

EXHIBIT E

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

TITUS JERMAINE CROMER, JR.,
BY HIS HEIR AT LAW LASHAUNA LOWRY,

Plaintiff,

v

Case No. 19-177547-CZ
Hon. Hala Jarbou

BEAUMONT HEALTH,

Defendant.

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PROCEEDINGS AND HISTORY

This case is before the Court after a hearing on whether the Court has subject matter jurisdiction over Plaintiff's claims.

Plaintiff filed this case as a "VERIFIED COMPLAINT FOR PRELIMINARY INJUNCTION AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER" on Friday, October 25, 2019, at 4:14p.m. The Court was not advised of this filing until the morning of October 28, 2019. The Court held an initial status conference with counsel of record on Monday morning, October 28, 2019. During that status conference Plaintiff's counsel indicated that he and Mr. Cromer's family were seeking to have Titus Cromer (Minor) moved to another facility for long-term care. The Court granted a Temporary Restraining Order, and to allow Plaintiff time to facilitate the transfer and obtain expert witnesses for a subsequent hearing, the Court set a hearing for a preliminary injunction for November 7, 2019, and held several status conferences in the interim. A hearing on the legal issue of whether exclusive jurisdiction of this case rests in the Probate Court was held on November 5, 2019, at 10:30a.m. The parties submitted briefs to the

FILED Received for Filing Oakland County Clerk 11/7/2019 12:06 PM

Court and the Court heard oral argument on the issue of jurisdiction. Status conferences related to the transfer of the Minor were held on November 6, 2019, at 9:45a.m., 11:30a.m., and 4:00p.m. Plaintiff's counsel advised the Court during those status conferences that doctors and a facility willing to effectuate the transfer had been located and details were being worked out. The parties were instructed to provide all the relevant names of doctors, personnel, and facilities that would be involved in the transfer.

The Court held two more status conferences on November 7, 2019 at 8:35a.m. and 9:03a.m. During those status conferences, Plaintiff advised the Court that a facility willing to accept Mr. Cromer for the purpose of performing medical procedures had not yet been secured because of issues with Mr. Cromer's status as a minor. It is not apparent to the Court when, or if, a transfer can be effectuated.

FINDINGS OF FACT AND LAW

Plaintiff asks this court to determine whether Beaumont Health (Defendant) can remove the Minor's life-sustaining treatment after Defendant determined the Minor to be brain dead. There are two prongs to Plaintiff's position: first, Plaintiff disputes Defendant's determination that the Minor is brain dead¹; and second, it would be the Minor's desire to continue the life-sustaining care he is receiving. Defendant argues for dismissal because Plaintiff has failed to state a cognizable claim, and also argues that jurisdiction is likely proper in the Probate Court. It is apparent to this Court that jurisdiction of this type of case is properly vested in the Probate Court.

¹ This part of Plaintiff's argument creates confusion in the way Plaintiff captioned the case, with Lowry suing in a representative capacity as Titus' heir at law. But only deceased persons, if they died intestate, can have heirs. MCL §700.1104(p).

Article 6 §15 of the Michigan Constitution created the probate courts and granted them original jurisdictional “in all cases of juvenile delinquents and dependents” and any further jurisdiction that “shall be provided by law.” One such law is the Estate and Protected Individuals Code, known as EPIC. MCL §700.1101 et seq. Section 1302(c) of EPIC grants the probate courts exclusive legal and equitable jurisdiction over “a proceeding that concerns a guardianship, conservatorship, or protective proceeding.”² Section 1103(j) of EPIC also defines “court” as the probate court.

Titus Cromer, the putative Plaintiff in this matter, is 16 years of age, and on life support in Defendant’s hospital. The rules of civil procedure recognize the need for a third party as found at MCR 2.201(E)(1)(b) which states:

“If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.”

The Michigan Court Rules at 2.201 recognize the need for a minor to have a third party protecting their interests.

This matter is captioned “By His Heir At Law” but there has been no nomination of a next friend nor appointment of a conservator. In fact, Plaintiff resists the appointment of a guardian, conservator, or treating Minor as a “protected person.”

Plaintiff maintains the sole issue is a dispute as to whether the Minor is brain dead according to MCL §333.1031. Assuming arguendo Minor is not brain dead, the issue of whether to terminate life-sustaining treatment remains. Analyzing that issue requires implementation by Minor’s surrogate of either the subjective substituted judgment analysis or the objective best interests standard. Typically, the parent of a minor serves

² Except where jurisdiction is carved out for the Family Division under MCL §600.1021.

as a surrogate, and such cases involve the surrogates seeking to effectuate the incompetent patient's desire to terminate life-sustaining treatment. See *In re Martin*, 450 Mich 204, 221; 538 NW2d 399 (1995); *In re Rosebush*, 195 Mich App 675, 683-688; 491 NW2d 633 (1992).

Since the parent-surrogate seeks to continue such life-sustaining treatment while engaged in a dispute with the medical providers who believe the patient is deceased, issues will arise that would require the assistance of a third party, whether it be a guardian, conservator or treating the Minor as a Protected Person under the Probate Code and EPIC. Such inquiries would be aimed at adjudicating the appropriate standard to apply under the Determination of Death Act, MCL §333.1031 et seq, and to represent the Minor's best interests throughout these proceedings. The inquiries would involve fact finding in the form of medical provider testimony, plaintiff expert witnesses, bioethics witnesses, financial questions, and standards of care. These are all factors routinely dealt with in the probate courts and require the assistance of a guardianship, conservator, or next friend.

In surveying the seminal cases on end-of-life issues it is abundantly clear that the probate court and family division have the jurisdictional authority to order cessation of life-sustaining treatment or order its continuance. See *In re AMB*, 248 Mich App 144,167-170; 640 NW2d 262 (2001), *In re Martin*, 450 Mich 204; 538 NW2d 399 (1995), and *In re Rosebush*, 195 Mich App 675, 687; 491 NW2d 633 (1992). While courts generally observe a nonintervention policy regarding these decisions, judicial involvement is usually triggered "when the parties directly concerned disagree about treatment," as we have in the case at bar. *In re Rosebush, supra*.

Finally, Plaintiff has not put forward a cognizable claim that the circuit court would have jurisdiction over. Plaintiff has only pled remedies in the form of declaratory relief and injunctions which are not causes of action in and of themselves. Plaintiff attempts to challenge the constitutionality of the Determination of Death Act, MCL §333.1031 et seq, as the anchor for the requested relief. Plaintiff argues that the probate court does not have the authority to declare a law unconstitutional because the probate court authority is derived from statute. In the absence of authority stating as much, this argument is without merit.

The rules of civil procedure and the probate code are both in agreement that an incapacitated minor must have a third party to represent their best interests; therefore, the controlling language found at MCL 700.1302 vests exclusive jurisdiction in the Probate Court.

“Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending.” *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). Where there is lack of jurisdiction, the only action a court may take is dismissal because any other action is void. *Id.* at 473.


While the parties and the Court agree that transferring Mr. Cromer is likely the ideal resolution, the jurisdictional considerations discussed herein demand action from this Court. Because of the jurisdictional defect, the Court cannot indefinitely defer dismissal of this case while hoping Mr. Cromer can be transferred from Defendant’s facility. The Court has afforded Plaintiff all the leeway it can give, but in this unfortunate circumstance, the lack of jurisdiction requires dismissal of this case.

IT IS HEREBY ORDERED that this case is dismissed as of Tuesday, November 12, 2019, at 12:00p.m., because exclusive jurisdiction rests in the Probate Court.

IT IS SO ORDERED.

This is a final order and closes the case.

Date: 11/7/19



Hon. Hala Jarbou
Circuit Court Judge