IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Order

This is a civil commitment proceeding. On March 14, 2003, the State's Petition for Ms. Myers' involuntary confinement for a period of 30 days under AS 47.30.735 was granted. The Court's Findings from the 30-day commitment hearing were set forth in two orders, one dated March 14, 2003 and one dated March 21, 2003.

On March 24, 2003, the State filed a Petition for a 90-day commitment of Ms. Myers pursuant to AS 47.30.740 and for an order authorizing the involuntary administration of medication per AS 47.30.839(g). A hearing was held on the State's Petitions on April 16, 2003. Approximately 6 hours of testimony and argument was presented, including Ms. Myers' own testimony and the testimony of her expert witness, Dr. Doug Smith. Two psychiatric experts from Alaska Psychiatric Institute (API) testified on behalf of the State, Dr. Hanowell and Dr. Kletti. In addition, testimony was presented by a psychiatric nurse, Mr. Emmett Laird, and by the Court Visitor, Ms. Marieann Vassar.

Analysis

AS 47.30.740(c) requires that findings relating to Ms. Myers' behavior made at the 30-day hearing be admitted as evidence at the 90-day hearing. The State filed Notice of Mandatory Admission of Prior Findings of Fact on April 11, 2003, taking the position that all of the findings from the 30-day hearing be admitted. Because I do not find that newly discovered evidence was introduced to rebut the earlier findings, I adopt the earlier findings here. AS 47.30.470(c).

I. 90-Day Commitment

In considering the State's Petition to extend the length of Ms. Myers' commitment from 30 to 90 days, Alaska law requires that the State prove by clear and convincing evidence that 1) Ms. Myers is mentally ill, and 2) that as a result of her mental illness she is likely to cause harm to herself or others, or that she is gravely disabled. AS 47.30.740(a). AS 47.30.755(b) provides that if there is a less restrictive alternative treatment program that is available and not refused by Ms. Myers, the court may order the less restrictive treatment for a period of no more than 90 days if the program accepts Ms. Myers for treatment.

Ms. Myers is entitled to counsel. AS 47.30.839(c). She was represented by Mr. Gottstein and Mr. Engel at the 90-day hearing. Ms. Myers did not request that a guardian be appointed.

Mental Illness

AS 47.30.915(12) defines 'mental illness' as:

> **an organic, mental, or emotional impairment that has substantial adverse effects on an individual's ability to exercise conscious control of the individual's actions or ability to perceive reality or to reason or understand;**

mental retardation, epilepsy, drug addiction, and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.

At Ms. Myers' request, Dr. Doug Smith was appointed to perform an independent examination of her. AS 47.30.745(e). Dr. Smith was qualified as an expert in the field of psychiatry at the hearing without objection from the State. He testified that he examined Ms. Myers for 75 minutes on April 8, 2003. Dr. Smith acknowledged that for a period in his earlier professional career he was something of an activist against the use of anti-psychotic medications. In the past, he wrote articles condemning the use of these medicines. Dr. Smith testified that he has moderated his views and now prescribes anti-psychotic medication on occasion in his practice, though he does have the view that more individual therapy should be used in the treatment of schizophrenia and less anti-psychotic medication should be used.

Unfortunately, Dr. Smith has a limited history with Ms. Myers and had limited information available to base his opinions. Dr. Smith reviewed Ms. Myers medical record but was not able to thoroughly read her entire medical history. Dr. Smith did not interview Ms. Myers' treating physicians or interview her family members. Dr. Smith agreed that Ms. Myers' treating care providers have a "wealth of knowledge" based upon their more extensive observations of her during this admission at API than during her previous admission there in 2000. He does not have a history of a therapeutic relationship with Ms. Myers, but I find credible, and am persuaded by, his testimony that Ms. Myers was forthcoming in her interview with him. Dr. Smith testified that Ms. Myers views her care providers at

API as her enemies and that she is in a stand-off with them at this point. She has not entered into a cooperative physician-patient relationship that allows her to participate in her treatment decisions there, because she largely refuses to speak to Dr. Hanowell and because she is currently in a stalemate with API over her current treatment plan and living situation. Due in part to the impasse Ms. Myers has reached with at least Dr. Hanowell and Dr. Kletti, Dr. Smith testified that Ms. Myers refuses to acknowledge that she is mentally ill, yet Dr. Smith believes that she knows that she is.

Dr. Smith concluded that Ms. Myers is "not psychotic, predominantly". He agreed that she does have "psychotic, hostile, angry parts to her" but also stated that he saw another side to her, one that she probably does not show to her treating physicians. Dr. Smith acknowledged that when she discussed medications and her relationship with her treating psychiatrists, she became overwhelmed and appeared more psychotic. When not talking about those subjects, she did better and appeared to Dr. Smith to be competent.

At the 30-day commitment hearing, I found by clear and convincing evidence that Ms. Myers suffers from a mental illness. I make the same finding after the April 18, 2003 hearing. Although Ms. Myers is both intelligent and articulate, I find that her ability to perceive reality, reason and to understand is severely impaired at the present time. The evidence shows that since the time of the 30-day commitment hearing, Ms. Myers has made statements in the presence of witnesses from API that she has confused another patient with her son, believes that her son purchased API, believes the weather has signaled that she will die, has mistaken another patient for

her doctor, verbalized that her son died and verbalized that she is her son. Ms. Myers also stated that she believes the personnel at API are attempting to harm her unborn child and, after having to be physically restrained by a nurse, testified that she fell to the ground and her "water broke". Ms. Myers is 51 years of age. There is no evidence that she has been pregnant while at API. By clear and convincing evidence, these statements show an inability to perceive reality, to reason or understand. I conclude that Ms. Myers is mentally ill within the meaning of AS 47.30.915(12).

Likely to Cause Serious Harm to Herself or Others

To prevail on its 90-day commitment Petition, the State must also show that Ms. Myers is likely to cause harm to her self or others. Per AS 47.30.915(10) "likely to cause serious harm" means a person who:

> (A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting, or threatening that harm;
>
> (B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person; or
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> (C) manifests a current intent to carry out plans of serious harm to that person's self or another.

Since the time of the 30-day commitment hearing, Ms. Myers has been in a very controlled environment at API. There is no evidence that she has made suicidal threats or that she has self-inflicted wounds or injuries. There is no evidence that she had weapons at the time of the 30-day hearing, or that she has

ever possessed guns or knives or other weapons, or used weapons in a threatening or harmful way. There is no evidence that she has a current intent to carry out plans of serious harm to herself or to others, though she has stated several times that she believes her life will end in the fairly near future. The experts all testified that it is difficult to predict violent behavior, but that the two most highly correlated indicia of violent behavior, a history of substance abuse and a history involving violence with the use of weapons, are not present in Ms. Myers' case.

There was evidence introduced at the April 18th hearing that Ms. Myers has been involved in 2 incidents since the 30-day commitment hearing where she assaulted staff and that she has approached staff in a threatening manner. In particular, Mr. Emmett Laird testified that one of his duties on the Susitna Unit at API is to maintain security. On March 27, 2003, Mr. Laird was making rounds to check on patients. Ms. Myers became angry and yelled at Mr. Laird that he should not enter the women's area. Mr. Laird testified that she got within inches of his face and said that he was not her husband, that he was a pedophile and that he was a devil. When he attempted to go around her to perform his duties, she swung her hand in an upward motion in front of his face. Ms. Myers testified that her gesture was like a karate chop. Mr. Laird avoided Ms. Myers' hand and went around behind her to place her in a passive hold. At that point, she kicked backward, striking Mr. Laird with her heel. Other staff members came to the scene to subdue Ms. Myers.

Ms. Myers testified that her culture has elements from eastern religions, and that she was raised with beliefs that make her very sensitive to the notion of men entering women's private living quarters. She is offended that male staff members

enter the living quarters on the Susitna Unit, checking on the patients every 15 minutes, 24 hours per day. She is understandably upset by the lack of privacy but unable or unwilling to acknowledge that there are safety reasons for needing to check on patients who are sufficiently mentally ill to require inpatient hospitalization.

In her current condition, where she is unable to distinguish family members from strangers, and care providers from devils, and because Ms. Myers has been willing to use physical violence when disputes have arisen, I find that the State has met its burden under AS 47.30.915(10)(A) and (B). This conclusion is further supported by the Findings from the earlier hearing.

Gravely Disabled

AS 47.30.915(7) defines "gravely disabled" as a condition in which a person as a result of mental illness:

> **(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or**
>
> **(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently.**

Since the time of the 30-day commitment hearing, Ms. Myers has continued to evidence an inability to recognize and attend to basic needs. She has refused treatment for a painful injury to her finger, which appears from casual observation in the courtroom to be a broken finger. (Her finger is bent at a very obviously

atypical angle. In court, it is apparent that it is causing Ms. Myers pain because she used her hand gingerly, gently rubbed her bent finger and blew on it during the hearing.) Ms. Myers also declined treatment for a dental problem since the 30-day hearing. Dr. Hanowell and Mr. Laird testified that Ms. Myers has shown poor hygiene at API, that she has odd and ritualistic eating habits that involve arranging (but not necessarily eating) her food[1]. In addition, the evidence at the first hearing showed that Ms. Myers' landlord had called family members to ask that she be removed from the apartment house where she was living because her behavior was frightening the neighbors. Dr. Hanowell testified at the 90-day hearing that, given Ms. Myers' current state of confusion and delusion, she would not be able to avoid being evicted and that she will not be able to provide shelter for herself if she is evicted. (I found at the first hearing that Ms. Myers was either sleeping or reading on the ground in a crawl space under her apartment, in the winter time, because she felt it necessary to establish her boundaries in that area to prevent neighbors from occupying it or using it as a means to enter her home.)

I find by clear and convincing evidence that Ms. Myers' impaired judgment and ability to reason and ability to perceive reality render her gravely disabled. Currently, Ms. Myers is not able to distinguish strangers from trusted family members and continues to think she may need to take action in response to voices she hears. She is sometimes under the impression that she is pregnant, that she is her son, that her thoughts are scrambled by certain telephone numbers, that persons she encounters are devils. All of these findings, in conjunction with the findings from the 30-day commitment hearing cause me to conclude by clear and

[1] There is no evidence that Ms. Myers has suffered a significant or dangerous weight loss, however.

convincing evidence that Ms. Myers will, if not treated, continue to suffer severe and abnormal distress associated with significant impairment of judgment and reason that will cause a substantial deterioration of her ability to function independently.

Less Restrictive Treatment Alternative

AS 47.30.755(b) provides that if there is a less restrictive alternative treatment program available to Ms. Myers, the court may order the less restrictive treatment for a period of no more than 90 days if the program accepts Ms. Myers for treatment. Unfortunately, I do not find that a less restrictive treatment alternative is available. I am mindful that Ms. Myers' expert's testimony at the 30-day hearing, and her expert at the 90-day hearing, suggested that a less restrictive treatment alternative would be optimal. Both advocated that she not be medicated and instead receive individual cognitive behavioral therapy and social skills training. Dr. Smith was not aware of whether this option is available in Anchorage, nor were the experts who testified on her behalf at the 30-day commitment hearing. Both Dr. Kletti and Dr. Hanowell testified that the available acute care facility, API, is not able to adequately treat Ms. Myers unless she is medicated. Dr. Hanowell testified that Ms. Myers was offered passes to receive counseling and treatment at Crisis Treatment Center on the condition that she agree not to leave. Ms. Myers refused this option, stating that she thought that God might tell her to flee. Further, Drs. Kletti and Hanowell testified that Crisis Treatment Center will not accept Ms. Myers as a patient unless she agrees to take psychotropic medication. She persists in her refusal to do so. Dr. Hanowell testified that he is aware of Ms. Myers' belief that she is allergic to some of the medicines that he discussed, but also noted that

there are others she has taken successfully. Ms. Myers' family testified that she did very well on Zyprexa, the drug given to her when she was admitted to API in 2000. So did the API psychiatrists. Mr. Laird testified that he witnessed Ms. Myers when she was previously admitted to API and was taking Zyprexa. Mr. Laird testified that he had a good rapport with her at that time, that he found her to be "intelligent, nice to be around" and "no danger to anyone" while on that medication. Dr. Smith testified that Ms. Myers reported to him that the medications had helped her in the past. By her own testimony, Navane, an anti-psychotic medication that Ms. Myers took for a period in excess of 20 years, made her sleepy but allowed her to function well enough to support herself and live independently. Further, in addition to Navane, Zyprexa and Rispridol, there are other anti-psychotic medications available that she has not tried. Dr. Hanowell testified that he discussed the possibility of taking a low dose of an anti-psychotic medication in conjunction with naturopathic options such as Omega 3 fish oil, something that has been successful for at least some other patients. Ms. Myers refused this option. Finally, both Dr. Kletti and Dr. Hanowell testified that the therapeutic treatment programs at API are not adequate for Ms. Myers if she is not agreeable to taking medication in addition to participating in treatment. By clear and convincing evidence, I do not find that there is a less restrictive treatment alternative available to Ms. Myers.

II. Renewed Authorization of Psychotropic Medication

The State's initial Petition for Court Authorization of Psychotropic Medication was granted on March 14, 2003.[2] Since that time, Ms. Myers has persisted in her desire to avoid taking psychotropic medications and has refused to consent to this type of treatment.

AS 47.30.839(h) requires that if a treatment facility wishes to continue the administration of medication without a patient's consent, it must file a petition to continue medication at the same time it petitions to continue commitment. The State's Petition for Involuntary Medication was filed March 24, 2003.

To succeed on its second Petition to administer medication involuntarily, the State must show that Ms. Myers is not competent to provide informed consent. AS 47.30.839(g). If the court determines the patient is competent to provide informed consent, the patient's wishes regarding use of psychotropic medication must be honored. AS 47.30.839(f).

Court-Appointed Visitor – Report Update

Informed consent means that a patient is competent to make treatment decisions, and the consent is informed and voluntary. AS 47.30.837(a).

The court is required to direct the Office of Public Advocacy to provide a visitor to assist the court in investigating the issue of whether the patient has the capacity to give or withhold informed consent to the administration of psychotropic medication. AS 47.30.839(d). AS 47.30.839(d) requires that the court appointed visitor gather pertinent information and present it to the court. The court visitor is

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[2]On the same date, I issued a Stay of my Order with respect to the administration of psychotropic

required to update previously submitted reports at the 90-day commitment hearing. AS 47.30.839(h). In this case, Ms. Vassar submitted a report dated April 15, 2003. It updates the report filed at the time of the 30-day commitment hearing. Ms. Vassar's report was consistent with her testimony at the 90-day hearing, where she stated that she visited Ms. Myers at API on April 15, 2003 and asked if she would complete a Capacity Assessment Instrument. Ms. Myers declined to do so, but she did talk to Ms. Vassar for about an hour. Consistent with the views expressed to Dr. Smith and at the March 5, 2003 hearing, Ms. Myers reported to the visitor that she is not mentally ill. She acknowledged that her diagnosis is schizophrenia of the paranoid type, but stated that she does not believe it to be correct. She reiterated her strong objection to psychotropic medications and her belief that she is allergic to them. She stated that she believe they killed members of her family, though no one was identified. The visitor noted Ms. Myers' obviously injured finger and reported that Ms. Myers is having to soak it in hot water frequently and could not comfortably shake hands with the visitor. The visitor's report states that Ms. Myers stated that she does not believe that the finger can be effectively treated.

Informed Consent

Consent is informed when a treatment facility has given a patient all material information for the patient to decide whether to give or withhold consent. The required information includes:

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medication pending Respondent's appeal of my decision.

(1) An explanation of the patient's diagnosis and prognosis, or predominant symptoms, with and without medication;

(2) Information about the purpose, dosage range, side effects and benefits, risks, treatment of side effects, and method of administration of proposed medication;

(3) Review of patient's history, including medication history and side effects from medication;

(4) explanation of interactions with other drugs;

(5) information about alternative treatments and risks, side effects, and benefits, including risks of nontreatment; and

(6) statement describing patient's right to give or withhold consent to nonemergency administration of psychotropic medications, procedure for withdrawing consent, and notification that court may override patient's refusal.

AS 47.30.837(d)(2)(A-F).

A patient's informed consent is "voluntary" if obtained without force, threats or coercion. Voluntary means "having genuine freedom of choice" under AS 47.30.837(d)(3).

In this case, I find that the personnel at API attempted to communicate the above information regarding medication options to Ms. Myers, but that she has not been willing or able to receive all the information. Dr. Hanowell testified at both hearings regarding his discussions with Ms. Myers regarding the above-referenced information. Though some of the information was communicated, his testimony is that Ms. Myers interrupted and did not wish to listen to the information he tried to provide. I find that the State met its burden to provide the information required by AS 47.30.837(d)(2)(A)-(F).

Competency

A patient is competent to make medical or mental health treatment decisions if he or she:

> **(1) has capacity to assimilate relevant facts and appreciate the patient's situation;**
>
> **(2) can appreciate that he or she suffers from a mental disorder if the evidence so reflects;**
>
> **(3) has the capacity to participate in treatment decisions by means of a rational thought process; and**
>
> **(4) is able to articulate reasonable objections to the medications.**

AS 47.30.837 (d)(1)(A-D).

Capacity to Assimilate Relevant Facts and Appreciate the Patient's Situation

Ms. Myers did not evidence to me a capacity to assimilate relevant facts, including that she does not acknowledge that her history is that she has benefited from the use of psychotropic medications in the past and that the positions she is now taking regarding her care have left no other treatment paths available. In particular, individual counseling at Crisis Treatment Center is not available as long as Ms. Myers refuses even a low dose of anti-psychotic medication and/or to agree that she will not flee if given passes to obtain treatment there. Ms. Myers lacks an awareness of her situation. She voiced sincere objections to the lack of privacy she feels at API, but no awareness of the fact that, in an acute care psychiatric hospital, there are safety reasons that mandate frequent monitoring of patients.

Appreciation of Suffering from Mental Illness.

At the 30-day commitment hearing, Ms. Myers testified that she is not mentally ill. Ms. Myers did not testify directly on this point at the 90-day commitment hearing, but Dr. Hanowell testified that Ms. Myers repeated that she does not believe she is mentally ill the day before the 90-day commitment hearing. She also voiced this opinion to the court visitor. Dr. Smith testified that he believed that Ms. Myers would still say that she is not mentally ill because she is in a hostile stand-off with her care providers. However, Dr. Smith believes that Ms. Myers acknowledges in her own way that she is mentally ill by conceding that she is "stressed out", saying that she is "at the end of her coping skills" and by conceding to him that she has memory problems and judgment problems. Ms. Myers also reported to the visitor that she is suffering from an undefined stress disorder.

Dr. Smith's opinion that Ms. Myers actually does appreciate that she is mentally ill is one that I cannot reconcile with Ms. Myers' testimony. She has acknowledged neither her illness nor her need for treatment, apart from good nutrition and lime baths. The evidence is that she hears voices, has mistaken strangers for family members, believes that the weather is signaling her impending death and believes that certain telephone numbers scramble her thought processes. She seems at times to recognize that some of her observations can not be real. One example was discussed in the Findings previously entered, regarding Ms. Myers' awareness that a child she knew years ago as a 5 year old, who recently visited Ms. Myers, must be 10 years old by now. The child appeared in Ms. Myers' home as a 5-year-old. Ms. Myers recognized this, but she stopped short of showing insight into her illness. She did not appreciate that the 5-year-old must be an illusion. Instead,

she seemed confused that the child who must be 10 appeared in her home as she existed 5 years ago.

Ms. Myers' thought processes are clearly not rational. She lacks the ability to correctly perceive reality.

I find that Ms. Myers currently suffers from a mental illness, by clear and convincing evidence, and do not find that there was evidence that, since the time of the last hearing, her condition has changed such that she is now able to acknowledge that she is mentally ill.

The Capacity to Participate in Treatment Decisions by Means of a Rational Thought Process

Although Ms. Myers acknowledges that she was able to function independently for over 20 years while on Navane, she does not now rationally discuss a treatment plan that would allow her a realistic option of being able to leave API and return to the community. She will not really discuss much of anything with her care providers, being engaged in a sort of stand-off on the issue of her treatment. The option that is supported by her experts, individual therapy, has been refused by Ms. Myers. The option that is advocated by the psychiatrists at API is refused by Ms. Myers. She clearly wishes to leave API immediately, experiencing an understandably distressing level of loss of privacy and freedom. However, there is no expert testimony that her psychotic state is likely to spontaneously improve in the near future and there is no evidence that she is willing to submit to any form of treatment that is likely to help improve it. The treatment options that Ms. Myers

identified include just good nutrition and lime baths. None of the experts testified that these options would be adequate to treat her psychotic condition.

Articulation of Reasonable Objections to the Medications

Ms. Myers has articulated reasonable objections to some of the proffered medications because she has articulated side effects that have bothered her in the past. The reasonableness of other objections is questionable, given that they must be balanced against the tremendous hardship she suffers as a result of being prevented from leaving API against her will. No one other than Ms. Myers can truly know how she has experienced side effects from medications administered to her in the past. She has testified in this matter that the effect of Zypraxa increased her hallucinations, that Risperidol made her angry and caused "a hole in her brain" that took years to heal. I am certainly convinced that Ms. Myers considers the side effects of Zypraxa and Rispridol to be have been terribly severe in her case (though there is no way to know whether Ms. Myers' increased hallucinations were caused by the use of these medicines or whether they were an unrelated manifestation of her long standing mental illness). Ms. Myers has not testified to reasonable objections to potential medications that she has yet to try, except for stating that she believes that she is allergic to them. She did tell the court visitor that she believes similar medicines killed a member of her family, but none of the testimony from her family members or the doctors who testified after having reviewed her medical history suggests that this belief is based on fact. There was no expert testimony that Ms. Myers has fact-based reasons for believing that she is allergic to the other types of medication suggested by the care providers at API. I note too that Ms. Myers voiced what appears to be a wholly unfounded belief that no treatment options

would be effective for her broken finger, giving reason to suspect that in her current paranoid state, no treatment options for her mental illness will be acceptable to her, for irrational reasons.

Conclusion

The State's Petition for 90-day commitment is granted. The State's Petition for Authorization of Psychotropic Medication is granted. No medication may be administered until a ruling is available on Ms. Myers' appeal from the decision reached March 15, 2003. The Stay issued on that date remains in effect until further order of the court.

Though she was notified on record, Ms. Myers is again notified here that she has the right to appeal this decision.

DATED 4/19/03

Morgan Christen
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 (X) mail (Y) fax ( ) hand upon:
James Gottstein 274-9493
Jeffrey Killip - 258-6872
Betty Wells/Mary-Ann Vassar 337-0146

HW
Hilary Williams
Administrative Assistant