

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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3AN-03-277 Civil

Order on Motion for Reconsideration

On May 1, 2003, Ms. Myers filed a Motion for Reconsideration of the Order issued in this case on April 19, 2003. An Opposition was received from the State at close of business on May 15.

Ms. Myers' Motion is 34 pages long. Most of the arguments she raises in it are not persuasive that a material fact was overlooked or the law incorrectly applied when the 90 day commitment order was entered. For example, the Motion contends that the standards at the April 19, 2003 hearing should have been whether Ms. Myers "has attempted to inflict or has inflicted serious bodily harm upon the respondent or another since the respondent's acceptance for evaluation," yet AS 47.30.755(a) sets out the standard for the court order issued after the 90 day hearing. That statute states that if the court finds by clear and convincing evidence that the respondent is mentally ill and as a result is likely to cause harm to self or others, or is gravely disabled, she may be committed for a period of 90 days. The reasons for finding that Ms. Myers is likely to cause harm to herself or others and that she is gravely disabled are set forth in the April 19, 2003 Order.

Ms. Myers also argues that the State's failure to treat her during her confinement mandates that she be released. I disagree, not because there is a factual

dispute about whether treatment has been administered, but because the crux of the issue is the parties' debate about what treatment is best for Ms. Myers. The care providers at API have testified that they believe she must be medicated and that counseling at a different facility is not possible unless she is at least mildly medicated. In short, the care that the providers at API believe to be appropriate has been provided in the sense that it has been made available to Ms. Myers. Ms. Myers refuses it. She has articulated her reasons for refusing it. As discussed in the orders issued in this case and at the hearings held in this case, the experts in this area disagree about what treatment is best for Ms. Myers' illness. This is difficult because, throughout these proceedings, Ms. Myers has not offered a specific suggestion about what treatment plan she advocates. She is clear that she does not wish to take psychotropic medications and, at one point, that she believed that good nutrition and a lime bath would cure her.<sup>1</sup> Ms. Myers' experts have testified that she should be given access to alternative therapies, but there was no testimony at the 30 day hearing regarding exactly what therapies are requested and/or whether they

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<sup>1</sup> The Motion for Reconsideration argues that the Court's misconceives material fact by finding that Ms. Myers does not acknowledge that she benefited from medications in the past. In fact, the Orders on the 30 day and 90 day commitment hearings both acknowledged that Ms. Myers testified that she was able to function for over 20 years while on Navane. See: Order dated March 14, 2003 at page 2, and Order dated April 19, 2003 at page 16, "Though Ms. Myers acknowledge 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." What she did not testify to, contrary to the testimony of her family, physicians and a psychiatric nurse who had regular contact with her, is that while on different medications administered at API in 2001 (Risperidol and Zyprexa) she functioned well and was released from the facility. March 14, 2003 Order at page 4. The intent of the Order was to carefully acknowledge that Ms. Myers attributes an escalation in her illness to these medications and that no one other than Ms. Myers can truly know how she experienced the impact of those medicines. See: page 17 of the April 19 Order and page 2 of the March 14 Order. The same is true of Ms. Myers testimony concerning her sensibilities about privacy and her eastern religion. I recognize that her beliefs are sincere, but noted at page 6-7 of the April 19<sup>th</sup> Order that she did not seem to realize that, in an acute care psychiatric facility, patients must be frequently checked to verify their safety. The psychiatric nurse from API testified to the need to do safety checks and the attempts made to accommodate the female patients' privacy.

are available to her at state operated facilities. See: A.S. 47.30.760 (treatment shall always be available at state-operated hospital). The experts who testified for Ms. Myers at the 30 day hearing had not examined her and did not have knowledge about what treatments are available at Alaska's state-operated hospitals. At Ms. Myers' request, Dr. Smith was appointed to evaluate her prior to the 90 day hearing. His report and testimony was available at the 90 day hearing. It states that he believes Ms. Myers needs help with social skills, conflict resolution, problem solving, anger management, stress management and discharge planning. Dr. Smith did not know if the type of therapy he advocated is available to Ms. Myers in Anchorage and there was no testimony offered to show that it is available in any state facility in Alaska.

The State is required to show that no less restrictive treatment options are available for Ms. Myers. A.S. 47.30.755(b). The State does not contest that it has this burden. The Motion for Reconsideration submits new evidence in the form of an affidavit by Jerry Jenkins. Though it was not submitted at the 90 day hearing, a footnote in the Motion for Reconsideration alleges that Mr. Jenkins was not available at the time of the hearing. Because of the important nature of this proceeding, I consider the new evidence here<sup>2</sup>.

Mr. Jenkins' affidavit raises the possibility that the testimony offered by the State at both hearings to the effect that it would not be possible for Ms. Myers to receive treatment at Crisis Treatment Center instead of API may be incorrect. In

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<sup>2</sup> The Alaska Rules of Civil Procedure do not allow the introduction of new evidence via Motions for Reconsideration. Ms. Myers' Motion was not properly filed as a Civil Rule 60(b) motion or a motion under Civil Rule 59 for the reasons set forth in the State's Opposition. This is called to counsel's attention not because the procedural deficiencies are applied here in a way that is prejudicial to Ms.

his affidavit, Mr. Jenkins states that CTC makes its own admission decisions and that, to his knowledge and after investigation, he does not believe that CTC was contacted to determine whether Ms. Myers is eligible to receive therapy there. In light of the affidavit filed by Mr. Jenkins, the State is ordered to arrange for Ms. Myers to be evaluated by personnel from CTC to determine whether therapy at CTC represents a less restrictive treatment alternative for Ms. Myers. It may be less restrictive because she will be able to obtain counseling without taking medications. Also, I am mindful that one of the barriers to successful treatment at API, at this point, is that Ms. Myers views the care providers there as her enemies and that she has reached a stalemate that is so severe that she hardly talks to the physicians there. Counseling at CTC may be a less restrictive option if there are treatment providers there with whom Ms. Myers can form a trusting, therapeutic relationship and agree to take some medication in order to undergo counseling.

The evaluation shall be arranged as soon as possible. Mr. Gottstein shall be notified in advance of the timing of the evaluation and a written report regarding the outcome of the evaluation should be filed, in chambers, as soon as it is available. In all other respects, the Motion for Reconsideration is denied.

DATED 5/17/03

Morgan Christen  
Morgan Christen  
Superior Court Judge

I certify that on this 19 day of

Myers – they are not – but because Ms. Myers might otherwise be left with the impression created in the Motion, that the Court is unevenly applying the procedural standards in this case.