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Judge upholds man's eviction from an Aspen assisted living complex

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Longtime local uses cannabis for arthritis, which official says endangers other tenants

A judge Wednesday approved the eviction effort by Aspen Valley Hospital, operator of the Whitcomb Terrace assisted living complex, of longtime local Paul Disnard after the tenant acknowledged using cannabis on the premises.

Wearing nasal oxygen tubes in court, Disnard protested that he didn't realize Whitcomb Terrace prohibited the use of marijuana.

"I thought this was all Colorado and that it was legal to have it," he told Judge Erin Fernandez-Ely of Pitkin County Court.

But Whitcomb director Maggie Gerardi said over half of the 12 current residents also use oxygen, underscoring why Disnard's pot habit is dangerous to both tenants and staff.

"I'm concerned for him," she testified. "He himself is using oxygen."

Gerardi said people using supplemental oxygen and smoking tobacco or cannabis have had their faces blown up, something Disnard dismissed as an urban legend. Because marijuana remains illegal under federal law, such behavior also endangers Whitcomb Terrace's Medicare license and funding, Gerardi said under questioning from AVH's attorney, Chelsea Rae Clark of Aspen.

Space heaters, cooking devices and candles are also prohibited in the apartments because of flammability concerns, Gerardi said.

Disnard, 68, compared his embattled situation to that of former Panamanian dictator Manuel Noriega, against whom the U.S. government used psychological warfare to induce his surrender in 1990. He said AVH security is constantly watching him.

"I do consume marijuana," he said. "But most of the time I was accused of it, it was on my clothes, the essence of it was on my clothes."

Disnard, a retired general contractor who represented himself, said he's not the only Whitcomb Terrace resident who smells of cannabis.

"I smell marijuana all the time," he said. "The essence of marijuana is in the air all throughout Colorado."

“If you don’t like the smell, try Wyoming.”

He said Gerardi and the facility’s assistant director, on one occasion, confronted him about using marijuana as he was exiting the premises.

“It became a third-world incident,” Disnard said, adding that he told them he had a joint in his pocket.

AVH security was eventually called, and Disnard said he had, at other times, cannabis the size of a piece of broccoli in his pocket that he had forgotten about.

“I’ve had trouble with them since the day I moved in,” he said, blaming another resident for narcing on him.

The eviction motion also said Disnard was behind on rent payments, but he told the judge that he is all caught up, which Gerardi did not dispute.

He was notified of the eviction proceeding on Feb. 1 and failed to vacate the apartment within 60 days. On April 11, AVH gave him notice to quit residing there and three days later filed the eviction motion in Pitkin County Court.

He moved to Whitcomb Terrace in December, after decades living in the Midnight Mine Road area on Aspen Mountain, because his supplemental oxygen provider apparently refused to make further deliveries.

Upon moving in, Disnard was advised of the facility rules, including the prohibition on smoking tobacco and marijuana, and Gerardi said he told her, “I no longer do that.”

Because of his oxygen needs, she felt he was suitable for Whitcomb Terrace.

As Disnard said, conflict arose quickly. Shortly after he moved in, officials spoke to him in depth about his “risky behavior,” Gerardi said, adding that the cannabis odor emanating from his apartment was frequent. It drew complaints from some residents and their family members.

“This was not something we could have on our campus,” she said.

Disnard reacted angrily, contending he had the right to do what he wanted with cannabis given state law, Gerardi said. He pulled the joint out and showed it to Gerardi, she said.

“We continued to smell the smell and receive complaints from family members” and physicians treating other tenants, Gerardi said.

His legal answer to the eviction motion said he is disabled and therefore unable to find new accommodation.

He told the judge that he moved to Aspen in 1967 and that “everyone I know lives in Aspen.”

Judge Fernandez-Ely found that Disnard had signed the lease agreement with the smoking prohibitions.

The evidence shows he smoked on the premises, and “they can say they do not feel they can take care of you,” the judge said. “They can make that decision.”

She ruled that Whitcomb Terrace also gave proper notice to Disnard about the termination of his lease and that officials had given him 60 days to vacate his apartment.

Disnard said he is now desperately trying to find a place to live. Judge Fernandez-Ely recommended that he try residential facilities near Glenwood Springs and in Rifle.

“I am diligently trying to get out,” he said.

Asked by the judge if marijuana edibles could be a solution, Disnard said they are too expensive and do not give him the same effect. He said he procures marijuana from longtime friends “that stinks” because of its potency.

“It’s better than taking opiates,” he said.

Judge Fernandez-Ely asked Clark, AVH’s attorney, if they’d be willing to give Disnard more time to ease his transition to new housing. She said no, noting that he had already been given 60 days since the February notice and that there is no indication he is willing to abide by the rules. Clark asked for immediate possession of the apartment.

The judge said she wanted to ensure AVH does not call the police to evict Disnard and leave him on the curbside with his possessions outside Whitcomb Terrace, something the defendant said is likely.

“You must have some place to go,” Judge Fernandez-Ely said.

“I really do not,” he said.

The Midnight Mine cabin he owns is basically worthless, and friends do not want him couch-surfing, he said, adding he has no place for his possessions.

Gerardi said the assisted living facility near Sunlight outside Glenwood has availability.

The judge told Disnard that the sheriff’s office will be notified within 48 hours of his eviction and that he will likely have five days past that to vacate Whitcomb Terrace.

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