

# ENDORSEMENT

Short Style Of Cause: MCKITTY et al v. HAYANI et al File No. CN-17-4125

Date

Counsel

SEP 28 2017

App: Kozembe, C  
Def: Byron, Grace

I have heard further submissions from counsel regarding my endorsement released earlier today.

Firstly, the defendants require information regarding the testing that Dr. Byrne is proposing. That information shall be provided to the defendants by September 29 at 12 :00 pm. If there are any issues regarding the testing, I will be available after noon tomorrow to hear counsel regarding those issues.

The plaintiffs request an order that the defendants administer 100 mg of thyroid treatment, three times per day, pending the adjournment. There is no evidence before me to make that order. While Dr. Byrne's affidavit contained some statements regarding this issue, he has not yet been qualified as an expert before the court to provide opinion evidence.

I have ordered that Dr. Baker shall perform the tests necessary to determine if Taquisha meets the neurological criteria for death. One of those tests is the apnea test. The plaintiffs' position is that such testing will cause harm as it will deprive Taquisha of oxygen. Again, there is no evidence before the court to support that position. Dr. Baker can perform all tests required to determine if Taquisha meets the neruolgical criteria for death, including the apnea testing. As per section 2(1) of the Health Care Consent Act, this is an assessment and not treatment and consent of the SDM is not required.

The plaintiffs have requested that the defendants treat Taquisha as a patient rather than being sustained for organ donation. There is no evidence before the court fo

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the plaintiffs to make that allegation. The defendants shall continue the current status quo pending the adjournment.

The parties have agreed that, with the current death certificate, the Consent and Capacity Board does not have jurisdiction to deal with this matter and that there will be no application made to the Board pending this court's ruling.

The parties have agreed to schedule this matter for a 2 day hearing. The matter is therefore adjourned to October 17 and 18, 2017. The parties have agreed that the affidavits filed by the deponents shall be admitted as examination in chief and that cross-examination will be permitted.

In order that this matter be ready for a full hearing on October 17 and 18, I order the following timetable :

1. All further testing of Taquisha shall be completed by October 5, 2017;
2. All Affidavits shall be served and filed by October 11, 2017
3. Factums and Book of Authorities shall be served and filed by October 13, 2017.
4. Each party shall advise the other by October 13 of the witnesses they wish to cross-examine.

