

Law Project for Psychiatric Rights
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Attorney for Plaintiff

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

ETTA BAVILLA,)
)
Plaintiff,)
)
)
ALASKA DEPARTMENT OF)
CORRECTIONS,)
)
Defendant.)
)

Case No. _____

ORDER GRANTING

MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff has moved for a temporary restraining order:

1. Prohibiting Defendant from proceeding with a involuntary psychiatric medication proceeding against Plaintiff until seven days after the requirements of the Temporary Restraining Order have been satisfied.
2. Ordering Defendant to allow Plaintiff's counsel unhindered access between counsel and Plaintiff, subject only to necessary restrictions such as curfew

and meal times in order to allow Plaintiff to assist in the preparation of her defense.

3. Allowing Plaintiff to take the deposition of witnesses the Department intends to rely upon in support of subjecting Plaintiff to involuntary psychotropic medication.
4. Requiring the Defendant to provide Plaintiff with the specific facts to be relied upon by Defendant in support of subjecting Plaintiff to involuntary psychotropic medication.
5. Disclosing to Plaintiff the specific drug(s) and dosage(s) proposed to be involuntarily administered to Plaintiff.
6. Allowing Plaintiff's counsel to assist her in defense of the Defendant's involuntary psychotropic medication proceeding.
7. Staying the any involuntary psychotropic medication order that might be issued for 2 full court days to allow Plaintiff to seek a further stay in this court and if such further stay is requested, the stay to remain in effect until such time as this court rules on such further stay request.

Findings of Fact

The Plaintiff is incarcerated at the Hiland Mountain Correctional Center (Hiland). On February 23, 2004, Defendant was notified that James B. Gottstein Esq., (Counsel) was representing Plaintiff with respect to a prospective forced psychiatric medication order and that he should be served with notice and copies of relevant documents in the event such an order was sought by the Defendant.

Instead, without any notice to Counsel, on Thursday, April 1, 2004, Plaintiff was informed the Defendant was going to seek such a forced psychiatric medication order at a hearing set for the following Monday, April 5, 2004, at 8:30 a.m. at Hiland. On April 1, 2004, Counsel faxed a letter to the Defendant informing Defendant that it was violating Plaintiff's constitutional rights and demanded copies of relevant documents, as well as moving for:

- (a) unhindered access between counsel and Plaintiff, subject only to necessary restrictions such as curfew and meal times in order to allow Plaintiff to assist in the preparation of her defense;
- (b) a one week continuance of the hearing to allow for preparation of Plaintiff's defense; and

an order allowing counsel to take the deposition of witnesses the Department intends to rely upon.

The Defendant responded by letter at the end of the day on April 1, 2004, through its counsel indicating the Plaintiff's mental health records would be provided to Counsel Friday, April 2, 2004, but it was unclear whether the forced medication proceeding documents would be included. The one week continuance was denied. The Defendant also indicated the institutional records would not be made available until after the scheduled forced medication proceeding was over.

It is unclear at this point the extent to which Counsel will be entitled consult with the Plaintiff, but it is clear he will not be allowed to call her.

Plaintiff has not been informed what medication(s) the Defendant intends to force her to take, nor what evidence or facts the Defendant intends to rely upon in support of the Defendant's intention to involuntarily subject her to psychotropic medication. It also does not appear she has been informed of what witnesses Defendant intends to call against her. Defendant is not intending to allow Plaintiff or his counsel to discover the prospective case against Plaintiff.

Substantial evidence has been presented that Plaintiff faces irreparable brain damage and a probability the medications will cause her to become more susceptible to psychotic relapses or even cause psychosis, potentially leading to chronic mental illness, if psychotropic medications are forced upon her. It does not appear the Defendant faces anything other than minor administrative inconvenience if the temporary restraining order is issued.

Reasons for Granting the Restraining Order

At this point in the proceedings, Plaintiff has presented a compelling case that has procedural due process rights to a full, fair hearing by an impartial, independent decisionmaker. Plaintiff has not been given the specifics regarding the case against her. She has not been provided with the medication the Defendant would like to force her to take. She has been given inadequate time to prepare a defense. Plaintiff's counsel was not served with any relevant paperwork and the Defendant intended to proceed to obtain a forced medication order without such notice to Plaintiff's counsel.

The court finds it is highly probable the Plaintiff is entitled to these procedural rights. Plaintiff has presented evidence that she faces substantial, irreparable harm if the

restraining order is not granted. This is contrasted with what appears to be fairly insubstantial administrative inconvenience to the Defendant if the restraining order is granted. The balance of hardships heavily favors Plaintiff. The Plaintiff certainly has shown serious and substantial questions going to the merits of the case. Plaintiff has also shown probable success on at least some of the merits of her claims. For these reasons, I find a restraining order should be issued.

Grant Restraining Order

In light of the foregoing, the restraining order is hereby GRANTED, and

1. Defendant is prohibited from proceeding with a involuntary psychiatric medication proceeding against Plaintiff until seven days after the requirements of the Temporary Restraining Order have been satisfied.
2. Defendant is ordered to allow Plaintiff's counsel unhindered access between counsel and Plaintiff, subject only to necessary restrictions such as curfew, counts, and meal times in order to allow Plaintiff to assist in the preparation of her defense.
3. Plaintiff shall be allowed to take the deposition of witnesses the Department intends to rely upon in support of subjecting Plaintiff to involuntary psychotropic medication.
4. Defendant is ordered to provide Plaintiff with the specific facts to be relied upon by Defendant in support of subjecting Plaintiff to involuntary psychotropic medication.

5. Defendant is ordered to disclosing to Plaintiff the specific drug(s) and dosage(s) proposed to be involuntarily administered to Plaintiff.
6. Plaintiff's counsel shall be allowed to assist her in defense of the Defendant's involuntary psychotropic medication proceeding.
7. Any involuntary psychotropic medication order that might be issued by Defendant is hereby stayed for 2 full court days to allow Plaintiff to seek a further stay in this court and if such further stay is requested, the stay shall remain in effect until such time as this court rules on such further stay request.

Plaintiff shall propose a briefing and hearing schedule to determine whether a preliminary injunction should be issued within five court days hereof. Defendant may respond to such proposed schedule within ten days of service thereof. Defendant may move to modify or dissolve this restraining order at any time. This restraining order shall remain in effect until such time as it has been modified or terminated by this court.

Dated this ____ day of April, 2004 at Anchorage, Alaska.

SUPERIOR COURT JUDGE