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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Spears Plaintiff/Petitioner(s) VS. Rosen Defendant/Respondent(s) (Abbreviated Title)	No. RG15760730 Order Demurrer and Motion to Strike Complaint Sustained

The Demurrer, Motion to Strike and Request for Judicial Notice, filed by Defendant UCSF Benioff Children's Hospital Oakland ("CHO") on June 25, 2015, was set for hearing on 07/30/2015 at 02:00 PM in Department 20 before the Honorable Robert B. Freedman. A tentative ruling was published directing counsel to appear.

The matter was argued and submitted, and good cause appearing therefor, IT IS HEREBY ORDERED as follows:

A. First Cause of Action

CHO's demurrer to the First Cause of Action for personal injuries on behalf of Jahi McMath ("Jahi") is SUSTAINED, pursuant to C.C.P. § 430.10(e), WITH LEAVE TO AMEND to allege facts sufficient to state a cognizable cause of action by Jahi against CHO and the other named defendants for negligence, including facts to the effect that Jahi has standing to bring the cause of action despite the issuance of a death certificate on January 3, 2014. (See Request for Judicial Notice filed on June 25, 2015 ["RJN"], Exh. D; Health & Safety Code § 103550; see also Hanson v. Grode (1999) 76 Cal.App.4th 601, 606 ["in any medical malpractice action, the plaintiff must establish: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence"].)

Plaintiff Latasha Nailah Spears Winkfield ("Winkfield") and/or other appropriate plaintiff(s) also has/have leave to amend to include a separate and alternative cause of action on a negligence theory as the personal representative of Jahi or, if none, the successor in interest to Jahi within the meaning of C.C.P. §§ 377.30-377.32. If brought as successor in interest, the plaintiff(s) must also execute and file an affidavit or declaration as required by section 377.32. The inclusion of such a separate and alternative cause of action shall not constitute a waiver or admission that Jahi cannot bring a cause of action on her own behalf. (See, e.g., Klein v. Chevron U.S.A., Inc. (2012) 202 Cal.App.4th 1342, 1388 ["modern rules of pleading generally permit plaintiffs to 'set forth alternative theories in varied and inconsistent counts'"]; Rader Co. v. Stone (1986) 178 Cal.App.3d 10, 29; Mendoza v. Continental Sales Co. (2006) 140 Cal.App.4th 1395, 1402.)

The instant demurrer is based primarily on the assertion that Jahi lacks standing to bring the First Cause of Action because a death certificate was issued on January 3, 2014, and because this court issued orders and a judgment in Case No. RP13-707598 denying Winkfield's petition for medical treatment for

Jahi after the court reviewed medical evidence to the effect that Jahi was legally dead as defined by Health and Safety Code sections 7180-7181. (RJN, Exhs. A, B, C and D.) While the court grants the request for judicial notice of such certificate and orders, the court cannot (and does not) take judicial notice of the truth of factual conclusions in the orders or death certificate, and makes no binding determination as to their preclusive effect. (See, e.g., Steed v. Department of Consumer Affairs (2012) 204 Cal.App.4th 112, 120 ["Judicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding."]) Nevertheless, in light of the uncontroverted issuance of such orders and the death certificate, it is appropriate for any cause of action asserted directly by Jahi to have allegations providing a basis for Jahi to have standing notwithstanding such orders and certificate.

Without making any binding determinations on this demurrer, the court notes that a death certificate is prima facie evidence of the facts stated therein but is subject to rebuttal and explanation. (See Health & Safety Code § 103550 ["Any ... death ... record that was registered within a period of one year from the date of the event ... is prima facie evidence in all courts and places of the facts stated therein"]; In re Estate of Lensch (2009) 177 Cal.App.4th 667, 677 n. 3 ["Of course, a death certificate is "subject to rebuttal and to explanation"], quoting Morris v. Noguchi (1983) 141 Cal.App.3d 520, 523 n. 1.) The court notes that, while it appears that plaintiffs have not petitioned the California Department of Vital Records to void or amend the death certificate, CHO has not submitted authority that this is a prerequisite in order for Jahi to have standing.

As to CHO's arguments that collateral estoppel and/or res judicata applies to the determinations in Case No. RP13-707598, it may or may not be appropriate for the court to make a determination in this regard at the pleading stage. These are affirmative defenses as to which the defendants have the burden of proof. (See, e.g., Vella v. Hudgins (1977) 20 Cal.3d 251, 257.) Under California law, the "theory of estoppel by judgment or res judicata ... extends only to the facts in issue as they existed at the time the judgment was rendered and does not prevent a reexamination of the same questions between the same parties where in the interim the facts have changed or new facts have occurred which may alter the legal rights of the parties." (City of Oakland v. Oakland Police and Fire Retirement System (2014) 224 Cal.App.4th 210, 230.) In amending, Jahi has leave to include allegations in this regard.

B. Third Cause of Action

CHO's demurrer to the Third Cause of Action for wrongful death, to the extent brought by Plaintiff Marvin Winkfield, is SUSTAINED, pursuant to C.C.P. § 430.10(e), WITH LEAVE TO AMEND to omit Mr. Winkfield as a plaintiff on this cause of action or to include allegations sufficient to give him standing to bring such a cause of action. (See C.C.P. § 377.60; Phraner v. Cote Mart, Inc. (1997) 55 Cal.App.4th 166, 168-169.) In their opposition memorandum, plaintiffs "acknowledge that it appears Mr. Winkfield, Jahi's stepfather, does not have standing to assert the alternative claim for wrongful death." (Opp., p. 15.) If this is the case, he shall be omitted as a plaintiff in a First Amended Complaint.

C. Motion to Strike

CHO's motion to strike the allegations and request for future damages, as well as the language "[i]n the event that it is determined that" in paragraph 44 of the complaint, is DROPPED by the court as moot in light of the order sustaining the demurrer with leave to file an amended complaint.

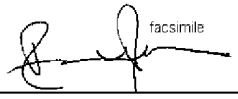
D. Requests for Judicial Notice

As with CHO's RJN, Plaintiffs' Request for Judicial Notice, filed on July 17, 2015, requesting judicial notice of letters of authorization from the New Jersey Department of Human Services, is GRANTED (see Evid. Code § 452(c)), but the court does not take judicial notice of the truth of factual matters asserted in the exhibits.

E. Leave to Amend

Plaintiffs shall have 14 days after the date reflected in the clerk's declaration of service of this order in which to file and serve a First Amended Complaint. CHO shall have 14 days after service thereof in which to respond. C.C.P. § 1013 applies to the calculation of these dates.

Dated: 10/20/2015



Judge Robert B. Freedman

SHORT TITLE:	CASE NUMBER:
Spears VS Rosen	RG15760730

ADDITIONAL ADDRESSEES

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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG15760730
Order After Hearing Re: of 10/20/2015

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/20/2015.

Chad Finke Executive Officer / Clerk of the Superior Court

By digital _____

Deputy Clerk