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2 **IN THE SUPREME COURT OF THE STATE OF ALASKA**

3 ITMO the Necessity of the)
4 Hospitalization of :)
5 L.M.) Supreme Court No.: **S-16393**
6)
7)

8 Trial Court Case # 3AN-16-01656 PR

9 **STATE'S OPPOSITION TO EMERGENCY MOTION
10 TO VACATE SUPERIOR COURT ORDER APPROVING
11 THE ADMINISTRATION OF MEDICATION**

12 The State opposes the emergency motion to vacate the Superior Court's order
13 granting the petition to medicate API patient L.M. In this appeal, the Court will consider
14 whether the superior court erred in ordering medication. Because it is an appellate court,
15 it will limit its review to the evidence that was presented to the superior court. But L.M.
16 asks the Court to vacate the superior court order based on a new affidavit that the superior
17 court never saw. The Court should deny the motion.

18 An appellate court is not the proper forum for presenting new evidence that was
19 not presented to the superior court. L.M. maintains that because the medication order is
20 on appeal, the Superior Court no longer has jurisdiction to consider new evidence, so she
21 must present her request to this Court. Motion at 3. She does not oppose a remand to the
22 Superior Court, however. Motion at 3. The proper legal framework for attacking a court
23 order based on evidence that was not presented during the original proceeding is Alaska
24 Civil Rule 60(b). Thus, L.M. essentially requests a limited remand for the Superior
25 Court's consideration of whether to grant relief from the medication order based on new
26 evidence under the standards of Alaska Civil Rule 60(b).

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2 L.M.'s request for a remand is premature, however. Under this Court's ruling in
3 *Duriron Co. v. Bakke*, 431 P.2d 499, 500 (Alaska 1967), while a civil appeal is perfected
4 and pending in the supreme court, the superior court has jurisdiction to deny a
5 Civil Rule 60(b) motion. "Upon application by the movant, all appellate proceedings in
6 this court will be stayed pending the superior court's resolution of the Civil Rule 60(b)
7 motion." *Id.* If the superior court indicates that it will grant the motion, the appellant then
8 requests a remand from the supreme court. *See id.* at 501 n.6.
9

10 If the Court instead wishes to consider a limited remand at this point, it should first
11 consider whether L.M. has shown that she might meet the standards of Rule 60(b).
12 Because she does not meet those standards, the Court should deny her request.

13 The subsection that allows relief based on newly discovered evidence—
14 Rule 60(b)(2)—refers to "newly discovered evidence which by due diligence could not
15 have been discovered in time to move for a new trial under Rule 59(b) [ten days after the
16 date of the judgment]." The new evidence L.M. presents here is the affidavit of Ben
17 Saylor, which states that L.M. told him that she did not wish to be treated with
18 psychotropic medication.¹ But L.M. has not shown that Ben Saylor's affidavit could not
19 have been "discovered" within ten days of July 25, 2016, when the superior court
20 distributed its order approving the magistrate judge's recommendations.² In fact, it
21 appears that by due diligence this information could have been discovered. Ben Saylor's
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25 ¹ See Affidavit of Ben Saylor at 1 [Exhibit B to L.M.'s emergency motion].

26 ² See Exhibit E to Emergency Motion for Stay of Forced Drugging, dated July 26, 2015.

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2 affidavit states that he has known L.M. since she was an infant, as her parents and his
3 parents were friends when she was born.³ He appears to be the son of Dr. Brian Saylor,
4 who submitted an affidavit with L.M.'s objections to the magistrate judge's
5 recommendations, dated July 21 and filed July 22.⁴ In that affidavit, Dr. Saylor stated that
6 he knows L.M., "being a friend of her family since she was a baby."⁵ He stated that L.M.
7 had previously "made statements . . . that expressed a desire to refuse future treatment
8 with psychotropic medication."⁶ He "believe[d] that she has made such statements" to her
9 mother, Dr. Saylor's daughter, and "other friends."⁷ While Dr. Saylor was not certain to
10 whom L.M. had made such statements, L.M. gives no explanation as to why, with due
11 diligence, Dr. Saylor's son could have been identified until now.
12

13 Rule 60(b)(6) also provides a broad catch-all provision that allows the superior
14 court to vacate a judgment for "any other reason justifying relief from the operation of
15 the judgment." L.M. has not provided any explanation for why she meets this standard
16 either.
17

18 The Court therefore should deny the motion to vacate the medication order, and
19 unless L.M. can show that she might meet the standards of Rule 60(b), should decline to
20 grant a limited remand.
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22 ³ Affidavit of Ben Saylor at 1 [Exhibit B to L.M.'s emergency motion].

23 ⁴ See Exhibit D to Emergency Motion for Stay of Forced Drugging, dated July 26,
2015.

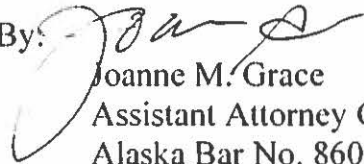
24 ⁵ Exhibit D to Emergency Motion for Stay of Forced Drugging, dated July 26, 2015,
at 47.

25 ⁶ *Id.* at 48.

26 ⁷ *Id.*

1
2 DATED August 15, 2016.

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2 **IN THE SUPREME COURT OF THE STATE OF ALASKA**

3 ITMO the Necessity of the Hospitalization)
4 of L.M.)

5 Appellant(s),)

6 v.)

7 Alaska Psychiatric Institute)

8 Appellee(s).)

Supreme Court No.: S-16393


9 **Trial Court Case #: 3AN-16-01656 PR**

10 **CERTIFICATE OF SERVICE AND TYPEFACE**

11 I certify that on August 15, 2016 a true and correct copy of the State's
12 **Opposition to Emergency Motion to Vacate Superior Court Order Approving the**
13 **Administration of Medication** and this **Certificate of Service** were served by U.S.

14 Mail to the following:

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