State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: 27-CV-23-9164
Case Type: Civil/Other

Michael Daniel Hart,

Plaintiff,

vs.

Hennepin County Medical Center,

Defendant.

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

The above-entitled matter came on for hearing before the Honorable Francis J. Magill, Judge of Hennepin County District Court, on June 14, 2023, on Plaintiff's Motion for a Temporary Injunction. The hearing was held in person at the Hennepin County Government Center. Plaintiff appeared *pro se*. Although not a party to the action, the minor child's mother, Princess Ortega, was also present *pro se*. Defendant Hennepin County Medical Center ("HCMC") was represented by Patti J. Jurkovich, Esq. and Henry Parkhurst, Esq. Dr. Thomas James Klemond, Vice President of Medical Affairs, was also present.

The Court heard testimony from Dr. Klemond and from Plaintiff. The Court received Exhibits 1-7 (consisting of medical records for the minor child, a summary of medical procedures employed by HCMC in situations of this nature, and a copy of a Washington County court order) into evidence without objection. The Court heard argument from Plaintiff and from counsel for HCMC. At the conclusion of the hearing, the Court instructed Plaintiff to make any written submissions he wanted to provide by June 15, 2023.

The Court received Plaintiff's additional submissions on June 15, 2023. The Court also received submissions from HCMC on June 16, 2023, and July 3, 2023. HCMC's July 3 submissions included additional Exhibits 8-51.

This case arises from profoundly tragic circumstances involving the life or death of a minor child. The Court commends the parties and attorneys for comporting themselves with appropriate gravity and respect. The Court is convinced that both parties are acting in good faith and that their positions are the results of earnest deliberation upon a difficult situation. As recognized by HCMC's counsel at the hearing, Mr. Hart and Ms. Ortega both love their child, have visited the hospital frequently, and despite taking certain actions that are questionable, they are trying to do what they think is in the best interest of their child.

Based on all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff Michael Hart and Princess Ortega are the parents of the two-year old boy who is the subject of this case. The minor child was admitted to HCMC on April 17, 2023, after going into cardiac arrest, likely as a result of ingesting an opioid substance and perhaps also fentanyl. The minor child suffered severe anoxic brain damage prior to admission. He has remained minimally responsive and on life support since he was admitted to the hospital.

2. Plaintiff filed a request for a temporary restraining order[1] on June 13, 2023, asking the Court to enjoin HCMC from ending life-support[2] care for the minor child. Plaintiff's

[1] Plaintiff originally filed this matter as a harassment restraining order. Due to the exigent and important nature of Plaintiff's request, the Court accepted the pleadings as a request for a temporary restraining order under Minnesota Rule of Civil Procedure 65. On June 14, 2023, the Court issued an Order converting the case type from a harassment restraining order case into a civil case. A new court file number (the current court file number) was assigned to the case.

MINNESOTA JUDICIAL BRANCH

request indicated that the minor child would be removed from life-support at 3:30 p.m. on June 13. 2023. The Court issued an order that same day granting Plaintiff's request and enjoining HCMC from removing the life-support care.

3. A hearing was set at the earliest practicable time, June 14, 2023 at 11:00 a.m. on whether the temporary restraining order issued on June 13. 2023 should be become a temporary injunction or should be dissolved.

4. At the hearing, Dr. Klemond testified to the following (inter alia):

a. Dr. Klemond is the Vice President of Medical Affairs at HCMC. He specializes in palliative medicine, geriatric medicine, and internal medicine. He has worked at HCMC for six years. He oversees an ethics committee and an ethics working group at HCMC.

b. The minor child has suffered catastrophic brain damage. The minor child is unconscious, and not consistently responsive to stimuli. He has minimal intact brain function other than his respiratory drive, which is not consistent. He is dependent on a ventilator. He requires an artificial airway to facilitate breathing. He is on a feeding tube.

c. The minor child cannot live without acute care.

d. Over the past two months, the minor child has not shown significant signs of improvement.

e. The minor child's prognosis is negative, particularly neurologically.

[2] The medical documents submitted indicate that HCMC's proposed action was to remove breathing support for the minor child; the hospital proposed to continue to provide nutrition and hydration support to the child.

f. Numerous doctors were consulted about the minor child's condition, including:

    i. Multiple specialists at HCMC (Exhibit 1)

    ii. A review panel at HCMC (Exhibit 3)

    iii. A doctor from Mayo Clinic (Exhibit 4)

    iv. A doctor from Children's Minnesota (Exhibit 5)

    v. Two doctors from the University of Minnesota Masonic Children's Hospital (Exhibit 6)

g. The most medically appropriate recommendation for the minor child is to discontinue breathing assistance and to allow natural death.

h. The minor child's parents disagreed with this recommendation. Accordingly, a Decision-Making and Dispute Resolution process was initiated by HCMC. (Exhibit 2). HCMC's policy regarding dispute resolution was conducted in accordance with its policy. At the conclusion of that process, there remained a disagreement between HCMC and the minor child's parents regarding the recommendation.

i. The minor child's parents expressed a desire to transport the minor child to a different hospital. Dr. Klemond testified that HCMC communicated with a hospital in Louisiana the minor child's parents had mentioned. That hospital indicated to HCMC that they would not admit the minor child.

j. Dr. Klemond testified that HCMC would have no objection to the minor child being transported to another hospital if the minor child's parents could find a hospital willing to admit him.

MINNESOTA JUDICIAL BRANCH

k. It is unlikely that the minor child is suffering or that he can even feel pain due to the amount of damage to his brain. Most of the harm related to continuing life-support as of the hearing date regards the minor child's dignity.

l. The minor child's parents visit him at HCMC regularly.

5. Mr. Hart testified to the following (inter alia):

a. When the minor child was first admitted to the hospital, the parents were told that he would never breath on his own or open his eyes. A few days after arrival, the minor child began to breath on his own.

b. Every week, the parents observe signs of progress. For example, Mr. Hart testified that when he asks the minor child to blink, the minor child blinks.

c. Mr. Hart believes that hospital staff are inadequately attentive to the signs of the minor child's progress, especially the doctors, whom he testified are only present with the minor child for five to ten minutes at a time.

d. Mr. Hart is concerned that the second opinions HCMC received from outside doctors were inaccurate because they were scheduled at 2:00 p.m., which is the time of day when the minor child receives a sedative and is at his least responsive. Mr. Hart implied that the minor child's condition seemed worse during those examinations than it actually is.

e. Mr. Hart asserted that recovery from global anoxic brain injury requires six months to a year.

f. Mr. Hart acknowledged that he does not have any medical education or training. His medical assertions were based on his own research.

MINNESOTA JUDICIAL BRANCH

g. Mr. Hart has been in contact with a Dr. Paul Harch in Louisiana. Mr. Hart said that Dr. Harch recommends that the minor child receive periods of higher-concentration oxygen each day, known as hyperbaric oxygen therapy.

h. Mr. Hart stated that he forwarded an email on May 14, 2023, from Dr. Harch regarding his recommendation to Dr. Ashley Bjorklund, one of the minor child's treating physicians. Mr. Hart read the content of that email into the record.

i. Mr. Hart testified that Washington County Child Protection is in favor of the minor child being transferred to another hospital.

6. At the hearing, the minor child's mother stated that she agrees with Mr. Hart's requests regarding their child.

7. On redirect, Dr. Klemond stated that the kind of hyperbaric oxygen therapy requested by Mr. Hart has not been approved by the FDA and is considered experimental. Dr. Klemond spoke with the department at HCMC that does hyperbaric oxygen therapy, and he was told that they do not do that kind of therapy for patients in the minor child's condition.

8. Exhibits 3-6 detail the extent of the minor child's brain injury. The documents corroborate Dr. Klemond's testimony regarding the minor child's condition. Exhibits 4, 5, and 6 also verify that none of the other hospitals consulted would accept the minor child for admission; all of the consulted physicians concurred with HCMC's recommendation to end life support. Although Plaintiff's concerns regarding the timing of the second-opinion examinations of the minor child are reasonable, the documentation provided removes any doubt that the consulted physicians conducted thorough reviews of the minor child's condition.

MINNESOTA JUDICIAL BRANCH

9. Exhibit 7 is a copy of a Washington County Findings of Fact, Conclusions of Law, and Order, dated April 26, 2023, in Court File Number 82-JV-23-192. This order stated that Mr. Hart and Ms. Ortega were never married, and Ms. Ortega has sole legal and sole physical custody of the minor child. The Order placed the minor child under the protective care of Washington County Community Services.

10. The Court received submissions from Mr. Hart on June 15, 2023, consisting primarily of several articles and a news story regarding hyperbaric oxygen therapy. Ms. Ortega, the parent with parental rights, has not submitted any documentation or argument other than she supports Mr. Hart's position.

11. One of the documents submitted by Mr. Hart states, "Sedatives, analgesics, and paralytics may alter the ability of a patient in assessment of neurologic capability," and "PICU clinical assessment is often compromised by sedation, neuromuscular blockade, ventilation, hypothermia, inotropic management etc."

12. Another document submitted by Mr. Hart states, "Use of hyperbaric oxygen therapy, including what protocol may be useful, is controversial. Some studies show promise, but sufficient evidence for integration into clinical care is still lacking."

13. The examples of recovery from brain damage found in Mr. Hart's materials appear to involve injuries that are less severe than the minor child's or involve patients who were able to recover on their own to the point of being discharged from the hospital prior to beginning hyberbaric oxygen treatment.

MINNESOTA JUDICIAL BRANCH

14. None of Mr. Hart's submissions identify a hospital willing to accept transfer of the minor child, nor do they establish a viable treatment plan to alter the child's current neurological state.[3]

15. The Court received additional submissions from HCMC on June 16, 2023, composed of a copy of the email Mr. Hart forwarded to Dr. Bjorklund on May 14, 2023, an affidavit of Chris Murphy, Supervisor of the Washington County Child Protection Intake and Investigation Unit, and an affidavit of Dr. Bjorklund.

16. The Affidavit of Chris Murphy indicates that Dr. Harch told Washington County that he only performs hyperbaric oxygen therapy in an outpatient setting after the patient has been discharged home or to a rehabilitation hospital, that he was unaware that the minor child still required Pediatric Intensive Care Unit (PICU) services, and that he does not treat patients who are in a PICU. The affidavit also stated that Washington County does not support the minor child receiving any experimental care. Washington County would, however, support transferring the minor child to another hospital that can provide care not available at HCMC if Mr. Hart and Ms. Ortega can provide documentation from a physician at a different hospital indicating the minor child would be accepted there; Washington County has not received any such documentation.

17. The Affidavit of Ashley Bjorklund, M.D. indicates that she is the Medical Director of the Pediatric Intensive Care Unit at HCMC, and she has been providing and coordinating care for the minor child since his arrival at the hospital on April 17, 2023. Dr.

---

[3] Although the minor child's care team did not have evidence to support that oxygen treatment would assist with the minor child's recovery, HCMC agreed to keep the minor child's FiO24 at 30% for 2 weeks in an effort to determine whether increased oxygen would benefit the minor child. HCMC observed the minor child for meaningful neurologic recovery for 2 weeks; there was no meaningful neurologic improvement from the increase in FiO2 during this period. (HHS Med R. M Hart FiO2 Ex. 21, at 3.)

MINNESOTA JUDICIAL BRANCH

Bjorklund states that the minor child's brain injury is severe and pervasive and has been confirmed by multiple MRIs and EEGs. Dr. Bjorklund stated that there is no additional therapy to provide for the minor child. Dr. Bjorklund further stated that hyperbaric oxygen therapy has never been considered a standard treatment for anoxic brain injury due to cardiac arrest; despite this, she formally consulted HCMC's expert hyperbaric oxygen team about the minor child's case. After reviewing his chart, test results, and examining him, they provided a detailed consultation note explaining why hyperbaric oxygen therapy would not be appropriate for the minor child. Dr. Bjorklund stated that she contacted the Louisiana State University hospital, and they do not provide hyperbaric oxygen therapy to patients with anoxic brain injuries, and they would not accept the minor child or offer hyperbaric oxygen therapy to a patient in the minor child's condition due to the lack of proven benefit.

18. Dr. Bjorklund states that the longer the minor child continues on ventilation the less likely he is to be removed from it, and this is in part why continued ventilation is contrary to the standard of care for his condition. Long-term ventilation will likely result in the minor child developing physical complications, including, but not limited to, tracheal injury or stenosis, pneumonia, barotrauma, muscle wasting, pressure ulcers, increased rates of infection, hypotension, venous thromboembolism, stress ulceration, and kidney injury. (Ex. 15 and 16.) According to HCMC, these complications have already begun. The minor child has experienced ventilator-related complications. (Ex. 38.) He had increased apneic episodes on ventilation with mild bradycardia. He has developed thrush, is monitored daily for infection, and has tracheitis. (Ex. 38, Ex. 39.) The longer the minor child stays on mechanical ventilation in the absence of brain function improvement, the more likely these complications will occur. As a result, the minor child will then endure further invasive procedures and treatments.

MINNESOTA JUDICIAL BRANCH

Based on the forgoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Minnesota Rule of Civil Procedure 65 governs Temporary Restraining Orders and Temporary Injunctions. Rule 65 states, in part:

> ***65.01Temporary Restraining Order; Notice; Hearing; Duration***
>
> *A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if the party does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.*
>
> ***65.02Temporary Injunction***
>
> *(a) No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party.*
>
> *(b) A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.*
>
> *(c) Before or after the commencement of the hearing on a motion for a temporary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the motion. Even when this consolidation is not ordered, any evidence received upon a motion for a temporary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at trial. This provision shall be so construed and applied as to preserve any rights the parties may have to trial by jury.*

65.03Security

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any documents affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the court administrator, who shall forthwith transmit copies to the sureties if their addresses are known.

2. A temporary injunction is an extraordinary equitable remedy. *Metro. Sports Facilities Com'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 221 (Minn. App. 2002) (citing *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982)). A temporary injunction is meant to preserve the status quo pending an adjudication on the merits. *Id*. The Court cannot issue a temporary injunction altering the status quo. *See, e.g., Yager v. Thompson*, 352 N.W.2d 71, 74 (Minn. App. 1984) (reversing the district court for altering the status quo). Therefore, the Court cannot issue a temporary injunction initiating hyperbaric oxygen therapy, nor a temporary injunction transferring the minor child to another hospital. The question before the Court is limited to whether to issue a temporary injunction preventing HCMC from terminating life support services for the minor child.

3. In analyzing whether to issue a temporary injunction, the Court must consider five factors:

a. The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief;

b. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial;

c. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in the light of established precedents fixing the limits of equitable relief;

d. The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal; and

e. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros. v. Ford Motor Co., 272 Minn. 264, 274–75, 137 N.W.2d 314, 321–22 (1965).

a. The Background and Relationship between the Parties

4. Mr. Hart is the father of the minor child, and HCMC is the hospital providing care for the minor child. There is no evidence of any preexisting relationship prior to the minor child's admission to HCMC. This factor is neutral.[4]

b. Harm to the Parties

5. From Mr. Hart's perspective, there is no question that immediate and irreparable loss is likely to occur if the temporary restraining order is dissolved. Dr. Klemond testified that the minor child is dependent upon intensive and life-sustaining care. It follows that natural death will likely occur if the minor child's life support is discontinued.

6. The harm to HCMC in granting a temporary injunction relates to the cost of continuing life support and the hospital resources taken up with the minor child which cannot be utilized by another patient in need of those resources. *See* Ex. 28 and 29 (generally discussing the strain on health care providers and the health care industry). HCMC also asserts that its staff

[4] HCMC has pointed to numerous allegations of misconduct on the part of Mr. Hart and Ms. Ortega. There is evidence that Mr. Hart and Ms. Ortega have increased the minor child's oxygen settings without permission from hospital staff. Ex. 46. Furthermore, two of HCMC's security badges went missing, and evidence suggests that Mr. Hart and Ms. Ortega took them. Ex. 51. Mr. Hart and Ms. Ortega are now excluded from the HCMC premises, and must conduct all visits with the minor child remotely. Ex. 51 These allegations do not preexist the minor child's admission to HCMC; thus, the Court will not consider them for purposes of this factor.

MINNESOTA JUDICIAL BRANCH

is being harmed by having to provide care for the minor child that they feel is unethical, will not benefit the child, and will only prolong the child's life until eventual death.

7. While the *Dahlberg* factors require the Court to consider the harm to the parties, given the nature of the dispute here, the Court's greatest concern is what is best for the minor child. Dr. Klemond testified that the minor child is likely not suffering any pain at this time. This does not, however, mean that there are no adverse effects of being on life support for a long period of time. The minor child has had to be treated for multiple different infections that are the result of the invasive measures required to keep him alive. Ex. 32. There are also numerous conditions, diseases, and forms of harm that can result from long term life support services. Ex. 15; Ex. 16. It is only a matter of time before more infections and complications befall the minor child. The facts establish that the treatment is not increasing the child's chances or survival, but simply prolonging the child's death.

8. The greatest harm to the minor child currently present at this stage, according to Dr. Klemond, is to the minor child's dignity. The minor child is situated in an unnatural setting, connected to tubes providing air and nutrition. Of necessity, the majority of the minor child's care is provided by strangers, and his body is subject to constant monitoring. According to the medical records, his brain is not responsive to stimuli, and any reactions he displays are wholly reflexive. While Dr. Klemond testified that he does not believe the minor child is neurologically capable of experiencing pain, it follows that he is also not experiencing comfort, pleasure, satisfaction, or joy. His quality of life appears to be extremely low.

9. With difficulty, the Court concludes that this factor weighs against granting a temporary injunction.

c. Likelihood of Success on the Merits

10. The underlying conflict in this case is between the minor child's legal guardians, who wish care to continue, and the hospital, which wants to discontinue care. This factor asks the Court to consider whether Plaintiff has pled a cause of action which would allow the Court to grant him relief. HCMC has alleged that there is no legal basis for the Court to grant Plaintiff relief. The Court considers a variety of potential legal bases for Plaintiff's requested relief below.

11. First, the Court considers Plaintiff's Complaint in this matter. The Court must liberally interpret pro se pleadings. *State ex rel. Farrington v. Rigg*, 107 N.W.2d 841, 841 (Minn. 1961). It is clear from Plaintiff's pleadings that he is seeking the continuation of life-sustaining care for the minor child. It is also possible that he is seeking the initiation of hyperbaric therapy at HCMC. Plaintiff does not set forth the specific legal grounds for his requests in his Complaint. None of Plaintiff's submissions have explained his theory of the case. Even considering the obligation to liberally interpret pro se pleadings, Plaintiff's pleadings are insufficient to allege malpractice, breach of contract, or any specific tort. The Court's analysis could end there, concluding that Plaintiff has not pled a claim upon which relief can be granted, and finding no possibility of success upon the merits. However, given the serious consequences of the issue before the Court, the Court will go further in searching for a legal basis for Plaintiff's requested relief.

12. Turning to possible statutory claims, the relationship between patients and medical care providers is governed by Minnesota Statutes Section 144.651, also known as the Health Care Bill of Rights. The purpose of this statute is to "promote the interests and well being of the patients and residents of health care facilities." *Id.* at Subd. 1. "No health care

MINNESOTA JUDICIAL BRANCH

facility may require a patient or resident to waive these rights as a condition of admission to the facility." *Id*. The minor child at issue here is a "patient" for purposes of this statute, which is defined as "a person who is admitted to an acute care inpatient facility for a continuous period longer than 24 hours, for the purpose of diagnosis or treatment bearing on the physical or mental health of that person." *Id*. at Subd. 2.

13. Subdivision 6 addresses a patient's right to appropriate health care, stating:

> *Patients and residents shall have the right to appropriate medical and personal care based on individual needs. Appropriate care for residents means care designed to enable residents to achieve their highest level of physical and mental functioning. This right is limited where the service is not reimbursable by public or private resources.*

14. The definition of "appropriate care" seems to preclude removing life support care. One could argue that a patient has a right to life support care under the statute, no matter how low the patient's level of physical or mental functioning – after all, any level of functioning is a higher level of functioning than the complete lack of functioning afforded by death.

15. Despite this, Subdivision 6 is not availing for Plaintiff. Minnesota courts have been clear that the Health Care Bill of Rights does not create a private right of action against a health care provider. *Favors v. Kneisel*, 902 N.W.2d 92 (Minn. App. 2017); *Findling v. Group Health Plan, Inc.*, 979 N.W.2d 234 (Minn. 2022). On the contrary, the exclusive remedies for a violation of the Health Care Bill of Rights lie in the health care facility grievance policies (Minn. Stat. § 144.651, Subd. 20) and enforcement action by the Minnesota Commissioner of Health (Minn. Stat. § 144.652; Minn. Stat. § 144.653, Subd. 3). Thus, the Health Care Bill of Rights

MINNESOTA JUDICIAL BRANCH

does not empower the Court to grant any form of relief for an alleged violation of a patient's rights. [5]

16. Nor can the Court find any basis in common law entitling a patient to whatever health care he or she requests; HCMC points out that this specific claim has been recently rejected in the case of *Salier v. Walmart, Inc.*, 622 F.Supp.3d 772 (D. Minn. 2022) (review pending). In that case, the plaintiffs brought suit against a pharmacy for failing to fill a prescription for ivermectin and hydroxychloroquine. *Id*. at 775. The court held that the plaintiffs had failed to state a claim upon which relief could be granted. *Id*. at 784. In so doing, the court rejected the plaintiffs' argument that the pharmacy had violated their "common law right to self-determination". *Id*. at 777. The court concluded:

> *It is one thing to say that a patient has the right to refuse medical treatment. It is quite another thing to say that a patient has the right to force a medical provider to provide a particular type of medical treatment against his or her professional judgment. As far as the Court knows, not a single state has recognized such a right. To the contrary, several state courts have ruled that patients do not have a legal right—whether constitutional, statutory, regulatory, or common-law—to compel health-care providers "to administer a treatment they do not wish to provide."*

Id. at 778 (citations omitted; internal quotations omitted).

17. The Court finds the *Salier* court's reasoning persuasive. To the extent that Plaintiff's pleadings could be construed to allege a common law right to receive medical care that a doctor does not want to provide, such a claim does not find support in Minnesota law.

18. Lastly, one could argue that Courts have an inherent authority to make decisions regarding life support based on two previous cases in Minnesota which have involved removal of life support, *In the Matter of the Conservatorship of Torres*, 357 N.W.2d 332 (Minn. 1984) and

[5] There is nothing in the record indicating that the care being provided to the minor child is not reimbursable by public or private sources; if such sources of funding were not available, that would represent another reason the Health Care Bill of Rights is not availing for Plaintiff.

In re Guardianship of Tschumy, 853 N.W.2d 728 (Minn. 2014). Both of those cases found that Minnesota courts have authority over the removal of life support based on constitutional and statutory grounds; however, those cases are distinguishable from the current situation for two related reasons.

19. First, both *Tschumy* and *Torres* involved interpretation of the statutory power granted to guardians (*Tschumy*) and conservators (*Torres*), finding that those statutes did grant the authority to end life support. Here, there is no question that the minor child's parents[6] would have the right to end life support for the minor child. Second, neither *Tschumy* nor *Torres* dealt with the question of whether a patient has the right to require a hospital to continue to provide treatment that it no longer wishes to provide and is inconsistent with the standard of care. These differences are crucial. The Court concludes that *Tschumy* and *Torres* do not provide a path for Plaintiff to be granted the relief he is requesting.

20. Based upon the foregoing analysis, the Court finds that there is almost no possibility that Plaintiff will succeed on the merits of this case; in fact, the Court cannot find a single basis upon which Plaintiff could find success. Minnesota law simply does not allow for the relief Plaintiff is requesting.

d. Public Policy

21. The public policy implications of granting a temporary injunction are neutral. On one hand, in any case that involves life support, failing to grant a temporary injunction threatens to render the action moot, making a temporary injunction very important in a case like this. On the other hand, continuing to expend hospital resources that may be needed by other patients in a

[6] Specifically Princess Ortega who is not a party to this action.

MINNESOTA JUDICIAL BRANCH

situation where there is no likelihood of recovery is not in the public's interest. The Court weighs these important considerations about equally.

e. Administrative Burden

22. There would be very low administrative burden on the Court of granting a temporary injunction. HCMC points out that there will be numerous future motions in this case if a temporary injunction is granted; the Court finds this contention speculative. This factor favors a temporary injunction.

23. Weighing these factors, the Court concludes that no temporary injunction should be issued, and the temporary restraining order should be dissolved. The fact is that there is no basis in Minnesota law for the Court to require HCMC to provide care that it believes is inappropriate and against medical advice. If any basis does exist, it is the exclusive province of the Commissioner of Health to enforce.[7]

24. HCMC's submissions detail the numerous procedural defects with Plaintiff's action: Plaintiff does not have legal custody of the minor child, and Princess Ortega has not joined in this action, meaning Plaintiff arguably does not even have standing to bring this action before the Court; Plaintiff originally filed a Petition for a Harassment Restraining Order, not a complaint for a Temporary Restraining Order; while Plaintiff provided notice of his application for a Temporary Restraining Order to social worker Stacy Stickney Ferguson (Ex. 44), he did not "state[] to the court in writing" that he had done so as required by Rule 65.01; Plaintiff did not formally make an application for a temporary injunction at the June 14 hearing, as required by Rule 65.01 ("if the party does not do so, the court shall dissolve the temporary restraining

[7] A search of the Department of Human Services' database of Human Services Judge decisions does not indicate that this Commissioner of Human services has previously confronted this issue. https://mn.gov/dhs/search/fair-hearings.jsp, last visited July 6, 2023.

MINNESOTA JUDICIAL BRANCH

order"); Plaintiff did not serve a notice of motion and motion or order to show cause on HCMC as required by Rule 65.02; Plaintiff did not post a security for payment of costs as required by Rule 65.03. The Court has overlooked all of these procedural defects in deference to the seriousness of Plaintiff's request. But the Court cannot overlook the fact that Plaintiff's request is not authorized by Minnesota law; to do so would be to exercise a power that the Court clearly does not have.

25. That said, even if the Court had the power to grant Plaintiff's requested relief, it would not do so under the tragic facts of this case. It is a medical certainty – barring an unprecedented miracle – that the minor child will not recover. His quality of life is extremely low and will continue to deteriorate as he inevitably succumbs to the perils of long-term life support care. It is difficult to read the medical records in this case when they describe the indignities visited upon the minor child by the highly invasive care needed to sustain the minor child's life. If it were this Court's decision to make, the Court would find that it is in the minor child's best interests to discontinue life support and allow natural death.

26. To be clear, this does not mean that the Court is instructing HCMC to terminate life support. But it does mean that HCMC is no longer prevented by this Court from doing so. The Court assumes that HCMC will take whatever actions it believes are consistent with its policies, the best medical practices, and applicable law.

27. Procedurally, the Court's decision to dissolve the temporary restraining order is not the same as an order dismissing the case. Either party may contact the Court to request any motion hearings they feel are appropriate.

MINNESOTA JUDICIAL BRANCH

Based on all the files, records and proceedings herein, the Court makes the following:

ORDER

1. Plaintiff's request for a temporary injunction is **DENIED**.

2. The Temporary Restraining Order issued on June 13, 2023 in court file number 27-CV-23-9132 and re-filed in this case is hereby **DISSOLVED**.

BY THE COURT:

____

The Honorable Francis J. Magill
Judge of District Court

MINNESOTA
JUDICIAL
BRANCH