

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: Other Civil
Court File No. 07-94-1717

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

Plaintiffs,

v.

Thomas Fashingbauer, in his official
capacity as Director, Ramsey County Community
Human Services Department, and Ramsey County,
acting through its Ramsey County Community
Human Services Department,

Defendants.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND
INJUNCTIVE RELIEF**

Plaintiffs James D. Butcher and Patricia A. Butcher, individually and as parents
and natural guardians of James D. Butcher, II, for their Complaint for Declaratory
Judgment and Injunctive Relief state and allege as follows:

INTRODUCTION

1. This case seeks a declaratory judgment and injunctive relief permitting
Plaintiffs to make all health care decisions, including the termination of artificially
administered nutrition and hydration, for their 34 year old son who has been in a
permanent vegetative state for over 16 years. Plaintiffs have been making all health care
decisions for their son since his birth without court supervision and seek to continue to
do so without court supervision.

2. Defendants have notified Plaintiffs that termination of artificially administered nutrition and hydration for their son without court authorization could constitute "neglect" under the Minnesota Vulnerable Adult Reporting Act, Minnesota Statutes §626.557, and that failure to seek court authorization could result in county protective action. Protective actions under that statute can include obtaining a restraining order, petitioning for another person to be appointed guardian or conservator for their son, and referral to a prosecuting attorney for possible criminal prosecution.

3. Plaintiffs seek a judgment declaring that they are the most appropriate surrogate decision makers for all health care decisions for their son and are not required to become court-appointed guardians or conservators in order to make the decision to terminate artificially administered nutrition and hydration. Plaintiffs also seek a judgment declaring that termination of artificially administered nutrition and hydration for their son, who has been in a permanent vegetative state for over 16 years, does not constitute "neglect" under the Minnesota Vulnerable Adult Reporting Act. Plaintiffs also seek appropriate injunctive relief to relieve them from the threat of Ramsey County protective action in the event they authorize termination of artificially administered nutrition and hydration for their son.

PARTIES

4. Plaintiffs James D. Butcher and Patricia A. Butcher are the natural parents of James D. Butcher, II. Plaintiffs reside at 4376 Cottage Park Road, White Bear Lake, Ramsey County, Minnesota 55110. Plaintiffs have one other child, Jeffrey Butcher, age 32, who resides in the State of New York.

5. James D. Butcher, II, (hereinafter referred to "Jamie Butcher"), a 34 year old male, has been a resident at White Bear Lake Care Center, 1891 Florence Avenue,

White Bear Lake, Ramsey County, Minnesota 55110 for nine years. He has been in a permanent vegetative state since a 1977 auto accident, when he was 17 years old.

6. Defendant Thomas Fashingbauer is Director of the Ramsey County Community Human Services Department. Defendant Ramsey County is the local welfare agency, through its Ramsey County Community Human Services Department, with the authority and responsibility under the Minnesota Vulnerable Adult Reporting Act for receiving, investigating, and acting upon reports of possible abuse and neglect of vulnerable adults in Ramsey County.

FACTUAL BACKGROUND

7. On October 8, 1977, Jamie Butcher was driving the family car, accompanied by three high school friends and wearing his seat belt, when the car slipped on wet leaves during a turn at 30 miles per hour and struck a tree. None of Jamie Butcher's companions were substantially injured, but the collision with the tree caved in the driver's side of the car and Jamie Butcher apparently struck his head, suffering severe head injuries. After eleven weeks at St. Paul-Ramsey County Hospital, Jamie Butcher returned to his family home under the care of his parents, the Plaintiffs. Plaintiffs have made all health care decisions for their son since his birth and since his accident in 1977.

8. Plaintiffs personally cared for Jamie Butcher in their home for the next six and one-half years. During that time, they sought rehabilitative therapies in order to restore Jamie Butcher to his highest level of functioning. In 1983 Jamie Butcher was diagnosed as being in a persisting vegetative state, with "the possibility of his recovery to a state of awareness with useful neurologic function . . . vanishingly small." Attached hereto and incorporated herein as Exhibit A is the January 26, 1983 letter from Scott Bundlie, M.D. of the Department of Neurology, Hennepin County Medical Center to

Miles Lane, M.D., White Bear Family Practice Clinic, which reflects the evaluation of Jamie Butcher by Dr. Bundlie and by Dr. Ronald Cranford.

9. Plaintiffs placed Jamie Butcher in White Bear Lake Care Center, a licensed nursing home, in 1984, and he has resided and received care there since that date. He breathes without the assistance of a ventilator, but receives nutrition and hydration through a gastrostomy tube directly into his stomach. He has had a physician order for DNR (Do Not Resuscitate) since his admission to the nursing home in 1984. At present, Marie LaFrance, M.D., serves as his attending physician for routine care. His medical and nursing care has been paid for by the Medical Assistance program, a joint federal/state program for indigent adults, since his admission to the nursing home. Plaintiffs visit Jamie Butcher regularly in the nursing home, and continue to be very involved in Jamie Butcher's care.

10. Around and about the date of Jamie Butcher's admission to the nursing home in 1984, Plaintiffs concluded that there was no hope of recovery for their son. At that time they decided that, if he did not die due to complications of his injuries before the 16th anniversary of his accident, they would terminate treatment so that he would not exist in the permanent vegetative state for a longer period of time than he had a conscious existence. In the spring of 1993, Plaintiffs began planning and making inquiries about discharging Jamie Butcher from the nursing home to their family home in September 1993 in order to terminate artificial administration of nutrition and hydration and to let him die naturally from the effects of the injuries he suffered in 1977.

11. Plaintiffs brought the matter to the Ethics Committee of White Bear Lake Care Center for review. That Committee held a meeting on June 28, 1993. The Committee recommended that Plaintiffs have an updated evaluation of Jamie Butcher's medical condition before implementing their decision. It also stated that, when discharge from the nursing home was imminent, a report under the Minnesota Vulnerable Adult Abuse Reporting Act would be made.

12. In accordance with the recommendation of the White Bear Lake Care Center Ethics Committee, Jamie Butcher was evaluated on August 4, 1993 by Dr. Ronald E. Cranford and Dr. Kathryn Selmo in the Department of Neurology at Hennepin County Medical Center. A head CT scan was also performed on that date. The Report of Neurologic Examination of James Butcher, August 4, 1993, the Report of Nonenhanced CT Scan of the Head of James D. Butcher II, August 4, 1993, and the August 9, 1993 letter from Ronald E. Cranford, M.D., Hennepin County Medical Center, to Marie LaFrance, M.D., White Bear Hills Medical Group, all attached hereto and incorporated herein as Exhibit B hereto, reflect that evaluation. Exhibit B indicates that Jamie Butcher is in a permanent vegetative state and that the physicians support the family's decision to withdraw treatment from Jamie Butcher. Also attached hereto and incorporated herein as Exhibit C are two photographs of the August 4, 1993 CT Scan for James D. Butcher, II as compared to two photographs of a CT Scan in a adult patient of comparable age.

13. Plaintiffs then made plans to discharge Jamie Butcher from White Bear Lake Care Center on September 26, 1993, and to bring him to their family home.

14. On August 17, 1993, Dr. Cranford, acting on Plaintiffs' behalf, made a telephone call to Dr. Michael McGee, Ramsey County Medical Examiner, to notify him in advance of the Plaintiffs' plans to let Jamie Butcher die at home after the termination of artificially administered nutrition and hydration. Dr. McGee recommended that Dr. Cranford call the Ramsey County Community Human Services Department to notify them in advance of Plaintiffs' plan.

15. On September 13, 1993, Dr. Cranford, acting on Plaintiffs' behalf, made a telephone call to Ms. Jenny Gordon, Supervisor of Vulnerable Adult Intake - 5NC, Ramsey County Social Services, Ramsey County Community Human Services Department to notify them in advance of the proposed discharge and termination of artificially administered nutrition and hydration. Ms. Gordon stated that she required

advice from the Ramsey County Attorney's Office before she could discuss the matter further. She called Dr. Cranford back and stated that the Ramsey County Attorney's Office advised her that the termination of artificially administered nutrition and hydration could constitute neglect under the Minnesota Vulnerable Adult Abuse Reporting Act and that Plaintiffs should petition the court to be appointed guardians for their son and should specifically petition the court for permission to terminate artificially administered nutrition and hydration. Shortly after the end of that telephone conversation, she called Dr. Cranford again and stated that the County Attorney's Office had called her again to advise that a violation of the Minnesota Vulnerable Adult Abuse Reporting Act was punishable as a gross misdemeanor.

16. On September 15, 1993, Ms. Jenny Gordon wrote a letter to confirm a telephone conversation with Ms. Char Samuelson, Administrator of White Bear Lake Care Center; that letter is attached hereto and incorporated herein as Exhibit D. In Exhibit D, Ramsey County indicated its position that discontinuation of artificially administered nutrition and hydration would appear to constitute neglect under the Minnesota Vulnerable Adult Reporting Act, Minnesota Statutes §626.557. Plaintiffs received a copy of that letter from Ms. Samuelson.

17. To the best of Plaintiffs' knowledge, on or about September 20, 1993, the Ramsey County Community Human Services Department conducted an investigation in a site visit to White Bear Lake Care Center. Plaintiffs have not been provided with any documentation of the results of that investigation.

18. On September 20, 1993, Ms. Char Samuelson, administrator of White Bear Lake Care Center, sent a letter to Ms. Jenny Gordon confirming the tentative discharge date of Jamie Butcher, a copy of which is attached hereto and incorporated herein as Exhibit E.

19. On September 20, 1993, Dr. Cranford, acting on behalf of Plaintiffs, spoke by telephone with Mr. Gary Davis, Assistant County Attorney, Ramsey County Attorney's

Office, to clarify Jamie Butcher's medical condition. Dr. Cranford's September 21, 1993 confirming letter to Attorney Davis, to which were attached copies of Exhibit B, is attached hereto and incorporated herein as Exhibit F. Exhibit F states Dr. Cranford's observation that Jamie Butcher's CT scan "is one of the worst I've ever seen in terms of showing extremely severe atrophy, not only of the cerebral hemispheres but also of the brain stem and cerebellum."

20. On September 20, 1993, acting upon Dr. Cranford's request on behalf of Plaintiffs, Paul S. Sanders, M.D., Chief Executive Officer, Minnesota Medical Association, sent a letter with four attachments to Jenny Gordon, Supervisor, Adult Intake Services, Ramsey County, a copy of which, with the first three attachments, is attached hereto and incorporated herein as Exhibit G. The attachments to Exhibit G included relevant policies of the American Medical Association and the Minnesota Medical Association and the 1993 Durable Power of Attorney for Health Care legislation enacted by the Minnesota Legislature. A copy of Exhibit G, with attachments, was also sent to Attorney Davis of the Ramsey County Attorney's Office.

21. On September 20, 1993, acting upon Dr. Cranford's request on behalf of Plaintiffs, Douglas K. Amdahl, Chief Justice, Minnesota Supreme Court (retired), sent a letter to Ms. Jenny Gordon, Supervisor, Adult Intake Services, Ramsey County, a copy of which, with attachments, is attached hereto and incorporated herein as Exhibit H. The attachments to Exhibit H include selected pages from "Guidelines for State Court Decision Making in Life-Sustaining Medical Treatment Cases", National Center for State Courts, Second Edition, 1992. A copy of Exhibit H, with attachments, was also sent to Attorney Davis of the Ramsey County Attorney's Office.

22. On September 22, 1993, Plaintiffs met with Ms. Jenny Gordon, Supervisor of Vulnerable Adult Intake - 5NC, Ramsey County Social Services, Ramsey County Community Human Services Department to discuss Jamie Butcher's medical condition and other relevant issues. Ms. Gordon confirmed Ramsey County's position that

Plaintiffs needed to obtain court authorization in order to implement their decision for their son.

23. Sometime during the first two weeks of October, 1993, Plaintiff Patricia Butcher spoke by telephone with Attorney Davis, during which conversation Attorney Davis confirmed the position of the Defendants communicated to White Bear Lake Care Center in Exhibit B.

24. On November 24, 1993, Ms. Gordon wrote a letter to Plaintiffs, a copy of which is attached hereto and incorporated herein as Exhibit I. In Exhibit I, Ms. Gordon again stated the position of Defendants that the termination of artificially administered nutrition and hydration for Jamie Butcher would appear to constitute neglect under the Minnesota Vulnerable Adult Abuse Reporting Act, and that Ramsey County would conduct an investigation and "contemplate possible protective actions" if Jamie Butcher were discharged to the family home for the purposes of termination of artificially administered nutrition and hydration.

25. Attached hereto and incorporated herein as Exhibit J is the report entitled "Medical Aspects of the Persistent Vegetative State", Statement of a Multi-Society Task Force, American Academy of Neurology, 2221 University Avenue S.E., Minneapolis, Minnesota 55414, Revised Final Draft (11/4/93). Exhibit J has been approved by the five professional associations which collaborated in its development: American Academy of Neurology; Child Neurology Society; American Neurological Association; American Association of Neurological Surgeons; and American Academy of Pediatrics.

26. Attached hereto and incorporated herein as Exhibit K are the Table of Contents, Preface, Pages 71-81, and Pages 142-146 of Guidelines for State Court Decision Making in Life-Sustaining Medical Treatment Cases, National Center for State Courts, Third Edition 1993. Exhibit K is the most recent version of materials which had previously been sent by Justice Amdahl (retired) to Jenny Gordon, Ramsey County, and

Attorney Davis, Ramsey County Attorney's Office on September 20, 1993, reflected in Exhibit H attached hereto.

FIRST CAUSE OF ACTION

The allegations contained in paragraphs 1 through 26 are hereby realleged and incorporated by reference herein.

27. Jamie Butcher was seventeen (17) years of age at the time of his automobile accident and at the time he entered the permanent vegetative state; therefore, Jamie Butcher has never been legally competent.

28. Jamie Butcher left no evidence, of which Plaintiffs are aware, of a previously expressed specific preference or advance directive of any kind, and as such there is no objective manner by which to ascertain what Jamie Butcher would have decided for himself in this situation.

29. Plaintiffs, as parents and natural guardians of Jamie Butcher, have in fact been acting as Jamie Butcher's surrogate decision makers since his birth, at all times before his accident and at all times after his accident.

30. The Minnesota Patients' and Residents' Bill of Rights, Minnesota Statutes §144.651, subd. 1, provides that the rights of patients and residents under that statute may be asserted on their behalf by an interested person in the absence of a guardian or conservator. As Jamie Butcher's natural parents, Plaintiffs are interested persons.

31. There is no dispute among family members concerning either the appropriateness of Plaintiffs continuing to act as Jamie Butcher's surrogate decision makers or the appropriateness of Plaintiffs' decision to terminate artificially administered nutrition and hydration.

32. To the best of Plaintiffs' knowledge, there is no dispute among Jamie Butcher's health care providers concerning the appropriateness of Plaintiffs continuing

to act as Jamie Butcher's surrogate decision makers or the appropriateness of Plaintiffs' decision to terminate artificially administered nutrition and hydration.

33. Plaintiffs have no adequate remedy at law.

34. Plaintiffs request an order from this court determining that they, as parents and natural guardians of Jamie Butcher, are the most appropriate surrogate decision makers for all health care decisions for their son, and determining that they need not petition for or be appointed guardians or conservators in order to continue making all health care decisions for their son.

SECOND CAUSE OF ACTION

The allegations contained in paragraphs 1 through 35 are hereby realleged and incorporated by reference herein.

35. The Minnesota Patients' and Residents' Bill of Rights, Minnesota Statutes §144A. 651, establishes the right of patients and residents to appropriate medical care based on individual needs, to receive information about treatment, to participate in planning treatment, and to refuse treatment.

36. The artificial administration of nutrition and hydration to Jamie Butcher is a health care treatment.

37. Plaintiffs, as the most appropriate surrogate decision makers for Jamie Butcher, have the right to make all decisions about health care treatments on his behalf.

38. 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.

39. Plaintiffs, as the most appropriate surrogate decision makers for Jamie Butcher, have the authority to decide to terminate the artificial administration of nutrition and hydration for Jamie Butcher.

40. Plaintiffs request an order from this court determining that they, as the most appropriate surrogate decision makers for Jamie Butcher, have the authority to make all health care decisions for Jamie Butcher, including the authority to decide to terminate the artificial administration of fluids and nutrition.

THIRD CAUSE OF ACTION

The allegations contained in paragraphs 1 through 40 are hereby realleged and incorporated by reference herein.

41. Jamie Butcher is a vulnerable adult under Minnesota Statutes §626.557, subd. 2(b) (1992) by virtue of his medical condition and his residence in a nursing home.

42. Minnesota Statutes §626.557, subd. 2(e)(2) (1992) defines neglect as "the absence or likelihood of absence of necessary food, clothing, shelter, health care or supervision of a vulnerable adult".

43. Under these circumstances, the termination of artificially administered nutrition and hydration to Jamie Butcher would not constitute the absence or likelihood of absence of necessary food, and therefore would not constitute neglect as that term is used in Minnesota Statutes §626.557, subd. 2(e) (1992). The artificial administration of nutrition and hydration is a health care treatment; it is not food as the term is used in Minnesota Statutes §626.557, subd. 2(e) (1992). Even if the artificial administration of nutrition and hydration is considered food under Minnesota Statutes §626.557, subd. 2(e) (1992), 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 and therefore would not constitute the absence of necessary food as that term is used in Minnesota Statutes §626.557, subd. 2(e) (1992).

44. Under these circumstances, the termination of artificially administered nutrition and hydration to Jamie Butcher would not constitute the absence or likelihood

of absence of necessary health care, and therefore would not constitute neglect as that term is used in Minnesota Statutes §626.557, subd. 2(e) (1992). 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 and therefore would not constitute the absence of necessary health care as that term is used in Minnesota Statutes §626.557, subd. 2(e) (1992).

45. Plaintiffs request an order from this court determining that the termination of artificially administered nutrition and hydration for Jamie Butcher would not constitute the absence of necessary food or necessary health care and thus would not constitute neglect as defined in Minnesota Statutes §626.557, subd. 2(e) (1992).

WHEREFORE, Plaintiffs James D. Butcher and Patricia A. Butcher, individually and as parents and natural guardians of James D. Butcher II request that this court provide a Declaratory Judgment and Order as follows:

1. Issue an ORDER directing a speedy hearing for a Declaratory Judgment and Injunctive Relief in this matter and advance it on the calendar pursuant to Minn. R. Civ. P. 57 and Minnesota Statutes §555.01.
2. Declare the rights of the Plaintiffs under the pertinent legal provisions.
3. Declare that Plaintiffs, as parents and natural guardians of James D. Butcher, II, are the most appropriate surrogate decision makers for all health care decisions for their son, and declare that Plaintiffs need not petition for or be appointed guardians or conservators in order to continue making all health care decisions for their son.
4. Declare that Plaintiffs, as the most appropriate surrogate decision makers for Jamie Butcher, have the authority to make all health care decisions for James D. Butcher, II, including the authority to decide to terminate the artificial administration of fluids and nutrition.

5. Declare that the termination of artificially administered nutrition and hydration for James D. Butcher, II would not constitute the absence of necessary food or necessary health care and thus would not constitute neglect as defined in Minnesota Statutes §626.557, subd. 2(e) (1992).

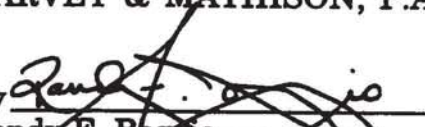
6. Issue an ORDER allowing but not directing Plaintiffs to remove their son James D. Butcher, II from White Bear Lake Care Center to bring him to their family home for the express purpose of terminating artificial administration of nutrition and hydration.

7. Issue an ORDER directing Defendants to refrain from instituting or otherwise proceeding with any protective action under Minnesota Statutes §626.557 (1992) on James D. Butcher, II's behalf.

8. Grant any other relief the Court deems equitable and just.

Dated: February 18, 1993

Respectfully submitted,
GARVEY & MATHISON, P.A.

by 
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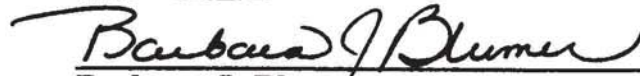
ACKNOWLEDGMENT

This Complaint is brought in good faith pursuant to Minnesota Statutes § 549.21. Plaintiffs recognize that costs, disbursements, and reasonable attorney and witness fees may be awarded to Defendants if Plaintiffs' Complaint is frivolous or in bad faith.



Randy F. Deggio

and



Barbara J. Blumer

INDEX OF EXHIBITS

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|------------|--|
| Exhibit A. | January 26, 1983 letter from Scott Bundlie, M.D., Department of Neurology, Hennepin County Medical Center, to Miles Lane, M.D., White Bear Family Practice Clinic. |
| Exhibit B. | August 9, 1993 letter from Ronald E. Cranford, M.D., Hennepin County Medical Center to Marie LaFrance, M.D., White Bear Hills Medical Group.

Report of Neurologic Examination of James Butcher, August 4, 1993, by Dr. Cranford and Kathryn Selmo, M.D., Hennepin County Medical Center Neurology Clinic.

Report of Nonenhanced CT Scan of the Head, August 4, 1993, of James D. Butcher II. |
| Exhibit C. | Two photographs of the August 4, 1993 CT Scan for James D. Butcher, II as compared to two photographs of a CT Scan in another adult of comparable age. |
| Exhibit D. | September 15, 1993 letter from Jenny Gordon, Supervisor, Vulnerable Adult Unit, Ramsey County Community Human Services Department to Ms. Char Samuelson, Director, White Bear Lake Care Center. |
| Exhibit E. | September 20, 1993 letter from Ms. Charlotte Samuelson, Administrator of White Bear Lake Care Center, to Ms. Jenny Gordon, Ramsey County Human Services. |
| Exhibit F. | September 21, 1993 letter from Ronald E. Cranford, M.D., Hennepin County Medical Center to Mr. Gary Davis, Ramsey County Attorney's Office, which had three attachments which have been previously incorporated in Exhibit B hereto. |
| Exhibit G. | September 20, 1993 letter from Paul S. Sanders, M.D., Chief Executive Officer of the Minnesota Medical Association to Jenny Gordon, Supervisor, Adult Intake Services, Ramsey County, with three of the four attachments: |

1. American Medical Association policies entitled "Decisions Near End of Life" and "Decision to Forego Life-Sustaining Treatment for Incompetent Patients", adopted at the 1991 American Medical Association Annual Meeting;

2. Minnesota Medical Association policies entitled "Artificially Administered Nutrition and Hydration" and "Limited Treatment Orders", adopted at the 1986 Minnesota Medical Association Annual Meeting, and "Physicians Contemplating Artificially Administered Nutrition and Hydration" adopted by the Minnesota Medical Association Board of Trustees in March 1986;

3. Minnesota Medical Association policies entitled "Decisions Near End of Life" and "Decisions to Forego Life-Sustaining Treatment for Patients Lacking Decision-Making Capacity" adopted at the 1992 Minnesota Medical Association Annual Meeting

Exhibit H.

September 20, 1993 letter from Douglas K. Amdahl, Chief Justice, Supreme Court of Minnesota (retired), to Ms. Jenny Gordon, Supervisor, Adult Intake Services, Ramsey County, to which are attached selected portions of Guidelines for State Court Decision Making in Life-Sustaining Medical Treatment Cases, National Center for State Courts, Second Edition, 1992.

Exhibit I.

November 24, 1993 letter from Jenny Gordon, Supervisor, Vulnerable Adult Unit, Ramsey County Community Human Services Department to Mr. and Mrs. James Butcher.

Exhibit J.

Medical Aspects of the Persistent Vegetative State: Statement of a Multi-Society Task Force, American Academy of Neurology, 2221 University Avenue S.E., Minneapolis, Minnesota 55414, Revised Final Draft, 11/4/93.

Exhibit K.

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