like I said, I'm understand -- I understand that
23 that -- that's not going to be a detailed analysis of any
24 medical situation but just, you know, a preliminary report as
25 to the status at this time and your recommendations.

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1 MS. BRADY-DRAGOMIR: Yes, I mean, I certainly can file
2 something with the court. I will bring to court's attention
3 though on Thursday, the 19th, I am scheduled to be at API at
4 12:00 o'clock that day pending med cases, as you know, so.....

5 THE COURT: All right.

6 MS. BRADY-DRAGOMIR:if that is the only time and
7 that certainly works for the rest of the parties, then I would
8 just ask that I be excused after maybe 10:30 or so.

9 THE COURT: I don't think that will be an issue if you
10 bring that to the court's attention at the hearing or prior to
11 the hearing or even in your report. Then it will probably make
12 sense for Judge Marston to hear from you first anyway.

13 MS. BRADY-DRAGOMIR: Okay.

14 THE COURT: All right. And so if that hearing date
15 works, then I'm going to go ahead and confirm that with Judge
16 Marston's chambers and we will get a calendaring order out
17 regarding expedited exchange of witness lists and exhibit
18 lists. And, the court visitor, if you -- do you think you
19 would be able to file that report the day before the hearing at
20 least, Ms. Brady-Dragomir?

21 MS. BRADY-DRAGOMIR: Yes.

22 THE COURT: Okay. So that everyone has a chance to
23 review it so they can ask any questions they need to at the
24 hearing.

25 MS. BRADY-DRAGOMIR: Very good.

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1 THE COURT: All right. Thanks. So that -- the
2 visitor's report will be in on -- by the 18th and I will have
3 Judge Marston's chambers issue a calendaring order for
4 everything else. And let me just see -- all right. The other
5 thing I want to make clear to the parties is that the power of
6 attorney was suspended. It is not -- it has not been revoked
7 in any way by the court so that is not -- that finding was
8 specifically made that the power of attorney is suspended. If
9 a permanent guardianship is put in place, then the power of
10 attorney is generally considered revoked but at this time, it
11 was suspended and so let me just go through and make sure I
12 addressed all the issues that I had listed here. So it's clear
13 that Mister -- that the parents are parties, that they are
14 going to be given access to confidential records. At the
15 hearing, it's going to be addressed the issue of who should be
16 appointed as guardian and whether the guardianship needs to be
17 changed at this time. I'm leaving that in place as is.

18 With regard to the injunctive relief, I'm going to be
19 denying the order that Mr. Bird submitted and issuing
20 recommendations as I discussed today. And as far as joining
21 Providence to this case, I'm going to leave that issue open for
22 the court to decide after hearing from Providence what their
23 position is and whether it makes sense to bring them in as a
24 party in order for the court to be able to order them to comply
25 with or do anything in any manner that seems appropriate if

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1 that is an issue. Do the parties have anything else they want
2 to address right now? All right. So we'll get an order out to
3 everyone as soon as possible. I'm understanding that you're
4 going to get those medical records to Mr. Bird and his clients
5 as soon as you can. All right. If there's nothing further,
6 we'll be off record at this time so I can start drafting my
7 order.

8 THE CLERK: Off record.

9 (Off record)

10 11:36:00

11 END OF REQUESTED PORTION

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TRANSCRIBER'S CERTIFICATE

I, Jerri Young, hereby certify that the foregoing pages numbered 2 through 63 are a true, accurate and complete transcript of proceedings in Case No. 3AN-13-2737 PR, In the Matter of Bret Byron Bohn, an Incapacitated Person, transcribed by Metro Court Reporting from a copy of the electronic sound recording to the best of our knowledge and ability.

December 16, 2013

*Jerri Young,
Metro Court Reporting*

METRO COURT REPORTING
*405 West 36th Avenue, Suite 201
Anchorage, Alaska 99503
(907) 276-3876*

IN THE SUPREME COURT OF THE STATE OF ALASKA

DOCKETING STATEMENT B

For Use With Petitions for Hearing, Petitions for Review, and Original Applications and as a Notice of Intent to File Sentence Petition

(for court system use)

FILED
2013 DEC 24 PM 1:41
CLERK APPELLATE COURT
BY: _____
DEPUTY CLERK
No. S-15409

INSTRUCTIONS FOR MULTIPLE PARTIES OR ATTORNEYS: If there are multiple parties or attorneys, repeat the appropriate box. This may be done on a separate page. Please clearly indicate which attorney represents which party.

1. TYPE OF PETITION

| Type of Petition | Court of Appeals or Superior Court Case Number | Date of Distribution of Decision or Order to be Reviewed | Superior Court Judge | Subsequent Proceedings |
|--|--|---|----------------------------|--|
| a. <input type="checkbox"/> Petition for Hearing from Court of Appeals | | | | Petition for Rehearing: <input type="checkbox"/> not filed <input type="checkbox"/> filed. Date filed: _____ <input type="checkbox"/> Date of distribution of order denying petition: _____ |
| b. <input type="checkbox"/> Petition for Hearing from Superior Court | | | | |
| c. <input checked="" type="checkbox"/> Petition for Review <input type="checkbox"/> Notice of Intent to file Sentence Petition | 3AN-13-2737P | 12/19/13 | Marston | Motion for Reconsideration: <input type="checkbox"/> not filed <input checked="" type="checkbox"/> filed. Date filed: <u>12/24/13</u> <input type="checkbox"/> denied by order distribution: _____ <input type="checkbox"/> deemed denied under Civil Rule 77(k)(4). |
| d. <input type="checkbox"/> Original Application <input type="checkbox"/> from Court of Appeals case No. _____ <input type="checkbox"/> from trial court case. No. _____ <input type="checkbox"/> Other. Explain: _____ | | | | Judge _____ |

2. PETITIONER

| | |
|---|---|
| a. Name Glenn Bohn and Lorraine Phillips | b. Status in the Trial Court <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
| c. Petitioner Mailing Address (not attorney's address) PO Box 874685 | <input checked="" type="checkbox"/> Other. Specify: <u>Petitioners to Guardianship</u> |
| City: Wasilla State: AK Zip Code: 99687 | d. Telephone: 907-317-8479 |

3. PETITIONER'S ATTORNEY

| | |
|--|--|
| a. Name Mario L. Bird | b. Bar Number 1211083 |
| c. Attorney Mailing Address 327 East Fireweed Lane, Suite 201 | d. Telephone: 907-276-5307 e. Fax: 907-276-6672 |
| City: Anchorage State: AK Zip Code: 99503 | f. Firm/Agency Ross & Miner, PC |

4. RESPONDENT

| | |
|--|---|
| a. Name SEE ATTACHMENT | b. Status in the Trial Court <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
| c. Respondent Mailing Address | <input type="checkbox"/> Other. Specify: _____ |
| City: _____ State: _____ Zip Code: _____ | d. Telephone: _____ |

No related cases

FF paid 12/24/13 BAA

5. RESPONDENT'S ATTORNEY

| | | | | |
|-----------------------------|-------|--------------------------------------|----------------|--------|
| a. Name SEE ATTACHMENT | | <input type="checkbox"/> Court Apptd | b. Bar Number | |
| c. Attorney Mailing Address | | | d. Telephone | e. Fax |
| City | State | Zip Code | f. Firm/Agency | |

6. CONSTITUTIONAL ISSUES

Is the constitutionality of a state statute or regulation at issue in this proceeding? Yes No
 If yes, cite statute or regulation: _____

7. SENTENCE PETITIONS ONLY

a. Excessiveness of the sentence is the ONLY issue.
 b. A transcript of the sentencing proceeding is requested because Petitioner is indigent.
 (If petitioner has not been adjudicated indigent by the trial court, a completed, financial statement affidavit form must be attached.)

8. ATTACHMENTS

The following items are submitted with this form (a, b, or c must be check unless this is a notice of intent to file sentence petition):

a. The original petition for review and SIX copies or petition for hearing from the superior court and SIX copies; OR
 b. The original petition for hearing from the court of appeals and NINE copies; OR
 c. The original application and SIX copies.
 d. A copy of the judgment or order from which relief is sought attached to the original petition and EACH copy.
 e. A \$150 filing fee or a motion to appeal at public expense (financial statement affidavit form must be included).
 a motion to waive filing fee (if basis for motion is inability to pay, financial statement affidavit form must be included).
 no filing fee is required because appellant is represented by court-appointed counsel.
 the state or an agency thereof.
 an employee appealing denial of benefits under AS 23.20 (Employment Security Act)
 f. A motion for expedited action submitted not submitted.
 g. A motion for stay of trial court proceedings submitted not submitted

12/24/13

Date

Marcello S.

Signature of Petitioner or Petitioner's Attorney

CERTIFICATE OF SERVICE

I certify that on 12/24/13 a copy of this docketing statement and all attachments (except filing fee) were

| mailed | delivered | to All Parties in the trial court (listed) |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>C. Perkins</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>N. Calik-Russell / T. Bove</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>E. Russo</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>C. Brady-Dragomir</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>C. Solte</u> |

Signature: *Marcello S.*

I, Mario L. Bird, hereby certify that, except where otherwise stated, the following opposing counsels listed below were notified of this motion by hand-delivery of the same on December 24, 2013:

Carolyn Perkins, GAL
900 W. 5th Ave., Ste. 525
Anchorage, AK 99501
Tel: 274-3937
Fax: 274-0857

John "Tony" Bove
Adult Protective Services
550 W. 8th Ave.
Anchorage, AK 99501
Fax: 269-3688

Nevhiz Calik-Russell
SOA-Adult Protective Services
1031 W. 4th Ave., Ste. 200
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Tel: 334-4488
Fax: 258-6872

Collene Brady-Dragomir, Court Visitor
PO Box 113252
Anchorage, AK 99501
Tel: 258-0242
Fax: 278-0017
(served by fax)

Elizabeth Russo
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Christopher J. Slottee
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420 L St., Ste. 500
Anchorage, AK 99501
Tel: 276-1700
Fax: 272-2082

Case No. 5-15409

Case Manager Ryan M-S

Is case ready to be closed? Has case been dismissed, or has an opinion, MOJ, or order been issued? Has the deadline for filing a petition for rehearing passed, or if a petition for rehearing was filed, has an order been issued?

In COA cases, look for petitions for hearing to SCT. If petition for hearing was filed, close COA file but do not return COA record. Remember to set tasks in COA case for eventual return of record and issuance of 209(b) judgment. (SCT No. _____)

When SCT petition for hearing from COA is decided, issue 209(b) judgment in COA case or forward objection, if any, to chief deputy clerk. Issue notice of intent in the petition, if decision does not reverse conviction. If conviction reversed do not issue 209(b).

Were costs and/or fees awarded? If so, has a cost order and check been issued?

If appellant prevailed or no costs and fees were awarded, prepare notice of return of cost bond for MM's signature. Place copy of check in pleading file.

ALWAYS RETURN OR DISBURSE BOND

Pull brief pocket, confidential file, record.

Clean files. *Pleading file*: Remove stickies, staples, clips from documents in file. File CDs in storage boxes in confidential room. Return trial court confidential & sealed envelopes (properly marked & sealed) and photos to trial court. Confidential documents not being returned to trial court (from our pleading file & brief pocket) go in confidential file. *Brief pocket*: remove stickies, clips, staples, comb bindings. *Confidential file*: remove stickies, clips, staples.

NA Before returning record, check against record transmittal form - be sure you have all record contents & nothing extra. Prepare record return notice. Place copies in pleading file & blue folder in your standup. *1st, 4th Dist*: send 2 copies to regional appeals clerk with record. *Anchorage*: send 2 copies to trial court appeals clerk with record; use orange "file routing sheet". *2nd & rest of 3rd Dist*: send 2 copies to clerk of court with record. Send 1 copy to each counsel or pro se party.

NA Send trial exhibits back to trial court with record, or to party who lodged them, if appropriate.

NA Mail record & notice of return by certified mail. Put case number on mail log. Fairbanks records are returned by truck on Wednesdays.

Stamp all files **CLOSED**. Check to make sure papers are in reverse chronological order; remove any stickies. SCT confidential files on appeals (not petitions) go to judicial assistant of assigned chambers. File COA confidential files in closed area of confidential room. Case file goes in closed file room.

Make sure CMS information is complete. Check overall status, briefs screen, motions screen, record screen, docket screen, tasks.

If case is stayed at time of closing, click off "stay case" button.

Cross-appeals or consolidated appeals? Apply checklist in each case.