

FILED: September 19, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

RANDY TODD McKINLEY,
Plaintiff-Appellant,

v.

GREG ROBERTS,
Superintendent,
Oregon State Hospital,
Defendant-Respondent.

Marion County Circuit Court
11C13099

A148264

Joseph V. Ochoa, Judge.

Submitted on August 03, 2012.

Erin Galli and Chilton & Galli, LLC, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Christina M. Hutchins, Senior Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 Plaintiff, who is a patient in the Oregon State Hospital, sought a writ of
3 habeas corpus, alleging that he is suffering health problems as a consequence of a poor
4 ventilation system in the hospital. The trial court, on its own motion, dismissed plaintiff's
5 petition for failure to state a claim for relief.

6 On appeal, plaintiff contends that this case is controlled by the Supreme
7 Court's decision in *Bedell v. Scheidler*, 307 Or 562, 570, 770 P2d 909 (1989), a case in
8 which an inmate at a corrections center alleged that her constitutional rights had been
9 violated because of inadequate ventilation and circulation of clean air at the facility. The
10 inmate's allegations, the court held, "established her right to a hearing at which she will
11 have a full and fair opportunity to present her evidence." *Id.*

12 Defendant, the superintendant of the hospital, concedes that plaintiff's
13 allegations are "virtually indistinguishable from the allegations that the Oregon Supreme
14 Court held in *Bedell* required issuance of the writ," and that the trial court therefore erred
15 in *sua sponte* dismissing plaintiff's petition. We agree, accept the concession of error,
16 and reverse and remand for further proceedings.

17 Reversed and remanded.