

Law Project for Psychiatric Rights
James B. Gottstein, Esq.
406 G Street, Suite 206
Anchorage, Alaska 99501
(907) 274-7686
Attorney for Appellant

FILED
SEP 26 2016
APPELLATE COURTS
OF THE
STATE OF ALASKA

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In the Matter of the Necessity)
of the Hospitalization of)
)
L.M.)
_____)

Supreme Court No. S- 16467

Trial Court Case No. 3AN-16-01656PR

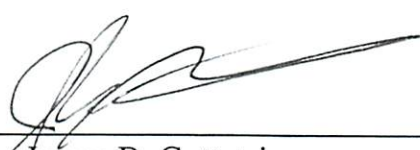
NOTICE OF APPEAL

Appellant, L.M., hereby gives notice of appeal to the Alaska Supreme Court from the August 30, 2016, oral order granting the Petition for 90-Day Commitment filed against Appellant. A copy of the transcript of the oral order made on the record is included herewith.

DATED September 26, 2016.

Law Project for Psychiatric Rights

By: _____


James B. Gottstein
Alaska Bar No 7811100

In the Matter of [REDACTED] [REDACTED]

FILED

SEP 26 2016

**APPELLATE COURTS
OF THE
STATE OF ALASKA**

*90-Day Commitment Hearing
August 30, 2016*

H&M Court Reporting

Original File [REDACTED] [REDACTED] 90-Day Commitment MUS.prn

Min-U-Script® with Word Index

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

IN THE MATTER OF:)
)
 [REDACTED])
)
 Respondent.)
_____)

CONFIDENTIAL

No. 3AN-16-1656 PR

90 DAY COMMITMENT HEARING (EXCERPT)

PAGES 1 THROUGH 92

BEFORE THE HONORABLE MARK RINDNER
Superior Court Judge

Anchorage, Alaska
August 30, 2016
8:35 a.m.

APPEARANCE:

FOR THE STATE: Steven Bookman
Aretha Tyus
Attorney General's Office
1031 West 4th Avenue
Anchorage AK 99501

FOR THE RESPONDENT: James Gottstein
406 G Street, Suite 206
Anchorage Ak 99501

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Based on the arguments of the parties and the testimony I've received, I'll find,

1 under AS 47.37.55, Ms. [REDACTED] has been found by clear
2 and convincing evidence to be mentally ill and as a
3 result she is likely to cause harm to others.

4 Under subsection (b), if the court finds
5 there is a less restrictive alternative available, and
6 the respondent has been advised of it and refused
7 voluntary treatment through the alternative, the court
8 may order the less restrictive alternative treatment
9 after acceptance by the program of the respondent for a
10 period not to exceed 90 days. Less restrictive alter
11 -- "least restrictive alternative" means mental health
12 treatment facilities and/or conditions of treatment
13 that are no more harsh, hazardous or intrusive than
14 necessary to achieve the treatment objectives of the
15 patient and they involve no restrictions on physical
16 movement or supervised residents or inpatient care,
17 except as reasonably necessary for the administration
18 of treatment or the protection of the patient, or
19 others from physical injury.

20 Given the findings by the jury that she is
21 likely to cause harm for another, a less restrictive
22 alternative would have to, under that definition, I
23 believe, protect others from physical injury and none
24 -- and I would find -- and I find this by clear and
25 convincing evidence, that none of the less restrictive

1 alternatives that have been proposed by the respondent,
2 or would otherwise be available, will protect and be
3 able to protect the public from the danger to others
4 that Ms. [REDACTED] currently proposes.

5 While choices, once she stabilizes, may be
6 able to do that, while unstabilized, they are unable to
7 do that. They can't watch her 24/7. Even Dr. Wolf
8 suggested that stabilization would be necessary. That
9 that might include medication.

10 The idea of crisis lines and stuff are not
11 going to protect the public from the harm of delusions
12 where Ms. [REDACTED] might believe she is being chased by
13 others, and cause traffic accidents by her belief that
14 others are out to get her, and she reacts in a physical
15 manner, that's led to the assault charges. When she
16 becomes agitated, she becomes agitated rapidly, and
17 call lines and other things are not sufficient to
18 protect the public from outcomes that might occur when
19 she becomes rapidly agitated and reacts. That could
20 cause others to react to her, but it causes her to take
21 actions that pose risks to the public, which is why the
22 jury has found her to be a danger to others by clear
23 and convincing evidence.

24 And, so, other than a facility like API, that
25 is locked and provides 24/7 care, I do not believe that

1 there is a less restrictive alternative under her
2 current status.

3 I reject the idea that there is a
4 constitutional right that would require the state to
5 fund particular kinds of programs. There would be
6 separation of powers issues, I believe. And I
7 certainly do not believe I've had sufficient evidence
8 that would suggest to me all the reasons that that
9 facility was defunded, went out of business,
10 whatsoever, but it no longer exists. And the
11 legislature is entitled to make choices of how the
12 state spends its money within certain confines.

13 I also do not believe that the treatment at
14 API, to date, has been inappropriate or has not -- or
15 that there has been an opportunity to determine the
16 efficacy of the treatment. The fact of the matter is
17 is that API is not a long term facility and intended to
18 be that, it's intended to be a short term facility that
19 stabilizes people and then moves them into the
20 community, while stabilized. And that hasn't really
21 been given a fair chance to proceed yet in this case.

22 The medication, based on the testimony, has
23 not had a full opportunity to reach an effective level,
24 where one could see whether there was stabilization.
25 There was some period of time where it appears that

1 medication was helping Ms. [REDACTED] although, I will
2 say that that is still somewhat up in the air.
3 Medication, oftentimes, takes a while to figure out
4 dosage and the right medication and the interactions of
5 medication, and I don't think there's been an
6 opportunity, given the legal proceedings, of where --
7 when Ms. [REDACTED] was unwilling, and has been unwilling
8 to take medication on her own. She -- there was an
9 order for her to be involuntary medicated. That was
10 stayed for a period of time, at the request -- with the
11 understanding that Ms. [REDACTED] was requesting that so
12 she could take an appeal to the Alaska Supreme Court to
13 see if they would stay the order for medication, which
14 I allowed.

15 Once she was on medication, she was on it for
16 a while and then she went off the medication, because,
17 either the 30-day petition was being said to expire --
18 although, it would have been my understanding that
19 medication could have continued once the 90-day
20 petition was filed. But it also was done because of a
21 request that Ms. [REDACTED] not be medicated during these
22 proceedings. So, my understanding is, she currently is
23 not being medicated. That has -- because of that, the
24 medication -- the efficacy of any medication has not
25 been fully explored, and, while there may be competency

1 groups that were designed to restore her to competency
2 and that other part of these legal proceedings, I don't
3 really think that API was seen as a place where
4 psychotherapy was going to have any significant effect.
5 It, in my mind, was clearly designed as a medication
6 oriented facility to stabilize her on medication and
7 then move her into less restrictive alternatives. That
8 hasn't happened yet. And as long as she remains a
9 danger to the community, to others, I think API is the
10 only facility that is available.

11 (12:55:57)

12 (End of requested portion)

13 ***END***

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

THIRD DISTRICT

STATE OF ALASKA

I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska, hereby certify:

That this transcript was prepared to the best of my knowledge and ability from a recording, recorded by someone other than H&M Court Reporting, therefore "indiscernible" portions appear in the transcript.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 8th day of September, 2016.

Georgi Ann Haynes
Notary Public in and for Alaska
My commission expires: 10/05/2015