

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/21/08

DEPT. 38

HONORABLE MAUREEN DUFFY-LEWIS

JUDGE

F. MOREAU

DEPUTY CLERK

HONORABLE #9.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. LOMELI, C.A.

Deputy Sheriff

NONE

Reporter

9:30 am

BS109596

Plaintiff

ELIZABETH PLOTT TYLER (X)

Counsel

ROBERT J. LISKEY (X)

VERNON CONVALESCENT HOSPITAL IN VS

Defendant

JESSE CARDENAS (X) D.A.G.

CALIFORNIA DEPARTMENT OF HEALTH SERVICES

Counsel

MARK A. JOHNSON (X) amicus

R/T BC363907 (LEAD CASE)

HEATHER L. RICHARDSON (X)

JODY L. SPIEGEL (X)

NATURE OF PROCEEDINGS:

PETITIONER VERNON CONVALESCENT HOSPITAL, INC.
MOTION TO AUGMENT THE ADMINISTRATIVE RECORD
PURSUANT TO CODE OF CIVIL PROCEDURE 1094(e)

AND MOTION IN SUPPORT OF PETITION SEEKING WRIT OF
ADMINISTRATIVE MANDAMUS

The administrative record (1 volume) is admitted in evidence as Petitioners exhibit 1. The Petitioner is to pick up the administrative record and preserve pending the time for appeal, and forwarded to the Court of Appeal in the event of an appeal.

Motion to Augment the Administrative Record and Motion in support of Petition seeking Writ of Administrative Mandamus are called to hearing, argued, and taken under submission by the Court.

LATER: The Court rules on the above motions as follows:

On June 22, 2007, a Petition for Administrative Mandamus was filed by Vernon. That matter was related to civil complaint BC363907 and therefore, will be heard by this department. California Association of Health Facilities has filed an amicus brief on behalf of Vernon. The Department of Public Health opposes the Petition, as does Mr. Bush, the real party in interest, who also opposes the Amicus.

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NATURE OF PROCEEDINGS:

Along with the Petition, Vernon seeks to augment the administrative record. That is also opposed by the Department of Public Health.

STANDARD OF REVIEW:

The Court must deny the writ if there is any substantial evidence in the record to support the findings. There is a presumption that there is substantial evidence to support the findings. DESMOND V COUNTY OF CONTRA COSTA (1993) 21 CAL APP 4TH 330, 335. The Court may reweight the evidence, but only in cases where the administrative decision affects a fundamental vested right to the point of extinguishing it. GOAT HILL TAVERN V CITY OF COSTA MESA (1992) 6 CAL APP 4TH 1519, 1526.

The matter before the Court as presented does not present the extinguishment of a fundamental vested right, there is a presumption that there is substantial evidence to support the findings that have been made.

The Trial Court reviews evidence and argument presented in the administrative hearing. It is error for the Court to augment the record without a proper foundation that one or both of the exceptions apply. HADLEY V CITY OF ONTARIO (1974) 43 CAL APP 3RD 121, 126.

Vernon's request to augment is not persuasive. Vernon was properly represented at the hearing and had the opportunity to present all proper evidence and

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NATURE OF PROCEEDINGS:

argument. The Motion to Augment is DENIED.

RULINGS:

1. Vernon was provided with a fair hearing. The record does not show any erroneous deprivation of Vernon's interest. As noted, Vernon was represented by counsel and had the ability to present the appropriate evidence and argument.
2. The record shows that the Department did not exceed its jurisdiction by ordering injunctive relief to re-admit Bush. The goal and intent of the involuntary discharge requirements is to protect the resident; it would be a "toothless" law if there was no ability to immediately enforce it.
3. The record shows that the hearing properly determined that there was an involuntary transfer. Vernon failed to properly notify Bush of his discharge.

The Writ of Mandate is DENIED, Counsel for Respondent is to prepare proposed judgment and give notice.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 03/21/08 upon each party or counsel named below by depositing in the United States mail at the courthouse

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JODY L. SPIEGEL (X)

NATURE OF PROCEEDINGS:

in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: March 21, 2008

John A. Clarke, Executive Officer/Clerk

By:



F. MOREAU

HEATHER L. RICHARDSON, ESQ.
GIBSON, DUNN & CRUTCHER, LLP
333 SOUTH GRAND AVE.
LOS ANGELES, CA 90071-3197

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