

In the Supreme Court of the State of Alaska

ITMO the Necessity of the
Hospitalization of L.M.,

Appellant,

v.

Alaska Psychiatric Institute,

Appellee.

Supreme Court No. S-16393

Order

Date of Order: 7/28/16

Trial Court Case # 3AN-16-01656PR

L.M. moves for a stay pending her appeal of the superior court order granting the State's petition for approval of the administration of psychotropic medication. For a stay request, we apply the same test we require for the grant of a preliminary injunction.¹

If the plaintiff faces the danger of "irreparable harm" and if the opposing party is adequately protected, then we apply a "balance of hardships" approach in which the plaintiff "must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'" If, however, the plaintiff's threatened harm is less than irreparable or if the opposing party cannot be adequately protected, then we demand of the plaintiff the heightened standard of a "clear showing of probable success on the merits."²

¹*Powell v. City of Anchorage*, 536 P.2d 1228, 1229 (Alaska 1973).

²*State, Division of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (citations omitted).

After the hearing on the State's petition, L.M. submitted supplementary affidavits and other materials. These materials suggest that any patient may suffer long-term irreparable harm from the administration of psychotropic medication. But L.M. also faces short-term harm if the stay is granted. L.M. faces both an involuntary civil commitment and pretrial detention on criminal charges. The testimony the superior court relied on suggests that it is unlikely that L.M. will be released until she can be safely discharged from the civil commitment and regain her competency to face the criminal charges. And the same record suggests that she is unlikely to regain these capacities unless she receives psychotropic medication.

This dilemma also places the State at risk. The State has an obligation to care for L.M. and her fellow patients based on their custodial status. But the superior court found that without her psychotropic medication, it is likely that L.M. will continue to pose a danger to physically assault other patients and staff.

The legal questions L.M. raises are not likely to be successful. Based on an affidavit from Dr. Brian Saylor, she argues that while she was competent, she made statements expressing her desire to refuse future medication. But on this point, Dr. Saylor's affidavit is not based on his personal knowledge. And this evidence was never presented to the master who conducted the medication hearing.

L.M. also argues that a program called Soteria-Alaska would have been a suitable, less restrictive alternative to medication. But Dr. Saylor's affidavit makes it clear that this program was closed last year due to insufficient funding. And again, Dr. Saylor's opinion on this issue was never presented to the master who conducted the medication hearing. In other words, L.M. has likely failed to preserve the two arguments she relies on for this appeal.

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L.M. has not satisfied the test for a stay pending appeal. **IT IS THEREFORE ORDERED** that the motion for a stay pending appeal is **DENIED**.

Entered by direction of an individual justice.

Clerk of the Appellate Courts


Marilyn May

Distribution: (via email and mail)

James B Gottstein
Law Project of Psychiatric Rights
406 G Street Suite 206
Anchorage AK 99501

Steven Bookman
Attorney General's Office
1031 W 4th Ave Suite 200
Anchorage AK 99501