

IN THE SUPERIOR COURT OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETTA BAVILLA,)
)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA, Department of)
Corrections,)
)
Defendant.)

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Law Project For
Psychiatric Rights

Case No. 3AN-04-5802 CI

MOTION TO DISMISS

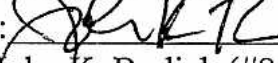
COMES NOW defendant State of Alaska, Department of Corrections (DOC), by and through Assistant Attorney General John K. Bodick and hereby moves to dismiss this case pursuant to Alaska Rule of Civil Procedure 12(b)(6) on the ground that plaintiff has failed to state a claim upon which relief can be granted. Bavilla has sued the State of Alaska, Department of Corrections for injunctive and declaratory relief alleging that procedures for involuntary administration of psychotropic medication violate due process under the state and federal constitutions. The Alaska Supreme Court has not recognized a direct cause of action under the Alaska Constitution so Bavilla's claims are brought under 42 U.S.C. §1983. *Vest v. Scafer*, 757 P.2d 588, 594 (Alaska 1988). The state is not subject to suit under 42 U.S.C. §1983 because it is not a "person". *Will v. Michigan State Police*, 109 S.Ct 2304 (1989); *State v. Green*, 633 P.2d 1381 (Alaska

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DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE - ANCHORAGE
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1981). Thus, Bavilla has failed to state a claim upon which relief can be granted against the State of Alaska and her case should be dismissed.

Dated this 14 day of July, 2004, at Anchorage, Alaska.

GREGG D. RENKES
ATTORNEY GENERAL

By: 
John K. Bodick (#8411098)
Assistant Attorney General

I hereby certify that a true and correct copy of the foregoing and all attachments were served by mail and fax on James Gottstein, 406 G Street, Ste. 206 Anchorage, AK 99501
By: Sherry Bower Date: 7-15-04

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ORDER GRANTING STATE'S MOTION TO DISMISS

IT IS HEREBY ORDERED that defendant State of Alaska, Department of Corrections' motion to dismiss is GRANTED. The State of Alaska is not a "person" under 42 U.S.C. §1983 so plaintiff has failed to state a claim upon which relief can be granted.

Dated this __ day of _____, 2004, at Anchorage, Alaska.

By: _____
Judge of Superior Court