

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

In the Matter of the Hospitalization of:)
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Faith J. Myers,)
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Respondent.)
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3AN-03-277 PR

ORDER

Counsel for Respondent filed two Motions to Dismiss before the 90-day commitment hearing. The first Motion, filed April 8, 2003, argues that the State’s Petition for 90-Day Commitment should be dismissed because it was untimely filed. The second Motion, filed April 11, 2003, contends that the Petition should be dismissed because it fails to state sufficiently specific facts pursuant to the requirements set forth under Alaska’s 90-day commitment statute. See AS 47.30.730.

Motion for Dismissal (Re: Time)

AS 47.30.740(a) states that the petition for a 90-day commitment hearing may be filed at any time during the respondent’s initial 30-day commitment. AS 47.30.740(b) provides that a date for judicial hearing on the petition shall be set “for not later than five judicial days from the date of filing of the petition.”

Respondent’s counsel does not dispute that the State filed its Petition within the time allowed to do so, but argues that because the hearing was not conducted within 5 judicial days as required under the statute, I must dismiss the Petition. The briefing

submitted by counsel on this point asserts that the statutorily mandated time for a hearing on such petitions should be strictly construed in light of the liberty interest that is implicated by continued commitment of an involuntarily confined respondent.

Ms. Myers' counsel is correct that the statutory time constraints for a hearing on a 90-day petition should be strictly adhered to so that respondents do not remain involuntarily confined without the opportunity to be heard. However, Master Duggan set a hearing on the Petition for March 28, 2003, four judicial days after the State's Petition was filed.¹ That the hearing was not held was due to the court's consideration of Respondent's own filing of a Notice of Election of Rights on the morning of March 28, which included a request that the hearing "be held in a real court room" rather than at Alaska Psychiatric Institute. Respondent's request was granted and I set on a scheduling conference in the superior court.² There is no question that Respondent was entitled to request that her 90-day commitment hearing be held in superior court. It is unreasonable, however, to expect that logistics involved in adding a 6 hour hearing to the superior court's calendar would allow the hearing to be held in less than 24 hours. The State argues that by making her request in the time and manner indicated, Ms. Myers thereby waived her right to challenge the delay in resetting the hearing. Ms. Myers counsel's response is that she did not waive her right because her request was not "direct, unequivocal conduct indicating a purpose to abandon or waive [her] legal right." See Miscovich v. Tryck, 875 P.2d 1293, 1301 (Alaska 1994). I disagree. Ms. Myers' counsel was undoubtedly aware when he filed the request for the hearing to be moved just hours

before it was scheduled to take place on a Friday afternoon that it would be virtually impossible for the hearing to then be rescheduled the following judicial day. I was out of the State the following week. At the scheduling conference held April 9th, State and the Court were both able to go forward with the 90-day hearing on April 10th. Counsel for Ms. Meyer declined that date, pointing out that the statute entitles Ms. Myers to 3 days notice of the hearing date. In light of Ms. Myers request for additional time to prepare, the hearing was set for April 16, 2003. The delays in rescheduling the 90-day hearing were not caused by the State. For these reasons, the Motion to Dismiss Re: Timeliness is denied.

As for the Motion for Dismiss for failure to state the basis of the petition with sufficient particularity, I find the State's argument convincing that no facts unknown to the Respondent formed the basis for the State's Amended Petition. The facts were either disclosed to Respondent at the 30-day hearing, were contained in her medical records (that had been produced to her) and/or were discussed in the depositions taken pre-hearing. Respondent had knowledge of the information that formed the basis of the State's 90-day Petition and was provided additional time to prepare for the 90-day hearing. A very detailed Second Amended Petition was served on the Respondent just 2 days before the April 16th hearing. It was a response to the complaint that the Amended Petition was too vague. The Second Amended Petition did not contain any new information. Respondent objected to the Second Amended Petition because it was filed so shortly before the April 16th hearing. I ruled that the State would proceed on the basis of the Amended Petition. No new or unknown facts supported it, and the Second Amended Petition provided

¹The hearing was scheduled to be held at 1:30 on the 28th at the Alaska Psychiatric Institute.

a clear narrative of the facts, already known to the Respondent, that the State would use to support its case. For these reasons, I do not find that there was any prejudice or surprise to the Respondent in proceeding on the basis of the Amended Petition.

The Motion to Dismiss is denied.

Conclusion

The Motions to Dismiss are denied.

DATED

4/19/03


Morgan Christen
Superior Court Judge

I certify that on this 21st day of April, 2003, a true and correct copy of the foregoing was served by mail () fax () hand upon:
Killip; Grotstein;
HW Betty Wells
Hilary Williams
Administrative Assistant

² No matters were set on my calendar during the week of April 1st because I was out of the State.