

Alameda County Superior Court

Case Number: RG15760730

Title: Spears VS Rosen

February 14, 2017

<https://publicrecords.alameda.courts.ca.gov/PRS/Case/CaseDetails/UkcxNTc2MDczMA%3d%3d>

This Tentative Ruling is made by Judge Stephen Pulido The Motion of Defendant Frederick S. Rosen, M.D. to Unseal the Reporter's Transcripts of the December 23, 2013 and December 24, 2013 Hearings in Department 31 (Grillo, J.), in In Re: Jahi McMath (Case No. RP13707598), pursuant to Rule of Court 2.551(h), is GRANTED.

The Court has been provided with copies of the hearing transcripts that have been placed under seal pursuant to the Court's order of December 23, 2013. The Court has reviewed the transcripts and the other records of the proceedings in Department 31 on December 23, 2013 and December 24, 2013. As an initial matter, the Court notes that Judge Grillo ordered only a discrete portion of the transcript to be shielded from public view. The Court refers to paragraph 6 of Judge Grillo's Case Management Order Regarding Petition for Authorizing Medical Treatment and Authorizing Petitioner to Give Consent to Medical Treatment, dated December 23, 2013. When the Court convened the evidentiary hearing on December 24, 2013, Judge Grillo specifically indicated that he would be conducting the portion of the hearing closed to the public in his chambers because it was not feasible to clear all of the members of the public and television cameras from the courtroom. Based on the Court's review of the transcripts, the only portions ordered sealed by Judge Grillo are pages 6 through 47 of the December 24, 2013 hearing transcript. The Court notes that Judge Grillo did not expressly make the findings of fact required for a sealing order under Rule of Court 2.550(d). See Rule of Court 2.551(h)(4) (court must consider the factors in Rule of Court 2.550(d) when deciding whether to unseal a court record).

Although Plaintiff Jahi McMath, who appears in this litigation through her Guardian Ad Litem, Latasha Nailah Spears, unquestionably has a constitutional right of privacy in the evidence presented to Judge Grillo by the doctors who examined her in connection with Case No. RP13707598, she has waived that right with regard to the information disclosed in pages 6 through 47 of the December 24, 2013 hearing transcript by filing her medical malpractice action against Dr. Rosen and others. See *Palay v. Superior Court* (1993) 18 Cal.App.4th 919, 933-934.

For that reason, the Court finds that the right of the public to access to information about Plaintiff's medical condition and the findings and conclusions of the doctors who examined her is not outweighed in this case by her right of privacy. See *Britt v. Superior Court* (1978) 20 Cal.3d 844, 864. Counsel for Dr. Rosen shall prepare a Proposed Order and submit it for the Court's consideration. See Rule of Court 3.1312. NOTICE: Effective June 4, 2012, the Court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201.