

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

In re Anonymous, a Minor
Filed Under Seal
O.C. No. 681 MI of 2018
Control No. 181866



OPINION

T.P. ("Petitioner"), mother of Anonymous, a Minor, seeks a temporary restraining order against [REDACTED] to prevent it from withdrawing life-sustaining measures from Anonymous. For the reasons stated below, the Court holds that Petitioner has failed to establish that issuance of a temporary restraining order ("TRO") is appropriate, and accordingly, her request for a TRO is denied.

I. Background

This case presents deeply tragic circumstances. On or about May 2, 2018, ten-year-old Anonymous was being attended to by a medical aide in his home when he suddenly became unresponsive. (Pet'r's Mem. of Law, 1) The medical aide called for emergency services and immediately began performing CPR. (Id.) Anonymous was transported by ambulance to Robert Wood Johnson Hospital in New Brunswick, New Jersey, where an initial computed tomography ("CT") scan and electroencephalogram ("EEG") showed that Anonymous may have suffered anoxic brain injury, and he was placed on life support. (Id.) Anonymous was diagnosed with spinal muscular atrophy type II in July 2009 and received treatment for his condition at [REDACTED] given this history, Petitioner and Anonymous's father requested that he be transferred there for further treatment. (Trial Tr., May 17, 2018, 24; Resp't's Ex. 4) After his transfer to the hospital, [REDACTED] physicians diagnosed Anonymous with cardiac arrest. (Resp't's Ex. 4)

[REDACTED] physicians and nurses dedicated their considerable skill and expertise to providing Anonymous with the best care they could render; however, CT scans, magnetic resonance imaging ("MRI"), and EEGs performed showed brain swelling and injury, which eventually became so severe that it led to herniation. (Trial Tr., May 17, 2018, 41-45) Following the May 14, 2018 CT scan that showed "evidence of severe diffuse hypoxic ischemic injury and brainstem herniation," [REDACTED] physicians noted that Anonymous had exhibited no evidence of neurologic function during bedside exams for over forty-eight hours. (Resp't's Ex. 5) That same day, [REDACTED] physicians performed an evaluation to determine whether he met criteria indicating death by cessation of neurologic function. (Id.)

██████████ evaluation for determining whether brain function has ceased is a multistep process conducted by two separate physicians following procedures that meet or exceed national guidelines of the American Academy of Neurology, the American Academy of Pediatrics, and the Society of Critical Care Medicine. (Resp't's Ex. 3; Trial Tr., May 17, 2018, 32-36) The evaluation examines whether there is any response to various stimuli that would indicate activity in any of the cranial nerves or brain stem. (Id.) The May 14 evaluation indicated that there was no activity in Anonymous's brain or brain stem. (Resp't's Ex. 9) In addition to the standard neurologic function evaluation, ██████████ physicians administered a cerebral blood flow exam, which showed that there was no blood flow to Anonymous's brain. (Id.) A second neurologic function evaluation and cerebral blood flow exam were performed roughly twenty-four hours later by a different pair of physicians, who also determined that Anonymous had no brain or brain stem function and no blood flow to his brain, and that the cessation of function is irreversible.¹ (Trial Tr., May 17, 2018, 48-53) Based on the concurrence of the four ██████████ physicians, Anonymous was declared deceased. (Resp't's Mem. of Law, 1-2)

Although Anonymous has no brain or brain stem function, he maintains cardiac function as a result of various life-sustaining measures; ██████████ sought parental permission to withdraw these life-sustaining measures, but Petitioner and her husband did not consent. Instead, they hope to identify another hospital or long-term care facility in New Jersey that will allow them to transfer Anonymous for continued administration of life support. (Trial Tr., May 17, 2018, 19-21) ██████████ has fully cooperated with Petitioner's efforts, providing the hospitals and facilities she has identified as potentially willing to accept the transfer with Anonymous's medical records, though ██████████ stated that, based on past experiences with similar matters, it is exceedingly unlikely that any facility will actually be willing to receive the transfer. (Id. at 14-16)

Petitioner states that her beliefs as a Buddhist do not allow her to consent to removing life support. (Trial Tr., May 17, 2018, 22) Petitioner filed her Petition seeking a TRO on May 16, 2016 to prevent ██████████ from withdrawing life support until she is able to identify a facility that will accept Anonymous's transfer. (Pet. for TRO) ██████████ opposed the Petition, arguing that maintaining life support for Anonymous diverts substantial hospital resources and staff time away from other still-living but severely ill patients. (Resp't's Mem. of Law, 4) To those unfamiliar with the extraordinary commitment of pediatric critical care resources dedicated to maintaining this deceased minor on a ventilator, the termination of this mechanical breathing might seem inhumane. Detailed expert testimony regarding the effort and resources required, however, illustrates a truly herculean effort: Anonymous is on a ventilator and heart rate monitor

¹ While Petitioner and her husband report sporadic movements, such as an occasional twitch of Anonymous's hand, such movement is the result of spinal nerve activity, not brain activity. (Trial Tr., May 17, 2018, 64-65) A video taken by Anonymous's father on May 12, 2018 appeared to show Anonymous moving his mouth, but the video was taken before physicians expressed concern that brain function had ceased entirely.

which must be continuously observed by staff to ensure stability, requires respiratory treatments multiple times per day to keep his lungs clear, and requires blood work multiple times per day to ensure that the correct dosages of the medications required to maintain stability in his heart, other organs, and bodily processes are being administered. (Trial Tr., May 17, 2018, 75-76)

A hearing on the Petition was held May 17, 2017. The Court carefully considered the record in this matter and the arguments advanced by the parties. This Opinion follows.

II. Discussion

Courts have reasonable grounds to grant a TRO only where the party seeking it is able to establish six elements:

1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by an award of damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; 3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; 5) that the injunction it seeks is reasonably suited to abate the offending activity; and, 6) that a preliminary injunction will not adversely affect the public interest.

Hendricks v. Hendricks, 175 A.3d 323, 330 (Pa. Super. Ct. 2017). The Court may not grant a TRO where any of these six elements is not present. *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Petitioner has failed to establish any of these six elements.

The Uniform Declaration of Death Act provides that a person is deceased if, in accordance with accepted medical standards, circulatory and respiratory functions have irreversibly ceased *or* if all activity of the brain and brain stem have irreversibly ceased. 35 P.S. §10203. All four ██████ physicians that performed the neurologic function evaluation concur that, in accordance with standards that meet or exceed national standards, the cessation of Anonymous's brain and brain stem function is irreversible. Therefore, the Court must unfortunately conclude that Anonymous passed away.

Given this conclusion, withdrawal of life support would not result in any irreparable or legally cognizable harm. Issuing the TRO would force ██████ to divert resources away from

other sick children, and, sadly, could not restore Anonymous's life. The Court is unable to identify an offending activity that issuance of a TRO would be able to abate, and holds that Petitioner is unlikely to prevail on the merits.

Petitioner asks to be granted an exemption from the Uniform Declaration of Death Act to accommodate her religious beliefs as a Buddhist. While her home state of New Jersey recognizes an exemption to the Uniform Declaration of Death Act to accommodate personal religious beliefs, N.J.S.A. 26:6A-5, there is no similar provision that would allow the Court to grant an accommodation under Pennsylvania's statute.

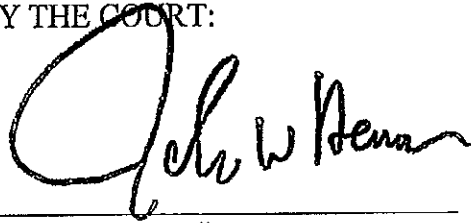
Alternatively, Petitioner argues that *In re Estate of Border* forbids ██████ from withdrawing life support without her consent even if all brain and brain stem function has ceased. However, *Border* presents facts that are not analogous to those in the present case. In *Border*, the family of an incapacitated person who was terminally ill wished to withdraw life support, and the guardian of his person refused to authorize withdrawal based on an advance healthcare directive he executed before his incapacity. 68 A.3d 946, 949-51 (Pa. Super. Ct. 2013). The hospital treating the incapacitated person sought removal of the guardian; the Orphans' Court held that the advance healthcare directive was rendered invalid by the decree that found the patient incapacitated, that continuing life support was not in his best interest, removed the guardian, and appointed the incapacitated person's brother to be his successor guardian. *Id.* at 952-53. While the Superior Court held that the Orphans' Court erred in holding that the advance healthcare directive was invalid,² it found no abuse of discretion in the removal and replacement of the guardian that would not consent to withdrawing life support. *Id.* at 961. The holding in *Border*, if it provides any real guidance here, simply indicates that Petitioner's authority in this matter is not absolute.

III. Conclusion

There is no loss greater than the loss of a child, and the Court extends its deepest sympathies to Petitioner, Anonymous's father, and their family. If this Court believed that issuing the TRO and compelling ██████ to continue life support could restore Anonymous, it would do so without hesitation. Sadly, this Court can find no such grounds for intervention, and the Petition must be denied.

² Although the Superior Court found error in the holding that the advance healthcare directive was invalid, the incapacitated person passed before the appeal was heard and there was no remand on the issue. *Id.* at 961.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John W. Herron". The signature is written in a cursive style with a large initial "J".

John W. Herron, J.

Dated this 18TH day of May, 2018

Christopher F. Bagnato, Esq.
Lawrence G. McMichael, Esq.
Patrick M. Harrington, Esq.