

In the Supreme Court of the State of Alaska

REC'D JUL 23 2009

W.S.B.,)	
)	Supreme Court No. S-13015
Appellant,)	
v.)	Order
)	
Alaska Psychiatric Institute,)	
)	
Appellee.)	Date of Order: 7/22/2009
)	

Trial Court Case # **3AN-07-01064PR**

Before: Carpeneti, Chief Justice, Eastaugh, Fabe, and Winfree, Justices
[Christen, Justice, not participating]

In a proceeding regarding the involuntary administration of psychotropic medication under AS 47.30.839, the respondent, W.S.B., requested that members of the public be allowed access to his confidential court file. On September 6, 2007, the master denied that request, barring public access. On September 11, W.S.B. moved to reconsider this order, and the master denied that motion on September 13. W.S.B.'s motion to vacate the order and allow public access was denied by Superior Court Judge Peter A. Michalski on January 21, 2008, and W.S.B. appeals that ruling to this court.

Under Alaska Administrative Rule 37.7, the superior court may allow access to non-public information in a case if the court finds that the requestor's interest in disclosure outweighs the potential harm to the person or other interests being protected. In this case, because the person whose privacy would be protected and the person requesting the public release of the information are the same person, public access should have been granted if W.S.B. was able to competently represent to the court that in his

own view his best interests would be served by such access, unless W.S.B.'s interest in disclosure is outweighed by the "other interests" set out in Administrative Rule 37.7(a). Therefore, before the trial court can make a ruling on W.S.B.'s motion, it must first make a finding on the record as to whether W.S.B. was competent or incompetent for purposes of evaluating and representing to the court his own best interests with respect to this public access request. The court did not make such a finding in this case. Accordingly, we must vacate the order in question and remand for such a finding to be made.

In this regard, we note that AS 13.26.090 provides that an incapacitated person for whom a guardian has been appointed "is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court."

Accordingly, **IT IS ORDERED:**

1. The superior court's orders of January 21, 2008 and September 6, 2007, which denied W.S.B.'s request to grant public access to the court file, are **VACATED**;
2. This case is **REMANDED** to the superior court to make findings as to whether for purposes of his public access request, W.S.B. is competent or incompetent to evaluate and represent to the court his own best interests;
3. If the superior court finds that W.S.B. is competent for these purposes, it should grant his request to allow public access to the court file. If the court finds that W.S.B. is not competent for purposes of evaluating and representing to the court his own best interests, it may appoint a guardian ad litem in order to assist it in ascertaining W.S.B.'s best interests in this matter.

E. [REDACTED] v. API

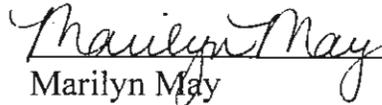
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Entered at the direction of the court.

Clerk of the Appellate Courts


Marilyn May

cc: Supreme Court Justices
Judge Michalski
Trial Court Clerk

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