CASE TYPE INDICATOR: CIVIL - OTHER

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

PROBATE DIVISION

FILE NUMBER: C7-94-1717

RE: James D. Butcher and Patricia A. Butcher, individually and as parents and natural guardians of James D. Butcher, II,
Plaintiffs,

vs.

Thomas Fashingbauer, in his official capacity as Director, Ramsey County Community Human Services Department, and Ramsey County Community Human Services Department,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The above-entitled matter came on for hearing before the Court on a Complaint requesting a declaratory judgment determining that James D. Butcher and Patricia A. Butcher, as parents and natural guardians of James D. Butcher, II, are surrogate decision makers for their son and that they need not be appointed guardians or conservators to make all health care decisions for him, including the decision to terminate artificial administration of fluids and nutrition. Plaintiffs further request the Court to determine that such treatment would not constitute neglect under Minn. Stat. 626.557, Subd. 2(c) (1992).

Plaintiffs further request an Order allowing them to remove their son from White Bear Lake Care Center for the express purpose of terminating artificial administration of nutrition and hydration, and, finally, plaintiffs request an Order directing the defendants to refrain from proceedings with any protective action under Minn. Stat. 626.557 (1992).

By their Answer, Defendants allege that the termination of James D. Butcher, II's nutrition and hydration would be neglect under Minn. Stat. 626.557.

Defendants further assert that the Plaintiffs do not have the right to make life or death decisions regarding their son as surrogate decision makers and that a guardianship or conservatorship is the proper forum to make their request, citing In Re: Conservatorship of Torres, 357 N.W.2d 332 (1984).

This matter was pre-tried by the Court on May 3, 1994, and it was agreed that there were no fact issues to be decided regarding the issue of whether or not the Minnesota Vulnerable Adult Reporting Act, Minn. Stat. 626.557 applied. Counsel agreed to submit memoranda and further agreed that the Court could render its decision on that issue prior to any hearing.

On June 14, 1994, the court by letter advised counsel that the Court intended to expand the initial decision to include the legal issue of whether or not the Butchers could be determined by the Court to be the surrogate decision makers for their son for the purpose of making a life and death health decision.

## FINDINGS OF FACT

1. James D. Butcher, II is a 34 year old man who was involved in an automobile accident in October, 1977. He received a closed head injury in the accident. He was rendered unconscious at the accident scene and never regained consciousness. He has been in a persistent vegetative state since 1983. He has not substantially improved since the accident. He is not capable of interaction with anyone and is fed through a gastrostomy tube.

2. Dr. Ronald E. Crawford, a neurologist in the Department of Neurology for the Hennepin County Medical Center, examined James D. Butcher, II on August 4, 1993, and describes his medical condition as follows:

> "Patient is a 32 year old thin white male who is lying on the gurney with left eye open and right eye closed from local swelling. There are intermittent, spontaneous, irregular head movements from side to side. There are no observed purposeful movements or interactions with the examiner or his mother who is present during the examination. The patient's right arm and left leg are in a flexed position. Cranial nerve examination - patient does not track with his eyes. He has rapid, random roving eye movements. Fundi were not visualized. Right pupil 3.5 mm., left pupil 4.5 mm. both sluggish bilaterally to light. There is clouding of the right cornea and the sclera is very injected. Corneas are brisk bilaterally. Fact symmetric. Gag was not checked. Motor examination reveals increased tone in all four extremities. There are contractures of the distal extremities, feet greater than hands bilaterally.

> Deep tendon reflexes are brisk throughout, left side painful stimuli, the patient extends lower extremities and flexes upper extremities tonically. He also grimaces. There is no purposeful reaction however. Frontal release signs including palmomental, snout and glabellar reflex are present."

The Court accepts this description of James D. Butcher, II as factual. James D. Butcher, II has no prognosis for a meaningful recovery. His CT scan shows extreme severe atrophy of the cerebral hemispheres, the brain stem and the cerebellum. Because of his vegetative state, he experiences no pain and has no quality of life.

3. James D. Butcher and Patricia A. Butcher are the natural parents of James D. Butcher, II, age 34. They are residents of Ramsey County, Minnesota. He has one brother, Jeffrey Butcher, age 32, a resident of New York.

4. James D. Butcher, II does not have a guardian or conservator. All decisions regarding his health care have been made by his parents since the 1977 accident. He has no written directives regarding his health care. There is no subjective manner by which to ascertain what James D. Butcher, II would have decided for himself regarding his health care.

5. James D. Butcher, II was admitted to the White Bear Lake Care Center in 1984 and has continuously resided there. Between 1977 and 1984 he was cared for in his parents' home when he was not hospitalized.

In September, 1993, Plaintiffs requested the nursing home to discharge James D. Butcher, II to their home in White Bear Lake, Minnesota. The purpose of the discharge was stated to be that the gastrostomy tube which provides him with nutrition and hydration would be disconnected and he would die at home.

6. James D. Butcher, II's attending physician, Dr. Marie LaFrance, and two consulting neurologists, Dr. Ronald E. Crawford and Dr. Kathryn Selmo in the Department of Neurology at Hennepin County Medical Center, concur in the diagnosis of permanent vegetative state and concur in Plaintiffs' decision to terminate artificial administration of nutrition and hydration as being within the scope of reasonable medical practice.

7. There is no dispute among family members concerning either the appropriateness of Plaintiffs continuing to act as James D. Butcher, II's surrogate decision makers or the appropriateness of Plaintiffs' decision to terminate artificially administered nutrition and hydration. There is no dispute among James D. Butcher, II's health care providers concerning the appropriateness of Plaintiffs continuing to act as James D. Butcher, II's surrogate decision makers or the appropriateness of Plaintiffs' decision to terminate artificially administered nutrition and hydration.

8. Ramsey County Human Services Department was contacted by Dr. Ronald Crawford to notify them of the proposed termination of artificially administered nutrition and hydration.

On September 24, 1993, Ramsey County notified the plaintiffs by letter that their plan for their son would fall within the scope of the Vulnerable Adult Act. Ramsey County recommended that a guardianship or conservatorship be established and a court determination be made regarding the proposed treatment plan.

9. The artificial administration of nutrition and hydration is a health care treatment and the termination of artificially administered nutrition and hydration for a person who is in a permanent vegetative state is within the scope of accepted medical and ethical practice in Minnesota.

10. James D. Butcher, II is a Vulnerable Adult and subject to the provision of Minn. Stat. 626.557.

## CONCLUSIONS OF LAW

1. James D. Butcher, II is a vulnerable adult under Minnesota Statutes 626.557, Subd. 2(b) (1992) by virtue of his condition and his residence in a nursing home.

2. Discontinuation of artificial administration of nutrition and hydration for James D. Butcher, II does not constitute "neglect" under the Minnesota Vulnerable Adult Abuse Act, Minnesota Statutes 626.557, subd. 2(e) (1992). A decision to continue or terminate artificial administration of nutrition and hydration is a health care and ethical decision.

The termination of artificially administered nutrition and hydration for a person in a permanent vegetative state is within the scope of accepted medical and ethical practice in Minnesota and does not constitute the absence of "necessary health care" as that term is used in Minn. Stat. 626.557, subd. 2(e) (1992).

3. Plaintiffs are appropriate surrogate decision makers for all health care decisions for their son, and they are not required to petition for or be appointed guardians or conservators in order to continue making all health care decisions for their son, including the decision to terminate artificial administration of nutrition and hydration. There is no need for a court order authorizing the termination of artificial administration of nutrition and hydration. This is a private health care and ethical decision to be made by Plaintiffs after consultation with James D. Butcher, II's health care providers and immediate family members.

4. Recognition of Plaintiffs as appropriate decision makers for their son without appointment as guardians or conservators is consistent with the guidelines set forth in Making Health Care Decisions, The Ethical and Legal Implications of Informed Consent in the Patient-Practitioner Relationship (1982) and Deciding to Forego Life-Sustaining Treatment, Ethical, Medical and Legal Issues in Treatment Decisions, (March 1983), both by the President's Commission for the Study of Ethical Problems in Medicine and BioMedical and Behavioral Research.

It is also consistent with similar guidelines established by the American Medical Association, Minnesota Medical Association, and the Guidelines for State Court Decision Making in Authorizing or Withholding Life-Sustaining Medical Treatment, and is consistent with the standard of medical and ethical practice in the State of Minnesota.

JUDGMENT

1. Termination of artificially administered nutrition and hydration for James D. Butcher, II does not constitute the absence of necessary food or necessary health care and does not constitute neglect as defined in Minn. Stat. 626.557, Subd. 2(e) (1992).

2. Plaintiffs are appropriate surrogate decision makers for all health care decisions for their son, and need not petition for or be appointed guardians or conservators in order to continue making all health care decisions for their son, including the decision to terminate artificial administration of nutrition and hydration.

THIRTY DAY STAY

Dated: September 6th, 1994

The foregoing facts were found by me after due hearing and the foregoing order thereon is recommended.

BY THE COURT:

James F. Finley 9/6/94

JAMES F. FINLEY
RAMSEY COUNTY COURT COMMISSIONER/REFEREE

JUDGE OF THE DISTRICT COURT

## MEMORANDUM

In 1984, the Minnesota Supreme Court took a first step in discussing the difficult problem of the rights of a person whose life depends on a medical procedure providing a life support system. The Constitutional issues and the involvement of the Court in the decisions of the patient and the decisions of the family were discussed. In re Conservatorship of Rudolfo Torres, 357 N.W. 332 (Minn. 1984). That case established that the Court had both Constitutional and statutory authority to empower a conservator to allow the removal of a life support system. It also established that the decisions for the removal of life support systems could be delegated to decision makers other than the patient. (conservatee in the Torres case). It also established that the best interests of the patient could be a removal of a life support system depending upon the circumstances of the case. The Torres Court quoted with approval In Re Quinlan, 70 N.J. 10, 355 A.2d 647 (1976), rev'g 137 N.J.Super 227,348 A.2d 801 (Ch.Div. 1975), cert. denied, 429 U.S. 922, 97 S.Ct. 319, 50 L.Ed.2d 289 (1976). It should be noted that in Quinlan, the Court conditioned the guardianship right to a removal of Karen's life support equipment upon the concurrence of her family and upon the doctor's determination that Karen had no reasonable hope of emerging from her comatose state.

The Torres Court also made reference to Patients and Residents of Health Care Facilities, Bill of Rights, Minn. Stat. 144.651, (Supp. 1983) referred to as the Patients' Bill of Rights. With Reference to the Patients' Bill of Rights, the Court emphasized that a patient does have a right to refuse treatment and that a conservator or another interested person may seek enforcement of these rights on behalf of a patient.

Finally, the Court in a footnote made reference to the fact that in 1984 there were approximately ten life support systems discontinued weekly in Minnesota following consultation between attending doctors and family with the approval of the hospital ethics committee. The Court concluded that it was not intended by this opinion that a court order is required in such situations. Although this was a footnote and it was not concurred by three justices who are no longer serving on the court, it was a statement of opinion with regard to the majority of the court.

The Patients' Bill of Rights, although not specifically addressing the issue in the present case, does provide that "any guardian or conservator of a patient or a resident or, in the absence of a guardian or conservator or interested person, may seek enforcement of these rights on behalf of a patient or resident." (emphasis added) The reference by the Minnesota Legislature in the context used (interested person) must refer to close family members and spouses, such as the plaintiffs in this case.

For direction, this Court considered the Minnesota Living Will Law, Minn. Stat. 145B.17, which states:

> "Nothing in this chapter appears or supersedes the existing rights of any patient or any other legal right or legal résponsibility a person may have to begin, continue, or withhold health care." (emphasis added).

By referring to person, this provision also indicates that the statute was intended to confirm that other sources of authority for decision making, like the Bill of Rights, continue and are not diminished by a living will.

Also, in the Durable Power of Attorney Health Care Statute, Minn. Stat. 145C. 10, it is provided:

> This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care and <u>does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another</u> in the absence of a durable power of attorney for health care. (emphasis added)

By referring to someone acting on behalf of another, it implies that there are surrogate situations which are not impaired by the execution of a Durable Power.

This Court recognizes that the Legislature, nor our appellate courts have specifically provided that a surrogate family member may make a decision on behalf of a person who is ill. The Court also recognizes that this is probably done daily in all of our hospitals and nursing homes within the State of Minnesota without the necessity of court involvement

Other jurisdictions have recognized that families and physicians make health care decisions without the necessity of involvement of the judicial system. These cases are well documented in the Memorandum of Plaintiffs regarding surrogate decision making, which is dated June 24, 1994 and filed with the Court. These cases included Barber v. Superior Court, 147 Cal.App.3d 1006, 195 Cal Rptr. 484 (1983), John F. Kennedy Memorial Hospital, Inc. v. Bludworth, 452 So.2d 921 (Fla. 1984), and In the Matter of the Guardianship of Joseph Hamlin, 689 P.2d 1372 (Wash. 1984). In the last case, the comment of the Court which states:

> The approach that best accommodates these most fundamental societal decisions is to allow the surrogate decision maker, the family, to make the decision free of the cumbersomeness and costs of legal guardianship proceedings.

The Connecticut Superior Court in Foody v. Manchester Memorial Hospital, 482 A.2d 713 (Conn. Super. 1984) came to the same conclusion that a family may act as a patient's substitute decision maker and may decide to discontinue the use of a respirator. The New Jersey court in three cases: In the Matter of Kathleen Farrell, 529 A.2d 404 (N.J. 1986), In the Matter of Hilda M. Peter, 529 A.2d 419 (N.J. 1986), and In the Matter of Nancy Ellen Jobes, 529 A.2d 434 (N.J. 1986) came to the same conclusion. Also decided was In re Guardianship of McInnis, 584 N.E.2d 1389 (Ohio Prob. 1991), in which the Court emphasized again that withdrawal of life sustaining treatment should be based upon medical expertise consistent with the patient's wishes as they are expressed by family members, and that there is no need for intervention by the Court.

In summary, other Courts that have directly addressed the issue have come to the conclusion that it is not necessary for a guardianship to be used in order to discontinue life support systems and that the decision should be made between family members and their doctors. If there is a dispute, that dispute can be resolved in a court proceeding.

This is also the recommended procedure from the medical profession generally, the President's Commission and contained in the Guidelines for State Court Decision Making in Authorizing or Withholding Life-Sustaining Medical Treatment, (11. Surrogate Decision Makers for Incompetent Patients), which was chaired by Hon. Douglas Amdahl, Chief Justice (Retired).

JFF 9/6/91

JAMES F. FINLEY

RAMSEY COUNTY COURT COMMISSIONER